Chapter – VIII

Role of Judiciary
8.1. INTRODUCTION:

The role of judiciary in abating the water pollution in our study is that the High Court and the Supreme Court has taken, in most cases, a stringent view in dealing with the pollution cases. Since, men is the creator and moulder of his environment, his conduct can be regulated through the instrument of law. In modern times, water pollution has assumed alarming dimensions in the light of advanced scientific and technological growth. Recent deadly growth of Nuclear Power Plants (NPP) and disposal of their wastes and its grave consequences compel us to think about the propriety, effectiveness of present laws.

In India, there has been a regular development of the law regarding the protection of the environment. However, neither the law nor the environment can remain static. Both are dynamic in nature. The changing pace of the environment is so fast that in order to keep the law to meet the new challenges or it has to be given new direction by the judicial interpretation. This becomes all the more important in view of the ever increasing scientific and technological development and advancement which man has made. The judiciary in India has played a pivotal role in interpreting the laws in such a manner which not only helped in protecting environment but also in promoting sustainable development. In fact, the judiciary in India has created a new "environmental jurisprudence".2

Judicial Attitude:

The judicial response to almost all the environmental issues concerned is very positive in India. The role of N.G.O's in this regard is very important. The people's response to ecological crisis and voluntary associations has shown their deep concern by filing Public Interest Litigation (PIL) and got favourable directions from the courts in

appropriate cases. The role played by M.C. Mehta (Supreme Court Advocate), Indian council for Enviro-legal Action, the society for Protection of Silent Valley (Kerala), Narmada Bachao Andolan (NBA) Team, Vellore Citizen’s Welfare forum, etc., are the well known organizations contributing for resolving environmental crisis. The Indian Judiciary has made an extensive use of the constitutional provisions and developed a new ‘environmental jurisprudence’ of India. The concept of Sustainable development, polluter Pays principle, precautionary principle and the Doctrine of Public Trust, culled out from the various international conventions and documents are effectively implemented by the courts. Referring to the wetlands conservation issues, in Indian council for Enviro-legal action vs. Union of India, popularly known as H-Acid case, the Honorable Supreme Court held that, the absolute reliability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring to the environmental degradation. It includes environmental costs as well as direct costs to people or property. Remediation of the damaged environment is part of the process of ‘sustainable development’ and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reinstating the damaged ecology.

In Vellore Citizen’s Welfare Forum vs. Union of India, (popularly known as T.N. Tanneries case) the Supreme Court adopted the principle of sustainable development and also accepted the ‘precautionary principle’ along with ‘the polluter pays principle’ as a part of the legal system.

In M.C. Mehta vs. Union of India, Public Interest Litigation was filed for seeking direction from the court to stop the mining activities in the vicinity of tourist resorts of Badkal Lake and Suraj kund in Haryana. The Haryana pollution control Board recommended that the mining activities within in the radius of 5 km. from the tourist resorts should be stopped.

In Jagannath vs. union of India, a Public Interest Litigation was filed alleging that intensified shrimp (Prawn) farming culture industry in coastal areas, by modern methods is causing degradation of mangrove ecosystem, depletion of plantation. Further commercial use of agricultural land and salt forms, discharge of highly polluting
effluents, pollution of portable water as well as ground water, obstruction of natural
drainage of flood water, reduction of fish catch and blockage of direct approach to
seashore would increase the malady of water pollution. It also affected the normal
traditional life and vocational activities of the local population of the coastal areas were
seriously hampered. It was held that, seacoast: and beaches are gift of Nature and any
activity polluting the same cannot be permitted. The Supreme Court upheld the CRZ
notification which sought to impose restrictions upon industries, operations and processes
in the CRZ areas.

In the case of M.C Mehta vs. Kamalanath, the lease granted by the State
Government of Riparian Forest Land for commercial purpose to a private company
having a motel management was interfering with the normal flow of the river by blocking
natural spill channel of the river. The court applied the principle of ‘public trust doctrine’
and held that the State had committed a breach of ‘public trust’ and it was observed by
the court that public trust doctrine primarily rests on the principle that certain natural
resources like water, air, sea and the forest are of such a great importance to the people as
a whole that it would be wholly unjustified to make them a subject of private ownership.
The Supreme Court has declared the ‘Public Trust Doctrine’ as a part of the law of the
land.

The High Courts and Supreme Court have interpreted ‘The right to life’
guaranteed under Article 21 of the Indian Constitution to mean and including the right to
live in a healthy environment. The courts have intervened by writs, orders and directions
in appropriate cases and recognized the constitutional right to a healthy environment. It
was held in Subhash Kumar vs. State of Bihar and Virendar Gaur vs. State of Haryana.

In Namarada Bachao Andolan vs. Union of India, declared that Water is the basic
need for the survival of human beings and is part of Right to life and human rights as
enshrined in Article 21 of the Constitution of India. The directives given in a land mark
case namely, Dahanu Environmental Welfare Association vs. Union of India, filed by
M.C. Mehta, the Supreme Court directed the government that, to conserve the
biodiversity rich network of wetlands in Dahanu and limited industrialization to areas in
Dahanu and declared that area as an ‘Ecologically Sensitive Area’ permitting only certain types of industries in this area. Industrial development was to be limited 500 acres, thus blocking the proposal for construction of a mega port at Vadhaven, Dahanu. This has created a valuable precedent for the 1986 Environment Protection Act being used proactively to safeguard the threatened wetlands against potentially damaging processes and activities. Recently, in T.N. Godavarman Thirumulpad vs. Union of India, the Supreme Court reiterated that, natural resources are the assets of an entire nation. It is the obligation of all concerned Union Government and State Governments to take measures to conserve the environment and evolved some guidelines and measures to be taken in licensing the industries, restricting the activities in ecologically fragile areas.

In Nature lovers Movement vs. State of Kerala others, the High Court of Kerala reiterated the principle evolved in M.C. Mehata vs. Kamalanath. Our legal system based on English Common Law – includes the Public Trust Doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running water, air, forest and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Thus, the ‘Public Trust Doctrine is now part of the law of the land’. In the instant case, the Kerala State Government granting approval and consequent proceedings for issue of Pattayams in favour of occupants of forest was challenged on the ground that there was environment degradation in de-reserving forest land or using it for non-forest purposes by occupants affecting environmental equilibrium held that each occupier who prays for regularization on the basis of compensatory afforestation scheme and consequent issue of title deed in his favour shall pay reasonable of compensation to State for injury caused by him to general public. This was based on the polluters pay principle evolved in the Supreme Court in Vellore Citizens’ Welfare Forum’s case observed that ‘the polluter pays principle’ and ‘the precautionary principle’ are essential features of ‘sustainable development’. In Indian Council for Enviro-legal Action case, the Apex Court adopted ‘the polluter pays principle’ as a sound principle to be reckoned with and followed by all agencies, governmental or otherwise as well as the persons or institutions responsible for environmental pollution.
The role of judiciary in controlling the water pollution and conservation can be acknowledged very well in the leading cases. The Judiciary, which forms the third important pillar of the State Machinery, apart from the executive and legislature, as traditionally opted for a moderate role in the day to day functioning of the state. Of late, however, this watchdog of the constitution has made its presence felt albeit with the assistance of media. It has played a very important role in the environmental protection and has applied in the principles of sustainable development while deciding the cases. While deciding the cases, the judiciary has tried to maintain a balance between the environmental protection and the sustainable development. The changing stance of the judiciary as epitomized by some recent judicial pronouncements, especially in the field of environment protection, has often being termed as ‘activism’ on the part of the judiciary or ‘judicial activism’. It is also worthwhile to mention here that most of the environmental cases have come before the courts through ‘Social Action Litigation’ or ‘the Public Interest Litigation (PIL)’.

8.2. PUBLIC INTEREST LITIGATION – ROLE OF SUPREME COURT:

No post-Stockholm legal gateway in the Indian environmental enforcement history has been as extensively used by the citizens as the Public Interest Litigation (PIL). A PIL is a constitutional right. Article 32 and Article 226 of the constitution empower a citizen to move the Supreme Court and High Courts, respectively, for a direction to the State for restoring a fundamental right. PIL came into existence in the early 1980s when reformist and activist judges such as P.N. Bhagwati and V.R. Krishna Iyer started creative interpretations of the law to allow citizens not directly affected by an injustice to file petitions in court on behalf of those less privilege and therefore unable or reluctant to approach the court. This ushered in a new genre of cases known collectively as Public Interest Litigation.

Since 1980s, PILs have progressed further beyond what was originally thought. In Dr. N.S. Subha Rao vs. the Government of Andhra Pradesh (1988) the High Court of Andhra Pradesh gave people of a particular locality a relief from a polluting factory. In L.K.Koolwal vs. State of Rajasthan, (1988), the Rajasthan High Court allowed petition of the citizens of Jaipur for the preservation of water sanitation in the city. Also, in Kinkri
Devi vs. State of Himachal Pradesh (1988) the High Court there directed the closure of a mining company to prevent further pollution of the local environment.

Almost 95 percent action taken in a court of law to protect environment is through public interest litigation. One name that comes out boldly in the protection of environment is that of the spirited public man, Shri M.C. Mehta, cases perhaps bear the highest tone of judicial activism never seen before in the legal aspects of environmental enforcement. For example, M.C. Mehta v Union of India and Shri Ram Food Fertilizer Industries vs. Union of India (1987) depicts the ethical debate of the environmental protection and the price of development. Another landmark M.C. Mehta case was the petition that moved the Supreme Court for prevention of nuisance caused by the pollution of River Ganga in order to protect the lives of the people who make use of its waters. Moreover, in Indian Council vs. Enviro-Legal, the Supreme Court of India entertained a petition of the people living in village due to sludge waste left out by closed-down industries which caused heavy damage to the environment. The court ordered a remedial action be taken and compensation be given to for the silent tragedies in line with the Mehta’s “Absolute Liability Principle”.

PILs have been the easiest way of approaching the Higher Courts for environmental justice. Thousands of litigations have been filed at the Supreme Court and this has caused a delay in a speedy justice. In Maharashtra, for example, one PIL case could take an average of six years for completion. Ruling is another problem. Lack of cooperation between a State, petitioner and judiciary is another obstacle as the Government is often among the accused in these litigations. Lack of access to information on polluter’s history is another burden on a PIL petitioner. Another problem is misuse of the right to PIL by people. This so happens because many people are ignorant of the steps and procedures required for a PIL.3

Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. Continued tolerance of such violation of law not only renders legal provisions

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nugatory but such tolerance by the enforcement machinery encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for future generations and to ensure good quality of life that the legislature has enacted anti-pollution laws and incorporated many statutory provisions for the protection of the environment. Violation of anti-pollution laws only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, an adverse effect of which has to be borne by the future generations.

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

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

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

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

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

In K.Purushotham Reddy S Another vs. Union of India and others⁴, the learned division Bench of the Andhra Pradesh High Court held that position of Hazardous substances without taking adequate care and precaution is not permissible and said that possessing of a hazardous substance without taking adequate care and precaution would not only give rise to ecological problem but may seriously affect the quality of portable water, in this situation, strict compliance of the rules, would be the necessity of the day having regard to the facts and circumstances of this case and particularly in view of the fact that thousands of kiloliters of waste lubricants are receded for its reuse.

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

In M.V.P. Social Workers Association, M.V.P. Colony, Visakhapatnam vs. Visakhapatnam Urban Development Authority and others, the grievance of the petitioners was that the area wherein the disputed construction was alleged to be made falls in category III of CRZ notification. That category includes coastal zone. In the rural areas and areas within the municipal limits including any other legally designated urban areas. The conditions provide that the total plot size shall be less than 0.4 Hectares and that they construct shall be consistent with the surrounding landscape.

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

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

8.3. UNDER CRIMINAL LIABILITY:

1. In Uttar Pradesh Pollution Control Board v. Modi Distillery, the appellant-complainant lodged a complainant against the respondent before the Chief Judicial Magistrate, Ghaziabad who issued the process against the respondents under the Sec. 44 of the Water Act. The fact was that Modi Distilleries had large diversified business and

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5 2002 (2) ALT 297, (DB).
6 AIR 1988 SC 1128.
prior to the enactment of the Water Act, it was running the business of manufacturing the industrial alcohol. The unit was discharging highly noxious and polluted trade effluents into the Kali River through Kadrabad dam, a stream under Sec.2 (j) of the Act. The company did not observe the formalities under the Sections 25 and 26, instead the unit applied for the grant of consent of discharging the effluents into the stream. The application was incomplete and in spite of the repeated efforts, the company did not cooperate the Board, submitting the required information. Ultimately the Board lodged the complaint against the 11 accused persons. The Board could not draft the complaint artistically wrongly designating various officials as that of the company. The issue was whether the Chairman, Vice Chairman, Managing Directors and the members of the Board of the Company could be proceeded against without the prosecution of the company. The High Court set aside the order of the Magistrate. It held that when an offence has been committed by the company under this Act, every person who at the time of the commission of the offence was ‘in charge of and responsible to’ the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be punished accordingly, but if the officials can prove that the offence has been committed without their consent, or the officers took all responsible steps to stop the pollution, they will not be held liable. The respondents submitted that the officials could not be vicariously prosecuted without prosecuting the Company itself. The Court was very annoyed because the company failed to furnish the required information. Hence it can be presumed that the officers of the company were very much aware of the problem and did not cooperate with the Board. They never responded the requests of the Board. “It would be a travesty of justice if the big business house of Messers Modi Industries Limited is allowed to defeat the prosecution and avoid facing the trial on a technical flaw which is not incurable, for their alleged deliberate and willful breach of the provisions contained in Sections 25 (1) and 26.” Hence the Officials of the Company would be prosecuted against and the quashing of the Magistrate’s order has been set aside.

In a similar case the Supreme Court had revived a prosecution launched in 1983 against the company, its directors, which was erroneously quashed by the Session’s Judge.
2. In *K.K.Nandi v. Amitabha Baneerjee*\(^7\)\(^8\), the Calcutta High Court rejected a motion for quashing the criminal prosecution against the manager of a beer company. The allegation was that the manager violated the provisions of the Sections 25 and 26 of the Water Act (Prevention and Control of Pollution) Act. The Manager submitted that, as the complaint did not mention how the manager had violated the provisions of the Sections 25 and 26, and how was he responsible. The court rejected the arguments and held a person designated as a manager of a company, i.e. prima facie liable under section 47 of the Act. Whether or not the person designated as the manager was responsible for the alleged pollution or whether he had any knowledge of the pollution will be decided in the trial court.

3. In a Full Bench by majority decision of a case *Mahmud Ali v. State of Bihar*\(^9\), the Patna High Court allowed invoking the provisions of the Section 319 of the Cr. P. C. The fact of this case was the Bihar Pollution Control Board instituted the criminal proceedings against the appellant accused before the Gopalgung Magistrate for violating the provisions of sections 20 (3), 24, 25 and 26 discharging the effluents into the river Daha without the consent of the Board. The name of the managing director was not named in the original complaint, which was revealed during the trial. The Majority held that:

"... the prevention and absolute control of water pollution and maintaining and restoring of wholesomeness of water resources of it cannot be labeled as beneficent legislation which has to be somewhat liberally construed. The violation of the Act...may also be committed by companies or legal persons is in a class by itself and poses problems peculiar to them...the issue of vicarious liability of the office-bearers through whom a company must necessarily act, comes into force...A plain reading of Sec. 17 would indicate that the stringent principles of strict vicarious criminal liability of persons who are responsible to the company for the conduct of his business or its responsible office-bears like a director, manager or secretary etc., for all offences committed by the company...Section 47 (1) spells out a deeming fiction of vicarious liability and a rule of

\(\footnote{7\text{ U.P. Pollution Control Board v Mohan Meakins Ltd., 2000 (2) SCALE 532.}}\)

\(\footnote{8\text{ 1983 Cr. L.J. 1479.}}\)

\(\footnote{9\text{ AIR 1986 Pat. 133 (Full Bench).}}\)
evidence laying the burden of proof on the person in charge of and responsible to the company for the conduct of its business... the broader perspective of the criminal law is more a matter of substance than of form and should not be allowed to be obscured by pettifogging technicality.” On this reasoning the inclusion of the name of the appellant the complaint has been upheld.

Another question arose whether the persons, who were in charge of the affairs of the company, when the discharge of effluents took place, can be prosecuted even after their retirement for the alleged violation occurred during their tenure. In J.S. Huja v. State, the Allahabad High Court answered in the affirmative.

4. In M/S Lipton India Ltd. V. State of Uttar Pradesh10, Division Bench of the Allahabad High Court was confronted that whether an officer authorized by the State Pollution Control Board could delegate another of its officers to lodge the complaint under the Sec. 39 of the Water (Prevention and Control of Pollution) Act.

The fact of this case was that the petitioners M/S Lipton India Ltd, company incorporated under the Indian Companies Act, had its manufacturing unit of vanaspati at Gaziabad. Under the provisions of the Water (Prevention and Control of Pollution) Act, no person can discharge trade effluents without the previous consent of the State Board. Therefore, the petitioners company applied for consent of the Board for discharging effluents until such time that a proper plan for treatment of the trade effluent was made in order to satisfy the provisions of this Act. The petitioners applied for this in 1983 and the Board granted conditional consent on 16th February 1983. Then petitioners applied from time to time to extend the constant until such time that its plant, which was under construction, was completed. The plant was completed in the year 1988. However, the petitioner has placed on record the consent was accorded by the Board on 6th October 1988 and has not brought on record any document to substantiate that the consent was accorded by the Board prior to 6th October, 1988. On 13th May, 1988 the Board refused to accord consent to the petitioners against which they preferred an appeal under section 28 of the Act on the ground, amongst others, that trade effluent was not discharged in the river Hindon, rather it was being discharged in Dasna drain. The aforesaid appeal was filed by the petitioners on 9th June, 1988 and prior to that i.e., on 26th May 1988, the
Board filed a complaint case through its Assistant Environmental Engineer in the Court of Chief Judicial Magistrates, Gaziabad under Section 200 of the Code of Criminal Procedure for taking suitable action under section 44 of the Act. The Magistrates took cognizance of the offence alleged under Section 44 of the Act and issued process against the accused persons. It may be nominated as Assistant Secretary, who, in turn, nominated Assistant Environmental Engineer to file the complaint.

The court held that the Board resolved to file the complaint; naturally the act of filing complaint was to be done by some officers of the Board who was well conversant with the fact of the case. Thus for performing the aforesaid act of filing complaint, the Board authorized one of its officers to be nominated as Assistant Secretary, accordingly the Assistant Secretary nominated one of its officers, Assistant Environmental Engineer. The nomination by Assistant Secretary does not amount to another delegation of delegation of delegated power. In the instant case, it is the Board, and not the Assistant Secretary who has authorized to the Assistant Environmental Engineer. It is not that the Board authorized the Assistant Secretary to file complaint and the Assistant Secretary authorized the Assistant Environmental Engineer. The nomination by Assistant Secretary does not amount to another delegation of the delegated power. When a statute confers certain duties and functions are incidental to the exercise of the power, in such a way that they are integrally connected with them, a permissible delegation of the powers effective to delegate duties and functions along with the power. The court did not trap itself into the technical rules of procedure. The substantive aspects of the water pollution were considered.

8.4. STOPPAGE OF PROCEDURE:

1. The interpretation of Environment (Protection) Act and the Water (Prevention and Control of Pollution) Act arose in the Orissa High Court in a case, *M/s Mahabir Soap Gudakhu factory v. Union of India*¹¹, where the appellant was running the manufacturing of processing of tobacco discharging the effluents polluting the water in the stream. The

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¹⁰AIR 1996 Allahabad 173.
¹¹AIR 1995 Orissa 218.
petitioner as running his business in a thickly populated area of Kantabanji town without the consent order from the State Pollution control Board under the Sections 25 and 26 of the Water Act. Its end product was 'gudakhu'. The Central Government, under Section 5 of the Environment (Protection) Act, issued the show cause notice proposing action with the request of filing the objections within a stipulated time and in absence of any reply the directions will be confirmed without any further communication. The Managing Director denied the allegations. In the meantime, the State Board enquired under Sections 251, 25, 26 of the Water Act. In the meantime, the Central Government directed the closure notice restraining the discharge of pollutants until adequate pollution control measure is adopted.

The point of issue was that the principles of natural justice were not observed. The court held that: "...there is little scope for doubt that it was within the power and competence of the Central Government to issue direction to close the petitioner's industrial unit forthwith and to disconnect supply of electricity and water and to restraint petitioner from restarting the unit until all the pollution control measures are taken to ensure that the effluent discharged from the unit meets the prescribed standards and after obtaining prior approval of the Central Government. It is also within the power of the State Board to reject the petitioner's application for consent under Sec. 25 of the Water Act. The question for consideration is whether the authorities have violated the principles of natural justice...the grievance that the opportunity of personal hearing was not given..."

"... In the case at hand, the notice was issued to the managing partner of the firm...sub-rule 3-b of rule 4 was not attracted in this case. The procedures prescribed under rule 4 were duly followed in the case. In these circumstances we are not persuaded to accept the contention of the petitioner..."

"...The reasons cannot be said to be unreasonable or extraneous not germane to the purpose of the statute which is to prevent and to control the water pollution and to maintain wholesomeness of water. Grant or refusal of the consent in the very nature of the thing is at the discretion of the State Board. It is not for the court to go into the
propriety of the reason and substitute its opinion in place of the State Board. We, therefore, see no valid ground to interfere with the order of refusal and consent by the State Board.”

2. In another case, Mandu Distilleries Pvt. Ltd. V. Madhya Pradesh Pradushan Niwaran Mandal, Bhopal\textsuperscript{12}, the principles of natural justice, though important for any administration, quasi-judicial and judicial body to follow has given importance. It is decided by the Indore Bench of the Madhya Pradesh High Court, a ground for quashing of the Board’s order. Here the petitioner is a company owning a factory located at village Sojwaya, district Dhar, manufacturing and distributing Indian made foreign liquor. It constructed the lagooning system of effluent treatment plant along with the distillery. The respondent issued the show cause notice objecting the discharge of polluted water in Pankhedi Nala. The petitioner replied that construction of anaerobic methane gas plant has been started but this work suffered delay for some time due to cancellation of the permission.

The respondent passed the adverse order and the order was challenged. The court observed: “...there is a serious flaw in the ‘decision making process’...and decision is taken on extraneous consideration and arbitrarily. Accordingly orders, as assailed, are infirm. The ground stated in the show cause notice and basis of order are not the same. And these seemed to be distant neighbours. There is, thus, denial of the principles of natural justice and consequent violation of in-built procedural safeguards.” On these grounds the petitioner should be given fresh show cause notice. The respondent will be at liberty, within the limits of laws, to suggest proper actions to safeguard the interest of the petitioner in fulfillment of the objects of the Act. Till those are done, the petitioner shall be restrained from discharging the untreated trade effluent through any stream channel or other sources reaching rivers Mohni Chamba, Parwati, Sheonath, Kharoon or any other river or lake.

\textsuperscript{12} AIR 1995 MP 57 (Indore Bench).
8.5. BOARD'S POWER TO MAKE APPLICATION TO THE MAGISTRATE UNDER SEC.33:

1. In Pondicherry Paper Mills Ltd. V. Central Board for Prevention and Control of Water Pollution, the Board¹³, acting as the State Board, applied for an injunction to the Magistrate under Sec. 33 alleging that a paper mill company was discharging and its operation should be stopped until the company constructed the water treatment plant as required by the consent order of the Board. The Magistrate issued the injunction. The company moved the motion against the injunction on the ground that the Magistrate has not that authority under Sec.33.

The court held that the Magistrate Court might make an order restraining the petitioner from polluting the water of the polluting the stream. It may direct the company to desist it from taking such actions as is likely to cause pollution, or, as the case may be, remove from the such stream or well such matter or it can authorize the Board to do so under Section 3 (ii). As it was held in Sub Divisional Officer, Faizabad v. Shambhoo Narayan Singh¹⁴, that when an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts on employing such means as are essentially necessary to its execution, but before doing so it must satisfy itself that the existence of the power of the court is absolutely essential for the discharge of the power conferred and not merely that it is convenient to have such power. The court also referred another case, Dr. Indiramani Dyarelai Gupta v. Nathu¹⁵, where it was held that to judge whether a legal power could be vested in a statutory body, the proper rule of interpretation is that unless the nature of the power was such as to be inconsistent with the purpose for which the body was created.

The Water Act is a social welfare legislation enacted for the purpose of the prevention and control of pollution of the water and for maintaining and restoring the wholesomeness of water. Therefore the Act is to be strictly enforced to carry out the true intent of the legislation. On this principle, the Magistrate was justified issuing the

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¹⁴ AIR 1970 SC 140.
injunction on the application filed under section 33 of the Act. When the Madras High
Court took a pragmatic approach, the Delhi High Court took another view and
highlighting the technical points quashed the order of the Magistrate’s order.

2. In Delhi Bottling Company Private Limited and another v. Central Board for the
Prevention and Control of Water Pollution\textsuperscript{16}, the appellant-petitioner was running the
business of manufacturing soft drinks under the names Gold Spot, Limca, Thumps Up,
Soda Water etc. they were discharging untreated effluents which ultimately polluting the
water stream. The company duly obtained the consent order under provisions of Sections
25 and 26 of the Water (Prevention and Control of Pollution) Acts. The Central Board
lodged a complaint under Section 31 of the Act alleging that the company has neither set
up any treatment plant nor took any preliminary step in this regard. It was further alleged
that a sample of a trade effluent was taken by the officials of the Board in the presence of
the representative of the company and on analysis it was found that it was not in
conformity with the parameters of the consent order issued to the company. It was further
prayed that the company be restrained from causing such pollution by discharging the
effluents until the treatment plat was installed and conform to the parameters mentioned
in the consent order. The Magistrate passed the impugned order and restrained petitioner
from causing pollution of the stream by discharging effluents without conforming to the
parameter as mentioned in the consent order of the Board on November 26, 1981.
Against this order the petitioner filed the petition under Sec. 482 of the Criminal
Procedure Code.

It was contended by the petitioner that there was no need to see the samples,
should be lifted for an order under Sec. 33 of the Act. Unless and until there is pollution,
the Board could not collect the sample and examine it. The power of the Board was not
disputed and contended that Sec. 21 does not come into operation unless there is likely to
be pollution, for the purpose of getting an order under Sec. 33 of the Act. The court did
not find any force in this argument and held that Sec. 21 if of general application
governing the matter of collecting samples in all cases including the disputed purpose of

\textsuperscript{15} 1963 (1) SCR 721.
\textsuperscript{16} AIR 1986 Del 152, per J.H.G. Goel.
obtaining an order under section 33 of the Act. It is clear that the sample must be collected in accordance with provisions of section 21 of the Act only then its analysis could be admissible in evidence in the proceedings under section 33 of the Act. For this the sample was to be divided into two parts and necessary formalities were to be observed. For Sections 32 and 33 also, the samples could be collected. Section 32 provides for emergency and Section 33 provides a normal situation. Before passing the order the Magistrate should have considered that the provisions of the Sec. 21 have been complied.

"The learned Magistrate also took note of the fact that the petitioners had not erected any treatment plant as per Clause 5 of the consent order, submitted that there was no to absolute obligation on the part of the petitioners to erect a separate treatment plat so long as they were not discharging the effluents contrary to the parameters is provided in the consent order. Be that it may, the true interpretation of the impugned order is that the restraint order has been passed against the petitioners restraining them from discharging their effluents into the stream which do not conform to the quality as per the standards prescribed by the Board in its consent order and thereby causing pollution of the stream. We cannot read between the orders that a direction has been given to erect a treatment plant. Such a direction is also not envisaged by the provisions of sections 33 (1) of the Act. Section 33 (1) of the Act provides for passing of a restraint order by the court against the company for ensuring the stoppage of apprehended pollution of water in the stream in which the trade effluents of the company are discharged. I, therefore, need not go into the question as to whether the petitioner's non-erection of treatment plant on which the impugned order was justified. The restraint order is not also based on that footing. For the non-erection of treatment plant the Board has the power to launch prosecution against the defaulting company under the provisions of Sec. 41 of the Act.

In conclusion I accept the petition and set aside the impugned order..."17

The Delhi High Court considered the Section 33 (1) and not 33 (2) and took a very technical view. The court did not consider the doctrines of implied power and public

17 Para 4 of the Judgment, Ibid.
welfare. Probably these conflicting views prompted the lawmakers to insert the Section 33A empowering the Boards vast power to curb the water pollution.

3. But in another case\textsuperscript{18}, Gujarat High Court, the similar question arose as to the power of the Magistrate under Sec. 33; the Magistrate passed the injunction restraining the industries from discharging the effluents. But the Session's Court revised the order stating that the order virtually banned the manufacture, so not valid. The High Court restored the earlier order holding that the resist order did not necessarily imply the closure, since the industries could opt to discharge even after erection of the treatment plant. If they choose not to spend for abatement for pollution, they should opt for closure. The Magistrate has the coercive power to issue this order.

4. In \textit{Aggarwal Textile Industries v. State of Rajasthan}\textsuperscript{19}, the constitutional challenge came against Sec. 33 on the ground that it violates the fundamental rights. The point of consideration was that the problem of prevention and control of water pollution is a problem of vast magnitude and it would be beyond the names of the individual to prevent or control the pollution resulting from the industry and that the prohibition contained in Section 24 of the Act would result in complete closure of the business of the petitioners and that it would thus resulted in imposing unreasonable restrictions to carry on trade and business. The question was whether the measure to preventive and control the water pollution will be given precedence over the fundamental right to carry on trade and business of which is a fundamental right under the Constitution of India. The court did not accept this contention and held that it is true that treatment of water pollution involved considerable expenditure and it requires cooperation among various units and local authorities. The act also envisages that one of the provisions of the State Board is to plan a comprehensive programme for the prevention, control and abatement of the water pollution of stream and wells in the State and the secure the execution thereof and to evolve a economical reliable methods of treatment of sewage and effluent, having regard to the peculiar conditions of soils, climates and water resources of the different regions. For this, it cannot it stated that in course of exercising the right to carry on trade and

\textsuperscript{18} Gujarat Pollution Control Board v. Kohinoor Dying and Printing Works, 1993 (2) Guj. L.R. 1368.

\textsuperscript{19} S.B.C. Writ Petition No. 1375/80, Rajasthan High Court Order, dated March 2.
business, one will be allowed to pollute the sources of water supply to others and thereby causing harm to the interest of the general public and the provisions of the Act, which seek to provide for the prevention and control of the water pollution, and maintaining and restoring the wholesomeness of water are enacted in the interest of the general public. Thus the restrictions placed by Sec. 24 of the Act cannot be said to be the unreasonable restrictions. The act contains adequate provisions for grant of consent and also the provisions of appeal and revision against the order passed by the State Board so as to enable a person to carry on trade and business after obtaining the constant of the State Board. Therefore the restrictions imposed by Sec. 24 of the Water Act cannot be treated as unreasonable restrictions on the right of anybody to carry on trade and business.

5. In Maharaja Shri Umaid Mills Limited v. State of Rajasthan and others 20, the State Pollution Control Board lodged a complaint before the Chief Judicial Magistrate, under Sec.33 of the Water (Prevention and Control of Pollution) Act on the ground that the Petitioner discharged the untreated effluent in a river contravening the provisions of Sec. 24, 25 and 26 and by that discharge, problems of river pollution and also the pollution underground water was created. The application was registered as Criminal Misc. Petition; as such notices were issued to the petitioners. The Magistrate ordered that the application would be treated as an injunction matter and the provisions of the Order 39 of the Civil Procedure Code would be applicable. Next day, the Board was absent and the application was dismissed. On the next day, the Board appeared and applied for the setting aside the order of dismissal and restoration of the original application. The Magistrate granted the restoration.

The High Court opined that the Sec. 33 is analogous to and pari materia with the Sec. 133 of the Criminal Procedure Code. Both are aimed to curb nuisance, but in different legislations. Section 58 of the Water Act also barred the jurisdiction of any civil court. Sec. 41 also provides that the violation of any order under Sec. 33(2) will amount to an offence and provides for the punishment. Thus the proceedings under the Sec. 33 of the Water Act are a criminal proceeding and so far as the accused persons are concerned, the order of dismissal of the complaint for non-appearance of the complainant i.e., Board, is final and the Magistrate has no revisional jurisdiction of the Magistrate to review its

20 AIR 1998 Raj. 9.
own order. But there is no bar to file a second complaint, provided the time limits will permit.

6. In *Haryana Pollution Control Board v. Bharat Carpets Limited*\(^2\), the Board challenged the order of the Magistrate, Faridabad of dismissing the complaint since nobody on behalf of the Board appeared that the case and, as a result the accused persons were acquitted. It was claimed that the accused persons were not involved in the day to day business of the company. The High Court was also convinced, on records, which the officers were not responsible to conduct the day to day business of the company and should not have been proceeded against. One of them was Chief Security Officer and another was the Production Officer. On record, the High Court was convinced that the Managing Director and the Chairman of the Company were in control of the day to do day business of the company and they could have been held liable.

8.6. APPEAL:

In *Gujarat Pollution Control Board, Gandhinagar v. Parmar Devusunh Shersinh*\(^2\), the question was regarding the maintainability of appeal. Here challenge was made against the order of the Appellate Authority constituted under Sec.28 of the Water (Prevention and Control of Pollution) Act. The appeal was filed by the respondent no.1 and under the impugned order, the same was held to be the maintainable. The objection was raised by the petitioner regarding the maintainability of the appeal. The court held that if a person who was not a party to the order had a right to appeal to the Appellate Authority though within the leave of the Appellate Authority, where the impugned order adversely affected him. The provision of the law is well settled. The petitioner, in case, was aggrieved of the order of the Board and an appeal was permissible with the leave of the Appellate Authority. Here the Appellate Authority had entertained the appeal and objection raised by the petitioner regarding the maintainability thereof had been turned down. In view of this legal provision, the petitioner had no case.

\(^{21}\) 1993 FOR. L.T.97.

\(^{22}\) A.I.R. 2001, Gujarat 12.
8.7 PROTECTION OF WATER LAND:

The sewage disposal system has been created by the nature itself. If the system is disrupted, or any action is taking so that this natural sewage disposal system lost then it leads to the water pollution, to control of which large investment of public money would be required and disastrous ecological imbalances will take place.

In the case People United for Better Living in Calcutta v. State of West Bengal\(^23\), in the Calcutta High Court the question arose regarding the protection of wetlands in the eastern fringe of the Calcutta city. During the last century the area of water bodies situated in the eastern fringe of Calcutta had been nearly more than half destroyed to build a new township, called Salt Lake.

In M.C. Mehata v. Union of India (Badkhal & Surajkund Lakes)\(^24\), the environmentalist-lawyer prayed under the Art. 32 of the Constitution of India, to stop all mining operations which pollute the two tourist resorts, Badkhal and Surajkund Lakes, seeking a direction to the Haryana Pollution Control Board to control the pollution caused by stone crushing and the mine operations, pulverization in the Faridabad-Balabgarh area. The core question was whether to preserve environment and to stop pollution mining operations should be stopped within the radius of 5 Km from the tourist resort of Badkhal and Surajkund in Haryana State.

The Court, on the basis of the expert report made by the National Environmental Engineering Institute, examined the case. The expert report recommended, to preserve environment and to control pollution within the vicinity of two tourist resorts, it is necessary to stop mining in the area. The NEERI, in its report, has recommended that 200 m green belts be developed within one km radius all around the boundaries of the two lakes. It is obvious that 1200 m adequate will be required for the green belts. Leaving another 800 m a cushion, to absorb the air and noise pollution generated by mining operations. “We are the view that it would be reasonable to direct the stoppage of mining activity within two km radius of the tourist resort of Badkhal and Surajkund”. The court ordered as:

1. There shall be no mining activity within two km radius of the tourist resort,

2. The forestry department of the State of Haryana shall have to develop the green belts has recommended by the N.E.E.R.I.

3. The Mining Directors and the Haryana Board will enforce all the recommendations of the N.E.E.R.I.

4. No further construction of any type shall be permitted within 5 km radius of the Badkhal and Surajkund lakes leading to restore all opened area is still be converted into green belts.

5. The mining leases within the area from 2 km to 5 km radius shall not be renewed without the prior permission of the Haryana State Pollution Board as also from the Central Pollution Control Board. Unless both the Boards grant the permission, the lease will not be granted.

8.8. PRECAUTIONARY PRINCIPLE:

The precautionary principle was recognized by the Supreme Court of India in the Andhra Pollution Control Board v. M.V. Nayudu\textsuperscript{25}, in which the uncertainty of scientific proof and its changing frontiers from time to time has led to great changes in environmental concepts. The basic shift in the approach to environmental protection occurred initially between 1972 on the 1982. Earlier the concept was based on 'assimilative capacity' rule as revealed from principle 6 of Stockholm Declaration of the U.N. Conference on Human Environment, 1972. The said principle assumed that science could provide the policymakers with the information and means necessary to avoid encroaching upon capacity of the environment to assimilate impacts and presumed that relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to act in order to avoid such harm. But in the 11\textsuperscript{th} principle of the U.N. General Assembly Resolution on World Charter for Nature, 1982.

\textsuperscript{25} A.I.R. 1999, Supreme Court, 812.
the emphasis shifted to the “Precautionary Principles” and this was reiterated in the Rio Conference of 1992. In other words, inadequacies of science are the real basis that has led to the Precautionary Principle of 1982. It is based on the theory that it is better to err on the side of caution and prevent environmental harm, which may indeed become irreversible. The principle of the precaution involves the anticipation of environmental harm and measure to avoid it or to choose least environmental activity. It is based on scientific uncertainty. Environmental protection should not only aimed at protecting health, property and economic interest but also protect the environment for its own sake, precautionary duties must have not only be triggered by suspicion of concrete danger but also by justified concern of risk potential.

The origin of the Precautionary Principle of becoming the part of our legal system lies in the case *Vellore Citizens’ Forum v. Union of India*, The court also elaborated the new concept of the burden of proof referred in *Vellore Citizens’ Forum Case*, In this case Justice Kuldip Singh observed that: “The onus of proof is one the actor or the developer/industrialist to show that his action is environmentally benign.” The Court deducted the new concept of burden of proof from the principles of precaution, which was again drawn from the scientific uncertainty. “It is to be noticed that while inadequacies of science have led to the ‘precautionary principles’ the said ‘precautionary principle’, in its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed is placed on those who want to change the status quo. This is often termed as reversal of the burden of proof, because otherwise in environmental cases, those opposing the change would be compelled to shoulder the evidentiary burden, a procedure that is not fair. Therefore, it is necessary that it party attempting to preserve the status quo by maintaining a less polluted state should not carry the burden of proof and party who wants to alter it, must bear the burden.”

The Court also explained that if the environmental risks being run by regulatory inaction are in some way ‘uncertain but non-negligible’, regulatory action is justified. This will lead to a question as to what is ‘non-negligible’ risk. In such a situation, the
burden of proof is to be placed on those attempting to alter the status quo. The required standard of proof is that this burden is to be discharged by showing that there is no reasonable ecological or medical concern. “The result would be that if insufficient evidence is presented by them to alleviate concern about the level of uncertainty then the presumption should operate in favour of the environmental protection. The required standard is that the risk of harm to the environment or to health is to be decided in public interest, according to a ‘reasonable persons’ test”. Thus the precautionary principle and the new standard of proof have become the part of our legal system.

8.9. POLLUTERS PAY PRINCIPLE:

The principle of polluters pay is not unknown to us it has already been adopted by European Union as their environmental and legal policy. In our country the Supreme Court has also adopted it in the famous Bichiri’s case.27

The Court recognized the principle in Vellore Citizen’s Forum v. Union of India28, and the polluters pay principle has been held to be the sound principle by the Supreme Court in India. The observed that ‘any principle evolved in this behalf of should be the very simple, practical, and suited to the conditions obtaining in this country’. ‘Once the activity carried on is hazardous and inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other another person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule premises upon the very nature of the activity carried on’. Thus, ‘the polluting industries are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected areas’. The polluters pay principle means that the absolute liability for harm to the environment extends not only to compensate for the victims of pollution but also the cost of restoring their environmental degradation. To make good such degraded environment is the process of sustainable development. So, it is the polluter, who bears

27 Council of Enviro-Legal Action v. Union of India, 1996 (3) SCC 212.
the cost to the sufferers as well as for reversing the damage to ecology. In view of the Constitution of India, and other pollution laws, the court held that, the precautionary principle and the polluters pay principle are part of the environmental law of the country, further these two principles are part of the Customary International Laws. Therefore there should not be any difficulty in accepting them as part of the domestic law. It is almost accepted proposition that the rule of customary International Law, which is not contrary to the municipal law, shall be deemed to have been incorporated in the domestic law.

8.10. URGE FOR AMENDMENT:

In India, the courts not only function as the adjudicators, but also as advisers, sometimes it does so under the Constitutional authority, sometimes during its own adjudicating process. In the Andhra Pradesh Pollution Control Board v. Prof. M.V.Nayudu29, the Supreme Court held that different statutes in our country relating to environment provide for appeals to Appellate Authorities. But most of them still fall short of a combination of judicial and scientific needs. For example, the qualifications of the persons to be appointed as Appellate Authorities under the Section 28 of the Water (Prevention and Control of the Pollution) Act, Section 31 of the Air (Prevention and Control of Pollution) Act, under rule 12 of the Hazardous wastes (Management and Handling) Rules are not clearly spelled out. While the appellate authority under Sec. 28, in Andhra Pradesh as per the notification of the Andhra Pradesh Government is a retired High Court Judge and there is nobody on his panel to help him in technical matters; Under the National Environmental Tribunal Act, which has the power to award compensation for the death or injury of any person (not a workman), the said Tribunal under the Section 10 no doubt consists of the Chairman who would be a Judge or a retired Judge of the Supreme Court or High Court and a Technical Member. But the same Act permits a Secretary to the Government or Additional Secretary who has been a Vice-Chairman for two years to be appointed as Chairman. Therefore, there is an urgent need to make appropriate amendments so as to ensure that in at all times, the Appellate Authorities in the Tribunals consist of judicial and also technical personnel well

28 AIR 1996 SC 2715.
29 AIR 1999, Supreme Court 812.
conversant with the environmental laws. Such defects in the constitution of these bodies can certainly undermine the very purpose of these legislations. The Central Government should bring about appropriate amendments in the environmental statutes, rules and notifications to ensure that in all the environment courts, tribunals appellate authorities there is on always a judge of the rank of the High Court Judge array Supreme Court Judge, sitting or retired, and scientist or group of scientists of high ranking and experience so as to help to have the proper and fair adjudication of disputes relating to environment and pollution.

8.11. INJUNCTIVE RELIEF:

In Sreenivasa Distilleries v. S.R. Thyagarajan30, the Andhra Pradesh High Court dealt with a case regarding the jurisdiction of the civil court and the power to grant injunction. Here the defendant is the revision petitioner. The plaintiff filed a suit for granting injunction against the defendant. An objection was raised that the suit is not maintainable under the Water (Prevention and Control of Pollution) Act. The trial court upheld the objection. On appeal, the appellate court overruled the view of the trial court and held that the suit is maintainable and remanded the case to the trial court. This civil revision petition is directed against that order stating that the trial court was right. The High Court examined the provisions of the Sec. 58 of the Act. It prohibited any civil court from entertaining any suit or proceeding in respect of any action taken by an authority under the Act is empowered to determine, and no injunction shall be granted in respect of any action taken by an authority under the Act in pursuance of the provisions of this Act. These two prohibitions only bar the civil court from taking any action in respect of the matter as stated. The second prohibition is intended to preserve the statutory protection given to the Boards untouched by the civil actions. Now the present action is only preventing the defendant from polluting water with the noxious liquid. This section is not directed to annual any action taken by the authority constituted under this Act. It is admitted that no orders are passed by the Board or other authority under this Act and, therefore, any order passed by the civil court will not to take away the jurisdiction of authorities constituted on this Act. The High Court did not entertain the revision petition,

30 AIR 1986, AP 328.
as Sec. 58 does not prohibit the civil courts from entertaining any suit of proceeding restraining the defendant to cause pollution.

8.12. RIPARIAN RIGHTS:

The river owner is one who has title to land adjacent to a natural stream. Our legal system clearly recognizes the right of a riparian owner to get polluted water under Indian Easement Act and also under the common law principles. In M.C.Mehta v. Union of India (Municipalities)\(^{31}\), and the Supreme Court held that the municipality can also be restrained by an injunction brought by a riparian owner who has suffered on account of the pollution of water in a river caused by the Corporation by discharging into the river insufficiently treated sewage and from discharging such sewage into the river.

In this respect the Ganga Pollution case is one of the most significant water pollution cases. In M.C. Mehata v. Union of India (Kanpur Tanneries Case)\(^{32}\), the petitioner was an environmentalist and activist lawyer to this public interest litigation. He sought the direction against the respondent industries from restraining them from letting out trade effluents into the river Ganga till such time they put up necessary treatment plants for stopping the pollution of water. The court examined various aspects of the petition, constitutional provisions and other pollution laws. The court issued notice under order 1 of the Code of Civil Procedure letting this as a representative action by publishing notice in the newspapers in circulation in all part of Northern India and calling upon all the industrialists and municipal authorities under whose jurisdictions the river Ganga flows to appear before the Court and to show cause why directions should not be issued to them as prayed by the petitioner asking them not to allow the trade effluents and the sewage into the river Ganga without appropriately treating them. With affect of this notice a large number of industrialists and the local bodies have appeared before the Court. Some of them filed counter-affidavits explaining the steps taken by them. Only 37 out of 75 tanneries designated as parties to the lawsuit appeared before the Court though their counsel. Remaining tanneries did not appear before court at the time of hearing nor

\(^{31}\) AIR 1988 SC 1115.
\(^{32}\) AIR 1988 SC 1037.
did their counsel represent them. The Court examined the various provisions of the Constitution of India including Article 48A, Article 51A; various declarations of the United Nations and provisions of the Water (Prevention and Control of Pollution) Act and is of the opinion that notwithstanding there are the comprehensive provisions in the Water Act, the State Boards had not taken any effective steps to prevent the discharge of the effluents to the river Ganga. The court ruled that the fact that effluents fell into the municipal pipe did not absolve the tanneries from being proceeded against under the provisions of the Act. It seems ultimately the equivalent to reach the river Ganga from municipal drains. It also invoked to the provisions of Environment (Protection) Act as further indication of the importance of prevention and control of water pollution and noted that not much had been even under the Act by the Central Government to stop the grave pollution. The tanneries of Jajmau formed an association, called Jajmau tanners Pollution Control Association with the following objects:

1. to establish, equip and maintain laboratories, workshops, institutes, organizations in factories of conducting and carrying on experiments and to provide funds for the objects of the association,

2. to procure and import, wherever necessary, the chemicals for the purpose of pollution control in tannery industries,

3. to set up and maintain or more common effluent treatment for the member tanners in and around Jajmau,

4. To make periodical charges on members for the effluent treatment based on the benefit it derives from time to time to meet the common expenses for maintenance, replacement incurred towards effluent treatment.

After examining the conditions of the Jajmau, Kanpur tanneries and they have taken efforts to primary treatment plants before it is discharged to the common drain approaching to river Ganga. About 60 tanneries jointed to be covered under the plan having a discharge of 5 million liters per day. The State Government has taken appropriate steps in preparation of feasibility report under the guidance of the UP
Pollution Control Board. The report suggested that each tannery should make arrangements for primary treatment of their effluent and then it will be discharged into common treatment plant. An action plan for prevention of pollution of the Ganga was prepared by the Department of the Environment, Government of India in 1985, for the Jajmau tanneries.

The respondent member of the Hindustan Chamber of Commerce admitted that tanneries discharged the effluent into the sewage, which leads to municipal sewage plant before they are thrown into the river Ganga. The pollution of the Ganga water was not disputed. About 6 tanneries already set up the treatment plant before it is discharged into the municipal sewage leading to Ganga. About 14 tanners started the construction of the primary treatment plants. They prayed for some time to establish the secondary treatment plants. The court also admitted that it would not be possible for the tanneries to establish immediately the secondary plant in view of a large expenditure involved, but having regard to the adverse effects on the Ganga River, the tanneries at Jajmau should set up primary treatment plans, which was appropriate at that time.

However, examining pros and cons of the case the Court ordered that the tanneries which did not appear the Court would stop running their tanneries and would not discharge any effluent to the river Ganga without subjecting the trade effluent’s pre-treatment process by setting up primary treatment plant as approved by the State Pollution Board with effect from 1st October. The court allowed the tanneries having primary treatment plants to continue their production as long as they would be in sound working conditions.

Counsel of the tanners of the members of the Hindustan Chamber of Commerce and other tanners who had entered the appearance submitted that they would establish primary treatment plants within six months and had submitted that in the event of their failure, they would stop operations within a period of six months. The court allowed them time up to March 31, 1988 to set up primary treatment plants. As such the court issued directions to the Central Government, State Pollution Control Boards and the District Magistrates to enforce the order.
In the Kanpur Tanneries case the fact was that the Ganga water was highly polluted at Kanpur by the effluents from the tanneries and the other industries and also by the untreated sewage of the municipalities. The central Government constituted the Ganga Action Plan to implement the orders of the Supreme Court so that the Ganga water becomes pollution free. In the present case, M.C. Mehata v. Union of India\textsuperscript{33}, the Supreme Court invoked the principles of riparian rights. It held that in the common law the Municipal Corporation could be restrained by an injunction in an action brought by riparian owner who had suffered on account of the pollution of water in a river caused by the Corporation by discharge into the river insufficiently treated sewage from discharging such sewage into the river. In the instant case, the petitioner had filed the petition for prevention of nuisance caused by the pollution of Ganga River. No doubt, the petitioner was not a riparian owner. He was a person who was interested in protecting the rights of the persons who make use of the water flow the Ganga and his right to maintain the petition could not be disputed. It was a public nuisance, which was widespread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition was, therefore, entertained as the public interest litigation.

The reports from experts made after the analysis of water, at different places at different times, of Ganga Water it was seen that pollution of water in Ganga was of the highest at Kanpur. It was not fit for drinking, bathing and fishery. The expert report recommended that all drains should be trapped immediately, raw water be treated conventionally at waterworks and disinfected with chlorination. By the time the works of the Ganga Action Plan had started in order to improve the sewage system and to prevent the water pollution in the Ganga. The court became dissatisfied for the slow progress of the implementation of Ganga Action Plan and expected that the authorities would complete the works within the target dates. The Kanpur Municipal authorities had not then submitted its proposals of sewage treatment plan to the State Pollution Control Board constituted under the Water (Prevention and Control of Pollution) Act, which was to be submitted within six months from that day.

\textsuperscript{33} AIR 1988, SC 1115.
The Court directed the Municipal Authorities to take action under the laws to prevent the water pollution either shift the 80,000 cattle was seen at Kanpur, outside the city so that the waste accumulated could not ultimately reach the Ganga or, alternatively, it might arrange for the removal of such waste by transportation from the existing diaries in such a way the owners could not claim any compensation. It also directed to increase the size of the sewers in the labour colonies so that the sewage might be carried smoothly through the sewage system. Sufficient numbers of public latrines and the urinals might be constructed there for the poor. For this any proposals to levy any charge should be dropped, because, in that event the poor might not use the urinals and latrines. The Nagar Mahapalika would responsible for their maintenance and cleaning them.

A serious allegations was made by the State Pollution Control Board that whenever they initiated in the proceedings to prosecute any industrialist on other persons for polluting the water in the river Ganga, the accuse persons immediately instituted petitions under Section 482 of the Criminal Procedure Code in the High Court and obtained stay orders frustrating the attempt of the Board to implement the Water Act. But no record had been placed in this regard. The Court, however, observed that High Courts should not ordinarily grant stay order of criminal proceedings in such cases. The High Court, in extraordinary situation, should dispose of the case within a short period. Another problem was the throwing of burnt and half-burnt corpses into the river Ganga. The practice should be immediately stopped. The Court directed to seek the cooperation of the people and police. Whenever any application for license to start any industry would be made, the Court directed to refuse the petition unless adequate treatment plant had been constructed. The Court also directed the Government to include the environmental curriculum into the school syllabus and to launch various campaigning programmes for environment.

The Supreme Court actually made the municipalities responsible and directed to clean the pollution of the Ganga near Kanpur. It ordered all municipalities of Uttar Pradesh along the river to take steps to prevent the polluting of Ganga.

Another public interest litigation petition was made under Article.32 of the Constitution of India by the same environmental-lawyer. In M.C. Mehata v. Union of
India\textsuperscript{34}, the court issued various directions relating to the Calcutta tanneries located in four areas Tangra, Tiljala, Tapsia and Pagla Danga, four clusters in the Eastern fringes of Calcutta. According to a report prepared by the National Environmental Engineering Research Institute (NEERI), there were about 550 tanneries, 90% of the Calcutta tanneries use chrome-based tanning process. The Institute made a status report and observed that there was no appropriate and drainage and collection system available in any of the tannery clusters. “The untreated water flows through open drains causing serious environmental, health and hygiene problems. Also no waste water treatment facilities existed in any of the code tannery clusters.” “The tannery units are located in highly congested habitations, offering, a little or no scope for future expansion, modernization or installation of the effluent treatment plants. The tannery units are located in thickly populated residential arrears. Surroundings of the tanneries are extremely unhygienic due to discharge of untreated effluents in the open drain, stagnation of waste water in low-lying areas around the tannery units, and the accumulation of solid waste in tanneries.”

The report clearly indicated that the tanneries have been functioning all along in unhygienic, unhealthy conditions discharging highly toxic equivalents all over the areas. Previously the Supreme Court handled the Kanpur tanneries case. It was seen that tannery effluent is 10 times more noxious than the domestic sewage water, which flew into the river from an area on its banks.

The Supreme Court had been monitoring the petition for a long time primarily with the object of preventing and controlling pollution and safeguarding the environment. In this process, the Calcutta tanneries had been extended all possible help for their relocation. Despite repeated efforts of the Board that Calcutta tanneries were discharging highly noxious effluents and polluting the land and other water resources, the Court did not consider the closer of tanneries because they agreed before the Court and had definitely undertaken that they would relocate to the new areas. In spite of all efforts made by the Court to provide every possible facility to the Calcutta tanneries to shift to the new complex, they remained only non-cooperative. With a view to prevent the pollution generated by the tanneries, the Court considered the proposal of constructing

\textsuperscript{34} 1997 (2) SCC 411.
the common effluent treatment plant at the existing areas where the tanneries were operating at that time. The Court directed N.E.E.R.I. to examine the feasibility of the projects and submitted to its project. They observed that:

1. The proposed schemes for the common effluent treatment plant were neither scientifically sound, nor can be constructed on the existing location without interfering with the normal life of the residents in the above mentioned areas.

2. The proposed schemes were not capable of treating the waste water laden with high total dissolved solids, Chromium and nitrogenous constitutes, and hence not capable to control pollution and odour in totality at the tannery clusters at Tangra, Tiljala, Topsia and Pagla Danga.

3. The proposed designs had little scientific basis, and did not consider the industry specific requirements for effective wastewater treatment in tannery clusters.

The Court examined various reports of the State Board and that of NEERI and came to the conclusion that actually there was no possibility of setting up of the common treatment plant at the existing locations of Calcutta tanneries. The Court, therefore, ordered that Calcutta tanneries should be relocated. The court rejected the tanneries contention that the designated new site would damage and ecologically fragile wetlands. Ultimately it invoked the principles of the polluters pay and precaution and made various orders.

8.13. WATER CESS:

In 1977 the Water (Prevention and Control of Pollution) Act was enacted with the object to augment and fund for the State and Central Pollution Control Boards. The Act is specified certain industries, by which the water is consumed is liable to pay water cess and also the local authorities. It will be seen that certain industries, not specifically mentioned in the Schedule I, have been construed to be covered by the entries of the Schedule I. By this way a liberal interpretation has been given to the Act.
In Andhra Pradesh State Board for Prevention and Control of water pollution v. Andhra Pradesh Rayon Limited, the question whether the respondent company, which was manufacturing synthetics or man-made fibre is an industry mentioned in the Schedule I of the Water (Prevention and Control of Pollution) Cess Act for the purpose of levy of water cess under the Act. The relevant entry of Schedule I contain:

7. Chemical

10. Textile Industry,

11. Paper Industry,

15. Processing of animal and vegetable products.

The Court held that the objective of the Act is to impose liability for cess. Therefore, the Act must be strictly construed order to find out whether a liability is fastened on a particular industry. The purpose of the Act is to realize money from those whose activities lead pollution and who must bear the expenses of the maintenance and running of the State Board. The court, therefore, found nothing to warrant the conclusion that Rayon Grade Pulp is included in either of the industries as contended by the petitioner.

In Member Secretary, Kerala State Board for Prevention and Control of Water Pollution, v. The Gwalior Rayon Silk Manufacturing (weaving) Company, the Division Bench of the Kerala High Court, there were forty eight appeals regarding the scope and amplitude of the Rule 6 of the Water (Prevention and Control of Pollution) Cess Rules. Before the single judges the question raised was whether the Rayon Division is not included in the specified industry within the meaning of Section 2 (c) of the Water Cess Act can consequently be levied in respect of that division under Section 3. According to the Division Bench, the Single Bench failed to understand that the chemical industry in the context of which it is used can include an industry manufacturing Rayon grade pulp. The Single Bench held, “The purpose of the Water Cess Act is to levy and collect a cess, i.e., a tax for a special administrative purpose. You cannot make rules under the Cess Act

35 A.I.R 1989 SC 611.

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to achieve the purpose of another Act”.

The fact was that the petitioner company commissioned a factory in Kozhikod District, located on the banks of Chaliyar River at Mavur, a beauty spot. The installation of the factory was not without its deleterious effects on the river water. The factory had rated capacity of 200 metric tones of pulp per day. The manufacturing process undertook various activities including conversion a bamboo, eucalyptus and other woods into pulp, washing by a continuous stream of water sprayed, and then they are the reduced to uniform sizes, conveyed to the digester, subjected to acid hydrolysis by using dilute sulphuric acid solution. The discharge was, then drained out and the acid was removed from the pulp. The discharge contained toxic liquid, which flew into the river.

The division bench held that the Single Bench overlooked the legislation on environmental protection in the general and water pollution in particular. The Water Cess Act was enacted three years after the Water Pollution Act had been brought into force. The financial constraints under which the State Boards to and the Central Board had been functioning received attention. To augment the fund the Act was passed. The court was satisfied that the enactments itself was about the intervening and into the interlacing of the two enactments. The charging section itself explicitly states that the levy of cess is for the purpose of the Water (Prevention and Control of Pollution) Act.

Normally the statute to imposing the duty or tax in construed in such a way that the true intention of the legislature is ascertained and unlawful or illegal tax or duty or not imposed, for this rule of liberal construction is not adhered to. The Kerala High Court has liberally construed the Water Cess Act and fastened the purpose of this Act, with that of the Water Act.

In Kishan Sahkari Chini Mills v. State of Uttar Pradesh\(^{37}\), the petitioner was carrying on the business of sugar manufacturing. It was contended by the petitioner that the sugar manufacturing industry was not covered in the Entry 15 of the Schedule I and therefore not liable to pay cess. The court held that Entry 15 contains the words,

\[36\text{ AIR 1986, Ker 256.}\]
\[37\text{ AIR 1987, Allahabad, 298.}\]
“processing animal, vegetable products”. The word “vegetable” has been in opposition to the expression “animal”. This word cannot be given the meaning of vegetables, which are kept on the dining table for dinner purpose. It has wider amplitude; sugarcane would be covered by this Entry in as much as the expression ‘vegetable’ has been used in a comprehensive sense. The court held the petitioner liable to pay the cess under the Act.

But in Saraswati Sugar Mills v. Haryana State Pollution Control Board\textsuperscript{38}, the Supreme Court refused to construe the Entry, “processing of animal and vegetable products industry”. It excludes the manufacture of sugar from sugar cane from this entry. Similarly, in Harrisons Malayalam Ltd. V. Kerala State Pollution Control Board\textsuperscript{39}, the Kerala High Court ruled that the processing of latex was not covered under the entry “processing of animal and vegetable products.”

The Allahabad High Court took different approach. The question whether glass manufacturing industry is liable to pay the water cess came in the case in the M/s Durga Das Works, Firozabad v. Union of India\textsuperscript{40}. The Allahabad, the appellant contended that glass did not fall under schedule I, but the respondents contended that glass fell under the Entry Ceramic industry. The appellant contended that there was no consumption of water as the product is made in dry conditions, moisture or water was harmful. The court rejected this argument holding that it would be unimaginable to think that an industry was running without any consumption of the water. Thus from the glass industry, the duty of cess would be recoverable.

In spite of having the rulings of the Supreme Court in Saraswati Sugar Mills case it is not clear how the Allahabad High Court held that glass industry would fall under the entry ceramic industry. But in the case, Haryana Tourism Development Corporation Limited v. Haryana State Board for Prevention and Control for Water Pollution\textsuperscript{41}, the tourism industry was not held to under any of the entries of the Schedule I.

\textsuperscript{38} AIR 1992, SC 224.
\textsuperscript{39} AIR 1992 Ker. 168.
\textsuperscript{40} AIR 1997 All 179.
\textsuperscript{41} AIR 1993 Punjab & Haryana 272.
8.14. REBATE OF CESS:

The Patna High Court was also in favour of the liberal interpretation. In Tata Iron Steel Co. Ltd. V. State of Bihar\(^{42}\), the case was under the law of as stood prior to 1991 Amendment. Here, the Tisco installed the treatment plant where only a part of the effluent was treated, not the whole. The Bihar pollution Control Board refused to grant any rebate due to the limited facilities of the treatment plan. The court accepted the contention of the company and held that rebate would be available to the assessed. Here, also the liberal approach was taken by the court, for the benefit of the industry.

Similarly the Madras High Court took the liberal view as in the Tisco. In Seshasayee Paper and Board Ltd. V. The Appellate Committee,\(^{43}\) it was found that the company had installed a ‘relatively successful’ treatment plant. The assessment authority has declined to grant any rebate, since the liquid after the treatment could not meet the standard in respect of biochemical oxygen demand standard. But the court rejected the contention of the respondents and held that it would be most unreasonable to say that the person could claim rebate only when treatment of effluent by the plant installed by him was successful, in that sense no further treatment of an effluent would be required at all. The Court stressed on the point that once the assessee contributed towards the treatment of the effluent, the revenue ought to allow rebate.

8.15 CRITICAL APPRAISAL:

The foregoing analysis of Water Act, 1974, Water Amendment Act, 1988 and Water Cess Act, 1977, makes it very clear that the policy makers and enforcing authority are not very serious in implementing the provisions of the Act. For the simple reason that pollution goes unabated in the cities and towns become of municipal sewage water seeping into the ground water and entering into sea waters through water pipes. Hence sea water is also getting polluted. Therefore, it has become a Herculean task for the enforcement authorities due to political interference and official apartheid. Rapid industrialization and urbanization and the resulting exodus of the rural people to urban

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\(^{42}\) AIR 1991 Patna 75.
areas have had their adverse consequences. Cities like Delhi, Calcutta, Hyderabad etc., have turned into vital dustbins with garbage strewn all over. In particular the use of plastics causes serious concern of pollution and hence the use of plastics has to be banned all over the country.

In general terms, the long-standing environmental problems in India are the growing demand for and pressure on natural resources by an ever burgeoning population. This is compounded by the influx of sizeable rural population to the cities thereby leading to a shortage of land in and around cities and causing a mad rush for reclamation of wetlands.

In India, several wide ranging policies, strategies and action plans have been formulated by the government which directly or indirectly supports wetland conservation. The National Conservation Strategy and Policy Statement on Environment and Development (1992) highlights conservation and sustainable development of wetlands including coastal areas, riverine and island ecosystems. The Prevention and Control of Pollution Act, 1974, the Water Prevention and Control of Pollution Cess Act, 1977 and the Environment (Protection) Act, 1986 including rules, orders, notifications issued by the Central Government declaring the coastal stretches of seas, bays, estuaries, creeks, rivers and back waters which are influenced by tidal action in the landward side up to 500 meters from the high tide line and the land between the low tide line and the high tide line as the Coastal Regulation Zone Notification, 1991 issued under the provisions of Environment (Protection) Act, 1986. This proposes graded restriction on setting up and expansion of industries, operations and processes including pressures from human activities. Establishments of SEZ, power plants destroying cultivable wet lands causes much alarm to the environmentalists.

The existing environmental laws available for conserving and wisely using wetlands are replete with loopholes which are exploited by profit-minded industrialists who use precisely these loosely worded laws to escape the snare of prohibition placed by the law. This is particularly the case with the Coastal Regulation Zone Notification issued under the Central Environment (Protection) Act which regulates coastal development in
Since the enactment of Water Acts, industries were invariably disregarding the directions of Pollution Control Boards and violating the conditions of consent with impunity. The Boards, being the agencies envisaged to control pollution, stood as helpless witnesses to these tragic happenings. This malady stirred the conscience of the courts. The very negligence of the boards in their functioning also came to the notice of judicial vigilance.

In Wadehra Vs. Union of India, the Supreme Court issued several directions to Government and other pollution control agencies, particularly the municipal authorities in Delhi, who were found to be remiss in performing their statutory duties of collecting and disposing garbage and waste. Significantly the court took the view that government should construct and install incinerators in all hospitals and nursing homes with 50 beds and above. Incinerator emissions may be carried back in winds, landfills may cause pollution of groundwater, and flushing and feeding waste into drains and garbage dumps expose people to health hazards. Recycling of the wastes with respect syringes, gloves and used bags cause incurable diseases. In due course the Government of India, in exercise of the powers conferred by Sections 6, 8 and 25 of EPA, notified the Biomedical waste (Management and Handling) Rules, 1998.

In Suo motu Vs. Ahmadabad Municipal Corporation wherein the Gujarat High Court held that the state and local authorities do have the duty to provide hygienic conditions to society. In this case, the government hospitals were directed to keep their entire complex clean, local bodies to carry out cleaning operations before monsoon sets in and chokes drainage and the authorities like railways, police, development agencies

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and education departments to keep their areas in hygienic condition.

The appeal made against the order of Allahabad High Court was quashed by the Supreme Court of India. The court observed that people discharging noxious polluting effluents into water sources like streams, rivers and thereby inflict injury to the public health are to be dealt strictly. The Judges while allowing the appeal of the UP Pollution Control Board granted the Modi Carpets Limited, conditional permission to discharge their industrial effluents into the river. A treatment plant for treating the effluents was directed to be constituted by the UP Pollution Control Board.

The Allahabad High Court while hearing a PIL on Ganga pollution case held that order of closure of tanneries in Kanpur district by the UP Pollution Control Board (UPPCB) was unjustified. In contrary, it observed that UPPCB did not take any action against Nagar Nigams, the public undertakings, who were also polluting the river, but was acting against only the private factories. The court thus directed the principal secretary of the State Industrial Development Board to take steps and provide alternative land for shifting of tanneries of Kanpur from their original places.

8.16 CONCLUSION:

The most important achievement of the environmental moment in our country is the Supreme Court ordered the establishment of the Green Bench in all the High Courts with effect from June, 1996, which exclusively hears the environmental cases.

In the case of criminal liability for water pollution, the Supreme Court has taken a stringent view by reviving an old prosecution in which the officials of the company were involved. A person, even after his retirement, cannot deny his liability for the discharge of pollutants, which had taken place during his tenure. Even the Court rejected the contention that the provisions under the Sec. 33 of the Act are contrary to the Fundamental Rights.

The court took a constructive approach, in the case of the availability of water in the coastal areas. For the lodgment of complaint the court did not hesitate to uphold a permissible delegation of power. When a statue conferred certain duties and functions incidental to the exercise of the powers in such a way that they are integrally connected
with them, a permissible delegation of powers would be permissible. The court avoided
the trap of the technicalities.

The principle of the Natural Justice is concerned, the position appears to be
confusing, and the Court upheld the refusal of consent even though there was no
observance of the principles of the Natural Justice. In another case, the court directed for
a fresh notice on the ground that the same had not been observed.

The judiciary adopted the precautionary principle is a part of our legal system.
The judiciary recognized the principle of scientific uncertainty in preventing the
environmental pollution. In this case the shifting concept of the burden of proof was
recognized for the protection of the environment from pollution.

In respect of formation of the tribunals, the judiciary recommended for the
amendment of the laws so that the retired or sitting judges of the high court or the
Supreme Court with scientists of high-ranking and experience can be inducted in the
tribunal for proper adjudication of the environmental disputes.

The most remarkable observations of the judiciary relate to the cases of the Ganga
Pollution and the Kolkata tanneries are worth mentioning here. In case of the Ganga
Pollution problems, on the basis of the court’s order, the Ganga Action Plan was
launched and the considerable improvements of the Ganga Water have been achieved.
Similarly in case of the Kolkata tanneries the court categorically ordered for the
relocation of the tanneries in the eastern part of the city shifting from the thickly
populated part of Kolkata. The fact is that a major portion of the order has been
implemented neither by the tanneries owner nor the Government.

In case of Water Cess Act, there are some conflicting positions regarding the
interpretation of the some items contained in the schedule to the Act. An approach has
been taken that the polluter may be exonerated by paying Cess. If that approach is
accepted, the polluters will continue to pollute water without adopting the preventive
measures and will be exonerated by payment in the form of Cess. Since most of the
wrongdoers happen to be white collar personnel it is difficult to take penal measures. If
the most they can be fined which they can easily pay and escape penal measures.
Chapter – IX

Conclusion and Suggestions