CHAPTER- 6

ROLE OF INDIAN JUDICIARY
IN WASTE MANAGEMENT

6.1 INTRODUCTION

The role of Indian Judiciary and scope of Judicial interpretation have expanded remarkably in recent time partly because of the tremendous growth of statutory intervention in the present era. International legal experts have been unequivocal in terming the Indian Courts of law as pioneer both in terms of laying down new principles of law and also in the introduction of innovations in the environmental justice delivery system. Although it is not unusual for courts in Western democracies to play an active role in the protection of environment, the way Indian Supreme Court has been involved since 1980s in interpreting and bringing new changes in the environmental jurisprudence is unique in itself. Perhaps no judiciary in the world has devoted as much time, effort and innovativeness to protect the environment from the adverse effects of solid waste as the Supreme Court of India has for the last two decades. Besides the assigned role of interpretation and application of law, the judiciary has also performed an educative and innovative function by creating awareness about environmental problems among the public through a series of illuminating directions and judgments.

In recent years, there has been a sustained focus on the role played by the higher judiciary in devising and monitoring the implementation of measures for pollution control, conservation of forests and wildlife protection.

There are several vocal NGO’s and public-spirited individuals who have moved the courts to seek relief against numerous problems such as those created by unchecked vehicular and industrial pollution, negligence in management of solid waste, construction of large projects and increasing deforestation.

2 The supreme court of other countries such as USA, Canada, Australia, New Zealand and Brazil also became part of environmental jurisprudence in their respective countries(186th Law Commission Report of India 2003)
3 www.supremecourtofindia.nic.in/speeches/speeches_2010/dp_shrivastava_momerial_lecture_20-3-10.pdf visited on 20-4-13
Acting either at the instance of petitioners or on their own, the Supreme Court has invoked Article 32 of the Constitution to grant interim remedies such as stay orders and injunctions to restrain harmful activities in many cases. Reliance has also been placed on the power to do complete justice under Article 142 to issue detailed guidelines to executive agencies and private parties for ensuring the implementation of the various environmental statutes and judicial directions. Beginning with the Ratlam Municipality case (1980) where the Supreme Court directed a local body to make proper drainage provisions there have been numerous cases where such positive directions have been given.

The tool of a ‘continuing mandamus’ has been used to monitor the implementation of orders by seeking frequent reports from governmental agencies on the progress made in the same. The adjudication and monitoring of environmental cases has also benefited from the inputs of fact-finding commissions and expert committees.

If one examines the judicial approach in cases involving environment-related objections against the construction of infrastructural projects, there have of course been different approaches taken by different courts in the past. One can broadly conceptualise these judicial approaches under three categories. The first of these can be described as a ‘pro-project’ approach wherein judges tend to emphasize the potential benefits of a particular project or commercial activity. The second approach can be described as that of ‘judicial restraint’ wherein judges defer to the determinations made by executive agencies and experts with regard to the environmental feasibility of a project. The third approach is that of rigorous ‘judicial review’ wherein judges tend to scrutinize the environmental impact of particular activities. It is in this form of judicial interventions that the services rendered by expert committees, amicus curiae and public-spirited NGOs prove to be a valuable asset.

In the ensuing years, there appears to be a growing consensus amongst the media and in academic circles that the general approach of the higher judiciary in environmental litigation can be described as ‘activist’ in nature. A prominent example

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of such activism in evaluating the environmental impact of commercial activities justified in the name of development is the decision given in the *Dehradun Valley case* (1985).7

A similar approach was adopted in *Tarun Bharat Sangh, Alwar v. Union of India*8 where the court adopted a firm stand against the owners of mines that were being operated inside the reserve forest areas. In both the cases mentioned above, the court appointed independent committees of experts to ascertain the environmental impact of the commercial activities that were being undertaken.

Times are never static, the situation changes with the changing s of the society. Environmental protection, environmental pollution, environmental awareness and environmental litigation were unknown to us bearing few exceptions. But during last few years, it has become a matter of global concern because it is an established truth beyond doubt that out environment very survival of mankind is at stake and it has become matter of life and death. Decline in environmental quality has been evidenced by increasing pollution, loss of vegetable cover and biological diversity, excessive concentration of harmful chemicals in the ambient atmosphere and in food chains: growing risk of environmental accident and at to life has drawn the attention of entire world community. Therefore, they resolved to protect and enhance the environmental quality. How can judiciary remain a silent spectator when the subject has acquired such a importance and has become a matter of judicial knowledge.9

The concern of protection of environment in India has not only been raised to the status of Fundamental Law of the land, but it is also wedded with the human rights approach.

It is true that a declaration of any fundamental right is meaningless unless there is effective machinery for the enforcement of the rights. It is remedy, which makes the right real. If there is no remedy there is no right at all. It was, therefore, in the fitness of the things that our Constitution-makers having incorporated a long list of fundamental rights have also provided for an effective remedy for the enforcement of these rights under Article 32 of the Constitution. Article 32 is itself a fundamental right. Article 226 also empowers all the High Courts to issue the writs for the enforcement of

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fundamental rights.

Article 32 (1) guarantees the right to move the Supreme Court by "appropriate proceedings" for the enforcement of the fundamental rights conferred by Part III of the Constitution. Clause (2) of Art.32 confers powers on the Supreme Court to issue appropriate directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari for the enforcement of any of the rights conferred by Part III of the Constitution. Under Clause (2) of Article 32 Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under (2). Clause (4) says that the right guaranteed by Article 32 shall not be suspended except as otherwise provided by the constitution. Article 32, thus, provide for an expeditious and inexpensive remedy for the protection of fundamental rights.

The Court of law with the sword of justice battling for the peoples' fights against the anti people order is a constitutional incarnation and democratic consummation and indeed is an overdue implementation of independence. Courts are duty bound to inspire confidence in people as a whole for which it exists. It must impart effective, prompt and ready justice in matters involving people’s civil rights such as sanitation facilities, light, air and environment through public interest litigation. It is a blunt truth that more than the legislative and administrative measures the "Judicial Activism" supported by public interest litigation (PIL) has served the cause of environmental protection and the pollution free environment.

The term judicial activism is used to refer to the extended arm of judiciary' or the increasing active interest that the judiciary is taking in our everyday life. This 'activism' on the part of the judiciary derives its constitutional legitimacy from Article 141 of the Constitution which lays down that the Supreme Court's declaration of law is final and Article 13 which empowers the judges to declare any law null and void if it was found to be against the provisions of Part III of the Constitution. Its areas of activity are widening such as Public Interest Litigation, writ petitions under Article 32, interpretation of Arts, 12, 14, 19, 21 etc.

On the wake of the 21st century it is neither feasible nor practicable o have negative approach to the development process of the country or the society, but that does not mean, without any consideration for the environment. The society shall have
to prosper, but not at the cost of the environment and in the similar vein, the environment of the society. Thus sustainable development is the only answer and administrative actions ought to proceed in accordance therewith and not otherwise.  

It is now a well-settled principle of law that socio-economic conditions of the country cannot be ignored by a court of law because the benefit of the society ought to be the prime consideration of courts. Thus, the court must take cognizance of the environmental problems. However, law courts ought not to put an embargo to any development project, which may be in the offing. The courts are required to strike a balance between the development and ecology and there should be no compromise with each other. It is worth mentioning here that while dealing with the problem of environmental degradation the courts are applying the principle of sustainable development. In the case of *Goa Foundation v. Konkan Railway Corporation*  

11 a writ petition was filed against the laying of new broad gauge railway line. The petitioner had the apprehension that small lake would be filled up, thus, preventing migratory birds from reaching the State of Goa. The High Court declined to interfere on the basis of such imaginary apprehension.

Similarly, in *Tehri Bandh Vidrohi Sangharsh Samiti v. State of UP*  

12 a public interest litigation was filed challenging the construction and implementation of Tehri Hydro Power Project and Tehri Dam on the ground of non-application of mind by the Government to safety and ecological aspects, the site being within the earth-quake prone zone. But the facts showing that the project was considered by Environmental Appraisal Committee of Ministry of Environment and Forest and by other renowned experts of international repute. Hence the Supreme Court refused to interfere.

The problem of environmental pollution has become a matter of grave concern and in case of India, the problem has assumed an alarming proportion. Relatively lax environmental laws and an indifference on the part of the affected public has been to a great extent held responsible for the deteriorating position of environment in our country.

10 Ibid.
12 1992 Supp (1) SCC 44.
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.

6.2 FUNDAMENTAL RIGHTS

Principle 1 of the Stockholm Declaration on the Human Environment, 1972, provides that “Man has fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations”. This principle finds reflection in Articles 14, 19 and 21 of the Constitution of India dealing with the right to equality, freedom of expression and right to life and personal liberty respectively, Although the right of pollution free air and water are not explicitly mentioned in Part III of the Constitution but it is included in the right to life under Article 21 of the Constitution because it is very easy to deprive of the right to life to any person by providing the polluted air or water etc. In order to treat a right as a fundamental right it is not necessary that it should be expressly stated in Part III of the constitution dealing with fundamental rights. The provisions of Part III and V, dealing with fundamental rights and directive principles, respectively, are supplementary and complementary to each other. Fundamental rights are but means to achieve the goal indicated in Part IV and, thus, must be construed in the light of the directive principles. A right can be recognized as a fundamental right even though not expressly mentioned in Part III and judicial activism in India has taken a lead in interpreting various unremunerated rights in Part III of the Constitution. For example, the right to free legal assistance, the right of the prisoners to be treated with human dignity, right to live with human dignity free from exploitation, right to livelihood, the right to education, right to pollution free air and water etc., are some of the unremunerated fundamental rights declared as such by the judiciary. Though the specific provisions for the protection of environment are found in the directive principles (Part IV) and fundamental duties (Part IV-A), yet right to live in a healthy environment has been interpreted by the judiciary into various provisions of Part III dealing with fundamental rights. Thus, the judiciary in India has provided impetus to the Human Rights approach for the protection of environment.

6.2.1 Article 21

Article 21 of the Indian Constitution deals with protection of life and personal liberty. It says: “No person shall be deprived of his life or personal liberty except according to procedure established by law”. It assures every person right to life and personal liberty. Its deprivation shall only be as per procedure prescribed in law, but the procedure has to be fair, just and reasonable. The ambit and scope of 'right to life' embodied in Article 21 are wide and far reaching. Any person who is deprived of his 'right to life' except according to just and fair procedure established by law, can challenge the deprivation as offending the 'right to life' conferred by Article 21.

Article 21 is the heart of fundamental rights and has received expanded meaning from time to time and there is no justification as to why right to live in a healthy environment, cannot be interpreted in it. For healthy existence and preservation of the essential ingredients of life, stable ecological balance is required. Article 21 guarantees a fundamental right to life—a life of dignity, to be lived in a proper environment, free of diseases and infection. It is an established fact that there exists a close link between life and environment. The talk of fundamental rights and, in particular right to life would become meaningless if there is no healthy environment. The judicial grammar of interpretation has made “right to live in healthy environment” as the sanctum sanctorum of Human Rights.

For the first time the judiciary recognized the right to live in a healthy environment as a part of Article 21 in the case of R.L. & E. Kendra, Dehradun v. State of U.P. In this case, the Rural Litigation and Entitlement Kendra, Dehradun and a group of citizens wrote to the Supreme Court against the progressive mining which denuded the Mussoorie Hills of trees and forest cover and accelerated soil erosion resulting in landslides and blockage of underground water channels which fed many rivers and springs in the valley. The Court ordered the registry to treat the letter as writ petition under Article 32 of the Constitution.

The Supreme Court appointed an Expert Committee to advise the Bench on technical issues. On the basis of the report of the Committee, the Court ordered the closure of number of limestone quarries. The Court observed; “This is the first case of its kind in the country involving issues relating to environment and ecological balance.

and the questions arising for consideration are of grave moment and significance not only to people residing in the Mussoorie Hill range.... But also in their implications to the welfare of the generality of people, living in the country”.

However, it is interesting to note that in its order the Supreme Court did not make reference to the basic Article 48-A, the object of which it sought to achieve. Nor did the Supreme Court articulate any fundamental right specifically infringed even though the exercise of the jurisdiction by the Supreme Court under Article 32 make it clear that it relates to the infringement of the fundamental rights.

In *M. C. Mehta v. Union of India*\(^{16}\) (Oleum Gas Leakage Case-111), the Supreme Court, once again impliedly treated the right to live in pollution free environment as a part of fundamental right to life under article 21 of the Constitution.

In *T. Damodhar Rao v. Municipal Corporation, Hyderabad case*\(^{17}\), the Court held that "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. There can be no reason why practice of violent extinctions of life alone should be regarded as violative of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of Article 21 of the Constitution. In this instant case, the petitioner prayed that the land kept for recreational park under the development plan ought not to be allowed to be used by the Life Insurance Corporation or Income Tax Department for constructing residential houses. Accordingly, the LIC of India and Income Tax Department were forbidden from raising any structures or making any constructions or otherwise using the land referred to move for residential purposes.

The Rajasthan High Court in *L.K Koolwal v. State*\(^{18}\) held that the maintenance of health, prevention of sanitation and environment fall within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizens.

In *Charan Lal Sahu v. Union of India*\(^{19}\) the Supreme Court of India while

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18  A.I.R. 1988 Raj. 2
19  (1990) 1 SCC 613.
upholding the validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, held that "in the context of our national dimensions of human rights, rights to life, liberty, pollution free air and water is guaranteed by the Constitution under Article 21, 48-A and 51 (A) (g). It is the duty of the State to take effective steps to protect the guaranteed constitutional rights." This observation of the Supreme Court put it beyond doubt that right to live in healthy environment is our fundamental right under Article 21 and has to be read with Article 48-A and 51 (A)(g) thereby putting an obligation on the State as well as citizens to protect and to improve it.

The Kerala High Court in *F.K. Hussain v. Union of India*\(^{20}\), pointed out that the right to sweet water and the right to pollution free air, are attributes of the right to life, for those are the basic elements which sustain life itself.

The Supreme Court in *Subhash Kumar v. State of Bihar*\(^{21}\), held that the right to live is a fundamental right under Article 21 of the Constitution and it include the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to recourse to Article 32 of the Constitution for removing the pollution of water or air, which may be detrimental to the quality of life.

The Patna High Court in *Rajiv Ranjan Singh v. State of Bihar*\(^{22}\), held that failure to protect the inhabitant of the locality from the poisonous and highly injurious effects of the distillery's effluents and fumes amounted to an infringement of the inhabitants' rights guaranteed under Article 14 and 21 read with Article 47 and 48-A of the Constitution of India. The Court further directed in this case that if any person has contracted any ailment, the cause of which can be directly related to the affluent discharged by the distillery the company shall have to bear all the expenses of his treatment and the question of awarding the suitable compensation to the victim may also be considered.

In *M.C. Mehta v. Union of India*\(^{23}\) the Supreme Court took note of environmental pollution due to stone crushing activities in and around Delhi, Faridabad and Balabhgarh complexes. The Court was conscious that environmental changes are the inevitable consequences of industrial development in our country, but at the same

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20 A.I.R. 1990 Kerala 321 at 323.
21 (1991) SSC 598.
22 A.I.R. 1992 Pat. 86.
23 (1992) 3 SCC 256.
time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area. Showing deep concern with the environment, the court reiterated that "every citizen has a right to fresh air and to live in pollution free environment". Thus, the Supreme Court once again treated it as violation of Article 21 of the Constitution and passed the order in absolute terms under Article 32 directing the stone crushing units to stop their activities in Delhi, Faridabad and Balabhgarh complexes. The court further ordered the Government to rehabilitate the stone crushers in "crushing zone" within the period of six months.

The Kerala High Court in *P.A. Jacob v. Superintendent of Police, Kottayam*\(^ {24} \) observed that the compulsory exposure of unwilling persons to dangerous and disastrous levels of noise, would amount to a clear infringement of their constitutional guarantee to right to life under Article 21. Right to life, comprehend right to safe environment, including air safe from noise.

The Madhya Pradesh High Court, in *K.C. Malhotra v. State*\(^ {25} \) held that right to life with human dignity is the fundamental right of every Indian citizen and, therefore, in the discharge of its responsibilities to people, State has to provide at least minimum conditions ensuring human dignity. Accordingly, the court directed that there must be a separate sewerage line from which the filthy water may flow out. The drainage must be covered and there should be proper lavatories for public convenience, which should be regularly cleaned. Public health and safety cannot suffer on any account and all steps are to be taken as Article 47 make it a paramount principle of Government for the improvement of public health as its primary duties.

The Kerala High Court in *Law Society of India v. Fertilizers and Chemicals, Travancore Ltd.*,\(^ {26} \) held that the deprivation of life under Article 21 of the Constitution of India comprehend certainly deprivations other than total deprivation. The guarantee to life is certainly more than immunity from any annihilation of life. Right to healthy environment is part of the right to life.

The Orissa High Court in *Kholamana Primary Fishermen Cooperative Society v.*

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\(^{24}\) A.I.R. 1993 Kerala 1.


\(^{26}\) A.I.R. 1994 Kerala 308.
State, held that right to life conferred by Article 21 of the Constitution include the right of enjoyment of pollution free atmosphere.

The Supreme Court in Virender Gaur v. State of Haryana, observed that the enjoyment of life and its attainment including their right to live with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which the life cannot be enjoyed. Environmental, ecological, air, water, pollution etc., should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment.

In Indian Council for Enviro-Legal Action v. Union of India, (popularly known as H-Acid case) a public interest litigation was filed by an environmentalist organization, not for issuance of writ, order or direction against the industrial units polluting the environment, but against the Union of India, State Government and State Pollution Control Board concerned to compel them to perform their statutory duties on the ground that their failure to carry on such duties violated the rights guaranteed under Article 21 of the residents of the affected area.

The Supreme Court further pointed out that if it finds that the government/authorities concerned have not taken the action required of them by law and that their inaction is jeopardizing the right to life of the citizens of this country or of any section thereof, it is the duty of the Supreme Court to intervene. The Court also rightly rejected the contention that the respondents being private corporate bodies and not "State" within the meaning of Article 12, a writ petition under Article 32 would not lie against them. If the industry is continued to be run in blatant disregard of law to the detriment of the life and liberty of the citizens living in the vicinity, the Supreme Court has power to intervene and project the fundamental right to life and liberty of citizens of this country.

The Supreme Court, in Indian Council for Enviro-Legal Action v. Union of India (popularly Known as Coastal Protection Case), issued orders and directions for

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29 (1996) 3 SCC 212.
30 Ibid. at 238.
the enforcement and implementation of the laws to protect the fundamental right to life of the people. The Court also pointed out that even though, it is not the function of the Court to see the day-to-day enforcement of the law, that being the function of the executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the agencies to implement the law for the protection of the fundamental rights of the people.

In *Vellore Citizen's Welfare Forum v. Union of India*,\(^{32}\) (popularly known as T.N. Tanneries Case), the Supreme Court held that in view of the constitutional provisions contained in Arts. 21, 47, 48-A, 51-A(g) and other statutory provisions contained in the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, and the Environment (Protection) Act, 1986, the "Precautionary Principle" and the "Polluter pays principle" are part of the environmental law of the country. In other words, these two basic principles include the right to life under Article 21 of the Constitution.

The Supreme Court in *Dr. Ashok v. Union of India*,\(^ {33}\) by giving an extended meaning to the expression "Life" in Article 21 of the Constitution, has brought health hazard due to pollution within it and so also the health hazards from use of harmful drugs.

The anti-dam petitions also showed that while courts were even willing to go so far as to interpret Article 21, 'right to life' has to include a right to environmentally meaningful life, the courts are reluctant to issue orders even stay orders to prevent 'development projects' which are likely to disturb ecological balance, and, so the human life. The most conspicuous case in point is the petitions before the Supreme Court against the Tehri Dam. The world's largest rock-filled dam located in a fault area in the Tehri region of Garhwal Himalyas in UP has been considered unsafe in major respects by seismologists. Delhi gas leak case\(^ {34}\) is among several landmark judgments of the Supreme Court by way of expanding the ambit of Article 21 of the Constitution interpreted that 'right to life' includes right to life in a healthy environment. The petitioner had alleged the infringement of 'right to life' of several thousand people due to severe pollution and hazardous activity of Shriram Food & Fertilizers, manufacturing

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34 A.I.R. 1987 SC 982 (Oleum Gas Leakage Case-II)
Oleum and chlorine, situated in the heart of the city of Delhi. The petitioner approached the court by way of writ petition under Article 32 of the Constitution for appropriate relief against the leakage of the Oleum gas resulting in loss of lives and injury to health. The right to appropriate relief against the ill effects of X-ray radiation on the employees of a State Corporation has also been recognized under Article 21. The slow poisoning caused by environment pollution and spoilation should also be regarded as violation of Article 21.

6.2.2 Fundamental Duties

The Article 51-A(g) reads as under:

“It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to compassion for living creatures”.

The Article specifically deals with the fundamental duty of the citizens with respect to environment. This also provides for the protection and improvement of the environment as it specifically puts stress on the water pollution by including matters like lakes, rivers, etc., tut it should not mean that other pollution like noise do not cause any concern. The Article uses the word "improvement of the environment" which definitely covers all types of the pollution including the noise pollution.

In the Dehradun Quarries case the Supreme Court closed down illegally operating limestone quarries, which were destroying the ecology of the hills and disturbing the environment. The Supreme Court held that “Preservation of the environment and keeping the ecological balance unaffected is a task which not only governments but also every citizen must undertake. It is a social obligation and every citizen is reminded that it is his fundamental duty as enshrined in Article 51-A(g) of the Constitution”

The true scope of Article 51 A(g) has been explained by the Rajasthan High Court in L.K. Koolwal v. State. The brief facts of this case were that the Municipal authority under the Rajasthan Municipalities Act, 1959, was charged with 'primary duty' to clean public streets, places and sewers and all spaces, not being private

property, which are open to the enjoyment of public, removing of noxious vegetation and all public nuisance, and to remove filth, rubbish, night soil, odor or any other noxious or offensive matter. The petitioner, Mr. L.K. Koolwal moved the High Court under Article 226 (writ jurisdiction) and highlighted that the Municipality has failed to discharge its "primary duty" resulting in the acute sanitation problem in Jaipur, which is hazardous to the life of the citizens of Jaipur.

The Rajasthan High Court allowed the petition and pointed out that the ‘rights and duty co-exists. There cannot be any right without any duty and there cannot be any duty without any right'. Insanitation leads to a slow poisoning and adversely affect the life of the citizens and hence it falls within the purview of Article 21 of the Constitution. Therefore, it is the duty of the citizens to see that rights, which he has acquired under the Constitution as a citizen, are fulfilled. The Court appreciated the action of the petitioner who like a real citizen, highlighted the problem of the city and brought to the notice of the Court the conditions which were hazardous to the life of the citizens. The Court directed the Municipality to remove dirt, filth, etc., from the city within the period of six months.

6.3 THE RIGHT TO POLLUTION FREE AND WHOLESOME ENVIRONMENT

Encouraged thus by an atmosphere of freedom and articulation, the Supreme Court rejected the “bureaucratic tradition” of mechanical and rules bounded adjudication38 and entered one of its most creative periods. Most significantly the court fortified and expanded the fundamental rights enshrined in Part III of the Constitution. In the process, the right to pollution free and wholesome environment (although not explicitly mentioned in Part III) was drawn within the expanding boundaries of the fundamental right to life and personal liberty guaranteed in Article 21.39

The Supreme Court expanded the scope of Article 21 in two ways. First, it required laws affecting personal liberty to also pass the tests of Articles 14 and 19 of the Constitution thereby ensuring that the procedure depriving a person of his personal liberty be reasonable, fair and just. Second, the Court recognized unarticulated .rights

that are impliedly included in Article 21.\textsuperscript{40} It is in this second category that the Supreme Court interpreted the right to life and personal liberty to include the right to pollution free and wholesome environment.\textsuperscript{41}

In Dehradun Quarrying Case, for the first time the Supreme Court held that the fundamental right to pollution free and wholesome environment is a part of the fundamental right to life under Article 21 of the Constitution. In July, 1983 the representatives of the Rural Litigation and Entitlement Kendra, Dehradun wrote to the Supreme Court alleging that illegal limestone mining in the Mussoorie-Dehradun region was devastating the fragile eco-system in the area. On 14th June the Court directed the registry to treat the letter as a writ petition under Article 32 of the Constitution with notice to the Government of Uttar Pradesh and the Collector of Dehradun. Over the years the litigation grew complex. The court issued its final judgment in this case in August, 1988 and it had heard lengthy arguments from central and state governments, government agencies and mine lessees; appointed several expert committees; and passed several comprehensive interim orders. None of these orders, however, articulate the fundamental rights infringed. Since the exercise of jurisdiction under Article 32 presupposes the violation of a fundamental right. Therefore, it becomes necessary to reasonably hold that enjoyment of right to life under Article 21 of the Constitution embraces the protection and preservation of pollution free and wholesome environment without which life cannot be enjoyed.

This view is also supported by Justice Kuldip Singh's concluding observations justifying the closure of polluting tanneries in the Ganga Pollution case\textsuperscript{42} in the following words, "We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people”.

Many High Courts have also explicitly recognized right to a pollution free and wholesome environment as a dimension of right to life guaranteed in Article 21. The High Courts of Andhra Pradesh,\textsuperscript{43} Himachal Pradesh,\textsuperscript{44} Rajasthan\textsuperscript{45} and Kerala,\textsuperscript{46} have

\textsuperscript{40} See for example, the right to free legal aid was recognized in Hoskot v. State of Mahrashtra A.I.R. 1986 S.c. 180.

\textsuperscript{41} The genesis of the fundamental right to pollution free environment may be traced in Rural Litigation and Entitlement, Kendra, Dehradun v. State of Uttar Pradesh, A.I.R. 1985 S.C. 652.


\textsuperscript{44} Kinkri Devi v. State of HP, A.I.R. 1988 H.P. 4
held that environment degradation violates the fundamental right to life. However, not clearly articulated by the Supreme Court, the right to pollution free and wholesome environment seems to be widely accepted by the higher judiciary is impliedly available in Article 21 of the Constitution.

6.4 NEW TRENDS IN INDIAN JUDICIARY

The judiciary has played a very vital role in protecting the environment and checking its degradation and pollution. It is the judiciary, which introduced the concept of environmental jurisprudence and made continuous serious efforts to make the people aware about the dire, consequences of environmental pollution. Keeping in view the dangerous consequences of environmental pollution, the judiciary has propounded the theories of “Absolute Liability”,47 theory of “Polluter Pays”48 and theory of "Public Trust"49. Further, the judiciary has not only made tremendous efforts to protect the flora and fauna but also interpreted the right to life in such a way as to include the right to pollution free and wholesome environment. In this regard judiciary has jumped from one principle to another, that is, from strict liability50 to absolute liability and, from compensatory principle51 to polluter pays principle and to the principle of public trust.

In M/s Chhatisgarh H.L Industries v. Special Area Development Authority. Bilaspur and Others52 the Madhya Pradesh High Court pointed out that protection of environment from pollution is a matter of public interest and when there is a clash between personal interest and public interest, the latter must prevail.

In M.C. Mehta v. Union of India53 a public interest petition was filed in the court for preventing nuisance caused by the pollution of the river Ganga. The Court observed that the nuisance caused by the pollution of the river Ganaga was a public nuisance, which was widespread in range and indiscriminate in its effect. The court in this case issued specific directions to the Kanpur Municipal Corporation for the controlling pollution of the river Ganga.

49 See the Hindustan Times, November 20, 1997.
50 Ryland v. Fletcher, 1868, L.R. 3 HL 331.
52 A.I.R. 1989 MP 82.
In *UP Pollution Control Board v. M/s Modi Distiller and others* 54 the industrial unit of the Company at Modinagar, Ghaziabad was engaged in the business of manufacture and sale of industrial alcohol. The said unit discharged its highly noxious and polluted trade effluents into the Kali river through the Kadrabad Drain and thereby caused continuous pollution of the stream without the consent of the UP Water Pollution Board. It was mandatory for the industry to obtain the consent of the Board. The court held responsible everyone Incharge and responsible for the conduct of the business of the company, as well as the company deemed to be guilty of the offence.

In *Bhopal Gas Tragedy Case*, 55 the Supreme Court has played a vital role. It showed its deepest concern for the life and liberty of the people which has affected by the leakage of the poisonous gas resulting into the pollution of the environment, affecting adversely the health of millions, the death of many and incapacitating their life forever. The Court directed the Government to immediately provide interim relief for the victims of the gas tragedy, which has been directed to be released in the month of May, 1993 under the directions of the Government of India to the Reserve Bank of India.

In *Union Carbide Corporation v. union of India* 56 the Supreme Court directed the Union Carbide Corporation to pay a sum of US Dollar 470 million to the Union of India in full settlement of all claims and liabilities related to and arising out of the Bhopal Gas Leakage as Dosaster. The Supreme Court considered it a compelling duty, both judicial and humane, to secure immediate relief to the victims. The court held that right to live in a healthy environment cannot be violated by anyone under the plea that if any harm is caused then the injured party shall be suitably compensated. The right to live in a healthy environment is supreme.

The Supreme Court also emphasized that there is also a need to evolve a national policy to protect national interest from ultra hazardous pursuits of economic giants. Jurists, technologists and other experts in economics, sociology and public health etc., should identify areas of common concern and help in evolving proper criteria, which may receive judicial recognition and legal sanction. The court further pointed out that

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there are certain things, which a civilized society simply cannot permit to be done to its members even if they are compensated for their resulting losses.

In *Tarun Bharat Singh, Alwar v. Union of India*\(^5\) the matter involved relates to the environmental pollution caused by mining operations in Sariska Tiger Park in Alwar District in the State of Rajasthan. The court directed that if admittedly or indisputably, mines are situated within protected area, then the mining activities must be stopped. However, if upon a demarcation of the boundary line any mining area is shown to fall clearly outside the protected area, then the bank will not operate.

In *People United for Better Living in Calcutta-Public and Another v. State of West Bengal and other*\(^5\) the court held that the development shall have to be in closest possible harmony with the environment, as otherwise, there would be development but no environment, which would result in total devastation. Times has now come to check and control the degradation of the environment and since the Law Courts also have a duty towards the society for its proper growth and further development and more so by reason of definite legislations in regard thereto, it is a plain exercise of the judicial power to see that there is no such degradation of the society and there ought not to be any hesitation thereto.

In *M/s Mahabir Soap and Gudakhu Factory v. Union of India*\(^5\) the petitioner was carrying on tabacco processing operations in its units, which was generating highly polluted effluents and the effluents were discharged from its unit without any treatment, thereby resulting in pollution of the water. This unit was being operated without the consent of the State Pollution Control Board in violation of Water (Prevention and Control of Water Pollution) Act, 1974. The power to stop the continuance of industrial unit is in the discretion of the State Board and it is not for the court to go into propriety of reason and substitute its opinion in place of the decision of the State Board.

In *Ishwar Singh v. State of Haryana*,\(^6\) the Punjab and Haryana High Court awarded compensation to the victims of pollution hazards, as violation of Article 21 of Indian Constitution, caused due to stone-crushers activities in violation of the directions of Supreme Court.

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In *Union of India v. Kamath Holiday Resort Pvt. Ltd.*\(^{61}\), the Supreme Court held that under Section 2 of the Forest (Conservation) Act, 1980, whenever any forestland was to be dereserved for establishing a holiday resort by a private company, permission of the Central Government is imperative. The Court further observed that all current streams of thought lead towards protection of environment and preservation of forest wealth.

The decision in *M.C. Mehta v. Union of India*\(^ {62}\) is one of the most leading decisions of the Supreme Court regarding environmental protection. This case is popularly called as Taj Trapezium case. In this case, the Supreme Court directed that 292 listed coke/coal using industries located in Agra be re-located or closed to prevent degradation to Taj-Mahal. The closure by December 31, 1997 is unconditional and irrespective of the fact whether the new unit outside TTZ (Taj Trapezium Zone) is completely set up or not.

### 6.5 ROLE OF HIGHER JUDICIARY IN SOLID WASTE MANAGEMENT

In India solid waste management law has seen considerable development in the last two decades. The development of the laws in this area has seen a considerable share of initiative by the Indian judiciary, particularly the higher judiciary, consisting of the Supreme Court of India, and the High Courts of the States.

India’s activist judiciary has undertaken the task of proper management of solid waste and its efforts to protect the environment have become effective to a certain extent only through PIL. Solid waste has many adverse effects on ecology. The judiciary has encouraged the environmentalist to take up important ecological issues through PIL. It has entertained petitions under article 32 and 226 of the constitution under its writ jurisdiction by way of broadening the rigid doctrine of *locus standi*. It has acted in an inquisitorial manner to enforce fundamental rights. Thus the credit may go to judiciary for taking measures in solid waste management to a certain extent where the executive failed in spite of legal authorization.

In its efforts to protect the environment from solid and hazardous waste, the Supreme Court and the Indian Judiciary in general have relied on the public trust doctrine, precautionary principle, polluter pays principle the doctrine of strict and

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absolute liability, the exemplary damages principle, the pollution fine principle and inter-generational equity principle apart from the existing law of the land. Another guiding principle has been that of adopting a model of sustainable development. The consistent position adopted by the courts as enunciated in its judgments has been that there can neither be development at the cost of the environment or environment at the cost of development.

The fundamental rights part of the constitution of India does not have any specific mention of the environmental matters. Here the Supreme Court played a pivotal role. The Supreme Court, in its interpretation of Article 21, has facilitated the emergence of the environmental jurisprudence in India. The Supreme Court and the high courts have in several cases held that maintenance of health and preservation of sanitation falls within the purview of Article 21 of the Constitution as it adversely affects impacts health and life of citizens, in the event of default. It has therefore mandated municipal authorities to remove rubbish, filth, night soil or any noxious or offensive matter and to ensure their proper and scientific disposal. Apart from the municipal authorities, the Pollution Boards also have a basic duty under the Environment (Protection) Act, 1986 to assist in the proper disposal of the waste.

In *Virendar Gaur v. State of Haryana* the Supreme Court has declared that Right to life under Article 21 encompasses right to live with human dignity, quality of life, and decent environment. Thus, pollution free environment and proper sanitary condition in cities and towns is considered to be integral part of right to life.

In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, the Supreme Court held that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing, shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

In *Subhash Kumar v. State of Bihar*, the Court observed that the right to live is a fundamental right under Article 21 of the Constitution, and it includes the right of

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64 1995(2) SCC. 577
65 A.I.R. 1981 SC 746
66 A.I.R. 1991 SC 420
enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution.

The Supreme Court, in its interpretation of Article 21, has facilitated the emergence of an environmental jurisprudence in India (including the solid waste management laws). Till 1980, not much contribution was made by the courts in preserving the environment. One of the earliest cases which came to the Supreme Court of India was:

In Municipal Council Ratlam v Vardhichand and others.67 the residents of a locality within the limits of Ratlam Municipality, tormented by stench and stink by open drains and public excretions by nearby slum dwellers moved the Sub-Divisional Magistrate under Sec. 133 CrPC to require the Municipality to construct drain pipes with the flow of water to wash the filth and stop the stench towards the members of the Public. The Municipality pleaded paucity of funds as the chief cause of disability to carry out its duties. The Magistrate gave directions to the Municipality to draft a plan within six months for removing nuisance. The High Court approved the order of the Magistrate, to which the Municipality further appealed to the Supreme Court.

The issue was whether a Court can compel a statutory body to carry out its duties to the community by constructing sanitation facilities?

The Supreme Court through J. Krishna Iyer, upheld the order of the High Court and directed the Municipality to take immediate action within its statutory powers to construct sufficient number of public latrines, provide water supply and scavenging services, to construct drains, cesspools and to provide basic amenities to the public. The Court also accepted the use of section 133 CrPC for removal of public nuisance. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Thereafter, series of cases were filed before the Supreme Court and there was a dynamic change in the whole approach of the courts in matters concerning solid waste handling.

67 A.I.R. 1980 SC 1622
In *L.K. Koolwal v State of Rajasthan and others* 68 a writ petition was filed by the petitioner asking the court to issue directions to the state to perform its obligatory duties. The petitioner invoked Fundamental Rights and the Directives Principles of State Policy and brought to the fore the acute sanitation problem in Jaipur which, it claimed as hazardous to the life of the citizens of Jaipur.

The Court observed that maintenance of health, preservation of sanitation and environment falls within the purview of Art. 21 of the Constitution as it adversely affect the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created of not checked.

The Court held that the Municipality had a statutory duty to remove the dirt, filth etc from the city within a period of six months and clear the city of Jaipur from the date of this judgment. A committee was constituted to inspect the implementation of the judgement.

In *M. C Mehta v State of Orissa* 69 a writ petition was filed to protect the health of thousands of innocent people living in Cuttack and adjacent areas who were suffering from pollution from sewage being caused by the Municipal Committee Cuttack and the SCB Medical College Hospital, Cuttack.

The main contention of the petitioner was that the dumping of untreated waste water of the hospital and some other parts of the city in the Taladanda canal was creating health problems in the city. The State, on the other hand contended that a central sewerage system had been installed in the hospital and that there is no sewage flow into the Taladanda canal as alleged. Further, it was asserted that the State had not received any information relating to either pollution or of epidemic of water borne diseases caused by contamination of the canal. Also, the health department shrugged off the responsibility for supply of drinking water and passed the buck to the Municipality which refuted the contentions of carelessness and callousness.

The Court reprimanded the authorities and directed the government to immediately act on the matter. Also, the court recommended setting up of a committee to take steps to prevent and control water pollution and to maintain wholesomeness of water meant for human consumption amongst other things. A responsible Municipal Council is constituted for the precise purpose of preserving public health. Provision of

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68 A.I.R. 1988 Raj.2  
69 A.I.R. 1992 Ori 225
proper drainage system in working conditions cannot be avoided by pleading financial inability.

In *B. L Wadhera v Union of India* 70 (Delhi Garbage Case), a writ petition was filed under Article 32 seeking directions to the Municipal Corporation of Delhi (MCD) and the New Delhi Municipal Corporation (NDMC) to perform their statutory duties, in the collection, removal and disposal of garbage and other wastes from the city. The Court issued a couple of interim order, wherein directions were issued to the Delhi administration to perform their duties.

The court observed that the river Yamuna—the main source of drinking water supply is the free dumping place for untreated sewage and industrial waste. Apart from air and water pollution, the city is virtually an open dustbin. Garbage strewn all over Delhi is a common sight. It is no doubt that rapid industrial development, urbanization and regular flow of persons from rural to urban areas have made major contribution towards environmental degradation but at the same time the authorities—entrusted with work of pollution control—cannot be permitted to sit back with folded hands on the pretext that they have no financial or other means to control pollution and protect the environment.

In its earlier order dated December 16, 1994 the court had directed the MCD and DDA to place on record the list of all garbage dumping places and city garbage collection centres. They were also asked to state what steps were being taken by them to keep those places clean and tidy. The gravity of the garbage disposal problem can easily be understood by the affidavit filed before the court by the Executive Engineer, MCD, dated January 30, 1995. It about was mentioned that about 4000 metric tones of garbage is collected daily by MCD. The disposal of the garbage is done mainly by ‘Land Fill Method’. The total numbers of garbage collection centres are 1804 (337 dhalaos, 1284 dustbins, 176 open sites and 7 steel bins). The garbage collection trucks collect the garbage from the collection centres and take it to the nearest Sanitary Landfill (SFL). It was highlighted in the affidavit that “about 45 percent of the total population of Delhi is living in slums; unauthorized colonies and clusters. There are about 4,80,000 jhuggies in Delhi. According to rough estimate about 6 persons stay in each jhuggi. They throw their garbage on the road or nearby dustbins.”

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70 A.I.R. 1996 SC 2969
The court passed another order in the case on September 15, 1995, where it was pointed out by the court that the collection and disposal of garbage in the city of Delhi was causing serious problems. It was not for the court to keep on monitoring such problems. The officers who were manning such institutions like MCD and NDMC must realize their responsibilities and show the end result. Further the court asked the petitioner and other learned counsel to assist the court on next hearing regarding the statutory duties and functions of various authorities in regard to the sanitation in the city of Delhi. The officers concerned with the problem of sanitation were directed by the court to consider various issues arising in the petition at their own level and give information to the court on the date of next hearing, i.e. October 12, 1995, regarding the final date by which they shall sort out the problem of collection and disposal in the city. Authorities were also asked by the court to place before the court, the difficulties which were likely to come up in their way. But at the same time the court made it clear that from the date which may be given by the authorities concerned, “not a drop of garbage is to be seen anywhere in the city of Delhi on early morning each day. The whole of the work of garbage collection must be completed over-night and the city is to be left absolutely clean of the residents for their use.” The court mentioned that MCD had a very large force of workers; it had 38,311 safai karamcharis and more than 1,400 Sanitary Inspectors to keep clean and tidy an area of 1399.29 sq. km. The simple arithmetic showed that there were 27 safai karamcharis and one Sanitary Inspector for one sq. km. of area. The NDMC was found by the court in still better position having 2,172 safai karamcharis for cleaning an area of 42.40 sq. km., i.e. 50 safai karamcharis for one sq. km. of area. The court held that there was no reason whatsoever why with such a large manpower at their command the MCD and NDMC cannot give a neat and clean Delhi to its residents.

After examining the relevant provisions of Delhi Municipal Corporation Act, 1957 and the New Delhi Municipal Council Act, 1994, the court opined that the MCD and NDMC were under a statutory duty to scavenge and clean the city of Delhi and they had been wholly remiss in the performance of their duties and that they cannot absolve themselves of their duties on the pretext of financial and other limitations like inefficiency of staff etc.
In the light of the facts and circumstances of the case and also keeping in view the suggestions made by the learned counsel assisting the court in the petition, the court issued following directions:

1. The experimental schemes placed by MCD and NDMC to distribute polythene bags and door to door collection of garbage and its disposal were approved by the court.

2. Directions were issued to construct and install incinerators in all the Government administered hospitals and nursing homes, with 50 beds and above preferably within nine months.

3. The All India Institute of Medical Sciences (AIIMS), New Delhi was directed separately to install sufficient number of incinerators, or an equally effective alternate, to dispose of the hospital waste.

4. The MCD and NDMC were asked to issue notices to all the private hospitals and nursing homes in Delhi to make their own arrangements for disposal of their garbage and hospital waste.

5. The Central Pollution Control Board (CPCB) and Delhi Pollution Control Committee (DPCC) were assigned the job to inspect the different areas of Delhi to ascertain that the collection, transportation and disposal of garbage and waste is carried out satisfactorily.

6. The Government of NCR of Delhi was directed to appoint Municipal Magistrate for the trial of offences under the DMC Act and the NDMC Act.

7. ‘Doordarshan’ was asked to undertake a programme of educating the residents of Delhi regarding their civic duties.

8. The Ministry of Defence Production, Government of India was directed to have already ordered Tippers supplied to the MCD as expeditiously as possible and preferably within three months.

9. The Development Commissioner, Government of NCT, Delhi was directed to hand over two sites, near Badarpur on Jaipur pits and Mandi Village near Janpur Query pits, to be used as SLF sites within three months.
10. The compost plant at Okhla was to be revived and put into operation with effect from June 1, 1996 and the MCD. It was also to examine the construction of 4 additional compost plants as recommended by the Jagmohan Committee.

11. The Union of India and NCT Delhi Administration were requested to consider grant for financial assistance to the MCD and NDMC.

12. The MDC and NDMC were to construct/install additional garbage collection centers within four months.

13. NCT Delhi Administration, MCO and NOMC were directed to engage an expert body like NEERI to find out alternative methods of garbage and solid waste disposal as the existing landfills would get exhausted soon.

14. The MCD shall not use the filled-up SLFs for any purposes except forestry. There are 12 such sites including Rajiv Gandhi Smriti Van. MCD has been directed to develop forests and gardens on these 12 sites. The work of aorestation shall be undertaken by the MCD with effect from April 1, 1996. An affidavit shall be filed by the end of April indicating the progress made in this respect.

In *Rampal v State of Rajasthan*[^71] the residents of Bhilwara District of Rajasthan, complained of the lack of drainage facilities made available by the district administration due to which drinking water, drain and storm water use to mix and get collect in open chowks, leading to the growth of insect and moss and possible threat of epidemics. The petitioner supported their cause by submitting the letter of the district medical officer about his view the said collection of water may lead to spreading of infectious disease and is generating nuisance to the residents.

The Rajasthan Municipalities Act, 1959 deal with the primary and secondary functions of the Boards, and it shows that the primary duty of the Board to keep the city clean, removing filth, rubbish or other noxious and offensive matter and constructing drains, sewers, drainage works etc. As the Board has not cared to take any action in the matter, the petitioners have a filed a writ of Madamus praying for a direction to the Municipal Board for removal and discharge of the filth and dirty water and the construction of proper drainage or sewers for the discharge of such water.

[^71]: A.I.R. 1981 Raj. 121
The Court allowed the writ petition by awarding suitable order and direction to the Municipal Board to clean by the city and for maintain proper drainage system. It may also be noted that the National Commission that is set up to review the working of the Constitution of India in its report submitted to the Central Government has recommended the addition of a separate article (30-D) in the Constitution of India which would confer the stature of a fundamental right within the Indian Constitution to the right to save drinking water, clean environment etc.  

6.6 ROLE OF LOWER COURTS IN SOLID WASTE MANAGEMENT

Wide range of powers have been exercised by the High Courts and the Supreme Court on a variety of solid waste management issues under Art.226 and Art.32 respectively. Apart from these superior Courts, the subordinate civil courts exercise powers in regard to public and private Nuisances. In addition, new offences are created by various provisions of certain environment related statutes.

6.7 SAGA OF ALMITRA PATEL’S CASE

The landmark case that drew attention to and changed the manner in which waste is handled in major cities is the ruling in the Almitra Patel case. A writ petition was filed by Almitra H. Patel in 1996 regarding the management of solid waste disposal in four metropolitan cities—namely, Mumbai, Chennai, Calcutta and Delhi. It also referred to Bangalore, but the Court took up the case of National Capital Territory of Delhi. The petitioner alleged that the practices adopted by municipalities for disposal of waste were deficient. The management of solid waste by the municipalities had a direct effect on the health of the people in the country. The petitioner had appreciated the guidelines and recommendations made by the Central Pollution Control Board for the management of the municipal waste. In its reply, the Central Pollution Control Board submitted that the responsibilities of management of solid waste were vested with the municipal corporations of the municipalities which are under the administrative control of respective states/union territories. At the Central level, the ministry of Urban Affairs is the nodal Ministry to deal with the matters relating to municipal solid wastes. The Central Pollution Control Board itself has taken several initiatives for improvement, collection, transportation, disposal and utilization of

73 See section 9 and also section 91 of the Code of Civil Procedure, 1908.
74 Almitra H. Patel v. Union of India 2000(2) SCC 166.
municipal solid wastes. On the basis of the replies of various departments, Central/State Pollution Control Boards and concerned State Government, the Hon’ble Supreme Court by an order dated January 16, 1996 appointed a Committee headed by Mr. Asim Burman (Commissioner of Calcutta Municipal Corporation) to look into the aspects of ‘municipal solid waste management’. The terms of reference for the Committee was to look into all aspects of urban solid waste management, particularly examine and suggest ways to improve conditions in formal and informal sector for promoting eco-friendly sorting, collection, transportation, disposal and utilization etc. of municipal solid wastes. The Committee gave its report in the month of March 1999 before the Supreme Court for consideration. The committee made several recommendations including technical aspects also for the management of solid waste in class I cities. The recommendations were further classified under three heads:

i. Mandatory recommendations for citizens/associations;
ii. Mandatory recommendations for local bodies/state governments; and
iii. Discretionary recommendations for urban local bodies.

**Mandatory recommendations for citizens/associations**

1. Not to throw any waste on the streets, lanes, bylane, footpaths, open spaces, water bodies etc.
2. Store the organic (food) and bio-degradable waste at source in personal domestic bins.
3. Segrate/store separately recyclable waste/non bio-degradable wastes as well as domestic hazardous waste at source.
4. Provide community bin/bins in commercial complexes.
5. Deposit domestic, trade, institutional wastes in the food cart/recycles/community bins/vehicles as may be notified by the local body.
6. Trim the garden waste by the days notified by the local body.
7. Store the construction waste within the permission outside the presence.
8. Hospitals, nursing homes makes their own arrangements for disposal of their industrial and bio-medical waste.
Mandatory recommendations for local bodies/state governments

(1) Initiate public awareness campaigns through Information Education and Communications (IEC) strategy.

(2) Primary collection of waste from doorstep/community bins with or without community participation.

(3) Street sweeping on all days in the year irrespective of Sundays and Public holidays, making adequate provision for giving statutory weekly off to the workers or compensating them for working on holidays, etc.

(4) Provision of mobile/bulk community waste storage containers/tractors trolleys at the waste storage depots.

(5) Transportation of waste at regular intervals before the containers start overflowing.

(6) Collection, transportation and disposal of market waste, Hotel and Restaurants waste, Construction waste, Garden Waste, Kalyan mandap/Marriage hall waste with the participation of waste producers.

Discretionary recommendations for urban local bodies

(1) Monthly charging for door-to-door collection based on income groups may be implemented.

(2) The vehicles for transporting the waste from the transfer point to the disposal site should be of appropriate design, suiting the waste characteristics.

(3) Composting of municipal solid waste should be the next appropriate option after land filling.

(4) Participation of private sector in setting up pilot plant utilizing appropriate technologies for urban solid waste management should be encouraged.

The report of the committee was circulated to all the states. The pronouncement made by the Supreme Court in *Almitra H. Patel v. Union of India*\(^75\) compelled the Central Government, the Ministry of Environment and Forest to notify the Municipal Solid Waste (Management and Handling) Rules, 2000.

The Almitra Patel case brought to fore the need for door-to-door collection of waste, segregation of waste at source as dry and wet, new and appropriate technologies

\(^75\) 2000(2) SCC 166
for the handling of waste and final disposal. While it was a good first step in addressing serious concerns relating to waste management, regrettably, the focus of this petition was not on reducing and recycling waste with the concomitant directions to ensure penalties on large polluters and reward efforts to recycle with tax breaks and subsidies. It may well be the subject of another writ petition.

In *Almitra H. Patel v. Union of India*, the Supreme Court pointed out that schemes such as “*Svachha Bangalore*” involving separation of recyclable waste/non-biodegradable waste as well as domestic hazardous waste at source by means of door-to-door collection by municipal workmen or through private contractors can and should-be -role model for other cities particularly in Delhi. The Court further directed that such schemes should be started as soon as possible, including the slum areas. The Court also directed the Delhi Municipal Corporation to file an affidavit in respect of each of the recommendations in Burman Committee report. The court pointed out that the disposal of wastes and identification of person or body to be fined was the responsibility of NDMC and it may do so in accordance with law. The court also laid emphasis that the slum clearance is interrelated with solid waste disposal because slums generate a great deal of solid waste adding to Pollution as borne out by report of Central Pollution Control Board.

In *Almitra H. Patel v. Union of India*, the Supreme Court considered the reference of the learned counsel for the petitioner to the extracts from Vol. II Sectoral Policies and Programmes of Tenth Five Year Plan (2002-07), Planning Commission, Govt. of India, New Delhi and directed the Govt. of India to file the action taken report (ATR) on the formation and time bound activities of the State Sanitation Councils and Mission-mode Urban Sanitation Mission to be set up during the Tenth Plan (2002-07). It was also submitted that the Govt. of India, Ministry of Agriculture, Department of Integrated Plant Nutrient Management with Indian Council of Agricultural Research and Ministry of Fertilizers shall set up a task force to: (i) prepare within 4 months a policy, strategy and action plan for promoting IPNM using city compost along with synthetic fertilizers in every area of agriculture, horticulture, plantation crops, forestry and revegetation of mining overburdens; and (ii) create

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76  (2000) 8 SCC 19. See also K.C. Malhotra v. State, A.I.R. 1994 M.P. 48 where the Corporation was directed to take necessary measure to ensure public health and safety which was threatened due to caused by open drainage.

market demand and supply mechanism for city compost within 50 km. radius of all urban local bodies and their compost plant.

The Supreme Court also took cognizance of Annual Report (2002-2003) on the implementation of Municipal Solid Wastes (Management and Handling) Rules 2000, which showed large scale of non-implementation of these Rules. Accordingly, the Supreme Court emphasized the necessity for formulating an action plan for management of Municipal Solid Wastes (MSW) in respect of metro cities and State capitals by the Ministry of Urban Development in consultation with all concerned. Directions were also issued to Central Govt., State Govt. and State Pollution Control Boards and concerned Pollution Control Committees to examine various aspects submitted by the petitioner in this regard.

In Sector 14 Residents Welfare Association v. State of Delhi, the Supreme Court considered the final report of the committee constituted for upgradation of city sewerage and management system in trans Yamuna and certain Noida sectors. The Court held that it will be appropriate if the monitoring of the implementation of the committee report as per its action plan is undertaken by the Environment Pollution (Prevention and Control) Authority constituted under section 3 of the Environment (Protection) Act, 1986.

In Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, it was held that unauthorised encroachment of pavements affects pedestrian's right to free passage and also creates unhygienic ecology, traffic hazards and risk to the lives of pedestrians. Therefore, the Municipal Corporation is entitled to remove such encroachments. The Court also pointed out that there is a constant efflux of rural people to urban areas leading to consequential growth of slums and encroachments. It is for constitutional functionaries to evolve such schemes and policies so as to provide continuous means of employment in the rural areas and to prevent the immigration of

rural people to urban areas.

In *M.C. Mehta v. Union of India*, the Supreme Court took notice of the news item under the caption “Falling Groundwater Level Threatens City” of Delhi which appeared in the Indian Express on 18-3-96. The news item was brought to the notice of the Court by Mr. M.C. Mehta, Advocate. The Court treated it as a public interest litigation (PICT) and issued notice to the Central Government, Ministry of Environment and Forest.

The Supreme Court issued direction to the Central Government to appoint "Central Groundwater Board" as an "authority" under section 3(3) of the Environment (Protection) Act, 1986 and to confer on the “authority” the power to give directions under section 5 of the Act. Board as an authority could resort to the penal provisions under sections 15 to 21 of the Environment (Protection) Act, 1986. The Board was required to apply its mind in respect of the urgent need for regulating the indiscriminate boring and withdrawal of underground water in the country and issue necessary directions in that regard.

In *Sushanta Tagore v. Union of India*, the question related to construction of residential and commercial complexes by developers and promoters in the territorial area comprising Shantiniketan in utter disregard of, inter alia, environmental and pollution control laws and requirements which had endangered the very purpose tradition and objective with which Visva-Bharti was established and which was thereafter sought to be preserved by the Act. The Supreme Court observed that it is the duty of the State and the Development Authority not to allow activities in the territorial limits which may damage environmental ambience of the area contrary to the ideals, of Visva-Bharti. It is imperative that the ecological balance be maintained keeping in view the provisions of both Directive Principles of State Policy read with Article 21 of the Constitution.

In *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group*, the Supreme Court after referring to a large number of decisions rightly stated that whereas the need to protect the environment is a priority, it is also necessary to promote, development. The court observed:

83 (2005) 3 SCC 16.
The development of the doctrine of sustainable development indeed welcome feature but while emphasizing the need of ecological impact delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore the dire need which the society urgently requires.\textsuperscript{85}

Thus, the harmonization of the two needs is required. The doctrine sustainable development although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on \textit{ipse dixit} of the court.\textsuperscript{86}

Similarly, the court declared in \textit{Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.}\textsuperscript{87} that every citizen has a fundamental right to enjoy quality of life and living as contemplated by Article 21 of the Constitution and violation of it will be punished adequately. Thus, courts have assumed the role of guardians and protectors against health hazardous activities and pollution disseminating activities affecting, directly or indirectly, the flora and fauna, micro-organisms and property.

It has been observed by the Supreme Court that a national policy has to be evolved for the location of chemical and other hazardous industries in areas where the population is scanty. Bhagwati CJ, while delivering judgment in \textit{M.C. Mehta v. Union of India}\textsuperscript{88}, observed:

There is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We cannot possibly adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard or risk to the community.... We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps....

In another landmark case of \textit{Sat Priya Mehamia Memorial Education Trust and another petitioner, v. State of Haryana and others}\textsuperscript{89}, the Punjab and Haryana High Court has made it clear that the judicial process cannot be used for fixing the lifespan

\textsuperscript{85} Id., at 526 (mphasis supplied).
\textsuperscript{86} See Suetha v. State of T.N., (2006) 6 SCC 543 at 547. See also (T.N. Godavarman Thirumalpad v. Union of India, 13 SCC 689. In this case DDA, while allotting the land had given the impression that all environment clearances had been obtained, though that was not true. Allottees had invested huge amount. The court held that demolition is not proper in the present case. The MoEF was directed to decide remedial measures including imposition of such amounts as costs.

\textsuperscript{89} CW P No. 8504 of 2003 Decided on 17 March 2009
for landfill sites in Haryana. In its petition the petitioners had brought under the high court scanner the problem arising out of waste dumping and need for its disposal by Rohtak Municipal Council. The petitioners had, among other things, contended landfill site had been used for over 25 years and should, therefore, be closed.

The Bench ruled: Whether or not a site can be used any further, would depend upon the size of the site and the quantity of solid waste being dumped on the same and the methods for its eventual disposal whether by process of decomposition or otherwise. Referring to the case in hand, the Bench asserted that the solid waste treatment plant, being set up on the site in question, will eventually use the solid waste after proper segregation to generate manure which would then be used by the farmers in their fields.

“What is important is that the waste, if dumped at the site, would be converted into useful material for use by the farmers. If that is so, as it appears to be, the site may never saturate for the purposes of dumping as the process of dumping, also the process of removal of the waste after conversion into manure, would be a continuous cycle”. Attaching utmost importance to the issue of waste management, the Bench added: "Disposal of municipal solid waste generated by cities big and small is a formidable challenge for the municipal authorities in this country". 90

In S. Nandakumar vs. The Secretary to Government of Tamil Nadu and others 91 Writ appeal pertains to the decision taken by the Government of Tamil Nadu to allot an extent of 70 acres of land and the consequential entry permission given to the municipalities of Ambattur, Maduravoyat, Thiruverkadu, Valasaravakkam and Poonamallee and Porur Town Panchayat to establish their Solid Waste Management Plant in Kuthambakkam Village in the District of Thiruvallur. In a petition, S. Nandakumar, president of Kuthambakkam Panchayat; stated to be a model village and nominated for the UN Habitat Award, said the livelihood of the people of the village was agriculture. Most of them solely relied on livestock. The cattle depended on common grazing lands where the government had decided to set up the SWMP.

There is a prescribed procedure as contained under Section 134 of the Tamil Nadu Panchayats Act and Rules 3 and 4 of the Tamil Nadu Panchayats (Restriction and Control to Regulate the use of Porombokes in Ryotwan Tracts) Rules, 2000, in the

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90  The Tribune April 14, 2009
matter of taking over the land for any other specific purpose. Section 134 of the Tamil Nadu Panchayats Act provides that the porambokes namely, grazing grounds, threshing floors, burning and burial grounds, cattle-stands, cart-stands and topes shall vest in the village panchayat and the panchayat shall have power to regulate the use of such porambokes. Section 134(3) authorises the Collector, after consulting the Village Panchayat to exclude the land from the operation of the Act. However the said procedure was not followed by the District Collector. Effective consultation made by the District Collector was only after granting entry permission by the Government as per G.O.Ms.No.78 dated 23 February, 2009. Therefore mandatory consultation process was not resorted to by the District Collector before recommending the case to the Government.

Disposing of the appeal and writ petitions, the Bench, said though it was of the view that no interference was called for in the order passed by the government as well as the order of the District Collector in view of the larger public interest involved in establishing garbage disposal plant and the developments which have taken place subsequently, it would make the legal position clear - before taking action under Section 134 (3) of the Tamil Nadu Panchayats Act (Village panchayat to regulate the use of certain porambokes in ryotwari tracts), the concerned panchayat should be consulted. The Bench also indicated the importance of public hearing and the need to ascertain the views of the affected persons by authorities before giving environmental clearance. The public consultative process is an essential component in the process of environmental impact assessment. Therefore, any violation of the mandatory procedure in the matter of conducting public hearing and recording the views or objections of the affected persons would give the aggrieved a cause of action to challenge the legality and correctness of the public hearing proceedings, without waiting for the final outcome of the impact assessment proceedings.

The court directed the EIAA to give a copy of the application by the municipalities and the panchayat for granting environmental clearance for establishing the facility, to the Kuthambakkam panchayat so as to enable the petitioner to submit the views or objections in the matter. The Kuthambakkam panchayat and the local affected persons should be given an opportunity to offer their comments during the public hearing. The court said that in case the EIAA rejected the application for environmental clearance, liberty is given to the Kuthambakkam panchayat to approach the government
for cancellation of allotment to the local bodies, in view of the statement made by the Advocate-General.

In K.K. v. State of Punjab and Others, petitioner seeks a direction to the respondents to shift/remove the Garbage Dumping Ground situated in between the residential area and adjacent to Government School. To say that the solid waste material is being dumped in the open area, reference was made to the photographs placed on record. It was further stated that due to non-cleaning of the sewerage lines, dirty water is coming out and is accumulating next to the residential houses. An affidavit of Dr. Sumeet Kumar, IAS, Additional Commissioner, Municipal Corporation, Ludhiana, has been placed a record. Relevant portion of the affidavit it reads thus:- “7 to 12. It was submitted that the over-flow of sewer was due to plugging in of the sewerage pipes as the main sewer pipe was being cleaned. Since the plugs have now been removed, the problem of overflowing of sewer is no more subsisting. It was mentioned here that the Corporation is already in the process of setting up a Municipal Solid Waste Treatment Plant at Garbage dump at village Jamalpur. The contract has been given to M/s A2Z Company who is now managing the garbage within the city area and transporting it to the garbage dump for its treatment.” It is also stated that one company has been engaged to remove the solid waste from open areas and taking it to an appropriate place for dumping.

In Satpal Singh & others v/s Municipal Council Gardhiwala and others the National Green Tribunal held that the Respondents have failed to implement Municipal Solid Wastes (Management and Handling) Rules, 2000 and discharge their duties under the Punjab Municipal Act, 1911.

The Respondents have failed to ensure that Fundamental Right available to the citizens of the township in the matter of protection of life is taken care of. The right to life includes the right to pollution free air and pure water. Having regard to the foregoing discussion, we deem it proper to allow the application and give appropriate directions to the Respondents.

The tribunal directed to take immediate action to shift the dumping ground “Hada Rori” to a suitable place outside the limits of Municipal Council and if
necessary by acquiring a suitable land, after negotiating with owner of such land and to complete the shifting process within a period of six months hereinafter.

The Municipal Council shall construct a parapet wall around the place so selected for “Hada Rori” with wire mesh affixed at least two (2) feet above on such parapet wall, which shall be of five feet height, in order to avoid entry of stray dogs in the “Hada Rori” after shifting of the dumping ground.

The Municipal Council shall consult experts as well as the Punjab Pollution Control Board in order to examine whether the dumping can be made by creating ditch of appropriate depth. The dead animals, being biodegradable waste, could be processed to convert them into manure by composting under the provisions of MSW Rules (Schedule II) if it is found that the same will not cause any adverse impact on the ground water level and will not cause contamination / pollution of the ground water. The Respondents shall make arrangements for processing of wastes within a period of one year herein after. The Punjab Pollution Control Board shall closely monitor the progress on alternate site selection and construction in “Hada Rori” and shall file affidavit on the progress.

In Pollution Control Committee, Amritsar v. Municipal Corporation other\textsuperscript{94} the petitioner prayed to shift the dumping place of Municipal Solid Waste and dead animals to an authorized and approved place in accordance with the provisions of the Municipal Solid Waste (Management & Handling) Rules, 2000 (for short the Rules) and for scientific disposal of the Municipal solid wastes and dead animals. The Hon’ble High Court allowed the petition with the following directions.

1) The Corporation shall award contract to set up Municipal Solid Waste Management Plant within six months from today.

2) The Municipal Corporation shall apply for authorization in respect of its site at Bhagtanwala, but the grant of such authorization shall not be a condition precedent for awarding contract to set up Municipal Solid Waste Management Plant.

3) The successful contractor shall be bound to obtain permission or to carry forward the request of the Municipal Corporation to obtain authorization from the stage, it may be pending at the time of grant of Contract.

\textsuperscript{94} CWP No. 2032 of 2006 (O & M) decided Punjab & Haryana High Court on July 23, 2013
4) Till such time, the contract is awarded, the Corporation shall make all efforts to keep the Municipal Limits free from garbage and ensure its disposal so as to minimize the hazards which the residents may suffer.

6.8 LAWS PERTAINING TO LAND FILLS AND ROLE OF JUDICIARY

Landfills are considered a growing menace. On one hand, their lack of availability reduces the ability of the local body to effectively manage and dispose waste. On the other hand, unsanitary land filling adversely impacts health and the environment. Increasingly, it faces resistance from locals where the landfills are sited. Both these problems are rampant and myriad issues relating to landfills have been brought to court. Landfills, in several parts of the country, are the primary source for collection of waste by waste pickers. The location of these sites has a direct impact on the livelihood access of waste pickers. Reviewing the situation in Delhi, the court in Almitra Patel’s case\(^5\) noted that the MCD despite orders in Dr. B.L. Wadhera’s case\(^6\) had neither identified nor handed over sufficient number of sites for landfills. One of the reasons cited for the sites not being made available, was that land owning agencies like the DDA or the Government of National Capital Territory of Delhi were demanding market value of the land of more than rupees forty lacs per acre before the land could be transferred to MCD. The Supreme Court held that “It is the duty of all concerned to see that landfill sites are provided in the interest of public health. Providing of land fill sites is not a commercial venture, which is being undertaken by the MCD. It is as much the duty of the MCD as that of other authorities enumerated above to see that sufficient sites for landfills to meet the requirement of Delhi for next twenty years are provided. Not providing the same because the MCD is unable to pay an exorbitant amount is un-understandable. Landfill site has to be provided and it is wholly immaterial which Governmental agency or the local authority has to pay the price for it.”

Contentious as the use of land for dumping waste, there has been several struggles and resistance to indiscriminate dumping by the locals. To cite an instance, in 2007, a division bench of the Kerala High Court\(^7\) which had directed the municipal corporation to dump waste at Brahmapuram, had to also order police protection if faced

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95 Almitra Patel v. Union of India, Judgement dated 15-02-2000
96 B. L Wadhera v Union of India A.I.R. 1996 SC 2969
97 Dejo Kappan v. Corporation of Cochin & Another. W.P. (C) No. 26304 of 2006
with villagers’ protests. Violent protests had erupted against the indiscriminate dumping. The court was examining a contempt petition against the municipality for not submitting a detailed plan for solid waste disposal in accordance with previous orders. Thus, land filling concerns are slowly snowballing into major controversies not merely from a public health and environment perspective but also from locational concerns over which land is more suited for land filling. Town planning and zoning laws need to be examined carefully in this context.

6.9 NEW TECHNOLOGY AND THE LAW

Waste-to-energy technology seeks to convert municipal solid waste to energy through either a thermochemical or biochemical process. Waste to Energy technology has been actively promoted with government subsidies. However, WTE projects have run into rough weather and increasingly become the subject of much controversy. The SELCO plant in Hyderabad, the project in Lucknow and the Timarpur plant in Delhi are a case in point.

In her petition to the Supreme Court, Almitra Patel demanded a stay on the subsidy to WTE plants and an independent review of such plants based on the experience in the Lucknow and Hyderabad plants. In 2005, the Supreme Court ordered the creation of a committee to study the performance of WTE plants. This 14-member committee was chaired by Dilip K Biswas, former chairperson of the Central Pollution Control Board.

The committee’s report came out in December 2005. Two of its members submitted differing reports but both reports raised apprehensions about the WTE plants at Hyderabad and Vijaywada. The majority report justified the subsidy on WTE projects because “the operational problems of one plant should not form the basis to judge the efficacy of a particular technology option or for rejecting the technology as a whole”.

It attributed the closure of the Lucknow plant to its operation at low capacities for one year due to an ineffective garbage segregation system. The differing report says

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98 The thermochemical techniques consist of combustion, gasification, and pyrolysis that produce high heat in fast reaction times. The biochemical processes consist of anaerobic digestion, hydrolysis, and fermentation using enzymes that produce low heat in slow reaction times. See: http://www.arch.hku.hk/research/BEER/waste.pdf.
99 Almitra Patel v. Union of India, Judgement dated 15-02-2000
the reason cannot be established, because the plant shut down before monitoring started.

Several problems are identified with new technologies. It is found that nearly 70 per cent of the waste produced is wet organic matter has a low calorific value and is not conducive for the WTE plants. Incinerators’ emissions contain dioxins, the most toxic of all human made substance. Based on a critical analysis of biological treatment, an MoEF white paper recommended composting over incineration: “The experiences of the incineration plant at Timarpur, Delhi, support the fact that thermal treatment of municipal solid waste is not feasible in situations where the waste has a low calorific value.” Likewise, The committee appointed in 1998 by the Supreme Court says:

“Calorific value of Indian waste is 800-1,000 kilo calories, which is very low. It is not suitable for incineration.” (People who understand garbage incinerators say waste should have a minimum calorific value of 2,000 kcal for making WTE work.) It does not recommend incineration of garbage as it is not environmentally friendly and in particular, waste in the country has high ash and dust contents. Incineration technology also requires high capital costs (especially for emission control) and has high operation and maintenance costs. \(^{100}\)

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100 Unfit to Burn, Down to Earth report, Volume 15, March 2007.