CHAPTER – V

JUDICIARY ON SUSTAINABLE DEVELOPMENT OF ENVIRONMENT

In the process of protection of environment, there has always been confrontation of two inevitable conflicting interests; one is the ‘Human Development’ for decent living and the other is the ‘Preservation of Environment’ for life existence. At the same time, these two rivalry interests are quite essential in Human Rights realm. Human development is always leads to the depletion of environment. The reason is that human development is possible only in the rapid growth of industrialization. Whereas the industrialization is always pave the way for environmental degradation. The one and only mantra for this bewildering situation is the principle of “Sustainable Development”.

Environmental consciousness has also rendered support to the demand of judicial activism in the field of environment. The concept of judicial activism is neither absolutely new nor absolutely free from class or controversy. In the statute law countries that demand of judicial activism arose due to the defective or deficient legislative process and also due to inefficient or ineffective executive. Article 142(2) of the Constitution has become a great source of inspiration to stress judicial activism to meet the ends of justice the Article empowers Supreme Court to pass appropriate orders in order to go beyond law and find out the habitation of justice

Therefore, the researcher made an attempt in the new era of ‘Judicial Activism’ made by the Temples of Justice through coercive sanctions of judicial process for the noble cause of protection of environment and prevention of pollution, for bringing cheers to the millions of silent victims of industrial pollution and environmental disaster. The researcher examines the role of courts in evolving a new jurisprudence in India’s onward march towards development. It

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discusses how certain unused provisions of law are being developed as a significant tool in the protection of environment highlights the vigilance of the Judiciary.

5.1. Environment Protection & Judiciary until the Rise of ‘Sustainable Development’

In the dying decade of twentieth century, protection of the environment is prime concern to every nation. When assaults on environment pose threat to life and cause adverse socio-economic repercussions, courts can not sit with closed eyes. In the rule of law societies, courts begin to examine the problems with greater consciousness and a commitment to remedying the environmental maladies. Times are never static, the situation changes with the changing needs of society, environmental protection, environmental pollution, environmental awareness and environmental litigation were unknown to us barring few exceptions. It is an established truth beyond doubt that without environment very survival of mankind is at stake and it has become a matter of life and death. Decline in environmental quality has been evidenced by increasing pollution, loss of vegetable cover, and biological diversity, excessive concentration of harmful chemicals in the ambient atmosphere and in food chains; growing risk of environmental accidents and threats to life support systems has drawn the attention of entire world community and therefore they resolved to protect and enhance the environmental quality. In such a situation how the judiciary can remain a silent spectator when the subject has acquired high importance and has become a matter of caution and judicial notice. The court of law with the sword of Justice battling for people’s rights against the anti-people order is a constitutional incarnation and democratic consumption and indeed is an overdue implementation of Independence. Courts are duty bound to inspire confidence in people as a whole for whom it exist. Justice Lodha has rightly pointed out Judiciary exists for the people and not vice-versa, and therefore it must impart effective, prompt, and ready justice in matters involving peoples civil rights, (such as sanitation facilities, proper light, air and environment) and public interest litigation. Courts cannot betray the confidence and trust by shirking their responsibilities but come forward immediately and provide relief wherever and whenever required. It is a gospel

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3 V.R. Krishna Iyer, J “Indian Justice Prospective and Problem, p. 34.
truth that more than administrative and legislature measures judicial activism supported by Public Interest Litigation (PIL) has served the cause of antipollution, environmental protection and the maintenance of ecological balance.

5.1.(a). Environmental Protection in Upholding Tortuous Liability

In order to protect the ecology, the judiciary in pre-independent period was in most of the cases applied ‘Nuisance’, ‘Negligence’ and ‘Strict Liability’ under law of Tort. Tort law is primarily on the protection of individual rights and there would a need to prove the injury. The ultimate result is that the successful claimant is allowed to receive compensation, besides it the court will order to abate the tort. Nuisance actions were the most popular in pre-independent era as under this tort the claimant would receive compensation. The Law of Torts in India is found on English law and it had frequently been applied in India for pro-environmental issues until India acquired Independence. In that period certain courts were empowered by their charter to administer English law as such, while others were required by their incorporating statutes, to act according to “Justice, equity and good conscience” in the absence of any specific law. In *Waghela Rai Sanji Vs. Sheikh Masluddin* this phrase was interpreted to mean the rules of English law, if found applicable to Indian society and circumstances.

The law thus developed was preserved by Article 372 of the Indian Constitution which states that “...... all the laws in force in the territory of India immediately before the commencement of this constitution shall continue in force therein until altered or repealed or rescind by a competent legislative or other competent authority. Prior to independence the rule in *Rylands Vs. Fletcher* was judicially recognised and so was part of the law preserved by the constitution. However, it has been applied with Indian circumstances in mind. In *Madras Railway Company Vs. The Zamindar of Carvatenagaram* the judicial committee of the Privy Council held that the rule in *Rylands Vs. Fletcher*, though not binding on a court of law recognised by the laws of all civilized countries, namely ‘Sic utere tuo allenum non laedas’ and

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6 (1887) 11 Born. 551, P.C.

7 (1868) L.R. 3 H.L. 330.

8 (1874) 1 I.A. 364.

9 Supra Note 6.
so was a rule that could be applied to the circumstances of the same character in India. Subsequent cases have refined the Indian version of the rule very much along English lines. Indian law also recognises the major exceptions to *Rylands Vs. Fletcher*\(^\text{10}\) liability. Further more, like a English rule the Indian rule appears to be becoming assimilated to the other forms of tortious liability, notably nuisance and negligence. The latter is particularly true where the hazardous activity is done in the public interest under statutory authority.

The rules of tort law were introduced into India under British rule. Initially, disputes arising within the presidency towns of Calcutta, Madras and Bombay were subjected to common law rules. Later Indian courts, outside the presidency towns were required by Acts of British Parliament and Indian laws to reconcile disputes according to justice, equity and good conscience where there was no applicable statute. Consequently, in suits for damages for torts (civil wrongs), courts followed the English common law in so far as it was consonant with these principles. By the eighteenth century, Indian courts have evolved a blend of tort law adapted to Indian conditions. Common law based tort rules continue to operate under Article 372 of the Indian Constitution which ensured the continuance of existing laws.

A common law action for negligence may be brought to prevent environmental pollution. In an action for negligence, the plaintiff must show that (1) the defendant was under a duty to take reasonable care to avoid the damage complained of, (2) there was a breach of that duty, and (3) the breach of duty caused the damage. The degree of care required in a particular case depends on the surrounding circumstances and varies according to the risk involved and the magnitude of the prospective injury.

An act of negligence may also constitute a nuisance if it unlawfully interferes with the enjoyment of another’s right in land. Similarly it may also amount to a breach of the rule of strict liability in *Rylands Vs. Fletcher*\(^\text{11}\), if the negligent act allows the escape of any thing dangerous which the defendant has brought on the land.

\(^\text{10}\) Id.,

\(^\text{11}\) (1868) L.R. 3 HL 330
The rule in *Rylands Vs. Fletcher*\(^{12}\) holds a person strictly liable when he brings or accumulates on his land something likely to cause harm, if it escapes, and damage arises, as a natural consequence of its escape. But ‘strict liability’ is subject to a number of exceptions, that considerably reduce the scope of its operation. Exceptions that have been recognised are: (1) an act of God (natural disasters, such as an earthquake or flood), (2) the act of a third party (e.g. sabotage), (3) the plaintiffs own fault, (4) the plaintiff’s consent, (5) the natural use of land by the defendant and (6) statutory authority. Strict liability applies to a non-natural user of land.

With the expansion of chemical based industries in India, increasing number of enterprises store and use hazardous substances. These activities are not banned because they have great social utility e.g. manufacture of fertilizers and pesticides). The doctrine of strict liability allows for the growth of hazardous industries, while ensuring that such enterprise will bear the burden of the damage they cause when a hazardous substance escapes.

In *M.C. Mehta Vs. Union of India*\(^{13}\) the Supreme Court of India has stated a new principle of liability for enterprises engaged in hazardous or inherently dangerous activities. Under this principle if any harm results from the hazardous activity, the enterprise is absolutely liable to compensate for such harm. Such liability is not subject to any of the exceptions (stated above) that operate under the rule in *Rylands Vs. Fletcher*.

*M.C. Mehta Vs. Union of India and Sri Ram Food and Fertilizers Industries Vs. Union of India*\(^{14}\) in this case the Supreme Court declared the law of strict and absolute liability in air pollution gas leak cases. The court held that an enterprise which is engaged in any hazardous or inherently dangerous industry which could pose a threat to public health and the safety of the persons in or outside the factory or residing in the neighbourhood owed an absolute and non-deligatable duty to the community to ensure that no harm resulted to anyone. It should conduct its hazardous and inherently dangerous activities with highest standards of safety. If any harm is caused, the enterprise would be absolutely liable to compensate for it. The enterprise will not be able to plead that it took all reasonable care and that harm occurred without any

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\(^{12}\) Id.

\(^{13}\) A.I.R. 1987, S.C. 1086

\(^{14}\) A.I.R. 1987 50. 965
negligence on its part and directed the Sriram Food and Fertilizers Industries to deposit Rs. 20 lakhs by way of security for payment of compensation to the victims of oleum gas.

Sriram Food and Fertilizer Industries, a unit of Delhi Cloth Mills Ltd., was engaged in manufacture of several chemicals like caustic soda, chlorine, sulphuric acid, alum etc. in a thickly populated area of Delhi, on 4th and 6th December, 1985 (exactly after one year of the Bhopal gas tragedy) a major leakage of oleum gas took place from one of the units of Shriram Food and Fertilizer Industries affecting large number of workers and public, and even an advocate died due to this leakage. The court as stated above declared the law of strict liability and thereby provided relief to the victims. The court though did not allow the government to stop the caustic soda plant but ordered to comply with certain stringent conditions which are to be applied by Shriram Food and Fertilizer Industries before starting the manufacturing process so that such incident may not take place. Giving justification for restart of industry court observed.

When science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. It is not possible to adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard or risk to the community. If such policy were adopted it would mean the end of all progress and development. Such industries even if hazardous have to be set up since they are essential for economic development and advancement and of course well being of the people.

Further if the industrial unit is closed about 4,000 workmen will be out of employment and such closure will lead to their utter impoverishment. Further the chlorine is a must for purifying the water and as such its supply is a must and therefore various considerations on both sides have to be weighted and balanced and then the decision has been made.

In the light of the above observation and also In the light of reports of various committees the court directed to restart unit but certainly with strict application and implementation of the guidelines and conditions as laid down by the court such as :
(i) Installation of loud speakers,

(ii) Tree plantation near the factory i.e., green belt of 1 to 5 kms width ground such hazardous industries.

(iii) To take special care and to evolve a national policy for location of chemical and other hazardous industry in the areas where the population is scarce.

(iv) Where hazardous industries is situated in such area every care must be taken to see that large human habitation does not grow around them.

(v) Expert Committees must be appointed to evolve safety devices.

(vi) Workmen working in these industries should be specially trained and instructed and educated in such a way so that he may take all possible precautions in case of leakage of gas or otherwise.

(vii) Detailed charts should be provided in Hindi and English both stating effects in such gas on human body. The chart must also provide as to what immediate treatment should be taken in case they are affected by leakage of gas.

(viii) Bank guarantee should be taken from such industries for compensating victims in case harm is caused to them because of the disaster.

(ix) Steps must be taken for strict observation of safety standards and procedures so that the risk is reduced to nil.

(x) It was recommended to set up "Environmental courts" on the regional basis so that they may dispose of such cases, as early as possible that too by the experts of the field”.

This case seems to be a landmark case in the judicial history of India in which the court tried to maintain the balance between the economic progress and environmental protection kept in the pros and cons in view and tried to adopt a midway convenient to both.
Further, the court has tried, to remove the tears from the oppressed, suppressed, depressed, gloomy faced poor innocent people who are victims of these tragedies and disaster by providing them with relief through compensation and making the polluter strictly liable. The court also emphasized the need of separate environmental courts in an unequivocal terms.

The court also provided a relief to the public spirited people and social activists who are working day in and day out for the cause of the society and their upliftment by directing Sriram Food and Fertilizers Industries to pay Rs.10,000/- to the petitioner as the token of appreciation for fighting a valiant battle against a giant enterprise. Singly for the noble cause of prevention of pollution and protection of environment.

M.C. Mehta Vs. Union of India\textsuperscript{15} in another application filed by Sriram Food and Fertilizers Industries for certain clarifications and modifications the Supreme Court has taken a very good view and held that where the court comes to the conclusion that certain directions or address given by the court does not seem to be feasible or practicable then the court will not shut its mouth but it will come forward and modify its orders for the smooth functioning of an industry, so that economy and growth not only of the company but of the entire nation may not get jeopardised by the judicial gun booms, because the judiciary is also bound to play its role in developmental process and it also cannot shrink from its responsibility. The duty of the court is to strike a proper balance between ecology and Industrial development.

The Supreme Court in yet another petition by M.C. Mehta, rejecting the established English rule of Rylands Vs. Fletcher, accepted the strict liability in absolute terms and held that Law has to be evolved in order to meet the challenge of new situations. Law can not afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with new problems which arise in a highly industrialised economy. We cannot allow our Judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have build up our own jurisprudence and we cannot countenance an argument that merely

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\footnotesize\textsuperscript{15} A.I.R. 1987 S.C. 982
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because the new law does not recognise the rule of strict and absolute liability in cases of hazardous or dangerous liability or as the rule laid down in Rylands Vs. Fletcher as is developed in England recognised certain limitations and responsibilities. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English courts have not done. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous activity which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegatable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance of any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional, on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity indemnifies all those who suffer on account of a carrying on such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover any guard against hazards or dangers and to provide warning against potential hazard. We would therefore hold that where an enterprise is engaged in hazardous or inherently dangerous activity and harm results to any one on account of an accident in the operation of such hazardous or inherently dangerous
activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in Rylands Vs. Fletcher.

In M.C. Mehta Vs. Union of India. Oleam gas escaped from a unit of the Sri Ram Foods and Fertilizer Industries and injured a few Delhi citizens. The court observed that in such cases, compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The large and more prosperous the enterprises, the greater must be the compensation payable by it.

5.1.(b). Environmental Protection by Penalizing

The judiciary has been invoking penal actions for the environmental protection until the rise of the ‘Sustainable Development’ in India. Under Section 133 of the Code of Criminal Procedure, 1973 an Executive Magistrate can be approached for orders for removal of public nuisance. Such nuisance may he caused by pollution arising from substances like domestic, urban or industrial waste or even by instrument, a device or Installation like a plant in a factory. This provision remained unused for a long time for removing nuisance arising from environmental pollution. Of late, the Supreme Court of India revitalised this provision. The public duty of the Magistrate to come to the rescue of citizens in such cases was emphasised, Gobind Singh Vs. Shanti Saruo

In this case the complaint was against public nuisance created by an oven and a chimney constructed for the business of the respondent as a baker. The magistrate made a conditional order for demolition of the oven and the chimney within a period of ten days and asked the respondent to show cause why the order should not be confirmed. After revision and a further reference to the High Court, the matter finally reached the Supreme Court in appeal by special leave. The Supreme Court said:

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16 A.I.R. 1987, S.C. 1086
17 A.I.R. 1987, S.C. 1086 at 1099
"We are of the opinion that in a matter of this nature where what is involved is not merely the right of a private individual but the health, safety and convenience of the public at large, the safer course would be to accept the view of the learned magistrate who saw for himself the hazard resulting from the working of the bakery”.

Municipal Council Ratlam Vs. Vardichand, the residents of a locality within limits of Ratlam Municipality to extended by stench and stink caused by open drains and public excretion by nearby slum-dwellers moved the magistrate under Section 133 Cr. P.C. to do its duty towards the members of the public. Another complaint was that the municipality has failed to prevent the discharge of malodorous fluids in the public street. Due to which mosquitoes found a stagnant stream of stench so hospitable to breeding and flourishing with no municipal agent disturbing their stringent music at human expense. The Honourable V.R. Krishna Iyer, J. speaking for the Supreme Court said:

“The Cr.P.C. operates against statutory bodies and others regardless of the cash in their offers. Public nuisance because of pollutions being discharged by big factories to the detriment of the poor section of the society is a challenge to the social justice component of the rule of law. The municipality should not adopt hands of attitude on the plea of financial difficulties.”

The court further observed:

“A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facts of human rights and are a first charge on local self governing bodies. Similarly providing drainage systems not pompous and attractive, but in working condition and sufficient to meet the needs of the people cannot be evaded if the municipality is to justify its existence. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice”.

Accordingly, the court directed the Municipal Council, Ratlam to take immediate action to stop the effluents from the Alcohol Plant flowing into the street. It also directed the State Government to stop pollution and specially asked the Municipal Council to construct a sufficient number of public latrines for the use by men and women separately, provide water supply and scavenging service morning and evening so to ensure sanitation within a period of six months.

Industries cannot make profit at the expense of public health. The Court said:

“Failure to comply with the directions will be visited with a punishment contemplated by Sec. 188 of Indian Penal Code”. This decision of the Supreme Court - touching upon the constitutional dimensions, social justice, environmental cleanliness and public health is of great significance.”

*Krishna Gopal Vs. State of Madhya Pradesh* 20 is another notable case where the provisions in Section 133 Cr.P.C. was effectively made of use. In this case the complaint was against noise and air pollution from a glucose saline manufacturing company. It was installed in a residential locality under licence granted by the appropriate authorities. A lady resident of that locality one Mrs. Sarala Tripathi complained that her husband a hear patient, had been disturbed in his sleep every night due to the booming noise produced by the boiler in the factory. The allegation of Mrs. Tripathi was that the factory was emitting ash and smoke all the time too. She contended that factory was causing atmospheric pollution, and noise pollution resulting in a deleterious effect on the residents of that locality and therefore this public nuisance be removed at once. The factory owner in his reply contended that she is the only lady who has made such complaint. Further, he has already obtained no objection certificates from concerned authorities. Rejecting the arguments of factory owner Hon’ble Justice V.D. Gyani of Madhya Pradesh High Court upholding the right of Mrs. Tripathi observed:

Merely because one complaint has come forward to complain about the nuisance cannot be said to be not a public nuisance contemplated by Section 133 Cr.P.C. The Hon’ble Judge appreciating the women's efforts not only accepted her appeal but also asked the factory owner to pay the cost of litigation to Mrs. Tripathi. Accepting the contention that working of a

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20 1986 Cri.L.J. 396
factory in residential area is a public nuisance under Sec. 133 Cr.P.C. court held Addl. District Magistrate was right when he ordered closure and removal of both the boiler and the factory by invoking provisions of Section 133 Cr.P.C.

Speaking on the value of the environment the court through Justice Gyani observed:

"A vagrant committing a petty theft is punished four years of imprisonment while a billion dollar price fixing executive comfortably escapes the consequences of his environmental crimes". He went on saying that "Society is shocked when a single murder takes place but air, water and atmospheric pollution is react merely as news without slightest perturbation till people take ill, go blind or die in distress on account of pollutants, that too resulting in the filling of the pockets of the few".

5.2. Judiciary vis-à-vis ecology

M.C. Mehta Vs. Union of India and Others21 Green Advocate cum active social worker has filed a petition as PIL, for issue of writ of Mandamus, for restraining the respondents from letting out the trade effluents into the river Ganga till such time they put up necessary treatment plants for treating the trade arrest the pollution of water in the said river. The court through Hon'ble Justice (Late) E.S. Venkataramaiah held (who later became the Chief Justice of India) :

"Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist. A tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensure by discharging of the trade effluents from the tannery to the river Ganga".

On the issue of financial incapacity the court observed that financial incapacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. On the question of pollution the court said that the effluent discharged from the tannery is ten times noxious when compared with domestic sewage water which flows into the river from any urban area on its banks. Accordingly the court directed about 30 industries to stop running

21 A.I.R. 1988, S.C. 1037
of their tanneries and also not to let out trade effluents from them either directly or indirectly
into the river Gang a without setting up of primary treatment plant as approved by State Board,
Hon'ble Justice K. N. Singh while taking note of the fate of the employees who will be out of
job because of closure of tanneries held:

"We are conscious that closure of tanneries may bring unemployment, loss of revenue
but life health and ecology have greater importance to the people".

The court thus realized the value of environment in unequivocal terms and even
tolerated unemployment problem for production, improvement and enhancement, conservation
and prevention of pollution of environment. The court also indirectly issued a mandate to have a
treatment plant to every industry which deals with hazardous substances or discharge the
effluents. Hon'ble Justice K.N. Singh while agreeing with (Late) Justice Venkataramaiah added
few words in the honour of the holy river Ganges which are as follows:

"The Hon'ble Supreme Court has thus agreed in principle that nothing would curb
pollution menace more effectively than public awareness and their cooperation for the noble
cause task of prevention and check of pollution. The Supreme Court also directed to take up the
matter again against municipal bodies and industries which were responsible for the pollution
of the water of the river Ganga. Number of Industries as per the directions of the court installed
effluent treatment plants but their remained number or other industries and municipalities and
therefore yet another decision."

M.C. Mehta Vs. Union of India\textsuperscript{22} the Supreme Court through this issued further
directions for checking and preventing the pollution of river Ganga.

\textit{M.C. Mehta Vs. Union of India}\textsuperscript{23} (Ganga Pollution case), in this cases an
active social worker has filed a petition as Public Interest Litigation, for issue of writ of mandamus for restraining the respondents from letting out the trade effluents into
the river Ganga till such time they put up necessary treatment plants for treating the

\textsuperscript{22} A.I.R. 1988, S.C. 1115
\textsuperscript{23} A.I.R. 1988, s.c. 1037
trade effluents in order to arrest the pollution of water in the said river. The court through Honourable Justice E.S. Venkata Ramaiah held:

"Just like an industry which can not pay minimum wages to its workers cannot be allowed to exist. A tannery which cannot setup a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from the tannery to the river Ganga. On the issue of financial incapacity the court observed that financial capacity of the tanneries should be considered as irrelevant while requiring them to establish Primary Treatment Plants."

On the question of pollution the Court said that the effluent discharge from the tannery is ten times noxious when compared with domestic sewage water which flows into the river from any urban area on its banks.

Accordingly court directed about 29 industries to stop running of their tanneries and also not to let out trade effluents from the either directly or indirectly into the river Ganga without setting up of Primary Treatment Plant as approved by State Board. Hon’ble Justice K.N. Singh while taking note of the fate of the employees who will be out of Job because of closure of tanneries held that we are conscious that closure of tanneries may bring unemployment, loss of revenue but life, health and ecology have greater importance to the people.

The court thus realised the value of environment in unequivocal terms and even tolerated employment problem for protection, improvement, enhancement, conservation and prevention of pollution of environment.

The court also indirectly issued a mandate to have a Treatment Plant to every industry which deals with hazardous substances or discharges the effluents. Hon’ble Justice K.N. Singh while agreeing with Justice Venkata Ramaiah added few words in the honour of the holy river Ganges. Since the views are of great importance and as such they are produced a verbatim for the convenience.
"The river Gang is one of the greatest rivers of the world, although its entire course is only 1560 miles from its source in Himalaya to the Sea. There are many rivers larger in shape and longer in size but no river in the world has been so great as the Ganga. It is great because to millions of people since centuries it is the most sacred river it is called “Sursari” river of the gods. "Patiepawani" purifier of all sins and Ganga Ma ‘Mother Ganges. To millions of Hindus it is the most sacred, most venerated river on earth. According to the Hindus belief and mythology to bathe in it is to wash away guilty to drink the water, bathed in it and to carry it way in containers for those who may have not had the good fortune to make the pilgrimage, to it, is meritorious. To be cremated on its banks, or to die there and to have one's ashes cast in its waters is the wish of every Hindu. Many saints and sages have persuaded their quest for knowledge and enlightenment on the banks of the river Ganga. Its water has not only purified the body and soul of the millions but it has given fertile land to the country in Uttar Pradesh and Bihar. Ganga has been used as means of water transport for trade and commerce. The Indian civilization of the Northern India thrived in the plains of Ganga and most of the important towns and places of pilgrimage are situated on its banks. The river Ganga has been part of Hindu civilization.

Pandit Jawhar Lal Nehru who did not consider himself a devout Hindu gave expression to his feelings for the Ganga that is to be found in his will and testament, a short extract from which is as under:

"My desire to have a handful of my ashes thrown into the Ganga at Allahabad has no religious significance, so far as I am concerned. I have no religious sentiment in the matter. I have been attached to the Ganga and the Jamuna rivers in Allahabad ever since my childhood and, as I have grown older, this attachment has also grown. I have watched their varying moods as the season changed and have often thought of the history and myth and tradition and song and story that have become attached to them through the long ages and become part of their flowing waters. The Ganga, especially, as the river of India, beloved of her people, round which are interwined her racial memories, her hopes and fears, her songs of triumph, her victories and her
defeats. She has been a symbol of India's age long culture and civilisation, ever changing, ever flowing, and yet ever the same Ganga. She reminds me of the snow-covered peaks and the deep valleys of the Himalayas, which I have loved so much and the rich and vast plains below where my life and work have been cast”.

The river Ganga is the life line of millions of people of India. Indian culture and civilization has grown around it. This great river drains of eight States of India - Himachal Pradesh, Punjab, Haryana, Uttar Pradesh, Rajasthan, Madhya Pradesh, Bihar and West Bengal. The Ganga has always been an integral part of the nation’s history, cultures and environment. It has been the source of sustenance for the millions of people who have lived on its banks from time immemorial.

Millions of people in India drink its water under an abiding faith and belief to purify themselves to achieve moksha release from the cycle of birth and death. It is tragic that the Ganga, which has since time immemorial, purified the people are being polluted by man in numerous ways, by dumping of garbage, throwing carcass of dead animals and discharge of effluents. Scientific investigations and survey report have shown that the Ganga which serves one-third of the India's population is polluted by the discharge of municipal sewage and the industrial effluents in river. The pollution of the river Ganga is affecting the life, health, and ecology of the Indo-Gangatic Plain. The Government as well as Parliament both have taken a number of steps to control the water pollution, but nothing substantial has been achieved. I need not refer to those steps as my learned brother has referred to them in detail. ‘No Law or Authority can succeed in removing the pollution unless the people co-operate’. To my mind, it is the sacred duty of all those who reside or carry on business around the river Ganga to ensure the purity of Ganga.

The Supreme Court also directed to take up the matter again against Municipal Bodies and Industries which were responsible for the pollution of the water of river Ganga. Number of industries as per the directions of the court installed effluent treatment plants but their remained number or other industries and
municipalities and therefore yet another decision *M.C. Mehta Vs. Union of India*\(^{24}\) the Supreme Court through this issued further directions for checking and preventing the pollution of river Ganga. Accordingly Supreme Court directed Kanpur Nagar Mahapalika to:

I. Take action against dairies for either removing the waste accumulated near the dairies or to get them shifted to a place outside the city.

II. Take immediate steps to increase the size of the sewers and wherever sewerage line is not yet constructed, to get them constructed.

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

IV. The practice of throwing corpses and semiburnt corpses be brought to an end immediately. The Muncipality and Police should take steps to ensure that dead bodies or half burnt bodies are not thrown into the river Ganga.

V. Whenever applications for licences to establish new industries are made in future, such applications shall be refused unless adequate provision has been made for the treatment of trade effluents, flowing out of the factories. The court also ordered to take immediate action against the existing industries if they are found responsible for pollution of water.

Through this Judgement court also directed the Municipalities to observe and celebrate “Keep City Clean” weeks and also to introduce environmental education as a subject to be taught in first ten classes. Not only this court also directed the Central and State Government to get the text books on Environment Education written and to get them distributed in educational institutions free of cost.

\(^{24}\) A.I.R. 1988, S.C. 1115
The remarkable thing which we find in this judgement is that though it was a case against Kanpur Nagar Mahapalika but the court directed that this will apply mutatis mutandis to all other Mahapalikas and Municipalities which have jurisdiction over the areas through which the river Ganga flows and accordingly directed to send the copy of judgement to all the municipalities.

*U.P. Pollution Control Board vs. Modi Distillery and Others*\(^{25}\), in this case, the Supreme Court went a step further and said where the legal infirmity is of such a nature which can be easily cured then in that case chairman or director cannot escape from their liability merely on a hyper technical ground of wrong description of the name of the industrial unit discharging effluents and polluting the river. The court held that the technical flaw of describing the name of the company wrongly could be rectified amending the complaint but it is no ground for quashing the prosecuting against the polluters.

The facts of the case are such that M/s. Modi Industries Ltd., having large business organisation with diversified business activities involved in manufacture and sale of alcohol was discharging its highly noxious and polluted trade effluents into the river Kali and thereby causing continuous pollution of the sand stream. It was found that the alcohol industry was established as M/s. Modi Distillery before passing of Water Act of 1974. Further in spite of repeated requests by the Pollution Control Board the respondents willfully neglected and failed to furnish the requisite information regarding particulars and names of the Managing Director, Directors and other persons responsible for the conduct of the business of the company resulting in mentioning incorrect name of the company in complaint (Modi Distillery instead of Modi Industries). The court said in categorical terms that in such a case it is not open to them to take advantage of the place of their own industrial unit and can claim that prosecution be quashed. It is a very good Judgement giving a warning to the big industrial list that they must either stop pollution and stop discharging the effluents in

the river which is meant for general public and if they fail to do so they are to share the responsibility and face prosecution and that they cannot get out of their responsibilities on the hyper technical grounds as they tried in this instant case.

*M.C. Mehta Vs. Union of India.*26 This case dealt with the construction of the common Effluent Treatment Plants (CETPS) in the 28 industrial areas in Delhi. The court also considered the issues relating to the expenditure involved in constructing these treatment plants. Considering the expenditure involved the court took the view that the industries for whose benefits the treatment plants are being set up are bound to co-operate.

The court noted the "most viable alternative" to construct the Common effluent Treatment Plant's as "adopting the model as provided in the Government of India scheme where under the water polluting industries in each area are required to form of a society and contribute a minimum of 20% of the cost of the project as their share, besides obtaining a maximum of 30% loan from Industrial Development Bank of India.

*Maharaja Suri Umald Mills Ltd.. Pall and others Vs. State of Rajasthan and others,*27 in this case, Section 33 of the Water (Prevention & Control of Pollution) Act, 1974 was examined. Section 33 relates to dismissal of complaint in proceeding under Section 33, Restoration proceedings under Section 33 are criminal in nature. The court held there is no provision in Criminal Procedure Code for review of order. The court also held restoration is not permissible.

*Navin Chemicals Vs. Noida,*28 this petition was filed in the Supreme Court under Article 32 of the constitution by M/s. Naveen Chemicals Manufacturing and Trading Company Ltd. and its share holder J.C. Bhatia, initially against two respondents who were New Okhala Industrial Development (NOIDA) and M/s.

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26 (1996) 2 scale (SP) at p.89
28 1987 All. L.J. 13
Datham Mineral Corporation, Sector VI Noida Complex, District Ghaziabad. The petition was ultimately transferred by the Supreme Court to be decided by the High Court of Allahabad. This is now the petition come to this court. The petitioners claimed for following two, amongst other relieves.

1. For directing respondent 1 to take appropriate steps for stopping the grinding and pulversing of stones by respondent No.2 M/s. Batchan Mineral Corporation.
2. For directing respondent 2 to refrain from conducting any activity resulting in pollution of atmosphere.

In this case the Supreme Court, responding to a petition for a writ of mandamus, directed that the (U.P. Pollution Control Board be impleaded and directed, further, that the U.P. Pollution Control Board inspect the site of alleged air pollution, including the premises of both the petitioner (Pharmaceutical manufacturer) and the respondent (a stone pulveriser). Having learned from the U.P. Pollution Control Board that both the respondent and the petitioner polluted beyond permitted levels, the High Court decided to dismiss the petition and to let the U.P. Pollution Control Board take any appropriate further action.

_dehradun valley case - rural litigation and entitlement kendra, dehra dun vs. state of u.p._ It is a significant case requiring the Supreme Court to balance environmental and ecological integrity against industrial demands on forest resources. The case arose from haphazard and dangerous limestone quarrying practices in the Mussorie Hill Range of Himalayas. Miners blasted out the hills with dynamite, trading limestone from thousands of acres. The miners also dug deep into the hillsides, an illegal practice which resulted in cave-ins and slumping. As a result, the hill sides were stripped of vegetation. Land slides killed villagers and destroyed their homes, cattle and agricultural lands. Mining operations upset the hydro- logical system of the Dehra Dun Valley. Springs dried up and severe water shortages

29 A.I.R. 1985, S.C. 652
occurred in the valley, an area formerly blessed with abundant water supplies. At the same time, mining debris clogged river channels and during the monsoon season severe flooding occurred. The State of Uttar Pradesh failed to regulate the mining as required by existing mining laws. In 1961 the State Minister of Mines did sharply curtail mining in the area. In less than a year, however, quarry operators successfully lobbied with the Chief Minister of the State to reopen mining operations. Mining leases were granted for 20 years. Illegal and destructive practices continued and existing mining safety rules were flouted with no enforcement by corrupt and ineffective state officials.

In 1982, eighteen leases came for renewal. The State, finally recognising the dimensions of the ecological devastation in the Valley, rejected all the renewal applications. The Allahabad High Court, however, issued an injunction allowing the applicants to continue mining, presumably in the belief that economic considerations outweighed ecological factors. At this point in 1983, the Supreme Court treated a letter received from the rural litigation and Entitlement Kendra, complaining against the environmental degradation, as an Article 32 petition. The case developed into complex litigation as lessees of more than 100 mines joined the action, engaging an impressive array of the nations’ top lawyers to argue for continued mining in the region.

The Supreme Court played an activist role in this litigation, essentially conducting a comprehensive environmental review and analysis of the national need for mining operations located in the Dehra Dun Valley. In addition, the court provided for finding and administrative oversight of reforestation of the region. A Bench presided over by the then Hon’ble Justice P.N. Bhagwati, Justice Sen and Justice R.N. Mishra through their order observed:

"This is the first case of its kind in the country involving issues relating to environment and the ecological balance while dealing with limestone quarries in Dehra Dun, held where the court finds that due to working of limestone quarries there is imbalance to ecology or hazard to healthy environment then in that case the court
will order their closure. The court also observed that due to closure of these quarries the lessees of limestone quarries would be thrown out of business in which they have invested large sum of monies and expanded considerable time and effort. This would undoubtedly cause hardship to them but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment.”

It is heartening to note that the court has also taken note of the unemployment problem which will get created due to closure of mines and directed that:

“The limestone quarries which have been or which may be directed to be closedown permanently will have to be reclaimed and afforestation and soil conservation programme will have to be taken up in respect of such limestone quarries with the help of the already available Eco Task Force of the Department of Environment, Government of India and the workman who are thrown out of employment in consequence of this order shall as far as practicable and in the shortest possible time be provided employment in the afforestation and soil conservation programme to be taken up on this area”.

Further in order to mitigate hardship to the lessees it also directed to give priority to these people (whose quarries were closed) while granting the lease for the limestone or dolomite quarrying. This order of the Supreme Court is once again a high water mark in the judicial history of India as its affects are three dimensional viz.,

1. Prevention of ecological ruin by closure of quarries,
2. Protection and improvement of environment through reclamation and afforestation,
3. Generation of employment for the good and noble task of ecological balance and environmentally rich zone.
Rural Litigation and Entitlement Kendra Vs. Union of India and others and Devaki Nandan Pandey Vs. Union of India, the Supreme Court gave its final decision in a case in which the earlier order was issued and finally made further observations that it is for the Government and the Nation and not for the court to decide whether the limestone deposits should be exploited at the cost of ecology and environmental considerations or the industrial requirement should be otherwise satisfied. The consequences of interference with ecology and environment have now come to be realised. The Himalayan range is the tallest and it is the mountain which has been responsible to regulate monsoons and consequently the rainfall in the Indo-gangetic belt. It is the source of perennial rivers the Ganges, Yamuna and Brahmaputra as also several other tributaries which have joined these rivers. Nature has displaced its splendour through the lush green trees, innumerable springs and beautiful flowers. It is a store house of herbs, shrubs, trees and plants. Deep forests on the lower hills have helped to generate congenial conditions for good rain. If the valley is in danger because of erratic, irrational and uncontrolled quarrying of limestone it must be stopped. Green cover is about of what was about 70% only a decade ago. It is therefore necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact.

Of course natural resources have got to be tapped for the purpose of social development but one cannot forget at the same time that tapping of resources has to be done with requisite attention and care so that ecology and environment may not be affected in serious way; they are permanent assets of mankind and are not intended to be exhausted in one generation. Preservation of environment and keeping the ecological balance unaffected is a task which not only governments but also every citizen must take. It is a social obligation and let every Indian citizen be reminded that it is his fundamental duty as enshrined under Article 51 (A) (G) of the Constitution.

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30 A.I.R. 1987, S.C. 359
The Supreme Court also warned the government in clear words that:

"Governments both at the Centre and in the State, must realise and remain cognizant of the fact that the State involved in the matter is large and far reaching. The evil consequences would last long. Once that unwanted situation sets in, amends or repairs would not be possible. The greenery of India as some doubt may perish and the Thar Desert may expand its limits”.

And finally in yet another litigation filed by the same Rural Litigation and Entitlement Kendra Vs. State of Uttar Pradesh31, the Supreme Court through Hon'ble Justice R.N. Mishra and N.M. Dutt observed:

"Mines whether in reserved forest or in other forest area provisions of Act would apply. Thus mining in Dehra Dun Valley area even under strictest control as a permanent feature would not only be violative of the Uttar Pradesh Forest Act but would be detrimental to restoration of the forest growth in a natural way in this area…Once the importance of forests is realised and as a matter of national policy and in the interests of the community, preservation of forests is accepted as the goal, nothing would direct from the end should be permitted”. - Court remarked.

It is worth noting that in its previous order dated 19.10.1987 in Rural Litigation and Entitlement Kendra Vs. State of Uttar Pradesh32 inspire of the fact that the court came to the conclusion and felt that stone quarrying in Dun Valley area should generally be stopped still in the interests of defence of country, as also for safeguarding foreign exchange position mining activity was permitted to limited extent but the Supreme Court did realise its mistake and said we are satisfied that if mining activity even to a limited extent is permitted in future it would be not congenial to ecology and environment and the natural calm and peace which is a special feature of this area in its normal conditions shall not be resolved and therefore

31 A.I.R. 1988, S.C. 2187
32 A.I.R. 1987, S.C. 2426
in its final judgement held: In such circumstances we reiterate our conclusion that mining in this area has to be totally stopped and directed accordingly.

The court has noted with interest the fact that the national per capita average of forest works out to 0.11 hectare as against an international average of 1.5 hectares. It is due to this unhappy situation which has arisen in India the court has in categorical terms directed to stop any mining work in Dun Valley area and thereby done a laudable work in bringing monsoon and rain, and in other words protection of environment and maintenance of natural calm and peace.

*Indian Council for Enviro-legal Action Vs. Union of India and others* 33, “The Supreme Court of India in this case considered the idea of an environmental audit by specialist bodies created on a permanent basis with power to inspect, check and take necessary action not only against erring industries but also against erring officers.

*Subash Kumar Vs. State of Bihar & others.* 34 In this case the Supreme Court of India laid down the following constitutional norms for controlling pollution:

(a) Right to life 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,

(b) if anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 31 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life, and

(c) a petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists.

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33 1996 (2) SCALE 44 at p. 74
34 1991 (1) 5CC p.598
Mehta Vs. Union of India\textsuperscript{35} in this case licences issued in the non-conforming areas to any new industry was restrained. The issuing of licences to the new industries in the notified residential areas by the Municipal Corporation of Delhi was stayed. The court directed the Municipal Corporation of Delhi to have a survey done in this regard and file an affidavit before the court as to how many fresh licences/registration in the non-conforming areas have been issued by the Municipal Corporation of Delhi.

Indian Council for Enviro-legal Action Vs. Union of India and others.\textsuperscript{36} in this case the court sought to frame special procedure for setting up chemical industries. The court stated:

"The Central Government shall consider whether it would not be appropriate in the light of the experience gained, that chemical industries are treated as a category apart. No distinction should be made in this behalf as between a large scale industry and a small scale industry or medium scale industry. All chemical industries whether big or small, should be allowed to be established only after taking into consideration all the environmental aspects and their functioning should be monitored closely to ensure that they should not pollute the environment around them. It appears that most of these industries are water intensive industries. If so, the advisability of allowing the establishment of these industries in and around areas may also require examination."

M.C. Mehta Vs. Union of India,\textsuperscript{37} M.C. Mehta filed a writ petition No.13381 in 1984 expressing concern over the threat to the Taj Mahal posed by environmental pollution particularly on account of the operation of the Mathura Refinery. Constant monitoring of the matter was ordered throughout 1996 by a series of orders, which resulted in steps being taken by the Pollution Control Board and the Government of Uttar Pradesh to clear the area of the hazardous industries.

\textsuperscript{35} 1995 (7) SCALE Sp. 7 at p8
\textsuperscript{36} 1996 (2) SCALE 44 at p. 73
\textsuperscript{37} 1996 SCALE cols. I, II, III & VIII, 1984
Gopi Aqua farms and others Vs. Union of India and others\textsuperscript{38} with Kharekuran Machimar Sarvodaya Sahkori Samstan Ltd. and another Vs. Union of India and others and Tamil Nadu Aquaculturists Federation Vs. Union of India and others, the Supreme Court held Constitution of India Article 141 and Section 3 of the Environment Protection Act, 1986, Order 1, Rule 8 of the Civil Procedure Code, 1908, is binding precedent. Shrimp culture industry, setting up of within prohibited area and in ecology fragile coastal area. Decision of Supreme Court as to rendered after giving widest publicity, it was public interest litigation and large number of aquaculture farms all over India along coastline appeared, special case was taken to notify individual aqua farms by directing State Government and Union Territories to issue notices and give widest publicity, few persons cannot say that they were unaware of the proceedings and so should be heard all over again. The court said judgement binds all petitioners who were not parties in earlier case. The court further held principle of Order 1, Rule 8 of CPC 1908 cannot be invoked.

\textit{M.C. Mehta Vs. Union of India}\textsuperscript{39} in this case, the Supreme Court while dealing with Section 3 of the Environmental Protection Act, 1986, pollution by mining operations, closure of mines, pollution caused by mining operations near Badkal Lake and Surajkand where the State Government ordering closure of all mines within radius of 5 kms. Considering report of expert body the Supreme Court directed closure of mining operations within 2 kms radius of Badkal Lake and Surajkand, further, directed that mining leases within areas of 2 to 5 kms, should not be renewed unless ‘no objection’ certificate of State and Central Pollution Control Board is obtained.

Mr. M.C. Mehta environmental lawyer, has filed this public interest petition under Article 32 of the Constitution of India seeking a direction to the Haryana Pollution Control Board to control the pollution caused by the stone crushers, pulverisers and mine operators in the Faridabad – Balogarh area. The core question which the court dealt within this order is whether to preserve environment and control

\begin{thebibliography}{99}
\bibitem{38} A.I.R. 1997 S.C. 351
\bibitem{39} A.I.R. 1996 SC. 1977
\end{thebibliography}
pollution the mining operations should be stopped within the radius of 5 kms. From
the tourist resorts of Badkal Lake and Surajkand in the State of Haryana.

_F.B. Taraporawala and others etc. Vs. Bayers India Ltd. and others_ 40, in this
case, the Supreme Court while examining sec. 3 (3) of the Environmental Protection
Act, 1996 in order to protect the environment caused due to chemical industries, in
this case the High Court issued an order prohibiting construction only within 1 km
radius in a crowded city, such direction can adversely affect rights of citizens to reside
in locality. The Supreme Court directed the Central Government to constitute an
authority under Section 3 (3) of the Environmental Protection Act, 1986 to examine as
to whether relocation of such industry was possible where residential area could be
kept wide apart from factory premises.

_Banawasi Seva Ashram Vs. State of Uttar Pradesh_ 41 in this case was initiated
as a public interest writ petition under Article 32 of the Constitution, on behalf of
local people protesting reservation of forest land by the State. People in 433 villages
had lived in or near the forest for generations and relied on the forest products – fruits,
vegetables, fodders, flowers, timber, animals and fuel wood, for their daily needs.
The petitioners alleged that the State had ignored the claims of these people over the
forest and that steps were being taken for the eviction of many of the forest dwellers.
The petitioners further operated that this curtailment of access to the forest violated
the fundamental right to life of the local people guaranteed of Article 21 of the
Constitution.

In 1983 the Supreme Court prohibited evicting of forest dwellers pending
investigation of their claims over the forest. It also ordered the formation of a high
powered committee to investigate the claims of the people over the forest. The state
responded that it had already formed such committee. The State Committee was
chaired by the Chairman of the State Board of Revenue and included the Uttar
Pradesh Collector, Mirazpur and the local conservator of forests. These three state

40 A.I.R. 1997 SC 1846
41 AIR 1987 SC 374
officials had a strong interest in reserving the forest to the state to ensure that the forest generate the revenue for the state. The Supreme Court disapproved this biased committee and ordered that a new committee of retired High Court Judge and two other officials be appointed to adjudicate the customary rights of the people to use of the forests. The court, however, failed to make the actual appointments and so a more objective committee was never formed.

In the meantime, the government informed the court that it wanted to site the proposed Rihand Super Thermal Plant of the National Thermal Power Corporation in the case, requesting that the court lift its order prohibiting evictions of local people and allow the National Thermal Powers Corporation to take the possession of land for the project. The court responded with an immediate lifting of the prohibition of eviction on all 1800 acres of forest requested by NTPC for the project. Although the court noted that forests are a “much wanted national asset” it determined that a scheme to generate electricity is equally of national importance and cannot be deferred.

Dehra Dun Valley Litigation, Rural Litigation and Entitlement Kendra, Dehra Dun Vs. Stae of U.P.\(^\text{42}\) Ambica Quarry Works Vs. State of Gujarat\(^\text{43}\), The Supreme Court while rejecting the renewal of mining lease applications of the appellants observed:

“All interpretations must subserve and help implementation of the intention of the Forest Act and said where the renewal of the quarry leases lead to further deforestation or at least does not help in reclaiming back the areas where deforestation has taken place no renewal of lease should be granted”.

In the light of the above observation rejection of renewal application of quarry lease for minor mineral black trap stands on sound reasons and appeals were accordingly dismissed.

\(^{42}\) A.I.R. 1987 SC. 2426
\(^{43}\) A.I.R. 1987 S.C. 1073
The Supreme Court once again established that further deforestation through mining or otherwise will not be tolerated at any cost because the environment issue is an issue which stands at the top and therefore must be given top priority as it is very basis of life.

State of Tamil Nadu Vs. Hind Stone etc\textsuperscript{44} on the principles of natural justice, the court held the application of principles of natural justice varies from case to case depending upon facts and context of each case. These principles cannot be put in straight jacket. Therefore it is necessary to impart the principle of ‘Audi alteram Partem’ in the matter of refusal by the Central Government to accord its approval under Section 2 to grant renewal of the mining lease and the party affected cannot claim to be head as of right before the Central Government takes a decision to refuse its approval under Section 2 for renewal of lease. Central Government must be deemed to be the best authority to judge where the public interest lies. Further, the forest land and mineral therein belong to the state and the lessee cannot claim fundamental right to carry on his business on government property. It is only a privilege granted to him which can be withdrawn at any time without even giving him an opportunity of being heard.

On the issue of afforestation and reafforestation the court has given widest interpretation to the definition of conservation and held: “Conservation” only means preservation and protection of existing forests but not afforestation were unable to agree. The court thus observed:

“Conservation of forests includes both, forest have to regularly cut to meet the needs of the country. At the same time reafforestation should go on to replace the vanishing forest, it is a continuous and integrated process”.

In unequivocal terms the court recognized afforestation and reafforestation as a part of the conservation of forest and environment.

\textsuperscript{44} A.I.R. 1981 SC. 711
Tarun Bharat Sangh Vs. Union of India and others\textsuperscript{45}, in this case licence was withheld for mining activity in a protected forest. The court also considered the effect of bringing to halt the activity involving a good amount of capital and a large number of workers, but the court noted “in view of the inherent illegality affecting to them, indicated herein before, we have no option but to close them”.

Delhi Ridge Case:

M.C. Mehta vs. Union of India,\textsuperscript{46} in this case the Supreme Court (Kuldip Singh and Sagir Ahmed, JJ) by an order dated January 3, 1996 directed the Ridge Management Board, Delhi to start fencing the ridge without waiting for completion of proceedings under the Forest Act.

Samata Vs. State of Andhra Pradesh and others\textsuperscript{47} with M/s. Hyderabad Abrasives and Minerals Pvt.Ltd., Vs. State of Andhra Pradesh and others, In this case the court held Article 21 of the Constitution of India, right to life, scope right to life means something more than mere survival of animal existence, thus tribals have fundamental right to social and economic empowerment.

Andhra Pradesh schedule area Land Transfer Regulation Act, 1959, Section 3 government land in scheduled area, transfer by government, permissibility, regulation does not prohibit transfer of government land for its public purpose.

Mines & Minerals (Regulation & Development) Act, 1967 Section 11 (5) mining lease, government land in scheduled area, transfer of lease or renewal of mining lease in favour of non-tribals, not permissible. However, government can transfer its land in favour of its instrumentalities.

\textsuperscript{45} (1993) Supp. (3) SCC p.128
\textsuperscript{46} 1996 (1) Scale sp. 22
\textsuperscript{47} A.I.R. 1997 SC. 3297
Section 2 of the Forest Conservation Act, 1980, preservation of forest, mining operation in forest area, provisions of Act get attracted to ensure preservation of forest, government land in reserved forests, mining lease in respect of grant or renewal, it is the duty of State Government to obtain prior approval of Central Government.

Mines & Minerals (Regulation & Development) Act, 1957, Section 11(5) (as amended in 1991), scope, prohibition as to allotment of a land for mining to non-tribals, provisions under Section 11 (5) are prospective in nature.

The court further held Forest Conservation Act, 1980 expression (forest land) does not mean only reserved forest but should be given extended meaning to cover track of land covered with trees, shrubs, vegetation and under growth under mingled with trees, with pastures, be it of natural growth or man made forestation.

Forest conservation Act, 1980, Section 2, mining activities forest land, absence of material to show that lessees in present cases were carrying on such activities on land which formed part of forest land. No discretion for prohibition of activities can be issued, State Government directed to examine mining activities were carried on forest land and then to proceed according to law.

The court also held Section 7 of Environment Protection Act, 1986, relating to mining lease, no data to show that on account of mining operations in question there had been emission of environmental pollutant in excess of standard prescribed. Lease cannot be annulled on ground of violation of Provisions of Act.

Animal and Environmental Legal Defence Fund Vs. Union of India and others, 48 This is a public interest petition under Article 32 of the Constitution of India relating to order of granting 305 fishing permits to tribals formerly residing within Pench National Park Area for fishing in Tolidoh reservoir situated in Pench National Park Tiger Reserve challenged. Fishing permits have been granted to tribals

48 1997 (1) SCJ 522
in lieu of their traditional fishing rights. After displacement these persons have been rehabililated systematically. They do not have any means of livelihood except catching fish which is their traditional occupation. The court held permits granted do not fall under Section 33 of Wild Life (Protection) Act, 1972 permissions which have been granted are subjected to conditions considering difficulties pointed out in monitoring fishing activity of all these permit holders additional directions made for properly implementing license conditions. A final notification under Section 35 is to be issued by State Government as expeditiously as possible. State Government is expected to act with a sense of urgency in matters enjoined by Article 48 A of the Constitution keeping in mind duty enshrined in Article 51A (G).

State of Kerala and others Vs. Sankara Narayan and others\textsuperscript{49}. The case relating to Kerala Preservation of Trees Act, 1986, Section 5 notification under prohibiting felling of all available trees in notified area, area in question found to be declared by Supreme Court earlier, as not private forest and therefore not liable to be vested in government. Party cultivating cardamom plantation in that area, valuable trees also found in area in question, notification modified by the Supreme Court and competent authority directed accordingly to give permission to the party to fell such trees which do not come under Section 2(e) of the Act and also other trees not of such value, so as to enable him to sustain his right to cultivate cardamom plantation.

Pradeep Krishen vs. Union of India,\textsuperscript{50} Sections 26A, 35 of the Wild Life (Protection) Act, 1972, sanctuaries and national parks, state Government permitting villagers living in and around to enter and collect tendu leave from such parks/had not been issued, State Government however directed to issue final notification expeditiously. 

Supreme Court held, that State Government shall take immediate action under Chapter IV of the Act and institute an inquiry, acquiring the rights of those who claim any right in or over any land proposed to be included in the sanctuary/national park

\bibliography{\textsuperscript{49} AIR 1997 SC 1463 \textsuperscript{50} AIR 1996 SC 2040}
and thereafter proceed to issue a final notification under Section 26A and 35 of the Act declaring such areas as sanctuaries/national parks. The court directed the State Government to initiate action in this behalf within a period of six months and expeditiously conclude the same showing that sense of urgency as is expected of a State Government in such matters as enjoined by Article 48A of the Constitution and at the same time keeping in view the duty enshrined in Art. 51A(G) of the Constitution. The court made it clear unequivocally “we are sure and we have no reason to doubt, that State Government would show the required zeal expeditiously declare and notify the areas sanctuaries/national parks.

M/s Ivory Traders and Manufacturers Association and others vs. Union of India and others

Wild Life Protection Act, 1972 (as amended in 1991, Sections 49B (1), (a) 9(a), 49A(C) (iii) 49C(7), trade of imported ivory and articles made therefrom, imposition of ban thereon, the court held not unreasonable restriction on trade of ivory (Constitution of India, Articles 19 (1) (G), 14).

Wild Life Protection Act, 1972 (1991 amendment) Sections 49B(1)(a)(ia), 49A(c) (iii), 49C(7) – trade in ivory, ban on, business in animal species on verge of extinction, being dangerous and pernicious not covered by Article 19 (1) (g) of the Constitution.

Wild Life Protection Act, 1972 (1991 amendment), Sections 39(1) (c), 49C (7), 51 (2), trade in imported ivory, imposition of ban thereon, the court held primary object of the Act is preservation of elephant and not for utilization of property for public purpose, the court further held thus Article 300 A of the Constitution is not attracted.

Wild Life Protection Act, 1972 (amended in 1991) Section 49(c) (7) – trade in imported ivory and articles made therefrom, imposition of ban thereon, state need not pay compensation to petitioners for extinguishment of title of petitioners in imported

51 AIR 1997 Del. 267 (FB)
ivory, or articles made therefrom, state cannot also be directed to either buy the same
or pay compensation for it.

Wild Life Protection Act, 1972 (as amended in 1991), Section 49 (C) (7), trade
in imported ivory and articles made therefrom, ban on exemption granted under
World Convention to specimens that are personal or household effects, does not apply
where owner acquires the specimens outside his state of usual residence and are being
imported into the State.

Wild Life Protection Act, 1972 (amended in 1991), Section 49 C(7), 57, trade
of imported ivory and articles made therefrom, imposition of ban thereon, merely
making the possession of imported ivory and articles made therefrom after the
specified date an offence, does not amount to creation of offence retractorily, not
hit by Article 29 (1) of the Constitution.

Wild Life Protection Act, 1972 (amended in 1991), Section 49(C) (7), trade in
imported ivory, banning of enactment of provisions relating thereto, does not amount
to judicial determination by the Parliament, as the Parliament having regard to the
public interest and the treaty obligations enacted Amendment Act of 1991 (Article
245 of the Constitution of India).

Wild Life Protection Act, 1972 (amended in 1991), Section 49B(1) (ia), trade in
imported ivory banning of, ward “ivory imported into India” in Section 49 (B) (1)
(a) (ia), include all description of imported ivory, whether elephant ivory or mammoth
ivory.

This case is said to be one of the land marked decision of the Delhi High Court
wherein the provisions of the Wild Life Protection Act, 1972 and its amendment
(1991) was elaborately discussed.
M.C. Mehta vs. Union of India⁵², Environment Protection Act, 1986 section 3 (1) (2) Environment Pollution (Prevention & Control) Authority, Constitution of regular committee for national capital Region by Central Government under section 3 – Committee constituted headed by former Judge of Allahabad High Court pursuant to order dated 13ᵗʰ September, 1996 passed by court in writ petition being an adhoc arrangement, discontinued, continuance of two authorities with concurrent jurisdiction in any area is bound to create conflict of jurisdiction – work pending with earlier authority headed by former judge of Allahabad High Court automatically get transferred to regular committee on its Constitution.

The court while examining section 3 of the Environment Protection Act, 1986, Environment Pollution (Prevention and Control) Authority, Constitution of the authority – draft order prepared by Government of India, approved by Supreme Court, Court, however, clarified that except for Chairman, Central Pollution Control Board who would be ex-officio member of the authority other persons included in the committee would be members not because of their office but because of their personal qualifications.

The question for consideration relating to environmental pollution now is whether the direction given earlier by this court for constitution of an authority under Section 3 (3) of Environment Protection Act, 1986 by the order dated 13.09.1996 is required to continue. The court held it is clear that the said order dated 13.09.1996 had been because of the absence of any such authority as is now being constituted in the manner afore said. For this reason, the direction to constitute an authority which was complied by the constitution of a committee headed by Mr. Justice ELK. Shukla, a former Judge of the Allahabad High Court, was merely an adhoc arrangement to continue till the constitution of a regular committee as is now being done. It is also necessary to take note of the fact that the constitution of a committee as above with the comprehensive authority to deal with the entire matter relating to environmental pollution in the national capital region the continuance of any authority with

⁵² AIR 1998 SC 617
concurrent jurisdiction in any area within the entire sphere of environmental pollution in the national capital region is bound to create an embarrassing situation because of conflict of jurisdiction of the two activities within the common sphere. It is therefore necessary to make an appropriate order which would avoid any conflict of jurisdiction between the two activities. In our opinion, the only appropriate cause to adopt is to permit the Government of India to supersede the earlier notification constituting the authority headed by Mr. Justice R.K. Shukla pursuant to the order dated 13.09.1996 to be effective from the centre of constitution of the above authority headed by Sh. Bhure Lal. We direct accordingly and the earlier order dated 13.09.1996 shall stand modified to this extent.

In view of this order we also direct that with the constitution of the above authority headed by Sh. Bhure Lal, the work pending with the authority headed by Mr. Justice R.K. Shukla shall stand automatically transferred to the committee headed by Sh. Bhure Lal on its constitution. We also place on record our appreciation of the work done by Mr. Justice R.K. Shukla pursuant to the orders of this court so that during the intervening period, the Work required to be done urgently did not suffer on account of the efforts put in by Mr. Justice R.K. Shukla.

Order dated 16.12.1997 requiring the appointment of private persons to enforce traffic safety laws and confer upon such people suitable powers under the criminal Procedure Code as well as under the Motor Vehicle Act shall apply not merely to the Union of India but also to the Government of National Capital Territory. People United for Better Living in Calcutta Vs. State of West Bengal53 in this case, the Calcutta High Court observed:

a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment as otherwise there would be development but no environment, which would result in total devastation though, however, may not be felt in present but at some future point of time, but then it would

53 AIR 1993 Cl. 215
be too late in the day, however, to control and proper balance between the protection of environment and the development process. The society shall have to prosper, but not at vein, the environment shall have to be protected but not at the cost of the development of the society and as such a balance has to be found out and administrative actions ought to proceed accordingly”.

_Calcutta Youth Front Vs. State of West Bengal_,54 In this case the Calcutta Municipal Corporation granted licence of subsoil of a public park to a company for construction of a two-storied air-conditioned underground basement market and parking place. The licence was granted subject to the condition that the licencee shall improve and maintain the park on the terrace of the underground market.

The Court held :

“By granting the licence there was no possibility of disturbing the ecological balance. On the other hand, the present condition of the park would improve, thus adding greenery to the thickly populated area wherein the Park is situated. The construction of basement market would be within the meaning of the expression “development work” in Section 353 (2) read with explanation thereto”.

The Court further held :

“We can only help to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose let risk or danger to the community and maximizing safety requirements in such industries. We would, therefore, like to impress upon the Government of India to evolve a national policy for location of chemical and other hazardous industries in areas whom population is scarce and there is little hazard or risk to the community and when hazardous industries are located in such area, every care must be taken to see that large human habitation does not grow around them. There should preferably be a green belt of 1 to 5 km width around such hazardous industries.

54 AIR 1988 SC 436
In some cases like Konkan Railway Corporation, Calcutta Municipal Corporation etc., the courts have decided in favour of development and industrialization since there can be no development without some adverse effect on environment and it is not possible to opt a policy of not having any industry because they are to be hazardous to the community. At the same time, the courts in India, both the Supreme Court and the High Courts have decided such cases given proper attention to the problem of preservation and protection of natural environment.

M.C. Mehta Vs. Union of India (September, 1996). In this case, the Supreme Court has asked the National Environmental Engineering and Research Institute (NEERI) in Pune to examine the matter of alarming decline in the water-table in the country and file a report before the court in two weeks. The order was passed by a Division Bench headed by Mr. Justice Kuldip Singh on an application by environmentalist lawyer, Mr. M.C. Mehta.

The Central Water Board, which filed an affidavit on the direction of the Court, had stated that the water-table in the country had fallen from four to eight metres between 1971 and 1983. The levels had further declined by another four to eight metres from 1983 to 1995. Based on this affidavit, the Court directed that it wished NEERI to give its suggestions to check further decline in ground water level after getting the matter examined by experts.

5.3. Judicial Activism on Sustainable Development

The traditional concept that development and ecology are opposed to each other is no longer acceptable. ‘Sustainable development’ is the answer. ‘Sustainability’ is defined in ‘Caring for the Earth’ as ‘characteristic or state that can be maintained indefinitely’, whilst ‘Development’ is defined as ‘increasing the capacity to meet human needs and improve the quality of human life. What this seems to mean is ‘to increase the efficiency of resource use in order to improve human living standards’. In ‘Caring for the earth’, the term ‘Sustainable development’ is derived
from a rough combination of these two definitions.\textsuperscript{55} 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 shaper by the World Commission on Environment and Development in its report called ‘Our Common Future’. The Commission was chaired by the then Prime Minister of Norway Ms. G. H. Grundtland and as such the report is popularly known as ‘Brundtland Report’. In 1991 the World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, jointly came out with a document called ‘Caring for the Earth’ which is a strategy for sustainable living. Finally, came the Earth Summit held in June, 1992 at Rio which saw the largest gathering of world leaders ever in the history-deliberating and chalking out a blue print for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely a Statement on Forestry Principles, A Declaration of Principles on Environmental Policy and Development Initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio ‘Sustainable Development’ as defined by the Brundtland Report means ‘Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs’.

While striving to protect the ecology, \textit{Vellore Citizens Welfare Forum v. Union of India}, the Supreme Court held that there is no hesitation in holding that ‘Sustainable Development’ as 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 finalized by the International law Jurists.\textsuperscript{56}

\textsuperscript{55} Quoted in \textit{karnataka Industrial Areas Development board v. D. Kenchappa}, AIR 2006 SC 2038 at p 2046.

Some of the salient principles of ‘Sustainable Development’ as culled-out from Brundtland report and other International Documents, are:

(a) Inter General Equity,
(b) Use and Conservation of Natural Resources,
(c) Environmental Protection,
(d) The Precautionary Principle,
(e) Polluter Pays Principle,
(f) Obligation to Assist and Co-operate,
(g) Eradication of Poverty and
(h) Financial Assistance to the developing countries.

The Supreme Court in this matter gave certain significant directions for implementation of two important principles, namely, ‘Precautionary Principle’, and ‘Polluter Pays’ principle, aimed at reversing the damage caused to the ecology and environment and determining the compensation payable to the individuals/families who have suffered because of pollution.

“Precautionary Principle” 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 a reason for postponing measures to prevent environmental degradation and

(iii) The “Onus of proof” is one the actor or the developer/industrialist to show that his action is environmentally benign.

The Bench ruled that “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”.

Mr. Justice Kuldip Singh, who delivered the judgment of the Bench, noted that it is not necessary for this court to monitor these matters (relating to control of pollution by tanneries in Tamil Nadu) any further and that the Madras High Court would be in a better position to monitor these matters hereafter.
The Chief Justice of the High Court is therefore requested to constitute a Special Bench - “Green Bench to deal with this case and other environmental matters. The Apex Court Bench which included Mr. Justice Faizan Uddin and Mr. Justice K. Venkataswamy, made it clear that it would be open to the High Court Bench (Green Bench) to make any appropriate order/orders keeping in view the directions issued by the Apex Court.

“Green Benches” are already functioning in Calcutta, Madhya Pradesh and some other High Courts, the Bench said and added that the High Court of Madras shall hear this matter as a petition under Article 226 of the Constitution (writ jurisdiction) and deal with it in accordance with law and also in terms of directions issued in this judgment.

The court also gave liberty to the parties to approach the High Court as and when necessary.

The Bench was pronouncing its judgment in a Public Interest Litigation (PIL) petition from Vellore Citizens Welfare Forum complaining against pollution caused by enormous discharge of untreated effluent by the tanneries and other industries in Tamil Nadu.

It is averred that the tanneries are discharging untreated effluent into agricultural fields, road sides, waterways and open lands and that the untreated effluent is openly discharged in river Palar which is the main source of water supply to the residents of the area concerned. According to the petition, the entire surface and sub-soil water of river Palar has been polluted resulting in non-availability of potable water to the residents of the area and there has been “environmental degradation in the area”.

The following are some of the directions issued by the Apex Court in this matter The “closure orders” in respect of all the tanneries in the five districts of North
Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai MGR are suspended. All the tanneries in these five districts are directed to set up CETPs (common effluent treatment plants) or individual pollution control devices on or before November 30, 1996. Those connected with CETPs shall have to install in addition the primary devices in the tanneries.

All the tanneries in the above five districts shall obtain the consent of the pollution control board to function and operate with effect from December 15, 1996. The tanneries who are refused consent or who fail to obtain the consent of the Board by December 15, 1996, shall be closed forthwith. The Superintendent of Police and the Collector/District Magistrate/Deputy Commissioner of the district concerned are directed to close all those tanneries with immediate effect who fail to obtain the consent from the Board by the said date. Such tanneries shall not be reopened unless the authority permits them to do so. It would be open to the authority to close such tanneries permanently or to direct their relocation.

The Government Order dated March 30, 1989 (prohibiting location of specified category of industries within a specified distance from rivers, dams and embankments etc.) shall be enforced forthwith. No new industry listed in Annexure - I to the Notification (namely, distillers, tanneries, fertilizers, steel plants and foundaries) shall, be permitted to be set up within the prohibited area. The authority shall review the cases of all the industries which are already operating in the prohibited area and it would be open to authority to direct the relocation of any of such industries.

The standards stipulated by the Board regarding total dissolved solids (TDS) and approved by the NEERI shall be operative. All the tanneries and other industries in the State of Tamil Nadu shall comply with the said standards. The quality of ambient waters has to be maintained through the standards stipulated by the Board.
In *A.P. Pollution Control Board II v. Prof. M.V. Nayudu (Retd.)*\(^\text{57}\), the Supreme Court took the question for indepth consideration. The matter involved the question of permission for establishment of industry within 10km. of the two big water reservoirs, the Himayat Sagar and the Osman Sagar, serving the twin cities of Hyderabad and Secunderabad. Jagannadha Rao J, spreading for the Court, adopted the principle of ‘Sustainable development.’ It was asserted that in today’s emerging jurisprudence, environmental rights are described as 3\(^{rd}\) generation rights. the facts of the case clearly bring out the tensions generated by the principle of ‘sustainable Development’. The affected industries had spent valuable resources in setting up the plants and their claim was that they should be allowed to function otherwise all the resources would go waste. The State Government had recommended their application. Even though the central government refused the permission, the industry went on with the construction of its plants. The court was not swayed by these claims. Instead, it took into account expert reports form three different sources and after considering these reports felt that the court could not rely upon a bare assurance that care will be taken in the storage of hazardous material. The court preferred to proceed on the ‘precautionary principle’ rather than a mere promise of the industries, holding that a chance of accident in such a close proximity of reservoir cannot be ruled out.

In the next case, the same conflict arose again before the Supreme Court and resulted in with contrary view. In *Goa Foundation v. Diksha Holdings Pvt. Ltd.*\(^\text{58}\), another division bench of the Supreme Court again faced a contest in the claims of sustainability and development. Diksha Holdings sought permission to build a hotel in Goa which it claimed would contribute to business of tourism which was the main resource earner for the State of Goa. The Goa Foundation contended that the hotel was located in an area which fell in the Coastal Regulation Zone-I (CRZ-I) where no building was allowed. It also contended that the construction of the hotel will destroy the ecology of coastal areas. The Supreme Court restated the principle that there should be a proper balance between the protection of environment and the development process. The society shall have to prosper but not at the cost of

\(^{57}\) (2001) 2 SC 62.
\(^{58}\) (2001) 2 SCC 97 at p 108
environment and the environment shall have to be protected but not at the cost of the development of the society. The Court held that the land in question on which the hotel was being built was not in the CRZ-I area. The court even refused to be persuaded by an expert of the National Institute of Oceanography because two of the scientists who had signed the report had earlier signed another report which favoured the builders. Benerjee J. laid down the following principle:

“While it is true that nature will not tolerate after a certain degree of its destruction and it will have its tone definitely, though, may not be felt in present and the present day society has a responsibility towards posterity so as to allow normal breathing and living in cleaner environment but that does not by itself mean and imply stoppage of all projects”.

While the court upheld the claims of the builders, it was more for the reason that the nature of the land in question could not be proved beyond doubt. Faced with uncertainties, the court preferred to favour development even at the cost of some risk to the environment. However, in *Diksha Holdings* as well as in the *Nayudu*, the court never formulated a scheme of balancing. In *Nayudu*, the court preferred to decided on the basis of precautionary principle but why it did not do so in *Diksha Holdings* can perhaps only be explained by the fact that in *Nayudu*, the right to drinking water was involved which is undoubtedly a pressing human need while in *Diksha Holdings*, there was no material to show the value of sand dunes to the environment save in terms of aesthetics which the court was willing to sacrifice to ensure development.

While both the *Nayudu* and *Diksha Holdings* cases surely established the presence of sustainable development as a fundamental principle of environmental law, they yield little material guidance to ensure proper balancing. *Nayudu* can be used as a precedent holding for primacy of human needs while *Diksha Holdings* is for giving weight to claims of development where the societal interests have no primacy. The two together can mean that where basic human needs are threatened, development
must be allowed to proceed. These cases also show that objective scientific evidence is of relevance only when it is unblemished.\textsuperscript{59}

The adoption of sustainable development as the basic principle of environmental law in India received its maximum acceptability in \textit{M.C. Mehta v. Union of India}.\textsuperscript{60} In this case, a three judge bench of the Supreme Court was considering the question of issuing directions to substitute diesel vehicles on the roads of city of Delhi with vehicles driven by Compressed Natural Gas (CNG). The matter had been in the court for as long as established under Section 3 of the Environmental Protection Act, 1986 and its report was accepted by the court on 28 July 1998. A time limit was fixed for switching over diesel vehicles to CNG vehicles. The government had been dragging its feet and sought to dilute the directions of the Bhure Lal Committee by constituting another committee called the Mashelkar Committee which recommended that emission norms must be laid down but the choice of fuels must be left with the user.

The Supreme Court categorically rejected the suggestion of the Mashelkar Committee on the ground that nothing concrete had resulted from adopting the process fixing emission norms and directed that a time bound programme of replacing diesel buses with CNG buses be implemented. The opinion of the court is particularly noticeable for pronouncing the fundamental nature of sustainable development as an underlying principle. The court observed:

\begin{quote}
“One of the principles underlying environmental law is that of ‘Sustainable Development’. This principle requires such development to take place which is ecologically sustainable. The two essential features of sustainable development are – \(a\) the precautionary principle, and \(b\) the polluter pays principle.”
\end{quote}


\textsuperscript{60} AIR 2002 SC 1969 AT 1698.
5.3. (a) The Precautionary Principle

The Supreme Court in *Vellore Citizens’ welfare Form* has recognized the ‘Precautionary Principle’. The Supreme Court has been reiterated again in the case of *M.C. Mehta v. Union of India*\(^61\). In the said case, the ‘Precautionary principle’ has been explained in the context of the 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 reason for postponing measures to prevent environmental degradation.

(iii) the ‘Onus of Prof’ is on the actor or the developer/industrialist to show that his action is environmentally benign.

The precautionary Principle was stated in Article 7 of the Bergen Ministerial Declaration on sustainable development in the ECE region, May 1990, as incorporated in the said article of Professor Ben Boer. It reads as follows:

“*Environmental measures must anticipate, prevent, and attack the causes of environment degradation. Where there are threats of serious or irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*”\(^62\)

The precautionary principle can be culled out from the following observations of the Australian conservation Foundation as:

“The implementation of this duty is that developers must assume from the fact of development activity that harm to the environment may occur, and that they should

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\(^61\) (1997) 2 SCC 353

\(^62\) Quoted in *Karnataka Industrial Areas development board v. C. Kenchappa*, AIR 2006 SC 2038 at p 2046.
take the necessary action to prevent that harm; the onus of proof is thus placed on developers to show that their actions are environmentally benign.  

5.3. (b). Polluter Pays Principle

The ‘Polluter Pays’ Principle has been held to be a sound principle by this court in *Indian Council for Enviro Legal Action v. Union of India* 64, the Court observed:

The polluter Pays Principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertaking which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in their prevention such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The ‘Polluter Pays’ Principle was promoted by the Organisation for economic Co-operation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public form the threats posed by pollution in a modern industrialized society. Since then there has been considerable discussion of the nature of the Polluter Pays Principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed.

The Court ruled that ‘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 area, to the soil

63 *Karnataka Industrial Areas development board v. C. Kenchappa*, AIR 2006 SC 2038 at p 2046.
64 AIR 1996 SCW 1069.
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 this 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 sufferers as well as the cost of reversing the damaged ecology. The ‘Precautionary Principle’ and ‘Polluter pays Principle’ have been accepted as part of the law of the land.

This principle has also been held to be a sound principle in the case of Vellore Citizens’ welfare Forum v. Union of India65. The Court observed that the Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. The Court in the said judgment, on the basis of the provisions of Articles 47, 48-A and 51-A(g) of Constitution, observed that we have no hesitation to holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental laws of the country.

5.3.(c). The Public Trust Doctrine

The concept of public trusteeship may be accepted as a basic principle for the protection of natural resources of the land and sea. The Public Trust Doctrine which found its way in the ancient Roman Empire primarily rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the government and its instrumentalities to protect the resources for the enjoyment of the general public.

65 ((1996) 5 SCC 647)
In the case of *M.C. Mehta v. Kamal Nath*\(^66\), the Supreme Court dealt with the Public Trust doctrine in great detail. The Court observed as under:

“We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities, who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislature the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.”

The public Trust Doctrine primarily rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

The Supreme court of California in *National Audubon Society v. superior Court of Alpine County*\(^67\), observed as under;

\(^66\) (1997) 1 SCC 388
\(^67\) (33 cal 3d 419).
“Thus, ‘The public Trust’ is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust….”

The Supreme Court in *Intellectuals Forum, Tirupathi v. State of A.P.* stated the meaning of the Doctrine of Public Trust as natural resources which includes lakes, are held by the State as a ‘trustee’ of the public and can be disposed of only in a manner that is consistent with the nature of such a trust.

5.3.(d). Inter-Generational Equity

The Principle of ‘Inter-generational Equity’ has also been adopted while determining cases involving environmental issues. The Court in the case of *A.P. Pollution Control Board v. Prof. M.V. Nayudu and Others*, held as under:

“The principle of Inter-Generational Equity is of recent origin. The 1972 Stockholm Declaration refers to it in principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

**Principle 1**- Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations. …. 

**Principle 2** – The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.”

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68 AIR 2006 SC 1350
Several international conventions and treaties have recognized the above principles and in fact several imaginative proposals have been submitted including the *locus standi* of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present. The principles mentioned above wholly apply for adjudicating matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country.

In a series of cases which may not be large in number but which have much economic significance, the Supreme Court had to consider the application of the principle of sustainable development. All these cases, involved industries are generating sizeable revenues and significantly contributing to the industrial development of the country. However, these cases also show that the industries hardly cared for the environment and which were not only significant polluters but were also persistent. Repeatedly the environmental agencies implored upon them to rectify their pollutant emissions and effluents but the industries hardly cared. Even directions issued by the high courts and the Supreme Court were ignored. In a sense, the behavioural pattern of the industry was irresponsible. The situation seemed to be destined for doom for the industry hardly cared and the environmental agencies could not really bring their weight to bear upon the industries. The industries classically represent the case of too powerful defendants who continue to flex their muscles totally ignoring the degradation of environment caused by the industries. Such muscle flexing is common in soft states where the majesty of law is often compromised by considerations of status and wealth.  

New economic order is industrial development. Nation’s status is depended on the economy. In order to improve the economical status, every country strives to boost the industrial development. This is the reason why the massive industries are coming into existence rapidly. As continuance of this situation, hazardous activities of these industries are increasing day by day. Ultimately it creates a threat to the all living beings on the earth. To control this grim situation, we need an environmental

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justice. An environmental justice should be with flexibility. The flexible way of access to environmental justice is Public Interest Litigation (PIL). Through this Public Interest Litigation, any interested person on behalf of the public can approach the apex Court to protect the environment. More about the concept of the PIL has been stated in the following chapter.