Chapter V

ENVIRONMENTAL PROTECTION: THE JUDICIAL APPROACH

1. INTRODUCTION

Environmental protection during the last few years has become not only a matter of national concern but of global importance. It is now an established truth beyond all doubts that without a clean environment very the survival of mankind is at stake. Decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biodiversity, excessive concentration of harmful chemical in the ambient atmosphere and food chains, growing risks of environmental accidents and threat to life support systems. This has drawn the attention of entire world community and therefore they resolved to protect and enhance the environmental quality. How the judiciary can remain a silent spectator when the subject has acquired high importance and become a matter of caution and judicial notice.

In a developing country like ours, with uneducated masses, conditions of abject poverty, where the awareness of socio-economic and ecological problems is lacking, the judiciary has to play an active role to protect the people's right against the anti-people order by infusing confidence in people as a whole for whom it exists, for as rightly put by Justice Lodha, "Judiciary exists for the people and not vice-versa."¹ Judiciary, therefore cannot sit in silence and helplessly but must come forward actively to make good the
deficiencies of law and provide relief wherever and whenever required. Besides the traditional role of interpretation and application of law, the judiciary can perform the educative function of bringing an awareness of the massive problems of environmental degradation through a series of illuminating judgments and through judicial activism can evolve new jurisprudential techniques of "environmental jurisprudence,". The present chapter examines the role of judiciary in the context of protection of environment. The main questions which have arisen for consideration in this regard are: what precisely is the role of courts in handling cases relating to environmental protection? Whether the technique of PIL which is of recent origin has contributed in tackling environmental issues and improving the quality of public health? Whether the judiciary has been able to develop new principles for more effective control and prevention of environmental pollution? Whether the courts can be regarded as an effective agency to curb violation of environmental laws? What are the new areas where the courts have laid down specific guidelines for protecting the environment? These questions have been answered in the present chapter.

2. PUBLIC NUISANCE: THE JUDICIAL RESPONSE

Criminal law provisions as contained in sections 268, 277, 278 and 290 of the Indian Penal Code and provisions of Chapter X (Sections 133 to 143) of the Criminal Procedure Code of 1973 provide effective, speedy and preventive
remedies for public nuisance cases including insanitary conditions, air, water and noise pollution. The remedies are quite old but during the recent years the higher judiciary has imparted new dimensions to these remedies by their extensive construction to enable citizens to bring actions against the public bodies to force them to be vigilant to keep the environment unpolluted.

The positive signal of environment protection is manifest in the judicial trend as set in the judgement delivered by V.R. Krishna Iyer and O. Chinappa Reddy, JJ in Ratlam Municipality Case wherein the apex court realising the gravity of pollution observed, "Public nuisance because of pollutants being discharged by big factories to the detriment of poorer section is a challenge to the social justice, component of the rule of law." In the above case, the residents of a locality within the limits of Ratlam Municipality tormented by stench and stink caused by open drains and public excretion by nearby slum dwellers and failure of the municipality to prevent the discharge of malodorous fluids in the public streets, moved the magisterial jurisdiction under section 133 Cr. P.C. 1973 to do its duty towards the members of the public. Consequently conditional order was passed by the magistrate which was found unjustified by the session court but upheld by the High Court. The Supreme Court, highlighting the role of judiciary in nuisance cases and the importance of judicial process in its role to fill in the gaps, tailored the
existing public nuisance remedy.

Speaking through Justice Krishna Iyer, the court observed that: "Although these two codes (I.P.C. and Cr.P.C.) are of ancient vintage, the new social justice orientation imparted to them by the constitution of India makes it a remedial weapon of versatile use. Social justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a magistrate under section 133, Cr.P.C. In the exercise of such power the judiciary must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obligated by Article 38 of the constitution." 4

Rejecting the plea of the municipality that notwithstanding the public nuisance financial inability exonerates it from the statutory liability, the supreme court held that such an argument has no force in law. The court observed that: "the Cr.P.C. operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the constitution have to be respected by the state regardless of budgetary provision... Otherwise a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self defence a self created bankruptcy or perverted expenditure budget. This cannot be." 5 The court further observed: "A responsible municipal council constituted for the precise purpose of preserving public health and providing
better finances cannot run away from its principal duty by pleading financial inability decency and dignity are now negotiable facts of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems not pompous and attractive, but in working condition and sufficient to meet the needs of the people cannot be eroded if the municipality is to justify its existence."

Accordingly, the court directed the municipal council to take immediate action to stop the effluents from the alcohol plant flaming into the street. It also directed the state government to stop pollution and specially asked Municipal Council to construct a sufficient number of public latrines, provide water supply and scavenging service to ensure better sanitation within a period of six months. Industries cannot make profit at the expense of public health. The court cautioned that failure to comply with the directions will be visited with a punishment contemplated by section 188 of Indian Penal Code.

Thus, the judgment of the supreme court in Ratlam Municipality case is a landmark in the history of judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance and making the environment pollution free even if there are budgetary constraints. It is significant also, as it interpreted section 133 of Cr.P.C. to impose a mandatory duty on a magistrate to remove a public nuisance
The judicial response to the public nuisance cases after the trend setter Ratlam judgement has the effect of introducing the element of judicial activism in most of the subsequent environmental litigations. The guns of section 133 of Cr.P.C. have gone into action wherever there has been public nuisance which affected the health, comfort, safety or convenience of the public at large. The judiciary has come to the rescue of environment by issuing the orders of demolitions, or of removal, or closure of industrial units subject to fulfilment of adequate pollution control measures or stoppage of pollutional operations etc.

It is surprising that despite activist judicial approach whereby new enforcement control has been introduced into hitherto dull legislation (133 Cr.P.C.), citizens petitions to stir indolent municipalities into action are still rare in our country. The reason for this is perhaps that people here are not conscious of their rights.

3. PUBLIC INTEREST LITIGATION AND ENVIRONMENT PROTECTION

In the early 1980s, the Indian judicial system witnessed important transformation. There was emergence of a new jurisprudence - 'jurisprudence of Masses' on the Indian legal scene which altered radically the litigation landscape in India. The jurisprudence of masses had a basic philosophy behind it and it was that as the citizens' rights are closely linked with social justice it is through the actualisation of
such right alone that justice can be done to the 'have nots' which was possible if the law is interpreted creatively by courts departing from traditional Anglo-Saxon jurisprudence norms of administration of justice. Thus, a co-operative and collaborative efforts to bring to light the common causes and suffering of poor, illiterate, ignorant Indian masses to enable them get judicial redressal for their maladies was greatly felt. It was perhaps this main consideration which inspired the judiciary to evolve a new phenomenon which outlawed the old procedural technicalities and barriers of the justice to make way for the poor and deprived to seek justice. This new phenomenon is known as Public Interest Litigation\(^\text{11}\) (P.I.L.). Most environmental actions in India fall within this class. With the emergence of 'Public interest litigation, which remarkably differs from the traditional litigation, a new dimension to the concept of \textit{locus standi} has been introduced where by the concept of access to justice has been revolutionized.\(^\text{12}\)

A. TRADITIONAL RULE OF LOCUS STANDI

When the machinery of Justice is moved by a person for getting redressal of his grievances, the grievances must be such of which the courts take judicial notice. This is known as the standing or the \textit{locus standi} of the person seeking a judicial review of the impugned administrative action. In other words, standing is required to have a court hear one's case and the latter is the right of a person to sue or seek a
relief in a court of law.

Traditionally, there were two prerequisites underlying as the basic principles for the application of rule of locus standi. They were: First, the petitioner himself should have a grievance i.e. he himself should be the aggrieved party. Second, the petitioners own right must be injeopardy i.e. some legal right or interest of the petitioner must be infringed or threatened so that the courts can intervene into the matter. The courts applied this traditional doctrine of standing with a great deal of strictness in domain of private law. Even in public actions, the access to courts was denied until a person asserting a public right or interest could show that he had suffered some special injury over and above the injury suffered generally by other members of public.

Strict adherence to the traditional doctrine of locus standi had the effect of preventing the grievances of poor, underprivileged, ignorant from being heard by a court of law. Another disadvantage of the strict application of rule had been that diffuse public injuries affecting a large number of people were difficult to redress.

However, with advent of welfare state-bidding farewell to laissez faire, whereby the activities of state have expanded many fold and larger powers have been vested in public authorities, individual rights have become an incidence of public concern and intervention. The traditional rule of locus standi in an era of state
accountability towards citizen and its responsibility to provide justice, has not found much favour in particularly, in the area of public law. Hence, the traditional rule of standing has been accorded a liberal interpretation in many parts of the world. In India too, a process of liberalization has also begun and the rule of standing has been expanded to make it easily accessible for the deprived and underprivileged citizens.

B. EXPANSION OF THE RULE OF LOCUS STANDI

In India, public interest litigation movement has been initiated and fostered by a few supreme court judges. In the 1970s two forces combined to liberalise the doctrinal limitations of standing. The first was the spreading concern for social justice and the second was the commitment for free legal aid as was enshrined in Article 39-A inserted by the forty-second Constitutional Amendment Act. The liberal approach in expanding the rule of locus standi became apparent in judicial pronouncements of the supreme court in the mid 1970s. For instance, in Bar Council of India V M.V. Dabholkar, the supreme court, permitted the Bar Council of Maharashtra to initiate proceedings against, an advocate, for professional misconduct by holding that Bar is a public institution and represented the collective conscience of the standard of professional conduct and etiquette. In Maharaja Singh V State of Uttar Pradesh the Supreme Court observed, "where a wrong against community
interest is one, "no locus-standi," will not always be a plea to non suit and interested public body challenging the wrongdoer in the court . . . locus standi has a larger ambit in current legal semantic than the accepted individualist jurisprudence of old.¹⁹

The Supreme Court, in subsequent decisions modified the traditional rule of standing by overriding the procedural obstacles and technicalities and permitted representative standing to expand the classical standing to enforce rights of under privileged. Representative standing cases in the apex court have helped secure release of bonded labourers²⁰ to obtain pension for retired governmental employees,²¹ to obtain release of undertrials,²² to improve living conditions of inmates at a protective home for women²³ and to obtain statutory minimum wages for exploited workers.²⁴ In all these litigations involving "representative standing" the supreme court permitted actions by any member of public who had not suffered any violation of his own right, to bring actions on behalf of those who had suffered legal wrong or injury conferred under the constitutional or some other law. The Supreme Court has been instrumental in further modification of classical standing doctrine during 1980s. This decade also saw emergence of "citizen standing" in the process of liberalization of tradition standing rule. The apex court allowed any concerned citizen or voluntary organization, not necessarily in the representative capacity but in his own right as a member of the citizenary to bring
action in cases involving executive abuse or governmental policy actions contrary to public interest. An early trend in this direction was seen in Fertilizer Corporation Case, where a trade union challenged the sale of old machinery and a plant belonging to a state owned corporation on the ground that the sale was arbitrary and violated the worker's right to occupation under Article 19(1)(g) of the constitution. Justice Krishna Iyer on the issue of standing advocated the need for class action or citizen suit by liberalization of locus standi. His lordship speaking for himself and for Bhagwati, J., observed: "The argument is, who are you to ask about the wrong committed or illegal act of the corporation if you have suffered no personal injury to property, body, mind or reputation? . . . Law as I conceive it, is a social auditor and this audit function can be put into action only when some one with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation happy and waste their time and money and the time of court through false and frivolous cases. . . . Public interest litigation is part of the process of participatory justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps. . . . If a citizen is no more than a way farer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But [if] he belongs to an organization which
has special interest in the subject matter, if he has some concern deeper than that of a busy body, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. I therefore, take the view that present petition would clearly have been permissible under Article 226."

It was a stepping stone where from Justice Bhagwati further expanded the scope of citizen suit as he held in the famous Judges Transfer Case\(^{27a}\) that where no specific legal injury had been suffered, any concerned citizen may sue to check the damage to the public interest and uphold the rule of law.

Citizen standing has enabled individuals to check the abuse of public office by high governmental functionaries,\(^{27b}\) to challenge governmental policies\(^{27c}\) or inaction that threatened to undermine the functioning of the judiciary, to test the legality of a fiscal policy that favoured tax dodgers\(^{27d}\) etc.

Thus, we see that the classical rule of locus standi has been modified by the courts in India. The scope of the locus standi now stands expanded with the flexible meaning accorded to the expression 'aggrieved person' and standing barriers removed. This development has led to the emergence of the concept of public interest litigation under which a public spirited citizen or a group of citizen or an association can take up the cause of the deprived sections of the society against administrative abuses.
C. CLASS ACTION OR CITIZEN SUITS

(a) The Emerging Profile of PIL

The process of liberalization in the traditional doctrine of locus standi as set in by the judicial pronouncement of the supreme court has given rise to a new form of litigation, popularly known as Public Interest Litigation in India. In fact, public interest litigation is a strategic arm of legal aid movement to bring justice within the reach of the poor. In contrast to the traditional mode of litigation, where in litigation is bipolar and adversial and of retrospective orientation, the public interest litigation is not strictly adversial but is cooperative or collaborative and prospective in orientation, the primary purpose of which is to promote and vindicate public interest. The petitioner seeks in such cases to champion a public cause for the benefit of all society and to prevent an egregious state of affairs or illegitimate policy from continuing into the future in which judges play a creative role in the organization and shaping of litigation and in supervising the implementation of relief which is essentially corrective rather than compensatory. It is through this type of litigation that the problems of the poor are now coming to the forefront and the entire theatre of the law is changing fast.  

(b) PIL with Reference to Environmental Protection

Since the last decade, PIL has played a unique role by
which people belonging to different walks of life, and especially the down trodden are getting social justice from the supreme court as well as the high courts. The PIL is now recognised as an effective instrument of social change. It is because of this new strategic of pro bono litigation that the poor and the down trodden have been able to seek justice from courts.  

Public interest litigation has extended its helping hand to prevent environmental damage. The strategic arm of PIL has also made a substantial dent in environmental pollution cases. Introducing the PIL concept into a pollution cases, in Ratlam Municipal Council Vs Vardhichand, J. Krishna Iyer observed that, "... social justice is due to people and therefore the people must be able to trigger off the jurisdiction vested for their benefit to any public functioning." Thus he recognised PIL as a constitutional obligation of the courts.

As a result of this development, a spate of environmental cases have been brought before the courts through public interest litigation. They have been filed either by individuals, voluntary organization or by letter/petitions sent to judges. In the following passes, an attempt is being made to examine some of the leading judicial pronouncements on the point.

(i) Delhi Gas Leak Case

In M.C. Mehta V Union of India popularly known as Delhi Gas Leak or Oleum Gas Leak Case, the Supreme Court of
India was confronted with multi-dimensional and complex issues relating to environmental pollution such as concerning the true scope and ambit of Articles 21 and 32 of the Constitution; the principles and norms for determining the liability of large enterprises engaged in manufacture and sale of hazardous products; the basis on which damages in case of such liability should be quantified; whether such large enterprises should be allowed to continue to function in thickly populated areas; and if so permitted what measures should be adopted to reduce the risks to minimum to the workers and community living in the neighbourhood.

This case originated in a writ petition filed in the Supreme Court by the environmentalist and lawyer M.C. Mehta, as a public interest litigation. The petition sought to close and relocate Shri Ram Caustic Chlorine and Sulphuric acid plants located in 76 acre industrial complex, in a thickly populated west section of Delhi.

One month after the filling of this petition, oleum gas leaked from the sulphuric acid plant of Shriram Food and Fertilizers Industries Ltd. affecting several people. It was also alleged that an advocate practising at the Tis Hazari Court died due to the leakage. Hardly had the people got out of the shock of this disaster, when within two days there was another minor oleum gas leakage. The leak took place, incidentally on December 4, 1985, a day after the first anniversary of the Bhopal gas leak. In view of these incidents, the Inspector of Factories and Assistant
Commissioner (Factories) issued separate orders prohibiting Shriram from operating their plants. Aggrieved by the orders, the latter filed a writ petition challenging the prohibitory order issued under the Factories Act of 1948 and sought interim permission to reopen the caustic chlorine plant.

On behalf of those affected by the Oleum leak, the Delhi Legal Aid and Advice Board and Delhi Bar Association filed applications for compensation in the original petition by M.C. Mehta.

There were committees after committees of experts constituted to examine the necessary steps for securing and devising safety measures, pollution control measures to eliminate the risk to the community before and after the institution of the original and subsequent petitions. All committees were of the opinion that the caustic chlorine plant pose a threat to life of workers and the people living in the vicinity. They were also unanimous that there was considerable negligence on the part of the management of Shriram in the maintenance and operation of the said plant.

In view of the considerable controversies between the parties as to whether the recommendations of various committees were complied with or not by Shriram, the court through its order December 18, 1985 constituted another committee called "Nilay Chaudhary Committee" to enquire into the implementations of the recommendations of the earlier committees and report after visits to the plant, to the court
as to whether the plant be allowed to recommence its operation and suggest measures to be adopted against the hazards or possibility of leaks, and pollution control devices to reduce the risk to minimum. This committee after their visits to the plant and hearing the parties submitted its report with 14 recommendations to the court. Another committee was constituted on court's order of January 31, 1986.

In the first case the sole question before the supreme court was whether Shriram be allowed to restart the caustic chlorine plant. It was strongly pleaded by the latters' Counsel that the company had complied with the recommendations of various committees and there was no reason for permanently closing down the caustic chlorine plant. It was further pleaded on behalf of Shriram that the closure would not only result in loss to the company but would also throw about 4000 workers out of employment and cause non-availability of chlorine for important uses including purifying drinking water. Whereas on the other hand petitioner strongly pleaded that restarting of the plant should not be permitted because the operation of plant threatens a continuing risk to the community.

The Supreme Court was confronted with the problem of how to balance the pollution-hazard of the chlorine gas against the safety arrangements made by the company, interests of workers, the scarcity of chlorine and production of down stream products. The court agreed that . . . "when
Science and Technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We cannot possibly adopt a policy of not having any chemical or other hazardous industry merely because they pose hazard or risk to the community . . . industries, even if hazardous, have to be set up since they are essential for economic development and advancement of well being of the people." The court expressed the opinion that total ban on industries would mean the end of all progress and development.

The court also took note of the fact that permanently closing down the caustic chlorine plant would put the jobs of 4000 workers at stake and would lead to their utter impoverishment. It tried to balance development and environment. The scales ultimately tilted in favour of development. The court made an order to reopen the chlorine plant temporarily subject to fulfilment of 11 conditions. In order to monitor operation and maintenance of the plant and ensure continued implementation of the recommendations of various committees, the court appointed an expert committee, which was asked submit its first report within one week of restarting of the plant, followed by a second examination within a period of 15 days. And in the event of an adverse report, it would revoke the permission to restart the plant. 
The court imposed the following conditions:

(1) The court asked to deposit Rs.30,000 to meet the travelling, boarding and lodging expenses of the expert committee constituted to monitor the compliance of the recommendations of the Manmohan Singh and Nilay Chaudhry committees.

(2) The court stipulated that one inspector be designated who shall be personally responsible for each safety device in the caustic chlorine plant.

(3) The Chief Factory Inspector was directed to inspect the plant at least once a week.

(4) The Central Pollution Control Board was asked to depute an inspector to visit the Shriram plant at least once in a week to ascertain compliance with the pollution standards prescribed in consent orders under the Water Act and the Air Act.

(5) The court asked the management of Shriram to obtain an undertaking from the chairman or officer(s) of Delhi Cloth Mills Ltd. who are in actual management of the plant that in any case of escape of chlorine gas resulting in death or injury to the workmen or to the people living in the vicinity, they will be personally responsible for payment of compensation for such death or injury and such undertaking shall be filed in the court within one week from the date of order.

(6) The court constituted a workers safety committee

(7) Shriram was asked to publicise the effects of chlorine and appropriate post exposure treatment through charts
placed at the gate of the premises and within the
plant.

(8) Shriram was directed to instruct and train its workers in plant safety through special audio-visual programmes.

(9) Shriram was also directed to install loudspeakers to alert neighbours in the event of a chlorine leak.

(10) Shriram was directed to ensure that workers use safety devices like gas masks, safety belts etc. and to provide regular medical check ups to the workers.

(11) Shriram was required to deposit Rs 20. Lakhs and bank guarantee for Rs. 15 lakhs had to be furnished with in two weeks from the date of this judgement for payment of compensation claims of the victims of oleum gas. Apart from the conditions, the court recommended that a national policy for location of hazardous industries in areas of scarce population may be evolved in order to reduce the pollution hazards. It further recommended that no large human habitation be allowed to grow around these areas and a green belt of 1.5 km. width around such industries be developed. The court also highlighted the need of setting up neutral scientific expertise body which could act as an information banks for the courts and the Government departments and for establishing 'environmental courts' to deal with cases of environmental pollution.

In the second case, Shriram moved the court for clarification in respect of certain conditions made in the
earlier order which according to them entail certain operational and practical difficulties. The court made the following modifications in the conditions imposed by the previous order of the court.

First, the Court first modified condition pertaining to safety devices. The modified condition provided for the personal responsibility of an officer placed in charge of a group of safety devices instead of one operation personally responsible for each safety device as was recommended in the earlier order. This modification was effected because it would not be practicably feasible to place one operator in charge of each safety device and it would not be desirable to place such a big responsibility on an operator who was simply a workman.

Second, so far as the absolute unlimited personal liability of the officer was concerned, the court, realising that many competent and professionally qualified person would shy away from accepting employment in Shriram, ordered that the responsibility of the officer would be to the extent of his annual salary with allowances. The court further added that Shriram would indemnify such officer if the leakage of gas was as a result of the Act of the God, sabotage or he had exercised all due diligence to prevent such escape. As regards the personal responsibility of the Chairman and Managing Director of Shriram, except the above mentioned situation, the court refused to make any modification. This approach according to the court was necessary and would
ensure proper and adequate maintenance of safety devices, instruments and operation of the hazardous plants. The management cannot be allowed to pocket the profit of the company without making due provision for repair, renovation, modern environmental technology and compensation for any loss of life or damage, if any, due to their negligence.

Third, the condition with respect to workers participation in ensuring proper observance of safety devices was slightly modified. The Committee of workmen, the court held, would consist of at least two out of the three representatives having experience of the working in the caustic chlorine plant. The representatives would not leave their duties unless they had informed the concerned officer half an hour, earlier. Further, they would give the officer in charge of the plant prior intimation at least half an hour before their visit. 39

In the third case, 40 the Supreme Court was confronted with questions of Constitutional importance pertaining to the interpretation of Articles 32 and 21 and complex question relating to the measure of liability of an enterprise engaged in hazardous or inherently dangerous industry. In view of the complex questions involved, the case was heard by a larger Bench of five judges consisting of Chief Justice Bhagwati and Justice Oza, Ranganath Mishra, Dutt and K.N.Singh.

The preliminary objection raised in the case by Shriram Counsel was that court could not decide the issues
arising from the compensation claims since no such claim was made in the original petitioner and the petitioner had not amended the pleadings to incorporate a compensation plea. But the Chief Justice, brushing aside this plea, held that the enforcement of article 21 could not be eclipsed by "the hyper technical approach. The court examined the ambit of Article 32 and held that Article 32 confer incidental and ancillary powers on it including "the power to forage new remedies and fashion new strategies designed to enforce fundamental rights" therefore the court may award compensation in appropriate cases.

On the preliminary objections raised by the Counsel of Shriram on the locus standi of Delhi Legal Aid and Advice Board and Delhi Bar Association to move the court, Bhagwati, C.J. one of the Champions of the "epistolary jurisdiction" endorsed its previous stand that "a public spirited individual or a social action group acting pro bono publico would suffice to ignite the jurisdiction of this court." The court further allowed two procedural relations: one, a letter addressed to an individual judge could form part of the writ petition and two, it was not necessary that the letter must be supported by an affidavit.

The next question which arose for consideration on the applications for compensation was whether Article 21 is available against Shriram, a public company engaged in an industry vital to public interest and with potential to affect the life and health of the people. The issue of
availability of Article 21 against a private corporation engaged in an activity having potential to affect life and health of the people was vehemently argued by the counsel for the applicant and Shriram. It was emphatically contended by the counsel for the applicants, with the analogical aid of the American doctrine of State Action\textsuperscript{44} and the functional and control test enunciated by this court in its earlier decisions\textsuperscript{45} that Article 21 was available as Shriram was carrying on an industry which, according to the government's own declared industrial policies was ultimately intended to be carried out by itself, but instead of the government immediately embarking on that industry, Shriram was permitted to carry it on under the active control and regulation of the government.

On the other hand, the counsel for Shriram cautioned against expanding Article 12 so as to bring within its ambit private corporations. He contended that control or regulation of a private corporation's functions by the state under general statutory law, is only in exercise of police power of regulation by the State. Such regulation did not convert the activity of private corporation into that of the State. It was emphasised that control which deems a corporation, an agency of state, must be of the type where the state controls the management policies of the corporation, whether sizable representation on the board of management or by necessity of prior approval of the government before any new policy of management is adopted or
by any other mechanism. Counsel for Shriram also pointed out the inappropriateness of the extension of the state action doctrine to the Indian situation. He pointed out that those rights which are specifically intended by the constitutional makers to be available against private parties are so provided in the constitution specifically such as Articles 17, 23 and 24. Therefore, to expand Article 12 so as to bring within its ambit even private corporations would be against the scheme of the chapter on fundamental rights.46

Interestingly, the court did not decide whether Shriram could be characterised as the 'state' within the meaning of Article 12 so as to be subjected to the discipline of the right under Article 21. The court observed: we have not had sufficient time to consider and reflect on this question in depth . . . we are called upon to deliver our judgement within a period of four days. . . . We are therefore, of the view that this is not a question on which we must make any definite pronouncement at this stage. . . ."47

As to the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industrial activity. The court discarded the rule laid down in Rylands Vs Fletcher48 and its further developments under the English law. The court evolved, what Chief Justice Bhagwati calls a new principle of strict and absolute liability in the case of hazardous or inherently dangerous activity resulting in harm to any one. The rule precisely as laid down by the court is
"that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas own an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken." The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken reasonable care and that the harm occurred without any negligence on its part." The court further held that the 'social cost' for carrying on such hazardous activities for profit was a legal presumption that the industry will compensate. This strict and absolute liability, finally, was not subject to any of the exceptions i.e. 'without knowledge' or exercised due diligence etc. which are attached to tortious liability under the rule in Rylands Vs Fletcher.

As to the measure of compensation, the court pointed out "that the measure of compensation in the kind of cases referred to . . . must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the
enterprise, the greater must be the amount of compensation payable by it. . . "51

The court directed the petitioner to take up the cases of all those who claimed to have suffered on account of Oleum gas and file them on their behalf in appropriate court for claiming compensation against Shriram.

The judgement of the apex court in the Oleum Gas Leak case is historic one in the field of environmental justice. The supreme court besides laying down substantial principles of law, embarked upon some important questions of law and policy which need to be answered.

The supreme court laid down two important principles of law: First, the power of the supreme court to grant remedial relief for a proved infringement of a fundamental right (in this case Article 21) includes the power to award compensation, albeit in exceptional cases. Thus, the court not only widened the scope of Article 21 (by including in it protection of environment) but also included a liability in tort for those harmed by pollution. Second, the judgement opened a new frontier in the Indian jurisprudence by introducing a new "no-fault" liability standard (absolute liability) for industries engaged in hazardous activities which has brought about radical changes in the liability and compensation laws in India. The new standard makes hazardous industries absolutely liable for the harm resulting from its activities. It is a standard which on its terms, admits of no defences. The judgement makes damages commensurate with
the tortfeasors ability to pay. This ruling may give a fright to capitalists and act as a deterrent force reminding the industries carrying on hazardous and inherently dangerous activities that they must include in their cost the expenditure on accidental compensation before they pocket the entire profit.

The case is significant from other points. The court further expanded the scope of "epistolary jurisdiction" when it reiterated that 'a public spirited individual or a social action group acting pro bono publico would suffice to ignite the jurisdiction of this court" held that hyper technical approach that defeated the ends of justice was inappropriate in PIL cases. The liberal approach in rule of locus standi, according to the court, was necessary otherwise it would frustrate the object and purpose of epistolary jurisdiction. Not only this, the court appreciating the social service rendered by M.C. Mehta, who singly fought a valiant battle against a giant enterprise and provided relief, by directing the Shriram to pay Rs. 10000 to him, as the token of appreciation. In view of the widespread ramifications of environmental pollution, the present stand of the court in the field of environment deserves appreciation.

The judgement brings in two important innovations in the environmental justice in Indian. The court, in view of the difficulty to identify appropriate experts and to seek their advice in complex and technical environmental issues, proposed the establishment of 'Ecological Research Group'- a
pool of experts which could act as an information bank to the courts and other units of government. And for speedy justice in environment matters, the Court proposed for the establishment of "Environmental courts" with due representation of professional judges. The idea of establishing such institutions is commendable but unfortunately awaits implementation.

The judgement, it is noteworthy, reflects the assumption by the apex court, of legislative and executive functions throughout the case. The court not only exposed the executive inactions in combating the pollution, but by assumption of quasi judicial function of balancing the development and safety considerations with the environment, took remedial actions by way of providing stringent safety and other pollution control measures, creating agencies, appointing safeguard committee, committee of inspectors, recruiting experts from all over the country and paying for their expenses, suggesting for devising of their powered authority to oversee the functioning of hazardous industries, and suggesting to devise a national policy for location of hazardous industrial units etc. All these developments are quite new and the courts creativity in this direction certainly deserves commendation.

At the same time, the court left certain issues unanswered. For instance, the court took note of unsatisfactory state of affairs of Delhi Municipal Corporation who had been sleeping over their statutory duty
and had let the sewer in the Najafgarh area choked for many years since 1980 which made Shriram to discharge its effluents in the Najafgarh drain thereby adversely affecting the standards prescribed by the Central Pollution Board. The court in spite of the unsatisfactory state of affairs simply expressed its deep sense of regret at the total indifference of the Municipal Corporation but did not take any action against it.

There had been a detailed discussion in the case on the issue whether Shriram comes within the definition of 'the state' under Article 12 of the constitution. The court does not say that Shriram is not a state instrumentality, but clearly there is no majority for the view that it is and so the court does not decide whether it has Article 32 jurisdiction over Shriram. Interestingly, despite this, the court goes on to articulate a new absolute liability standard and a new standard for determining the quantum of damages.

The decision has opened up subsequent controversial questions of law. The court in its orders of February, 1986 directed Shriram to contribute substantial sums of money—15000 and 30000 rupees to support the expenses of various committees appointed by the court and present a bank guarantee of Rs. 15 lakhs and deposit Rs. 20 lakhs to ensure compensation for any future chlorine victims and to compensate the oleum leak claimants. This remedial action of the court was unprecedented. On the other hand when the court through its order of December, decided it would not
assert jurisdiction over Shriram and referred the case to be instituted for compensation in an appropriate court, should it not have ordered the reimbursement of the above-mentioned contributions.

As earlier pointed out the court did not in precise terms expand the ambit of Article 12 to include in it, the private enterprises. Would the court have still refused to assume jurisdiction upon the argument that it is a private company and therefore not subject to an Article 32 petition, had the leakage from Shriram Chlorine plant resulted in numerous casualties.

The court articulated a new rule of absolute liability by modifying the Ryland v Fletcher Strict liability rule, though Shriram did not, in fact, offer any of the defences to the latter rule, to that extent expansion of the rule simply reflected the court's intention to nullify any of the defences which may be pleaded in the Bhopal Case. While in the present case there seemed nothing in the order that justified such expansion. The expansion of strict liability rule would fall too harshly on the industries in cases where there is any mishap beyond the control of the latter such as in case of war, terrorist attack or act of God.

Even the standard of quantum of damages as propounded by the supreme court in Shriram's case which states that quantum of damages is to commensurate with the tortfeasors ability to pay seems to have been diluted by certain observations of some judges in Bhopal Act case wherein
Chief Justice Mukherji observed:

"This is an uncertain promise of law. On the basis of evidence available and on the basis of the principles so far established, it is difficult to see any reasonable possibility of acceptance of this yard stick. And even if it is accepted, there are numerous difficulties in getting that view accepted internationally as just basis in accordance with law." Similar view is shared by Justice Ranjanathan in this case.

(ii) The Ganga Pollution Cases

The Ganga pollution cases are the most important water pollution cases in India to date. The brief facts being in 1985, M.C. Mehta, an activist advocate and social worker, by way of a public interest litigation, filed a writ petition under Article 32 of the constitution inter alia, for the issue of a writ/order/direction in the nature of mandamus, directing Kanpur Municipality to restrain itself from discharging waste water into the river Ganga, and governmental authorities and the tanneries at Jajmau near Kanpur to stop polluting the river with sewage and trade effluents till such time that they put up necessary treatment plants for treating these effluents.

Considering the large number of respondents (89 in the case, including union Government, Chairman of the Central Pollution control Board and the U.P. Pollution Control Board and Indian Standard Institute) during the preliminary
hearing, the court directed the issue of notice under Order 1 Rule 8 of the Code of Civil Procedure treating this case as a representative action by publishing the gist of the petition in the newspapers in circulation in northern India and calling upon all the industrialists and municipal corporation and town municipal councils having jurisdiction over the areas through which the river Ganga flows to appear before the court and to show cause as to why directions should not be issued to them asking them not to allow the trade effluents and sewage into the river without appropriately treating them before discharging them into the river. Pursuant to the said notice a large number of industrialists and local bodies entered appearance before the court by filling counter affidavits explaining their stand on the issue of treatment of effluents. The court bifurcated the litigation dealing separately with pollution caused by tanneries and municipalities. The court in Mehta I\(^5\) made order against the tanneries, while in Mehta II\(^6\) ruled against municipalities and other governmental authorities.

In Mehta I, the court realising the importance of water, of the river Ganga in particular, and concerned over the continuing pollution of it by the industries and municipal wastes, reminded the conviction of environmental protection as enshrined in the directive principle in Article 48-A of the constitution which provides that state shall endeavour to protect and improve environment and to safeguard the forests and wildlife of the country, Article 51-A which
imposes a fundamental duty on the citizens to protect and improve the natural environment, and the proclamation adopted by the United Nations Conference on the Human Environment of 1972, containing the common conviction of the participant nations that environmental pollution must be halted. The court also invoked the Water Act as an indication of the importance of the prevention and control of water pollution. The court emphasised that notwithstanding the comprehensive provisions contained in the Water Act the state Boards had not taken effective steps to prevent the discharge of effluents into the river Ganga.

The court ruled that the fact, as was asserted on behalf of some of the tanneries, that the effluents were not directly discharged into the river but first discharged into the municipal sewers, did not absolve them from being proceeded against under the provisions of the law in force, since ultimately the effluents reach the river Ganga from Municipal Sewers. The court also invoked the Environment (Protection) Act 1980 as further indication of the importance of prevention and control of water pollution and noted that not much had been done even under that Act by the Central Government to stop the grave public nuisance caused by the tanneries at Jajmau Kanpur.

There was not much dispute on the question that the discharge of the trade effluents from these 74 tanneries into the river Ganga has been causing considerable damage to the life of the people who used the water of the river Ganga and
also to the aquatic life in the river. The tanneries had been failing to adequately pretreat the effluents before their discharge into the municipal sewers. This was evident from the examination of the counter affidavit filed on behalf of Hindustan Chambers of Commerce, of which 43 respondents were members where in it was admitted that the tanneries discharged their trade effluents into the sewage nullah which led to the municipal sewage plant before they were turnover into the river Ganga. Neither was disputed by any of the respondents that the water in the river Ganga was being polluted grossly by the effluents, discharged by the tanneries. The court was informed that only six of the tanneries had set up primary treatment plants for carrying out the pretreatment of effluents and about 14 were stated to be engaged in the construction of primary treatment plants. It was also urged on behalf of some of the tanneries that they would not be able to meet the enormous expenditure on the treatment plant. The court, however, rejected this argument and rightly held that no tannery could be allowed to continue unless it makes provision for the treatment (Primary) of its trade effluents. The court, speaking through J. Venkataamiah observed. "The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to
continue to be in existence for the adverse effects on the public at large which is likely to ensue by discharging of the trade effluents from the tannery to the river Ganga would be immense and it will out weigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure. Moreover, the tanneries involved in these cases are not taken by surprise, the court further held, since they have not installed primary treatment plants even after having been told to do so for several years. The tannery effluents are ten times more noxious than domestic sewage. The court observed that when statutory authorities do not discharge their duties then the court has power to issue appropriate directions.

Accordingly, Justice E.S. Venkataramiah and K.N. Singh directed that from October, 1987, 29 tanneries must close down if by then they do not subject their wastes to primary treatment plants as approved by the state pollution control board.) the judges regretted that in spite of the extensive notices in newspapers about the hearing of the case, many tanneries have not cared to appear before the court or even promise that they will set up primary treatment plants.

The court gave further time to the tanneries which were members of the Hindustan Chamber of Commerce, to set up primary treatment plants by 31 March, 1988 in terms of their statement recorded in the court. If they did not set up the plants by then they must shut down operation from April 1. Seven other tanneries which had put up such plants were
allowed to continue their operation subject to the condition that they will keep these plants in sound working order. The judge directed the Union Government, the Uttar Pradesh Pollution Control Board, and the District Magistrate, Kanpur to enforce these orders faithfully.

Justice K.N. Singh concurring with Justice Venkataramiah added a few words on the status and importance of river Ganga under Hindu mythology and expressed his anguish and anger over the deteriorating state of the water quality of the pious river in his supplementing opinion. The anguish and anger is visibly reflected when he says "closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people."60

Mehta II60a case relates to the action taken against Kanpur Municipality and other Government entities for their failure to prevent waste water flowing to the river Ganga as was asserted in the original petition of the petitioner. The Supreme Court drew upon the issue of the state of deteriorating water quality of river Ganga. After examining the affidavit filed by Dr G.N.Misra, Scientific Officer of the U.P. Pollution Control Board Setting out the information regarding the measures taken by several local bodies and also by the Board to prevent the pollution of water flowing into the river and the reports of Shri Tanzar Ullah Khan, Assistant Environmental Engineer and Shri A.K. Tiwari, Junior Engineer of the Kanpur Municipality, enclosed to the counter
affidavit, the court was convinced that notwithstanding the actions taken by the U.P. Jal Nigam, the U.P. Water Pollution Control Board, the National Environmental Engineering Research Institute, the Central Leather Research Institute, the Kanpur Nagar Mahapalika, the Kanpur Development Authority and the Kanpur Jan Sansthan and the measures taken by the Central Ganga Authority to minimise the pollution of river, the status of water quality by and large remained appalling. It was surprising that in Kanpur City sewer cleaning has never been done systematically and in a planned way except that some sewers were cleaned by the U.P. Jal Nigam around 1970. The main reasons for malfunctioning and chocking of the city sewerage, as indicated in the affidavit were (i) throwing or discharge of solids, clothes, plastics, metals etc. into the sewerage system; (ii) throwing of cow dung from the dairies located in every part of the city which consisted of about 80,000 cattle; (iii) laying of undersized sewers specially in labour colonies; (iv) throwing of solid wastes and debris from construction of building into sewers through manhole (v) throwing of night soil collected from unserved areas in the city; (vi) defecation by economically weaker sections; (vii) non-availability of mechanical equipment for sewer cleaning works; (viii) shortage of funds for proper maintenance; and (ix) the discharge of untreated industrial effluents.61

The petitioner drew the attention of the court to the Progress Report of the Ganga Action Plan (July 1986 - January
1987) prepared by the Industrial Toxicology Research Centre, Council of Scientific and Industrial Research. The report revealed that pollution of the water in the river Ganga was of the highest degree at Kanpur. About 274.50 million litres of sewage were being discharged into the river from the city of Kanpur, which was the highest in the state of Uttar Pradesh only next to the city of Calcutta which discharges 580.17 million litres a day of sewage water into the river Ganga.

After going through all the records submitted to it by the Central Government, the U.P. Pollution Control Board and the Kanpur Nagar Mahapalika, the Court discussed at length the 'Benefits of Control,' the urgency of the problem in view of the wide range effects of water pollution. On the question of locus standi of the petitioner, the court observed that "he who is a person interested in protecting the lives of the people who make use of water flowing the river Ganga, his right to maintain the petition cannot be disputed. The nuisance caused by the pollution of river Ganga is a public nuisance, which is wide spread in range and indiscriminate in its effect and it would not be unreasonable to expect any particular person to take proceeding to stop it as distinct from the community at large. The petition has been entertained as a Public Interest litigation. On the facts and in the circumstances of the case we are of the view that the petitioner is entitled to move this court in order to enforce the statutory provisions which impose duties on
the municipal authorities and the Board constituted under the Water Act.\(^65\)

Convinced on the failure of the Kanpur Nagar Mahapalika to obey the statutory duties under the *Uttar Pradesh Nagar Mahapalika Adhiniyam*,\(^66\) the Uttar Pradesh Municipalities Act 1916 and the Uttar Pradesh Water Supply and Sewage Authority Act 197567 and the failure of the state and Central Pollution Boards to discharge their duties under the Water Act, the court observed that "many of these provisions have just remained on paper without any adequate action being taken pursuant there to."\(^68\) Even the construction of certain works under the Ganga Action Plan to improve the Sewerage System at Kanpur progressed on 'Snail's pace.'\(^69\)

Accordingly the Supreme Court directed Kanpur Nagar Mahapalika to:

(i) Complete the works to improve sewerage system within the target dates mentioned in the counter affidavits\(^70\) and not to delay the completion of those works beyond those dates. Kanpur Nagar Mahapalika was required to submit its proposal for sewage treatment works to the state Pollution Control Board within six months from the date of the judgement.

(ii) Take action against dairies for either removing the waste accumulated near the dairies or to get them shifted to a place outside the city.
(iii) Take immediate steps to increase the size of the sewers and wherever sewerage line is not yet constructed, to get them constructed.

(iv) To construct sufficient number of latrines and urinals for the use of poor people in order to prevent defecation by them on open land. It was further directed not to take any fee or levy, any charge for making use of such latrines or urinals. The cost of construction was to be borne by the Mahapalika.

(v) The practice of throwing corpses and semi burnt corpses be brought to an end immediately. The Municipality and Police should take step to ensure that dead bodies or half burnt bodies are not thrown into the river Ganga.

The supreme court further asked the High courts not to grant stay of criminal proceedings against industries in pollution cases unless there were extraordinary circumstances. The High Courts should dispose of the case within a short period say about two months from the date of the institution of such case. Such a direction is perfectly in line with the zeal the court has displayed to do what it should to preserve the environment and control pollution.

The court also directed the government to reject new applications to set up industries unless these included adequate provisions for the treatment of effluents and directed the Central government to include environmental preservation teaching in the school curriculum and to
popularise the concept of mass environmental consciousness by the central, state governments all over India by organizing cleanliness weeks such as "keep the city clean week" (Nagar Nirmali karana Saptaha) and 'keep the town clean' week (Pura Nirmali karana Saptaha) and 'keep the village clean' week (Grama Nirmali karana saptaha) in every city, town and village at least once a year. During such week, the organizing of which should be entrusted to local bodies and village panchayats, the respective towns, cities, villages may be kept far from air, water and land pollution. The legislative executive or judiciary member may be requested to cooperate with the local bodies and take part in the celebrations by rendering free personal service.

The remarkable thing about this judgement is that though, it was a case against Kanpur Nagar Mahapalika but the court directed that this will apply *mutatis mutandis* to all other Mahapalikas and Municipalities which have jurisdiction over the areas through which the river Ganga flows and accordingly directed to send the copy of judgement to all municipalities.

Thus, we see that the decision of the apex court in the Ganga pollution cases marks a new trend in the judicial approach to combat at Water pollution. The judicial pronouncements are unique where in the sense that the court declared that the financial capacity of polluting industrial units (tanneries in the first case) is irrelevant in directing them to establish primary treatment plants. Some
other inferences that may be drawn from the case are:

(i) No industry discharging effluents in water or air should be allowed to continue, until and unless it installs effluent treatment plant.

(ii) Discharge of effluents in river water should be stopped totally. Water Pollution is a national disgrace and must not be tolerated at any cost.

(iii) It is the primary duty of Municipal Corporations to see that water pollution of pious rivers is prevented by taking appropriate measures.

(iv) Whenever application for licences to establish new industries are made in future, such applications are to be refused unless adequate provision is made for treatment of trade effluents flowing out of the factories; and

(v) Environment and Ecology is a problem to be tackled by every one. For this purpose awareness about the environment must be inculcated in every individual through mass awareness programmes and environmental education. The latter must be introduced as a subject to be taught in classes and text books on Environmental education must be written and to be distributed in educational institutions free of cost.

(iii) Dehradun Quarrying Case

Rural Litigation and Entitlement Kendra, Dehradun Vs State of Uttar Pradesh or Dehradun Valley Litigation as it is commonly known, is one of the most complex environmental
cases handled by the Supreme Court. It is the first momentous decision of the apex court wherein it was required to balance environmental and ecological integrity against industrial demands on forest resources.

The case arose from indiscriminate, haphazard and dangerous lime stone mining in the Mussoorie Hill Range of the Himalayas in the western part of state of Uttar Pradesh. The mining and the quarrying work in the region had been going on for the past many years. The mining involved blasting of hills with dynamite and also deep digging into the hill side which resulted in cave ins and slumping. The obvious results of such indiscriminate quarrying were that a large area of the valley had been stripped of vegetation and frequent landslides and denudation of Hills posed a great threat to the ecology and the environment of the valley.

It is interesting to note that the Uttar Pradesh Government had not taken serious steps to regulate the mining except in 1961 when the state Mining Minister curtailed mining in the area. But the mining operations reopened in less than one year, after the quarry operators successfully manipulated the grant of leases for 20 years by lobbying with the Chief Minister. In 1982, eighteen leases came up for renewal but this time the state after becoming aware of the ecological devastation in the valley refused the renewal of leases. Consequently, Allahabad High Court was moved by the operators and obtained injunction permitting the applicants to continue the mining operations.
In 1983, Rural litigation and Entitlement Kendra, Dehradun, a voluntary organization, wrote a letter to the Supreme Court alleging therein that illegal lime stone quarrying was devastating the fragile environment in the Himalayan foothills around Mussoorie. The Supreme Court directed the letter to be treated as a writ petition under Article 32 of the Constitution. Satisfied that the letter merited inquiry, the court issued notices to the state of Uttar Pradesh and the Collector of Dehradun to appear before the court. Subsequently Union Government, concerned governmental agencies and mine owners were also impleaded.

The main question before the supreme court for consideration was whether the mine lessees could be allowed to mine quarrying operations. In 1983, the court forthwith prohibited blasting operations pending a review to determine if the mines were being operated in compliance with the safety standards as laid down in the Mines Act 1952 and the relevant mining regulations. The court appointed an expert committee (The Bhargava Committee) to assess the mines. 72

In its order 73 of 12 March, 1985, the Supreme Court, after considering the recommendations of the Bhargava Committee, ordered immediate closure of most dangerous mines and those falling within Mussoorie city board limits. The order to this effect was passed by a bench presided over by the than Hon'ble Justice Bhagwati, Justice Sen and Justice R.N. Misra who observed that where the court finds that due
to working of lime stone quarries there is imbalance to ecology or hazard to healthy environment, then in that case the court will order their closure. The court also observed that "due to closure of these quarries the lessees of limestone quarries would be thrown out of business in which they have invested large sum of moneys and expanded considerable time and effort. This would undoubtedly cause hardship to them but it is a price that has to be paid for protecting and safeguarding the rights of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment." The court thus impliedly recognised right to a wholesome environment as implicit in Article 21 of the constitution.

The court also took note of the unemployment problem which the closure of mines would result and directed that the "limestone quarries which have been or may be directed to be closed down permanently will have to be reclaimed and afforestation and soil conservation programmes will have to be taken up in respect of such limestone quarries with the help of the already available Eco Task Force of the Department of Environment, Government of India and the workmen who are thrown out of the employment in consequence of this order shall as far as practicable and in the shortest possible time be provided employment in the afforestation and
The court constituted a second committee (the Bandopadhyay committee) to assess the working of second group of mines, the operations of which were restricted pending review by the appointed committee. The Bandopadhyay committee was empowered to consider plans submitted by the miners to safeguard the environment and to hear the claims of people adversely affected by mining. By the same order the Government of Uttar Pradesh was directed to provide the necessary funds for the committee including transport and other facilities for the purpose of enabling them to discharge their functions. The Court permitted quarrying by a third group of mines including a major operation owned by the state of Uttar Pradesh, for the environmental damage on account of such mining was not very clear.

In December, 1986 the court was once again confronted with the difficult task of either to protect the ecology and environment or to make available to the country, high grade lime stone deposits as it was contended on behalf of the state as well as the central governments that putting a complete ban on mining may lead to scarcity of lime stone necessary for other uses. The court consequently in the case, shifted its responsibility and preferred a decision by the bureaucrats over the judicial finding. Rangnathan Misra J. (as he was then) observed: "It is for the Government and the Nation and not for the court, to decide whether the
limestone deposits should be exploited at the cost of ecology and environmental considerations or the industrial requirements should be otherwise satisfied. The consequences of interference with ecology and environment have now come to be realised. The Himalayan range is the tallest and it is this mountain which has been responsible to regulate monsoons and consequently the rainfall in the Indogangetic belt. If the valley is in danger because of erratic, irrational and uncontrolled quarrying of limestone it must be stopped. Green cover is about 10% of what it was about 70% only a decade ago. It is therefore necessary that Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact."

The court further insisted that "natural resources have got to be tapped for the purpose of social development but one cannot forget at the same time that tapping of resources has to be done with requisite attention and care so that the ecology and environment may not be affected in any serious way. They are permanent assets of mankind and are not intended to be exhausted in one generation. Preservation of environment and keeping the ecological balance unaffected is a task which not only Government but also every citizen must undertake. It is a social obligation and let every
Indian citizen be reminded that it is his fundamental duty as enshrined under Article 51(a)(g) of the Constitution." The supreme court also gave a (judicial) warning to the Government in clear words that: "Governments both at the centre and in the state, must realise and remain cognizant of the fact that the stake involved in the matter is large and far reaching. The evil consequences would last long. Once that unwanted situation sets in, amends or repairs would not be possible. The greenery of India as some doubt may perish and the Thar desert may expand its limits."  

Thus, the court, at this point of litigation showed inclination towards the development process in the exercise of balancing ecological considerations against the development.

It is also noteworthy that in its order of October 10, 1987, in spite of the fact that the court, after reviewing the report of the Bandopadhyay Committee, came to the conclusion and felt that stone quarrying in the valley should generally be stopped in the ecological considerations, still in the interests of defence of the country as also for safeguarding of foreign exchange position mining activity was permitted to the limited extent. Concerned about the effect of closure of mining on other national interests, the court made the following request for information from the central government "while we reiterate our conclusion that mining in this area has to be stopped as far as practicable, we also
make it clear that mining activity has to be permitted to the extent necessary in the interests of the defence of the country as also for the safeguarding of the foreign exchange position. We call upon the union of India in the relevant ministry or ministries to place before the court on affidavit the minimum total requirement of this grade of limestone for manufacture of quality of steel and defence armaments. The affidavit should also specify as to how much of high grade ore is being imported into the country and as to whether other indigenous sources are available to meet such requirements. This court would also require an affidavit from responsible authorities of the Union of India as to whether keeping the principles of ecology, environmental protection and safeguards and anti-pollution measures, it is in the interest of the society that the requirements should be met by import or by tapping other alternative indigenous sources or mining activity in this area should be permitted to the limited extent. The court expects the Union of India to balance these two aspects and place on record its stand not as a party to the litigation but as protector of the environment in discharge of its statutory and social obligation for the purpose of consideration of the court by way of assisting the court in disposing of the matter in issue. If the court comes to the conclusion that the minimum requirement of limestone will be permitted to be lifted from some of the quarries, it shall be for the court to indicate
as to which of the quarries shall be operated for that limited purpose. We make it clear that whichever quarries may be permitted to be worked out the same shall be subject to strict control and regulations and would have to undertake acceptance of the obligation to maintain the green cover of the area by diverting a major portion of its profits."82

The court in August 1988 after review of the second affidavit submitted by the secretary of the Ministry of Environment and Forest changed its earlier stance and concluded that the requirements of the defence industries did not justify continuing of mining operation of any mine in the Dehradun-Mussoorie region.84 There also arose a question of jurisdiction of the court to try the case in view of the adoption by the Parliament of the Environment (Protection) Act in 1986. The mining operators relying of the ruling of J. Misra in its earlier order,85 contended that as the new Act has been passed which now provides procedures to deal with the situation at the issue, the court, therefore should dismiss the case and leave the issue under the above Act to be determined by the administrative authorities. The court rejected the argument for dismissal by saying that the litigation commenced and significant orders were issued in the case before the adoption of the Environment (Protection) Act therefore there is no question of courts jurisdiction being ousted. The court addressed the potential effect of the Act in ousting the court's jurisdiction over Article 32
Public interest writ petitions in the following words: "The Act does not purport to - and perhaps could not take away the jurisdiction of this court to deal with a case of this type. In consideration of these facts, we do not think there is any justification to decline the exercise of jurisdiction at this stage. Ordinarily the court would not entertain a dispute for adjudication of which a special provision has been made by law but that rule is not attracted in the present situation in these cases. Besides it is a rule of practice and prudence and not one of jurisdiction. The contention against exercise of jurisdiction . . . must stand overruled."  

On the question of banning the limestone quarrying in the region, the supreme court realising its mistake to allow limited mining in its earlier orders observed, that if mining activity even to a limited extend is permitted in future, it would be not congenial to ecology and environment and the natural calm and peace which is a special feature of this area shall not be restored and finally held all mines in the valley except three operations, the leases of which should not be renewed upon their expiry, be closed.

The court further concluded that continued mining in the valley violated the Forest (conservation) Act, 1980. The court issued orders to state government to take measures to restore the ecology of the valley by undertaking reforestation programmes. The court established a Monitoring
Committee comprised of Central, State and local officials and two 'public spirited' citizens to oversee reforestation, mining activities and all other aspects necessary to bring about normalcy in the Doon valley. The court by the same order required 25 per cent of the gross profit of the remaining mines be deposited in a fund controlled by the committee for meeting its expenses. Rehabilitation Committee was also ordered to be set-up to rehabilitate the mine owners whose mines had been closed by the court without payment of compensation. The Rehabilitation Committee was to ensure that the displaced mine owners were given alternative mining sites in other parts of the country.

Thus, the decision of the apex court in this case is undoubtedly a high watermark in the judicial history of India. It calls for prevention of ecological ruin by closure of quarries, protection and improvement of environment through reclamation and afforestation and of generation of employment for the good and noble task of ecological balance.

(iv) Calcutta Taj Hotel Case

Sachidanand Pandey Vs State of West Bengal is an important town planning case which in categorical terms reiterates the court's duty to protect environment. In this case, the Government of West Bengal gave on lease to the Taj Group, four acres of land belonging to the Calcutta Zoological Garden for the Construction of a five star hotel. This garden was located in Alipore, the heart of Calcutta.
It was this giving away of the land that was challenged by PIL petition originally in the Calcutta High Court by two citizens of Calcutta - one, the secretary of the Union of Workmen of the Zoological Garden and the other, a life member of the zoo.

The Calcutta High Court upheld the lease in favour of the hoteliers. In appeal one of the submissions made by the counsel for the appellant before the supreme court was that the construction of a five star hotel would interfere with the animals in the zoo, disturb the flight of migratory birds preventing them to arrive at the zoo and disturb the ecology by causing greenery and the plants disappear on account of construction activities and therefore, the construction was too heavy a cost to pay for the environmental damage that may be caused by it. On the other hand the contention of the respondent's counsel was that the landscaping was so designed to encourage tourism that it would not in anyway disturb the ecology but improve the surroundings of the place.

It may be noted that in this case though the land was allotted for construction of a medium sized five star hotel but the final decision of allotment was taken, as the state Government asserted, after several discussions, negotiations and also after consideration of various reports and objections stretched over a long period of time. It may be pointed out that the public undertaking committee, appointed
by the West Bengal legislative Assembly, the Chief Town Planner and the Forest Department did not approve of the said Plan. Even the managing committee of the zoo initially was of the opinion that such construction would be highly detrimental to the animals of the zoo, migratory birds and to ecological balance itself. The managing committee withdrew their objections to the hotel after the government promised them adjacent lands and relocation grants. The hoteliers also assured to provide all assistance necessary to preserve the zoo and its inmates; surrendered an area of about 288 square metres from the allotted land to the zoo; to construct the hotel of a moderate size and height (75 feet, in contrast to skyscrapers in the surrounding area), with roof of the hotel free for the flight of birds; to keep subdued lights in the hotel as not to disturb birds; and to keep the surrounding of the hotel and flora well maintained.

The court, while dismissing the appeal, took the stand in favour of government as it was observed by J. Chinappa Reddy: "Obviously, if the Government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for this court to interfere in the absence of malafides. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the court may interfere in order to prevent a likelihood of prejudice to
Reiterating its stand that ecological balance shall be maintained by the court in spite of the fact that such duty imposed on the government is merely a directive principle of state policy under part IV of the constitution the court further held: "Whenever a problem of ecology is brought before the court, the Court is bound to bear in mind Art. 48-A of the Constitution . . . and Art. 51 A (g) . . . . When the court is called upon to give effect to the Directive Principles and fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the court may do is to examine whether appropriate considerations are borne in mind and irrelevancies are excluded. In appropriate cases the court may go further, but how much further must depend on the circumstances of the case. The court may always give necessary directions. However, the court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the court may feel justified in resigning itself to acceptance of the decision of the concerned authority." 90

In view of the above approach the court adopting a liberal approach in favour of the development held that the Government has acted perfectly bonafide in granting the lease and its action was not against the interests of the
zoological garden or against the interest of animal inmates of the zoo or migrant birds visiting the zoo. On the contrary as the proposed hotel is a garden hotel there is every chance of the ecology and environment being improved as a result of planting of numerous trees around the premises and removal of the burial ground and dumping ground for rubbish.

Thus, the decision of the supreme court in this case is significant as through this decision the court has reaffirmed its commitment towards the public interest at large and even of protection of birds and proved that if the action of the Government or any other agency is proper then in that case it will welcome it and will not prove hurdle or impediment or a rider in the smooth functioning and working of such organs but will join hands in hands with them so that such organs may work and act in better way. The judgement further clears the stand that judicial pronouncements cannot be a hurdle in the path of securing just things and also just social order.

The decision is also significant because for the first time, the supreme court tried to put a check on public interest litigation by public spirited citizens when Justice Khalid gave a caution to the public minded or public spirited persons in bringing such actions. He urged for judicial restraint in PIL so that this salutary type of litigation does not lose its credibility and pointed out such cases of public minded persons should be entertained by the courts only in extreme situations such as "when basic human rights
are invaded or when these complained acts are such as to shock the judicial conscience."

A close look at these leading pronouncements of the highest court of the land reveals firm commitment of the court to protect environment and to further the development process if it does not clash with the former. The popularity and utility of social interest litigation in the area of environmental cases is further marked by these pronouncements. The emergence of this type of litigation has not only helped the poor and sufferers of pollution to bring their grievance before the court but has enabled the court forging new remedies, principles, innovative suggestions for effective, speedy and cheap environmental justice. Some of the beneficial perspectives of public interest litigation in relation of environmental protection, which have emerged from the foregoing discussion may be summarised as follow:

(a) Public spirited citizens and social Action groups or voluntary organizations can now come forward on behalf of the sufferers of environmental degradation because of the liberalisation of the traditional rule of locus standi.

(b) Public interest litigation even in environmental cases has simplified the entire procedure for obtaining justice and this has made it easy for the individuals or the social Action Groups to approach the court by writing letters.
addressed to the court which can be treated as writ petition.

(c) The Court in PIL environmental cases has frequently appointed commissions by associating expert persons in fact finding process. This has given rise to a more simple and new method of fact finding process before the court.

(d) The PIL has also provided an opportunity to the court to fashion remedial orders to accommodate a range of interests exercising wide discretion and to make periodic assessment of its directions issued from time to time for implementation of the pollution control laws.

4. CLASS ACTION OR REPRESENTATIVE SUIT AND JUDICIAL APPROACH

Class suit is an effective and economically viable class action device which can be conveniently used in any personal injury tort cases for redressal of grievances and procurement of compensatory relief. Under this judicial remedy one or more members of a numerous class, having "the same interest," may sue or defend on behalf of themselves and all other members of class. The basic premises on which such suits are allowed is that members of the class who are made parties protect not only their own interests but in protecting them, the interests of the absent members of the class will also be protected. The purpose of this procedural devices is to promote efficiency and fairness in handling of large numbers of similar claims.
A representative or class suit is recognised in our law system under Order 1 Rule 8 of the Code of Civil Procedure of 1908. According to Rule 8 of Order 1 of the Code of Civil Procedure 1908, as it stands after its amendment in 1976 there are 4 conditions for a representative action; (1) that the class be numerous; (2) that members of the class have the same interest in the suit; (3) that the court permit a few persons to sue or be sued on behalf of the entire class; and (4) that the court issues notice of suit to all persons having the same interest. Class suits in environmental tort cases can be a more useful remedy for vindication of group interests generally involved. But unfortunately this procedural device has not yet become popular with the litigants in India despite its distinct advantages over other judicial processes presently availed of. In view of rising number of environmental protection organizations, class suit hold a great promise for its being used as potential procedural weapon in future times.92

The judicial approach to environmental class suits has not been very significant as very few cases have come up before the courts for determination. The supreme court recognised in Ganga Pollution (Tanneries) case93 the defendant class action by an individual plaintiff as an effective way to enjoin a large number of polluters when the court after taking notice of the pollution of water of river Ganga directed to issue notice under Order 1 Rule 8 of the code of civil Procedure treating this case as a
representative action. It orders to publish the gist of the petition in the national and regional newspapers calling upon all the industrialists and municipal corporations and committees having jurisdiction over the areas through which the river Ganga flows to appear before the court to show cause as why directions as prayed by the petitioner (to stop pollution) should not be issued against them. Consequently, a large number of industrialists and local bodies were enjoined as defendants and important directions were issued against them to stop them to discharge trade and municipal effluents into the river untreated.

The most obvious use of class action under Order 1 Rule 8 of Civil Procedure Code to get redress for pollution victims was made in the Bhopal Case. This case is, as Professor Baxi rightly puts it as "among the most complex litigation in the late twentieth century world" whereby complex legal questions regarding the liability of parent companies for the acts of their subsidiaries, the responsibilities of multinational corporations engaged in hazardous activities, the transfer of hazardous technologies and applicable principles of liability were involved. The judicial approach of the apex court, in this case has also been subjected to great criticism. Considering the importance of the case it will not be out of place to discuss this case in brief as under.

A. THE BHOPAL CASE

The Bhopal Case can for the sake of brevity, be studied under three heads: (a). Proceedings before the
subordinate trial court; (b) Proceedings before the High Court of Madhya Pradesh; and (c) Proceeding before the Supreme Court. It will be desirable to give introductory facts before we dwell on the above heads.

On the fateful night intervening between December 2 and 3, 1984, forty tones of highly toxic methyl isocyanate (MIC) gas escaped from a chemical plant belonging to 'Union Carbide India Limited (UCIL)' in Bhopal, into the atmosphere and killed over 3,500 people and left over 200,000 others injured many seriously and some permanently. The Police registered the criminal case against the officials of UCIL, the subsidiary of multinational union carbide corporation (UCC) of the USA, on 6th December, 1984. Individual claimants filed a large number of claim cases against the UCC in the United States of America between January and February 1985. In the mean time, on February 20, 1985 Parliament enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 to ensure that claims arising out of the disaster were dealt speedily, effectively and equitably. This Act conferred exclusive right on the Government of India to represent all claimants both within and outside India and also directed the latter to organise a plan for the registration and processing of the victims' claims.

The Union of India sued the UCC as parens patriae by virtue of its constitutional duty to protect, preserve and restore the environment and to secure the health and well being, both physical and economic, of all victims of
disaster, in court of the Southern District of New York, USA on April 8, 1985 to recover damages for any and all claims present and future arising from the Bhopal disaster. The Government choose to institute proceedings for recovery of the damages in the American court because it lacked confidence in its own judicial system. The other reasons for its preference obviously were getting large damages and uncertainty over Carbide's submitting to the jurisdiction of an Indian court.

Judge John F. Keenan, the District Judge of the Southern District of New York, by his order dated 12.5.1986 dismissed the Indian claim case and consolidated cases on the ground of forum non-conveniens, declaring that India was the more appropriate forum for the suit. The court, however, put the UCC to give consent to submit to the jurisdiction of the court of India and to satisfy the judgement rendered by any court in India and to be subject to discovery under the rule of procedure in the USA. Consequent to the decision of Judge Keenan, appeals were filed by the UCC, Union of India and individual claimants before the US court of Appeals. The UCC's appeal being on the limited question of satisfying the judgement of the Indian court and Discovery. The United States Court of Appeals disposed off the above appeals by its order dated 4.1.1987. The court of Appeals rejected the appeals of Union of India and the consolidated appeals on behalf of 145 claimants holding that there was nothing wrong with the findings of District Judge. While with regard to
the cross appeal of the defendant UCC the court held that in the absence of agreement the parties will be limited by the applicable discovery rules of Indian courts in which the claim will be pending. Further appeals were filed by the Union of India, individual claimants in the United States Supreme Court. Here too, the appeals of Union of India and of individual claimants were rejected.

(a) Proceedings before the District Judge, Bhopal

The Union of India, after the Judge Keenan of the Southern District of New York entered order of dismissal on 12.6.1986, filed a suit under order 1 Rule 8 of civil Procedure code, in the court of District Judge, Bhopal on 5.9.1986, against the sole defendant--the UCC. The plaint filed by the Indian Government in this court was similar to the complaint filed by it in the U.S. District Court. The Union of India sued in the capacity of parens patriae as conferred upon it by the Bhopal Gas Leak Disaster (processing of claims) Act, 1985, for damages to the tune of Rs. 3,900 crores (US $3 billion). It was alleged in the plaint that the defendant UCC, at all the times, constructed, owned, operated and controlled UCIL in Bhopal its subsidiary including manufacturing, processing and storing of 'MIC' a chemical used in the manufacture of agriculture pesticides. The defendant knew that MIC was ultra hazardous substance, a small exposure of this could pose an immediate danger to living beings and environment hence, it knew or should have known that the long term affects of human exposure to MIC
could lead to genetic and carcinogenic consequences. It was also asserted that the Defendant undertook to design, construct, operate manage and control a plant which would be safe for the production, handling, storage and processing in the city of Bhopal as was assured in the Design Transfer Agreement between the UCC and the UCIL entered into on 13.11.1973. The defendants were also responsible for training of technical personnels for its Bhopal plant under the Technical Service Agreement between the above two concerns, entered on the same date mentioned above, as a part of terms to the issuance of letter of intent to the UCIL by Government of India.

It was therefore asserted by Union of India that UCC being a multinational corporation, despite its complex corporate structure with network of subsidiaries and divisions which make it exceedingly difficult to pin point responsibility for damages caused by the enterprise to discrete corporate units or individuals, is in reality but one entity in the monolithic multinational which is responsible for the design, development and dissemination of information and technology world wide, acting through a forged network of interlocking directors, common operating systems, global distribution and marketing systems, financial and other controls. As a multinational corporation it has a primary, absolute and non-delegable duty to persons and country in which it has in any manner caused to be undertaken any ultrahazardous or inherently dangerous activity. This
includes a duty to provide that all ultrahazardous or inherently dangerous activities be conducted with the highest standards of safety and to provide all necessary information and warning regarding the activity involved. The defendant UCC not only breached this primary absolute and non-delegable duty through its undertaking (UCIL) but has been guilty of breach of strict liability: duty to take reasonable care to protect persons from unreasonable danger (negligence), breach warranty and of misrepresentation for non performance of terms under the Design Transfer and Technical Transfer Agreements. Thus, it is liable from their conduct to punitive damage to deter this wrongful conduct from ever recurring and all direct and proximate dangers resulting therefrom.97

The UCC entered appearance in the case on 30.10.1986. In its written statement and counter claim filed in the Bhopal District Court, it denied that the concepts multinational corporation and monolithic multinational were known to law. It also claimed that assuming these concepts were recognised, they had "no relevance, significance or legal consequence, in the context of the present suit."98 The defences upon which the UCC proposed to rely upon were following:

"First, either the UCIL is an autonomous Indian corporate entity or the UCC's role was deliberately and scrupulously reduced by India's sovereign functions of regulation. In neither case is the UCC liable."
Second, either there exists, awaiting recognition, the principle of absolute multinational liability or there is no such principle. If it exists, it does not extend to Bhopal case. If it does not, there is no case and hence UCC is not liable. Third, either MIC, in the present state of knowledge is not ultra hazardous or if it is no more so, and even less so, than other chemicals that India stores in profound quantities as a matter of its industrial policy. In neither case, is the UCC liable. Fourth, either the UCC is not liable at all or if it is liable, so are India and Madhya Pradesh. In neither case, is the UCC is absolutely liable. Fifth, either the forum discovery documents do not tend themselves to any interpretation of the UCC's overweening control over the UCIL or they have to be proved in their contrary interpretation by material evidence. In neither case is the UCC liable."

The UCC filed counter claim before the District Judge, Bhopal on 17.11.1986 and written statement on 16.12.1986. The UCC filed interlocutory applications to delay the proceeding until August, 1987. In the mean time the negotiation for settlement had been going on between the UCC and the Union of India which failed. An intimation to this effect was communicated to the court. The case was fixed for hearing on 17.12.1986 for consideration of intercolony applications; of the interveners for payment of interim
relief to the claimant; and 21.12.1987 for further hearing and for better particular and other issues on day to day basis from 11.1.1988. In November, 1986, two non-governmental organizations representing some victims applied to the District Court for immediate relief. Thereafter on April 2, 1987, the District Judge Mr Deo placed his proposal to grant reconciliatory substantial interim relief. By its order dated 17.12.1987 the District Judge, Bhopal exercising inherent powers under section 151 of the code of civil Procedure of 1908 suo moto directed the UCC to deposit within two months a sum of Rs. 350 crores by way of interim payment to be disbursed by the commissioner appointed under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 for granting substantive relief to the victims of the disaster. This action had the effect of derailing the primary law suit against carbide. It also raised questions of fair judicial procedure and the right to a trial on merits before the issuance of a judgement. Carbide filed a revision application against the interim payment decision of the District Judge in the High Court of Madhya Pradesh.

(b) Proceedings before the Madhya Pradesh High Court.100

In the revision petition filed in the High Court of Madhya Pradesh, the Court took note of the events that led the District Judge, Bhopal, to make the impugned order of interim relief on 17th December, 1987. The court summarised the pleadings, briefly described the proceeding right from the institution of the case in the US courts and its final
outcome to the impugned order of interim payment by the trial court. It also spoke a word about unbecoming stand taken by the plaintiff, Union of India, before U.S. District Court where by the latter "under rated its own judiciary and made it a subject matter of ridicule publicly before a foreign court."101

The court analysed the impugned order and considered the UCC's argument. The District Court has asserted jurisdiction to award interim payment on the basis of its "inherent power" as envisages in section 151 of the Code of civil procedure of 1908. To this Carbide urged "inherent power" was confined to matter of trial court had
areas of law of torts remained uncodified and are being applied as a part of 'judge made common law' even today. Section 9 of the Code of Civil Procedure of 1908 is the true repository of civil court's jurisdiction to administer the common law of torts "according to justice, equity and good conscience." Though the courts here don't blindly apply such rules but their application is selective having regard to the particular Indian conditions of society. 103

As regards the particular rule of substantive law i.e. the general law of torts under which the liability of the alleged tortfeasor in the Bhopal suit is governed, Justice Seth observed that the "decision of the Supreme Court in M.C. Mehta's Case (AIR 1987 SC 1086) fully answers the same. . . . Accordingly, the "principle of absolute liability without exception laid down in M.C. Mehta's case applied more vigorously to the Bhopal suit." He further added that "it is thus unquestionable in the Bhopal Suit that whichever was the enterprise engaged in the hazardous or inherently dangerous activity at the plant in question at Bhopal resulting in the MIC gas leak disaster, whether it be the Indian company i.e. Union Carbide India Limited or it be the defendant UCC, is liable to pay damages/compensation to the gas victims in accordance with the rule of absolute liability without exception." 104

As to the question whether the rule of absolute liability as laid down by the Supreme Court in M.C. Mehta's cases which happened after one year or so of the Bhopal gas
leak disaster, could apply to the Bhopal suit. The court held that there was 'no reason to think that the rule of absolute liability without exceptions laid down in M.C. Mehta's case could not apply to the Bhopal suit. The court gave two good reasons for this- "one, that the reasoning adopted by the Supreme Court while applying the said rule to the oleum gas incident is based on principles which are equally valid and recognisable before the occurrence of the Bhopal MIC Leak disaster and two, that large number of law critics in many countries have expressed opinion that many exceptions attached to the rule of strict liability made it grossly inadequate to meet the requirements of modern times." 105

As to the question whether it was permissible for courts to grant relief of interim payment under the substantive law of torts, Justice Seth, supported the interim payment by reaching out to a new set of rules introduced in 1980 in the English Supreme Court. 106 These rules permit an interim payment in various cases where (a) the defendant has admitted liability, or (b) judgement has been obtained and damages remain to be assessed, or (c) the eventual trial would result in the plaintiff obtaining judgement for substantial damages against the defendant. 107 There is second requirement under the rules (Para 2) which provides that no order of interim payment of damages should be made unless the defendant is not a person falling with in one of the following categories, namely, (a) a person is insured in
respect of the Plaintiff's claim; (b) a public authority; or (c) a person whose means and resources are such as to enable him to make the interim payment. Since the above rules have no application in India, Justice Seth rationalised that the rules were more in consonance with Justice, equity and good conscience and it was open for the court to apply new rules here also.

As far the fulfilment of the second requirement is concerned, the court was satisfied from the affidavits filed on behalf of the defendant UCC that it had enough means and resources to make the interim payment. The UCC, as was revealed from the statements on record, was insured in respect of liabilities including that relating to the plaintiff's claim to the extent of Rs. 262 crores. As to the first requirement concerning, in particular to 'eventual trial would result in plaintiff to obtain judgement for substantial damages against defendants' Justice Seth brushed aside forceful argument of the UCC that the concept of lifting the veil or piercing the veil of the corporation in the absence of any fraud or improper conduct is not applicable in the present case. He held that "there is no reason why when the corporate veil can be lifted in the cases of tax evasions, enforcement of welfare measures relating to industrial workmen . . . it cannot be lifted on purely equitable considerations in a case of tort which resulted in a mass disaster and in which on the face of it the assets of the alleged subsidiary company are utterly insufficient to
meet the just claims of multitude of disasters victims. The concept in question regarding lifting the veil has been an expanding concept and the court shall fail in its duty if it does not apply the said concept in a case of the nature of the Bhopal suit."

After lifting the veil of UCIL, the court held that carbide held the "majority of equity share capital of the Indian company at all material times." Controlling more than half of voting power, carbide not only "Controlled the composition of the Board of Directors... but also held the full control over the management of the Indian company." And further, by its own corporate manual its control over the subsidiary was "full and effective so much so that the Indian company was "at the receiving end all the time and was fully dependent on whatever was provided by the holding company." Hence, it was the defendant UCC who was absolutely liable (without any exceptions) to pay damages/compensation to the multitude of the victims.

The court finally fixed Rs. 250 crores as the reasonable amount of interim payment of damages which the defendant UCC was directed to deposit in the District Court, Bhopal by June 1988. The court also after having considered the financial capacity, assets and the insurance cover of the UCC, precisely determined the measure of compensation to approximately 5500 victims of disaster, for four categories of claims, under the Bhopal Act, in the following manner: (a) Rs. 2 lakhs in each case of death (b) Rs. 2 lakhs in each
case of total permanent disability. (c) 1 lakh in case of partial disablement and (d) Rs. fifty thousand in each case of temporary partial disablement. This amount, the court opined would be obtained by the plaintiff, Union of India if it proceeded to trial and the latter obtained judgement against the defendant. Interim relief payment awarded by the court was just half of the amounts mentioned above in respect of each of the above four categories.\(^{111}\)

(c) Proceedings before Supreme Court

The Bhopal case reached the supreme court through separate appeals of UCC and Union of India from the judgement of Justice Seth of the Madhya Pradesh High Court who awarded interim damages of Rs. 250 crores on the basis of "more than a prima facie case having been made out" against the defendant. Carbide challenged that the judgement of the high court was unsustainable because it amounted to a verdict without trial. While union of India appealed because the interim payment award was reduced from Rs. 350 crores as earlier awarded by the District Judge to Rs. 250 crores.

In December, 1988, a five judge Supreme Court bench surveyed the Bhopal litigation. The bench must have dismayed at the slow progress in the principle law suit, ineffectiveness of the Government's manoeuvres and carbide's disregard for the victims whereby the hopes of the victims for early compensation seemed diminished. Under the exigency of circumstance the apex court moved to announce a settlement of claim through its orders dated February 14, 1989,\(^{112}\)
Supplementary order of February 15, a consequential memorandum of the terms of settlement signed by the lawyers of defendant and the Plaintiff respectively and tendered to the court on February 15, and order of May 4, 1989 setting forth the reasons of court for urging settlement.

It was interesting to note that, the supreme court for its own reasons, allowed Carbide to argue a special leave petition even though Carbide was in breach of Madhya Pradesh High Court's interim compensation order which had not been stayed. Ordinarily, the court's discretionary power to grant special leave under Article 136 of the constitution would be withheld from a party that had neither complied with a high court order nor obtained a stay from that order.

On February 14, 1989 the Supreme Court after having given careful consideration to the facts and circumstances of the case, pleadings of the parties, material record of preceding in the United States, offers and counter offers of settlement negotiated earlier, enormity of the human suffering and urgency of providing immediate relief to victims opined that "the case is pre-eminently fit for an overall settlement between the parties covering all litigations, claims, rights and liabilities related to and arising out of the disaster." The court induced the Government of India and Carbide to accept its suggestion for overall settlement under which UCC was to pay US $470 million to the Indian Government on behalf of the victims in full
and final settlement of all past, present and future claims arising from the Bhopal disaster. The entire amount of settlement was to be paid by 31 March 1989.

On February 15, 1989, the Supreme Court passed a supplemental order whereby UCIL was joined as a necessary party in order to effectuate the terms and conditions of its order dated 14 February, 1989 as supplemented by this order. The court made a change in the manner of payment of settlement amount. The UCC was now required to pay a sum of US $ 425 million to the Union of India by March 23, 1989 less US $ 5 millions already paid by UCC pursuant to order of June 7, 1985 of judge Keenam in court proceedings in United States. The rest US $ 45 millions were directed to be paid by UCIL to the Union of India by March 23, 1989. These payments were to be made exclusively for the benefit of all the victims of disaster under the Bhopal Act 1985 and not as fines, penalties or punitive damages. The court, in order to facilitate the settlement, exercised its extraordinary jurisdiction and terminated all civil, criminal and contempt of court proceedings that had arisen out of the Bhopal disaster and were pending in subordinate courts.

Through its order of 5th April, 1989 the Supreme Court ordered the Union of India and the UCC to file their respective affidavits indicating the precise terms of proposals made from time to time outside the court in regard
to the settlement of the claims, within three weeks from the
date of order. Such an order was necessitated because during
the course of argument before the court there were
allegations in some of the documents that attempts were made
to settle the dispute between UCC and the Union of India in
respect of compensation to be paid to the victims involved in
the disaster at US $ 30 million and towards t e expenses of
the Government in the sum of Us $ 100 million.

On May 4, 1989, the Supreme Court, on its own motion
issued an unprecedented pronouncement styled as an 'order' setting forth the reasons justifying its promotion of Bhopal
settlement with a view to 'appreciate any tenable and
compelling legal or factual infirmities that may be brought
out, calling for remedy in review under Article 137 of the
constitution.

The court proposed to give reasons on the following
points:

(a) How did court arrive at an overall settlement of US $ 470 million?

(b) Why did court consider this sum as 'just, equitable
and reasonable' and

(c) Why did the court not pronounce on certain legal
questions of contemporary relevance such as
"principles of liability of monolithic, economically
en renched multinational companies operating with
inherently dangerous technologies in the developing countries of the third world."\textsuperscript{119}

As to the first point the court pointed 'compelling need for urgent relief' as the basic motivating consideration for the conclusion of the settlement. Despite after prolonged four years of litigation, fundamental question of law pertaining to liability of UCC and quantum of damages remained debatable. On the other hand destitute victims needed immediate relief. Therefore, "considerations of excellence and niceties of legal principles were greatly over shadowed by the pressing problem of very survival for a large number of victims."\textsuperscript{120}

Equally was the court concerned about the prospects of delays inherent in the judicial process as it observed, "the law's delays are indeed, proverbial. It has been the unfortunate bane of the judicial process that even ordinary cases . . . require some years to realise the fruits of litigation."\textsuperscript{121} Thus, this was another reason for reaching out for a settlement. With these considerations in mind the court asked the learned counsels of UCC and the union of India to make available the particulars of offers and counter offers of claims. Shri Nariman, the counsel for UCC, stated before the court that his client would stand by its earlier offer of 350 million US dollars plus appropriate interest at the rates prevailing in the US which raised the figure to 426 million US dollar. On the other hand, the learned Attorney
General submitted that any sum less than 500 million US dollar would not be reasonable and hence not acceptable. The range of choice in regard to the figure between maximum of 426 million US dollar and 500 million US dollars was left by the both parties on the court.

The court after giving due consideration to the facts of delays inherent in judicial process in India and in the domestication of the decree in the United States, quantified a sum of 470 million US dollars (Rs. 750 crores) as settlement amount. The court clarified that the settlement proposals were considered on the premises that the Government had unobjectionable and exclusive authority to represent victims and act on behalf of them and order was made on premises that the Bhopal Act 1985 was a valid law. In the event of latter Act being held void in the pending proceedings challenging its validity, the order of February 14, 1989 would require to be examined in the light of that order.

On the justification of the reasonableness of the sum of settlement, the court observed, "The question is not independent of its quantification. . . The question is how good or reasonable it is as a settlement, which would avoid delays, uncertainties and assure immediate payment. The estimate in the very nature of things, cannot share the accuracy of an adjudication. Here again one of the important considerations was the range disclosed by the offers and
counter offers which was between 426 million US dollars and 500 million US dollars. The court principally relied on the summary estimate made by High Court of Madhya Pradesh in its revision decision for determination of quantum of damages. For estimated 3000 fatal cases, compensation ranging from Rs. 1 lakh to Rs. 3 lakh as estimated for this Rs. 70 crores -3 times higher than ordinarily awarded compensation in motor vehicles accident claims, were envisaged. For personal injuries cases of permanent total or partial disability, the number of which was estimated to be about 30000, compensation ranging from Rs. 2 lakh to 50000 per individual according to the nature and degree of disability was envisaged, for which Rs. 250 crores were accounted for, whereas for another 20000 cases of temporary or partial, compensation ranging from Rs. 1 lakh to Rs. 25000. Rs. 100 crores could be allocated for. Additional Rs. 80 crores could be envisaged for cases of utmost severity injuries the number of such cases could be roughly 2000 to whom a compensation of Rs. 4 lakh per individual could be considered. Hence Rs. 500 crores was thought allocable to fatal cases and 42000 cases of serious personal injuries. Rs. 25 crores could be used for creation of specialized medical treatment and rehabilitation and after care, and rest Rs. 225 crores for cases of less serious nature comprising of claims for minor injuries, loss of personal belongings and loss of live stock etc. The court further justified the
reasonableness of the sum of settlement by pointing out that even if the corpus of Rs. 750 crores is spent at the current interest rates of 14 or 14 1/2 per cent over a period of eight years it would make available Rs. 150 crores each year or alternatively if the interest alone is taken about 105 to 110 crores per year could be spent year after year perpetually towards compensation or relief to victims.¹²⁴

The court did not think it proper to give reasons for dropping the criminal proceeding against the UCC. As to the remaining question relating to the principles of liability of monolithic, economically entrenched multinational companies operation with inhumanly dangerous technologies in the developing countries of the third world, the court gave its explanation for not making its pronouncement on such vital issues by saying, "the compulsions of the need for immediate relief to . . . victims could not . . . wait till these questions, vital though they be, are resolved in due course of judicial proceedings . . . immediate relief . . . should not be subordinated to the uncertain promises of law."¹²⁵

The court, however, observed that there is "need to evolve a national policy to protect national interests from ultra hazardous pursuits of economic gains and that jurists, technologists and other experts in economics, environmentology, futurology, sociology and public health etc. should identify areas of common concern and help in evolving proper criteria which may receive judicial
recognition and legal sanction. The judicial approach of the apex court in the Bhopal case has come under heavy criticism rather than commendation. The settlement is criticised mainly on the following points:

(a) That the judiciary was used to disguise what was really a settlement which the Government desired but did not itself want to own the responsibility from the fear of criticism for striking a deal against the interests of the victims.

(b) That the sum of the settlement was paltry and was not fixed after any rational examination of the damage.

(c) That the settlement was without jurisdiction as the main suits could not be finally disposed of, neither could they be withdrawn in the course of hearing of appeals arising out of an interlocutory order.

(d) That the orders of the court dated 14th and 15th February, 1989, in so far as they pertain to the quashing of criminal proceedings are without jurisdiction.

(e) That the settlement recorded on 14th and 15th February, 1989 is void under Order 23 Rule 3B of CPC as the orders affect the interests of persons not enomine parties to the proceedings. The settlement reached without notice to the persons so affected without complying with the procedural drill of Order...
23 Rule 3 B is a nullity.\textsuperscript{132}

(f) That termination of pending criminal proceedings brought about by the orders dated 14th and 15th February, 1989 is bad in law,\textsuperscript{133} specially, in context with sections 320, 321 and 482 of Cr. P.C.

(g) That the settlement and the orders of the court thereon, are bad and opposed to public policy amounting to a stifling of criminal proceedings (Sections 23 and 24 of Contract Act), for the dropping of criminal charges and undertaking to abstain from bringing criminal charges in future were part of consideration for the offer of 470 million US dollars by the UCC.

(h) That settlement is bad for not affording a fairness in hearing and not incorporating a 're-opener clause.' The settlement is bad for not indicating appropriate break down of the amount amongst the various classes of victim groups. There were no criteria to go by at all to decide the fairness and adequacy of the settlement.\textsuperscript{134}

(i) That the settlement is void as violative of natural justice as no notice to the affected persons as implicit in section 4 of the Bhopal Act, 1985 was given by the Union of India or the court before making or approving the settlement.\textsuperscript{135}

Some of the points (e.g. C to i) came for the consideration
of the apex court in review petitions in Union Carbide Corporation etc. V Union of India wherein the settlement is assailed in the Review petitions on many grounds. The court has upheld the validity of the settlement and has given its findings on some of the points of criticism. The apex court has justified its jurisdiction to withdraw to itself the original suits pending in subordinate court and dispose of the same in terms of settlement and quashing of criminal proceedings under its plenary powers under Article 142 (1) of the constitution. But in particular facts and circumstances it held quashing of criminal proceeding unjustified and deleted this part from its earlier order of February 14, 1989. The settlement was justified as not being hit by non-observance of requirement of notice under order 23, Rule 3-B as it held that Rule 3-B does not apply proprio vigore to proceedings under Art 136 of the constitution. The settlement is also not hit by doctrine of stifling prosecutions, the court held that section 23 and 24 of contract Act have no application as no part of consideration for payment of 470 million US dollars was unlawful and therefore the orders of the court on settlement are not opposed to public policy. The settlement is also not vitiated for the want of fairness hearing. Neither does section 4 of the Bhopal Act envisage or compel fairness in hearing before entering into settlement. The absence of a Re-opener clause also does not ipso facto vitiate the settlement. As regards the adequacy of settlement sum,
the court giving regard to the complexity of issues involved in the case such as, the basis of UCC's liability, assessment of the quantum of compensation in mass tort action, admissibility of scientific and statistical data in quantification of damages without resort to the evidence as to injuries in individual cases, left the settlement reached undisturbed. The supreme court, however, added that in the event settlement fund is exhausted, the Union of India should make good the deficiency. As to the application of principle that the size of award should be proportional to economic superiority of offender as propounded in *M.C. Mehta V Union of India*, AIR 1987 SC 1086, the court held that this 'principle cannot be pressed to assail the settlement reached in Bhopal Gas Disaster Case . . . . there is no scope for applying . . . . the principle in as much as the tort feasor, in terms of the settlement - for all practical purposes - stands nationally substituted by the settlement fund which now represents and exhausts the liability of the alleged hazardous entrepreneur viz UCC and UCIL.'

A review of the Bhopal case would should that class actions or representative suits has been considered as an effective remedy for initiating actions in cases of where the common interests suffers. The Bhopal Gas Leak Disaster where the liability of a multinational corporation was in question has emerged as a leading example of initiating action in the form of a representative suit. The award of compensation to the affected victims of the gas leak disaster affirms the
principle of measuring the liability of the concerned undertaking in terms of compensatory treatment to those who lost their lives or suffered multiple ailments or injuries as a result thereof. However, the apex court did not lay down any policy or guidelines to tackle the reoccurrence of such disasters in the near future. In our submission, it would have been better if the highest court of the land would have laid down some basic principles of law which could govern the liability of such multinational corporations in India. In view of various advances made in the field of science and technology, the possibility of such happening affecting human life cannot be overruled. Therefore, it is desirable that in view of this changed scenario which may pose unforeseen environmental hazards, we should have some definite guidelines to cover up all such contingencies.

5. NEW TRENDS IN JUDICIAL APPROACH

Environmental litigation is of recent origin in India. During a short span of time, the Indian judiciary not only has successfully undertaken a complex task of balancing the environmental and development concerns but in the process of its adjudication of cases, evolved new principles of the environmental jurisprudence. A few new trends have been set up by the judiciary which hitherto had not been seen in the legal system. Here an attempt is made to evaluate the role of the courts with reference to certain specific situations in the context of environment protection.
(A) EXPANSION OF ARTICLE 21

The role of Indian judiciary in interpreting the constitutional provisions in the light of changed socio-economic perspectives is worth appreciating. It has introduced many changes in the constitution through its judicial activism. One of the highest watermarks in the judicial activism is witnessed by the judgement of the Andhra Pradesh High Court decision in the case of T. Damodar Rao vs S.O. Municipal Corporation, Hyderabad. It was the first decision, which has explicitly recognised an environmental dimension to Article 21 when it while considering a writ petition to enjoin the Life Insurance Corporation and the Income Tax Department from building residential houses in a recreation zone, held: "It would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Art. 21 of the constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Art. 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regard as amounting to violation of Art. 21 of the constitution." 145

This judicial activism was the aftermath of Maneka Gandhi's case 146 which opened new frontiers in Article 21. Various High Courts in some cases have observed environmental degradation as violative of the fundamental right to life. 147
The Supreme Court of India in a number of cases has also followed the above expanding frontier of the Article 21 recognizing albeit right to wholesome environment as implicit in Article 21.\textsuperscript{148} It was in the case of \textit{Subhash Kumar Vs State of Bihar},\textsuperscript{149} the apex court explicitly recognised right to wholesome environment included in Article 21 of the constitution when it held: "Right to live is a fundamental right under Art. 21 of the constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the constitution for removing the pollution of water or air which may be detrimental to the quality of life."\textsuperscript{150}

Thus, the Indian judiciary has shown unprecedented dynamism by expanding the scope of Article 21 by including in it right to wholesome environment. This feat is remarkable in so far as even some of the developed countries have yet to achieve such distinction. It still remains to be seen as to whether a developing country like India can sincerely and effectively allow enforcement of this fundamental right to live in a clean environment, nonetheless such innovative approach would certainly help to prevent further degradation of our environment.

\textbf{B. Judicial Activism}

The second new judicial trend in environmental litigation has been noticed in the form of court's assumption
of executive functions and judicial legislation. The judiciary has in many public interest litigations ingressed into fields traditionally reserved for executive when and where the courts have found the executive response missing or deficient.

The supreme court has used quite effectively its interim directions to influence the environmental justice making it more responsive to constitutional mandate and provision of law. The Dehradun Quarrying case is a typical example of the supreme courts 'creeping jurisdiction' as Prof Baxi calls it, where the Supreme Court while deciding on closure of the operation of some of lime stone quarries in the Dehradun valley and to allow conditional operation of some of them, had to consider, balance and resolve competing policies-including need for development, environmental protection, preservation of jobs. The court entrusted an expert committee to evaluate the environmental impact of limestone quarrying operations and used the committee mechanism to supervise the implementation of judicial orders. Thus, the court have come to fill in the administrative vacuum by assuming the executive functions. Similarly, in Shriram Gas Leak Case, the Supreme Court solicited the help of several expert committees not only with the purpose of advising it on the question of allowing shriram's hazardous chemical plant to recommence operations but to suggest measures to reduce the environmental threats.
Through its judicial creativity, the judiciary has embarked upon the judicial legislation by making up the gaps of legal vacuum. **Shriram Gas Leak Case** is one example of judicial activism which has helped to propound a novel approach in the context of imposition of liability in case of leakage of dangerous material from industrial undertakings. The Supreme Court in this case adopted a strict approach having in view disastrous consequences of leakage of MIC gas from the Union Carbide Plant in Bhopal and refused to follow in totality the rule of strict liability as laid down in **Rylands Vs Fletcher**. Instead Justice Bhagwati evolved the rule of "Absolute liability." In this context Justice Bhagwati observed: "Law has to grow in order to satisfy the needs of fast changing society and keep abreast with the economic developments taking place in the country. As new situations rise the law has to be evolved in order to meet the challenges of such new situations. Law cannot afford to remain static we have to evolve new principles and lay down new norms which adequately deal with new problems which arise in a highly industrialists economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter in that in any other foreign country. We have to develop our own law and if we find it necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are
concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability." Accordingly, a new principle of absolute liability was propound by J. Bhagwati in the following words: "We are of the view that an enterprise which is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding area owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of activity which it has undertaken. . . . We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous and inherently dangerous activity resulting for example, in the escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operates vis-a-vis the tortious principle of strict liability under the rule in Reylands V Feltcher."  

This judicial legislation filled in the gaps in the law which existed prior to the adoption of Public Liability Insurance Act, 1991. Such judicial legislation despite its having now been incorporated in the statute, still remains a good law though the apex court has declined to apply its principle relating to award of damage in subsequent cases.
C. PROBLEM OF MONITORING POLLUTION

It must be stated that identification and monitoring of pollutants is by no means an easy task. The problem of identification and monitoring stems from the multiplicity of pollutants and different manners of their escape into the atmosphere. Another factor which stands in the way is the vast infrastructure required to undertake this task and the absence of willingness on the part of persons of administration designated for the purpose to properly undertake the functions assigned to them.

The Supreme Court, in the case of M.C. Mehta V Union of India has come to the rescue of the hapless public exposed to the grave dangers and health hazards created by vehicular emissions from more than 1.8 million vehicles plying in Delhi by directing the transport authorities to take to their task of monitoring the vehicular emissions in an effective way. The court, concerned over the rising vehicular pollution which constituted 60 per cent of air pollution in Delhi, that included poisonous pollutants such as carbon monoxide, hydrocarbons and oxides of nitrogen and sulphur, called for every available information on the subject by various ministries of transport, gas, environment and others and ordered the constitution of a committee under the chairmanship of Justice K.N. Saikia, a retired judge of the Supreme Court. The committee was asked to examine details and present bimonthly reports on technologies available for vehicular pollution control, low cost
alternatives for operating vehicles at reduced pollution levels and to make recommendations accordingly.

In the pursuance of this judgement, the Justice Saikia Committee has been making regular bimonthly reports which are submitted in the court. Simultaneously, hearing of the case had been conducted on related issues. A significant order was passed by the Supreme Court on January 8, 1992, directing that if any Delhi Transport Corporation (DTC) bus or any private bus on the fleet of DTC is found emitting excessive smoke, that fact may be brought to the notice of a DTC officer to be named, under the intimation to the Registrar of the Supreme Court and on receipt of the information from any member of the public, the DTC Officer concerned will immediately have the bus checked and intimate the action taken to the Registrar of the Supreme Court.

It is submitted that the problem of monitoring pollution is a difficult one. The technique of appointing commission to enquire into the details of vehicular technologies for pollution control and the mechanism of monitoring of pollution as desired by the court is a welcome move. Since government is not committed to an honest and sincere task regarding monitoring of pollution, the responsibility to a great extent will have to be shared by voluntary organizations or public spirited citizens as well.

D. FREEDOM OF INFORMATION AND THE RIGHT TO KNOW

There is a close link between the government accountability and a citizen's ability to secure authentic information. Public access to government information in
democratic society is desirable as it enables citizens to exercise their political choice more meaningfully. It not only helps to check the abuse of executive power but influences the decision-making process to a better direction wherein an atmosphere of openness the government can mend administrative follies. The right to know at the same time in addition to improving the quality of decision-making also strengthens participatory democracy. On the contrary, secrecy erodes the legitimacy of elected government by providing a cover to conceal its misdeeds. Actions and policies of Government cannot in such situation be fairly judged by electorate. Consequently, accountability of the former is greatly inhibited.

The right to know assumes special significance in environmental matters as government decisions on developmental plans may have the tendency to displace myriads of people and affect their lifestyles and livelihood. In such situations it becomes the duty of the government to inform the public of harmful consequences of their intended economic activities and it becomes also a right of the public to freedom of information and right to know, by having access to governmental records so as to assess for themselves the ill effects of development plans intended to be undertaken.

It is unfortunate that we do not have any legislation which provide for risk communication and emergency planning mechanism against industrial negligence cases. The Bhopal gas disaster is one good example of such legal vacuum. This
tragedy could have been avoided if the right people had obtained the right information at a time when they were capable of appreciating it and taking appropriate preventive action. Hence, there is an urgent need of devising a regulatory mechanism to prevent reoccurrence of events like Bhopal and which provide for the right of information to people. The necessity of enacting a specific legislation which provide for right to know becomes more pressing in view of the changed economic scenario wherein the economy is being liberalised and foreign investment wooed. This development is likely to involve transfer of technology with the transnational corporations making insurgence in the industrial economy of developing state. Therefore, laws will be needed which provide for systematic, accurate and comprehensive characterization of risk information, identification of toxilogical properties of individual chemicals, environmental impact analysis of location of dangerous industries so that public health, safety and environment could be adequately secured.

The Supreme Court of India has done a commendable task in shaping the broad contours of community right to know by elaboration of Articles 19 (1)(a) and 21 of the constitution pertaining to fundamental rights of freedom of speech and expression and personal liberty respectively.

Justice Mathew was the first to recognise the citizen's right to know when he observed in the case of State of Uttar Pradesh V Raj Narain. "In a government of
responsibility like ours, where all the agents of public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security... To cover with veil of Secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self interest or bureaucratic routine. The responsibilities of officials to explain and justify their acts is the chief safeguard against oppression and corruption.  

Justice Bhagwati has also recognised the right to know as implicit in Article 19 (1) (a) of the Constitution in Judges Transfer Case. And latter Justice Mukharji in Reliance Petrochemical's Case recognised this right as a part of right to life as guaranteed under Article 21 of the Constitution.

The recent judicial development has been the extension of citizen's access to official environmental information as is evidenced by the judgement of the Bombay High Court in an unreported case of Bombay Environmental Action Group V Pune Cantonment Board and an order of the Supreme Court in a
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minutes of Board's meeting under section 41 of the said Act. Permitting such "will amount to creating an extra-legal authority to supervise and control the working of cantonment Board, which is not permissible. The right conferred by Art 19(1) (a) will not include in its import such a right of inspection or to get copies of documents." The Bombay High Court rejecting the first contention of the respondents observed that:

"The Supreme Court in S.P. Gupta's Case has in terms construed the scope of Art. 19(1)(a) of the constitution. If Art. 19(1)(a) takes in its import the disclosure of information in regard to the functioning of the Government and the right to know about it, which is implicit in the right to free speech and expression guaranteed under Art. 19(1)(a) of the constitution of India, then the right of inspection as claimed by the petitions ... must flow from the said fundamental right." 166

The court placing reliance on role of social action groups as highlighted by the Supreme Court in Neerja Chaudhary V State of M.P.; 167 the importance of people's participation in decision making process of local bodies in Narendra V Manikarao; 168 and the need for reconciling the conflict between development and conservation in larger interest of the people as asserted in R.L. and E. Kendra Dehradun V State of U.P. 169 rejected the second contention of the respondents and held that an environmental action group has a restricted right to information and right to inspection
provided such right is exercised bona fide, and subject to the payment of requisite fees fixed for the purpose by the Board and to the refusal of permission by the Cantonment's Executive Officer, if he, after recording the reasons, finds that such request is not made for a genuine purpose or granting inspection will be against the public interest. The court allowed inspection of documents relating to permission of construction in respect of certain buildings to the Hon. Secretary of the Bombay Environment Action group and Save Pune Citizens committee or a person specifically authorised in this behalf by them.

The decision of Bombay High Court is of seminal importance in so far as it recognised the Environmental Action group's right to information flowing from fundamental right of freedom of speech and expression, such right was independent from the government's claim to privilege under the Indian Evidence Act of 1872; and this right may be asserted even when there are no illegalities alleged provided the group acts bona fide and for a genuine purpose. 170

In the second case between the same parties i.e. Bombay Environmental Action Group Vs Pune Cantonment Board 171 the Supreme Court made even more significant order. It extended the right of information not only to the social action group or any pressure group but to all persons residing within the area. Such right, as per the court's order could be refused if the interests of security do not permit inspection of documents. Thus, the order restricts
the exceptions or wide discretion as conferred on municipal officers by the earlier decision of the Bombay High Court. The court's order has certainly widened the scope of the right to know. In other words, the concerned authority which is approached by a recognized social action group having interest in the locality or even the individual concerned cannot be denied access to information except where the interest of security demand a decision to the contrary. Thus, the citizens have virtually an unqualified right to seek information from any statutory authority affecting the interests of the people.

E. PUBLIC AWARENESS

The law by itself is inadequate to bring about the desired change in society without public awareness and participation in the process. Unfortunately, lack of awareness and apathy of the people towards environmental concerns and the grave consequences of ignoring environmental priorities, have acted against changing the situation. The obvious consequences of this neglect has been that even age old norms of good living which once found a part of our culture are no longer followed.

A step to retrieve this situation was taken recently by the supreme Court in the M.C. Mehta Vs Union of India. This was a public interest petition in which certain directions of the court were sought to be issued against the Union of India on environmental pollution. The court in this case perceiving the importance of public awareness observed:
"Enactment of laws regarding water and air pollution control was not sufficient. No law can indeed effectively work unless there is an element of acceptance by the people in society. In order that human conduct may be in accordance with the prescribed law, it is necessary that there should be appropriate awareness of what the law requires and an element of acceptance by the people that the requirement of the law is grounded in a philosophy which is to be followed. This is possible only when steps are taken to make the people aware of the indispensable necessity of their conduct being oriented in accordance with the requirement of the law."^{174}

On the issue of wide publicity of public awareness as was prayed in the petition the court said: "We are in a democratic polity where the dissemination of information is the foundation of the system. Keeping the citizens informed is an obligation of the government. It is equally the responsibility of society to adequately educate its various component so that awareness percolates down to every stratum of society."^{175}

Consequently, the court issued the following directions to the government of India:

(1) The Union Government was asked to issue directions to all the state governments and the Union territories to invariably enforce through collectors, as a condition for licence on all cinema halls, touring cinemas and video parlous, to compulsory exhibit free of cost at least two slides/messages on environment during each
show The Ministry of Environment was directed to come efficiently carried the message home on various aspects of environment protection and pollution. The material for slides should be striking so that it leaves an impact on the mind of viewers. The failure to comply with this direction should be treated as a ground for cancellation of licence by the appropriate authorities;

(2) The Ministry of Information and Broadcasting of Government of India should without delay, start producing information films of short duration highlighting the various aspects of environment and pollution and the benefits of clean environment on society;

(3) Doordarshan and AIR were directed to produce daily programmes with a duration of five to seven minutes with messages on the environment and a regular weekly programme on the subject; and

(4) The Education Board were directed to take steps to enforce compulsory education on environment up to matriculation from the next academic year and the University Grants Commission (UGC) to consider the feasibility of making environment a compulsory subject at every level in college education.

The judiciary has once again taken the initiative on issues like public awareness which otherwise should have come from
the Government. It is submitted that if the laws are to be effectively enforced and the environment is to be protected it is necessary that the people are made aware of the vices of pollution and its evil consequences. The observations and directions on public awareness, of the supreme court should certainly lead us into a direction where every citizen realized his duty to protect the environment. It is unfortunate that the directions of the apex court are still to be implemented in its true spirit by the government.

6 CONCLUSION

The above discussion demonstrates the active role of the supreme court of India as People's as well as environment court. In fact, during the last decade the court has exhibited its legal scholarship in the development of environmental jurisprudence. The Ratlam Municipality Case, Delhi Gas Leak Case, The Ganga Pollution Cases, Dehradun Quarrying case, Calcutta Taj Hotel, etc are some of the notable examples where the court, not only by liberlising the traditional rule of locus standi has evolved the concept of public interest litigation but has in reduced novel innovative techniques directed at protection of environment. Additionally, by providing new remedies or reliefs, appointing commissions to look into the task of identification and monitoring of pollution the court has been able to provide adequate relief and compel the state to carry out the directions given by it from time to time.
The supreme court has also to a great extent succeeded in bridging the gap between the law and its implementation. Apart from giving direction to government and local bodies as and when their slacklessness was brought to its notice. The court has come down with heavy hands on the inactive industrialists and forced them to rise to the occasion and fulfil their constitutional duty relating to environment.

The apex court has also given new direction to environmental justice by giving its vital observations on Environmental education, public awareness, protection of Public and workers, fundamental rights and duties, neutral environment experts, pollution insurance, quantum of damages in pollution accident cases and principle of absolute liability etc.

The role of higher judiciary as is witnessed from majority of the cases decided by it has been worth appreciating. The court has successfully done its job, fulfilled its obligation and performed its duty. It is our submission, that judiciary is not the only effective forum to resolve environmental problems. Pollution is a problem which can be effectively solved only through public awareness and political will rather than judicial will. No doubt, judiciary can and does play a role of catalyst and thereby speed up and gear up the process but it has to be initiated by and from the public and none else. Hence, there is urgent need that citizens as well as the state must sit up and take notice of environmental degradation and take appropriate
steps to improve it.

Secondly, the environmental issues are complex one and need to dwell on points of scientific and technical relevance. The courts in such situations find it difficult to form its own independent opinion and take recourse to the help of expert committees which is a long time consuming exercise. In order to overcome such difficulties it is submitted that the suggestion made by the Supreme Court in the Delhi Gas leak case for the setting up of environment courts for speedy disposal of environmental cases, if implemented will be a right step in the right direction.

Notes and References

3. Id, at 1623.
4. Id, at 1628.
5. Ibid.
6. Ibid.
7. The judgement of the Supreme Court in Gobind Singh Vs Shanti Sarup, AIR 1979, SC 143, pronounced even before Ratlam Municipality case, is noteworthy and is certainly a right step to preserve environment free from pollution in the interest of health, safety and convenience of public at large. The apex court has rightly upheld the view taken by subdivision Magistrate, Khanna in passing the conditional order under sec. 133 Cr.P.C. where by the appellant was called upon to demolish the oven chimney which emitted smoke which was alleged to be injurious to the health, and physical comfort of the people living or working in the proximity.
8. The Madhya Pradesh High Court has upheld the conditional order passed by ADM, Indore under section 133 Cr. P.C. in the case of Krishna Gopal Vs State of M.P. 1986 Cr.L.J. 396, where a glucose saline factory in a residential area was alleged to emit ash and smoke all the time and its boiler vibrations resulted in loss of sleep to the complainant's husband who was a heart patient, was ordered to be closed and its boiler removed. Justice V.D. Gyani, speaking for the court observed: "Merely because one complainant has come forward to complain about the nuisance cannot be said to be not a public nuisance contemplated by Sec. 133 Cr.P.C. Speaking on the value of environment, he further observed: "A vagrant committing a petty theft is punished for years of imprisonment while a billion dollar price fixing executive comfortably escapes the consequences of his environmental crimes. . . . Society is shocked when a single murder takes place but air, water and atmospheric pollution is read merely as news without slightest protuberance till people take ill, go blind or die in distress on account of pollutants that too result in filling of the pockets of the few."

9. The Andhra Pradesh High Court in Nagarjuna Paper Mills Ltd. Vs Sub Divisional Magistrate and Divisional Officer, Sangareddy, 1987 Cr.L.J. 2021 considered a petition from a magistrates conditional order shutting down a paper Mill which had failed to take adequate pollution control measures. The mill challenged the order, claiming that State Pollution Control Board had exclusive power to regulate air and water pollution. Rejecting this contention the High Court upheld the Magistrates power to regulate pollution by restraining a public nuisance and the powers of Magistrate under Sec. 133 Cr.P.C. to deal with pollution was not curtailed by Air Act 1981 or Water Act, 1974.

10. In K. Ramachandra Mayya V. District Magistrate, 1985 (2) KAR.L.J. 289, the High Court approved of the magistrate's order shutting down a stone quarry, where the latter acted on complaints from neighbouring residents that the blasting of rocks at the quarry caused damage from flying stone chips.

Similarly, the Kerala High Court in P.C. Cherian V State of Kerala, 1981 Ker. L.T. 113 upheld the magistrates order under section 133 Cr.P.C. directing the petitioners to stop the service mixing of carbon in their rubber factories, the process emitted carbon particles and polluted the atmosphere in the vicinity, until they introduce gadgets or equipments which would present dissemination of carbon black into atmosphere.
See also, Tata Tea LtdVs. State of Kerala 1984, KER L.T. 645.


13. There are however a few exceptions to the traditional rule of standing. For example, any person can move a writ of habeas corpus for the production of a detained person and a minor may sue through his/her parent or guardian.

14. There was, however a narrow exception under the traditional standing rule in regard to public injuries redressal. For example, citizens could bring environmental actions by way of 'rate payer' i.e. some one who pays a rate, cess or assessment on value of his property to local authority which are applied for local purposes, to compel local authorities to perform their public duties even if rate payer suffered no harm. Thus, the apex court has in K.Ramdas Shenoy Vs The Chief Officers, Town Municipal Council, Udipi, AIR 1974 S.C. 2177, has upheld a rate payer's right to challenge an illegal sanction to convert a building into a cinema hall.

15. In United Kindom, for instance, Lord Denning has advocated for the liberalization of rule of locus standi in N. Mcwriter Vs Independent Broadcasting Authority (1973). 1.A11 E.R. 184 and in R. Vs Greater London Council, Exparte Black Burn (1976) 3 A11 E.R. 184, R Vs Metropolitan Police Commissioner, Exparte Black Burn and others (1973), All. E.R. 324 and R Vs Metropolitan Police Commissioner, Ex Party Black Burn (1968), 1. All. E.R. 763 and upheld any member of public right having sufficient interest in enforcing it against a statutory or public authority. The relaxation, however, in the rule is very limited. The P.I.L. movement is, in fact, of American origin. In the United States of America, the rule of locus standi has been liberalised by active judiciary to the extent that standing in citizen groups associated with the protection of environment, public health, consumer protection, media access, corporate responsibility, education reforms, employment benefits etc. has been fairly recognized by the courts even though the concerned individual has no direct personal interest provided his action vindicate the public interest.

16. Justices Krishna Iyer and P.N. Bhagwati of Supreme Court, were the fore runner of PIL movement in India. These two judges delivered early judgements liberalising standing and also involved deeply in fostering legal service institutions for poor and week. Both judges strongly recommended in the Report on National Judicature 1977, for broadening of the rule of locus standi as a means of encouraging PIL. See Report on National Judicature: Equal Justice - Social Justice, Ministry of Law, Justice and Company Affairs, Govt. of India (1977) at 61-67.

17. AIR 1975 SC 2092.

18. AIR 1976 SC 2602.

19. Id., at 2609.

20. Bandhua Mukti MorchaVs Union of India (Bonded Labourers Case) AIR 1984 SC 802.


22. Hussainara KhatoonVs Home Secretary, State of Bihar, AIR 1979 SC 1360.


24. People's Union for Democratic RightsVs Union of India, AIR 1982 SC 1473.
25. The Supreme Court had earlier in Uidpi Municipality Case, Supra Note 14, and M.P. High Court in Town Improvement Trust vs Sahajirao, AIR 1978 M.P. 218 recognized a rate payers right to invoke courts jurisdiction if he is prejudicially affected by an act or omission of a local authority.


27. Id., at 354.

27a. S.P. Sharma vs Union of India, AIR 1982 SC 139, 194.

27b. R.B. Samant vs State of Maharashtra (Cement Case), 1982 (1), Bom., Cases Rep. 367 (the judgement of Bombay High Court led to resignation of Maharashtra's Chief Minister Mr. A.R. Antulay); Raju vs State of Karnataka (Arrak Liquor Bottling Case) Kar. Law Rep, 1986 (1) 164 (The judgement led to resignation of Karnataka Chief Minister, Mr R.K. Hedge).

27c. Supra Note 27a.

27d. R.K. Garg vs Union of India (Bearer Bonds Case), AIR 1987 SC 965.

27e. Peoples Union for Democratic Rights vs Union of India Supra Note 24 at 1473.


29. Supra Note 2.

30. For a survey of various cases of environmental pollution under PIL in different High Courts of the Country and the Supreme Court; See Shastri, S., Pollution and the Environmental Law (1990) at 17-33.


32. The Government of India, after having its eyes opened after the Bhopal gas tragedy and on an assurance of the Minister of Chemical and Fertilizers on the floors of the House in March, 1985; through Delhi Administration appointed a 3 member Man Mohan Singh Committee to go into the existence of safety and pollution control measures of chlorine in Shriram Unit and to suggest necessary measures to avoid the risk to
community. The latter visited the caustic chlorine plant and inspected various operations and after through enquiry submitted its report to the Govt. Subsequent to leakage the court also appointed a team of experts to visit the caustic chlorine plant and report as to whether recommendations of the Manmohan Singh Committee had been carried out by management. This team orally reported to the court at hearing on December 7, 1985, that after cursory examination it found that many of the recommendations of Manmohan Committee had been followed. Unsatisfied by the hurried examination of former committee, the court gave a liberty to the petitioner to constitute its own committee of experts and report to court. Pursuant to the liberty given, the petitioner appointed Agarwal Committee which visited the plant and reported to the court that it was not possible to eliminate hazard to the public so long as the plant remained at the present location.

33. Id., at 968.
34. M.C. MehtaV. Union of India, Supra Note 31 at 965.
35. Id at 981.
36. Id.
37. Id.
38. AIR 1987 SC 982.
39. Ibid.
40. AIR 1987 SC at 1086.
41. Id., at 1089.
42. Id at 1091.
43. Id at 1090.
44. By American doctrine of state Action even Private Companies acting under the colour of state law i.e. with the sanction and co-operation of state officials are deemed to be engaged in state action and hence subject to the U.S. Constitution's 14th Amendment, regulating the conduct of the states.
45. For example See, R.D. ShettyV Air Port Authority of India AIR 1979 SC 1928.
46. Supra Note 31, 1095-1098.
47. Id., at 1098.
48. (1868) 19 L. T. 220.
50. Id., at 1099.
51. Id., at 1099.
52. Supra Note 31, at 1090.
54. Id., at 704.
55. See, Id., at 722.
57. Id., at 1037.
58. Id., at 1115.
59. Supra Note 56, at
60. Id., at 1048.
60a. AIR 1988 SC 1115.
61. Ibid.
62. Ibid.
63. Ibid.
64. Ibid.
65. Id., at 1126.
66. The Adhiniyam enlists Statutory duties of Municipalities which inter alia include, treatment and disposal of sewage; provide safe water supply; protect water used for human consumption; provide for public sanitation and disposal of human wastes; disposal of dead animals; limit agricultural operations etc. in the nagar palika areas of Kanpur, Allahabad, Varanasi, Agra and Lucknow to which it applies.
67. Under the Uttar Pradesh Municipalities Act 1916 and the Uttar Pradesh Water Supply and Sewage Act 1975 statutory duty regarding the supply of water to cities and towns and the construction of sewage systems is cast upon the Municipalities.
68.  **Id.**, at 1129.

69.  **Ibid.**

70.  It was disclosed in the affidavit that Rs. 493.63 Lacs had been spent on works to minimise the pollution of river at Kanpur between 1985 and 1987 and that the total allocation of funds by the Central Ganga Authority for Kanpur was Rs. 3694.94 lakhs and that up to the end of the (current) financial year it was proposed to spend Rs. 785.58 lakhs (1985 to 1987) towards various schemes to be completed under the Plan.

71.  **AIR 1985 SC 652.**

72.  It is significant to note that the central Government also became concerned about the destructive mining in Dehradun Valley at the same time the issue came up before the Supra Court. In 1983 the Central Government appointed a working Group headed by D.N. Bhargava to inspect the lime stone quarries in the Dehradun, Musoorrie area. The working Group also prepared reports for the court on few mining operations. the question on their allowing to continue operation was under the consideration of the Supreme Court.

73.  **AIR 1985 SC 652.**

74.  **Id.**, at 656.

75.  **Ibid.**

76.  **Ibid.**

77.  **AIR 1985 SC 359.**

78.  **Id.**, at 363.

79.  **Ibid.**

80.  **Ibid.**

81.  **AIR 1987 SC 2426.**

82.  **Id.**, at 2428.

83.  The Central Government submitted an affidavit prepared by the Director of Environment, Forest and Wild Life in the Ministry of Environment and Forest. This affidavit was rejected by the court because it did not provide satisfactory evaluation of other sources of
limestone within India and the extent to which national defence industries relied on the limestone. Hence, the Central Government was asked to submit second affidavit.

84. AIR 1988 SC 2187.

85. See, Supra Note 77.

86. Supra Note 84 at 2195.

87. It is interesting to note that at the time when the question of renewal of leases in 1982 came before the U.P. State government, the Forest (Conservation) Act was already in force. The state government did not seek the approval of central government for mining operations as required by the Act despite the fact that mining in the valley occupied about 800 hectares of reserved forests. This was perhaps due to confusion as to whether the requirements of the Act applied to renewal of leases which had been granted before the Act came into force. The question was finally resolved by the apex court in Ambica Quarry WorksVs State of Gujarat, AIR 1987 SC 1037 when it held that the State Governments may review preexisting mining leases only with the review and approval of the centre as per requirement of the Forest (Conservation) Act.

88. AIR 1987 SC 1109.

89. Id., at 1114-1115.

90. Ibid.

91. Id., at 1134. For a similar view of Supreme Court see, Subhash KumarV State of Bihar, AIR 1991 SC 420; Chhetriyya Pradushan Mukti Sangharsh SamitiV State of Uttar Pradesh, AIR 1990 SC 2060.


95. 145 Separate Complaints for damages by some Indian victims were filed in different Federal Courts in the
USA. These individual complaints were joined and assigned by the Southern District of New York by order dated 6.2.1985. The individual Federal Court complaints were superseded by consolidated complaint filed on 28.6.1985.

96. The lack of confidence in the Indian Judiciary was reflected when on behalf of Union of India it was asserted before American Court that Indian judiciary is not up to the task of conducting the Bhopal litigation as the justice system here still has to cast off burden of colonialism to meet the emerging needs of a democratic people and therefore, it has yet to reach full maturity to deal such cases. It is not innovative and is ill-equipped to deal such complex cases. See the affidavit of Marc S.Galanter in Upendra Baxi and Thomaspaul, Mass Disaster and Multinational Liability: The Bhopal Case (ILI 1986), p. 161, 96 and of Dadachanji affidavit in Upendra Baxi, Inconvenient Forum and Convenient Catastrophe: The Bhopal Case (ILI 1986) at 72.

97. For a detailed account of form of Plaint instituted by Union of India in the US District Court and in the Court of District Judge Bhopal See. Id and U.Baxi Supra Note 94 Chapter I.

98. U. Baxi, Supra Note 94 at xiv.

99. Id, at xviii.


101. See, Id, at 542.

102. Id, at 549.

103. Id, at 554.

104. Id, at 571.

105. Id, at 573.


107. Order 29 Rules 11 Para (1), in particular which refers to interim payment of damages.

108. Id, Para 2.
109. Supra Note 100 at 579.

110. Id, at 583.

111. Id, at 585.

112. Union Carbide Corporation Vs Union of India, AIR 1990 SC 273, 274.

113. Id, at 275.

114. Ibid.

115. Id, at 277.

116. Id, at 274.

117. Rajiv Dhavan, unimpressed with the court's explanation of the settlement, terms the legal status of this pronouncement as a puzzle. He says, "Although styled as such, it is not an order written as a judgement, it cannot be treated as one. It cannot form the basis of review and writ petitions because they have already been filed. It cannot be a judgement on these petitions because they have not yet been heard. See R. Dhavan, "On Carbide Terms," Indian Post, Bombay, May 12, 1989.

118. Supra Note 112, at 278.

119. Ibid.

120. Ibid.

121. Ibid.

122. The Supreme Court, upheld the constitutional validity of the Bhopal Act, in December, 1989 in Charan Lal Sahu Vs Union of India, AIR 1990 SC 1480. The court acknowledged in this case the Indian Governments exclusive right to represent all Bhopal victims and also that the Act entitled the victims to notice and an opportunity to be heard which was not provided while making its order in Bhopal case, in spite of this breach, a post-decisional hearing would not in the facts and circumstances of the case result in injustice. The court rationalized its view by saying, "To do a great right, after all, it is permissible sometimes to do a little wrong." Id, at 1545.

123. Supra Note 112 at 280

124. Id, at 281-281.
125. Id, at 284.
126. Id, at 283.
129. Dhavan, Supra Note 117.
131. Ibid.
133. Bhagwati, Supra Note 128 at 47.
134. Dhavan, Supra Note 117.
135. Jaising, Supra Note 132.
137. Id, at 272.
138. Id, at 274.
139. Id, at 288.
140. Id, at 294. For contrary opinion of Justice Ahmedi See Id, at 314.
141. Ibid.
142. Id, at 305-106, 308. The minority view (of J. Ahmedi) was that the Union of India without finding it liable in damages on any count cannot be directed to suffer the burden of the shortfall, Id, at 314.
143. Id, at 309.
144. AIR 1987 AP 171.
145. Id, at 181.
146. Meneka Gandhi Vs Union of India AIR 1978 SC 597.


149. AIR 1991 SC 420.

150. Id, at 424.

151. Supra Note 148; See, also Tarun Bharat Singh V Union of India, AIR 1992 SC 514.

152. U. Baxi, Taking Suffering Seriously, Social Action litigation in the Supreme Court of India, 29 The Review (International Commission of Jurists) 37, 42 (December 1982).

153. AIR 1987 SC 1086.

154. Id, at 1099.

155. Ibid.

156. For example see, Charan Lal Sahu Vs Union of India, AIR 1990, SC 1480, Union Carbide Corporation Vs Union of India, Supra Note 136.


159. For further details see, Jasanoff; "The Bhopal Disaster and the right to know," 27, Social Science and Medicine, (1988) at 1113.

160. AIR 1975 SC 865.

161. Id, at 884.

162. AIR 1982 SC 149, 234.


166. Id, at 146.

167. AIR 1984 SC 1099.

168. AIR 1977 SC 2171.

169. AIR 1985 SC 652.

170. Rosencranze, Supra Note at 148-149.

171. Supra Note 165.

172. In this case the petitioners sought the supreme courts special leave to appeal under Article 136 of the constitution after the Bombay High court had rejected their petition under Article 226. The petitioners challenged the construction of "Sterling Centre," a building in the Cantonment area of Pune. The court rejected the special leave petition on facts and circumstance of the case but made important directions to be followed by the respondent.


174. Id, at 384.

175. Id, at 385.