Concomitance of Environment and Human Rights

Chapter - III
3.1 Theoretical Diagnosis

What basic rights are human rights? To speak of human rights requires a conception of what rights are possessed by virtue of being a human? Are these rights that human beings have simply, because they are human beings? What are the sources of these basic rights? What are the compelling justifications to conclude all Basic Rights available to Human beings? Such questions are concern of virtually every school of thought – Theological, Natural Law, Positivist, Historical etc. Religion itself doesn’t give any definition of term Basic or Human rights. However theology present the basis for a Human rights theory stemming from a law Higher than the State and whose source is the Supreme Being. This theory presupposes an acceptance of revealed doctrine as sources of such rights. A universal common father gives rise to a common humanity and from this flows a universality of certain rights as God has created man in his own image.¹

So when human beings are not visualized in God’s image then their basic right may well lose their metaphysical raison d’etre.² Concept of human beings created in the image of God certainly endows men and women with a worth and dignity from which there can logically flow the components of a comprehensive human right system. Few examples can be quoted from Guru Granth Sahib³ and Bible as So Kyo Manda Aakhiye, Jit Jamme Rajaan (Women right), Maanas Ki Jaat Ekey Pehchaniye (Right
against social discrimination) and from Bible, *Limitation on Slavery*⁴, justice to poor⁵, racial equality.⁶

Natural law theory believes that Natural law embodied those elementary principles of justice, which were right reason, i.e. in accordance with nature, unalterable and eternal.

Medieval philosophers such as Thomas Aquinas put great stress on natural law, and viewed it as part of law of God. Modern philosophers detached it from religion. According to Grotius, a Natural characteristic of human beings is social impulse to live peacefully and in harmony with others, whatever conformed to the nature of men and women, as rational social being was right and just, whatever opposed it by disturbing the social harmony was wrong and unjust. Natural law theory led to natural rights theory, theory closely associated with modern human rights. Main exponent of this theory was John Locke who imagined the existence of human beings in a state of nature that State, men and women were in State of freedom, able to determine their action and also in a state of equality in the sense that each one was subjected to the will or authority of another.

To end certain hazards and inconveniences of state of nature, men and women entered into a contract by which they mutually agree to form a community and set up a body *politique*. However in setting up that political authority they retained natural rights of life, liberty and property which were their own. Government was obliged to protect the national rights of
its subjects and if Government neglected this obligation it will forfeit its validity and office.

Under positivist theory, source of human rights is to be found only in enactment of a system of law with sanctions attached to it. What the law ought to be have no place and are cognitive worthless. So according to positivist source of Human Right is will of Sovereign. Sociological theory put emphasis on obtaining a just equilibrium of interests among prevailing moral sentiments and the social and economic conditions of time and place.

So whatever will be the theory, conclusion can be reached by concluding that human beings have certain rights, basic rights. One more factor in determining the basic right is time. It becomes a need of time to change certain concepts according to need of human beings, what basic rights are available to human beings, by virtue of each and every school of thought, are the human rights.

3.2 Fundamentals of Basic Rights

Conception of basic rights as our human rights is very clear. Right to equality which says that we all are born equal. Right to freedom, right of personal liberty, but as in the limits set by law because absolute liberty is likes alcohol. If we take it in moderate capacity, it flourishes us but if take it in access, it demolishes us, right to profess religion of one’s liking, though there are some states which restrict that if not expressly but impliedly but still it is included in basic rights. From national constitutions
Concomitance of Environment and Human Rights

to universal constitution of rights\(^7\) (Universal Declaration of Human Rights). It is very well obvious that what is needed at a time become the basic rights of human race e.g., After two world wars, it was the need of time draft some document like Universal Declaration of Human Rights (See Annexure) for recognition by all states of the world, so that any discrepancy with the implementation by any of the state could be regarded as violation of those basic principles enumerated in that document which I would like to elaborate as historic document of age with a title of Universal Constitution of Rights.

Universal declaration of Human Right makes these Basic rights, the rights of whole mankind. General Assembly proclaimed this declaration as a common standard of achievement for all people and all nation to the end that every individual and every organ of society shall strive by teaching and education to promote respect for rights\(^8\) as enumerated in declaration so we should not have any doubt in claiming our basic rights.

United Nation Charter also gossips about the protection of the human rights, which have already declared as our basic rights. Preamble of United Nation Charter specifies its faith in fundamental human rights, in dignity and worth of human person, in equal rights of men and women, to promote social progress and better standard of life in larger freedom\(^9\) whereas its Article 1, Clause (3) puts pressure on promotion and encouragement in respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.\(^{10}\) Article
13(b) also repeats the same concept. Further United Nation shall promote higher standard of living, full employment and conditions of economic and social progress and development and will promote also the solution of international, economic, social, health related problems and sing the same song of universal respect of and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Now by this, it is not clear to us what human right and fundamental freedoms, charter talks about? But by having even only a glimpse of various National and one universal constitution we can very well come to conclusion what are the Basic/ Fundamental/ Human right. I can quote it at random as: Right to equality; Right to freedom; Right to personal liberty and life; Right to profess religion; Right to get justice and Right against racial discrimination etc.

3.2.1 National Efforts Placed in

Issue worth sacrosanct for whole of the human race is whether environment is one of our rights rather human rights. Whether it is included in our basic rights. National laws in this regard are the first or primary basic documents, which should show such phenomenon. As German constitution in Chapter I, by its title it is very clear that it has included the concept of human rights in basic rights, as its (Chapter I) title itself is basic rights. Its preamble show respect for human rights in one
phrase which is apparent as “conscious of their responsibility before God and Human kind." Its constitution or as Germans called it basic law impose responsibility on state to protect natural resources of life for present and future generation. It makes environment protection and neat and clean environment as one of basic rights of its citizens.\(^17\)

Portuguese Constitution has in its belly the right to quality of life, the preservation of environment and cultural heritage, right to secure environmental conditions such as practices of healthy living.\(^18\) It imposes a duty on state to secure the right to environment in context of a sustainable development, ecological stability while respecting the principle of solidarity between generations, to promote environment qualities of populated area and urban life, to promote environmental values and education, to secure that tax policy achieves compatibility between development and environmental protection and quality of life.\(^19\)

For securing these ends it has also created national council for environment and sustainable development under decree law no. 221/97 of 20\(^{th}\) August, 1998.\(^20\)

Constitution of kingdom of Netherlands makes the rights to keep country habitable and to protect and improve environment, a concern of authorities. Authorities are bound to take steps to promote health of population.\(^21\)
Protection of life as included in constitution act of Finland is very clearly established by having a glimpse on the average age of Finnish male and female which is 72 years and 78 years respectively and average height which is 6 feet. It needs no more words to explain about protection of environment.

Indian constitution has also included this right of neat and clean environment in right to life and personal liberty (Article 48A as inserted by 42 amendment, Act 1976). It speaks of protection and improvement of environment and wild life. State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of country. Article 51(A)g imposes duty on every citizen of India to protect and improve natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. Besides this under Article 21 Indian Constitution has right to live in unpolluted environment. Though it is not expressed but impliedly by judicial interpretations, in various cases. It is elaborated as fundamental right. Besides this India has Environment Protection Act in the same context. Austrian legal system also provided regulation governing the protections of rights covered by environmental law. In constitutional act B9B1 1984/491, Republic of Austria declares its commitment to comprehensive environment protection.

Australian government has enacted environment protection (Sea Dumping Act) 1981 which prohibits the dumping of radioactive material. Loading of radioactive material for sea dumping digging of waste other
than radioactive material, loading of waste for sea dumping etc. Maximum penalties are fine of $50,000 in case of an individual and $2,50,000 for a corporate body. Other acts dealing with pollution are Navigation Act 1912, Protection of Sea Civil Liberties Act, 1981, Australian Maritime Safety Authority Act 1990, etc. etc.

United States of America has environment enactments like National Environmental Policy Act, Clean Air Act 1977 to protect the right to clean environment of its citizen.

Canada has in its legislative box, Canadian Environment Protection Act 1988 whose Preamble declares that protection of environment is essential to the well being of Canada and proclaims the presence of toxic substances in the environment to be a matter of National concern necessitating national leadership to protect the Canadian Government and to fulfill international obligations in this regard. Canada’s Fisheries Act first passed in 1868 has contained pollution prevention provisions since its inception. 1991 Amendment Act raised fine penalties from $300,000 for first offence to $1 million plus up to 3 year in jail for repeated offences.

To protect the aspect of Environment as Human Right Canada has some organisation to fight e.g. Canadian Nature Federation, Green plan, Green peace, Pollution probe, Western Canada Wilderness Committee. Beside other numerous legislations, Britain has its Water Act 1989,
Environment Protection Act of 1990 to protect Environment Right of its citizens.

New Zealand has Resources Management Act 1991 which talks of preservation and protection of particular aspects of natural environment as a matter of National Importance.  

3.2.2 International Instruments having Spectacle of Right to Environment

3.2.2.1 Draft Declaration of 1994

Environment and Human Rights are concomitant like blood and flesh as we can’t separate blood and flesh at same we can’t make separate Environment and Human Rights. Neat and clean environment is our birth right/ fundamental right/ human right/ basic right. As few constitutions of world have declared it as basic fundamental right expressly. One Draft Declaration of 1994, May 16 (See Annexure) is the praise worthy step towards this sort of conception as on May 16, 1994 an international grove of experts on Human rights and Environment protection convened at UN in Geneva and drafted the first ever declaration of principles on Human rights and Environment. Geneva group assembled at the initiation of Sierra club, Legal defense fund – in cooperation with Association Mondiale Pour L'école instrument de Paix and La Société Suisse Pour La protection de L'environment.
On behalf of special rapporteur on human rights and environment for UN sub commission on prevention discrimination and protection of minorities. It declares certain principles, which leads us to show that environment is our human/ birth/ basic right. It says Human rights, an ecological sound environment, sustainable development and peace are interdependent and indivisible. All persons have a right to secure healthy and ecologically sound environment. This right is universal and indivisible. It makes it a right of all persons to be free from any form of discrimination in regard to actions and decisions that affect the environment. This declaration has expressed the similar idea as once was expressed by Gro Harlem Brundtland in her report submitted “Our Common future” as this declaration give all persons the right to an environment adequate to meet equitably the needs of present generations and that doesn’t impair the rights of future generations to meet equitably their needs. It not only secures the present generations right but also the right of posterity, which is yet to come. It is a view so sound for humanity that concept of environment right become a right perpetual i.e Never ending right of Human beings.

It makes environmental right an international right by giving right to freedom from pollution, environment-degradation and activities adversely affecting environment, threaten life, health, livelihood, well being and sustainable development within across or outside national boundaries.
It has declared to every person the right to be benefited equitably from conservation and sustainable use of nature and natural resources for cultural, ecological, educational health, livelihood, recreational, spiritual or other purposes this includes ecologically sound access to nature.\textsuperscript{40}

It makes the belief of Jean Jacques Rousseau, a French Philosopher, a conviction, as he said, "You are undone if you once forget that the fruits of Earth belong to us all and the Earth itself to Nobody".\textsuperscript{41}

It dressed every person with a right to effective remedy and remedies in administrative or judicial proceedings for environment harm or threat of such harm.\textsuperscript{42} We can trace its root in earlier few instances where environment protection was considered as basic right of mankind. In 1974, in his Hague academy Lecture, Noble Prize, Winner René Cassin advocated that existing concepts of Human Right Protection should be extended to include right to a healthful and decent environment i.e. freedom from pollution and corresponding right to pure air and water.\textsuperscript{43} In 1970 decade intensive consideration had been given to the possibility of codifying an additional human right for purpose of protecting private persons against the hazards of pollution guaranteeing pure air, to assure man's continued existence on our planet.

\textbf{3.2.2.2 Universal Declaration of Human Rights}

Stockholm declaration in 1972, recognized this interest of individuals. There is a growing awareness of the need to protect man's
right to life as enunciated in Universal Declaration of Human Rights that
Universal Declaration of Human Rights which is known as "A Magna
Carta for all humanity" and which sound as universal constitution of rights
about which U. Thant Third United Nations Secretary General, had said,
"This great and inspiring instrument was born of an increased sense of
responsibility by international community for promotion and protection of
man's basic rights and freedoms". This Magna Carta of All humanity
dressed everyone with the right to a standard of living adequate for health
and well being of himself and family.

3.2.2.3 International Covenants

International Covenant on Economic, Social and Cultural Rights
(1966) recognize the right of everyone to enjoyment of highest attainable
standard of physical and mental health and full realization of these rights
shall include improvement of all aspects of environmental hygiene.

International Covenant on Civil and Political rights presented every
human being an inherent right to life.

3.2.2.4 Stockholm Declaration

Besides this, very first conference on Human environment at
Stockholm (See Annexure), consisting of Preamble and 26 principles also
declare in principle I that man had the fundamental right to freedom, equal
and adequate conditions of life in an environment and quality that
permitted a life of dignity and well being and we bore a solemn responsibility to protect and improve the environment for present and future generations.  

Its preamble proclaimed that defence and improvement of human environment – both Natural and Man made had become an imperative goal for mankind to be pursued together with the fundamental goal of peace and of worldwide economic and social development.

This conference results into creation of United Nations Environment Programme and has placed Environment law among its major activities.

3.2.2.5 UN conference on Environment and Development

UN Conference on Environment and Development – Earth Summit, which took place in 1992 at Rio de Janeiro, Brazil (See Annexure), which adopted Agenda 21 which stated that Humanity was confronted with a worsening of poverty, hunger, ill health and illiteracy and continuing deterioration of ecosystems. Integration of environment and development concerns would lead to fulfill of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future. It imposes duty on State to enact environment legislature, few other conferences of United Nations which can be listed here in relation to protect environment are:
3.2.2.6 **Earth Charter**

Non-Governmental Organizations Earth Charter, which was prepared in the non-governmental organizations gathered together in Rio de Janeiro 1992 has certain provisions regarding Environment Protection and it as a right of mankind.

Its original version as introduced at Rio de Janeiro in 1992, recognize and respect all cultures and affirms the right of all people to basic environmental needs. Its Benchmark draft (Reviewed and Presented) during Rio + 5 Forum 1997 has in its belly the principle of establishing justice and to defend without discrimination the right of all people to life, liberty and security of person within an environment adequate for human health and spiritual well being. It says people have a right to potable water, clean air, uncontaminated soil and food security. One more principle of the Bench Mark draft which makes strong our contention of environment as a Human Right is do not do to the...
environment of others What you do not want to be done to your environment.

Its Second Benchmark Draft 1999, which honour and defend the right of all persons without discrimination, to an environment supportive of their dignity, bodily health and spiritual well being and to secure the human right to potable water, clean air, uncontaminated soil, food security, safe sanitation in urban, rural and remote environments.54

3.2.2.7 Nuuk Declaration

In Nuuk Declaration of 1993 (6th September) (See Annexure) as adopted by Ministers of Arctic countries. It is proclaimed that we (Ministers of Arctic countries) are committed and determined individually and jointly to conserve and protect the arctic environment for benefit of present and future generations as well as for global environment55 and reaffirm faith in management and developing activities to conserve and protect flora and fauna of Arctic for benefit and enjoyment of present and future generations including local populations and indigenous people and will cooperate to achieve such ends.56

Draft submitted by Committee on Environmental Policy under Economic Committee for Europe in 7th Session 1997 (29 Sept - 3 Oct on access to environment information and public participation in environment decision making in which party to this convention recognize that adequate
protection of environment is essential to human well being including right to life itself.\textsuperscript{57}

It also recognize that every person has the right to live in an environment adequate to his health and well being and the duty both individually and in association with others to protect and improve the environment for benefit of present and future generations.\textsuperscript{58}

3.3 Litigative measures taken by various states proving right to environment: A Basic Fundamental Right

Now it is very clear from all these conventions, draft declarations and instrument on Environment policy that Environment is no doubt (Sans doubts) our basic human right. Precious and primary human right without including the life is no life in real means. But one more thing which has established is this that Environment degradation is violation of Human rights. A layman who have just read about the concept of Environment and also make contribution by his psyche by saying Yes, It is a violation of our basic/human rights if we are degrading our precious environment of our blue planet, the only and only planet throughout the universe who shades in blue colour which is a sign of life, the life which has been bestowed to us by virtue of Almighty to whom we all genuflect.

3.3.1 Canada

In a Latest case of Canada Akzo Nobel Chemicals Ltd. Mississauga Ontario was changed in Provincial Court Brampton Ontario on May 13,
1999 with three counts of violating the new substances notification regulations issued pursuant to Canadian Environment Protection Act. The purpose of new substance notification is to ensure that no new substance will be manufactured in or imported into Canada on a commercial scale before an assessment has been carried out to determine the risk they pose to environment and human health.

It is alleged that Akzo Nobel failed to make proper pre-notification to Environment Canada’s New Substances Division. This resulted in considerable delay in proper evaluation and assessment of environmental impact of these chemicals. During the time between importation of first substance in August 1994 and cessation of imports in March 1998, over 90,000 kg of notifiable substances, namely three organic peroxides were brought into Canada prior to proper technological assessments being carried out. An assessment of substance in early 1998 confirmed their toxicity and resulted in the issue of ministerial conditions (an order of Minister of Environment) on company which impose social requirement for handling these substances when they are wastes and for treatment of their shipping containers prior to disposal.

These offences are punishable to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 6 months or both.59

In another case control fire systems limited of Toronto, Ontario was charged in provincial court at Toronto on 30th July, 1999 on violating the
Export and Import of Hazardous waste regulations issued pursuant to Canadian Environmental Protection Act. Adam Richardson, Company President was also changed.

It is alleged that company and Richardson illegally imported 75 large cylinders of used Halon 1301 into Canada from Pakistan on or about 7 May, 1999. Used Halon BOI (Bromotrifluoromethane) falls under the classification of waste dangerous goods as such the stringent requirements of export and import of Hazardous waste Regulations are application to its importation.

Basel Convention on Control of transboundary movements of hazardous wastes and their disposal 22 March, 1989 which Canada ratify in 1992 is intended to provide environmentally sound management of hazardous waste by ensuring the hazardous waste will be subject to well established controls (such as prior consent of importing country and treatment). Basel convention is implemented in Canada through the export and import of Hazardous waste regulations.

This offence is punishable to a fine of not exceeding $300,000 or to imprisonment for a term not exceeding six months or both.60

One more case in queue is of Moe Campbell Uncoln mercury Sales (1981) limited and an employee of Company David Badman were each changed in provincial court, Windsor Ontario with unlawfully exporting ozone depleting substances to USA ozone depleting substance referred to is
Concomitance of Environment and Human Rights

R-12 from commonly found in refrigerators. Ozone depleting substances regulations which are issued pursuant to Canadian Environment Protection Act (COPA) allow Canada to meet its international treaty obligations under Montreal Layer, Regulation Control Import, Manufacture, Use, Sale and Export of Ozone depleting substances.

Penalties under Canadian Environment Protection Act are fine not exceeding $300,000 or imprisonment not exceeding 6 months or both.

Mr. David Badman pleaded guilty to exporting CFO, hence charges against Moe Campbell Lincoln, Mercury Sales Ltd. were withdrawn. 61

Lineage follows in case of Snap - on tools of Canada Ltd. of Mississauga, Ontario was charged in Provincial court at Brampton Ontario, it was alleged. Company and its traffic and custom coordinator Mr. Kevin McKay imported 17.30 ounce (852 gram), Canisters containing freon into Canada from USA. Freon is chloro-floro-carbon known to be an ozone depleting substance having adverse effect on climate. It had been banned in Canada from import and used in products contained in pressurized containers of less than 10 kilograms since 1990. As alleged that canisters were not properly safety marked or documented and freon is also classified as a dangerous food under transportation of dangerous goods regulation. First offence of import is punishable with a fine not exceeding $300,000 or imprisonment of 6 months or both. Second offence of transportation is with fine of $50,000. 62
In historical order the case of federal Government of Canada prosecuted the container vessel M.V. Brandenburg, for unlawfully discharging an oily substance in Canadian Waters and creating a visible stick on the ocean covering an area of 11.6 kilometers long by 30 meter wide. Vessel reviewed a fine of $35m000 as crew of fisheries and ocean surveillance flight observed the vessel trailing an oil stick off the South east Coast of new Foundland about 60 nautical miles from Cape Saint Mary’s Bird Sanctuary, Visible Port of Stick contained an estimate of 71 litres of oil and due to these sort of activities each year thousands of sea birds are killed by illegal discharge of oil in waters. 

In Gauthier Vs. Commission de Protection du territoire agricole du québec. (Commission for protection of agricultural territory of québec). 

In 1975, the appellant bought a peace of land intending to turn it into a residential development and began construction of a street and ditches. Two years later the municipal council approved by resolution the plan for subdivision of land used in constructing a street and appellant filed the subdivision plan for entire development with department of lands and forests. Plan was accepted by department. Appellant proceed with work. He built an electricity and telephone line and a model house. He also sold several lots when the act to preserver agricultural land came into effect, part of appellants land was included in an agricultural zone. This part was though sub divided had not been developed and had not been subject of any building permit, sale or promise of sale. It was fallow land apart from
an earth and gravel street extending the street located in non-agricultural part of land. Appellant made several requests to use the land for the purposes other than agriculture and to alienate it. But requests were denied. Appellant then applied to superior court asking it to declare that he had acquired rights over the lots located in agricultural zone. Superior court dismiss application and court of appeal affirmed the judgment. Appellant argue for the acquired rights pursuant to 101 of the act to preserve agricultural land which requires not only use for non-agricultural purposes but also that such use must be effective and in progress at the time the act become applicable to lost in question. Effective and current use can only be demonstrated by verifiable human intervention that would indicate that lots are currently being used for a purpose other than agriculture.

Second para of Section 101 limits the acquired rights resulting from use for purposes other than agricultural exclusively to area of the lot actually used. Court come to conclusion that land was unoccupied at the time of act become applicable except for street and use of appellant’s land appears to be used for agricultural purpose. Since word agricultural is defined in Section 1(1) of Act as being, “Leaving land uncropped) Approval of appellant subdivision plan doesn’t constitute a permit authorizing use within meaning of Section 101. A permit authorize use. Respondent had not act in discriminatory manner by denying the applicant’s request to use his land for a purpose other than agriculture.
To secure a right specially which has a wide and vast field like environmental rights, courts often had to act in a strict manner by considering all the factors prevailing at time. Even by this court decision, roots of right to environment related to positive development become strong.

In another case of *Friends of old man river society Vs. Minister of Transport (Canada)*, the society in Alberta Environmental Group, brought application for certiorari and Mandamus in Federal Court seeking to compel the federal departments of transport and fisheries and oceans to conduct an environmental assessment. Pursuant to federal environmental assessment and review process guidelines order, in respect of a dam constructed on the oldman river by province of Alberta – a project which affects several federal interests in particular navigable waters, fisheries, Indians and Indian lands. Guidelines required all federal departments and agencies that have a decision making authority for any proposal (i.e. any initiative, undertaking or activity) that may have an environmental effect on an area of federal responsibility to initially screen such proposal to determine whether it may give rise to any potentially adverse environment effects.

Province had itself conducted extensive environmental studies over years which took into account public views including the views of Indian bands and environmental groups and in 1987 had obtained from Minister of transport an approval for the work under Section 5 of Navigation Waters.
Protection Act which provides that No work is to be built in navigation waters without the prior approval of Minister. In assessing Alberta’s application the minister consider only projects effect on Navigation and no assessment under guidelines order was made. Society’s attempt to stop the project in Alberta Court failed and both federal ministers of environment and of fisheries and ocean declines request to subject the project to guidelines order when society commenced an action against such project in 1989 when 40% of work was completed. Trial division dismissed the applications on appeal, court of appeal reversed judgement and quashed the approval given to proceed with under Section 5 of Navigable Waters Protection Act and order the minister to comply with the guidelines. This appeal rises the constitutional and statutory validity of guidelines order as well as its nature and applicability. Validity of guidelines order was held and are mandatory in nature. Guidelines are not merely authorized by statute but formally enacted by order with approval of Governor in Council. Guidelines order is consistent with navigable Waters Protection Act.

There is nothing in the act which explicitly or implicitly precludes the Minister of Transport from taking into consideration any matter other than massive navigation in exercising has power of approval. Minister’s duty under order is supplemented to his responsibility under Navigable Waters Protection Act and he cannot resort to an excessively narrow interpretation of his existing statutory powers to avoid compliance with
order. There is also no conflict between the requirement for an initial assessment “as early in the planning process as possible and before irrevocable decisions are taken in Section 3 of Guidelines order and remedial power under Section 6(4) of Act to grant approval after the commencement of construction. This power is an exception to Section 5 of Act requiring approval prior to construction; and in exercising his discretion to grant approval after commencement, the minister is not precluded from applying the order.

Regarding applicability of guidelines order court held that it is not restricted only to new projects, programs and activities but also when and where a project may have environmental effect on area of federal jurisdiction and old man River Dam Projects fall within ambit of Guidelines order. Court held Guidelines order is *intra vires* Parliament. Order doesn’t attempt to regulate the environmental effects of matters within the control of province but merely makes environmental impact assessment an essential component of federal decision making. Order is in pith and substance nothing more than an instrument that regulates the manner in which federal institutions must administer their multifarious duties and functions. Court further held that futility is not a proper ground to refuse remedy in present circumstances. Prerogative relief should only be refused on that ground in those few instances where issuance of a prerogative writ would be effectively nugatory.
In present case, visualized aspect make it clear that Right to neat and clean environment is not only recognized but also it can be availed even when the train has left the station e.g in this case though the dam was 40% complete yet relief was allowed which is ample enough to prove right to environment’s assimilation with human rights.

In *Ontario Vs. Canadian Pacific Ltd.*, question raised before Court was to examine Constitutionality of Section 13(1)(A) of Environment Protection Act of Ontario, which “Constitute a Broad and General Prohibition of pollution of natural environment for any use that can be made of it”. In present case during control led burns along the appellants right of way, dense smoke escaped onto adjacent properties. This led to complaints and about injuries to health and property and change under 13(1)(a) of Environmental Protection Act of Ontario was made against aggressive party. It was contended that woods of Section 13(1)(a) (Prohibition of Pollution of natural environment for any use that can be made of it) are unconstitutionally vague, over broad and therefore violation of Section 7 of Canadian Charter of Rights and freedoms, which says everyone has right to life, liberty and security of person and right not be deprived thereof except in accordance with principles of Fundamental justice.

It was held 13(1)(a) was neither unconstitutionally vague nor overbroad and clearly covered the pollution actively at issue. Court says a law will be found unconstitutionally vague if it is so lacking in precision as
Concomitance of Environment and Human Rights

not to give sufficient guidance for legal debate. Legislative precision is required because of the need to provide fair notice to proscribe enforcement discretion using general and broad terms in legislation may well be justified. Section 7 doesn’t prescribe the Legislature from relying on the Judiciary to determine whether those terms applied in particular fact situations.

Court further says purposes of EPA is to provide for the protection and conservation of natural environment. Environment protection has an obvious social importance and yet the nature of environment doesn’t lend itself to precise codification and a generally framed pollution prohibitions may be desirable from a public policy perspective. Generality of 13(1)(a) ensures flexibility in Law so that EPA may respond to a wide range of environmentally harmful scenario which could not have been foreseen at the time of its enactment. Scope of Section 13(1)(a) is reasonably delineated and legal debate can occur as to its application to a specific fact situation. This is all that Section 7 of Charter requires. Section 13(1)(a) is not overbroad. Environment protection is a legitimate concern of government and very broad subject matter, which doesn’t lend itself to precise codification. Legislature when pursuing the objective of environment protection is justified in choosing equally broad legislative language in order to provide for a necessary degree of flexibility.

Court goes beyond all variation in proving the authenticity of a particular Section in controlling environmental pollution which leads to
essence that Environment is a basic fundamental right. One more judicial pronouncement can be referred in present context.

In *R Vs. Hydro* 67 Question arose before Court was this that Federal Legislation which empowered Ministers to determine what substances are toxic and to prohibit introduction of such substances into environment except in accordance with specified terms and conditions is valid. Whether such legislation falls within Parliament’s jurisdiction to make laws for peace order and good government of Canada and Thirdly whether Legislation falls within Parliament’s Criminal Law Jurisdiction.

In the case respondent allegedly dumped polychlorinated biphenyls (PCBs) into a river in early 1990. It was charged with two infractions under Section 6(a) of Chlorobiphenyle interim order, which was adopted and enforced pursuant to Section 34 and 35 of Canadian Environment of Protection Act. Section 34 and 35 appears in Part II of Act which entitled as toxic substance. Part II deals with first identification of substance that could pose a risk either to environment or to human life and health; and then provides a procedure for adding them to list of toxic substances in Schedule I (which contains a list of dangerous substances carried over from pre-existing legislation) and for imposing by regulations requirements respecting the terms and conditions under which substances so listed may be released into environment.
Section 11 define a toxic substance which is entering in environment and have an immediate or long term harmful effect on environment and constitute or may constitute a danger in Canada to human life or health.

Section 34 provides for regulation of substance on list of toxic substances. Section 35 describe where a plant is not listed in Schedule I and Ministers believe that immediate action is required an interim order may be made in respect of substance. Such order may contain any regulation remaining in effect for 14 days unless they are approved by Governor in Council. Failure to made a compliance with such regulation under Section 34 and 35 constitute an offence. Respondent brought a motion seeking to have Sections 34 and 35 of act as well as Section 6(a) of interim order itself declared *ultra vires* the Parliament of Canada on ground that they don’t fall within the ambit of any federal head of power set out in Section 91 of Constitution Act 1867. Motion was granted to Court of *Québec* and an appeal to superior court were dismissed. But it was held by Court that appeal should be allowed. The impugned provisions are valid legislation under criminal law power.

Environment is not as such a subject matter of legislation under Constitutional Act 1867. Rather it is a diffuse subject that cut across many different areas of Constitutional responsibilities, some federal, some provincial. If a provision relating to environment in Pith and substance falls within the parameters of any power assigned to body that enacted the
Concomitance of Environment and Human Rights

Concomitance of Environment and Human Rights

legislation then it is constitutionally valid, under Section 91(27) of Constitution Act 1867, Parliament has been accorded plenary power to make Criminal law in widest sense. It is entirely within Parliament’s discretion to determine what evil it wishes by Penal prohibition to suppress and what threatened interest it thereby wish to safeguard. Protection of environment through prohibitions against toxic substances constitute a wholly legitimate public objective in exercise of its power. Parliament may validly enact prohibitions under criminal law power against specific Acts for purpose of preventing pollution. This doesn’t constitute an interference with provincial legislative powers. The use of federal criminal law power in no way preclude the provinces from exercising their extensive powers under Section 92 to regulate and control pollution of environment either independently or in cooperation with federal action.

Secondly broad wording is unavoidable in environment protection legislation because of breadth and complexity of subject. The effect of requiring great precision would be to frustrate the legislature in its attempt to protect the public against the dangers flowing from pollution.

Interim order under Section 91 (27) of Constitution Act 1867 is valid. PCBs are not only highly toxic but long lasting and very slow to break down in water, air and soil. They are also extremely mobile. As well they dissolve readily in fat tissue and other organic compounds with the result that they move up the food chain. They pose significant risks of serious harm to both animals and humans and it is not necessary to
consider whether impugned provisions fall within Parliament’s jurisdiction to make laws for peace, order and good government of Canada.

How much Government of Canada is concerned with purity of environment as a fundamental right is apparent by time case. Court goes one step ahead in proving the worth of this right of citizens of Canada by giving its assent to legitimate use of Criminal law in enacting prohibitions against the acts of pollution and also give an interpretation of non-effecting the provincial legislations in this regard. Court approved interim order under Section 91 (27) of Constitutional Act 1867, only to prohibit and prevent harm to environment.

Importance of human life related to environment can only be secured by effective and right steps taken towards this context.

3.3.2 European Union

We can talk about whole of the Europe in one single citation i.e. European Economic Community which was formed by Treaty of Rome in which major concern of members was the creation of a Common market. European Community Policy on Environmental Protection was not an objective of treaty of Rome, 1957. Its incorporation didn’t come until the 1970s when First Environment Action Programme was adopted in 1973. It was in 1986 Single European Act that title III ‘Environment’ was incorporated into treaty, giving community a legal competence in the field of environmental protection. Single European Act (SEA) dignify a key
stage of development of European Community’s Environment Protection Policy. The SEA resulted in the incorporation of new title specifically on environment into EEC treaty and so introduce Article 130 (r-t) into treaty. Article 130r envisaged that policy on Environment shall have the objectives of preserving, protecting and improving the quality of environment, protecting human health, prudent and national utilization of natural resources and shall promote measures at international level to deal with regional or worldwide environment problems. Policy shall be based on precautionary principle and on the principles that preventive action should be taken that environment damages should as a priority be rectified at source and that polluter shall pay. Besides these legislation European courts have contributed much in declaring Environment Degradation a violation of human rights impliedly through judicial decisions in Procureur de La re’publique v/s Abdhu.  

The case involved an action in French courts to dissolve the association de degense de bruleurs d’huiles usage’es, an association established in 1980 to defend the interests of manufacturers dealers, and users of heating appliances designed to burn fuel oil and waste oil. In their defence, association contested that Directive 75/439 (regarding disposal of waste oil) Environment Council which aims to protect environment against risks from waste oil, is contrary to principle of freedom of trade, free movement of Goods and freedom of competition. French Court sought a ruling from European Court of Justice on interpretation and validity of
directive. Court by holding directive valid said that Directive must be seen in perspective of environmental protection, which is one of the community’s essential objectives. Court states that there could be no doubt that protection of environment constitutes an objective of general interest which the community could legitimately pursue.

This view was reinforced and developed in *EC Commission Vs. Denmark* (known as Danish Bottle case), Danish Government concerned about the environmental consequences of litter and waste from discarded metal cans institute a system requiring beer and soft drinks to be marketed only in containers that could be reused. Use of metal can was forbidden. Containers need to meet the requirement laid down and be approved by Danish National agency for protection of environment. Non-approved containers were permitted subject to very limits and also to a deposit and return system. Although the object of system was to reduce the number of discarded metal tins, it had as an effect a potential restriction on competition. Manufacturers of beer and soft drinks outside Denmark could sell their product throughout the community but not in Denmark unless they could comply with Danish Deposit and return system. Therefore Danish manufacturers were protected from external competition.

European Commission commenced proceedings against Danish Government under Article 169 of EEC treaty on ground that approval system constitute a breach of Article 30 which secure the right for goods to move freely throughout the community. It raises to important questions...
firstly whether member states could introduce more stringent environmental laws than rest could introduce more stringent environmental laws than rest of the community. Secondly, significance of relationship between environment protection and free movement of goods as required by Article 30 of treaty.

Court held that approval system was incompatible with Article 30 but deposit and return system was lawful. Court said that protection of environment is a mandatory requirement which may limit the application of Article 30 of treaty which prohibits the quantitative restrictions and measures of equivalent effect which restrict the free circulation of goods. Breach of Article 30 may be justified on grounds of public, morality, public policy or public security, protection of health and life of humans, animals or plants, protection of national treasure possessing artistic, historic or archaeological value or protection of industrial or commercial property. So approval of proportionality or the aims of environment protection can be secured by less restrictive means.

Development of Environmental law owes a great deal to the torts of public and private nuisance, negligence, trespasses and rules in Ryland Vs. Fletcher.70

Application of these torts to field of Environmental Protection developed significantly in late 19th century. Largely in response to need of landowners and industrialists to protect their interest in land having
reliance on torts of nuisance, negligence, trespass and the rule in *Ryland vs. Fletcher* has diminished as more specifying legislation has been enacted. In this case rule of strict liability was enacted though there was no fault of defendant when his water reservoir break and cause damages to plaintiff property.

In *Cambridge Water Company Vs. Eastern Countries Leather Plc.*, In 1976 Cambridge Water Company bought a piece of land which was formerly used as a paper mill at Sawston Cambridgeshire, attached to which, was a license to abstract water from a bore-hole on site. Company began to abstract water for public consumption in June 1979. Unknown to Company, water was contaminated by a solvent, which had reached into the acquifer from a nearby tannery operated by Eastern countries leather. The spillages of solvent occurred regularly between 1950 and 1976 after which the tannery began to operate more efficiently. This contamination was not considered an issue until in 1976, EC issued a Directive 80/778 relating to standards of drinking water for human consumption and contain figures relating to maximum level of perchloroethylene which could be present in water. Water abstracted from bore-hole from Eastern Countries leather was found to exceed these limits and use of bore-hole was discontinued.

It was originally though to be under the purview of Water Resources Act, 1991 but pollution pre-dated its enactment so water company began proceeding against Eastern Leather on grounds of nuisance, negligence and
strict liability (No fault liability for natural use of land as under *Rylands Vs. Fletcher*).

Before High Court, the Action was dismissed in nuisance and negligence because it was decided that defendant could not force the damage caused to acquifer arising from their tannery operations and it was decided solvent used by (Leather) company was a natural use of land. High Court decision was reversed by Court of Appeal and Cambridge Water Company was awarded £10,00,000 in damages plus costs. Court of appeal decided that pollution of acquifer by Eastern countries Leather Plc. Constituted an interference with Cambridge Water Company’s natural rights to abstract naturally occurring water which comes beneath his land by percolation through undefined underground channels. So it was actionable.

How European Court has bucked up the Non-Government Organizations for preservation of Environment as a human right of Homosapiens, Best example can be quoted as in *R Vs. Her majesty’s inspector of Pollution (HMIP)*, Green peace brought a challenge against decision of HMIP in relating to nuclear processing plant at Sellafield, Britain. British Nuclear Fuels Ltd. (BNFL) argued that Greenpeace had failed to establish a sufficient interest and there application should be set aside but this argument was rejected by court and it was held that Greenpeace was an eminently respectable and responsible organization and that their genuine interest in matter was sufficient for them to be granted
locus standi as Greenpeace as a company group whose prime objective was protection of environment and Greenpeace had been accredited by UN and several other International bodies and denial would be meant that people represented by Greenpeace would not have an effective way to bring the issues before Court.

3.3.3 United States of America

In City of Chicago Vs. Environmental Defense Fund et al., Respondents environment defense fund sued petitioners, the city of Chicago and its major alleging that they were violating the resource conservation and Recovery Act of 1976 (RCRA) and implementing regulations of Environmental Protection Agency by using landfills not licensed to accept hazardous waste combustion (NWC) ash that is left as a residue when the city’s resource recovery incinerator burns household waste and non-hazardous industrial waste to produce energy. Although it was uncontested that with respect to ash, petitioners had not adhered to any of the RCRA requirements addressing hazardous waste.

District Court granted summary judgement on ground that Section 3001(i) of Solid Waste Disposal Act, a provision within RCRA excluded the ash from those requirements. Court of appeal disagreed and reversed the judgement and held that Section 3001 (i) of Solid Waste Disposal Act doesn’t exempt that NWC ash generated by petitioners as hazardous waste. Although a pre-Section 3001 (i) EPA regulation provided a waste stream
exemption covering household waste from generation through treatment to final disposal of residues, petitioners facility would not have come within the exemption because it burns something in addition to household waste; the facility would have been considered a hazardous waste generator, but not a hazardous waste treatment, storage and disposal facility. Since all the waste it took in was non-hazardous, Section 3001 (i) cannot be interpreted as extending the pre-existing waste stream exemption to product of a combined household non-hazardous industrial treatment facility such as petitioner’s.

In a developed country, it is awareness about rights of people to get need and clean environment which can shake even the administration’s view which according to administration is sound but judicial review incorporates it in violation of fundamental right of its citizens. Hence right to clean environment is basic right as even a disposal of hazardous ash which can result into unforeseen herein to health is prevented pre-empty. Another example lies down in Jefferson County Vs. Washington Department of Ecology, Section 303 of clean water requires each state, subject to a federal approval, to institute comprehensive standards establishing water qualities goal for all intrastate waters and requires that such standards consist of the designated use of navigable waters involved and the water quality criteria for such waters based upon such uses”.

Under Environmental Protection Agency regulations, Standards must also include an anti-degradation policy to ensure that existing in
stream water uses and the level of water quality necessary to protect those uses are maintained and protected. States are required by Section 401 of Clean Water Act to provide a water quality certification before a federal license or permit can be issued for any activity that may result in a discharge into intrastate navigable waters. Under Washington comprehensive water quality standards, characteristic uses of waters classified as class AA include fish migration, rearing and sprawling. Petitioners a city and a local utility district want to build a hydroelectric project on the Dosewallip’s river, which would reduce water flow in the relevant part of the river to minimal residual flow of between 65 and 155 cubic feet per second (cfs). In order to protect the river’s fishery, respondent state environment agency issued a Section 401 certification imposing, among other things, a minimum stream flow requirement of between 100 and 200 cfs.

A state administrative appeals board ruled that certification condition exceeds respondents authority under State law, but state superior court reversed. State supreme court affirmed, holding that the anti-degradation provisions of state’s water quality standard require the imposition of minimum stream flows, and that Section 401 authorized the stream flow condition and conferred on States power to consider all state action related to water quality in imposing conditions on Section 401 Certificates and held Washington’s minimum stream flow requirement is a permissible condition of a Section 401 certification. A State may impose
conditions on certifications in so far as necessary to enforce a designated use contained in State’s water quality standard. Washington’s requirement is a limitation necessary to enforce the designated use of river as a fish habitat and act is not only concerned with water quality but quantity also since a sufficient lowering of quantity could destroy all of a river’s designated uses and since the act recognizes that reduced stream flow can constitute water pollution.

Biological cycle of air, water, soil is so important to survival of human life, is proved by securing fish habitat which ultimately leads to recognition of right to unpolluted and neat clean environment as a fundamental/basic right.

_Friends of the Earth et al., Vs. Laid Law Environmental Services, Inc._73 Defendant – respondent laid law Environmental Services inc. brought a facility in Roebuck, South Carolina that include a wastewater treatment plant. Shortly, thereafter South Carolina Department of Health and Environmental Control (DHEC) acting under Clean Water Act granted laidlaw a National Pollutant Discharge Elimination System Permit (NPDES). Permit authorized laidlaw to discharge treated water into the north tyger river but limited among other things, the discharge of pollutants into waterway. Laid law began to discharge various pollutants into waterway, these discharges particularly of mercury, an extremely toxic pollutant, repeatedly exceeded the limits set by permit.
On April 10, 1992, plaintiff-petitioners friends of earth (Foe) and citizen local environmental action network notified laid law of their intention to file a citizen suit against it under the Clean Water Act after the expiration of 60 days notice period. On the last day of expiry of notice DHEC and Laid law reached a settlement requiring laid law to pay $1,00,000 in civil penalties and to make every effort to comply with its permit obligations. On June 12, 1992 FOE filed citizen suit against laid law, alleging non-compliance with NPDES permit and seeking declaratory and injunctive relief and an award of civil penalties.

Laid law moved for argument that FOE lack standing to bring lawsuit. After examining affidavits and deposition testimony from members of plaintiff organizations. District Court denied the motion finding that plaintiffs had standing, also denied laid law’s motion to dismiss suit on the ground that citizen suit was barred by DHEC prior action against the Company.

After FOE initiated the suit and before judgement of District Court Laid law violates the mercury discharge Limitation in its permit 13 times and committed 13 monitoring and 10 reporting violations. District Court concluded civil penalties of $405,800 as appropriate and said that laid law would have to reimburse the plaintiffs for a significant amount of legal fees. Court declined to grant injunctive order as laid law had achieved substantial compliance with the term of permit after the law suit began.
On appeal to fourth Circuit Court case was remanded and ordered to be dismissed as case become moot when laid law comply with the NPDES permit and FOE can’t even get recovery of attorney fees or cost because such award is available only to a prevailing or substantially prevailing party and according to laid law Roebuck facility has since been permanently closed, dismantled and put up for sale and all discharge from facility have permanently ceased.

But on appeal it was held that fourth circuit court erred in concluding that a citizen suitor’s claim for civil penalties must be dismissed as moot when defendant has come into compliance with its NPDES permit after the commencement of litigation and for standing party has to show that it had suffered injury in fact was adequately documented by affidavits and testimony of FOE members asserting that laid law’s pollutant discharges, directly affected recreational aesthetic and economic interests. FOE’s civil penalty claim does not automatically moot once the company come into substantial compliance with its permit. A defendant’s voluntary cessation of a challenged practice ordinarily doesn’t deprive a federal court of its power to determine the legality of practice.

Participation of Non-Governmental Organizations like friends of earth has sufficient place in proving environment a fundamental human right concomitant with basic rights. It is envisaged by the present spectacle of judicial decision. Further Chemical Waste Management, inc. Vs. Hunt, Governor of Albama et al., testimony chemical waste management inc.
operates a commercial hazardous waste land disposal facility in Emelle, Alabama that receives both in state and out of state wastes. An Alabama Act imposes a fee on hazardous wastes disposed of at in State Commercial facilities and an additional fee on hazardous wastes generated outside, but disposed of inside the State petitioner file a suit for declaratory relief against respondent officials. It was held that Alabama's differential treatment of out of State waste violates commerce clause. No State may attempt to isolate itself from a common problem of several states by raising barriers to free flow of interstate commerce. Additional fees on hazardous waste generated outside Alabama plainly discourages the full operation of petitioner's facility. Such a burden some tax imposed on interstate commerce alone is generally forbidden and is typically struck down without further inquiry. Any concern touching an environmental conservation and Alabama citizen's health and safety does not vary with the waste point of origin and state has the power to monitor and regulate more closely the transportation and disposal of all hazardous waste within its body.

Here environment for all doctrine was held to be prevailed impliedly and indirectly by allowing the treatment of hazardous waste generated outside which shows to claim to environmental right of each and every person without any discrimination.

United States of America's Judicial pronouncement goes not only one but hundred steps ahead in proving its efficiency and right to neat and
clean environment of every human being by imposing physical penalties on violators as in United States vs. Weitzenhoff. Weitzenhoff was the manager and Mariani was the assistant manager of East Honolulu Service Sewage treatment plant on the Hawaiian island of Oahu. The plant operates under a national pollution discharge elimination system (NPDES) permit which establishes limitations for effluents discharges on ocean. During 14 months in 198 and 1989 plant exceeded its NPDES permit effluent limitation by 6%. Defendants defend themselves by asserting that the discharge was permissible under permit. But District Court held that they were discharging pollutants into ocean and refuse to entertain plea of no-knowledge of violation of permit and held them guilty of felony (Serious Crime) and sentenced Weitzenhoff to 21 months and Mariana to 33 months imprisonment as under the Doctrine of Public Welfare Offences.

It needs no other proof to prove Environment a basic fundamental right and concomitant as blood and flesh with other Human Rights.

3.3.4 India

Indian Scenario is a must in proving environment a fundamental right. Principle has a reflection in Article 14, 19 and 21 of Constitution of India which give the people of this country the right to equality, freedom, life and liberty as fundamental rights serve from generation to generations. Sometimes rights are not expressly expressed in any grundnorm of a democracy. But is implied with a view of interpretations as Part III of
Indian Constitution deal with Fundamental rights which directly don’t or ‘specifically don’t’ include right to unpolluted environment but impliedly by interpretations of Supreme authority of this ancient democracy through Directive Principles of State policy speaks something about these rights. But these become unenforceable.

So a right can be interpreted as Fundamental Right though it is not expressly mentioned in Part III and judicial activism rather I will say acceleration. Because Judiciary was already active but it accelerated. Now, has played a prominent role in specifying whether environment is a human right or not by delivering various judgments as In Doon Valley Case i.e. R.L. and E. Kendra Dehradun Vs. State of Uttar Pradesh. In this case Rural Litigation and Entitlement Kendra, Dehradun and a group of citizens wrote to Supreme Court against denuding of Mussoori hills of trees and forest cover and soil erosion resulting in land slides and blockage of underground water channels due to mining.

This letter was treated as a writ petition. Court appointed an expert committee to advise bench on technical issues on whose report court ordered the closure of number of lime stone quarries. Court consider it the first case involving issue relating to environment and ecological balance and question raised was of great concern for the people residing there in Mussoori hills but also people in General living in country.
In Charan Lal Sahu Vs. Union of India,\textsuperscript{77} Validity of Bhopal Gas leak disaster (processing of claims) Act, 1985 was challenged which give Central Government the exclusive right to fight on behalf of victims in or outside India. Supreme Court held the act valid and gave a staunch right enumerated in Article 21, 48, 51A (g) of Constitution. It says in the context of our national dimensions of human right, right to life, liberty and pollution, free air and water is guaranteed by Constitution under Article 21, 48-A and 51A (g). It is the duty of State to take effective steps to protect the guaranteed Constitutional rights.

In Indian Council for Environ-legal Action Vs. Union of India,\textsuperscript{78} Public Interest Litigation was filed by petitioners an environmental organisation against Union of India, State Government and State Pollution Board concerned to compel them to perform their duties on the ground that their failure to carry on such duties violated rights guaranteed under Article 21 of residents of affected area. Supreme Court further pointed out that if it finds that Government or Authorities concerned have not taken the actions required by law and their inaction is jeopardising the right to life of citizens of the country or of any Section thereof. It is the duty of Supreme Court to interfere.

Defendant raise the contention as respondents are private corporate bodies so are not under the definition of State within the meaning of Article 12 so a writ under Article 32 cannot be lied against them. But it was rejected by Supreme Court and said if the industry is continued to be run in
blatant disregard of law to detriment of life and liberty of citizens living in vicinity, Supreme Court will interfere and protect the fundamental right of life and liberty of citizens of the country.

In *M.C. Mehta Vs. Union of India*,\(^7^9\) popularly known as *Taj Mahal Case*. In this case Supreme Court was approached to injunct the working of Industries using coal nearby Taj Mahal, which were polluting the beauty of this wonder. Supreme Court was pleased to pass an order directing the industries using coal to stop functioning and its operations in *Taj trapezium zone* and directed government to relocate their industries another site under Agra Master Plan. In this case whereas Court ensure the right of pollution free environment there, it also put its steps forward in ensuring sustainable development.

In *M.C. Mehta Vs. Union of India*,\(^8^0\) Tanneries adjacent to River Ganga, were discharging effluents from their factories in holy River which resulted into Water pollution. Tanneries were not listening to set up primary plant to clear water from effluents and were not willing to take appropriate steps to establish primary treatment plant. Petition was filed to direct them to stop working as effluent discharged was 10 times noxious when compared with domestic sewage water flowing into river. Court issue the directions for closure of those tanneries which had failed to take minimum steps required for that primary treatment of Industrial effluent. Court give more importance to life, health and ecology but also was conscious that closure of tanneries will cause unemployment but first issue
was held more important. Court also reject the issues of financial incapability and said a tannery which could not implant a plant for purification shouldn’t be allowed to continue to be in existence as it would be adverse affect on people which can be effected clear from this decision that court had considered the protection and improvement of environment as a right of rather Fundamental right of people.

3.4 Overview of Chapter

To pursuit right to unpolluted environment which is inherited in all human beings. Since the emergence of this specie, the most recent specie on Earth, no one can deny this right when highest authority of State’s (as in various cases) judicial attitude has shown its willingness to accept environmental right of mankind. Though sometime, in some states’ Constitution it is not expressed but implied in each and every interpretation of judicial authority in case related to. At any cost, this right cannot be separated from other fundamental rights of mankind.

It has a relation with other basic rights, of blood and flesh, as it is the foremost basic right, right to life, without this right all fundamental rights are useless, worthless, futile. Junoesque of nature jenre life can be saved only by way of beautifying it by removing insidious, despicable, tormented, prostrated view of degrading the sylph of environment.

There is no conundrum in proving environment as a basic fundamental right concomitant with other fundamental rights of mankind
as has been explained by examining various conventions, laws and judicial
decisions of various Supreme Courts of various countries. Various laws,
interpretation and rights enumerated in convention have substantiated this.
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