CHAPTER -5

ENVIRONMENTAL PROTECTION AND ROLE OF JUDICIARY

“No one can tell what the law is until the courts decide it. The judges do everyday make law, though it is almost hearsay to say so, if the truth is recognized then we may hope to escape from the dead hand of the past and consciously mould new principles to meet the need of the present.”

C.J. Hamson

Environmental law is an instrument to protect and improve the environment and to control and prevent any act or omission pollution or likely to pollute the environment. In view of the enormous challenges thrown by the industrial revolution, the legislatures throughout the world are busy in this exercise. Many have enacted laws long back and they are busy in remodeling the environmental law. The other have moved their law-making machineries in this direction except the under developed states who have yet to come on this wavelength. India was one of those few countries which paid attention right from the ancient time down to the present age and till date; the tailoring of the existing law to suit the changing condition is going on.

The problem of law making and amending is a difficult task in this area. There are a variety of colours of this problem. For example, the industrial revolution and the evolution of certain cultural and moral values of humanity, the rural and urban areas, development in agricultural technology, waste barren or industrial belts, developed, developing and under developed parts of the land, the rich and the poor Indians; the population explosion and the industrial implosion, the peoples increasing awareness and the decreasing state exchequer; the promise in the political manifestos and the state’s development action. In this whole gamut of problems the Tiwari Committee came out with the data that we have in India nearly five hundred environmental laws’ and the Committee pointed out that no
systematic study has been undertaken to evaluate those legislative developments. Some legal controls and techniques have been adopted by the legislature in the field of Indian Environmental Law. Different legislative controls right from the ancient time, down to the modern period make interesting reading. Attention has to be paid to identify the areas of great concern to the Legislature; the technique adopted to solve these problems; the pollutants which require continuous exercise; the role of Legislature and people’s participation outside. These are some of the many areas which attract the attention in the study of history of Indian Environmental Law.

Constitution of India is the supreme law of the land and all three organs of government i.e. Executive, Legislature and Judiciary derive its powers from Constitution itself. The judiciary, with Supreme Court at apex, has been given the role of final interpreter and protector of the Constitution. Specific provisions regarding environmental protection have been given in the Constitution in the form of Fundamental Duties and Directive principles. Therefore it is the duty of courts in India to devise new ways and principles to protect the environment and help common citizens achieve their fundamental right to healthy life. Supreme Court has devised some important principles to protect environment in India.

5.1 IMPORTANT PRINCIPLES FOR ENVIRONMENTAL PROTECTION DEVISED BY COURTS

To give proper direction of this research work it is imperative to go through some of the important principles adopted by the legislature in framing the laws and courts in implementing them. These principles can be taken as collective effort of all machinery entrusted with environment protection to make it a reality. The Supreme Court has built on the constitutional mandate to protect the environment by deriving and laying down principles to guide environmental decision making. The court has emphasized the need for sustainable development and required administrators to strike an appropriate balance between development activity and protection of the environment. Chief amongst the principles enunciated by the Supreme Court are the precautionary principle, the polluter
pays principle, the public trust doctrine and inter-generational equity. The new environmental jurisprudence has evolved case by case, through public interest litigations field before the Supreme Court and the High Courts in the states.

Environmental concerns arising in public interest litigations have been held to be as important as human right concerns. Both may be traced to the fundamental right to life and liberty. While environmental aspects concern 'life', the human rights aspects concern 'liberty'.

The primary effort of a court dealing with environmental issues is to see that the enforcement agencies take effective steps to implement the law. Although it is not the judiciaries function to ensure day-to-day enforcement, where the executive has ceased to function, the courts have been required to pass orders directing the enforcement agencies to implement the law by necessity.

Public interest litigations have resulted in the closure of polluting factories, the relocation of industry away from rivers, the recovery of compensation from polluters and protective directions in favour of workers employed by the polluting units. Thus, where polluters refuse to establish effluent treatment plants, the court directed the units to shut down. Similarly, where a paper mill was found to commence manufacturing operation without meeting the trade effluent norms, the company was directed to deposit substantial amount in courts and the court registry was directed to invest the amounts until appropriate orders were passed with regard to disbursal of the funds.

The Supreme Court has overseen measures to restore areas damaged by industrial pollution and the payment of compensation to affected farmers on the

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polluter pays principle. In discharging these tasks, the court has obtained the assistance of an independent agency that reported to the court on the adequacy of pollution control devices installed by industry, the damage caused by the water pollution and the cost of restitution.

Polluting industries that disobey closure orders passed by the court are liable to be fined and the directors of such defaulting companies are liable to be imprisoned.

5.1.1 Sustainable Development:

Sustainable development refers to the type or extent of development that can take place and that can be sustained by nature with or without mitigation. The right to a healthy environment is required to be balanced with the right to sustainable development, both of which are implicit in the right to life. Hence, it is essential to achieve balance between industrialization and ecology. Economic development ought not to take place at the cost of ecology or by causing widespread environmental destruction. Equally, the necessity to preserve the environment must not hamper development. Development and environment protection must progress together with due regard to environmental considerations. While the development of industry is essential for the economy of the country, at the same time, the environment and the ecosystems are required to be protected. The pollution created as a consequence of development must not

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exceed the carrying capacity of the ecosystem. Industrial development ought to be sustained and must not be at the cost of ecological degradation\(^\text{13}\).

Two essential features of sustainable development are:

1. the precautionary principle\(^\text{14}\); and
2. the polluter pays principle\(^\text{15}\).

Thus, there is an obligation on the authorities to make a proper assessment of the forests' wealth before allocating forest produce to industries\(^\text{16}\). Where a project involves the displacement of people and the loss of forest, a proper relief and rehabilitation plan for the displaced persons and appropriate ameliorative and compensatory measures to mitigate the environmental impact are necessary.

The role of a court in reviewing infrastructure is limited. The conception of the project, the decision to undertake the project and the manner of executing the project are policy decisions. A court should refrain from transgressing into the field of policy decisions unless the system for execution of the project is arbitrary and the only role for the court is to ensure that the system works in the manner envisaged. Thus, a petition challenging an infrastructural project on environmental grounds must be filed with in a reasonable period of the environmental clearance being granted. Where a petition is filed at a belated stage after vast amounts have been expended on the project, the petition is liable to be rejected on the ground of laches.

5.1.2 Precautionary Principle:

The precautionary principle requires anticipation of environmental harm and the adoption of measures to avoid it or to choose the least environmentally harmful activity. The precautionary principle is necessary due to scientific uncertainty and is based on the premise that it is better to err on the side of caution.


\(^{14}\) As to the precautionary principle.


and prevent environmental harm which might otherwise become irreversible. The precautionary principle ordinarily applies to a case of polluting industry or project where the extent of damages likely to be inflicted is not known. Where the environmental impact is known, the project proponent is required to show what mitigating measures can be taken to offset such adverse impact. Where there is an identifiable risk of serious or irreversible harm such as the extinction of species or widespread toxic pollution, the burden of proof lies on the person proposing the activity that is potentially harmful to the environment. Where the risk is 'uncertain but non-negligible', the project proponent is required to show the absence of a reasonable ecological or medical concern. If insufficient evidence is presented by the project proponent, then the presumption must operate in favour of environmental protection. The precautionary principle imposes the onus of proof on the developer or industrialist to show that the proposed action is environmentally benign. Where a government order permitting a polluting industry to operate close to a drinking water reservoir ignores the precautionary principle, it is an arbitrary order and it is for the industry to show that there is no danger from the pollution even if it is established near the reservoir. The precautionary principle may also be applied to a situation where environmental damage results from facility to fill liquefied petroleum gas in cylinders.

5.1.3 Polluter Pays Principle:

The polluter pays principle require that a polluter bear the remedial or clean up costs as well as the amount payable to compensate the victims of pollution. Thus, tanneries that pollute river are required to compensate the

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20 Majra Singh v Indian Oil Corpn AIR 1999 J&K 81.
victims who have suffered due to discharge of untreated effluents. In the exercise of its writ jurisdiction, the Supreme Court may award damage on the basis of the polluter pay principle against those responsible for polluting the environment. In such a case, the wrongdoer may be required to bear the cost of restoring the damaged environment. However, a fine for causing pollution cannot be imposed by the Supreme Court in the exercise of its constitutional jurisdiction and a person can be punished with a fine only after the procedure prescribed under the environmental law for the trial of offences is followed and the wrongdoer has been found guilty.

5.1.4 Public Trust Doctrine:

The public trust doctrine, on which the Indian legal system is based, is derived from the English legal system. The doctrine rests on the principle that certain resources such as air, sea, running waters and forest are too important to the people as a whole and it is unjustified to make them a subject of private ownership. Thus, the doctrine enjoins the government to protect the resources for the enjoyment of general public rather than permit their use for private ownership or commercial purposes. Therefore, ecologically fragile land along a river could not be leased to a hotelier since this would result in the breach of public trust doctrine. Similarly, deep underground water belongs to the state and the doctrine of public trust extends to this resource.

However, since the doctrine is not absolute, it may be required to yield to a project that is in public interest. Thus, in an instance, a 900 year old tank,
covering about six hectares had to be demolished to make way for a bus stand and a railway station in order to prevent breach of public trust doctrine.27

5.1.5 Intergenerational Equity:

The violation of environmental statute not only affects the existing quality of life but also degrades the environment and adversely affects future generations.28 It is the duty and responsibility of the present generation to protect and improve the environment for the benefit of the present and future generations through careful planning and management of natural resources as it provides the resources for the survival of present and future generations.29

5.2 SOME INSTANCES OF APPLICATION OF THE PRINCIPLE OF ENVIRONMENTAL PROTECTION FOR SUSTAINABLE DEVELOPMENT

5.2.1 The Silent Valley Project

In the late 1970s, the Kerala I Government proposed to construct a dam on Kuntipuzh, a river in the Palghat District of the State with a view to produce 240 M.W. of electricity, to provide irrigation facility to 10,000 hectares of land to provide job to over 2000 people. The area chosen for the aforesaid purpose was known as the “Silent Valley”. This area was one of the world’s richest biological and genetic heritages. According to experts it contained over 900 species of flowering plants and ferns, and several endangered species of animal and birds. In order to save the valley from being damaged, people in general, environmentalists and NGO joined hands against the proposed project. The situation became so tense, that the then Prime Minister Mrs. Indira Gandhi had to intervene and in August, 1980, a Committee was constituted under the Chairmanship of Prof.

M.G.K. Menon then Secretary Ministry of Science and Technology Government of India, New Delhi, and 8 other persons as members out of which four were to be nominated by the Kerala Government and remaining four by the Central Government.

The Committee was required to submit its report within a period of three months but it could submit its Report only in the summer of 1983. The Committee failed to submit a conclusive Report. It was ambiguous. However, the Chairman, Prof. MGK Menon was of the view that the valley should be preserved. In November, 1983, Minister for Electricity, State of Kerala, announced that his government had scrapped the Silent Valley Project in deference to the wishes of Prime Minister Mrs. Indira Gandhi.

The Silent Valley Project was scrapped by the Government of Kerala in November, 1983 but the role of the judiciary, i.e., High Court of Kerala cannot be taken in good spirit. It was not environmentally benign. The reason for this may be that, probably, His Lordship was not aware of the concept of “Sustainable Development.” May be, he favoured development at all cost. In Society for Protection of Silent Valley v. Union of India & Others,30 Hon’ble Mr. Justice V.P Gopalan Nambiar while pronouncing the judgment observed:-

“Counsel for the petitioner stressed the national importance of forests as having been responsible for certain amendments in the Constitution. Reference was made to Art. 48-A of the Constitution whereby the preservation of forests and wildlife is one of the directive principles of State policy. Article 49 was also stressed giving obligation to protect every monument or place or object of artistic or historic interest declared by Parliament to be of national importance from destruction, removal, etc.

Rich and worthy material of a variegated nature was placed before us in regard to the national policy and environmental considerations. We are by no means satisfied that these aspects have not been bore in mind by the Government

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30 The High Court of Kerala pronounced the judgment on January 2, 1980 but it was not reported.
in planning and processing the project. We are also not satisfied that the assessment of these considerations made by the Government and the policy decisions taken thereafter are liable to be reviewed by this Court in these proceedings. Even if, they be open to review no grounds for such review have been disclosed.

...We do not think if necessary to cover the entire gamut of the material—whether scientific, technical, technological or ecological—placed before us in great detail. It is not for us to evaluate these considerations again as against the evaluation already done by the Government. It is enough to state that we are satisfied that the relevant matters have received attention before the Government decided to launch the project. There has been no-non advertence of the mind to the salient aspects of the project. We are not to substitute our opinion and notions on these matters for those of the Government.

We find no reason to interfere. We dismiss these applications with no order as to costs."

5.2.2 B.L. Wadehra v. Union of India

This case deals with Municipal Solid Waste (MSW) management or garbage disposal in urban areas. In almost all cities management of municipal solid waste has not been given due attention and its impact has to be borne not only by the urban poor but also the affluent because of the resultant unhygienic conditions. The outbreak of plague in Surat in 1994 is still fresh in our memory. Municipal wastes are dumped in and around the city by the municipal workers and the sites are poorly managed and are swarmed by vermins, mosquitoes, etc. Composting is seldom practiced and the ground water is contaminated by leachate.

In such a situation the petitioner drew the attention of the Apex Court of India towards the garbage-clearance and management in Delhi. The petitioner

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31 AIR 1996 S.C. 2969
drew the attention of the Court that the National Capital has become 'an open dustbin' with garbage strewn all over. The problem of cleanliness and hygienic condition was alluding the city despite the employment of over 40,000 workers to keep the city clean. The Supreme Court, while disposing of the case made the following observation:

"It is clear from various provisions of the Delhi Municipal Corporation Act of 1957 and the New Delhi Municipal Council Act, 1994 that the Municipal Corporation of Delhi (MCD) and the New Delhi Municipal Corporation (NDMC) are under a statutory obligation to scavenge and clean the city of Delhi. It is mandatory for these authorities to collect and dispose of the garbage/waste generated from various sources in the city. We have no hesitation in observing that the MCD and the NDMC have been wholly remiss in the performance of their statutory duties. Apart from the rights guaranteed under the Constitution the residents of Delhi have a statutory right to live in clean city. The Courts are justified in directing the MCD and the NDMC to perform their duties under the law. Non-availability of funds, inadequacy or inefficiency of the staff cannot be pleaded as grounds for non-performance of their statutory obligations."

Thus, the Supreme Court, came heavily on Municipal Corporations directing them to perform their duties so as to make cities fit for habitation and no excuse of any sort on the part of the Municipal Authorities will be accepted in this regard.

5.2.3 Bangalore Medical Trust v. B.S. Muddappa

This case deals with the significance of public spaces, parks, and pavements. The Bangalore Development Authority Act, 1976 provided for reservation of not less than 15% of the total area of the layout in a development scheme for public parks, and playgrounds, the sale and disposition of which was prohibited under Section 38-A of the Act. One such area earmarked for a park was allotted to Bangalore Medical Trust for establishing a nursing home by the

33 AIR 191 S.C. 1902.
Karnataka Chief Minister in violation to the provisions of the Bangalore Development Authority Act, 1976 as well as in violation to environmental statutes. One Sri B.S. Muddappa challenged the action of the Chief Minister. The matter, ultimately went to the Supreme Court and the judgment for the Court was pronounced by Mr. Justice R.M Sahai:

"Public park as a place reserved for beauty and recreation....is a gift from people to themselves. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its motto, but earning is its objective. A private nursing home can not be a substitute for a public park. No town planner would prepare a blue-print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development Acts of different States require even private house owners to leave open space in front and back for lawn and fresh air.... Absence of open space and public park, in present day when urbanization is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home....."

The Court went on to comment upon the functioning of a public official especially on the manner in which the decision was taken by none other than the Chief Minister of the State for ignoring the existing laws and necessity of the people in the form of parks and open spaces:

"......query on it (area left for park) by the Chief Minister of the State, guidance of way out by the Chairman, direction on it by the Chief Minister orders of the Government resolution by the BDA an allotment were all completed and the site for public park stood converted into site for private nursing home without any intimation direct or indirect to those who were being deprived of it. Speedy or quick action in public institutions call for appreciation but... no one howsoever
high can arrogate to himself or assume without any authorization, express or implied in law, a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law; where the law requires an authority to act or decide, if it appears to it necessary, or if he is of opinion that a particular act should be done', then it is implicit that it should be done objectively, fairly an reasonably. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if action is bereft of rationality, lack objectivity and purposive approach. The action and decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised."

The court held that the authority had exercised powers, contrary to the purpose for which it is conferred on it under the statute, therefore, it is set aside. Alteration in the scheme could have been made, under the provisions only if it resulted in improvement in any part of the scheme but permitting opening of a private nursing home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park with respect to preservation of greenery and open spaces in cities, the following are other important decisions:-

M.L. Sud v. Union of India,\textsuperscript{34} deals with preservation of 435 acres of forest belt in Delhi, known as Jahapana forest.

M.C. Mehta v. Union of India,\textsuperscript{35} restriction on use of parks for marriages or commercial purposes, prohibiting the Delhi Chief Minister from running a camp office in a public park:\textsuperscript{36}

\textsuperscript{34} (1992) Supp. (2) S.C.C. 123.
\textsuperscript{35} (1997) (6) SCALE 13 (S.P.).
\textsuperscript{36} (1997) (6) SCALE 14 (S.P.).
Clearing the Delhi Ridge area from unauthorised encroachments\textsuperscript{37} including the place of worship:\textsuperscript{38} protecting Asola wildlife sanctuary within the National Capital territory from degradation.

5.2.4 M.C. Mehta v. Union of India\textsuperscript{39}

This case was filed to procure order from the court to shift industrial units from the heart of the city, especially from the densely populated urban areas as they pollute and spoil the environment, rendering it unfit for human habitation. This case relates, in general, to all cities in particular to the city of Delhi, where population is increasing by leaps and bound.

For the proper development of the city of Delhi. Master Plans were prepared in 1962, under which the National Capital Region Planning Board Act, 1985 (Capital Region Act) came into being. Then the National Capital Region Plan, 2001 came into being. The Master Plan approved in 2001 has dealt with hazardous/noxious/heavy and large industries. Increasing population had consumed open spaces and green areas and presence of small, medium and big industries were making the life miserable. Under the Act, hazardous and noxious industries were required to be shifted by the end of 1993. As no action was taken in this regard therefore, the present writ petition was initiated.

It was held that the industries were operating illegally in Delhi in utter violation of the mandatory provision of the Master Plan and therefore, they must stop operation in Delhi and relocate themselves to some other industrial estate in the National Capital Region (NCR). The Court further observed that the concerned officers of the Delhi Administration are equally responsible for continuous illegal operation of the industries in Delhi; therefore, the Chief Secretary Delhi Administration shall hold an inquiry and fix the responsibility of the officers/officials who have been wholly re-miss or negligent in the performance of the statutory duty entrusted to them under the Master Plan.

\textsuperscript{37} (1996) (1) SCALE 72.
\textsuperscript{38} (1996) (2) SCALE 55 (S.P.).
\textsuperscript{39} AIR 1996 S.C. 2231.
The heavy and large industries were required to shift within six years to Delhi Metropolitan Area (DMA) and NCR. Some of the industries offered for modernization and also for conversion from polluting to non-polluting industries.

Sometimes, however, the courts have taken peculiar stands, which becomes difficult to explain. In Bayer (India) Ltd. v. State of Maharashtra, pharmaceutical and chemical industries located in an area in the jurisdiction of Thane Municipal Corporation (TMC) requested the corporation not to permit residential buildings to be constructed within a radius of one kilometre from the boundaries of these factories on the ground that these factories have stored and use hazardous chemical and population in their neighbourhood is likely to be exposed to risk. According to industry owners, it was a danger zone. On the basis of the request the TMC started rejecting building plan in this area.

The action of TMC was challenged by the colonisers and developers in the High Court and the High Court quashed the direction of the TMC with a direction to re-examine the building plans without having regard to the request of the industry owners.

This order of the High Court was challenged by the petitioner in the Supreme Court and the petitioner was directed by the Supreme Court to approach the High Court for review of the judgment in question. This time High Court agreed with the request of the industry owners and held that a safety zone with a radius of one kilometre was absolutely essential around the hazardous industrial units and TMC was right in not allowing any new development in that area. The Court further observed that the units in question are large industrial undertakings, therefore, shifting of which is hardly feasible. As of necessity, these units have to be within the close proximity of are where the entire infrastructure is available and can not be located at some isolated spot and therefore the court held that the best in the present situation would be to at least maintain a safety distance around hazardous industries.

Bayer (India) Ltd. was not satisfied with the decision of the High Court. It went in appeal before the Supreme Court where environmentalist lawyer M.C. Mehtra was successful in persuading the court that 1 km. prohibitory zone infringed on the rights of the residents and at the same time a large number of persons residing in the area were exposed to the risk of industrial accident. The consisting of Mr. Justice Kuldip Singh and Mr. Justice B.L. Hansaria observed:

"....It was thought by us that if the industrialists wanted to safeguard their interest in the event of some accident happening in their industries, it was for them either to obtain the ownership of the area in question or to shift their factories to such places where the residential areas could be kept wide apart from their factory premises.”

The Court while pronouncing the order directed the Central Government to constitute an authority under section 3(3) of the Environment (Protection) Act, 1986 to examine the issues arising in the case and to make a report to the Central Government and the TMC was asked to await the report of the authority before finally sanctioning the plan. This observation of the Supreme Court, it is submitted, is not appropriate. Hazardous industries were already there, the area in the neighbourhood was still developing, as happens that cities keep on growing and expanding gradually, therefore, development and expansion of the city in the neighbourhood of factories could have been prohibited and in other directions it should have been permitted. I would not be appropriate to ask the industries especially big establishments to shift every time residential colonies come up near such establishments. The Development Authorities, Municipal Corporations may be asked to drawn out plan especially in regard to big industries so that they may not have to shift in the name of security to the people. This kind of order is likely to discourage the entrepreneurs to carry on developmental activities. The order passed by the High Court during the examination of review petition was, it is submitted, appropriate.
5.2.5  M.C. Mehta v. Union of India,\textsuperscript{41}

Popularly known as Delhi Vehicular Pollution case,\textsuperscript{42} a suit was filed in the Supreme Court regarding the vehicular pollution in the country, and especially in Delhi and for this purpose reference was made to Articles 48A and 51A(g). The Court issued specific direction for educating the people on television and in schools. It also directed the Ministry of Environment and Forest to form a committee for assessing available technology for low cost alternatives for operating vehicles and making specific recommendation on pollution control regulations. The Government of India was directed to provide lead free petrol to four metropolitan cities of Delhi, Bombay, Madras and Calcutta from 01-04-1995 and to supply petrol with a maximum lead content of 0.15 g/lt. in the entire country December, 1996. Later the Court also asked the Union Government to convert all government vehicles and public transport to run on CNG fuel or on lead free petrol with catalytic converters. Subsequently the court banned the sale of leaded petrol altogether. It was also banned the plying on Delhi roads of all commercial vehicles that are more than 15 years old. Further, it gave directions for conversion of all the buses to CNG mode by 30-09-01 in the city of Delhi. In addition to this, the court ruled that after 01-04-04 no commercial vehicles would be registered in Delhi which does not conform to the Court's order dated 28-07-98. Later on in its order dated 28-09-2001 the Supreme Court at the request of the Delhi Government extended the time limit till 18-10-2001 for converting entire city bus fleet into single fuel mode using CNG subject to certain conditions. Subsequently the deadline was extended till 31-01-2002 by order dated 18-10-2001 for conversion of the city's bus fleet to the CNG mode.

It was proposed that keeping into account the supply of CNG and the number of buses plying in the city, the Court may permit for a mixed fleet of public transport vehicles but this request was rejected by the court (Supreme Court).

\textsuperscript{41} J.T. 201 (4) S.C. 2001.
\textsuperscript{42} M.C. Mehta v. Union of India, W.P.N. 130 29 of 985.
More recently the Government of Maharashtra had submitted a request to the Supreme Court that some more time be given to the Government for conversion of city bus fleet to CNG mode, which the Supreme Court rightly refused.\textsuperscript{43} However, no correct static is available as to what extent in metropolitan cities this order had been obeyed. Nevertheless on the basis of experience of the city of Delhi, it can be said without doubt that some changes had taken place and a drop in the level of pollution can be realised since the introduction of CNG mode of fuel. However, it is desirable that the stand taken by the Hon'ble Supreme Court of India should not be relaxed, however, forceful lobbying is done by the State Government in the name of financial scarcity or of private transporters that due to new guidelines, they are unable to operate buses.

5.2.5 \textbf{Rural Litigation Entitlement Kendra, Dehradun v. State of U.P.},\textsuperscript{44}

This is an important case that sets an example of sustainable development and pollution of environment. The Himalayan mountains, especially in the region of Dehradun and Mussoorie are rich with limestone which are useful for manufacture of quality steel and defence equipments. The mining operations were going on in the region since long time in an unplanned way resulting into damage to hills due to use of dynamite cave ins and slumps and mining debris clogged river channels during monsoon and severe flooding. Mining operations have helped in the increase of the incidents of landslide causing loss of life and property of villagers. Springs and water resources were drying up and forests were adversely affected. In a scenario like this in 1962, the State Government of U.P. granted mining lease for a period of 20 years to industrialists. They were supposed to carry on mining operations as per mining rules taking precaution for safety of life and property as well as to land scape of the area. But they too, continued illegal and destructive practices and flouted the safety rules with impunity. When the period of lease expired in 1982 and they submitted applications for renewal, the government declined to renew the lease recognizing

\textsuperscript{43} Hindustan- April 16, 2004.
\textsuperscript{44} AIR 1985 S.C. 652.
the dimensions of the ecological destruction in the valley. Industrialists knocked at the door of the Allahabad High Court for remedy. The Court issued injunction allowing the applicants to continue the mining operations probably recognizing the rights of the miners in the absence of any specific charge against them; may be also giving economic development priority over ecological factors. However, before the final disposal of the case by the High Court, the Rural Litigation and Entitlement Kendra, Dehradun submitted a letter to the Supreme Court under Article 32 complaining against environmental degradation and the Supreme Court treating the same as a writ petition directed that:

(i) blasting operations pending review of the case be stopped forthwith (i.e., in 1983) and at the same appointed an expert Committee known as Bhargava Committee to assess the mining operations,

(ii) After studying report of Bhargava Committee, in 1985 the Court ordered that most dangerous mines and those falling within the Mussoorie city Board limits should not be granted lease to continue their operations and the operation being carried on under the order of the High Court be stopped at once. The Court also restricted the mining operations of the industries not covered by the first category. Along with this, the court appointed another committee, known as Bandopadhyay Committee to consider plans submitted by the minors to safeguard the environment and to hear the claims of people adversely affected by mining. However, the mining operations carried on by the State of U.P. was allowed to be continued,

(iii) The Bandopadhyay Committee submitted its report in 1987. The report was based primarily on ecological considerations ignoring the effect of closure of mining operations on the national interest as well as on the interest of the people. The Court made the following observations:-

"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 steel and defence ornaments. The affidavit should also specify as to how much of high grade of ore is being imported into the country and as to whether other indigenous sources are available to meet such requirements...”

The affidavit submitted by the Ministry of Environment and Forests contained the required information and stated that the requirements of defence industries did not justify continuing operations of any mine in the Dehradun-Mussoorie region.

In 1988, the Court concluded that all mines in the Dehradun valley remain closed, except three. It further directed that leases of the three remaining mines should not be renewed upon expiration of their remaining duration of lease and their operation be closed.

The Court, thus has tried to strike a balance between development and preservation and conservation of ecology of the region. It is submitted this is a right approach.

5.2.6 In Sriram Food and Fertilizer case,45

In this Supreme Court directed the company manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighbourhood, to take all necessary safety measures before reopening the plant. There was a leakage of chlorine gas from the plant resulting in death of one person and causing hardships to workers and residents of the locality. This was due to the negligence of the management in maintenance and operation of the caustic chlorine plant of the company. The matter was brought before the Court through a public interest litigation. The management was

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directed to deposit a sum of Rs. 20 lacs by way of security for payment of compensation claims to the victims of oleum gas leak with the Registrar of the Court. In addition, a bank guarantee for a sum of Rs. 15 lacs was also directed to be deposited which shall be encashed in case of any escape of chlorine gas within a period of three years from the date of the judgment resulting in death or injury to any workman or any person living in the vicinity. Subject to these conditions, the court allowed the partial reopening of the plant.

The efforts of the highest court in environment pollution control through public interest litigation is indeed laudable, particularly when the legislature is lagging behind in bridging the lacuna in the existing legal system and administration is not well equipped to meet the challenge.

In M.C. Mehta v. Union of India, the Supreme Court ordered the closure of tanneries at Jajmau near Kanpur, polluting the Ganga. The matter was brought to the notice of the Court by the petitioner, a social worker, through a public interest litigation.

The Court said that notwithstanding the comprehensive provisions contained in the Water (Prevention and Control of Pollution) Act and the Environmental (Protection) Act, no effective steps have been taken by the Government to stop the grave public nuisance caused by the tanneries at Jajmau, Kanpur. In the circumstances, it was held that the Court was entitled to order the closure of tanneries unless they took steps to set up treatment plants.

5.2.7 In M.C. Mehta v. Union of India,

In this case petitioner brought a public interest litigation against Ganga water pollution requiring the Court to issue appropriate directions for the prevention of Ganga water pollution. He claimed that although Parliament and the State legislatures have passed several laws imposing duties on the Central and State Boards constituted under the Water (Prevention and Control of Pollution)

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Act and the municipalities under the U.P. Nagar Mahapalika Adhiniyam, they have just remained on paper and no proper action has been taken pursuant thereto. The Supreme Court held that the petitioner, although not a riparian owner (living on the river side) is entitled to move the court for the enforcement of various statutory provisions which impose duties on the municipal and other authorities. He is a person interested in protecting the lives of the people who make use of the Ganga Water. The nuisance caused by the pollution of the river Ganga is a public nuisance which is widespread and affecting the lives of large number of persons and therefore any particular person can take proceedings to stop it as distinct from the community at large. Accordingly, the court directed the Kanpur Nagar Mahapalika to submit its proposals for effective prevention and control of water pollution within 6 months to the Board constituted under the Water Act.

It also directed the Mahapalika to get the dairies shifted to a place outside the city and arrange for removal of wastes accumulated at the dairies so that it may not reach the river Ganga, to lay sewerage line wherever it is not constructed, to construct public latrines and urinals, for the use of poor people free of charge, to ensure that dead bodies or half-burnt bodies are not thrown into the river Ganga and to take action against the industries responsible for pollution, licences to establish new industries should be granted only to those who make adequate provisions for the treatment of trade effluent flowing out of the factories.

The above directions apply mutatis mutandis to all other Mahapalikas and municipalities which have the jurisdiction over the areas through which the river Ganga flows.

In Ramesh v. Union of India,48 it has been held that public interest litigation for ensuring communal harmony is maintainable under Article 32 of the Constitution. In Subhash Kumar v. State of Bihar,49 it has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in the right of life under Article 21 of the Constitution.

If anything endangers or impairs that quality of life in violation of laws, a citizen has right to have recourse to Article 32 for removing the pollution of water or air which may be detrimental to the quality of life. Such a petition under Article 32 is maintainable at the instance of affected persons or even by a group of social workers or journalists. In M.C. Mehta v. Union of India,\textsuperscript{50} it was held that public interest litigation against pollution in Delhi caused by increasing number of petrol and diesel driven vehicles is maintainable. The Court directed the Delhi Administration to make the Central Motor Vehicles Act, 1989 effective from April 1, 1991 and to implement it seriously and effectively.

In Vincent Panikurlangara v. Union of India\textsuperscript{51} the petitioner, an advocate and General Secretary of Public Law Service Society, Cochin, filed a petition under Article 32 asking for directions for maintenance of approved standards of drugs and banning on injurious and harmful drugs. It was held that the public interest writ was maintainable as the issues raised by the petitioner were of vital importance, i.e., the maintenance and improvement of public health. The Court directed the Central Government to compensate and reimburse him for his expenses in recognition of his service for bringing the matter before the Court.

In M.K. Sharma v. Bharat Electronics Ltd.,\textsuperscript{52} the petitioners, the Bharat Electronic Employees Union, claimed that the employees working in the transmitter assembly room of the company, Bharat Electronic Limited, a public sector undertaking, were exposed to the ill-effects of X-ray radiation because of the failure on the part of the company to comply with safety rules and safety measures and claimed compensation for the violation of their fundamental right. Though on medical examination, no ill-effect was apparently found on the workers but the respondent agreed to pay compensation in the event of proof of ill-effect on a future date. The Court directed that safety rules and other safety measures must strictly be complied with and there should be annual checking of it by competent authority. The Court also directed that every workman and officer

\textsuperscript{50} (1991)\textsuperscript{2} S.C.C. 137.
\textsuperscript{51} (1987) \textsuperscript{2} S.C.C. 165.
\textsuperscript{52} (1987) \textsuperscript{3} S.C.C. 231.
working in the sensitive portion of the factory must be insured for Rs. 1 lakh and Rs. 2 lakhs respectively over and above the general insurance, if any, available to them. The cost of these insurance policies were to be borne by respondents as business expenditure.

5.2.8 M.C. Mehta v. Union of India and others,

In this case a public interest litigation was filed by environmentalist lawyer Sri M.C. Mehta under Article 32 of the Constitution for seeking a direction to the Haryana Pollution Control Board to control pollution caused by the stone crushers, pulversers and mine operators in Ballabghar area of Faridabad. The principle question was whether to preserve environment and control pollution, the mining operation should be stopped within the radius of 5 km from the tourist resorts of Badkhal lake and Surajkund in the State of Haryana. After getting report from the environmental scientists and engineers as to the environmental conditions prevailing at the two tourist resorts and steps taken by the mine operators to prevent pollution of environment, it came to the conclusion that the mining operations in the vicinity of tourist resorts are bound to cause serious impact on the local ecology. The Court noted with concern that mining operations bring about extensive alteration in the natural land profile of the area. Mined pits and unattended dumps of soil are the irreversible consequences of mining operations. Rock blasting, movement of heavy vehicles, movement and operations of mining equipment and machinery cause considerable pollution in the shape of noise pollution and vibration. The ambient air in the mining area gets highly polluted by the dust generated by the blasting operations, vehicular movement, loading/unloading/transportation and the exhaust gases from equipment and machinery used in the mining operations. It was found that both lakes were monsoon fed bodies and the mining operation will affect the water quality of lakes and their water level. Mining may also cause fractures and cracks in the sub-surface rock layer causing disturbance to the aquifers which are the source of ground water and this may disturb the hydrology of the area.

In the light of these facts, the Division Bench of the Supreme Court comprising of Mr. Justice Kuldip Singh and K. Ramaswamy directed that the mining operations in these areas be stopped within 2 km. radius of the tourist resorts. Apart from this, mining leases within the area of 2 km. to 5 km radius should not be renewed without obtaining prior “no objection” certificate from the Haryana Pollution Control Board and Central Pollution

5.2.9 **Vellore Citizens Welfare Forum v. Union of India and others.**

In this case the Court has dealt with at length relationship between environment and development and it has given its approval with regard to “sustainable development” rather than “absolute development” or “development at all costs.”

A Writ Petition was filed under Article 32 of the Constitution of India by Vellore Citizens Welfare Forum against the large scale pollution which was being caused due to the enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. The petitioners alleged that tanneries discharge untreated effluent into agricultural fields, road-sides, water ways and open lands which ultimately reaches into river Polar, which is the main source of water for the residents of the area. The pollution of water has risen to such an alarming stage that drinking water is not available. The Tamil Nadu Agricultural University Research Centre, Vellore after research found that nearly 35000 hectares of agricultural land in the tanneries belt has become either partially or totally unfit for cultivation. An expert committee found the allegations to be true. It was argued on behalf of the tannery owners that tannery business is a big foreign exchange earner. It has come to stay. It cannot and should not be abolished. On this the question arose, should the tannery business be encouraged on the basis of monetary consideration &t the cost of the lives of lakhs of people? The Supreme Court appointed an expert committee to report on the matter. The Committee after examining the factual position presented a detailed report to the

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54 AIR 1996 S.C. 2115.
Supreme Court. After examining the report the Supreme Court, pronounced its judgment.

The judgment of the Supreme Court is an effort to strike a balance between economic development on one hand and welfare of the people on the other. The Court held that it is true to state that leather industry in India has become a major foreign exchange earner and it provides employment to a good number of persons, it has no right to destroy the ecology, degrade the environment and pose a health hazard. It cannot be permitted or even to continue with the present production unless it tackles by itself the problem of pollution created by the tannery industries.

The Court went further to state that the traditional concept of development and ecology are opposed to each other is no longer acceptable. "Sustainable development" is the answer. In the international sphere, ‘Sustainable Development’ as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987, the concept was given a definite shape by the world commission on “Environment and Development’ in its report called “our common future”. “Sustainable Development” means “development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”. The court held that “sustainable development is a balancing concept between ecology and development has been accepted as a part of the Customary International Law though its salient features have yet to be finalised by the International Law Jurists. Some of the salient features however, are Inter Generational Equity, use and conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter pays principle obligation to assist and co-operate, eradication of poverty and Financial Assistance to the developing countries. Out of these "the Precautionary Principle" and "The Polluter Pays" are essential features of “Sustainable Development”. The court further clarified that the 'Precautionary Principle' in the context of municipal law means:

(i) Environmental measures - by the State Government and the Statutory
authorities must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.

The "Polluter Pays" principle has been held to be a sound principle by the Supreme Court itself in Indian Council for Envirolegal Action v. Union of India. In this case the Court observed:

"We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country."

The Court held:

"Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity, irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. "Consequently, the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected areas, to the soil and to the underground water and hence they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas."

The "Polluter Pays" principle as interpreted by the Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual

sufferer as well as the cost of reversing the damaged ecology. This was held to be a part of the environmental law of the country.

In order to implement the twin principle of environmental law, i.e., “Polluter Pays” and “precautionary principle”, the court ordered and directed the Central Government to constitute an Authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said Authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The Authority to be headed by a retired judge of the High Court. The Authority was entrusted with the following duties:

(a) to assess the loss to the ecology/environment in the affected areas;
(b) to identify the individual's families who have suffered because of the pollution; and
(c) to assess the compensation to be paid to them.

The Authority was directed to compute compensation under two heads:

(a) for reversing the ecology;
(b) for payment to individuals.

The Authority was further directed to specify:

(a) the polluter/polluters from whom the amount is to be recovered;
(b) the amount to be recovered from each polluter;
(c) the person to whom the compensation is to be paid; and
(d) the amount payable to each sufferer.

The Court was not satisfied with this. It authorised the Authority to order closure of the industry which evades or refuses to pay the compensation awarded against it. If an industry has set up necessary pollution control device at present, it
shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the people.

This full bench judgment of the Supreme Court comprising of Mr. Justice Kuldip Singh, Faizanuddia and K. Venkatswami will go a long way in the history of environmental law. Its effect will be felt in all future planning for development.

5.2.10 Union of India v. Union Carbide Corporation56:

Just after midnight on December 3, 1984 nearly 40 tons of highly toxic methyl isocyanate (MIC) escaped into atmosphere from the Bhopal Plant of Union Carbide and killed over 3500 persons who lived in the dispersing chemicals pathway. Experts have declared it as the worst industrial accident that has ever taken place. In order to provide remedy to persons affected Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 was enacted by Parliament under which exclusive right was conferred in the Union Government to represent all claimants both within and outside India. Under this provision a claim for compensation was presented in a New York District Court of U.S.A. on the grounds that: (a) the Union Carbide Corporation (MIC) the parent Company of Bhopal plant was registered in U.S.. and (2) the U.S. Court might award large sums by way of damages. But the New York Court dismissed he appeal on the ground that for this purpose an Indian Court is the best and hence appeal should be preferred there.

After the dismissal of the suits in America by Judge Keenon, the Union of India filed a suit in the District Court of Bhopal. The District Judge M.W. Deo ordered the UCC to pay interim relief of Rs. 350 crore to the gas victims. On a civil revision petition filed by the UCC against his judgment, the Madhya Pradesh High Court through Mr. J.S.K. Seth reduced the quantum of "interim compensation" from Rs. 350 crore to Rs. 250 crore District Court to claim compensation from the UCC of which Indian Company was a subsidiary. The suit was filed by the Government of India as parens patriae to secure the health and

56 (1991) 4 SCC 584
well being of its people. But the New York District Court dismissed the suit on the ground of forum “Non-convenience.” On the request of UCC, it held that the Indian Court is competent to examine the case. Against the order of the Madhya Pradesh High Court, both UCC and Union of India presented appeal before the Supreme Court. The Union of India went in appeal as the High Court has reduced the amount of compensation and UCC went in appeal under Article 136 as it was not satisfied with the order of the Court.

On February 14, 1989, the Supreme Court of India induced the Indian Government and the UCC to accept its suggestion for an overall settlement of the claims arising from the Bhopal disaster. Under the settlement UCC agreed to pay US $ 470 million to the Indian Government on behalf of the Bhopal victims in full and final settlement. On this settlement, the Supreme Court exercised its extraordinary jurisdiction and terminated all the civil, criminal and contempt of court of proceedings against the UCC and this is how the curtain was finally drawn on the Bhopal Gas Disaster case. This settlement has been applauded by some and has been condemned by some.

“This is the right approach. This is not only desirable; it is must for everyone. Developmental the cost of environment without regard for its restoration, wherever possible, is not going to last for ever. It will boomerang and dooms day will not be far away for living beings, therefore, it is must for us to conserve:

1. Ecological and Scientific Value
2. Biological Values.
3. Aesthetic Values, and
4. Environmental Qualities.

5.3 PUBLIC INTEREST LITIGATION

Public Interest Litigation as it has developed in recent years marks a significant departure from traditional judicial proceedings. Public interest litigation was not a sudden phenomenon. It was an idea that was in the making for
some time before its vigorous growth in the early eighties. It now dominates the public perception of the Supreme Court. The court is now seen as an institution not only reaching out to provide relief to citizens but even venturing into formulating policy which the state must follow.

At the time of independence, court procedure was drawn from the Anglo-Saxon system of jurisprudence\textsuperscript{57}. The bulk of citizens were unaware of their rights, and much less in a position to assert them. The guarantee of fundamental rights and the assurance of directive principles, described as the ‘conscience of the Constitution’\textsuperscript{58}, would have remained empty promises for the majority of illiterate and indigent citizens under adversarial proceedings. PIL has been a conscious attempt to transform the promise into reality.

In a developing country, the legal process tends to intimidate the litigant, feels alienated from the system. A poor person who enters the legal stream, whether as a claimant, a witness or a party; may find the experience traumatic. Lawyers have not done much to alleviate this. The way the Bar had developed gives issues of legal aid and legal awareness a low priority, thus ensuring that the lawyer is the only route of access to the legal system. The traditional rule of procedure in the adversarial system of law permit only a person whose rights are directly affected to approach the court. Under the Common Law, a person claiming the writ of mandamus had to show that he was enforcing his own personal right\textsuperscript{59}. In Municipal Council, Ratlam v. Shri Vardichand\textsuperscript{60} the court reacts to this approach and observed:

"The truth is that a few profound issues of procedural jurisprudence of great strategic significance to our legal system face us and we must zero in on them as they involve problems of access to justice for the people beyond the

\textsuperscript{57} Bandhu Mukti Morcha v. Union of India (1984) 3 SCC 161 at p. 188.
\textsuperscript{58} Granville Austin, The Indian Constitution: The Cornerstone of a Nation, 1999, at p. 50.
\textsuperscript{60} (1980) 4 SCC 162. Incidentally, this was a unique instance of section 166 of Criminal Procedure Code, 1973 being invoked by public-spirited persons to seek redress against an apathetic municipality remiss in providing civic amenities.
blinkered rules of 'standing' of British-Indian vintage. If the centre of gravity of justice is to shift, as the preamble of our constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these issues must be considered.”

Seervai refers to the development of the expanded concept of locus standi in the context of one of the earliest public interest litigation case. He notes⁶¹:

“The most striking illustration is furnished by the unreported judgement of Gandhi J, of the Bombay High Court, in a writ filed by a public spirited citizen—Mr. Piloo Mody. In Piloo Mody v. Maharashtra, Gandhi J adopted the views of locus standi which was later laid down by Bhagwati J in the Judge's case. Piloo Mody complained that the government—through three ministers—has leased out valuable plots of land at a gross undervalue. Gandhi J rejected the respondents’ contention that the petitioner had no locos standi. He upheld the petitioner’s contention that the leases were granted mala fide at a gross undervalue. Having regard to the equities of the case, Gandhi J directed that if the lessees wanted to obtain the grant of lease they should pay increased rent or return the land to government.”

The two originally separate rationales for a representative standing and citizen standing have now merged. The Supreme Court in the Judges’ case⁶², said:

Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provisions or without authority of law or authority of law or any such legal wrong or legal injury or legal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction,

order or writ in the High Court under Article 226 and in case of the breach of any fundamental right of such person or class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

In such case the court will allow any member of the public acting in bonafide manner to espouse the cause of such person or class of persons. Representative non-political, non-profit and voluntary organizations who have sufficient interest can maintain an action for judicial redress for public injury arising out of breach of public duty or violation of some provisions of the Constitution. Lawyers, medical practitioners, and journalists have brought such representative actions.

The object of the public interest litigation is to ensure public interest and protection of legal or constitutional rights of disadvantaged and oppressed groups or individuals and to render social and economic justice to them, there cannot be any reason why in a fit and proper case the court would hesitate to entertain a public interest action against any non-governmental institution or any person invested with statutory or public duties or public obligations when their omission or commission affects the rights of disadvantaged groups or individuals who were unable to approach the court and legal injury or legal wrong caused to them.

5.3.1 Relaxation of Procedural Requirements:

In order to permit fuller access to courts, public interest litigation has been marked by a departure from procedural rules extending to the form and manner of filing a writ petition, appointment of commissions for carrying out investigations, and giving a report to court and the appointment of lawyers as amicus curiae to assist the courts.

The flexibility of public interest litigation procedure can best be illustrated by what is termed as ‘epistolary jurisdiction’. Taking a cue from the American Supreme Court’s decision in Gideon v. Wainwright,68 where a postcard from a prisoner was treated as a petition, the Supreme Court said in the judges’ case69, that a public-spirited person could move the court even by writing a letter. The court has accepted letters70 and telegrams71 as petitions.

On 1 December 1988, the Supreme Court, on its administrative side, issued a notification on what matters could be entertained as public interest litigation72. Under this notification, letters petitions falling under certain categories alone would be ordinarily entertained. These includes matters concerning bonded labour, neglected children, petitions pertaining to environmental matters, adulteration of drugs and food, maintenance of heritage and culture and other matters of public importance could also be entertained. The notification also laid down the procedure: the petition would be first screened in the PIL cell and thereafter it would be placed before a judge to be nominated by the Hon’ble Chief Justice of India.

5.3.2 Maintainability of Public Interest Litigation:

Environment, more than anything else, is and should be a concern for all. It is one thing which is available free to all the inhabitants of an area and it is essential that this environment is maintained for the purpose of ensuring a healthy life. This issue, in fact, is no longer res integra. The Supreme Court, in Subhash Kumar v. State of Bihar73

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70 As in Ram Kumar Misra v. State of Bihar (1984) 2 SCC 451. This case related to minimum wages not being paid to labourers employed in two ferries.
71 As in Paramjit Kaur v. State of Punjab (1996) 7 SCC 20, where the CBI at the instance of the Supreme Court unearthed the facts of the mass cremation of thousands of persons by the Punjab Police by labeling them 'unidentified'. The proceedings began with a telegram being sent to the residence of Kuldip Singh J.
72 The full text of this notification is set out in Sangeeta Ahuja, People, Law and Justice: Cases and Materials on PIL, 1996, Vol.II.
73 (1991) 1 SC 598.
".... Right to live is a fundamental right under Article 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 a right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life...."

With regard to locus standi, the answer is squarely given by the judgment of the Supreme Court in the case of Janta Dal v. H.L. Chowdhary.\textsuperscript{74} Dealing with the question of locus standi, viz-a-viz public interest litigation, it was observed by the Court, at page 909, as follows:—

"..... In contrast, the strict, rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public wrong or public injury, but who is not a mere busybody or a meddlesome interloper; since the dominant object of PIL is to ensure observance to the provision of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged group and individual or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bona fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like action popularizes of Roman Law whereby any citizen could bring such an action in respect of public delict....."

It would, therefore, follow that a public interest litigation at the behest of an organization or a group of individuals, who have no personal gain or private motive or any other oblique consideration except to see that public injury does not take place and to prevent or executive acts and omissions which are isolative of the Constitution or the law, would be maintainable.

\textsuperscript{74} AIR 1993 SC 892.
5.4 PUBLIC INTEREST ‘ENVIRONMENTAL’ LITIGATION AND ENVIRONMENT PROTECTION

The area in which public interest litigation’s contribution has been significant is environmental law. So it is not wrong if we call it public interest environmental litigation. M.C. Mehta, as a petitioner in person, was a pioneer in bringing a larger number of issues to the court concerning environmental and ecological degradation. These includes the issues arising out of the leak of Oelum gas from a factory in Delhi, pollution in Delhi, the danger of the Taj Mahal from the Mathure refinery, regulation of traffic in Delhi and the degradation of ridge area in Delhi.

The traditional rule of locus standi that a petition under Article 32 can only filed by a person whose fundamental right is infringed has now been considerably relaxed by the Supreme Court of India in many of the rulings. The court now permits public interest litigation or social interest litigation at the instance of “public spirited citizen” for the enforcement of constitutional and legal right of any person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach to court for relief. Public interest litigation has emerged as a growing mechanism in the field of environmental protection in India. Most of the cases cited above were initiated by a public spirited citizen or by public interest groups rather then by affected party. Obviously environment issues relate more to the problems of a group of people than to ascertainable rights of individuals. In India class action against public nuisance can be brought under section 91 of the Code of Civil Procedure and section 113 of Code of Civil Procedure. An inquisitive research may perhaps

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76 Ibid., (1996) 4 SCC 750.
77 Ibid., (1996) 4 SCC 351 and 750.
78 Ibid., (1997) 8 SCC 770.
80 See the orders in M.C. Mehta v. Union of India (1997) 11 SCC 227, 312 and 327.
be disappointed if he sets out to collect cases from courts in the past which dealt
with an environment problem directly under the former provision.82

The provision was also not frequently used for environmental matters in
early stages. But of late courts found section 133 of the Code of Civil Procedure
as a useful weapon for the protection of environment while a single resident or
group of residents in locality have been permitted to move under it. A reading of
section 133 Code of Civil Procedure shows that the District Magistrate can take
action after apprising himself of the situation either on public report or on receipt
of any other information. Invoking the provision, the courts in India have asked
for affirmative action. Municipalities were directed to provide amenities of life
and factories causing pollution in residential localities were ordered to be wound
up.

Sri C. P. Reddy; an advocate practicing at Rangareddy District Court had
written a letter, with press clipping about pollution problems in Patancheru and
Bollaram areas to the Hon’ble Supreme Court. The Hon’ble Supreme Court
admitted the letter as writ petition83. The matter was relating to pollution caused
by the industries located in Patancheru, Bollaram and Jeedimetla industrial areas
located in the District of Medak. Due to discharge of effluents of some of the
industries ground water got polluted and land in the areas became uncultivated
and the air and water became polluted leading to several diseases among human
beings and cattle. The Hon’ble Supreme Court vide its order dated 29-07-1997
ordered an independent report from CPCB relating to the state of common
effluent treatment plan and also individual treatment system installed by the
individual industries in these industrial areas.in order to comply with the
directions of Hon’ble Supreme Court, the Cpcb initially filed its report in the
month of October, 1998, pursuant to the Court’s order and in the month of March
1999 report on status of pollution control at Pollaram of Andhra Pradesh was
submitted. Keeping in view the joint report submitted by the A.P. Pollution

82 Dr. G.S. Karkara, "Environmental Law", 1999, at p. 66.
Control Board and Central Pollution Control Board, regarding short-term and long-term action to be taken, the Hon’ble Supreme Court vide its order dated 10-11-1998 directed the unregistered tankers dump effluents illegally in unauthorized areas should be confiscated and appropriate action should be taken by the Andhra Pradesh government. In respect of the Jeedimetla effluent treatment plane, the Hon’ble Court directed that there will be no new member and no additional industrial land outside Jeedimetla area in the present CEPT, the State Board shall monitor the JELT effluents at the outlet of CETP and in the event of violation fine may be imposed as per norms on the board. The District Judge of concern area has also been directed to submit report regarding compensation to be paid to farmers whose lands have been affected by the discharge of effluents.84

One of leading public interest cases which has come before the higher courts in respect of causing environmental pollution, the Delhi Gas Leakage case85 involving the Shriram Food and Fertilizers Industries Ltd.(SFFIL) has become historic in view of not only the stringent condition imposed on the erring unit but also for laying a strict and absolute liability without any exception overruling Rylands v. Fletcher case. In delivering the judgment the Supreme Court laid down certain stringent conditions for reopening of the Caustic Chlorine Plant:

"The management of Shriram (SFFIL) will obtain an undertaking from the Chairman and Managing Director of the Delhi Cloth Mill Ltd., which is the owner of various units of Shriram and also from the officers or officers who are in actual management of the Caustic Chlorine Plant that in the case there is any escape of chlorine gas resulting in death or injury to the workman or the people living in the vicinity they will be personally responsible for payments of compensation for such death or injury".

The SFFIL case has also become a trendsetter, in view of the fact that it has provided for compensation for the victims of Oelum Gas. While doing so

84 AIR 1999 SC 1502.
Supreme Court has laid down important norm in respect of damage resulting from environment pollution. The Court said:

"The management of Shriram will deposit in this court a sum of Rs 20 lacs by way of security for the payment of compensation claims made by or on behalf of the victims of Oelum Gas. The management of Shriram will also furnish a bank guarantee to the satisfaction of the Registrar of the court for a sum of Rs 15 lacs which bank guarantee shall be encased by the Registrar, wholly or in part, in case there is any escape of chlorine gas within a period of three years from today resulting in death or injury to any workman or any persons living in the vicinity".

In view of the increasing trend in number of cases based on environmental pollution and ecological degradation coming up before the courts, the Supreme Court also felt the need for "neutral scientific expertise as an essential input to inform judicial making". Hence, the court came out with a refreshing suggestion for setting up Environment Courts, which reflects its judicial activism:

"We would in the circumstances urge upon the Government of India to set up an Ecological Sciences Research Group consisting of independent, professionally competent experts in different branches of science and technology, who would act as an information bank. We would also suggest to the Government of India that since cases involving issues of environment pollution, ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, it might be desirable to set up environmental courts on the regional basis with one professional judge and two exerts drawn from Ecological Science Research Group keeping in view the nature of the case and the expertise required for the adjudication. There will, of course be a right of appeal to this court from the decisions of the environment courts".

Article 226 provides that notwithstanding anything contained in Article 32, every High Court shall have power, through out the territorial limits in relations to which it exercises jurisdiction to issue to any person or authority
direction, orders or writs. Thus the jurisdiction of a High Court is not limited to
the protection of the fundamental rights but also other legal rights as is clear from
the words “for any other purpose”. These world make the jurisdiction of the High
Court more extensive then that of the Supreme Court which is confined to only
for the enforcement of fundamental rights. The words “for any other purpose”,
referred to enforcement of a legal right or duty. They do not mean that a High
Court can issue writs for ay purpose of pleasure.86

It is through invocation of the original jurisdiction of the Supreme Court
under Article 32 and that of the High Court under Article 226 that the PIL relating
to environment has grown in recent times. The Rural Litigation and Environment
Kendra87 and M.C. Mehta88 cases bear testimony to the fact that the traditional role
of locus standi did not stand in the way in cases where environment questions
were raised and that the Supreme Court interfered and give direction after
directions to the Government for taking environmental protection measures in the
interest of the general public89. The High Courts leg behind. They invoked
jurisdiction under Article 226 and give significant contributions t the development
of public interest litigation through environmental cases. When residents of a
particular locality were aggrieved by the emission of pungent smell from a bone
factory which made their life miserable, the High Court of Andhra Pradesh gave
them relief in Dr. N.S. Subba Rao v. Government of Andhra Pradesh90 for the
preservation of sanitation in the city. In Kunaparaju Ranga Raju v. Government of
Andhra Pradesh and others91(Tank Fish case), the Andhra Pradesh High Court
directed the state government to take expeditions actions for completing the
process. In case of Damondar Rao v. Municipal Corporation Hyderabad92, the
Andhra Pradesh High Court has held that slow poisoning by the polluted
atmosphere caused by environmental pollution and spoliation should be regarded

87 AIR 1988 SC 2187.
88 AIR 1988 SC 1037.
89 Dr. G.S. Karkara, “Environmental Law”,1st Ed, 1999 at p.66.
90 AIR 1968 AP 98.
92 AIR 1987 AP 171.
as violation of Article 21 of the Constitution of India and developed the view that enjoyment of life and its attainment and fulfillment guaranteed by article 21 of the Constitution embraced the protection and preservation of nature's gift without which life could not be enjoyed and there was no reason why the practice of violent extinguishments of life alone should be regarded as violation of Article 21.

5.4.1 Air and Water Pollution by Trade and Industry:

In Abdul Hamid v. The Gwalior Rayon Silk Mfg., (WVG) Co. Ltd.,93 the Madhya Pradesh High Court has considered that Section 21 of the Water Pollution Act, provides for taking samples of effluents. Sub-section (2) thereof makes the result of analysis in admissible in evidence any legal proceedings in the absence of compliance with the various provisions in sub-sections (3), (4) and (5). Section 26 of the Air Pollution Act, contains similar provision. These provisions are for the protection of the industries. They are there to ensure a proper balance between the conflicting claims of nation's industrial progress and the hazards to the health of the citizens. The safeguards provided under the Act have rational basis and without them the industrialists could be vexed day-to-day out by being dragged to the criminal Courts for variety of reasons even unconnected with the vindication of the law. The Water and Air Acts are special Act brought on the statute-book and constitute a complete Code for prevention and control of water and air pollution by any trade industry. It has expressly been mandated therein that notwithstanding anything inconsistent therewith contained in any enactment other than the Acts their provisions have to prevail. Inconsistent provisions in any other Act cannot, therefore, be permitted to come in the way of the provisions of the special Acts and defeat them. In view of the express provisions in Section 52 of Air Act and Section 60 of the Water Act, it has to be held that to the extent of inconsistency the provisions of the Penal Code, General Clauses Act, and the Code Stand repealed. In matter relating to pollution in air or water by trade or industry recourse has to be taken to the provisions of the special Act.

93 (1989) Cri LJ 2013 (MP)
5.4.2 Environmental Questions Affecting Humanity:

In Sri Sachidanand Pandey v. State of Bihar94 quoted in Obayya Pujari v. Member Secretary, K.S.P.C.B., Bangalore,95 The Supreme Court held:

"Today society's interaction with nature is so extensive that the environmental question has assumed proportion affecting all humanity. Industrialization, urbanization, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials the disruption of natural ecological balances, the destruction of multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the Scientific and technological progress of man has invested him with immense power nature, it has also resulted in unthinking use of the power, encroaching endlessly on nature, if man is able to transform deserts into cases, he is also leaving behind deserts in the place of cases. In the last century great German materialist philosopher warned mankind: "Let us not, however, flatter ourselves overmuch on account of our human victories over nature. For each of such victory nature takes its revenge on use. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different unforeseen effects which only too often cancel the first." Ecologists are of the opinion that the most important ecological and social problem is the widespread disappearance all over the world of certain species of living organisms. Biologists forecast the extinction of animal and plant species on a scale that is incomparably greater than their extinction over the course of millions of years. It is said that over half of the species which became extinct over the last 2,000 years did so after 1900. The International Association for the protection of Nature and Natural Resources calculates that now, on average, one species or subspecies is lost every year. It is said that approximately 1,000 bird and animal species are facing extinction at present. So,

94 AIR 1987 SC 1109.
95 AIR 1999 Kant 157 at 162.
it is that the environmental question has become urgent and it has to be properly understood and squarely met by man, Nature and history, it has been said, are two component parts of the environment in which we live, move and prove ourselves.

"In India, as elsewhere in the world uncontrolled growth and the consequent environmental deterioration are fast assuming menacing proportions and all Indian cities are afflicted with this problem. The once Imperial City of Calcutta is no exception. The question raised in the present case is whether the Government of West Bengal has shown such lack of awareness of the problem of environment in making an allotment of land for the construction of a Five Star Hotel at the expense of the zoological garden that it warrants interference by Court, Obviously, if the Government is alive to the various consideration requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for Court to interfere in the absence of mala fides. On the other hand, if relevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. Whether a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48-A of the Constitution. Directive Principle which enjoins that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country’s and Article 51-A 9g) which proclaims it to be the fundamental duty of every citizen of India’ to protect and improve the natural environmental including forests, lakes, rivers and wildlife and to have compassion for living creatures”. When the Court is called upon to give effect to the directive principle and the 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 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."
5.4.3 Evolution of New Law Role in the Process of Social Transformation:

In M.C. Mehta v. Union of India,96, it was held that where a law of the past does not fit in the present context, the Court should evolve a new law and in National Worker’s Union v. P.R. Ramkrishnan,97 it was held, if the law fails to respond, to the needs of the changing society, then either stifle the growth or the society and choke its progress or if the society is vigorous enough it will cast away the law which stands in the way of its growth. Law must, therefore, constantly be on the move adopting itself to the fast changing society and not stand lag behind. It must shake off the inhibiting legacy of its colonial past and assume dynamic role in the process of social transformation.

“The truth is that the law is uncertain. It does not cover all the situations that may arise. Time and again, practitioners are faced with new situations, where the decision may go either way. No one can tell what the law is until the Courts decide it. The Judges do everyday make law, though, it is almost hearsay to say so. If, the truth is recognized then Court may hope to escape from the dead hand of the past and consciously mould new principles to meet the needs of the present.

5.4.4 Jurisdiction of High Court to Constitute Special Bench for Pollution Matter:

In Vellore Citizens Welfare Forum v. Union of India98, Public interest litigation under Article 32 of the Constitution of India was filed by Vellore Citizens Welfare Forum and was directed against the pollution which was being caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It was stated that the tanneries were discharging untreated effluent into agricultural fields, roadsides, waterways and open lands. The untreated effluent was finally discharged in river Palar which is the main source of water supply to the residents of the area. According to the petitioner the entire surface and sub-soil water of river Palar has been polluted.

96 AIR 1987 SC 1086.
97 AIR 1983 SC 75.
resulting in non-availability of potable water to the residents of the area. It was stated that the tanneries in the State of Tamil Nadu have caused environmental degradation in the area. According to the preliminary survey made by the Tamil Nadu Agricultural University Research Centre Vellore nearly 35,000 hectares of agricultural land in the Tanneries Belt, has become either partially or totally unfit for cultivation. It was further started in the petition that the tanneries use about 170 types of chemicals in the chrome tanning processes. The said chemicals include sodium chloride, lime sodium sulphate, chlorium sulphate, fat liquor Amonia and Sulphuric acid besides dyes which are used in large quantities, nearly litres of water is used for processing one kilogram of finished leather, resulting in dangerously enormous quantities of toxic effluents have spoiled the physicochemical properties of the soil, and have contaminated ground water by percolation. According to the petitioner an independent survey conducted by Peace Members, a Peddiar Chatram Anchayat Unions, reveals that 350 wells out of total of Women and children have to walk miles to get drinking water. Legal aid and Advice Board of Tamil Nadu requested indicating the extent of pollution caused by the tanneries.

It was held that, the Board has the power under the Environment ti and the rules to lay down standards for emissions or discharge of environmental pollutants. Rule 3 (2) of the Rules even permit the Board to specify more stringent standards fro those provided under the Rules. The NEERI have justified the standards stipulated by the Board, this Court direct that these standards are to be maintained by the tanneries and other industries in the State of Tamil Nadu.

The Central Government shall constitute an authority under Section 3 (3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the Stat of Tamil Nadu.

The apex Court has issued comprehensive directions for achieving the end result in this case. The Madras High Court would be in a better position to monitor these matters hereinafter. The Chief Justice of the Madras High Court to
constitute a Special Bench. "Green Bench" to deal with this case and other environmental matters. This Court make it clear that it should be open to the Bench to pass any appropriate order/orders keeping in view the directors issued by Supreme Court.

5.4.5 Consumerism of Plastic and its Effect on Environment:

This petition was basically brought to Court as the residents of the hills, particularly of Garhwal, and more particularly of the district Chamoli, felt threatened by the invasion by State Organisations and the erosion of the sanctity and the peace and tranquility of the bugiyal, in Garhwal, basically means meadows and pasture land which exists above a certain altitude in the mountains no different than the alpine meadows at Khilanmarg above Gulmarg in Kashmir are called "marg". The complaint to the Court was that these areas are pasture lands to the sheep and the shepherd. It was said that the bugiyal is basically an ecosystem in itself and this delicate balance between ecology and environment has to be understood and respected. It cannot be defiled and the intricate balance of nature does not suffer the presence of aliens on these pasture lands as it keeps away the sheep and shepherd, thus, disturbing the ecology. This living phenomenon may be watched but cannot be tread upon.

The complaint is that the Garhwal Mandal Vikas Nigam had put up pre-fabricated lodging houses as a hostel for tourist on the slopes of a bugiyal which is below the peak of the temple of "Tungnath". This has happened at Chopta. Tungnath incidentally is tration as on the highest temples in India.

That indiscriminate import of plastic and non-biodegradable material is playing havoc with the environment of the hills as each seasons plastic collects on the slopes of the hills to be covered by autumn leaves of one season and this exercise is repeated year by year with plastic being sandwiched between leaves preventing rain water from seeping and percolating into the hill slopes and causing another ecological percolating into the hill slopes and causing another ecological disbalance; the disappearance of little streams and water resources on
which the hill people rely upon. This deposit of plastic material also kills the green life on the slopes of the mountains.

The third aspect is about the tourist and trekking pilgrimage routes, where the tourist, the pilgrim and the trekker devoid of all civic sense with no respect of the environment throw non-biodegradable material on the slopes of the hills and the mountain routes are being littered with indiscriminate evidence of deliberately created garbage. Besides on these mountain routes commercial activity, like kiosks and tea shops at places where they ought not to be, has been encourage by the State administration. Court’s attention was drawn to the garbage strewn on the slopes of the hills right upto the glacier of Gomukh and of man-made deposits of synthetic and non-biodergradeables materials at the source of the river Ganga at above 14,000 feet, Environmentalists have voiced concern on the receding glacier at Gomukh, the source of the river Ganga. A leading news agency reported that the glacier at Gomukh was drying up. Discussion on this dangerous retardation of the glacier at Gomukh has even been broadcast on the British Broadcasting Corporation. (See United News of India, New Delhi, 9 October, 1996). Today, as this matter is being considered by the Court, a national daily reports summarized in effect, that the glacier at Gomukh is receiving the harmful impact of spreading deforestation and urbanization and ill-mannered anti-environment recreational visits of city dwellers to these regions. This newspaper highlights the worry of scientists of the glacier at Gomukh receding, reducing and shrinking (see The pioneer, Lucknow, 27 October, 1996). The “Warming up” phenomenon is one factor, but this itself is related to many others.

It was held that Merely because money has been spent is no ground to degrade ecology and environment. While confirming uses in urban planning were not permitted to be compromised by the Supreme Court, when was held that such violations were illegalities which were not curable.

The violation of environment cannot continue and upsetting an ecological balance will be judged with even mere strict standards. That money has been
spent by the Nigam on putting prefabricated structures and tents on the bugiyal was a misplaced expenditure.

The bugiyal belongs to the people. It is an eco-system in itself. Nature has tailored it. It is not for man to erode the sanctity of this area. It must be returned to nature to provide for whom it was meant, the sheep, the shephred, the wild flowers the micro-organisers and the plant and insect life below the turf and in the shrubs at that altitude. Clearly, putting a tourist lodging house on a bugiyal was a mistake. The Court had during the seasons 1994-95 and 1995-96 not interfere with the Nigam’s occupation with this sensitive area. As the Court has expected that by this time the Nigam would see the reality and unwind its occupation of running a camp tourist resort there. There is a danger looming on the horizon. If a Stat financed tourist camp has been planted on the bugiyal, there are other five star hotel groups waiting enc-roach on this beautiful and tranquil area nesting in the mountain of the bugiyal next season before the end of March 1997. The Chief Conservator of Forests (Mills) will ensure that this will be done. Further, no allotment should be made in respect of occupation of the pasture lands and the meadows that are the bugiyals. This eco-system is to be preserved.99

5.4.6 Petition Alleging Environmental Pollution – Whether Every Citizen has Fundamental Rights?

A letter written to Supreme Court was treated as a writ petition under Article 32 of the Constitution of India. The letter written by Chhetriya Pardushan Mukti Sangharsh Samiti, Sarnath, alleged environmental pollution in the area. It was also alleged therein that the Jhunjhunwala Oil Mills and refinery plant are located in the green belt area, touching three villages and the Sarnath temple of international frame. The smoke and dust emitted from the chimneys of the mills and the effluents discharged from these plants were alleged to be causing environmental pollution in the thickly populated area and were proving a great health hazard. It was further stated that the people were finding it difficult to eat and sleep due to smoke and foul smell and the highly polluted water. It was

further alleged that the lands in the area had become waste, affecting crops and the orchards damaged. Diseases like TB, Jaundice and other ailments were stated to be spreading in an epidemic form. The growth of children was affected. It was further alleged that the schools, nursing homes, leprosy homes and hospitals situated on the one kilometer long belt touching the oil mills and the plant were adversely affected. It was stated that licences has been issued to one richman ‘D’ for these industrial units thereby risking the lives of thousands of people without enforcing any safety measure either to cure the effluents discharged from the plants or to check the smoke and the foul smell emitted form the chimneys. The whole area was expected to be ruined due to any explosion or gas leakage.

In the background, the petitioner prayed for necessary directions to check the pollution, and also enclosed a printed leaflet allowing malpractices and corruption on the part of the proprietor of these industrial units apart from polluting the atmosphere.

As mentioned hereinbefore, the complaint was made by the said Samiti stated to be a social organization about environmental pollution and ecological imbalance being caused by the two plants and thereby exposing the population to health hazards and life risk which was, therefore, considered to be a matter of great public importance. It is necessary to recognize the danger in order to strike a balance between the quality of life to be preserved and the economic development to be encouraged. Dealing with this aspect in M.C. Mehta v. Union of India, it has been stated that whenever applications for licences to establish new industries are made in future, such applications should be refused unless adequate provision has been made for the treatment of trade effluents flowing out of the factories. So, letter was treated as a writ petition and notice issued, counter-affidavit was filed on behalf of respondent No. 3 being the proprietor of Jhunjhuwala Oil Mills, Reference was made to the decision of this Court Bandhua Mukti Morcha v. Union of India wherein Supreme Court underlined the importance of

100 AIR 1984 SC 802.
101 AIR 1984 SC 1037.
satisfactory verification of allegations. The Court was asked to be ever vigilant against abuse of its process and there was need for appropriate verification. There is a statute for controlling pollution.

It is well-settled that if there is a statute prescribing a judicial procedure governing a particular case, the Court must follow such procedure. It is not open to the Court to bypass the statute and evolve a different procedure at variance with it. It is further asserted on behalf of the respondents that between the petitioner 'S' and respondent No. 3, there was a long rivalry, According to respondent No.3, the petitioner is an anti-social element and his only aim was to extract money from the people like respondent No.3 as in the instant case.

It has further been stated that there has been criminal proceeding against the petitioner and several items have been marked in the affidavit in opposition. The particulars make out a rather disgraceful state of affairs. It has been alleged that ‘S’ for the last so many years was blackmailing the people, and a case under Section 500 of the IPC being Case No. 121/88 was filed. It has been further averred that respondent No. 3 has complied with the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 and there is no complaint of any kind from any person, body or authority. The correspondence, in this connection, has been set out.

As early as 1980, the petitioner had made various complaints to the A.D.M. (Supply), District Varanasi, alleging that respondent No. 3 was accused of smuggling of coal and diesel blackmailing. It was dismissed. There was no complaint from anybody apart from the present petitioner by any authority as to the non-compliance of any statute by respondent No. 3. The orders passed by the Pollution Control Board which had been annexed, also indicate that there no instances of violation of the said Acts.

Time was sought on behalf of respondents for filing a rejoinder which, unfortunately, has not been filed, and no satisfactory explanation has been given
therefore. Certain letters alleged to have been written on behalf of the petitioners were sought to be placed before the Court.

Having considered the facts, circumstances, nature the allegations and the long history of enmity and animosity, this Court was of the relevant view that the Air Pollution Control Act have been complied with and there is no conduct which is attributable to respondent No. 3 herein leading to pollution of air or ecological imbalances calling for interference by Court.

Article 32 of the Constitution of India is a great and salutary safeguard for preservation of fundamental rights of the citizens. Every citizens has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 32 of the Constitution of India. Anything which endanges or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to be taken resource of Article 32 of the Constitution. But this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilized and invoked by the Court with great deal of circumspection and caution. Where it appears that this is only a cloak to "feed fact ancient grudge" and enmity, this should not only be refused but strongly discouraged. While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 of the Constitution should not be misused or permitted to be misused creating a bottleneck in the superior Court preventing other genuine violation of fundamental rights being considered by the Court. That would be an act or a conduct which will defeat the very purpose of preservation of fundamental rights.

Having regard to the ugly rivalry here, this Court have no doubt that between the contestants the Court was misled and Court must, therefore, proceed with caution. There was no violation of fundamental right or could be isolative if the allegations of the so-called champions on behalf of the society are scrutinized. This Court must protect the society from the so-called 'protectors'. Petition was legally devoid of any merit or principles of public interest and public protection.
Instant application certainly created bottlenecks in Courts, which is an abuse of process of this Court.\textsuperscript{102}

In State of H.P. v. Ganesh Wood Products,\textsuperscript{103} it was observed as follows:-

"The High Court was not right in observing that ‘T’ cannot be accepted as a public spirited citizen approaching the Court to protect public interest... more so, when it has recorded as simultaneous finding that there is no evidence of collusion between him and Shankar Trading Company (Mahesh Udyog). The credentials of ‘y’ appear to be impeccable. He is not only a member of the Himachal Pradesh Legislative Assembly but also the Convenor of the Indian National Trust for Art and cultural Heritage. He is also the President of the Himalayan Wildlife and Environment Preservation Society. The said organizations may be big or small, may be well-established ones or recently started ones—that is immaterial. Once it is found that he was not acting at the instance of or at the behest of or protecting the interest of Shankar Trading Company, there was no reason to hold that he was not acting bona fide in approaching the Court to preserve the forest wealth of the State in the interest of environment and ecology. His inability to produce material in support of his allegation of licit felling in the State does not tell upon his bona fide".

5.4.7 Ban on Public Smoking [Environmental Tobacco Smoke]:

Lawsuits involving environmental tobacco smoke have been successful in other countries such as Sweden, Britain, and Australia. Like the cases in the United States, the courts and juries find the “victimless” plaintiffs more compelling. Individual plaintiffs have won suits against their employers who did not adequately protect their workers from ETS. Prior history of smoking has not disqualified claimants, as long as the secondhand smoke exposure was a substantial contributing cause of their illness or disability. In Britain, an employee who worked as a croupier for 14 years sued the casino after he developed asthma.

\textsuperscript{103} AIR 1996 SC 149 at 164: 1996 AIR SCW 3847.
The casino settled with the croupier for £50 000. After the settlement, the croupier continued to advocate in the media for a public ban on smoking in Britain.¹⁰⁴

In 2001, an Australian jury awarded monetary compensation to a bartender after finding that her employer negligently caused or materially contributed to her throat cancer. A 2002 medical journal article attempted to analyze how the four-person jury found causation based on the evidence produced in the ETS case; the scientific evidence linking ETS with cancer included expert witnesses flown in from the United States, while the evidence used to establish that the plaintiff was sufficiently exposed to ETS to cause the cancer was indirect.¹⁰⁵ The Australian decision caused a nationwide movement to ban smoking in casinos, restaurants and bars.

Non-governmental organizations (NGOs) are advocacy groups not affiliated with a government. NGOs often work to effect changes on a local level while forming an international network with other NGOs to pool information, resources, and strategies. Some NGOs file, where allowed, “public interest” lawsuits to compel government action to enforce antismoking laws. Some of these suits effected meaningful changes in their countries, specially regarding ETS.

Deora v. Union of India¹⁰⁶ was an NGO-sponsored public interest case that sought to protect the community from ETS. In a 2002 decision, the Supreme Court of India banned smoking in public spaces because of the fundamental right to health of non-smokers until legislation could be passed doing the same. The Court directed the Union of India and other governmental entities to take measures to enforce the ban. The Court noted that the Attorney General for India had pledged to the Court “that Union of India shall take necessary effective steps to give wide publicity to this order by electronic as well as print media to make

the general public aware of this order of prohibition of smoking."107 Justice S.B. Sinha, Chief Justice of the Delhi High Court, gave a speech entitled “Environmental Justice in India.”108 The central theme was achieving in India a balance among developing the economy, promoting a clean environment, and respecting human rights. He cited the Deora decision in which the high court “stated that nonsmokers cannot be compelled to become helpless victims of pollution caused by cigarette smoke.”109

The Supreme Court of India’s decision bore strong similarities to an earlier case decided in 1999 in the southwestern Indian state of Kerala. In Ramakrishnan v. State of Kerala, the court determined that ETS was a criminal nuisance and found that exposure to ETS violated a person’s fundamental right to life.67 Noting that the court could not create new legislation, it did exercise its judicial power to compel the executive branch to adopt anti-nuisance orders regarding ETS.

5.5 POLITICS IN ENVIRONMENTAL MATTERS

In Kamal Nath’s case110, a motel named M/s Span Motel Private Ltd. belonging to a person no less than the former union minister for environment and forests, was given a lease of twenty seven bighas and twelve biswas of area to construct a motel. The motel made various constructions in the river bed and on the bank of river Beas. This not only obstructed badly the flow of river but also allowed discharge of the untreated effluents of the motel in the river. The granting of lease in such sensitive area was contended as an ‘arbitrary executive action’ and ‘atrocious behaviour of public authorities in violation of public duties cast upon them’. This play game with the river had, surprisingly, the blessings of Himachal Pradesh Government, the Himachal Pradesh Pollution Control Board and a prior approval was also granted by the Ministry of Environment and

Forests, Government of India. M. C. Mehta, a noted environmentalist, moved the apex court for the enforcement of the fundamental right and directive principles relating to the protection and improvement of environment. The Supreme Court, realizing the impact of the states approval, quashed the lease-deed and ordered the motel to pay compensation as may be estimated by NEERI and also to pay exemplary damages. Further a direction was issued to give a fresh notice to the motel to show cause as to why pollution fine be not imposed on them.

It may be pointed out that it was true that the Span Motel was a culprit in this vicious circle but unless it had the green signal from the authorities it could not have exceeded its limits. Thus the concerned government and their agencies were equally responsible for the present state of affairs. The court rightly pointed out that ‘the state is the trustee of all natural resources, which are by nature meant for public use and enjoyment’. It further observed, ‘The state as trustee is under a legal duty to protect the natural resources. These resources meant for public use can not be converted into private ownership’.111 But the judicial concern for the public trust doctrine is badly shaken when the court, instead of making accountable the erring officials for their ‘atrocious behaviour’, simply passed the order that ‘Hamachal Pradesh Government shall take over the area and restore it to its original natural conditions’.

The nature lovers movement case112, on the other hand, presents a different picture. In this case large area of forest was invaded by encroachers. The Government of Kerala sent a proposal to the Ministry of Environment and Forests, Government of India in June 1986 for the regularization of encroachments which had taken place before 1 January 1977. The pleading before the court bring out the fact that the chief minister of the state was in favour of regularizing encroachments due to political compulsions. The result was that that Central Government agreed in principle for approval for diversion of 28,588.159 hectares of forest land, subject to fulfillment of certain conditions. It was stated in

their letter that after a compliance report on fulfillment of conditions, a formal approval under section 2 of the Forest (Conservation) Act 1980 would be issued. The chief minister had promised on the floor of the assembly that the land would be assigned in their favour. An order to this effect was passed by the state government. Subsequently a function called ‘pathayamela’ was organized to allot the government land to the illegal encroachers, as settlers of forest area. The petitioner, a voluntary organization, functioning with the main object of protection of wild life and ecology, approached the High Court against the Government of Kerala flouting the provisions under Article 48-A and the laws and rules relating to the protection of environment. The lame pleas taken by the State of Kerala included pressure of population, impossibility of reverting into forest area, implementation of social forestry scheme involving Rs. 113 crores, and that the regularization of encroachments before 1.1.1977 did not attract provision of Section 2 of the Act of 1980.

The apex court, it seems, influenced by the humane problem in upholding the action as valid, tried to balance environment and development in such a way that the socio-economic development was given predominance over the issue of the protection of environment. In coming to the conclusion, it is submitted, the court confined its vision to some of the pre-development case law where the judges looked to aspect other than environment. At this stage, one is reminded of the stand taken by Bhagwati J., in the Banwasi Seva Ashram case113, a case which has been cited in support in the present case, where the learned judge was more concerned for the shortage of electricity which, according to him, may be made good at the cost of denudation of Vindhya Valley. There is nothing impossible in reverting back to the then status quo. The Supreme Court has time and again ordered shifting of large scale tanneries and other polluting industries to other places.114 It was a question of fifty thousand acres of forest land to be protected.

One would at least expect the court to reduce, as the last alternative, the encroached lands. The second aspect which led to dismissal of the writ petition was that the regularization was of the encroachment before 1 January 1977 when the Act of 1980 did not exist and as such had no application. But in this case the order of regularization came after the Forest (Conservation) Act 1980 came into force. In view of this, the order required all formalities under the Act to be complied with before taking any action. For the non-compliance the court itself observed, ‘this is no doubt true’ and directed that state government to furnish monthly reports in this connection to Ministry of Environment and Forest, Government of India. In these circumstances, the court could have allowed the petition and provided modalities to rehabilitate the illegal encroachers. So; in the present case of ‘great moment, affecting a large number of persons and of great public importance’, Mahammad, J., speaking for the full bench, started with ‘Love of nature’, ‘Love for ecology’ but ended with love for the forest encroachers, one finds a pre-development approach of the learned judge when he ventilates his feeling by saying, ‘it appears to be a mudslinging slogan that man is upsetting ecology and destroying his life support.’ Do the Bhopal mass disaster, oleum gas leak, Bichhari episode and some of many other disasters not enough to prove otherwise? Thus in the continuing denudation of forests in India the fifty thousand acres land was further allowed to be used for human habitat and for commercial and agricultural purpose.

5.6 DISRESPECT TO COURT’S ORDERS IN ENVIRONMENTAL MATTERS

The court from time to time issues orders and directions to the government concerned to do or not to do certain things. The orders so passed, as per the provisions of Article 142(1) of the Constitution of India, shall have the same force of enforcement as may be prescribed by or under any law. Thus the above article imposes a constitutional mandatory obligation on all the concerned person to abide by the orders and decisions issued by the courts in these cases. There are
case where the government did not honour the orders/decisions of the court, a breach of constitutional obligation leading to bureaucratic Raj.

The decision in M. C. Mehta v. Union of India case\textsuperscript{115} stands out as an example of defiance of Supreme Court's order by the states. In this case, the State of Delhi adopted a defiant attitude. The Supreme Court has issued order on 28 July 1998 and 26 March 2001 regarding switching over to CNG for the entire fleet of city buses. These orders and other relevant directions issued in this regard by the court were not complied by the government; rather it chose to act contrary to the orders/decisions. The non-compliance of orders was unfortunately made public by none other than the Chief Minister herself. This led to the Central Government's counsel withdrawing from the case. Still the Supreme Court, it is regretted, chose not to exercise its contempt proceeding against the erring officials.

One can see a naked violation of the courts order in the A. Lakshmisagar v. State of Karnataka case\textsuperscript{116}, where the Karnataka Government, nullifying the order of the High Court, issued order permitting the conversion of the forest land for housing residential colony. It is interesting to note the forth respondent requested the state government to issue a G.O. stating therein, 'notwithstanding in the order passed by the divisional bench of the High Court U.P. 13014/89 dated November 28, 1990'. The government toed the illegal course of action. But the illegality was set at rest by the Karnataka High Court. Rama jois, J., speaking for the division bench, showed strong displeasure against the abuse of power. The learned judge pointed out that it was the power of the Supreme Court to undo the High Court ruling; whereas in the present case, the government had arrogated to itself a the power of the Supreme Court which was not only high handedness and arbitrary but also against the constitutional discipline. The learned judge termed such incident 'as most shocking and unfortunate' and 'a very bed example' which

\textsuperscript{115} See, the further defiant attitude in M.C. Mehta v. Union of India, AIR 2001 SC 1948; M. C. Mehta v. Union of India, AIR 1999 SC 1501; M.C. Mehta v. Union of India, AIR 1999 SC 291.

\textsuperscript{116} AIR 1993 Kant 121.
'would endanger the faith of people in the rule of law'. The most appreciable role of the court was that the efforts of the petitioners were commanded by the court; and on the order, the high handedness with an exemplary cost of ten thousand rupees to be paid in each petition by the state government and the builder, to be shared by them in equal proportion. But the hard stand of the court id diluted when the court surprisingly answered the plea for action for the contempt of the court by saying, 'we do not consider it appropriate to express any opinion'. Is not the court adopting a deferential approach at this stage? In such a game, it is suggested the court should have made accountable the defaulting officer(s) involved in blatant illegality, tarnishing the image of the government.

The stone crushing industries give rise to stone dust effecting the environment of the near by area. The national capital city of India, Delhi, was bearing the brunt of the stone dust storm. But there were no specific rule to control the pollution caused by such industries. The Supreme Court\textsuperscript{117} in order to control and prevent the environmental pollution directed the Government of Delhi to frame separate rule for licensing and operation of stone crushing industries around Delhi. The government chooses not to comply with the orders of the court. The Supreme Court had itself law down detailed direction to fill the vacuum in this regard. This activist stands in laudable but it is felt that at the same time the court should have processed against the erring officials.

Section 3(3) of The Environment (Protection) Act 1986 authorised the Central Government to constitute an authority in order to exercise and perform such of its powers and functions under this Act the protect and improve environment. There were cases where the Supreme Court felt that the Central Government failed to perform or was inactive in exercising certain powers conferred under this section. Hence it directed the central Government to constitute such an authority. But in many cases the central government hardly did any thing. The Vellore Citizens Welfare Forum case\textsuperscript{118} reveals that there were

\textsuperscript{117} M. C. Mehta v. Union of India, (1992) 3 SCC 256.
\textsuperscript{118} Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715.
large number of tanneries in the state of Tamil Nadu causing pollution of a very wide dimension, but the state government did nothing to control it, the apex court showed its anguish for not constituting an authority and, in the view of distressing state of affairs in the state of Tamil Nadu, the apex court had to direct the Central Government to take immediate action for constituting such an authority. The reality in this regard is that such order have been flouted more rather than complied with. The non-creation of such an agency, it may be pointed out, shows Central Government's unconcerned approach in that matter.

In the D.D. Vyas case119, the development authority made people 'hapless', forcing them to resort to judicial remedy. In this case the development authority cooperate with the justice delivery system. It was supposed to file counter affidavit but realizing that the petitioner would not press that matter it kept mum. The court had to repeatedly asked the authority to file the same but the respondent’s counsel did not show any response. However, realizing that the contempt proceeding may be initiated, it demanded additional time to file the counter. The respondent sat on the matter for more than five months. The disrespect did not end here. It continued even on the date when the hearing was fixed. Astoniguishly, the respondent’s counsel did not file the affidavit even on the date of hearing, keeping their card closed till the last moment. The result of such inaction was that the High court had no option but to take the plea of the petitioner as undisputed.

5.7 THE LAW AND POLICY DIVIDE: WHERE DO WE DRAW THE LINE?

The framers of Indian Constitution did not incorporate a strict doctrine of separation of power but envisaged a system of check and balances. Policy-making and implementation of policy are conventionally regarded as the executive domain of the executive and the legislature, with judiciary enforcing the law. The Supreme Court has itself recognized the 'the Indian Constitution has not indeed

recognized the doctrine of the separation of powers in its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated and consequently it can very well be said that our constitution does not contemplate assumption, by one organ or part of the state, of functions that essentially belong to another'.\textsuperscript{120} The power of the judicial review cannot be used by the court to 'usurp or abdicate the powers of other organs'.

In the development of our writ jurisdiction, derived from the English Common Law and the principles of judicial review, the court is primarily concerned with the decision-making process and not the decision itself. The court has reiterated that matter of policy would be a bar to the courts interference. Public interest litigation in practice, however, tends to narrow the divide between the roles of the various organs of government, and has invited controversy principally for this reason. The court has sometimes even obliterated the distinction between law and policy. The approach of the court in policy matter is to ask whether the implementation or non-implementation of the policy results in the violation of fundamental rights. Where it does, the Court may interdict the violation, and issue orders accordingly. In M. C. Mehta v. Union of India,\textsuperscript{121} the court explained how, despite the enactment of the Environment (Protection) Act, 1986, there had been a considerable decline in the quality of environment. The court noted that despite several public interest litigations 'the required attention does not appear to have been paid by the authorities concerned to take the steps necessary for the discharge of duty imposed on the state......any further delay in the performance of duty by the Central Government cannot, therefore, be permitted. Suitable directions by the Court to require performance of its duty by the Central Government as mandated by the law and have therefore, now to be given'. The court however, required the Central Government to indicate what steps it had taken thus far and also place before it the national policy, if any, drawn up for the protection of the environment.

\textsuperscript{121} Ibid., at p. 590.
In the matter relating to forests, in T. N. Godavarman v. Union of India, the court constituted an expert committee to examine the issue of depletion of forest cover and to consider questions such as who could be permitted to use forests produce and in what circumstances this was permissible. The Court imposed restrictions on the feeling of trees and the sale of timber. In an exercise of 'continuing mandamus' it closely mentioned the implementation of its orders.

A writ petition in 1985 filed by M.C. Mehta related to proper management and control of vehicular traffic in Delhi. It was suddenly activated on 20 November 1997 by the Supreme Court after a large number of children dies when a school bus plunged into the river Yamuna. The Court justified its directions to the government to prescribe speed limits and mandate the installation of speed control devices on the ground of executive inaction when it found that although the provisions of the Motor Vehicle Act, 1988, were adequate, they had not been exercised.

The law and policy divide was obliterated in Vishaka v. State of Rajasthan, which was public interest litigation, concerning sexual harassment of women at workplace. A significant feature of this decision was the Court's readiness to step in where the legislature had not. The Court declared that till the legislature enacted a law consistent with the Convention on the Elimination of All Forms of Discrimination against Women, which India was obliged to do as a signatory, the guidelines set out by the Court in Vishaka, adopting the Convention, would be enforceable.

However, in Delhi Science Forum v. Union of India, where the Government of India's telecommunication policy was challenged by a public interest litigation, the Court refused to interfere with the matter on the ground that

it concerned a question of policy. Likewise, public interest litigations have sought prohibition on sale of liquor,\textsuperscript{127} or for the recognition of a particular language as a national language,\textsuperscript{128} or for the introduction of a uniform civil code\textsuperscript{129} have been rejected on the ground that these were matters of policy.

The Court may refuse to entertain a public interest litigation if it finds that the issue are not within the judicial ambit or capacity. Thus, a petition seeking directions to the Central Government to preserve and protect the Gyanvati Masjid and the Vishwanath temple at Varanasi as well as the Krishna temple and the Idgah at Mathura was rejected. The Court said: 'the matter is eminently one for appropriate evaluation and action by the executive, and may not have an adjudicative disposition or judicially manageable standards as the pleading now stands'.\textsuperscript{130}

In the Tehri Bandh Virodh Sangarsh Samiti v. State of U.P.\textsuperscript{131} the court stated that it did not possess the requisite expertise to render any final opinion on the rival contention of the experts. In our opinion the court can only investigate and adjudicate the question as to whether the Government was conscious to the inherent danger as pointed out by the petitioners and applied its mind to safety of the dam. We have already given in detail, which shows that the government has considered the question on several occasions in the light of opinions expressed by the experts. The Government was satisfied with the report of the experts and only thereafter clearance has been given to the project.

Despite such observations, the Court has not adopted a uniform and consistent approach in dealing with its emerging role as policy-maker. While in

\textsuperscript{127} Kanhya Lal Sethia v. Union of India (1997) 6 SCC 573. But see, Santosh Kumar v. Secretary, Ministry of Human Resources Development (1994) 6 SCC 579, where the Supreme Court, in a public interest litigation issued a mandamus to the government for an amendment of the syllabus for secondary schools to include Sanskrit as an elective subject.


\textsuperscript{131} (1992) Supp. 1 SCC 44.
some occasions, the court has expressed its reluctance to step into the legislative field, in others it has laid down detailed guidelines and explicitly formulated policy. The more recent trend, however, is for the court to assert its new role as a policy maker, as the directions in Visakha’s case demonstrate.