ENVIRONMENTAL PROTECTION AND ECOLOGICAL DEVELOPMENT-PERSPECTIVES OF INDIAN SUPREME COURT

“The robbed Judge must hold the sword and the scale both together being symbolic of social justice.”

- HOLMES

7.1 INTRODUCTION

The judicial approach to deal with the problems of environmental pollution was influenced to a very great extent by the common law doctrine of strict liability as laid down in Rayland’s Vs. Fletcher.\(^1\) However these appears to be a marked difference in the judicial approach. While under the rule of strict liability a person was held liable as soon as a thing escape from the premises of the person and causes injury to others. In pollution problems the Supreme Court goes a step further and enquires into the possibility of any alternative solution of the problem. If an alternative solution is feasible the Court has preferred to maintain the status quo possibly influenced by citizen’s right guaranteed under the Constitution and directs the parties concerned to adopt the alternative course or scientific approach to avoid the situation. This does not mean that the Court is reluctant towards the persons causing pollution because if they continue to do such act then court granted injunction against the parties concerned. The Court is more vigorous in its approach while dealing corporate or local bodies which failed to perform their duties towards the society and thereby permitting the pollution to continue. Here the Court

\(^1\) 1868, L.R. 3HL. 330.
has reminded to such bodies towards their duties to society. The courts also caution to the state towards its public duty in preventing and regulation the environmental pollution.

7.2 SUPREME COURT - THE GUARDIAN OF CONSTITUTION

The essence of a federal Constitution is the division of powers between the Central and State governments. This division is made by a written Constitution which is the Supreme Law of the Land. Since language of the Constitution is not free from ambiguities and its meaning is likely to be interpreted differently by different authorities at different times: it is natural that disputes might arise between the Centre and its constituent units regarding their respective powers.

Therefore, in order to maintain the supremacy of the Constitution there must be an independent and impartial authority to decide disputes between the Centre and the States or the States inter Se. This function can only be entrusted to a judicial body. The Supreme Court under India Constitution is such arbitration. It is the final interpreter and guardian of the Constitution. In addition to the above function of maintaining the supremacy of the Constitution the Supreme Court is also the guardian of the Fundamental Rights of the people. Truly the Supreme Court has been called upon to safeguard civil and minority rights and plays the role of guardian of the social revolution”. It is the great tribunal which has to draw the line between individual liberty and social control. It is also the highest and final interpreter of the general law of the country. It is the highest court of appeal in civil and criminal matters.
7.3 SUPREME COURT ON ENVIRONMENTAL PROBLEMS AND ECOLOGICAL DEVELOPMENT

The Supreme Court of India is the highest court; it played a major role in protection of environmental problems and ecological development in India right from its establishment. The role of Supreme Court in protecting the environment under various heads has been discussed. They are as follows:

1. SUPREME COURT ON LAW OF NUISANCE:

Earlier Case: Dattatraya V. Gopisa\(^2\), it was alleged by the plaintiff that a construction of a cess pool and latrine constructed by the defendant had caused private nuisance to him and the other neighbors because from it offensive smell was emanated causing inconvenience and injury to their health. In this context a remit was ordered with a view to find out the degree of nuisance being committed there and what ways and means could be devised with the help of medical or sanitary expert’s evidence to prevent such nuisance.

So it is suggested that at the first instance preventive measures should be adopted by the Municipal Corporation and assistance of medical and sanitary experts should be obtained for that purpose. In such cases if no other alternative is found only then measures should be taken to demolish those structures causing loss to the other party. Thus it should be the intention of the court to justice with both the parties and if it is possible to stop nuisance of air pollution without causing loss to the wrong-doers then that mode should be preferred by the court.

\(^2\) AIR 1927 Nag 236
In modern times a changing trend has been noticed and rights of person for comfortable occupation in quite residential surroundings has been recognized. The first case in relation to this trend was Govind Singh V. Shanthi Swaroop. In this case Supreme Court had examined the emerging parameters of public nuisance. The case related to the nuisance of smoke from a bakery causing injury as smoke was emitted from its chimney in such a manner that it was injurious to health safety and convenience of people living in the close proximity of the bakery. The Supreme Court on special leave to appeal noted that the evidence disclosed the emission of smoke injurious to the health and physical comfort of the people living or working in the proximity of the appellant’s bakery. Approving the view of the magistrate that the use of the oven and chimney was virtually playing with the health of the people the Supreme Court held: in a matter of this nature where what is involved is not merely the right of a private individual but the health safety and convenience of the public at large the safer course would be to accept the view of the learned Magistrate who saw for himself the hazard resulting from the working of the bakery.

The Court did not ask for sufficient evidence as to whether there was public nuisance and whether the smoke would be dangerous to the people living close by in order to support the position. The Court did not go behind the findings of the local inspection nor did it insist that the magistrate should not have relied on sufficient scientific evidence nor did it ask for reports from

3 AIR 1979 SC 143 at p. 145
experts. The Court relied on the findings of the sub-divisional magistrate believing him to have made a local inspection of the site.

**The Ratlam Case:** The important role played by the judicial activism of the eighties made its impact felt more in the area of the environmental protection than in any other field. Municipal Council, Ratlam Vs Vardhichand⁴, is a signpost. The Supreme Court identified the responsibilities of local bodies towards the protection of environment and developed the law of public nuisance in the CrPC as a potent instrument for enforcement of their duties. The residents within Ratlam municipality were suffering for a long time from pungent smell from open drains. The odour caused by public excretion in slums and the liquids flowing on to the street from the distilleries forced the people to approach the magistrate for a remedy. Following a direction from the magistrate to remove the drain a six-month time bound programme had to be adopted for constructing drainage and public latrines. Instead of complying with the order the municipality opted to challenge it pleading financial constraints and inability to carry out the scheme. When the case came to the Supreme Court Krishna Iyer J. had made a thorough examination of two main issues:

- The municipal legislation which casts a duty on the municipality to maintain clean roads and clean drains. and
- The provision in the Indian Penal Code which prescribes punishment to a person contravening the direction of the magistrate.

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⁴ AIR 1980 SC 1622 at p. 1929
According to him the imperative tone of these provisions demands a mandatory duty. When an order is given under as 133 of the CrPC the municipality cannot take the plea that notwithstanding the nuisance its financial inability validly exonerated it from statutory liability. The CrPC operates against statutory bodies and agencies regardless of the cash in their offers because human rights have to be respected by the state regardless of budgetary provisions. The Court held the plea of financial inability has no place when the municipalities have mandatory duty to protect the people from environmental hazards.

Ratlam is a significant milestone in the path of environmental protection. It probably has served to offset the insufficiency of the legal mechanism and enforcement not only in the local body laws but also in other environmental legislations such as Water Act Air Act or the Environment Act. This case has widened the scope and amplitude of the jurisdiction of the magistrate under Sec. 133 of the CrPC. It also lays down basic guidelines in determining the primary responsibilities of local bodies and industry. However it may well be asked whether the plea of financial inability was rejected in a realistic manner. In order to overcome this problem 73rd and 74th Amendments to the Constitution were passed. By these Amendments the local bodies have been endowed with more powers responsibilities and financial strength.

2. ENVIRONMENTAL HAZARDS: RULE OF ABSOLUTE LIABILITY

It is only when an accident of the magnitude and impact like the Bhopal catastrophe takes place that environmentalists social workers the general public and government institutions wake up to a new awareness. Along with
launching rehabilitative measures they start thinking about new ways and means of preventing similar tragedies in the future. This process leads to legislative and administrative activism. Industrial accidents involving environmental hazards give rise to judicial concern also. In India the Rule of Absolute liability for the harm caused by industry engaged in hazardous and inherently dangerous activities is a newly formulated doctrine free from the exceptions to the strict liability rule in England. The Indian rule was evolved in MC Mehta vs. Union of India\textsuperscript{5} which was popularly known as the oleum gas leakage case. It was a public interest litigation under ART 32 of the Indian Constitution filed by a public spirited lawyer seeking the closure of a factory engaged in manufacturing hazardous products. While the case was pending oleum gas leaking out from the factory affected several persons. One person living in the locality dies. Applications were immediately filed for award of compensation to the victims. The Supreme Court could have avoided a decision on their applications by asking parties to approach the appropriate subordinate court by filing suits for compensation. Instead the Court proceeded to formulate the general principle of liability of industries engaged in hazardous and inherently dangerous activity.

The Court observed that the issues of closure of the factory where dangerous substances manufactured and stored the responsibility of civil authorities like the Municipal Corporation the personal liability of the managerial personnel and the official in-charges of the factory, and finally the

\textsuperscript{5} AIR 1986 SC 1086
responsibility of the Government in framing a suitable location policy which would ensure that the vicinity of such factories is not habituated so that in the event of an accidental escape of the dangerous substances loss of human life can be kept to the minimum have been very forcefully articulated in this judgment. The court also held that, where an enterprise is engaged in hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions operate to the tortuous principle of strict liability.

The Supreme Court has indicated a two-fold base for this rule. Firstly if an enterprise is permitted to carry on hazardous or inherently dangerous activity for its profit the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Secondly the enterprise alone has the resources to discover and guard against hazards or dangers and to provide warning against potential hazards.

The new rule of Strict liability laid down MC Mehta’s Case is more stringent rule of strict liability than the one propounded in Rylands Vs Fletcher. The reasons for this opinion are as under:
The necessary requirements for applicability of the new rule are that the defendant is engaged in a hazardous or inherently dangerous activity and that harm results to any one on account of an accident in the operation of such hazardous or inherently dangerous activity. While the rule in Rylands v. Fletcher requires non-natural use of land by the defendant and escape from his land of the thing which causes damage.

The new rule makes no distinction between persons within the premises where the enterprise is carried on and persons outside the premises for escape of the thing causing harm while the rule in Rylands V. Fletcher will not cover cases of harm to persons within the premises.

The rule in Rylands v. Fletcher is not absolute inasmuch as it is subject to a number of exceptions. On the other hand the new rule laid down in Mehta’s case is not only strict but absolute and is subject to no exception.

By invoking the rule of Rylands Vs. Fletcher only ordinary damages or compensation can be awarded to the aggrieved person where it is laid down in MC Mehta’s Case that the court can allow exemplary damages and that greater amount of compensation will be payable by the enterprise which varies according to the status and prosperity of enterprise.
BHOPAL LITIGATION

The Bhopal accident the worst industrial disaster in human history happened about two years before the Supreme Court evolved the rule of absolute liability. Under any condition it is not possible for a court to make quick decisions relating to compensation to victims of accident like those of Bhopal. The interests affected are various: the intensity of damage and suffering varies from one victim to another. Assessment of the quantum of compensation of the loss mental agony suffering and death is an arduous task. The nature of the Bhopal disaster and its aftermath disclosed the stark realities of a developing nation and threw a challenge to the Indian legal system. To solve the problem Supreme Court followed a method which is described bellow in the Union Carbide Corporation Vs Union of India⁶.

Doctrne of parens patriae in mass tort cases

In order to avoid the problem of multiplicity of parties Parliament passed the Bhopal Gas Leak Disaster (Processing of Claims) Act I 985 hereinafter called the Bhopal Act and conferred on the Union of India the responsibility of suing parens patriae on behalf of the victims. The doctrine of parens patriae to the rights of a person real or artificial to sue and to be sued on behalf of the rights of a person real or artificial to sue and to be sued on behalf of another who is incapacitated to take up the case before a judicial forum as effectively as the former can. Obviously the intention behind the legislative measure was the speedy and equitable disposal of claims arising out of the Bhopal disaster.

⁶ AIR 1992 SC 248
From interim order to compromise

As soon as adjudication of the claims in a US court was found impossible the Union of India filed a suit in Bhopal on behalf of the victims. The District court invoked the inherent power of courts under Sec. 151 of the Code of Civil procedure and ordered an interim relief for Rs. 3500 millions. The use of inherent power was not approved by the High Court when the revision against the interim order was heard. It was held that interim compensation could be given under Sec. 9 of the Code of Civil Procedure as well as under the common law evolved and recognized by Indian courts in light of statutory changes in judicial procedure on tort actions in England. According to the High Court there was more than prima facie case that made the defendant UCC liable and the plaintiff, Union of India entitled to interim payment. The High Court reduced the interim relief granted by the District Court to Rs. 2.500 million. Both UCC and Union of India appealed.

In the course of hearing the appeal an idea of compromise arisen. The Supreme Court accepted the suggestion. In the settlement award the Court laid down a clear mandate that all claims cause or criminal action against UCC and its subsidiaries stood extinguished all civil proceedings were transferred to the Court and dismissed and all criminal proceedings including contempt proceedings were quashed and the accused were deemed to be acquitted. In a detailed order the Court listed the factors that led them agree to the compromise they were:
The range disclosed by offers and counter offers of parties

The estimates made by the High Court in making the interim order

The number of cases of death and of total or partial disability permanent or temporary

The possibilities of injuries of utmost severity and

The need for specialized medical treatment and rehabilitation

The quantum so fixed was far higher than average rates of compensation in comparable cases. The Court seems to have admitted that the exercise was not an exact quantification of the legally payable damages to the claimants either individually or by category. This is so because as the Court said considerations of excellence and niceties of legal principles were greatly overshadowed by the pressing problems of very survival for a large number of victims.

The matter concerns the interests of a large number of victims of a mass disaster. The Court hoped that the settlement would do them good and bring them immediate relief before it was too late. The proverbial delay inherent in similar litigation is thus eliminated.

**Review of compromise judgment**

Some of the questions highlighted by the commentators reached the Supreme Court in a petition asking for review of the settlement. The questions are as follows
a) The Supreme Court could not quash all pending proceedings civil and
criminal and come to a compromise in an appeal against an interim
order in a suit.

b) The principles of natural justice did not follow that is the notice which
is essential in a suit was not given. Hence the compromise was invalid.

c) What would be the out come if the settlement was found inadequate?

This petition was disposed off by the apex court and gave answers to
above questions. For (a) the Court said such technicalities don’t fall under the
preview of the constitutional interpretation as the main matter was being
disposed of with the consent of parties in a special leave petition with the goal
of doing complete justice under Art 1 42 of the Constitution of India. The
power to do complete justice could be exercised with the aid of the principles
under Code of Criminal Procedure which enables withdrawal of prosecution.
The bar against future prosecution neither clothed the UCC with immunity nor
amounted to a stifling of prosecution but was only a reiteration of the
consequences of termination of prosecution which was a motive not a
consideration for entering into the agreement. Despite these perspectives the
Court found no grounds for justifying withdrawal of prosecutions.

To answering the question (b) Court said that the provision for notice in
the Civil Procedure Code for representative suits should not proprio vigore
apply to a compromise judgment and that notice of proceedings in the review
is enough compliance on the matter. The plea for a fair hearing was also
rejected as the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 provides only for due regard to the views expressed by the claimants and does not require a fair hearing as condition precedent to compromise.

On the third important issue the court held that the Union of India as a welfare state has the responsibility to make good the deficiency and safeguard the interest of the victims.

In this case it was held that there was no scope for applying the rule of absolute liability which is evolved in MC Mehta Cases the tort feasor stood notionally substituted by the settlement fund which exhausted the liability of alleged hazardous entrepreneurs the UCC and the UCIL. Mehta is also not applicable against the Union of India in making good the deficiency if any. The liability of the Union of India is not as a joint tort feasor but only as a welfare state. According to Chief Justice Misra the Court did not conclude in the Mehta case that the delinquent company was a State in order to attract the discipline of Art 21 and 32 and hence compensation was given. To him the Mehta principle of absolute liability is only an obiter and there has been no final adjudication in a mass tort action anywhere. Adjudication would only be an attempt at approximation not exact quantification.

The Bhopal disaster was the world's worst industrial catastrophe. It occurred on the night of December 2–3, 1984 at the Union Carbide India Limited (UCIL) pesticide plant in Bhopal, Madhya Pradesh, India. A leak of
methyl isocyanate gas and other chemicals from the plant resulted in the exposure of hundreds of thousands of people. Estimates vary on the death toll. The official immediate death toll was 2,259 and the government of Madhya Pradesh has confirmed a total of 3,787 deaths related to the gas release. Other government agencies estimate 15,000 deaths. Others estimate that 3,000 died within weeks and that another 8,000 have since died from gas-related diseases. A government affidavit in 2006 stated the leak caused 558,125 injuries including 38,478 temporary partial and approximately 3,900 severely and permanently disabling injuries.

UCIL was the Indian subsidiary of Union Carbide Corporation (UCC). Indian Government controlled banks and the Indian public held 49.1 percent ownership share. In 1994, the Supreme Court of India allowed UCC to sell its 50.9 percent share. The Bhopal plant was sold to McLeod Russel (India) Ltd. UCC was purchased by Dow Chemical Company in 2001.

Civil and criminal cases are pending in the United States District Court, Manhattan and the District Court of Bhopal, India, involving UCC, UCIL employees, and Warren Anderson, UCC CEO at the time of the disaster. In June 2010, seven ex-employees, including the former UCIL chairman, were convicted in Bhopal of causing death by negligence and sentenced to two years imprisonment and a fine of about $2,000 each, the maximum punishment allowed by law. An eighth former employee was also convicted but died before judgment was passed.
On 28th Feb 2011 the Supreme Court of India issued notice to the Union Carbide Corporation, Dow Chemicals and others on the Centre’s extraordinary petition seeking an additional compensation of Rs7,844 crore for the victims of 1984 Bhopal gas tragedy. Through its curative petition, the Central Government has requested Supreme Court to take a re-look at the entire evidence and enhance the compensation amount. The bench also decided to hear CBI's curative petition asking the court to restore the stringent charges of culpable homicide not amounting to murder against the accused in the criminal case.

**Legal action against Union Carbide**

Legal proceedings involving UCC, the United States and Indian governments, local Bhopal authorities, and the disaster victims started immediately after the catastrophe.

**Legal proceedings leading to the settlement**

On 14 December 1984, the Chairman and CEO of Union Carbide, Warren Anderson, addressed the US Congress, stressing the company's "commitment to safety" and promising to ensure that a similar accident "cannot happen again". However, the Indian Government passed the Bhopal Gas Leak Act in March 1985, allowing the Government of India to act as the legal representative for victims of the disaster, leading to the beginning of legal wrangling.
In 1985, Henry Waxman, a Californian Democrat, called for a US government inquiry into the Bhopal disaster, which resulted in US legislation regarding the accidental release of toxic chemicals in the United States.

March 1986 saw Union Carbide propose a settlement figure, endorsed by plaintiffs' US attorneys, of $350 million that would, according to the company, "generate a fund for Bhopal victims of between $500–600 million over 20 years". In May, litigation was transferred from the US to Indian courts by US District Court Judge. Following an appeal of this decision, the US Court of Appeals affirmed the transfer, judging, in January 1987, that UCIL was a "separate entity, owned, managed and operated exclusively by Indian citizens in India". The judge in the US granted UCC's forum request, thus moving the case to India. This meant that, under US federal law, the company had to submit to Indian jurisdiction.

Litigation continued in India during 1988. The Government of India claimed US$ 350 million from UCC. The Indian Supreme Court told both sides to come to an agreement and "start with a clean slate" in November 1988. Eventually, in an out-of-court settlement reached in 1989, Union Carbide agreed to pay US$ 470 million for damages caused in the Bhopal disaster, 15% of the original $3 billion claimed in the lawsuit. By the end of October 2003, according to the Bhopal Gas Tragedy Relief and Rehabilitation Department, compensation had been awarded to 554,895 people for injuries received and 15,310 survivors of those killed. The average amount to families of the dead was $2,200.
Throughout 1990, the Indian Supreme Court heard appeals against the settlement from "activist petitions". In October 1991, the Supreme Court upheld the original $470 million, dismissing any other outstanding petitions that challenged the original decision. The Court ordered the Indian government "to purchase, out of settlement fund, a group medical insurance policy to cover 100,000 persons who may later develop symptoms" and cover any shortfall in the settlement fund. It also requested UCC and its subsidiary "voluntarily" fund a hospital in Bhopal, at an estimated $17 million, to specifically treat victims of the Bhopal disaster. The company agreed to this.

**Charges against Warren Anderson and others**

UCC Chairman and CEO Warren Anderson was arrested and released on bail by the Madhya Pradesh Police in Bhopal on December 7, 1984. The arrest, which took place at the airport, ensured Anderson would meet no harm by the Bhopal community. Anderson was taken to UCC's house after which he was released six hours later on $2,100 bail and flown out on a government plane. In 1987, the Indian government summoned Anderson, eight other executives and two company affiliates with homicide charges to appear in Indian court. Union Carbide balked, saying the company is not under Indian jurisdiction.

In 1991, local Bhopal authorities charged Anderson, who had retired in 1986, with manslaughter, a crime that carries a maximum penalty of 10 years in prison. He was declared a fugitive from justice by the Chief Judicial
Magistrate of Bhopal on February 1, 1992, for failing to appear at the court hearings in a culpable homicide case in which he was named the chief defendant. Orders were passed to the Government of India to press for an extradition from the United States.

The U.S. Supreme Court refused to hear an appeal of the decision of the lower federal courts in October 1993, meaning that victims of the Bhopal disaster could not seek damages in a US court.

In 2004, the Indian Supreme Court ordered the Indian government to release any remaining settlement funds to victims. In September 2006, the Welfare Commission for Bhopal Gas Victims announced that all original compensation claims and revised petitions had been "cleared".

In 2006, the Second Circuit Court of Appeals in New York City upheld the dismissal of remaining claims in the case of Bano Vs. Union Carbide Corporation. This move blocked plaintiffs' motions for class certification and claims for property damages and remediation. In the view of UCC, "the ruling reaffirms UCC's long-held positions and finally puts to rest—both procedurally and substantively—the issues raised in the class action complaint first filed against Union Carbide in 1999 by Haseena Bi and several organizations representing the residents of Bhopal".
In June 2010, seven former employees of the Union Carbide subsidiary, all Indian nationals and many in their 70s, were convicted of causing death by negligence and each sentenced to two years imprisonment and fined Rs.1 lakh (US$2,124). All were released on bail shortly after the verdict. The names of those convicted are: Keshub Mahindra, former non-executive chairman of Union Carbide India Limited; V.P. Gokhale, managing director; Kishore Kamdar, vice-president; J. Mukund, works manager; S.P. Chowdhury, production manager; K.V. Shetty, plant superintendent; and S.I. Qureshi, production assistant. Federal class action litigation, Sahu Vs. Union Carbide et al. is presently pending on appeal before the Second Circuit Court of Appeals in New York. The litigation seeks damages for personal injury, medical monitoring and injunctive relief in the form of cleanup of the drinking water supplies for residential areas near the Bhopal plant. A related complaint seeking similar relief for property damage claimants is stayed pending the outcome of the Sahu appeal before the federal district court in the Southern District of New York.

On December 3, 2004, the twentieth anniversary of the disaster, a man claiming to be a Dow representative named Jude Finisterra was interviewed on BBC World News. He claimed that the company had agreed to clean up the site and compensate those harmed in the incident, by liquidating Union Carbide for $12 billion USD.
Immediately afterward, Dow's share price fell 4.2% in 23 minutes, for a loss of $2 billion in market value. Dow quickly issued a statement saying that they had no employee by that name—that he was an impostor, not affiliated with Dow, and that his claims were a hoax. The BBC broadcast a correction and an apology. The statement was widely carried.

"Jude Finisterra" was actually Andy Bichlbaum, a member of the activist prankster group The Yes Men. In 2002, The Yes Men issued a fake press release explaining why Dow refused to take responsibility for the disaster and started up a website, at "DowEthics.com", designed to look like the real Dow website but with what they felt was a more accurate cast on the events. In 2004, a producer for the BBC emailed them through the website requesting an interview, which they gladly obliged.

Taking credit for the prank in an interview on Democracy Now!, Bichlbaum explains how his fake name was derived: "Jude is the patron saint of impossible causes and Finisterra means the end of the Earth". He used this approach to garner major media attention showing how Dow could help.

After the original interview was revealed as a hoax, Bichlbaum appeared in a follow-up interview on the United Kingdom's Channel 4 News. During the interview he was repeatedly asked if he had considered the emotions and reaction of the people of Bhopal when producing the hoax. According to the interviewer, "there were many people in tears" upon having
learned of the hoax. Each time, Bichlbaum said that, in comparison, what
distress he had caused the people was minimal to that for which Dow was
responsible. In the 2009 film *The Yes Men Fix the World*, the Yes Men travel
to Bhopal to assess public opinion on their prank, and are surprised to find that
the residents applaud their efforts to bring responsibility to the corporate
world.

The Bhopal gas tragedy has turned out to be a study in contrast between
humanity and human rights. Here’s what’s happened till date:

June 7, 2010: The verdict: Eight persons comprising the Indian
management of UCIL convicted; Warren Anderson not named.

June 7, 2010: After more than 25 years, the judgement against the nine
accused in the Bhopal gas tragedy is due.

2004: Supreme Court orders government to pay out rest of $ 470
million paid by Union Carbide as compensation.

2001: Union Carbide refuses to take responsibility for former Indian
arm’s liabilities.

1992: Part of $ 470 million disbursed among victims. Anderson
declared fugitive from law for ignoring court summons.

1989: Indian government and Union Carbide strike out-of-court deal,
Union Carbide gives $ 470 million.

1985: India claims $3.3 billion from Union Carbide in an American
court.
Dec 4, 1984: A case is registered against Union Carbide. The chairman Warren Anderson is arrested but later released on bail by the Madhya Pradesh police.

Dec 3, 1984: Union Carbide India Ltd’s (UCIL) pesticide plant in Bhopal releases Methyl isocyanate. Around 800,000 people exposed to the gas. According to government estimates, 15000 people died. Others passed on the harmful effects of the gas, genetically.

2010 update

On June 7, eight UCIL executives including former chairman Keshub Mahindra were convicted of criminal negligence and sentenced to two years in jail. The sentences are under appeal.

On June 24, the Union Cabinet of the Government of India approved a Rs1265cr aid package. It will be funded by Indian taxpayers through the government.

On August 19, US deputy National Security Advisor Michael Froman said pursuing the Bhopal case might have a chilling effect on US investment.

On August 20, the United States State Department said the Bhopal gas tragedy case is legally closed.
A Misery of a Village: Mehta reiterated and explained:

It was in Indian Council of Enviro-Legal Action vs. Union of India⁷, ‘popularly called as the Sludge’s case that the Supreme Court got the opportunity to examine and reiterate the Mehta principle of absolute liability. The sludge discharged from manufacture of H acid remained as lethal waste for a long time after the respondents the units of a chemical industry stopped production. It destroyed the whole village spreading disease death and disaster. Two questions were posed in the case: Should respondents be held responsible to meet the cost of remedial action to remove and store the sludge in safe and proper manner? Should they be made liable for the loss and suffering to the village where the industrial complex was located? The Court supported the rule of absolute liability laid down in Mehta cases and applied to this case. According to the Court the polluter pa principle has gained almost universal recognition and is stated in absolute terms in MC Mehta cases. The Court imposed on the erring respondents not only the liability for the environmental hazards but also the cost of all measures including remedial measures which are decided by the competent Civil Court to be recovered from them. The Court directed the government to take all steps and to levy the costs on the respondents if they fail to carry out remedial action.

⁷ AIR 1996 SC 1466
3. RIGHT TO ENVIRONMENT:

The concepts the right to life personal liberty and procedure established by law’ contained in Art. 21 of the Constitution were in a state of inertia during the year 1976 the year of the national emergency. Tables were turned by the landmark decision of the Supreme Court in Maneka Gandhi Vs Union of India\(^8\) which held that the right to life and personal liberty guaranteed under Art 21 can be infringed only by a just fair and reasonable procedure. According to the Court the right to life is not confined to mere animal existence but extends to the right to live with basic human dignity.

**Ecological balance:** There are a host of questions to be dealt with when the Supreme Court reviews environmental decisions under right to environment. Among them the question of how to bring about a balance between the environment and development possess a great dilemma. The Rural Litigation and Entitlement Kendra Vs State of UP\(^9\) is the first case where the Supreme Court made an attempt to look into this case. In this case the petitioners a voluntary organization feared that mining activities of the lessees caused ecological disturbance. The lessees had rights given by the government and on conditions laid down under a specific law. According to a committee of experts appointed by the Court mining of limestone in certain areas was found dangerous damaging ecological balance. The Supreme Court ordered to close the mining operations in these areas though it allowed mining operations in

\(^8\) AIR 1978 SC 597
\(^9\) AIR 1985 SC 652 at pp. 654-657
certain cases reported as not dangerous. The apex Court considered the hardship caused to the lessees but thought that it is a price that has to be paid for protecting and safeguarding the right of people to live in healthy environment with minimal disturbance to ecological balance. For rehabilitation of the lessees it must be given to them when mining leases were granted in other areas of the state. Workers are to be rehabilitated by employing them in the reclamation a forestation and soil conservation programmes in the areas.

The right to humane and healthy environment is seen indirectly approved in the MC Mehta group of cases decided subsequently by the Supreme Court. For the convenience of study I discussed the MC Mehta cases into two headings. They are Oleum gas cases & Ganga Pollution cases. I first discuss the Oleum gas cases. In the first MC Mehta case the Apex Court had to deal specifically with the impact of activities concerning manufacturing of hazardous products in Shriram Foods & Fertilisers Industries located in New Delhi. It was alleged that the leakage of Oleum gas from the factory resulted in the death of a person and affected the health of several others. The activities of the factory are also threat to the workers in the factory as well as members of general public outside. The question was whether or not the plant should be closed down. The Court in stead of closing down laid down many conditions under which industries of hazardous products should be allowed to restart. In

10 AIR 1987 SC 985
doing so the Court found that the case raised some seminal questions concerning the scope and ambit of Art 21 and 32 of the Constitution. By making such a comment the Court was referring to the concept of right to life in Art 21 and the process of vindication of that right in Art 32.

In the second MC Mehta case\textsuperscript{11} the Supreme Court modified some of the conditions which are issued in the first MC Mehta case. In the third MC Mehta case\textsuperscript{12} Supreme Court dealt with an important question concerning the amount of compensation payable to the victims affected by leakage of Oleum gas from the factory. The Court held that it could entertain a petition under Article 32 of the Constitution, namely a petition for the enforcement of fundamental rights and lay down the principles on which the quantum of compensation could be computed and paid. This case is significant as it evolved a new jurisprudence of liability to the victims of pollution caused by an industry engaged in hazardous and inherently dangerous activity. Although it did not specifically declare the existence of the right to a clean and healthy environment in Art 21 the court evolved the principle of absolute liability of compensation through interpretation of the Constitutional provisions relating to right to live and to the remedy under Art 32 for violation of fundamental rights.

\textsuperscript{11} AIR 1987 SC 982
\textsuperscript{12} AIR 1987 SC 1086 at p. 1099
The first MC Mehta case enlarged the scope of the right to live and said that the state had power to restrict hazardous industrial activities for the purpose of protecting the right of the people to live in a healthy environment. The third MC Mehta case took a step forward and held that read with the remedies under Art 32 including issuance of directions for enforcement of fundamental rights. The right to live contains the right to claim compensation for the victims of pollution hazards. An entirely different fact situation was there in the fourth MC Mehta case, which is also called as Ganga pollution case No.1. The tanning industries located on the banks of Ganga were alleged to be polluting the river. The Court issued directions to them to set up effluent plants within six months from the date of the order. It was specified that failure to do so would entail closure of business. The Court also issued directions to the Central Government. UP Pollution control Board and the district magistrate. In the main judgment there is no reference to the right to life and the need to protect the environment. It is evident that the Court had taken for granted that the fundamental right is violated by the alleged pollution and that this violation entails the Court to interfere and issue directions for a remedy despite the mechanisms available in the Water Act. In the supporting judgment however Justice KN Singh noted that the pollution of river Ganga is affecting the life health and ecology of Indo-Gangetic plain. He concluded that although the closure of tanneries might result in unemployment and loss of revenue. life health and ecology had greater importance

13 AIR 1987 SC 1037 at pp. 1047. 1048
The four MC Mehta cases came before the Supreme Court under Art 32 of the Constitution on the initiative of a public-spirited lawyer using the lethal weapon PIL. Though he had no interest in the subject matter he filed the petitions on behalf of the people who were affected or were likely to be affected by some action or inaction. In these cases the traditional rule of Locus Standi was not raised. This was the issue in the fifth MC Mehta case’ (Ganga pollution case No.2). Facts were same as in the third MC Mehta case. Accepting the dynamic approach of PIL the Court held that a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga has the right to move the Supreme Court.

In these MC Mehta Cases the Supreme Court held explicitly that the right to the environment is contained in the right to life and personal liberty in Art 21. In these cases the Court issued directions under Art 32 of the Constitution which is a provision to enforce fundamental rights to protect the lives of the people their health and the ecology. The vigilance to safeguard the fundamental rights and the readiness to interfere for saving the life and health of the people were clearly spelt out in these judicial pronouncements. Despite the presence of specific laws dealing with the matter the Court wanted to ensure that the activities authorized under these laws were carried out without harming the environment to which every person has a fundamental right. These initiatives lead to one conclusion that the right to life in Art 21 is so

AIR 1988 SC 1115 at p. 1126
wide and comprehensive that it becomes meaningless if it does not contain such elements of enhancing the quality of life as the right to a clean humane and healthy environment and the right to get just compensation when this right is violated.

The first time when the Supreme Court came close to almost declaring the right to environment in Art 21 was in 1990, in Chhetriya Pardushan Mukti Sangarsh Sarnati Vs. State of UP\textsuperscript{15} and Subhash Kuniar Vs. State of Bihar\textsuperscript{16} is the other notable case where the Supreme Court took a step forward. In Chhetriya Pardushan, Chief Justice Sabyasachi Mukerji observed that every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated in Art 21 of the Constitution of India. In Subhash Kunar, Justice KN Singh observed in a more vivid manner that Right to live include the right to enjoyment of pollution free water and air for full enjoyment of life.

However in both the cases the Court did not get an opportunity to apply the principles to the facts of cases. The Court found that the petitioners made false allegations due to a personal grudge towards the respondent companies alleged to be polluting the environment.

\footnote{\textsuperscript{15} AIR 1990 SC 2060} \footnote{\textsuperscript{16} AIR 1991 SC 420}
The real opportunity came before the Supreme Court in 1991 in Bangalore Medical Trust. Vs B.S. Mudappa\textsuperscript{17} when an interesting question as to whether an open space laid down as such in a development scheme could be leased out for a private nursing home had to be decided. The Court held that the land once appropriated or earmarked as open space or for building purposes or other development as part of the scheme adopted by a local authority like the Bangalore Development Authority (BDA) should not be used for any other purpose unless the scheme itself is altered in the manner in which by law the authority as a corporate body is competent to alter. The Court's words are emphatic on the constitutional mandate for the protection of individual freedom and dignity' and attainments of a quality for life which a healthy and clean environment guarantees. The Court said that Protection of the environment open spaces for recreation and fresh air play grounds for children promenade for the residents and other conveniences or amenities is matters of great public concern and of vital interest to be taken care of in a development scheme. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot sacrifice by leasing or selling such sites to provide persons for conversion to other user. Any such act would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of quality of life which makes the guaranteed rights a reality for all citizens.

\textsuperscript{17} AIR 1991 SC 1902
Right to life was expanded further by the Supreme Court in Consumer Education and Research Centre EC. Union of India\textsuperscript{18} In this case what reformative and remedial actions are possible in respect of occupational diseases of workers in asbestos industry was the issue in a PIL filed by the Petitioner a Research Centre. The Court said that Social security just and humane conditions of work and leisure to workmen are as part of his meaningful right to life. The Court held that this fundamental right to health and medical aid shall continue even after retirement. Significantly the Court said that in appropriate cases appropriate directions could be issued to the state or private employer with a view to protecting the environment preventing pollution in the work place safeguarding the health of the people. Directions were issued to the asbestos industry and the union and state authorities are meant to fill up the yawning gaps in implementation of the law.

In Indian Council for Enviro-Legal Action Vs Union of India\textsuperscript{19} popularly called as Sludge’s case the Supreme Court had to re-examine the Right to life concept from a new perspective. In this case remedial action was sought for the malady that gripped the men and property of the village where the industries were located. Though they stopped producing the toxic material the respondents could not comply with various orders of the Court. They could not completely remove the sludge nor could they store them in a safe place. Sludge percolated into the earth making the soil reddish and ground water

\textsuperscript{18} AIR 1995 SC 922 at p. 938

\textsuperscript{19} AIR 1996 SC 1446
highly polluted. The water in wells became dark in colour and was no longer fit for consumption by human beings or by cattle. The leaves of the trees got burnt and the growth of the trees got stunted. Sludge flowed into irrigation canal. Crops were affected. Besides the respondents without taking adequate measures were discharging untreated toxic water emanating from the sulphuric acid plant. Toxic water was flowing over the sludge. This was unauthorized. All facts and materials were brought to the notice of the Court through a report prepared by the National Environmental Engineering Research Institute (NEERI). It also contained the opinion of experts from the Ministry of Environment and Forest and views of the State Pollution Control Board. The Court said that the damage caused by the untreated highly toxic wastes resulting from the production of sulphuric acid and the continued discharge of highly toxic effluent from sulphuric acid plant flowing through the sledges is indescribable. It has inflicted untold miseries upon the villages and long lasting damage to the soil to the under ground water and to the environment of the area in general The Court had categorically fixed the responsibility on the errant industry and asked the Central Government to recover in case the industry failed to take effective remedial action the expenses for the remedial action.

4. SUPREME COURT ON COASTAL MANAGEMENT:

The Supreme Court of India had the opportunity to scrutinize various aspects of coastal zone management. One case related to the attempt of the
Central Government to dilute Coastal Regulatory Zones (CR1) norms for beach resorts and another was the indifference of coastal states and union territories to prepare Coastal Zone Management Plans on time. The other case related to indiscriminate aquaculture practices resulting in environmental degradation in the coast.

**Resorts and Hotels on the Beach:** Building of hotels in the beach and catering to the needs of tourism was at one time a contentious issue for a long time in the past. To solve the problem Central Government appointed a Committee headed by Mr. B.B. Vohra, a bureaucrat turned environmentalist to examine how tourism and hotel industry could be sustainably developed without harming the ecology. Based on this Committee’s recommendations Central Government brought an Amendment in 1994 to the CR1 notification.

This Amendment was challenged in Supreme Court in Indian Council Enviro-Legal Action Vs Union of India\(^20\). In this case Supreme Court scrutinized the Amendment in light of the recommendations of the Vohra Committee and held that the Amendment though included some of the recommendations was partially invalid.

The Vohra Committee had suggested case to case relaxation of the rule in rocky formations and hilly areas in case of No Development Zone (NDZ). The Amendment to the CRZ notification went further and conferred on the

\(^{20} 1996, 5\) SSC 281
Central Government the discretion to permit construction within NDZ with such conditions and restrictions as it may deem fit. The Court took the view that this part of the amendment gave arbitrary and unrestricted power to the government. Exercise of such power could result in ecological degradation make NDZ ineffective and lead to the violation of Art. 21 to those living in the areas.

Vohra Committee suggested no reduction in the NDZ limits but the 1994 Amendment reduced the NDZ limit from 100 meters to 50 meters in the case of rivers, creeks and backwaters. No reason was given nor was it certain whether the reduction would not result in serious ecological imbalance. The Court observed that in the absence of any justification for this reduction being given the only conclusion which can be arrived at is that the relaxation to 50 meters has been done for some extraneous reasons. This amendment is therefore contrary to the object of the Environment Act and has not been made for any valid reason and is therefore held to be illegal.

(b) Aquaculture in Coastal Zones: Recent trends of aquaculture industry are illustrations. The traditional and improved systems have had no environmental consequences. These systems gave way to extensive semi-intensive and intensive shrimp farming with an eye on export and more profits. Agricultural farms were converted into commercial aquaculture on a large scale: traditional water-fed use was substituted by pump-fed water use with submarine pipelines from the sea. The impact was so deleterious that this
transformation led to stagnation of ground water obstruction to natural drainage for flood water difficulties of access to the sea by fishermen and the public, pollution of ponds and source water destruction of mangroves and land subsidence etc. Abandoned shrimp farms and ponds remained virtually unusable for any other purpose. Jagannath Vs Union of India\(^{21}\) investigated these evils. The Apex Court observed that the purpose of CRZ Notification is to protect the ecologically fragile coastal areas and to safeguard the aesthetic qualities and uses of the sea coast. The setting up of modern shrimp aquaculture farms right on the sea coast and construction of ponds and other infrastructure there is per se hazardous and is bound to degrade the marine ecology coastal environment and aesthetic uses of the sea coast. We have therefore no hesitation in holding that shrimp culture industry is neither directly related to water front’ nor directly needing foreshore facilities. The setting up of shrimp culture farms within the prohibited areas under the CRZ Notification cannot be permitted. Any Industry which is directly related to the waterfront or needs foreshore facilities is exempted from prohibitions on the CRZ. Aquaculture needs brackish water. This can be brought from the sea by pipes. Hence aquaculture industry needs not foreshore facilities. Shrimp farms are constructed on the banks of creeks without leaving any area for drainage of flood water. According to the Court such construction violates the provisions under the CRZ Notification against burning and disturbance of the natural course of seawater and is contrary to rules relating to hazardous wastes and

\(^{21}\) (1997) 2 SCC 87
substances. The Apex Court expressed the view that a High Powered Authority under the Environment Act was to be created. It said the authority should examine questions relating to aquaculture and have a strict environmental test on all attempts to install shrimp industry in ecologically fragile coastal area. The impact on physical and social environments also had to be assessed. Using the precautionary principle the Court directed the authorities to demolish all aquaculture farms except those which may operate with the prior approval of the authority thus constituted. In the Court’s view the damage caused to the ecology and economics by environmentally poor aquaculture techniques is higher than the earnings from the sale of products. The Court made it absolutely clear that agricultural lands salt pan lands mangroves wetlands forest lands for village common purpose and lands meant for public purposes shall not be used for construction of shrimp farming. This Judgment was influenced by the concept of sustainable development.

5. SUPREME COURT ON POLLUTION CONTROL LAW (WATER):

For a long time since the enactment of Water Act of 1974 industries had been disregarding the directions of pollution control boards and violating the conditions of consent with impunity Supreme Court was forthright in disapproving the lethargy of boards in taking coercive action against violators of the law. The limits and extent of the prosecuting power were the issue in UP Pollution Control Board vs. M/s Modi Distillery. The case raised the

22 AIR 1988 SC 1128
questions of efficiency of criminal sanctions against pollution offences and sought more commitment of the part of the pollution control agencies in initiating prosecution. The respondents an industrial unit of a company Modi Industries Limited were being prosecuted for discharging noxious trade effluents without the consent of the state board. The company as such was not impleaded. In an application filed under s 482 of the CrPC. the High Court held that this lapse was detrimental to the validity of process against the Managing Director. Chairman, Vice-Chairman and Directors of the company who were in the array of parties. Saying that such technical flaws could have been corrected by an amendment of the complaint the Supreme Court held that the office bearers of a company are deemed to be guilty of the offences committed by the company. The Court found it regrettable that due to sheer negligence of the board and its legal advisors large business houses were allowed to escape with impunity the consequence of breaches of the provision of law committed by them.

Rapid industrialization and urbanization and the accompanying rural exodus to urban areas have had their evil consequences. Cities like Delhi have turned into dual dustbins with garbage strewn all over. In Wadehra Vs. Union of India\textsuperscript{23} the Supreme Court issued several directions to government and other pollution control agencies particularly the municipal authorities in Delhi who were found to be remiss in performing their statutory duties of collecting and

\textsuperscript{23} (1996) 2 SCC 594
disposing garbage and waste. Significantly the Court took the view that government should construct and install incinerators in all hospitals and nursing homes with 50 beds and above. Efficiency in disposal of hospital wastes is a matter which requires urgent attention because it is an irony that hospitals meant for treating and curing diseases become sources for generating and spreading diseases by exposure to dangerous bio-medical waste.

In MC Mehta Vs Union of India\textsuperscript{24} popularly called as Ganga Pollution Case. Supreme Court notices the utter indifference of the tanneries to the orders to stop the discharge of trade effluents into the river Ganga. Noting that the immense adverse effect on the public at large by the discharge of trade effluents would outweigh any inconvenience caused to the management on account of the closure the Court gave specific directions to the tanneries either to set up at least Primary Treatment Plants (PTP) or to stop their functioning. It asked the Central Government state pollution control board and the District Magistrate to monitor the enforcement of its orders. Assignment of such a watch dog function to the authorities was unprecedented. It gave them more awareness and strength for taking up anti-pollution measures.

In MC Mehta Vs Union of India\textsuperscript{25} popularly called as Second Ganga Pollution Case. Supreme Court issued guidelines to the Kanpur Municipality to tackle about the tanneries around River Ganges. In this case the facts are

\begin{itemize}
\item \textsuperscript{24} AIR 1988 SC 1037
\item \textsuperscript{25} AIR 1988 SC 1115
\end{itemize}
like this. The sewerage system in Kanpur was in complete disarray. Therefore the level of pollution of the river Ganga at Kanpur was higher. Water became unfit for drinking, fishing or bathing. The Supreme Court fixed the responsibility on the Nagar Mahapalika of Kanpur and asked it to improve its sewerage system within six months with better interaction with the state board. General directions issued by the Supreme Court in the case are notable. High Courts were asked not to grant stay to proceedings to prosecute industrialists and other persons who pollute the water in the river Ganga. In extraordinary circumstances the High Court should dispose of such cases within two months from the date of institution. These directions were particularly significant as the court said that they applied mutatis mutandis to all other nagarapalikas and municipalities which had jurisdiction over the areas through which the river Ganga flows. Although the observations and directions were related to the pollution of the river Ganga had the force of law in relation to similar cases of pollution throughout the country. They pointed to the need for quick prosecution of criminal proceedings against industrialist’s official and other persons responsible for pollution.

6. SUPREME COURT ON ENVIRONMENTAL PROTECTION ACT (EPA) 1986

There are only a few cases in which courts have had to examine the scope of the EPA. I quote a few cases in this regard. In Vellor Citizens
Welfare Forum Vs Union of India\textsuperscript{26} Supreme Court had dealt with following questions. Does the provision for the appointment of authorities read with the power of the Central Government to protect and improve the quality of environment contain a power coupled with duty? Can the government sleep over the provisions relating to the creation of authorities and allow the law to be operated for a long time with the sole mechanics of delegated legislation and delegation of powers? In this case Supreme Court held that the main purpose of the EPA was to create an authority or authorities under Sec.3(3) with adequate powers to control pollution and protect the environment. Directing the closure of polluting tanneries in the State of Tamil Nadu the Court observed that it is a pity that till date no authority has been constituted by the Central Government. The work which is required to be done by an authority in terms of a sec 3(3) read with other provisions of the Act is being done by this Court and the other Courts in the country. It is high time that the Central Government realizes its responsibility and statutory duty to protect the degrading environment in the country. If the conditions in the five districts of Tamil Nadu where tanneries are operating are permitted to continue then in the near future all rivers/canals shall be polluted underground waters contaminated agricultural lands turned barren and the residents of the area exposed to serious disease. It is therefore necessary for this Court to direct the Central Government to take immediate action under the provisions of the Environment Act.

\textsuperscript{26} AIR 1996 SC 2715 at 2724
Enactment of a law is worse than non-enactment if its infringement is tolerated. In Indian Council for Enviro-Legal Action Vs Union of India\(^27\) the mandates laid down in the CR1 notification issued under the provisions of the EPA were seldom followed by states who delayed in preparing and submitting Coastal Zone Management Plans to the Centre. Once the Central Government delegates responsibilities to the states the implementation of the provisions of the EPA essentially becomes the duty of State Governments. The EPA is an excellent example of generating co-operative federalism where both the Centre and states have to work together for the protection and improvement of the quality of environment although the crucial provision in the Act the necessary and expedient clause confers sweeping powers on the Central Government.

The necessary and expedient clause’ generates and guides all measures for the protection and improvement of environment. Besides appointment of authorities the ingenious use of the tool of issuing directions adds a significant dimension to this power. In the sludge case the Supreme Court interpreted the necessary and expedient clause and the directing power in such a manner that the combination of the powers would enable the Central Government to levy and recover the cost of remedial measures against environmental degradation. Thus the Central Government is empowered to take all such measures and issue all such directions as are called for to protect and improve the quality of the environment. The Court said that these powers could be used by the

\(^{27}\) (1996) 5 SCC 281 at pp 301-303
Central Government for several purposes the removal of sludge undertaking of remedial measures imposition of costs on the offending industry and utilization of the amount for remedial measures. The observation of the Court tells that the quintessence of the EPA that Sections 3 and 5 of Environment Protection Act 1986 empower the government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the environment which expression has been defined in very wide and expansive terms in s 2(a) of the Environment (Protection) Act. This power includes the power to prohibit an activity close an industry direct and or carry out remedial measures and wherever necessary impose the cost of remedial measures upon the offending industry.

7. SUPREME COURT ON FOREST PROTECTION:

Forests help in maintaining the ecological balance. They render the climate equable add to the fertility of the soil prevent soil erosion and promote perennial stream flow in rain-fed rivers. They shelter wild animals preserve gene pools and protect tribal people. The Supreme Court took note of this role in Rural litigation and Entitlement Kendra Vs. State of UP\textsuperscript{28}.

(a) Sustainable use of Forests: The Right of Forest Dwellers: For industrial growth and progress energy is indispensable: exploitation of resources available from forest cannot be rules out. The location of development projects in or near a forest area raise complex questions conflict between short-term

\textsuperscript{28} AIR 1988 SC 2187
benefits and long term gains the social impact rehabilitation of the local people and reforestation etc. In Banwasi Seva Ashram Vs State of UP\textsuperscript{29} Supreme Court favoured the Super Thermal Plant of NTPC Ltd in location that extended to a forest area. In this case the apex court said indisputably forests are a much wanted national asset. On account of the depletion there of ecology has been disturbed: climate has undergone a major change and rains have become scanty. These have long term adverse effects on national economy as also on the living process. At the same time we cannot lose sight of the fact that for industrial growth and also for provision of improved living facilities there is great demand in this country for energy such as electricity.

The Court also said that the concept of sustainable development demanded that the ousters be rehabilitated after examining their rights. While endorsing the project the Court gave equal importance to this question and issued various orders for the determination of the rights. In the second Banwasi Seva Ashram\textsuperscript{30} the apex Court imposed more responsibilities on the NTPC to find out alternative plots render resettlement and subsistence allowance give free transportation reserve jobs and provide facilities of roads water supply health care and electricity.

In State of Orissa Vs. Duti Sahu\textsuperscript{31} Supreme Court held that when displaced people were given lands for cultivation they didn’t have any right to deforest the land and to cut and take the trees that belong to the Government unless the Government gives permission.

\textsuperscript{29} AIR 1987 SC 374 at p. 376
\textsuperscript{30} (1992) 2 SCC 202 at pp. 204-206
\textsuperscript{31} AIR 1997 SC 1040 at p. 1041
(b) **Tribal Rights:** In the past Tribal were considered protectors of forest. Only when men from the planes began mixing with them and when needs of development started to displace them from their habitats the Tribals were seen as group of posing threat to environment. The conflict lies at the very foundations of all legislative policies and is a bi-product of the environmental development dilemma. A solution to this dilemma is based on what are the rights and privileges of Tribals in the forest area and their protection.

In Animal and Environment Legal Defence Fund Vs Union of India\(^{32}\) Supreme Court dealt with the Tribal Rights and privileges in the forest area. In this case Supreme Court had to resolve a dispute between two neighboring states on the rights of tribals. The Government of Madhya Pradesh allowed fishing permits to the displaced tribal people in Toltadoh reservoir within Pench National Park. The government of Maharashtra objected on environmental grounds such as potential danger of felling trees harm to crocodiles and turtles in the reservoir disturbance to water birds and migratory birds and the possibility of lighting fires and throwing garbage and polythene bags around and into the reservoir. The fact that displaced persons were not systematically rehabilitated weighed more in the balance. The Court observed while every attempt must be made to preserve the fragile ecology of the forest area and protect the Tiger Reserve the right of the tribals formally living in the area to keep body and soul together must receive proper consideration.

\(^{32}\) AIR 1997 SC 1071 at p. 1073
Undoubtedly every effort should be made to ensure that the tribals when resettled are in a position to earn their livelihood.

Emphasizing stricter vigilance on the exercise of fishing rights and allied matters the Court insisted on photo identity for access of permit holders, check posts to bar transgress into other parts daily record of fish catch prohibition of tribal fishermen from lighting fires on the banks of reservoir and sanction of more monitoring facilities.

In Salehbhai Mulla Mohnadali Vs State of Gujarat\textsuperscript{33} Supreme Court told that Tribal people or other forest dwellers obviously do not have unrestrained right of access to all forest produce. If they are given rights over standing trees the rights will definitely be subject to conditions imposed by regulations whether they are framed by an old princely state or a new state thereafter.

(c) **Reasonableness of regulations**: Both the Central Government and State Governments are given the power to regulate transactions taking place in forest. The Central Government can levy duty on timber in any manner at any place and at any rates as it may determine. Other regulatory powers are vested in State Government. They exercise these powers by framing rules and issuing notifications. The challenge to the reasonableness of regulations takes different

\textsuperscript{33} AIR 1993 SC 335 at 340
forms. In State of Tripura vs Sudhir Ranjan Nath\textsuperscript{34} regulatory fees laid down in the rules were questioned as not having quid pro quo and as volatile of conditions for free flow of inter-state trade under Art 304 (b) of the Constitution. Interestingly the Court found that the impugned rule was made neither by the state legislature nor by the state as a delegate of Parliament for the implementation of forest legislation which was extended to Tripura when it was a Union Territory. The Court said the rule was thus saved by the provisions of Art 302 of the Constitution which enables Parliament to impose restrictions or even prohibitions in the public interest on inter-state commerce.

(d) Forest Conservation: Role of Central Government: A major part of the forest conservation cases relates to the question whether or not prior approval is essential when the government grants licenses for mining in forest area. In the past mining was regulated by the conditions listed under license only. For mining in a forest area before the commencement of the FCA prior approval of the Central Government was not necessary. This position was taken by Supreme Court in State of Bihar Vs Banshi Ram Modi\textsuperscript{35}. The State Government permitted him to mine these two minerals the forest department objected as there was no prior approval from the Central Government. According to the court the action of the State Government did not violate FCA as the new minerals were found in an area already broken up and cleared for

\textsuperscript{34} AIR 1997 SC 1168 at p. 1173
\textsuperscript{35} AIR 1985 SC 814
mining although this may not be the case for mining in a new area. It is true that the Court instructed that the mining should not lead to felling of trees.

In Ambica Quarn’ Works Vs State of Gujarat\textsuperscript{36} the Supreme Court made it categorically clear that renewal of a license after the FCA came into being can be made only on getting prior permission from the Central Government. The FCA was passed in order to arrest ecological imbalance, a consequence of deforestation. Holding that the power of the authorities is not coupled with the duty to renew all licenses once given the court observed the primary duty was to the community and that duty took precedence in our opinion in these cases. The obligation to the society must predominate over the obligation to the individuals.

Following Ambica Quariy Supreme Court is consistent in holding that for mining in reserved forests or protected forests prior approval of the Central Government was necessary.

In most cases licenses granted or renewed against this mandate were disapproved and set aside. In a recent case Supreme Court Monitoring Committee Vs Mussoorie Dehradun Development Authority\textsuperscript{37} the Supreme Court instead of stopping non-forest activity directed the respondent to enlist proposals for expost facto approval by the Central Government. Obviously the FCA does not envisage expost facto approval and the law clearly provides for

\textsuperscript{36} AIR 1987 SC 1073 at 1076
\textsuperscript{37} (1997) 11 SCC 605
prior’ approval. However the Court directed the Central Government to ascertain whether the grant was on extraneous considerations and if so, identify the persons or officers responsible and whether criminal action could be taken against those responsible.

(e) Eco-Tourism and Forest Protection: There are differing views on the benefits of eco-tourism. While it provides opportunities for nature lovers to experience its beauty and appreciate its importance its promotion also results in polluting and harming the environment. Supreme Court deals with this concept in various cases. In MC Mehta Vs Karnalnath\(^{38}\) an artificial deviation of the flow of a river in forest land for the purpose of augmenting facilities of a motel was challenged. Quashing prior approval for the lease and imposing on the motel the responsibility of restoration of environment and ecology of the area the Supreme Court observed 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 sea-shore running waters air forests and ecologically fragile lands. 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. The Court referred to the struggle between members of the public who would preserve our rivers forests parks and open lands in their pristine purity and those charged with

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\(^{38}\) (1997) 1 SCC 377 at p. 413
administrative responsibilities who under the pressure of changing needs of an increasingly complex society find it necessary to encroach to some extent upon open lands. In the opinion of the court this conflict had to be resolved by the legislature and not by the courts. If there is a law the courts can act as an instrument of determining legislative intent.

The formulation and application of the public trust doctrine in the context of protection of forests and preservation of natural resources is a landmark in the growth of Indian environmental law.

In Union of India Vc. Karnath Holiday Resorts\textsuperscript{39} Supreme Court disagreeing with the argument that the lease for a snack bar and restaurant was necessary for visiting tourists in the reserved forest observed, all current streams of thought lead towards protection of environment and preservation of forest wealth. On the other hand there are demands in justification of other use telling on the forests. A balance would have to be struck in a cool and dispassionate manner”.

10. THE HIGH-WATER MARK IN FOREST PROTECTION MEASURES:

The balance between environment and development is necessarily to be maintained. This idea of sustainable development had its influence on the judiciary in interpreting the provisions of laws relating to the forest. Various dimensions of this problem came to be examined by courts. TN Godavarman\textsuperscript{39} (1996) 1 SCC 774 at p. 776
Tirumulkpad vs. Union of India\textsuperscript{40} is a remarkable illustration. In view of the significance of the problem the Court gave notice to both the Central Government and State Governments enabling them to present their views. The pronouncements of the court can be summarized as follows:

- Forest includes the area noted in the government records as forest irrespective of ownership.
- Mining license in such an area without prior approval is violation of the FCA. All on-going activity under such invalid license must cease. The State Governments have to take necessary remedial measures.
- Running saw mills of any kind is a non-forest activity. All saw mills within a distance of 100 kilometers from the border of the State of Arunachal Pradesh are to be wound up.
- Responsibility is imposed on each State Government to report on the number of sawmills, actual capacity of the mills proximity to the nearest forest and their sources of timber.
- Complete ban on felling of trees in the tropical wet ever-green forests in Arunachal Pradesh is essential because of their significance to maintain ecological balance needed to preserve biodiversity. Felling of forests in other states except in accordance with working plans is suspended.

\textsuperscript{40} AIR 1997 SC 1228 at pp. 1230-1233
Movement of the cut trees and timber is banned with the exception of certified timber required for defense purposes.

Each State Government should constitute expert committees to identify forest areas denuded forests and covered by plantation trees and to assess the sustainable capacity of the forest qua saw mills.

In the State of Jammu and Kashmir no private agencies should deal in felled trees or in timber. No permission should be given for sawmills within a distance of eight kilometers from the boundary of demarcated forest area.

In Tamil Nadu the tribals who are part of the social forestry programme in respect of patta lands other than forests may continue to grow and cut trees according to the government scheme and in accordance with the law applicable.

Plantations are not allowed to expand further and encroach upon forests by way of clearing or otherwise.

While reviewing the follow up action the Supreme Court proceeded to constitute a High Power Committee to oversee the strict and faithful implementation of its orders in the North Eastern region.
8. SUPREME COURT ON WILD LIFE

Judiciary has the opportunity to examine the provisions of Wildlife Protection Act on more occasions than one. In State of Bihar Vs Murad Alikhan\textsuperscript{41} the question was whether the first class magistrate before whom, a Range Officer makes a complaint could take cognizance of the offence while an investigation by the police is pending with regard to the same offence. The allegation was that the respondents shot and skinned an elephant and removed the tusks. The Supreme Court disagreed with the High Court and held that the magistrate can proceed with the case even while the police investigation is pending as the law allows the magistrate to take cognizance of a case on complaint by forest officials. The significance of the case lies in the courts observation that the laws on wildlife were the result of the compelling need to restore the ecological balance overturned by human actions.

Violation of any provisions of law or orders or of conditions of license is an offence but if the offence relates to an animal specified in Schedule I and Part II of Schedule II or its trophy six month imprisonment is the minimum punishment. If he declares the fact of possession a dealer possessing the trophy will escape from punishment. In Pyarelal vs. State\textsuperscript{42} the appellant found in possession of trophies of chinkara skin intended for sale had been convicted by the trial court despite his plea that trophies were made out of goat skin and not of any wild animal. There was no evidence to prove when exactly the

\textsuperscript{41} (1988) 4 SCC 655
\textsuperscript{42} AIR 1995 SC 1159
appellant came in possession of the trophies. This led the Supreme Court to hold that the appellant committed only an offence of violating the law relating to declaration of the trophies in possession. According to the Court the appellant did not make a declaration required under law from all dealers and hence was only liable for the reduced punishment prescribed for that offence.

The concern over protection of sanctuaries and national parks is evident in the cases where the courts do not allow even a small tinkering with the mechanism. Tarun Bharai Sangh Aiwar vs. Union of India is an illustration where a mining license relating to the area within a sanctuary was challenged as contrary to laws on forest conservation and wildlife and as a threat to wildlife habitat leading to degradation of the ecology. The State government pleaded that the license was valid as the area was not yet declared as reserved forests. Describing this plea as odd the Court said that the State Government allowed mining operations in a protected area and in turn allowed degradation of environment while they preferred by notifications and declaration to protect the environment. However, as there was some doubt with regard to the limits of the area the Court appointed a committee to identify the protected area and assess the damage to the environment if mining was carried out in the area. Till the committee submitted its report the granting of a license was prohibited.

43 AIR 1992 SC 514 at 516-518
9. ENVIRONMENTAL AWARENESS AND EDUCATION: The directives of the Supreme Court went to the extent of spreading environmental awareness and literally as well as the launching of environmental education not only at school level but also at the college level. In MC Mehta Vs Union of India\textsuperscript{44} the Supreme Court stressed the need for introducing such schemes: The Court said that in order for human conduct to be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires. This should be possible only when steps are taken in the adequate measures to make people aware of the indispensable necessity of their conduct being oriented in accordance with the requirements of law. The directions of the Court to All India Radio Doordarshan to focus their programmes on various aspects of environment have been immediately complied with. The Court also required every State Government and Education Board to take steps for environmental education. It is also to be noted that in tune with these directions various authorities have taken up meaningful schemes of environmental education.

10. FILLING GAPS IN LAW AND LACUNAE IN ADMINISTRATION:

In some cases Supreme Court issue directions to fill the gaps in existing law in some cases the Court may go to the extent of asking the Government to constitute national and state regulatory authorities or environmental courts. In most cases the Apex Court had issued directions to remind statutory

\textsuperscript{44} AIR 1992 SC 382 at p. 384
authorities of their responsibilities to protect the environment. The Court always wanted pollution control authorities to function effectively in the spheres allotted to them by law. By entrusting them directly with the responsibility of studying the state of environment and ecology the Court had molded these bodies into dynamic independent environmental protection agencies.

Being conscious of its constitutional obligations to protect the fundamental rights of the citizens of India the Supreme Court has issued directions in various types of cases relating to protection of the environment prevention of pollution in order to ensure a safe and clean environment along with the development and to deal with issues like local conditions. In Indian Council for Enviro-Legal Action Vs Union Vs ‘India’ the Supreme Court felt that such conditions in different parts of the country being better to them the High Courts would be appropriate forum to be moved for more effective implementation and monitoring of anti-pollution laws.

In Vellore Citizen Welfare Forum Vs Union of India45 after issuing various directions for closure relocation of tanneries in Tamil Nadu the Supreme Court entrusted Madras High Court with the responsibility of monitoring matters if they are part if a petition to the High Court under Art. 226. The notable request made by the Supreme Court to the of the Madras High Court was to constitute a special bench called Green Bench to deal-a

45 AIR 1990 SC 2060 at p. 2063
green bench - to deal with the case and other environmental matters as is done in Calcutta. Madhya Pradesh and in some other High Courts. The Supreme Court only made a request to the High Court to constitute a green bench. However, the rationale of such request is obviously admission and an approval of the need for experienced judicial institutions with the requisite environmental expertise at the regional and state levels to deal with environmental and ecological issues of local and regional significance.

11. COMMITTEES AND COMMISSIONS

The assessment of the impact on the environment is of recent origin and in statutory form is limited in many respects. The fact that there was no objective impact study before a project was allowed to start caused the judicial machinery to be moved on many occasions in the past. For example, in the Doon Valley’s Case the Court wanted information on whether indiscriminate mining continued under a legally valid license had any adverse impact on the ecology. Several committees consisting of experts were appointed to go into the question. On the basis of their reports certain mining operations were ordered to be closed immediately and others in a phased manner.

When facts alleged by one party are denied by another, a committee would be of immense help to the Court to ascertain the true position. Thus in Tarun Bharat Sangh Alwar Vs. Union of India the Supreme Court appointed

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46 Rural Litigation and Environmental Kendra Vs State of UP AIR 1988 SC 2187
47 AIR 1992 SC 514
a committee not only to oversee compliance of notifications and orders but also to identify the limits of the protected area in a reserved forest to find out whether mining was carried on within that area as alleged and to find out alternative sites for mining during the period of license. Like that there are many cases in which the Supreme Court took the decisions with the help of committees and commissions.

The judicial technique of appointing committees and commissions is ingenious as these results in more light being shed on areas of environmental and ecological knowledge. The feedback helps courts substantially to arrive at correct conclusions and to issue appropriate orders. This technique is a welcome development in the field of judicial activism filling as it does yawning gaps in existing laws.

ENVIRONMENTAL PROTECTION AND PUBLIC INTEREST LITIGATION

Public Interest Litigation has come to stay in India. Contrary to the past practice of Locus Stand. today a person acting bona tide and having sufficient interest can move the courts for redressing public injury, enforcing public duty protecting social and collective rights and interests and vindicating public interest. In last two decades of 20th Century there has been a wave of environmental litigation. Most of such cases were in the form of class action and PIL obviously because environmental issues relate more to diffuse interests than to ascertainable injury to individuals. The concept of class action
is embodies in the Code of Civil Procedure 1908 where if numerous persons have common interests one or more of such persons can file a suit.

It has been mentioned that community interests can also be agitated under the law of public nuisance incorporated in the CrPC. An individual a group of individuals or an executive magistrate suo motu can move the courts. This provision has proved to be a potent weapon for regulatory measures as well as affirmative action by the government and local bodies for protection of the environment. The ability to invoke the original jurisdiction of the Supreme Court and the High Courts under Arts 32 and 226 of the Constitution is a remarkable step forward in providing protection for the environment. Courts have widened the dimensions of the substantive rights to health and a clean and unpolluted environment. In most cases this progress was made with the aid of PIL. In Tarun Bharat Sangh Alwar J c. Union of India a social action group challenged the legality of granting a mining license in the protected area of a reserved forest. Upholding the contention the Supreme Court observed:

“This litigation should not be treated as the usual adversarial litigation. Petitioners are acting in aid of a purpose high on the national agenda. Petitioners concern for the environment ecology and the wildlife should be shared by the government”.

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48 AIR 1992 SC 514
The observation of the Court is important as it emphasizes the rationale of PIL in environmental issues. It is the duty of the State to protect the environment - a duty imposed by the Directive Principles and Fundamental Duties introduced by the forty-second amendment of the Constitution. Any person, who raises an environmental issue, whether individual group or institution is equally concerned with the problem. Such litigation can never be considered as one of adversarial confrontation with the state.

The range of issues has been very broad. It extends from compassion to animals and privileges of tribal people and fishermen to the eco-system of the Himalayas and forests eco-tourism and use patterns and vindication of an eco-malady of a village. The cause of environment being taken up through PIL was championed by a wide spectrum of people in society. Lawyers association of lawyers’ environmentalists, groups and centers dedicated to environmental protection and forest conservation, welfare forums including those for tribal welfare societies registered under the Societies Registration Act and consumer research centers etc.

12. PIL FOR RENVIRONMENT NOT FOR PRIVATE GAINS

The liberal use of PIL against assaults on the environment does not mean that every allegation even if it is tainted with bias ill will or intent to black mailing will be entertained b the Supreme Court. In Chhetriya Pardushan
Mukti Sangh Samati Vs State of UP\textsuperscript{49} the Supreme Court laid down the aims and limits of PIL in environmental cases as follows: this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilized and invoked by the Court with great circumspection and caution. Where it appears that this is only a cloak to feed fat ancient grudge and enmity it should not only be refused but strongly discouraged. While it is the duty of this Court to enforcing fundamental rights it is also the duty of this Court to ensure that this weapon should not be misused or permitted to be misused'.

When the primary purpose of filing a PIL is not public interest courts will not interfere. In Subhash Kumar Vs State of Bihar\textsuperscript{50} the petitioner asked for an injunction against the West Bokaro Collieries and sought for himself an interim relief for his right to collect the slurry alleged to have been discharged into the river by the respondent company. It was found that the petitioner a businessman who used to purchase slurry from the colliery had put pressure through various means on the company to supply more quantity of slurry thereafter without proper authorization he had removed slurry and had approached the courts many times against the respondent company. Dismissing the petition on the basis of the report of the Pollution Control Board that the discharge did not affect river water adversely the Supreme Court held that PIL for environmental rights could be initiated by affected

\textsuperscript{49} AIR 1990 SC 2060 at 2063  
\textsuperscript{50} AIR 1991 SC 420 at p. 424
persons or even a group of social workers or journalists but not at the instance of a person or persons who had a bias or personal grudge or enmity.

**Public interest litigation (PIL)– Role of Supreme Court**

In public interest Litigation the complaint is seldom of rights of the petitioner but denial of rights to an individual (other than the petitioner) or a section of society who have no means to approach the court. In expressive words of Bhagwati, Justice, in the Asiad Workers Vs. Union of India AIR, 1982 SC 1978:

The narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo-Saxon system of jurisprudence have been broken and a new dimension has been given to the doctrine of locus stand which has revolutionized the whole concept of access to justice in a way not known before the western system of jurisprudence.

The activist judge added: this court (Supreme court) has taken the view that having regard to the peculiar socio economic conditions prevailing in the country where there is considerable poverty, illiteracy and ignorance obstructing, and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress were to be blindly adhered to and followed, and it as therefore, necessary to evolve a
new strategy by relaxing this tradition& rule of standing In order that justice may become easily available to the lowly and the lost.

In India it is now firmly established that wherever a person or class of persons to whom legal injury is caused or legal wrong is done and who, by reason of poverty, disability or socially or economically disadvantageous position, is not able to approach the court for judicial redress, any member of the public, ay public organization may move the court on his or their behalf for judicial redress. In such cases the court may be moved by any member of the public by addressing a letter drawing the attention of the court to such legal injury or legal wrong, ad the court would set aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it.

_In S.P Gupta vs Union of India, Bhagwati, 1, observed:_

The court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning.

The law seems to have crystallized in this: whenever there is a public injury caused by an act or omission of the state or public authority which is contrary to the constitution or the law, any member of the public acting bona
fide and having sufficient interest can maintain an action for redressed of such public wrong or public injury.

The public interest litigation permits any member of the public who is not a mere busybody or a meddlesome interloper but one who has sufficient interest in the proceeding. In the absence of a machinery to effectively represent the public interest generally In courts, it is necessary to liberalize the rule of standing In order to provide judicial redress for public injury arising from breach of public duty or from other violation of the constitution or the law by allowing public minded persons and organizations to move the court and act for a general or group interest, even though, they may not be directly injured in their own rights. It is only by liberalizing the rule of locus stand that it is possible to effectively police the corridors of power and prevent violations of law. The oppression might be financial, commercial, corporate or governmental.

**Environment protection through Public interest litigation**

Almost 95 percent action taken in a court of law to protect environment is through public interest litigation. One name that comes out boldly in the protection of environment is that of the spirited public man, Shri M.C. Mehta. A few cases, to indicate the importance of action through public interest litigation is presented.
Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. Continued tolerance of such violation of law not only renders legal provisions nugatory but such tolerance by the enforcement machinery encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for future generations and to ensure good quality of life that the legislature has enacted anti-pollution laws and incorporated many statutory provisions for the protection of the environment. Violation of antipollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which has to be borne by the future generations. *(Indian Council for Environmental Legal Action Vs. Union of India, 1996, 5 SCC 281-293.)*

Therefore, it is essential that the people should be aware of the adverse consequences of environmental pollution and they should not only protect and improve the environment but also ensure the compliance of antipollution laws and if need be, to take help of the judicial forum to enforce such laws to maintain the ecological balance.

Fortunately, in India, the people’s response to ecological crises has been very positive. In certain cases they have formed the pressure groups and exerted influence on the government to take decision on certain developmental
projects only after making proper environment impact assessment (EIS) For example, silent valley movement in Kerala.

The role of NGO’s (non-governmental organizations) in this regard is very important. The scientific and academic community has contributed their share in environment & decisions by new researches. For example, national environmental engineering research institutes, Nagapur (NEERI). The center for science and environment, New Delhi: The centers for environment education, Ahmedabad, are a few institutions among many others in the country, which are continuously engaged in conducting research in the field of environment. Some people has shown their deep concern for environmental issues by filing public interest litigation (PIL) and got favorable directions from the courts in appropriate cases. In this regard the name of Mr. M.C.Mehta comes in the forefront who single handedly has filed a number of public interest litigations in the Supreme Court relating to different aspects of the environment protection. Thus, the environmental activists, lawyers and judges have made their significant contributions.

The local people of the municipality i.e. Ratlam have raised their voice against the local authorities with respect to the environmental issues at local level, state level and at the national level in different ways.

It is interesting as well as significant to note that in India different laws relating to the environment protection recognize the role of people in
“CHIPKO” movement and “APPIKO” movement (in Karnataka) for saving the forests for exploitation are the examples of peoples’ responses for the protection of environment by their involvement. In Kerala, at the gross root level, the campaign against the silent valley project was led by Kerala Sastra Sahitya Parishad (KSSP). The society for the protection of silent valley filed a PIL against the government to stop the execution of the project. There has been sustained agitation by certain environmentalists and social workers against the Naramada valley project. The movement is known as Naramada Bachao Andlan (NBA) or save the Naramada movement, which has been led by Baba Amte and Medha Patikar. The Tehr Bandh Virodhi Sangharsh Samiti (TBVSS), led by Shri Sunder Lal Bahuguna has protested against the construction of the Tehr Dam due to its adverse environmental effects.

The judicial response to almost all environmental litigations has been very positive in India. The primary effort of the court, while dealing with the environment and related issues is to see that the enforcement agencies, whether it is the state or any other authority, take effective steps for the enforcement of the laws. Even though it is not the function of the courts to see the day-to-day enforcement of the law, the courts as of necessity have to pass orders directing them to implement the law for the protection of the
fundamental right of people to live in healthy environment. Passing of the appropriate orders requiring the implementation of the law ca not be regarded as the court having usurped the function of the legislature or the executive.8(Indian Council for Enviro-Legal Action Vs. Union of India, 1996, 5SCC 281-293.( Popularly known as Coastal Protection case).

Though the judicial development of environmental law has been vigorous and imaginative, yet at times it may be found wanting. It has certain limitations of its own. For example, in some cases frivolous or vexations writ petitions are filed in the name of public interest litigation involving environmental matters. It has been noticed that such litigations are filed malaise and arise out of enmity between the parties Some times the judicial orders is not fully obeyed by the parties concerned. Even the government and its agencies like Pollution Control Board (PCB) have been issuing directions contrary to the orders of the courts The courts also do not have any scientific and technical expertise in environmental cases and thus it has to depend upon the findings of various commissions and other bodies. It is because of this reason that the courts have suggested for setting up of environmental courts to deal with environmental matters. The government has set up the national Environment Appellate Authority in 1990 to hear the appeals with respect to restrictions of area in which any industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986.
7.4 ENVIRONMENTAL LITIGATION – ROLE OF JUDICIARY

Times are never static, the situation changes with the changing needs of the society. Environmental Protection, Environmental Pollution, Environmental Awareness and Environmental Litigation were unknown to us barring few exceptions. The subject was treated so dry that no body wanted to talk of it but during last few years it has become a matter of global concern because it is an established truth beyond doubt that without environment very survival of mankind is at stake and it has become a matter of life and death. Decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover, and biological diversity, excessive concentration of harmful chemicals in the ambient atmosphere and in food chains; growing risks of environmental accidents and threats to life support systems has drawn the attention of entire world community and therefore they resolved to protect and enhance the environmental quality. How the judiciary can remain a silent spectator when (Chetan Singh Mehtya, Environmental Protection and the Law, 1997, p.77.)

The subject has acquired high importance and has become a matter of caution and judicial notices.

“The Court of Law with the sword jounces bathing for people’s rights against the anti people order is a constitutional incarnation and democratic consummation and indeed is an overdue implementation of independence10 (Krishna Iyer, J, Indian Justice Prospective and Problems, p.34). Courts are
duty body to inspire confidence in people as a whole for which it exists. Justice Lodha has rightly pointed out "Judiciary exists for the people and not vice-versa" (Lodha V.M. Krishna Devi Vs. Vishnu Mitra, AIR, 1982, Raj. 281.) and therefore it must impart effective, prompt, and ready justice in matters involving peoples civil rights (such as sanitation facilities, proper light, air, and environment) and Public Interest Litigation”. Courts can not betray the confidence and trust by shirking their responsibilities but come forward immediately and provide relief wherever and whenever required. It is blunt truth that more then the administrative and legislative measures the “Judicial Activism” supported by Public Interest Litigation (PIL) or ‘Social Interest Litigation (SIL) has served the cause of antipollution, environmental protection and maintenance of Ecological balance. Till now, laws of the welfare of the masses had no life, and only decorated the statute book. ‘But if, by the process of democracy of remedies, Courts are pressed by the people to activism human rights, interdict corporate inhumanity, extinguish exploitative injustice and executive arbitrariness and judicial gun’s boom, added by the mobilized manpower of Social Action Groups, then the social justice personality of judiciary will become a national reality. The court will then bark and bite but the victims will be hitherto respectable enemies of the people, including the corrupt wielders of administrative power, the corrupting agencies of economic power, the violator of all measures meant for public safety, environmental purity and distributive justice”1. Participative justice through people oriented process Is a judicial dimension of democracy and is
remarkable conquest of our judicial system as Ten Zing’s conquest of Mount Everest of Himalayas. It is like a lightening in the dark clouds.

“If Green is the symbol of prosperity and Brown is of barrenness then, Court is of course the symbol of Cure”12

( Prabhakar Rao Vs. State of A.P., AIR 1986 SC 210)

Therefore let us have a look over the attempts made by the ‘Temples of Justice’ in the new era of Judicial Activism through coercive sanctions of judicial process for the noble cause of protection of environment and prevention of pollution; for bringing cheers to the millions silent victims of Industrial pollution and environmental disaster.

The whole idea of analyzing the case law is to see that whether the judiciary has maintained status quo by remaining static or activated itself and evolved new principles and laid new norms to deal with new problems and thereby adverted and exposed a new “Environmental Jurisprudence” or not? When the world community Is In acted and dire need of evolution of this new Environmental jurisprudence; as It has become sine queue non to the very survival. To answer this Honorable Supreme Court Itself reminds us that:

Justice may be blind but It is not to be deaf.

Judges are not to sit in soundproof rooms”13

Let us study the case law on environment; and conclude whether they sitting in sound proof rooms ivory towers or have come out of them to impart justice to the millions through its positive approach towards environment or not?

For coming to the conclusion I am putting these cases into three heads:

1. Nuisance sanitation pollution (Water, Air, Sound, etc. And Environment.

2. Pollution through Mining and excavation and Environment

3. Reclamation through Afforestation - Maintenance of Parks, Chowks etc. and Environment.

In Gobind Singh vs. Shanti Swaroop’14 (AIR 1979 SC 143) the respondent who was a partner of Punjab Oil Mills filed complaint against appellant under Sec133 Cr PC 1898 as to this effect that appellant who is a baker by constructing oven and chimney caused nuisance under S133 Cr PC because the smoke emitted by the chimney is injurious to health and physical comfort of the people living or working in the proximity situated in a thickly populated area G.T. Road.

The court ordered to demolish the chimney and oven within a period of one month and observed that “in a matter of Public Nuisance what is involved is not merely the right of Private individual but the health, safety and convenience of the public at large. The safer course would be accepting the
view of the learned magistrate who saw for himself the hazard resulting from the working of the bakery.

In Municipal Council Ratlam vs. Vardhichand.15 (AIR 1980 SC 1622) the Residents of a locality with in limits of Ratlam Municipality tormented by stench and stink caused by open drains and public excretion by nearby slum dwellers moved the Magistrate under Sec.133.Cr.PC.1898 to do its duty towards the members of the public.

Another complaint was that the Municipality has failed to prevent the discharge of malodorous fluids in the public street. Due to which mosquitoes found a stagnant stream of stench so hospitable to breeding and flourishing with no municipal agent disturbing their stinging music at human expense.

The Hon’bie V.R.Krishna Iyer speaking for the Supreme Court said:

“The Cr.P.C. operates against statutory bodies and others regardless of the cash in their coffers. Public nuisance because of pollutions being discharged by big factories to the detriment of the poor section of the society is a challenge to the social justice component of the rule of law. The municipality should not adopt hands off attitude on the plea of financial difficulties”.
The Court further observed:

“A Responsible Municipal Council constituted for the precise purpose of preserving public health and providing better finances can not run away from its principal duty by pleading financial inability. Decency and dignity are nonnegotiable facts of human rights and are 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 can not be evaded if the municipality is to justify its existence. The law will relentlessly by enforce and the plea of poor finance will be poor alibi. When people in misery cry for justice”

Accordingly, the court directed the Municipal Council to take immediate action to stop the effluents from the Alcohol Plant flaming into the street. It also directed state Government to stop pollution and specially asked Municipal Council to construct a sufficient number of Public Latrines for the use by men and women separately; provide water supply and scavenging service, morning and evening so as to ensure sanitation within a period of six months. Industries can not make profit at the expense of public health. The court said that “failure to comply with the directions will be visited with a punishment contemplated by Section 188 of Indian Penal Code”.

*In Krishna Gopla vs State of M.P16 (1986 Cr.LJ 396)*
The facts of the case are such that one Mrs. Tripathi filed a complaint against the manufacturer of a glucose saline factory, operating in some residential area of Indore. The allegation of Mrs. Tripathi was that the factory was emitting ash and smoke all the time and vibrations from the boiler disturbed the sleep of her husband who is a heart patient. She contended that factory was causing atmospheric pollution, and noise pollution resulting in a deleterious effect on the residents of the locality and therefore this public nuisance be removed at once.

The factory owner in his reply contended that she is the only lady who has made such complaint. Further he has already obtained no objection certificates from concerned authorities. Rejecting the arguments of factory owner Honorable Justice V.D.Gyani of Madhya Pradesh High Court upholding the right of Mrs. Sarla Tripathi observed:

“Merely because one complaint has come forward to complain about the nuisance can not be said to be not a public nuisance contemplated by Sec. 133 Cr PC. The Honorable Judge appreciating the Women’s efforts not only accepted her cost of litigation to Mrs. Tripathi. Accepting the Contention that working of a factory in residential area is a public nuisance Under Sec. 133 Cr. P. C. Court held ADM was right when he ordered closure and removal of both the boiler and the factory by invoking Provisions of section 133 Cr PC”.


Speaking on the value of the environment the Honorable Court through Justice Gyani observed:

“A vagrant committing a petty theft is punished for years of imprisonment while a billion dollar price fixing executive comfortably escapes the consequences of his environmental crimes”.

He went on saying that:

“Society is shocked when a single murder takes place but air, water and atmospheric pollution is read merely as news without slightest perturbation till people take ill, go blind or die in distress on account of pollutants, that too resulting in the filling of the pockets of the few”.

A highly nationalistic, futuristic, environmentalist, and humanistic judgment reminding us of the Bhopal disaster in which about 2700 people died and thousands suffered partial blindness, other lung chest pains etc. The Courts view seems to be that pollution of environment is more heinous a crime than even murder and therefore require to be dealt with accordingly.

In Krishna Devi vs. Vishnu Mitra (17 AIR 1982 Raj 281) , which was though a Private injunction petition filed by yet another valiant woman of Rajasthan the Hon’ble Rajasthan High Court through Hon’ble Justice Guman Mal Lodha made following observations:
“Wherever and whenever, the Court are required to deal with alleged Encroachment on public streets, sanitary lanes, public roads, public parks or public chowks which are always left open by the city planning authorities, in order to ensure proper hygienic conditions about the light, air, sanitation. Then the Civil Courts should insist and enforcement of such public rights in which the people, as a while are very much concerned and attached”.

The court further observed that:

“In these cases individual rights should yield to the public rights and individual interested litigations should be treated as subsidiary and secondary and in a given case yield to the public interest.”

The Court through Lodha Justice further held:

“It is the solemn duty of the Civil Court to protect public rights and to come heavily against the efforts of unscrupulous officers or private persons or sometimes even the public authorities who on account of ulterior motives or vested interests or ignorance or corruption, alienate the public health and public hygiene and public Sanitation to vested interests of individuals who purchase them on the strength of Coins”.
The Court warned the local authorities that:

“*They should relapse that they are trustees of public interest and public rights and ensuring proper light, air, sanitation facilities for drainage, sewage and roads is not a matter of mercy or charity but a matter of right of daises and they should not betray the trust by shirking the responsibilities In any manner whatsoever*”

Speaking about the role of judiciary Hon’ble Justice Lodha observed and cautioned:

“*Administration of Justice and Judiciary should inspire confidence in people as a whole for which it exists. Judiciary exists for the people and not vice versa and therefore, it must impart effective, prompt, and needy justice in matters involving people and Public Interest Litigation*”

Thus, throughout this decision Court once again made its intentions clear that Right to health, hygiene and pollution free environment is a Fundamental Right under Art.21, and a constitutional directive under Art.48 (A) and 51 (A) (g) of the constitution and no one has got right to infringe them and if any one infringes that or otherwise curtails this right the Courts will not shut its mouth but will come out and provide relief as it exists for the people to resolve their problems and disputes. Further to provide relief to the victims is not a mercy or charity of the Court but it is a fundamental duty of the Court; as
Court’s Power are also intra Constitutional and it is also equally bound to fulfill its constitutional obligation in establishment of just social order and also just and human conditions of living.

In yet another Bombay case18 (Citizens Action Committee Vs. Civil Surgeon Mayo General Hospital, Nagpur, AIR 1986 Bom. 136) filed by the Citizens Action Committee, Nagpur against the state of Maharashtra and certain other public authorities complaining about the sad state of affairs with regard to roads, and sanitation and public health in the city of Nagpur1 The High Court pointed out that it through its extraordinary jurisdiction has a right to compel statutory bodies including state to standby the citizen and discharge public duties. The court further said that public interest is the sole touch stone for exercise of jurisdiction and accordingly appointed an ‘Investigative and Remedial Measures Suggestive Committee’ of five persons comprising of one leading publican, two Doctors and to Members of the Bar, to report to it within six months regarding remedial measures needed on the matters raised. The court observes ‘Statuary Duty’ imposed upon public utility is a public duty, compliance with which is enforceable by writ.

In Janki Nathu Bhai Chara vs. Sardar Nagar Municipality19 (AIR 1986 Guj. 49) in this case on a Public Interest Petition filed by two persons against Municipality of Sardar Nagar describing absence of underground drainage and complaint about the unsanitary and unhygienic conditions in the area which could lead to loss of life and likelihood of epidemics during monsoon. The
Gujarat High Court persuaded the State Government to sanction Rs.758000/- to execute the scheme for underground drainage and sewerage. The Court also directed Water Supply and Sewerage Board to undertake and execute the work as an emergency measure so as to avoid the recurring situation of the last monsoon in the current monsoon.

In L K Koolwal vs. State of Pajasthan20 (AIR 1988 Raj.2.) the Rajasthan High Court on a writ petition against acute Sanitation problem in Jaipur through Hon’ble Justice Dinker Lal Mehta held that:

“Preservation of sanitation and environment falls under Art.21 of the constitution. Art. 51 (A) confirms Right on citizen to move the court for appropriate relief and the Municipality is duty bound to see that Primary Duties are fulfilled. Paucity of funds or Staff is no excuse for not performing the primary duties. It is the primary duty of municipal council to remove filth, rubbish, night soil, dour or any other noxious or offensive matter. The plea of the municipality whether the funds are not available or staff were not available is not tenable. The court further held that Insanitation leads to a slow poisoning and adversely affects the life of the citizen and invites death at an earlier date then the natural death and therefore it must be checked”.

363
The Court even warned the Legislature and the State Government and said:

“If the legislature or State Government feels that the law enacted by them can not be implemented then the legislature has liberty to scrap it but law which remains on the statutory books will have to be implemented particularly when it relates to Primary Duty. Thus the Court through this decision directed the state not to keep law as paper tiger but they are to be enforced and if they are not enforced the judiciary will activate itself and issue the mandate to enforce the laws.”

Fortunately, the Gujarat High Court in Surat Municipal Corporation vs. Ramesh Chandra Shanti Lal 21 (AIR 1986 Guj. 50) Parikh observed that the Indian Court should go by the constitutional mandates and the socioeconomic conditions prevailing in the society. Since judiciary is an independent body and is not accountable either to executive or to the Legislature but it has got to exercise its power so as to fulfill the mandate give by the constitution from which is derives its power. The judiciary thus plays an active role in implementation of the constitutional directives and maintenance of just social order and whenever and wherever the executive or legislature fails to perform its obligation judiciary compels them to perform their duties.
In Chatisgrah Hydrate Lime Industries Bilaspur vs. Special Area Development Authority (SADA) Bilaspur (AIR 1989 M.P. 82.)

The facts of the case are such that the petitioner was granted registration to manufacture hydrated and burnt lime. Latter a permanent lease was also granted by District Industries centre. Latter when it was found that the factory is situated near college and hospital and also because of coming into force of Environment Protection Act, 1986; the non-petitioner on the ground of pollution refused to grant no objection certificate. The court on the petition of petitioner for quashing the order of refusal of SADA held:

“The Parliament has enacted EPA to provide for protection and Improvement of environment and the Central Govt. Is empowered to take measures to protect and improve the environment. The court further held that where there is a clash between the personal and public interest the latter must prevail”.

The court accordingly held registration for manufacture of Ume kiln at Korba as Irregular. No writ can lie against statutory bodies for preventing them dong their statutory functions and duties. By preventing the petitioner from further polluting the area Public Interest is being served in preference to Individual interest and as such no question of any discrimination arises.
The court observed:

“Simply because one industry which is causing pollution is already in industrial area does not make out a case for allowing other person to pollute the area and therefore ordered the petitioners to convert their hydrated lime industry into some other non-polluting industry”.

A highly appreciable judgment of the Honourable Madhya Pradesh, High Court clarifying in categorical terms that judiciary will not prove a hurdle or impediment or barrier in working of the executive where it is discharging its functions properly as per the mandates of the constitution or other statutes but if these bodies do not perform their duty properly then of course courts will be left with no other alternative then to interfere as was done by Rajasthan High Court in L.K. Lookwal’s case discussed earlier.

In MC Mehta Vs. Union of India and others 23 (AIR 1988 SC 1037.) case an active social worker has filed a petition as Public Interest Litigation, for issue of writ of mandamus; for restraining the respondents from letting out the trade effluents into the river Ganga till such time they put up necessary treatment plants for treating the trade effluents in order to arrest the pollution of water in the said river. The court through Honourable Justice E.S. Venkata Ramiah held:
“Just like an Industry which can not pay minimum wages to its workers can not be allowed to exist. A tannery which can not setup a Primary Treatment Plant can not be permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from the tanner,’ to the river Ganga”

On the issue of financial incapacity the court observed that financial capacity of the tanneries should be considered as irrelevant while requiring them to establish Primary Treatment Plants. On the question of pollution the Court said that the effluent discharged from the tannery is ten times noxious when compared with domestic sewage water which flows into the river from any urban area on its banks.

Accordingly court directed about 29 Industries to stop running of their tanneries and also not to let out trade effluents from them either directly or indirectly into the river Ganga without setting up of Primary Treatment Plant as approved by State Board.

Hon’ble Justice K.N.Singh while taking note of the fate of the employees who will be out of job because of closure of tanneries held:

“We are conscious that closure of tanneries may bring unemployment, loss of revenue but life, health and ecology have greater importance to the people.”
The court thus realized the value of environment in unequivocal terms and even tolerated employment problem for protection, improvement, enhancement, conservation and prevention of pollution of environment.

The Court also indirectly issued a mandate to have a Treatment Plant to every industry which deals with hazardous substances or discharges the effluents. Hon’ble Justice K.N.Singh while agreeing with Justice Venkata Ramaiah added few words in the honour of the holy river Ganges. Since the views are of great importance and as such they are produced verbatim.

“The river Ganga is one of the greatest rivers of the world, although its entire course is only 1560 miles from its source in Himalaya to the Sea. There are many rivers large in shape and longer in size but no river in the world has been as great as the Ganga. It is great because to millions of people since centuries it is most sacred river it is called “Sursari” river of the gods. “Patitpawani” purifier of all sins and Ganga Ma’Mother Ganga. To Millions of Hindus it is the most sacred, most venerated river on earth. According to the Hindus belief and mythology to bathe in it is to wash away guilt to drink the water, bathed in it and to carry it way in containers for those who may have not had the good fortune to make the pilgrimage, to it, is meritorious To be cremated on its banks, or to die there and to have one’s ashes cast in its waters is the wish of every Hindu. Many saints and sages have persuaded their quest for Knowledge and enlightenment on the banks of the river Ganga. Its water has not only purified the body and soul of the millions but it has given fertile
land to the country in Uttar Pradesh and Bihar. Ganga has been used as means of water transport for trade and commerce. The Indian civilization of the Northern India thrived in the plains of Ganga and most of the important towns and places of pilgrimage are situated on its banks. The river Ganga has been part of Hindu civilization.

Pt. Jawahar Lal Nehru who did not consider himself a devout Hindu gave expression to his feelings for the Ganga that is to be found in his will and Testament, a short extract from which is as under:

“My desire to have a handful of my ashes thrown into the Ganga at Allahabad has no religious significance, so far as I am concerned. I have been attached to the Ganga and the Jamuna rivers in Allahabad ever since my childhood and, as I have grown older, this attachment has also grown. I have watched their varying moods as the seasons changed and have often thought of the history and myth and tradition and song and story that have become attached to them through the long ages and become part of their flowing waters. The Ganga, especially, as the river of India, beloved of her people, round which are intertwined her racial memories, her hopes and fears, her songs of triumph, her victories and her defeats. She has been a symbol of Indias age long culture and civilization, ever changing, ever flowing, and yet ever the same Ganga. She reminds me of the snow covered peaks and the deep valleys of the Himalayas, which I have loved so much and the rich and vast plains below where my life and work have been cast.”
Millions of people in India drink its water under an abiding faith and belief to purify themselves to achieve moksha release from the cycle of birth and deaths. It is tragic that the Ganga, which has since time immemorial, purified the people is being polluted by man in numerous ways, by dumping of garbage, throwing carcass of dead animals and discharge of effluents. Scientific investigations and survey report have shown that the Ganga which serves one third of the India’s population is polluted by the discharge of municipal sewage and the industrial effluents in the river. The Pollution of the river Ganga is affecting the life, health, and ecology of the Indo Gangatic Plain. The Government as well as Parliament both have taken a number of steps to control the water pollution, but nothing substantial has been achieved. I need not refer to those steps as my learned brother has referred to them in detail. “No Law or Authority Can Succeed in Removing the Pollution unless the People Co-operate.” To my mind, it is the sacred duty of all those who reside or carry on business around the river Ganga to ensure the purity of Ganga.

The Hon’ble Supreme Court has thus agreed in principle that nothing would curb pollution menace more effectively than public awareness and their cooperation for the noble task of prevention and check of pollution. The Hon’ble Supreme Court also directed to take up the matter again against Municipal Bodies and industries which were responsible for the pollution of the water of river Ganga. Number of industries as per the directions of the
court installed effluent treatment plants but their remained number or other industries and Municipalities and therefore yet another decision M.C.Mehta Vs. Union of India l8 the Hon’bie Supreme Court through this issued further directions for checking and preventing the pollution of river Ganga.

**Snelia Mandal Co-operative Housing Society Ltd, Mumbai and others vs. Union of India and others, AIR 2000 Bom. 121**

It was public interest litigation where the petitioners prayed that the construction and the development activities carried out or proposed to be carried out on Plot Nos. 146, 147 and 148 of Backbay Reclamation area be declared as Illegal since the same contravenes the Environment (Protection) Act and the Coastal Regulation Zone Notification.

In the facts and circumstances of the case, and while disposing of the writ petition, a learned Division Bench of the Bombay High Court Held, inter alia as follows:

1. It is hereby declared that construction of bulk Receiving Station by Tata Electric Company on part of plot 148, Backbay Reclamation Scheme, does not contravene the provisions of CRZ Notification dated February 1991. To this extent, the writ petition fails.

2. However, it needs to be clarified that this Order will not prevent respondent No. 7 from obtaining permission from MOEF and
Maharashtra Coastal Zone Management Authority and after obtaining requisite permission license approval from the competent authority under the provisions of the air Craft Act, 1934 read with the Rules framed there under.

3. However, it needs to be clarified that special planning authority! Government would be entitled to bring about the change in the

4. User from garden to residence if so approved by the Maharashtra Coastal Zone Management authority. Till such approval is obtained, the said two plots 146 and 147 shall continue to be earmarked as garden.

**Indian Council for Enviro-legal Action vs. Union of India and others, (2000) 2 SCC 293**

Expert Representation in the National Authorities: MC Mehta appearing in person drew the attention of the Supreme Court about the need for representation of NGOs in the national Authorities and the Authorities that were constituted by the coastal States by separate notifications. The Learned Additional Solicitor General Pointed out that Father Thomas Kocherry at Serial No.8 in the Central Authority has been representing a non - Governmental organization.

In the circumstances of the case the Hon’ble Supreme Court opined that it could not understand why 3 persons, namely Shri Bal mane, Shri Shiva Kasinath Naik and Shri Rajaram Gadhekar at Serial Nos. 9 to 11, though not
specialist, were inducted in the Central Authority and therefore, required the learned Additional Solicitor /General to obtain instructions as to whether it would be possible to induct people from other coastal States in the National Authority replacing of at least two persons from the States of Maharashtra.

In MC Mehta Vs Union of India and Others, (2000) 10 SCC 551

Regarding construction of Building at Amrud ka Tilla, the Supreme Court passed an order directing, inter alia as follows: “In order to develop an alternative site at Amrud ka Tilla, if any building is required to be constructed, building plan as also the number of shops which are proposed to be construction will be made only after the plan is approved by this Court”

The site is now in the possession of the Department of Horticulture, State of UP. Therefore the Hon’ble Supreme Court directed the State Government to hand over possession of the said site to the Agra Development Authority which will proceed with the development of the area and the construction of 71 kiosks, as mentioned in the concerned plan, the Agra Development Authority will grant necessary permission to the contractor for the construction and supervision of the manner in which the construction is to be done etc.
In Hinch Lal Tiwari Vs Kamala Devi and Others, (2001) SCC 496

The Honorable Supreme Court while allowing the appeal held that:

“It is important to notice that the material resources of the community like forests, ponds, hillock, mountain etc. are nature’s bounty. They maintain delicate ecological balance they need to be protected for a proper and healthy environment, which is the essence of the guaranteed right under Article 21 of the constitutions. The government, including the revenue authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large.

In T. Ramakrishna Rao Vs Chairman, Huda & others ILR (2001) 2 AP 186

A learned Division Bench of the Andhra Pradesh High court held, inter alia, that the “Protection of the environment is not only the duty of the citizens but also the obligation of the state and it’s all other organs including the courts. The enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the constitution embraces the protection and preservation of nature’s gift without which life cannot be enjoyed fruitfully. The slow poisoning of the atmosphere caused by the environmental pollution and spoliation should be regarded as amounting to violation of Article 21 of the constitution of India”
Regarding closure of Brick Kilns within 20km radial of distance of Taj Mahal - the Supreme Court by its order dated 4-4-1996 directed NEERI, Nagpur to send an Inspection team to visit the brick kilns in Taj Trapezium area to find out whether to safeguard Taj Mahal and other significant monuments from pollution, it would be environmentally viable to permit the brick kilns to operate in the said area. The said report dated 24-4-1996 was submitted, indicating, inter alia, that there was no brick kiln up to 5 kms from the Taj Mahal. However, there were 12 brick kilns within the distance of 5-10 kms. 31 between 10-15 kms. and between 15 - 20 kms. From Taj Mahal, all other brick Kilns are beyond the distance of 20 kms, From Taj Mahal. The Court held that:

(1) All licensed brick kilns within 20 km radial distance of Taj Mahal and other significant monuments in Taj Trapezium and Bharatpur Bird Sanctuary shall be closed and stop operating w.e.f. 15.8.1996. The court directed the State of U.P. to render all possible assistance to the licensed brick kiln owners in the process of relocation beyond Taj Trapezium, if the owners so desire. The closure order is, however, unconditional.

(2) The court directed the District Magistrate and the superintendent of Police concerned to close all unlicensed and unauthorized brick kilns
operating in the Taj Trapezium with immediate effect. The U.P. Pollution Control Board (Board) shall file a compliance report within two months.

(3) No new licenses shall be issued for the establishment of brick kilns within 20 km. Radial distance from Taj Mahal, other monuments in Taj Trapezium and Bharatpur Bird Sanctuary.

_In K. Purushotham Reddy S Another vs. Union of India & Others ILR (2001) 2 AP 390, (393,394) (DB)_

The learned Division Bench of the Andhra Pradesh High Court held that possession of hazardous substances without taking adequate care and precaution is not permissible and said that possessing of a hazardous substance without taking adequate care and precaution would not only give rise to ecological problem but may seriously affect the quality of potable water. In this situation, strict compliance of the Rules, would be the necessity of the day. Having regard to the facts and circumstances of this case and particularly in view of the fact that thousands of kilolitres of waste lubricants are receded for its reuse.

It was further held necessary that all authorities including the AP. State Pollution Control Board Must strictly comply with the provisions or the said Rules. In the event if any person is found to be unauthorized handling such hazardous waste products and / or if any person violates any of the terms and
conditions or directions or any law operating in the field, the State Pollution
control Board should take strict view of the matter and shall take steps for
cancellation of their authorization in terms of Rule 6 of the Rules.”

In MVP Social Workers Association, MVP Colony Visakhapatnam Vs.
Vlsakhapatnam Urban Dvelopment Authority and others, 2002 (2) ALT
297, (DB)

The grievance of the petitioners was that the area wherein the disputed
construction was alleged to be made falls in Category - III of CRZ
Notification. That category Includes coastal zone. In the rural areas and also
areas within the municipal limits including any other legally designated urban
areas. The conditions provide that the total plot size shall not be less than 0.4
hectares and that the construction shall be consistent with the surrounding
landscape.

The Division Bench of the Andhra Pradesh High Court Held, inter alia,
as follows: The overall height of the construction upto the highest ridge of the
roof shall not exceed 9 meters and there shall not be more than two floors, etc.
having noticed that the conditions mentioned in Annexure II have been strictly
adhered to.

The further said that the 1st respondent, in our considered opinion, has
taken all the necessary precautionary measures essential for protecting and
safeguarding the sensitive area in question before granting the license in
favour of the 4th respondent. In our opinion, the authorities have not wrongly exercised their power of jurisdiction in favour of the respondent. In our view, the 1st respondent and other authorities have not allowed any activities which would ultimately lead to unscientific and unsustainable development and ecological destruction.

**M C. Mehta Vs Union of India and others (2004) 6 5CC 588**

This case about unauthorized industrial activity in Delhi in residential areas had a protracted background. The present examination was confined to the issue of industrial activity in residential/non-conforming areas to decide what directions could be issued to put an end to such illegal activity. As a result of orders passed from time to time, hazardous and noxious industries and heavy and large industries (‘H’ category) had been shifted out of Delhi. Some of the extensive Industries (‘F’ category) had also been shifted out of Delhi. As per the State Government, all nonpolluting ‘F’ category industries had not yet been shifted though. The question was what should be done about continued unauthorized use contrary to the master plan and zonal plan by the remaining ‘F’ category and ‘b’ to ‘E’ categories (light and service industries) and household industries (‘A’ category industries). These industries were continuing in residential/nonconforming areas. It was not in dispute that most of the continuing industrial activity under consideration was in contravention of law except in the case of only a few household industries.
In the order dated 19-4-1996, the Supreme Court had observed that the provisions of the master plan had to be complied with and in case any nonresidential activity was permitted in residential areas, that had to be stopped. On 10-12-1999, the State Government came up with an application (IA No. 1206), inter alia, seeking modification of the order dated 8-9-1999 and for extension of time up to March 2004 for the shifting of industries which had been found eligible for allotment of alternate industrial accommodation under a “Relocation Scheme” subject to their functioning in conformity with the pollution norms under the existing laws.

The prayer in the application also was that the industrial units functioning in residential areas, where concentration of industry was 70%, should be permitted to continue to operate from their existing location. According to the Government, about 15,000 industrial units would fail in this category and another approximately 6000 industrial units would fail in the category of household industries (‘A’ category).

Allowing writ petition, and dismissing the said application (IA No. 1206), the Supreme Court held that: Regularization cannot be done if it results in violation of the right to life enshrined in Article 21 of the Constitution. The question will have to be considered not only from the angle of those who have set up industrial units in violation of the master plan but also others who are lawful residents since regularization has effect on the entire area, particularly with respect to the infrastructure available.
Deepak Nitrite Ltd Vs State Of Gujarat and Others (2004) 6 SC 402

A petition was filed before the high court in public interest alleging large-scale pollution caused by industries located in Gujarat industrial development corporation (GIDC) industrial estate at Nandesari. It is alleged that effluents discharged by the said industries into the effluent-treatment project had exceeded certain parameters fixed by the Gujarat pollution control board (GPCB), thereby causing damage to the environment. On 9-5-1997 the High Court passed an order directing industries to pay 1% of the maximum annual turnover of any of the preceding three years towards compensation and betterment of environment within a stipulated time. The appeal was against this order.

While disposing of the appeals the Supreme Court Held:

The fact that the Industrial units. In question have not conformed to the standards prescribed by GPCB, cannot be seriously disputed in these cases. But the question is whether that circumstance by itself can lead to the conclusion that such lapses has caused damage to the environment no findings given to that aspect which Is necessary to be ascertained because compensation to be awarded must have some broad correlation not only with the magnitude and capacity of the enterprise but also with the harm cause by it.
Regarding noise pollution the court held that it is not possible to say that the Act is not authorizing the State to make rules calling upon the manufacturers to provide a device for preventing noise pollution i.e., acoustic enclosure, but on the contrary the Act casts duty to frame rules to prevent noise pollution. As indicated above, for vehicles, air conditioners, diesel generating sets for domestic purposes etc, the State has made provision for noise level at the manufacturing stage and in our opinion rightly, in view of Section 3 which specifically authorizes the State to make rules in this behalf. Material resource of the community need protection for a healthy environment, which enables quality of life being the essence of the right guaranteed under Article 21.

The Court find no substance and, therefore, these petitions are required to be dismissed.
7.5 CONCLUSION

After analyzing these cases their remains no doubt; and one can say with certainty that Judiciary has done the job, fulfilled its obligation, and performed its duty; towards the people for whom it exists in a perfect, speedy, effective and integrated manner and came out as a arm of this social, green, white and blue, revolution for the noble cause of protection, preservation, conservation and enhancement of environment and of course prevention of pollution. The responsibility for the lack of progress towards the objective of Pollution Free Environment can not be placed on the judiciary at all times but it must be placed on the people and to make them accountable strictly.