CHAPTER - 7

INTRODUCTION OF JUDICIAL ACTIVISM
AND ITS EFFECT IN THE FIELD OF ENVIRONMENT PROTECTION IN INDIA
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The preceding chapter has demonstrated how the concept of ecology and environment protection has been developed in India right from prehistoric age till the recent times. In India, there was an age old tradition of protection and preservation of natural environment, even during the Indus Valley civilization period, people were also very much aware of the concept of ecology and environment. In addition, concept of environment protection was very much predominant in various religious and spiritual thoughts and believes in India. There is no doubt that the concept of ecology and environment protection under historical and religious perspective has helped to develop most viable legal basis upon which constitutional mandates as well as various legislative provisions, meant for the protection and preservation of natural environment have been developed in India and ultimately a strong legal philosophy of environment protection has been grown up with the help of Judicial perception, as it appears from the earlier chapter. But due to lack of application and effective implementation of constitutional as well as legislative provisions, environmental pollution problems have not been properly controlled and checked. Under this environmental scenario, judiciary has raised into the occasion to take effective steps in controlling environment pollution by playing its activist role in India after coming out from the four corners of statutory compulsion. Therefore, it is essential to discuss in detail regarding the role of Indian Judiciary in introducing Judicial activism in India to control pollution problems in conformity with the situation of USA.
and UK and its effect. This chapter is devoted to this aspect.

7.1 Development of the Concept of Judicial Activism.

7.1.1 Development in USA

In the opinion of Louis Henkin, a famous American Jurist, "Notably, in the phrase judicial activism, activism describes a philosophy of or a method used by Judges who interpret the U.S. Constitution imaginatively so as to promote values that the constitution is believed to represent. Sometimes identified with "liberal" as distinguished from "strict" construction of the constitution, judicial activism is usually reflected in a greater readiness to extend individual rights and invalidate statutes and other governmental acts in order to protect such rights. Judicial activism is sometimes applied also to describe the practice of interpreting legislation "liberally" to achieve some dominant purpose or value. Judicial activism is usually contrasted with judicial self-restraint and great deference to the political branches of Government".

The concept of judicial activism might be said to have begun in United States of America (USA) with the famous case, Marbury Vs. Madison. This particular case had established judicial review of Congressional Legislation and led to the Courts becoming the final arbiter of the Constitution. In the opinion of Louis Henkin, it had been possible due to liberal and progressive approach of the court as introduced by Chief Justice Earl Warren of the United States by interpreting the Constitution and congressional legislation liberally with an intention to extend the right of the citizen and to restrain the government control over the individual. In

2. 5 U.S. (1 cranch) 137, 2 L. Ed. 60 (1803).
this regard it was observed by Henkin as follows "while in modern times judicial activism has been commonly associated with the "Liberal-progressive" Philosophy of the Warren Court, one might see judicial activism in decisions of a very different kind throughout the Court's history. For example, the decision of the Court that the Section of the Missouri Compromise prohibiting slavery in the North was unconstitutional because it deprived the slave owner of property (Dred Scott Vs. Sanford, 60 U.S. [19 HOW.] 393, 15 L. Ed. '691 [1856])\(^3\).

It may be mentioned here that judicial activism had been flourished excessively in U.S.A. during the first decades of the twentieth century when the U.S. Court often declare invalid the economic and social legislations of the State as well as by the United States. The judicial attitude was perfectly reflected in \textit{Lochner Vs. New York}\(^4\). In this case, American Supreme Court found in the Due Process clauses of the Constitutional economic and political theories that sanctified "Liberty" of contract and invalidated regulation of wages and hours and other welfare Legislations. Similar activist role of the Court had been also imposed in another reported American Case, \textit{Schechter Poultry Corp. Vs. United States}\(^5\). Here Federal powers had been restricted and narrowed and much Federal legislation, including the early New Deal enactments had been also invalidated.

\subsection*{7.1.2. Development in India}

\subsection*{7.1.2. a Traditional Role of Indian Judiciary.}

\subsubsection{7.1.2.a.i. Tradition of Bipolar litigation}

In earlier 'days', Indian Judiciary were very much reluctant to interfere

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3. See the note Supra 1.
5. 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 [1935].
in the domain of administrative discretions, including the administrative policies and actions in connection with the environmental issues. In this regard the "Silent Valley case" is the best example. In the said case, it was alleged that if the proposed hydro-electric project, designed to be located after cleaning a virgin forests having rich bio-diversity, had been implemented, there would have been an adverse impact upon the climatic conditions, the bio-diversity and the ecology. Inspite of the preponderance evidence of environmental disorder, as likely to be caused by proposed deforestation, the Kerala High Court was very much reluctant to interfere in administrative decisions and in this regard it had been held by the High Court that the questions of viability of the project were thoroughly examined by the Government and there was limited scope for interference with such policy decision.

But later on through a newly developing judicial approach, being capable to assess through the socio-legal aspects of each and every legal disputes came up before the Court of law for adjudication, the Indian judiciary has evolved the new indigenous system of adjudication based on the principle of Judicial review of the administrative decision making. This principle explicitly has been expressed in the 'Minerva Mills Case', where it has been held that— "the power of Judicial review is an integral part of our constitutional system and without it, there will be no Government of Laws and the rule of Law would become a teasing illusion and a promise of unreality." With this new juristic approach, judiciary has began to

8. Ibid at page 1825-1826;
intervene in various matters including the matter relating to environmental issues in connection with the protection of human environment and preservation of the quality of environment, by playing its activist role.

Previously Indian Legal system has been strongly identified, both in theory and in practice, with such a traditional rule which has been concerned with the rights and duties of the person individuals. As per such traditional rule, Judicial redressal would be available only to those persons who had suffered an injury due to violation of their legal rights or any legally protected interest by the impugned action of the state or any public authority or any person individual or any group of persons. Under this traditional rule, judicial redressal may also be available to such person who is likely to suffer a legal injury due to threatened violation of his legal right or legally protected interests in the same manner as stated above.

Under this rule, judiciary had been concerned with the question whether the applicant who came before the court of Law, was an aggrieved person or not who had suffered a specific legal injury due to actual or threatened violation of his legal rights or legally protected interests. So, for getting judicial relief in the court of Law, there must be infringement of certain own legal rights and interests of such persons who come for relief. In this regard one reported case, Charanjit Lal Chowdhury vs. Union of India and others\(^9\), is an ideal and perfect example where the aforesaid traditional notion of Indian Judiciary had been exposed. In the 44th paragraph of the Judgement of this case\(^10\), it has been observed by the Supreme Court that the rights that could be enforced under Article 32 must ordinarily be the rights of the petitioner himself who complains of infraction of such rights and approaches the court for relief\(^11\).

10. Ibid.
11. AIR 1951 S.C. 41 (52-53)
From the aforesaid observation of the Supreme Court it is clearly understood that unless and until legal rights of a person individual is infringed, he can not go before the Court of law for redressal of his grievances as violated. Only in that case he can come to the court for relief. So, traditionally there had been two pre-requisites to come into the court of Law. Firstly, the petitioner himself should have a grievance, i.e. he himself should be the aggrieved party and secondly, the petitioner's own right must be in jeopardy, i.e. some Legal right and/or interest of the petitioner must be infringed or threatened by the action and inaction of other person or persons or a group of persons. This traditional doctrine of 'Standing' or 'Locus Standi' had been applied by the Judiciary with a great deal of strictness within the domain of private Law. Even in the case of public grievances, due to action and inaction of the State Authority, the access to the Court would be denied until a person could show that he had personally sustained some injury due to action and inaction of the State Authority within the domain of public rights or interests.

This traditional mode of Judicial approach had been also prevailing in case of such issues, where interest of public at large had been involved, like question of human rights violation, environmental pollution, etc., till the 1970s. To deal with the problems in connection with these particular social issues, Indian Judiciary did not introduce any new approach other than those prevailing redressal mechanism till that period. The Legal disputes in connection with environmental issues like protecting the quality of natural resources and maintaining of proper sanitation and public hygiene in the residential and/or public places had been usually entertained only within the ambit of traditional method of litigation, i.e. under the domain of
Section 133 of the code of Criminal Procedure; Section 91 of the Code of Civil Procedure, including the Law of torts under the domain of common Law principles, which have been introduced in British India in very early period of British Rule.

7.1.2.a.ii. Relief under the Law of Torts.

Initially disputes arising within the Presidency Towns of Calcutta, Madras and Bombay were subject to common law rules based on justice, equity and good conscience. Consequently later on, in a suit for damages and injunction for civil wrong, principle of Law of Torts had been also applied. Even in some cases, in deciding the suits arising out of the disputes relating to environmental issues, principle of Law of Torts had been applied by the Court of Law. In a reported case, J.C. Galstaun Vs. Dunia Lal Seal, "Exemplary damages" under the principle of Law of Torts had been awarded to the plaintiff for the outrageous nature of the conduct of defendant in discharging the liquid refuse of his factory into the Municipal drain, amounting to cause a perpetual nuisance, provided material injury as caused to the plaintiff, who had been entitled to restrain the defendant from such discharging of liquid refuse and damage, should be substantial. Such Judgement of the Hon'ble Calcutta High Court in J.C. Galstaun Vs. Dunia Lal Seal case, as delivered in 1905, may be the earliest reported Judgement of pollution Control case decided on the basis of principle of Law of Tort in India.

In this regard, another example may be given and that is the case of Ram Baj Singh Vs. Babula, where the plaintiff successfully restrained

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12. (1905) 9 CWN 612
13. Ibid.
14. AIR 1982 All 255.
the defendant from using a Brick powdering mill which used to generate in sufficient amount of dust in quantity and pollute the air of the surroundings. In this case, Court of Law had recognised the Private right of action in the event of action of the defendant amounting to Public nuisance and established the right of the private individual to sue on the basis of private nuisance considering it as the cause of action. Such Judicial approach was nothing but a step to encourage the traditional type of bi-partite litigation which had usually developed arising out of the dispute between two litigant parties of whom one used to make claim or seeking relief against the other and other part used to oppose such claim or resisting such relief.

7.1.2.a.iii. Relief under the Code of Criminal Procedure.

As stated earlier, another traditional way of judicial control over the environmental pollution problems had been usually practiced to invoke the provision under Section 133 of the Code of Criminal Procedure considering such pollution problems as public nuisance. Actually a public nuisance is an Act of illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to the persons who may have occasion to use any public right as it has been laid down under the provision of section 268 of the Indian Penal Code. The persons, who conduct offensive trades and thereby pollute the air or cause undesirable loud and continuous noise which may affect the health and comfort of those people dwelling in the neighbourhood, are liable for prosecution for causing a public nuisance. Regarding the remedies against this public nuisance, provisions of Section 133 of the Code of Criminal Procedure may be
invoked for the independent, speedy and quick remedy by the Judiciary. Under the provision of Section 133 of the Code of Criminal Procedure, Magistrate may act on the informations received from a police report or any other sources including a complain made by a citizen. In this regard, one reported case, *K. Ram Chandra Mayya Vs District Magistrate*\(^\text{15}\), is an appropriate example. In this case, Kerala High Court had approved the order of the Magistrate shutting down a stone quarry, while the Magistrate acted on the complain, made by the neighbouring residents that the blasting of rocks at the vicinity of quarry creating stone chipes and flying stone dust causing damage and nuisance to those residents.

In another case, *Gobind Singh Vs. Shanti Sarup*\(^\text{16}\), the Court of Law had also exercised its traditional mode of adjudication by invoking the provision of Section 133 of the Code of Criminal Procedure to prevent the environmental pollution. In this case, said Judicial power had been exercised in a little different way making balance between judicial pronouncement and prevention of environmental pollution. In this case\(^\text{17}\), Supreme Court found that the order of the Learned Magistrate, against which the present Criminal Appeal being No. 59 of 1973, had been moved before the Supreme Court, was too broad and narrowed the scope of requirement of the bakery by resisting the owner of the bakery from carrying on the Trade of a bakery at that particular disputed site. Ultimately, though Supreme Court passed the necessary order to demolish the oven and the chimney of the bakery constructed by the Appellant within a period of one month from that date, but by that order the business had not been prohibited.

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15. 1985(2) KAR L. J. 289
17. Ibid;
7.1.2.a.iv. Relief under the Code of Civil Procedure.

Civil Courts of Law in India had also invoked the provisions of Section 91 of the Code of Civil Procedure in many cases against the wrongful acts in the nature of public nuisance, responsible for causing environmental pollution problems. It is also an example of traditional mode of judicial control by which disputes regarding environmental issues relating to public nuisance would be adjudicated while two or more than two persons are locked together in a dispute of public nuisance and other wrongful acts affecting the public even though no special damage had been caused to such persons. In this regard, one case, *Neti Gopalakrishna Gokhle and another Vs. Brahmandam Narasimham and others* ¹⁸ may be cited as an perfect example of adjudication where provision of code of civil procedure had been invoked as traditional mode of adjudication by the Court of Law.

Till the last phase of 1970s, Indian Judiciary had been acting in this traditional way to control environmental pollution by adjudicating the litigations arising out of disputes relating to environmental issues, since Indian Judiciary had not been familiar with the concept of "Social Action litigation" or "Public Interest Litigation", the litigation for the benefit of the common people and for the protection of the legal and fundamental rights of the common people at large. Rather during those days, for the purpose of adjudication, judiciary used to entertain only those legal disputes, in connection with environmental issues, which would speak for itself regarding its adversary character.

7.1.2.b Changing Role of Indian Judiciary

7.1.2.b.i. Development through Ratlam Municipal Council Case.

Since the early phase of 1980s, being influenced by the activists role of USA Supreme Court and also being sensitive to the need of the weaker sections and downtrodden and traditionally oppressed classes of the society, Indian Judicial system has been passing through immense change, specially in judicial approach towards the environment related issues. For the first time in the history of Indian Judiciary, it has been explicitly stated by the *Appex Court in Rathlam Municipal Council case*¹⁹ that grievances of the public at large for violation of their rights should be redressed by the Court of Law and they should be given opportunity to go before it for the protection of their common rights and interests.

In this case²⁰, residents of a locality within the limits of Rathlam Municipality, tormented by stench and stink caused by open drains and public excretion by near by slum dwellers, filed complain before the Learned Magistrate under the provision of Section 133 of the Code of Criminal Procedure to require the Municipality to do its duty towards the members of the public specially to remove the public nuisance as taken place in a locality due to existence of open drains, pits and public excretion by human beings for want of Lavatories. After entertaining such Application the Magistrate had given direction to the Municipality to draft a plan within six months for removing nuisance. In appeal, sessions Court reversed the order, but the High Court upheld the order of Magistrate. In further Appeal in the present case²¹, the Supreme Court also affirmed the

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²⁰. Ibid.
²¹. Ibid.
Magistrate's order.

In this case, it has been directed by the Supreme Court as follows:

1. We direct the Rathlam Municipal council to take immediate action, within its statutory powers, to stop the effluents from the Alcohol plant flowing into the street. The State Government also shall take action to stop the pollution. The Sub-Divisional Magistrate will also use his power under Section 133 of the Indian Penal Code to abate the nuisance so caused, Industries can not make profit at the expense of public health. Why has the Magistrate not pursued this aspect?

2. The Municipal Council shall, within six months from to-day, construct a sufficient number of public latrines for use by men and women separately, provide water supply and scavenging service morning and evening so as to ensure sanitation. The health Officer of the Municipality will furnish a report, at the end of the six-monthly term, that the work has been completed. We need hardly say that the local people will be trained in using and keeping these toilets in clean condition. Conscious co-operation of the consumers is too important to be neglected by representative bodies.

3. The State Government will give special instructions to the Malaria Eradication wing to stop mosquito breeding in ward 12. The Sub-Divisonal Magistrate will issue directions to the officer concerned to file a report before him to the effect that the work has been done in reasonable time.

4. The Municipality will not merely construct the drains but also fill up cess pools and other pits of filth and use its sanitary staff to keep the

22. Ibid.
place free from accumulations of filth. After all, what it lays out on prophylactic sanitation is a gain on its hospital budget.

5. We have no hesitation in holding that if these directions are not complied with the Sub-Divisional Magistrate will prosecute the Officers responsible. Indeed, this Court will also consider action to punish for contempt in case of report by the Sub-Divisional Magistrate of wilful breach by any officer”23.

In this case, while passing this directions, it has been also observed by the Supreme Court as follows — "drive common people to public interest action? Where Directive principles have found statutory expression in Do's and Don'ts the Court will not sit idly by and allow Municipal Government to become a statutory mockery. The Law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice. The dynamics of the judicial process has a new 'enforcement' dimension not merely through some of the provisions of the Criminal procedure code (as here), but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if what the constitution and follow up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal”24.

So with these observations and directions, Justice Krishna Iyer has introduced as new trend of Judicial approach towards the procedural justice. In this case25, Justice Krishna Iyer has recognised the urgent need

23. AIR 1980 S.C. 1622 (1630-1631)
for social justice which is due to common people and also the necessities to trigger off the Jurisdiction vested for their benefit in any public functionary like a Magistrate under of the provision of Section 133 of the code of Criminal Procedure to achieve social justice. The recognition of this urgent need reflects a fundamental change in the concepts of 'procedural justice' and in this regard, the paramount consideration is to provide 'Social Justice' to the ordinary common people for the protection of their rights. In this particular case, main priority has been given to the protection of the interests and rights of the common people. Here common people has been given liberty to came forward and to trigger off the jurisdiction vested for their benefit and for the protection of their common rights and interests and redressal of their common grievances. It has brought Indian Public Law in a new dimention. It has changed the conception regarding point of Locus Standi and it has enlarged the scope of judicial redressal system, Specially in case of public grievances.

7.1.2.b.ii  Development after Ratlam Municipal Council Case.

The decision, as given by the Hon'ble Supreme Court in the Ratlam Municipal Council case\textsuperscript{26}, has given hints of shifting of the rule of 'standing' or 'Locus Standi" from strict traditional rule to liberal rule of locus standi which has been ultimately well framed by the decision given in a famous case, \textit{S.P. Gupta and others Vs. President of India and others},\textsuperscript{27} popularly known as Judges' Transfer Case.

In this Judges Transfer case\textsuperscript{28}, it has been observed by the Supreme Court that the traditional rule as regard to 'locus standi' is that judicial redress

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\textsuperscript{26} Ibid.
\textsuperscript{27} AIR 1982 S.C. 149.
\textsuperscript{28} S. P. Gupta and others Vs. President of India and others, AIR, 1982, S.C. 149.
\end{flushleft}
which is available only to the person who has suffered a legal injury by reason of violation of his legal rights or legally protected interests by the impugned action of the State or a public authority or any other person or persons or who is likely to suffer a legal injury by reason of threatened violation of his legal rights or legally protected interests by any such action. It has been also observed that this is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. Under this rule, the court was concerned with the question whether the applicant was a person aggrieved and only a person, who suffered a specific legal injury by reason of actual or threatened violation of his legal right or interests, could bring an action for redressal of his grievances.

Ultimately Supreme Court has held that the necessities of innovation of new methods of judicial process for the purpose of providing access to justice to the large mass of people who are denied of their basic human rights and to whom freedom and liberty have no meaning, as it was observed in this Judge's Transfer case. It has been also felt by the Supreme Court that the only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the court for relief.

So by this Judicial observation Supreme Court has introduced new concept of 'Locus Standi' within the domain of public Law keeping harmony with the fast changing socio-economic and legal scenario in India. Here judiciary has innovated new methods and device new strategies for the
purpose of providing access to the court of law for justice to the large
number of common people who have been denied of their basic human
rights. Here the citizens of the country also depend upon the Judiciary for
the protection of their rights and freedom and it lead the judiciary to start
playing the active role in social reforms and change. Ultimately it has
encouraged the judiciary to liberalise the principle of "Locus Standi" and
to expand the judicial power in various fields where directly and indirectly
different social issues are involved.

This change has been well reflected in people's Union for Democratic
Rights and others Vs. Union of India and others,²⁹ popularly known as
Asiad Case, in which it has been held that where a person or class of
persons, to whom any legal injury is caused or legal wrong is done, is not
able to approach the Court for judicial redress due to poverty, disability
and disadvantage position, any number of the public acting bonafide and
not out of any extraneous motivation may move the Court for judicial
redress of the legal injury or wrong suffered by such person or class of
persons.

In Nakara Case³⁰, this newly introduced principle of 'Locus Standi'
has been further liberalised. In this case³¹, even locus standi of a non
profit making voluntery organisation has been recognised unquestionably
to move a writ petition on behalf of the large number of the old pensioners
who had been unable to undertake the journey through labyrinths of legal
judicial process. Locus standi of the society has been accepted since it
has been consisted with public spirited citizens who have taken up the
cause of ventilating legitimate public problems and as such it had been

³¹. Ibid;
recognised in the light of the majority decision of the Supreme Court as taken in S. P. Gupta case\textsuperscript{32}.

In another early eighties' case, \textit{Bandhua Mukti Morcha Vs. Union of India and others}\textsuperscript{33}, Supreme Courts has also followed the same line of newly introduced judicial approach regarding point of 'Locus Standi'. In this case\textsuperscript{34}, it has been observed by the larger Bench of the Supreme Court presided by Justice P. N. Bhagwati that where the fundamental rights of a person or class of persons is violated, but who can not have resort to the Court on account of their poverty or disability or socially or economically disadvantaged position, in such case Court can and must allow any member of the public acting bonafide to espouse the cause of such person or class of persons and move the court for judicial enforcement of the fundamental rights of such person or class of persons. So in this way rules of Locus Standi has been liberalised in dispensing socio-economic justice to the public at large, specially to the vulnerable sections of the society.

In this way due to activist role of Judiciary, which desires a Judge to go beyond the traditional concept of law and introduce new concept of justice, after being departed from the traditional mode of interpretation in the prevailing socio-economic perspective, new legal thoughts have been germinated in India for the protection of the interests of the masses, but not for any person individual. Ultimately, it has accelerated the upcoming litigations on public interests and for social justice and for the benefit of the public at large, specially for those persons who are both socially and economically oppressed and under privileged and belonged to the weaker

\textsuperscript{32} S. P. Gupta Vs. Union of India, AIR 1982, S.C. 149.
\textsuperscript{33} AIR 1984 S.C. 802.
\textsuperscript{34} Bandhua Mukti Morcha Vs. Union of India and others, AIR 1984 S.C. 802.
and vulnerable section of the society in India.

7.2 Emergence of Public Interest Litigation as an Instrument of Social Reform

7.2.1. General Overview

Right from early 1980's, role of Indian Judiciary in dispensing Justice has undergone a lot of transformation and a new judicial approach had come into existence due to activist role of Indian Judiciary. Since then, Judicial Institution became sensitive to the need of the weaker sections, downtrodden and traditionally oppressed classes of people in India. Indian Judiciary began to entertain the public grievances over violation of human right of the public at large. This new trend of Indian Judiciary has altered the litigation landscape within the Indian legal system and it has introduced a new trend of litigation for the redressal of grievances of the public at large and for their common good and welfare and ultimately the concept of public interest litigation has come into existence in India.

In Black's Law Dictionary, 'Public Interest' is defined as follows:

"Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest Shared by citizens generally in affairs of local, state or National Government". Actually the expression 'Public Interest' means

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an act for the benefit of public and for their common good. The expression 'litigation' means "legal action, including all proceedings therein, initiated in a court of Law with the purpose of enforcing a right or seeking a remedy." So litigation is a legal action which may be initiated in a court of Law for enforcing right of the person individual or group of persons.

In Stroud’s Judicial Dictionary, 'Public Interest ' has been also defined in the following manner — "A matter of Public or general interests does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected".

Therefore, the term ‘Public Interest Litigation’ may considered as a legal action initiated in a Court of Law for the purpose of enforcing the Public Interest or general interest in which the public or the community at large have pecuniary interest or some interest by which their legal rights or liabilities are affected.

Justice Krishna Iyer’s illustrative remark about Public Interest Litigation, as made in following manner — "The dynamics of a functional jurisprudence is the creative expression of judicial response to the crisis of hunger for justice. Public Interest Litigation is the offspring of these social forces" can be treated as a beacon light in realising the meaning of Public Interest Litigation in true sense.

‘Public Interest Litigation’ is actually a creation of the activist role of

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36. Ibid at page 935.
Indian Judiciary, specially of Appex Court. ‘Public Interest litigation’ or its
various forms, like ‘Social action litigation’ or class action litigation’, is a
litigation filed at the instance of public spirited persons for the common
cause of the public at large and for the protection of their rights and interests
and it is intended to bring justice within the reach of poor masses.

Though traditionally Indian judiciary are always concerned with the
rights and duties of individuals in adjudicating legal disputes, but in recent
years specially from 1980’s onwards, as stated earlier, it has been
recognised that this tradition is inadequate to cope with a wide range of
socio-economic problems arising out of inequality of means and
opportunities in the society. So to supplement this inadequacy a new
concept of Law has been developed due to the activist role of Indian
Judiciary for effective and purposeful dispensation of social justice to the
common people.

Ultimately, being influenced by the development of the concept of
public interest litigation or social action litigation in USA and UK, Indian
Judiciary starts playing the active role in socio-legal reforms and it
encourages the development of the Public Interest Litigation in India by
liberalising the existing traditional Procedural and Customary rules of
adjudication system and in this regard name of justice Krishna Iyar shall
be ever remembered, since he has introduced this concept of public
interest litigation in the Indian Legal system.
7.2.2. Development of the Concept of Public Interest Litigation in U.S.A.

7.2.2.a. Early Development

Originally the concept of public interest litigation has been brought into existence in the United States of America first and there it is known under the name and style 'Public Interest Law'. The definition of 'Public Interest Law' may be derived from the following portion of the Report given by the Council for Public Interest Law, U.S.A. (1976): "It is the name given to efforts to provide legal representation to groups and interests that have been unrepresented or under represented in the Legal process. These include not only the poor and the disadvantaged but ordinary citizens who, because of poverty they can not afford lawyers to represent them, have locked access to courts, administrative agencies and other legal forums in which basic policy decisions affecting their interests are made"39.

With this conceptual thought Public interest Law had come into existence in United States during late 1960s, the period, from which Supreme Court gradually began to liberalise strict procedural rules of adjudication of the legal disputes. It may be mentioned here that previously it had been the convention that Federal Court's jurisdiction could be invoked only if the plaintiff himself had suffered some threatened or actual injury resulting from 'Putatively illegal action'40.

Regarding the traditional view of Locus Standi of the US Court may

be explicitly found in the case of *Forthingam vs. Mellon*\(^{41}\) where the Court held that for locus standi the extent and the nature of injury suffered by a person must be direct, distinct and palpable. It must be one who suffered to an extent or of a character different from an average member of the public. This classic rule about locus standi was called as "The Forthingam Barrier" as established in the aforesaid American case.\(^{42}\)

But, since late 1960s, in response to the changed socio economic and political scenario in USA, the American Supreme Court had been gradually liberalising the strict procedural rule regarding locus standi in different cases. In 1968, in the case of *Flast Vs. Cohen*\(^{43}\), the Court allowed tax payer and rate payer standings to complain against the spending of Federal funds on religious schools even though the plaintiff did not allege that he was sustaining an injury greater than the average tax payer. In this regard another decision of the US Supreme Court may be referred here. *Association of processing service organisation Vs. Camp*\(^{44}\), where U.S. Judiciary had advanced one step more from its earlier stand on locus standi issue. In this case, for the first time judicial protection was provided to diffuse rights and interests. The court held in this case that interest may reflect aesthetic, conservational and recreational, as well as, economic values. So form this case it appears that gradually concept of standing has been shifted from its traditional notion to present one.

Thus judicial protection has been gradually extended from mere 'Legal injury' to 'Zone of interests', protected by the statutory or constitutional provisions.

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41. 262 US 447 (1922)
43. 392 US 53 (1968);
44. 397 US 150 (1970).
The next step for advancement towards relaxation of rule of standing was taken by the United State Supreme Court in this case, *Office of communications of the United Church of Christ Vs. F.C.C.*45, where the expression 'Person aggrieved' was understood in the new way. In this case, the term 'person aggrieved', has been considered as any person who has 'genuine interest' in the subject matter rather than a 'Legal Grievance'. Thereafter in order to further relaxing the standing of 'Person aggrieved', in a subsequent case, *Sierra Club Vs Morton*46, the concept of 'genuine interest' to satisfy the standing of 'person aggrieved' had been replaced by either a 'Special' or even 'sufficient' interest in the matter.

### 7.2.2.b. Development after Sierra Club Case.

In *Datta Processing service vs. Camp*47, a broader view was taken regarding question of standing and it was held legal interest test went to merits and the question of standing was different and depended upon the question as to whether interest, sought to be protected by the complainant, could be arguably with the zone of interests to be regulated or protected by the statute or constitutional guarantee in question. The similar view had been followed by the court in *Barlow vs. Colling*48.

Ultimately this changing trend regarding rule of 'standing' in United States of America gave rise to a new concept of litigation, involving the judicial protection for the public interest, under the name and style 'Public interest Law' and it has also attracted the legal dispute relating to environmental matter which had been very much involved with the public interest. In this regard one case may be cited here and that is

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45. 123 US. App. DC. 328.
46. 405 US 727 (1972),
47. 397US, 150 (25 L, Ed. 2D, 184),
Environmental Defence Fund Vs. Environmental Protection Agency, which has been filed against the Suffolk County Mosquitto Control Commission with the allegation of adverse environmental impact on wildlife by the extensive use of D.D.T. In this case the Court has ordered a one year ban on the use of D.D.T.

So in this way in United States of America from the early phase of 1970s after relaxing the traditional rule of Locus Standi, the public Interest Law has been developing as an useful weapon to redress the public grievances and to protect the interest of common people involving in environmental issues of that country.

7.2.3. Development of the Concept of Public Interest Litigation in U.K.

7.2.3.a. Development during Pre-Blackburn era.

While exploring the historical background regarding development of the concept of Public Interest litigation, if the scenario of United Kingdom is not mentioned here then such discussion will remain incomplete.

English law, based on the Anglo-Saxon jurisprudence, earlier use to patronize the strict principle of 'Locus standi'. However, under the changing circumstances, England began to liberalise the doctrine of 'Locus Standi' during 1970s and the Lord Denning was the main architect behind such liberalisation process in England.

The traditional rule regarding availability of writ jurisdiction, as practiced in England was that only such person could invoke the writ jurisdiction of
the Court if he would suffer a 'Legal injury' as a consequence of the violation of his 'Legal rights'. In this regard, *ex parte Sidebotham* is one of the finest example of the cases decided on the basis the classical principle of Strict doctrine of Locus standi.

In 1957, in *R. Vs. Thomas Magistrate's Court, ex-parte Greenbaum*, Lord Denning had for the first time departed from the traditional concept of Locus Standi. In this case, subject in issue as involved had been the dispute in respect of awarding a pitch in a street market by the Magistrate in favour of a seller of jellied eels rather than a newspaper seller. Since the newspaper seller had no legal right to the pitch, he was banned by the strict doctrine of Locus Standi. However, Lord Denning held that the newspaper seller had 'Locus Standi' and quashed the order of the magistrate awarding the pitch to the seller of jellied eels.

Again in *R. Vs Paddington valuation officer, ex parte Peachey Property Corpn. Ltd.*, a rate payer alleged that the property valuation list of the whole area had not been properly prepared. However, he was not able to show that his own property was rated wrongly. Inspite of his failure to establish his own suffering from any injury due to any wrong caused to him, Lord Denning had approved his Locus Stadi to move that case. In this case the main issue, which had been decided, was that whether the Peachey Property Corporation had been the "person aggrieved" so as to be entitled to ask for writ of Certiorari or writ of Mandamus or not. Lord Denning held that, if a ratepayer or other persons would find his name included in a valuation list which was invalid, he had been entitled to come

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49. (1880) 14Ch. D458.
50. (1957) 5 LGR 129
51. (1960) 1Q.B. 380 (400).
to the Court and apply to have it quashed and he would not be put off by the plea that he had not suffered any damage.

7.2.3.b. Development during Blackburn era.

So the process of liberalisation of the traditional concept of Locus Standi had been started in England right from the *ex-parte Peachey property Corpn. Ltd. case*\(^{52}\) mainly due to the activist role as played by Lord Denning. Thereafter a series of cases were brought to the court by Mr. Raymond Blackburn, a public-spirited person. Lord Denning had given him a standing welcome and through those cases, the concept of Public Interest Litigation had been substantially developed in England.

In *R. vs. Commissioner of Police of the Metropolis, exparte Blackburn*\(^{53}\), Mr. Blackburn a public spirited person, came to the Court with his allegation that the big gambling clubs of London had been openly breaking the Law. But before coming into writ court he made complain to the Metropolitan Police but it remained unmoved to act because of a 'Policy decision' which had been issued to the Metropolitan Police. Mr. Blackburn claimed that the said 'policy decision' was illegal and as such a mandamus be issued to compel the commissioner of Police to do his duty under the Law. While deciding the case, a question raised in Lord Denning's mind that can Mr. Blackburn invoke the remedy of Mandamus. Ultimately, considering the involvement of the public interest in the case and for the sake of maintaining the rule of Law in the society, Lord Denning had entertained that writ petition and accepted the involvement of the responsibility of the Lawyers themselves in the matter of enforcement of Law in the society.

\(^{52}\) Ibid.

\(^{53}\) (1968), 2 Q. B 118.
Mr. Blackburn had come again in person in a case, *R. Vs. GLC, ex parte Blackburn*,\(^54\) alleging that pornographic films were being exhibited in London and Greater London Council were doing nothing to stop them and as such he applied for a writ of Prohibition. In this particular case\(^55\), Lord Denning held that if there had been good ground for supposing that a Government department or a public authority was transgressing the Law, or is about to transgress it in a way which would offend or injure thousands of her Majesty's subjects, then any one of those offended or injured could draw it to the attention of the courts of Law and seek to have the Law be enforced.

7.2.3.c. Development during Mack Whirter Case period and beyond.

Along with all the Blackburn's case, as discussed above, Lord Denning has also dealt with the issue of 'Locus Standi' in *Mc Whirter case*\(^56\). While dealing with this issue in *Mc Whirter case*, Lord Denning has held that if there is good ground for supposing that a government department or a public authority is transgressing the Law, or is about to transgress it, in a way which offends or injures thousands of her Majesty's subjects, then in the last resort, when there is no other remedy resonably available, any one of those offended or injured can draw it to the attention of the courts of Law and seek to have the law be enforced.

So in this way traditional concept of 'Locus Standi' had been gradually shifted towards the new liberalised concept of 'Locus Standi' which had enlarged the scope of writ jurisdiction in United Kingdom by allowing the Locus Standi of such persons, whose legal right had not even been

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54. (1976) 1 WLR 550.  
55. *R. Vs. GLC, ex parte Blackburn* (1976) 1 WLR 550.  
infringed, to come before the writ jurisdiction. In this regard, the decision of another reported case may be mentioned and that is *R. Vs. Secretary of State for the Environment, ex parte ward*[^57], where it has been held that the Locus Standi requirement of day is that any body may apply, for example a member of the public who has been inconvenienced, or a particular party or person who has a particular grievance of his own and if the application is made by a stranger (third party) the remedy is purely discretionary.

But one thing may be stated here that after the decision of *R. vs. Secretary of State for the Environment, ex p ward*[^58] in case of judicial review challenging the administrative decisions relating to environmental issues, English Courts placed certain restrictive approach regarding Locus Standi, specially of Environmental Pressure Groups, as it appeared in *Ex P. Rose Theatre Trust Case*[^59] where it had been held that trust did not have locus standi since it had no sufficient interest. Actually this observation had been made in terms of the provisions of the Supreme Court Act, 1981, which requires a person to have "sufficient interest" in the matter in which their application for judicial review relates.

However this restrictive approach, as laid down in *Rose Theatre Trust Case*[^60], was not followed in *Green Peace Case*[^61], which was filed by the Green peace Challenging the decision of Her Majesty's Inspectorate of Pollution to allow testing at the Neureal reprocessing plant at Sellafield. In this case, court allowed the locus standi in favour of Green Peace. In

[^57]: (1984) 2 All ER 556.
[^58]: Ibid.
[^60]: Ibid.
this case, it was held that Green Peace was an eminently respectable and responsible organisation and their genuine interest in the matter was sufficient for them to be granted locus standi.

So in this way, changing trend of Judicial approach towards the Locus Standi had begun to attract the problem of environmental pollution also in United Kingdom as it appears from the foregoing reported cases and the litigations arising out of that pollution problems got a new shape based on the newly developed rules of Locus Standi which allowed even the stranger person, having no personal interest in danger, to come before the writ jurisdiction for the redressal of any injury causing damage to any other person or the public at large.

7.2.4 Development of the Concept of Public Interest Litigation in India

7.2.4.a Early Development in India

Being inspired by the latest development in adjudication system in the U.S.A., as well as in the U.K. due to changing notion regarding rule of 'Locus Standi', as a result of which Public Spirited Person, even being the Stranger, may be allowed to come into the court for the redressal of grievances of the public at large, the concept of public Interest Litigation has been also developed in India.

The seed of the concept of public Interest Litigation was initially sown in India by the Justice Krishna iyar without using the terminology of the "Public Interest Litigation" in the case of The Mumbai Kamgar Sabha,
Bombay Vs. M/s. Abdulbhai Faizullahbhai and Others\textsuperscript{63} wherein he has introduced the concept of representative actions and concept of pro bono Publico in keeping conformity with the current accent on justice to the common man and suggested for consideration of writ jurisdiction under wider perspective required for ventilation of collective or common grievances distinguished from assertion of individual rights.

So in this case\textsuperscript{64}, Justice Krishna Iyer has recognised the necessities to promote the liberal construction of the Rule of 'Locus Standi' and to take liberty with the individualisation of the right to enforce legal right of the considerable number of the people, specially of those, who belong to the weaker section of the society, in the court of Law considering the Public interest is a priority. However, Justice Krishna Iyer had not mentioned the term "Public Interest Litigation" in anywhere of his Judgement of this case.

The terminology "Public Interest Litigation" has been used by the Hon'ble Mr. Justice Krishna Iyer for the first time in the history of Indian Judiciary in Fertilizer Corporation Kamgar Union (Regd.) Sindri and others Vs. Union of India and others\textsuperscript{65}. In this case, Justice Krishna Iyer has introduced this new terminology in the perspective of narrating the necessities of liberalisation of the strict principle of the locus standi for providing justice at door steps of the common people. Here Justice Krishna Iyer has recognised the fact that the right of effective access to Justice has emerged as the most basic human right in the contemporary social condition and activism is essential for such participative public justice.

\textsuperscript{63} AIR 1976 S. C. 1455.
\textsuperscript{64} The Mumbai Kamgar Sabha, Bombay Vs. M/s. Abdulbhai Faizullahbhai and Others, AIR 1976 S.C. 1455.
\textsuperscript{65} AIR 1981 S.C. 344.
in this country. Finally he has observed in this case\textsuperscript{66}, that Public Interest Litigation is a part of the process of participative justice and "Standing" in Civil litigation of that pattern must have liberal reception at the judicial doorsteps.

At the time of introducing this new concept of public interest litigation in Indian legal system, all the aforesaid observations, as made in this case are actually based on the liberal judicial approach towards the principle of locus standi which has been introduced through one of the famous decisions of the Supreme Court as delivered in the Rathlam Municipal Council Case\textsuperscript{67}.

\textbf{7.2.4.b Role of the Supreme Court}

\textbf{7.2.4.b.i. Development upto Ganga Pollution Case.}

The concept of Public Interest Litigation, which has taken its root firmly in the Indian Judicial System through the \textit{Fertilizer Corporation Kamgar Union Case}\textsuperscript{68}, ultimately fully blossomed with fragrant smell in the case of S. P. Gupta and others Vs. President of India and others\textsuperscript{69}, popularly known as Judge's Transfer case.

Due to fast changing social dynamics and need for revolutionary change in the traditional judicial process to cope up with the new trend of society, by which the problems of the poor are coming to the forefront, Supreme Court's Constitution Bench had felt the necessities to innovate new methods and to devise new strategies for the purpose of providing access to justice to large mass of people who have been denied their

\begin{enumerate}
  \item \textsuperscript{66} Fertilizer Corporation Kamgar Union (Regd.) Sindri and others Vs. Union of India & Others, AIR 1981 S.C. 344 (355).
  \item \textsuperscript{67} Municipal Council Rathlam vs. Vardichand and Others, AIR 1980, S.C. 1622.
  \item \textsuperscript{68} See the note Supra 45.
  \item \textsuperscript{69} AIR 1982 S.C. 149.
\end{enumerate}
basic human rights and to whom freedom and liberty have no meaning.

Under this perspective, in this case\(^\text{70}\), Supreme Court had come to this conclusion that such change can be done by entertaining writ petitions and even letters from public spirited individuals acting pro bono publico, seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury due to violation of their constitutional and other legal rights, but are unable to approach the court for relief due to their poverty and ignorance and socially or economically disadvantaged position.

Ultimately this newly established principle of law has been considered as beacon light in introducing new adjudication system in India based on new philosophy of Law. In this way, Indian Judiciary, specially the Apex Judiciary, has began to remove the procedural Shackle in connection with Public Interest Litigation under the domain of public law.

Gradually this concept of 'Probono Publico' has got its place as a guiding principle to invoke writ Jurisdiction for redressal of public grievances in connection with dispute relating to Environmental Pollution in India. In this regard first remarkable case, came up before the Supreme Court as Public Interest Litigation, is *Rural litigation and Entitlement Kendra, Dehradun and Others Vs. State of U.P. and Others*\(^\text{71}\), popularly known as Doon Valley case which was filed by the Rural litigation and Entitlement Kendra, Dehradoon and a group of citizens for destruction of forests and damaging natural structure and resources due to extracting more and more lime stone, as available in the Dehradun Valley region (Mussoorie Hill Range of the Himalayas), by the quarry owners leading to

\(^{70}\) S. P. Gupta & Others Vs. President of India & Others, AIR 1982 S.C. 149; 
\(^{71}\) AIR 1985 S.C. 652
Land slides killing villagers and destroying their homes, cattle and agricultural lands and blocking the underground water channels which fed many rivers and springs in the river valley.

In this case, while passing the order of closure of the lime stone quarries classified as category "C" in Bhargav Committee Report, Appex Court had been pleased to observe that such closure order would undoubtedly cause hardship to the quarry owners, but it was a price that had to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimum 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.

With this observation, Supreme Court has established the right of the people at large including other potential living organisms to live in the Pollution free healthy environment and it had been the priority than any other matter like financial loss, loss of business, unemployment, etc. Gradually this line of thinking had been well accepted by the judiciary and followed in various environment related cases filed in the nature of Public Interest Litigation.

Next remarkable Public Interest Litigation, filed before the Supreme Court, is "Oleum Gas Case" or "Shriram Foods and Fertilizer Case". In this case some seminal questions had been raised regarding principles and norms for determining the liability of large enterprises engaged in manufacturing and selling hazardous products in case of damage caused to the people residing in the vicinity of the industrial units. Another question,

raised in this case, is what would be the extent of liability of industrial units and what remedies can be devised under the writ jurisdiction for enforcing the liability with a view to secure payment of damages to the persons affected by the leakage of liquid or gas from such industrial units.

While delivering Judgement, Supreme Court has held in this case that the caustic chlorine plant should be allowed to restart by the management of Shriram on the basis of some terms and conditions to be followed by the said management in view of the report of two expert committees, namely Mon Mohan Singh Committee and Nilay Choudhury Committee, as constituted in pursuance to the order of the Hon'ble Supreme Court. In addition, it has been also held that in case of escaping of chlorine gas resulting death or injury to the workmen or to the people living in the vicinity of the unit, Chairman and Managing Director of Delhi Cloth Mills Ltd. will be personally responsible for payment of compensation, in case of such death or injury.

The Writ petition being W. P. (Civil) No. 12739 of 1985 which has been heard by the Supreme Court alongwith another writ petition being W. P. (Civil) No. 26 of 1986, moved by Shirarm Foods and Fertilizer Industries, against Union of India and reported in *AIR 1987 S.C. 965*, had come up further before the Five Judges Bench of the Supreme Court on a reference made by the three Judges' Bench. The reference was made because certain questions of seminal importance and high constitutional significance, such as ambit of Article 32 of the Constitution of India; enforcement of the fundamental right, including the scope of Article 21 of the Constitution of India and principle of liability, had been raised in course of arguments where the writ petition was originally heard before the earlier
three Judges Bench and those issues raised enormous debt amongst the jurists and legal luminaries.

In this case\textsuperscript{74}, Supreme Court has enlarged the scope of writ Jurisdiction to entertain the public interest litigation involving different socio-economic issues including the liability in environmental accidents. In this particular case, Supreme Court had invoked the Jurisdiction under Article 32 of the Constitution of India not only for the prevention of infringement of a fundamental right, but also for the remedial purpose and to provide relief against a breach of a fundamental right already committed.

In this particular case, while delivering Judgement, Supreme Court has also elaborately discussed regarding the issue of liability. Finally, in this case,\textsuperscript{75} it has been held by the Supreme Court that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous 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 of the principle of strict liability as fixed under the rule in \textit{Rylands Vs. Fletcher}\textsuperscript{76}. It may mentioned here that through this Judgement polluter paying principle has been introduced in India.

Right from 'Oleum Gas Case\textsuperscript{77}', the stream of public interest Litigation got its momentum in real sense. Actually in this 'Oleum Gas Case', Scope of public interest litigation had been enlarged with various prospect under the extended scope of writ jurisdiction what ultimately able to make the

\begin{itemize}
  \item \textsuperscript{74} M.C. Mehta & another Vs. Union of India & Others, AIR 1987 S.C. 1086.
  \item \textsuperscript{75} Ibid.
  \item \textsuperscript{76} (1868(19) LT 220)
  \item \textsuperscript{77} M.C. Mehta and another Vs. Union of India others, AIR 1987 S.C. 1086.
\end{itemize}
public interest litigation as an effective weapon with its versatile power and ability to redress the grievance of the public at large in connection with the environmental matters and such vigour of the public interest litigation may be witnessed from various cases.

In this regard one case may be referred here and that is *M.C. Mehta Vs. Union of India and others* which is popularly known as "Ganga Pollution (Kanpur Tanneries) case". It was a public Interest Litigation, filed by Advocate of Supreme Court, an active social worker, for issuing writ / order / direction in the nature of Mandamus to the Respondents restraining them from letting out the trade effluents into the river Ganga till they put up necessary treatment for treating the trade effluents in order to arrest the pollution of water in the river Ganga.

In this case, Supreme Court through its Judgement has directed few tanneries, which have not expressed their willingness to take appropriate steps to establish the pre-treatment plants, as approved by the State Board (Uttar Pradesh Pollution Control Board) to stop the running of their tanneries and also not to let out trade effluents from their tanneries either directly or indirectly into the river Ganga without any treatment.

Finally, in this case Justice K. N. Singh justified the issuance of directions for the closure of those tanneries, which had been situated at Jajmau area near Kanpur and polluting the river ganga like anything and have failed to take minimum steps required for primary treatment of Industrial effluent, with the following observations: "We are conscious that closure of tanneries may bring unemployment, loss of revenue; but life,

78. AIR 1988 S.C. 1037
79. M. C. Mehta Vs. Union of India and others, AIR 1988 S.C. 1037
health and ecology have greater importance to the people.\textsuperscript{80}

Ultimately with these observations, Supreme Court has been able to develop the concept of environment protection in strict sense. In addition, Supreme Court has also developed new principle of law regarding the scope of public interests litigation under the writ jurisdiction which may even also allow to issue writs enforceable against the private individuals, organisation, industrial operators and entrepreneurs who are responsible for the environmental pollution due to their activities.

The aforesaid writ petition again come up for hearing before the Hon'ble Supreme Court comprising of the Hon'ble Mr. Justice E. S. Venkataramiah and K. N. Singh, J. and accordingly an order has been passed by the said Hon'ble Supreme Court, on 12.1.88 and it has been reported in \textit{AIR 1988 S.C. 1115 (M. C. Mehta Vs. Union of India and others), known as 'Ganga Pollution (Municipal) Case'}.\textsuperscript{81}

In this Public interest Litigation\textsuperscript{81}, in addition to all these directions and orders, issued under writ jurisdiction upon the State authorities, aiming at protection of environment and maintaining proper health and hygiene, having regard to the grave consequences of the pollution of water and air and considering the need for protection and improvement of the natural environment, Article 51A(g) of the Constitution of India has been invoked by the Supreme Court. In this case, it has been held by the Supreme Court that it is the duty of the Central Government to direct all the educational institutions throughout India to teach at least for one hour in a week lessons relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wild lives in the first ten

\textsuperscript{80} M. C. Mehta Vs. Union of India and others, \textit{AIR 1988 S.C. 1037 (1048)}.

\textsuperscript{81} M. C. Mehta Vs. Union of India and others, \textit{AIR 1988 S.C. 1115}.
classes and children should be also taught about the need for maintaining cleanliness.

So it appears from the 'Ganga Pollution (Municipality) case82, Supreme Court has been also able to extend the scope of Article 51A(g) of the Constitution aiming at protection and preservation of the natural environment and to combat pollution problems in India and in addition, it has also extended the scope of the writ Jurisdiction under Article 32 of the Constitution of India in such a way so that the Constitutional mandates meant for environment protection other than fundamental rights may be suitably invoked by exercising the activist role of judiciary in India.

6.2.4.b.ii. Development after Ganga Pollution Case.

Since Ganga Pollution Case, Indian Judiciary, specially the Apex Judiciary used more flexible and liberal approach regarding entertaining Public Interest Litigation and invoking the writ jurisdiction to provide more social justice in more flexible moods in those cases.

In this regard, another case, Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others83, may be referred here. In this case, Supreme Court had further extended the scope of Article 32 by entertaining even a letter as a writ petition going beyond the four corners of the procedural compulsion and also extend the scope of Article 21 of the constitution of India, by making following observation — "Every citizen has a fundamental right to have the enjoyment of the quality of life and living as contemplated by Art. 21 of the Constitution of India"84.

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83. AIR 1990 S.C. 2060; (1990) 4 S C C 449.
In another Public Interest Litigation, Subhas Kumar Vs. State of Bihar and others, filed in connection with the pollution problem in river Bokaro caused due to continuous discharge of sludge / slurry in heavy quantity by the Tata Iron and Steel Co. posing high risk to the health of the people living in the surrounding areas, Supreme Court has also held in this case that right to live is a fundamental right under Article 21 of the constitution of India and it includes the right of enjoyment of pollution free water and air for full enjoyment of life and if anything endangers or impairs that quality of life in derogation of Laws, a citizen has right to have recourse to the Article 32 of the constitution for removing the pollution of water or air which may be detrimental to the quality of life.

It had been also held that a petition under Article 32 of the constitution for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists, and such person should be genuinely interested in the protection of society on behalf of the community.

Gradually in this way Public Interest litigation has gaining its strength and momentum and becoming matured day by day in the field of environmental matter involving various environmental issues, like preservation of natural environment, maintenance of ecological balance, protection of environment from the effects of pollution of different kind and it has been maintaining its true spirit of social reformer which endeavours to bring social justice to the common people specially to those group of people who are in disadvantageous condition in the society, by redressing their grievances and mitigating their hardships what they have been actually suffering.

In Consumer Education and Research centre and others Vs. Union of India and others\(^{86}\), moved as Public Interest Litigation, Supreme Court has justified the necessities of providing social justice as constitutional obligation to ensure life to be meaningful and liveable with human dignity, since social justice is a dynamic device to mitigate and redress the sufferings of the poor, week, dalits, tribals and deprived sections of the society and to elevate them to such level so that they may live with dignity.

In another Public Interest Litigation, M.C. Mehta Vs. Union of India and others\(^{87}\), the Supreme Court has recognised the fact that keeping the citizens informed, is a social obligation of the Government, particularly about the environment, free of cost and also recognised the necessities of introduction of environmental education compulsorily in the schools and colleges in a graded system so that there would be a general growth of awareness regarding environment and its problems relating to pollution.

Though during this period, after ganga pollution case\(^{87A}\), Supreme Court has dealt with the environmental issues in liberal manners and in flexible moods, but in some cases, Appex Judiciary has exercised its writ jurisdiction in a very strict manner aiming at protection of environment and ecology of this coutry under certain circumstaces. One of such cases is Delhi Industries Pollution Case\(^{87B}\). In this case\(^{87C}\), Supreme Court has held and directed that one hundred sixty eight (168) industries, listed as hazardous / noxious / heavy / large industries and falling in H(a) and H(b) categories under the master plan, as approved and placed by the Central Government in this case, can not be permitted to operate and function in

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\(^{87}\) AIR 1992 S.C. 382.

\(^{87A}\) M.C Mehta vs. Union of India and Others, AIR 1988 S.C. 1037;

\(^{87B}\) M.C Mehta vs. Union of India and Others, AIR 1996 S.C. 2231.

\(^{87C}\) Ibid
Delhi. It has been also directed by the Supreme Court that 168 industries listed as above, shall stop functioning and operating in the city of Delhi with effect from 30th November, 1996 and those industries shall close down and stop functioning in Delhi with effect from the said date. In this regard, the National Capital Territory, Delhi administration through its Chief Secretary and Secretary Industries; State of Haryana through its Chief Secretary, Industries; State of Rajasthan through its Chief Secretary, Industries and the State of Uttar Pradesh through its Chief Secretary and Secretary, Industry had been directed by the Supreme Court to provide all assistance, help and necessary facilities to the industries which intend to relocate themselves in the industrial estates situated in their respective territories. It had been also directed that the allotment of plots, construction of factory buildings, etc. and issuance of any licence / permissions, etc. should be expedited and granted on priority basis.

In this case, Supreme Court had also tried to protect the interest of the workmen engaged in all those industries under closure order. Supreme Court had directed that the workmen should have continuity of employment at the new town and place where the industry would be shifted without any alteration of the terms and condition of their employment. In addition, the period between the closure of the industry in Delhi and its restart at the place of relocation shall be treated as active employment and workmen should be paid their full wages with continuity of service and all these workmen, who agreed to shift with the industry should be given one year wages as 'shifting bonus', to help them settled at the new location, interalia, as directed by the Supreme Court in this case. It had been also directed that workmen employed in the industries which fail to relocate and the workmen, who are not willing to shift alongwith relocated industries shall
be deemed to have been retrenched with effect from 30th November, 1996 and those workmen should be compensated in accordance with the law as laid down under the provision of Section 25F(B) of the Industrial Dispute Act, 1947, alongwith additional compensation of one year wages.

Though by these judgement Supreme Court had provided these relocation facilities to all those industries who had been under the purview of closure order, but for that purpose no such specific guidelines excepts some general direction, had been provided by the Supreme Court. On the contrary, such closure order had been issued within a very stringent mandatory direction, as follows — "the closure order with effect from November 30 1996, shall be unconditional. Even if the re-location of industries is not complete they shall stop functioning in Delhi with effect from November 30, 1996." And there is no doubt such type of closure order had definite impact upon the rehabilitation programme for the workmen engaged in those industries.

On the eve of his retirement, Justice Kuldip Singh had delivered one of his landmark Judgements, while sitting in the Supreme Court as a Judge in the Taj Trapezium (TTZ) Case which had been moved as a Public Interest Litigation under the writ jurisdiction of the Supreme Court by Sri M. C. Mehta, a practicing Advocate of the Supreme Court, who had been fighting a long and laborious battle for the protection of environment since 1980s. Actually the Taj Trapezium case was Mr. Mehta's first tentative step in the nascent field of environmental litigation during early 1980s, though decision came much after filing of the case.

87D. Ibid
In this case\textsuperscript{89}, after considering various reports in connection with the ambient air quality of Taj Trapezium, such as the report of National Environment Engineering Research Institute (NEERI), Report of Varadharajan Committee regarding Environmental Impact of Mathura Refinery, and various other reports of different scientific and technical committees, the Supreme Court had reached in to the finding that the emissions generated by the Coke/Coal consuming industries had damaging effect on the Taj Mahal and people living within the close vicinity of Taj Trapezium and it was proposed that the atmospheric pollution in Taj Trapezium must be eliminated at any cost. Under the perspective of this observation, it had been held by the Supreme Court that the 292 identified industries, as per the schedule, should change over to the natural gas as an industrial fuel. It had been also held that the industries which had not been in a position to obtain natural gas connection for any reason should stop functioning with the aid of coke / coal in the vicinity of Taj Trapezium (TTZ) and they might relocate themselves, as per the direction given. It has been further held that those industries, which neither apply for gas connection nor for alternative industrial plot, shall forthwith stop functioning with the aid of coke / coal. In this regard the District Magistrate and the Superintendent of Police, Agra have been directed to take steps for compliance of the said order.

In this public interest litigation\textsuperscript{90}, Supreme Court has also tried to resolve the pollution problem from a different angle. Here Supreme Court has invoked "The precautionary principle" and "The Polluter pays principle", the two prime components of the concept of sustainable development. In

\begin{thebibliography}{99}
\bibitem{89} Ibid.
\bibitem{90} Ibid.
\end{thebibliography}
this case Supreme Court has followed the same line of adjudication as it was made in "Vellore Citizens welfare Forum Case" where "the precautionary principle" and "the polluter pays principle" had been well accepted as part of the law of the land in case of protection of environment and prevention of environmental pollution within the ambit of constitutional mandates, specially as provided under Article 21, 47, 48A and 51A(g) of the Constitution of India.

In Shrimp Culture Case, Supreme Court has delivered its Judgement almost in the same line as it was made in Taj Trapezium case, Vellore citizens Welfare Forum Case and Indian Council for enviro-legal action case.

In this case, after passing the order of demolition of aquaculture industries / Shrimp culture industries / shrimp culture pond, it has been further directed that Acquaculture industr / Shrimp culture industry and Shrimp Culture ponds which have been operating within the coastal regulation zone as defined under the CRZ Notification and within 1000 meter from Chilka and Pulikat Lakes shall be liable to compensate the affected persons due to this Acquaculture and shrimp culture industry on the basis of the "polluter pays" principle and such compensation shall be computed by the authority under two heads namely for reversing the ecology and for payment to individuals and the Collector / District Magistrate after recovering the amount from the polluters, shall disburse to the affected persons / families.

93. See the Note Supra 88.
94. See the note Supra 91.
95. Indian Council for Enviro-Legal Action, etc. vs. Union of India and Others, AIR 1996 S.C. 1446.
In this case Justice Kuldip Singh has invoked the "polluter pays" principle along with precautionary principle, within the scope of extended meaning of 'life' under Article 21 of the Constitution of India considering "Polluter Pays' principle is meant for absolute liability for harm caused by the polluter to the environment extending not only to compensate the victims of pollution but also the cost of restoring the environmental degradation aiming at to protect and save the life from the disastrous effect of environmental pollution in this country.

This polluter pays principle has been also further illustrated in terms of recovery of restoration costs in *Calcutta Tanneries Case.*96 While delivering Judgement in this particular case, Supreme Court has considered the report, dated 30.9.1995, submitted before the court by the National Environmental Engineering Research Institute (NEERI) regarding condition of the tannery units of East Calcutta which are located in highly congested habitations having no appropriate waste water drainage and collection systems available therein.

After considering the findings of the NEERI and several other reports, submitted by the Pollution Control Board, the Supreme Court had been pleased to issue certain directions in the present case. It had been directed by the Supreme Court that the Calcutta Tanneries shall relocate themselves from their present location and shift to the new leather complex setup by the West Bengal Government and the tanneries, which decline to relocate, shall not be permitted to function at the present sites. It has been also directed that the Calcutta Tanneries shall deposite 25 percent of the price of the Land before 28.2.1997 with the authority concerned, but the

96. M.C. Mehta Vs. Union of India & Others, 1997 (2) SCC. 411.

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tanneries, who will fail to deposite 25 percent of the price of the land, shall be closed on and from 15.4.1997 and the tanneries, which are not closed on 15.4.1997, must relocate and shift to the new leather complex on or before 30.9.1997 and ultimately all the Calcutta tanneries shall stop functioning at the present sites on and from 30.9.1997 and in this regard the concerned Deputy Commissioner / Superintendent of Police will be directed to execute such closure order.

In this case97, Supreme Court has also imposed Pollution fine of Rs. 10,000/- to each one of all the tanneries in the four areas, such as Tangra, Tiljala, Topsia and Pagla Danga and it will be paid before 28.2.1997 in the office of the Collector / District Magistrate and such amount, recovered as fine from the polluting tanneries shall be deposited under a separate head called, 'Environment Protection Fund', and it shall be utilised for restoring the damaged environment and ecology.

By this Judgement, it has been also tried to Protect the interests of the workmen, employed in the Calcutta Tanneries with the following directions. As per direction of the Supreme Court, the workmen shall have continuity of employment at the new place where the tannery is shifted without any alteration of the terms and conditions of their employment. It has been also directed that the period between the closure of the tannery at the present site and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service. As per the order, all those workmen, who agree to shift with the tanneries, shall be given one year's wages as shifting bonus to help them to settle at the new location and the workmen employed in the tanneries, which fail to relocate, shall be deemed to have been

97. Ibid.

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retrenched with effect from 15.4.1997 and 30.9.1997 in terms of the Industrial Dispute Act, 1947 and in addition, these workmen shall also be paid six years' wages as additional compensation.

So from the aforesaid Judgement, as delivered in the *Calcutta Tanneries case*\(^98\) by the Supreme Court, it has became clear that gradually Supreme Court, while adjudicating all the public issues under writ jurisdiction within the domain of public interests litigation, become also sensitive to the other problems which is very much attached to the pollution problems, like maintaining livelihood, means of sustenances, etc.

This activist role of Apex Judiciary has gradually become more and more powerful regarding environmental issues under the domain of Public Law and "*Delhi Transport Case (M.C. Mehta Vs. Union of India and others)*"\(^99\) is one of such cases where Supreme Court has shown the trend of that kind of Judicial activism.

Here two writ petitions, one being writ petition(C) No. 13029 of 1985 and another being writ petition (C) No. 939 of 1996 had been filed as Public Interest Litigation for taking urgent steps to tackle the acute problem of vehicular pollution in Delhi. In connection with these two writ petitions, Supreme Court has given directions from time to time to the authorities to take necessary urgent steps to tackle the acute problem of vehicular pollution in Delhi. Though in a white paper, published by the Government of India, a dead line of 1st April, 1998, had been proposed for implementations of major actions, but however no concrete steps had been taken till the date, of pronouncement of Judgement in the instant cases, i.e. 28th July, 1998, inspite of the assurances given through affidavit,

\(^98\) Ibid.
dated November 18, 1996.

Ultimately realising the urgency and importance of protection and improvement of the environment, the Supreme Court has given certain directions through the order, dated 28.7.1998, as reported in AIR 1998 S.C. 2963 (M.C. Mehta vs. Union of India and Others), for fixing the deadline of restriction regarding plying of existing commercial vehicles, goods vehicles, including taxies and also for supply of alternative fuel.

In the instant case\(^{100}\), Supreme Court has also approved certain measures within the time frame in its action as proposed by the Authority, headed by Sri Bhure Lal, being appointed vide Gazette Notification, dated 29th January, 1998 such as:— entire city buses fleet (DTC and Private) to be steadily converted to single fuel mode on CNG from 31.03.2001; No 8-year old buses to ply except on CNG or other clean fuels from 01.04.2000; Replacement of all Pre-1990 autos and taxis with new vehicles on clean fuels from 31.03.2000, etc.

In the meantime, a number of Applications have been moved seeking extension of deadline to convert the entire city bus fleet to single fuel mode of CNG beyond 31.3.2001, highlighting the difficulties, such as non-availability of CNG — conversion kits free from all defects; conversion of CNG at reasonable prices; lack of stabilisation of CNG technology in respect of public Transport as also the non-availability of CNG and CNG cylinders.

Ultimately a comprehensive order has been passed by one larger Bench of the Supreme Court on March 26, 2001 on that earlier pending writ petition, being writ petition (C) No. 13029 of 1985 and such order,

\(^{100}\) M.C. Mehta vs. Union of India and Others, AIR 1998, S.C. 2963.
dated 26.3.2001, has been reported in (2001) 3 S.C.C. 756 (M. C. Mehta Vs. Union of India and others). Through this order, dated 26.3.2001, only for the Public Interest and with a view to mitigate the sufferings of the commuter public in general and the school children, in particular, Supreme Court finally had been pleased to make certain relaxation and exemptions, in connection with the earlier order, dated 28.7.1998, passed by the Supreme Court.

So in this way through the series of orders, as passed in the writ petition being W. P. (C) No. 13029 of 1985, moved by Sri M. C. Mehta as Public Interest Litigation, popularly known as Delhi Transport case¹⁰¹, Supreme Court has again given much more priority in environment protection and as such Supreme Court has passed certain stringent directions with certain reasonable exceptions aiming at the protection of the quality of air and controlling the air Pollution arising out of vehicular emissions in Delhi.

6.2.4.b.iii. Development after Delhi Transport Case.

Gradually Supreme Court has given hints of shifting its standpoint regarding environmental issues. Previously it was very much stick on strict notion of environment protection. Its main aim was to check and control environmental pollution at any cost, even at the cost of employment and other necessities of life, but ultimately Supreme Court has realised the necessities of development and other aspects of life which can not be ignored, rather it should be protected and keeping it in momentum along with carrying on the mission for environment protection and such changing trend of adjudication system of Supreme Court as it appears from Taz

¹⁰¹. See the Note Supra 99.
Trapezium case, has become more evident in the *Hot Mix Plants Case*.\textsuperscript{102}

In this case\textsuperscript{103} responding the Application, being I.A. No. 642 of 1999, for getting permission to instal 'Hot Mix Plants' in the vicinity of Indira Gandhi International (I.G.I.) Airport, New Delhi, filed by the Airport Authority of India and considering all the factual aspects of the present case, including the environmental issues, as involved therein, the Supreme Court had been pleased to allow the setting up of Hot Mix Plants in the safe vicinity of IGI Airport at least at a distance of 3 kms. from the populated area. While allowing the prayer of Airports Authority of India in setting up of Hot Mix Plants, Supreme Court had been also pleased to direct that such plants should be operative for a period of one year from the date on which these would be installed till the resurfacing work of the Runways would be completed.

So in this way judicial approach in adjudicating environmental issues got a new safe through public interest litigation. From strict notion of environment protection, Indian Judiciary has inclined towards the necessities of accepting development of life related with environmental issues. This new trend of Justice delivery system in connection with the environment related matter in India has been further divulged in another public Interest litigation, (*Narmada Bachao Andolan, etc. etc. Vs Union of India and others*), popularly known as "*Narmada Bachao Case*"\textsuperscript{104}.

Challenging the decision to construct the dam on the river Narmoda under Sardar Sarovar Project, writ petition, being W. P. (C) No. 319 of 1994, has been filed as public interest litigation by the Narmada Bachao

\textsuperscript{102} M.C. Mehta vs. Union of India & Others, (2001), 3 S.C.C. 763 (766).
\textsuperscript{103} M.C. Mehta vs. Union of India & Others, AIR 1999 S.C. 2367.
\textsuperscript{104} Narmada Bachao Andolan etc. etc. vs. Union of India & Others, AIR 2000 S.C. 3751.
Andolan Committee in the Supreme Court for protecting the rights of life and livelihood of the People who would have been directly affected by one of the biggest inter-state multipurpose Project ever undertaken, known as the Sardar Sarovar Project on the river Narmoda.

In this case, Justifying in the need of construction of large dam, it has been held by the Supreme Court that "Water is the basic need for the survival of human beings and is part of right to life and human rights as enshrined in Article 21 of the Constitution of India and can be served only by providing source of water where there is none." Ultimately in this Judgement, directions have been issued for continuation of the construction of dam as per the Award of the Tribunal and this clearance is subject to completion of relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection in terms of the Scheme framed by the Government protecting the rights under Article 21 of the Constitution of India.

So, in this need for carrying on development project for the purpose of providing human sustenance has been given priority by the Supreme Court than any other matter considering the fact that all round development in life would not spoil the environment, rather it creates a good and healthy environment required for human existence and this notion is derived by the Appex Court from the spirit of Article 21 of the Constitution of India.

So in this way Supreme Court has reaffirmed its changing mode of adjudication in environmental matters by giving emphasis on the present.
trend of development and simultaneously invoking new concepts like 'Precautinary Principle,' 'Polluter Pays Principle' to tackle pollution problem and to save guard its victims.

7.2.4. Role of the High Courts

7.2.4.c.i. Traditional approach of the High Courts.

As it appears from the foregoing discussion that, Indian Judiciary specially of the Appex Court has been able to bring up public interest litigation up to such height where it has emerged as an effective and useful weapon to fight against the environmental crises of various kind and to protect the people from the hazardous effect of pollution and ecological disturbance, as it appears from the foregoing discussion in this capter.

But in this regard, various State High Courts are not Lagging behind. They invoked the jurisdiction as vested under Article 226 of the constitution of India and also made significant contributions to the development of public interest litigation in connection with the environmental issues. Actually being inspired and influenced by the activist role of the supreme court in dispensing social Justice in various public interest litigations regarding environmental matter, different state High courts, have also entertained public interest litigation filed under the jurisdiction of the Article 226 of the constitution of India for the purpose of protection of environment and for maintaining ecological balance.

In this regard one well known case, filed under Article 226 of the constitution of India in the nature of public interest litigation, being writ petition No. 8261 of 1984, may be referred here and that is T.
Damodhar Rao and others vs. The special officer, Municipal Corporation of Hyderabad and others. This writ petition has been filed by some of the residents and rate payers of the Hyderabad Municipal Corporation, who lived around an area reserved for recreational park, for issuing writs upon the Municipal corporation of Hyderabad, not to allow the Life Insurance Corporation or Income Tax Department to use a substantial portion of land for residential purpose out of total reserved land demarcated by the Development Plan published in State Government Gazette, to use as a recreational park.

Ultimately Andhra Pradesh High Court allowed the writ petition and issued writs forbidding the Life Insurance Corporation of India and the Income Tax Department, Hyderabad, from raising any structures or making any constructions or otherwise using the land for residential purposes. While allowing this writ petition, it has been also directed by the High Court that the State Government of Andhra Pradesh, the Hyderabad Municipal Corporation and the Bhagyanagar Urban Development Authority, Hyderabad will remove any structure, which might have been raised by the Life Insurance Corporation of India or the Income Tax Department, Hyderabad, during pendency of the writ petition, within sixty days. However in this case, it has been categorically clarified by the High Court that any residential houses or structures, if already have been built prior to the filing of the writ petitions, will not be covered by the Judgment of this writ petition.

It may be mentioned here that while deciding the case, Andhra Pradesh High Court has taken into consideration, the Law of Ecology

108. AIR 1987 AP 171.
and Environment, both under national and international regime. Under International regime, Andhra Pradesh High Court has accepted the declaration as made in Stockholm, in 1972, on Human Environment regarding necessities of protections of the natural resources of the earth, including the air, water, land, flora and fauna. Under Indian perspective, Andhra Pradesh High Court has also taken into account the provision of Article 48A of the Constitution of India imposing directive for the state's responsibility to protect and improve the environment and to safeguard the forests and wildlife of the country and also the provision of Article 51A(g) Constitution of India which has imposed certain fundamental duties upon the citizens of India to protect and improve the natural environment.

In another case, L. K. Koolwal vs. State of Rajasthan and others110, Rajasthan High Court has entertained a writ petition, being civil writ petition. No. 121 of 1986, filed in the nature of public interest litigation by a public spirited citizen, Mr. L. K. Koolwal, under the Jurisdiction of Article 226 of the constitution of India.

The instant case had been filed by the petitioner in the Rajasthan High Court praying for a direction to remove filth, rubbish, night-soil, odour or any other noxious or offensive matter which had been disposed in the privies, latrines, urinals, cess-pools or other common receptacles or such matter situated in the Jaipur city causing dirtiness and creating unhygienic condition in the city. Ultimately the said writ petition had been allowed by High Court and Municipal Authority had been directed to remove the dirt, filth, etc., within a period of six months and to clean the entire Jaipur City, particularly in relation to the areas as mentioned in

110. AIR 1988 Raj. 2

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the writ petition and to see that the sanitation would be properly maintained in accordance with the provisions of the Rajasthan Municipalities Act, 1959.

While giving the directions upon the Municipality, Rajasthan High Court had been also pleased to hold that it is the duty of the court to see whether the funds are available or not and it is the duty of the Administrator, Municipal Council, to see that Primary duties of the Municipality are fulfilled. In this case\textsuperscript{111}, it has been also held by the High Court that Municipality can not say that because of paucity of fund or because of paucity of staff they are not in a position to perform the primary duties, since the law, which remains on the statutory books, will have to be implemented, particularly when it relate to primary duty of the local Authority. So These observations had been made just in the same line of the decision as made in the \textit{Ratlam Municipal Council case}\textsuperscript{112}. Actually in this case, right to maintenance of healthy preservation of the Sanitation and environment has been recognised as a part of right to life required to be protected as fundamental right of the citizens.

Himachal Pradesh High Court had also entertained one of Social Action Litigations\textsuperscript{113} being civil writ petition No. 82 of 1987, under the Jurisdiction of Article 226 of the constitution of India. Instituted in the Himachal Pradesh High Court by the petitioners seeking reliefs, interalia, to cancel the mining lease for the excavation of limestone, as granted in favour of the third respondent by the first respondent (State of Himachal Pradesh in the District Sirmaur), Himachal Pradesh and to direct the respondents to pay compensation for the damage as caused

\textsuperscript{111} See the note Supra 110.
\textsuperscript{112} Municipal Council, Rathlam Vs. Vardichand, AIR 1980 SC. 1622.
\textsuperscript{113} Kinkri Devi and Another vs. State of Himachal Pradesh and Others, AIR 1988 H.P.4.
to the environment, ecology, natural resources, including the inhabitants of the illaqua as a result of the uncontrolled quarrying of the lime stone by the third respondent in the said locality.

While passing this order, Himachal Pradesh High Court had been totally guided and influenced by the decision of the Supreme Court as given in a case, *Rural Litigation and Entitlement Kendra, Dehradun vs. State of U.P.*\(^{114}\) where Supreme Court has highlighted the gravity of the environmental problem due to destruction of natural resources for the development and industrial growth and also emphasised on the necessities to impose regulatory measures to mitigate the environmental hazard arising out of extensive and unscientific use of natural resources of the environment and to maintain balance between the conservation of natural resources of the environment.

Another writ petition, being writ petn. 23138 of 1980, which had been filed much earlier by the petitioners including V. Lakshmipat\(^{2}\) in Karnataka High Court against the alleged violation of the Karnataka Town and Country Planning Act, 1961 in operating the industries and industrial enterprises in residential area of Banashankari Extension I stage, Block-I, which includes a part of N. R. Colony and Ashokanagar situated in Karnataka, and also against the persistent pollution due to the establishing and running of such factories, work shops, factory sheds, in the said locality being detrimental to public health.

Ultimately the writ petition had been allowed by an order dated 9.4.1991 by the Karnataka High Court and it had been reported in *AIR*

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\(^{114}\) *AIR* 1985, S. C. 652
In this case\textsuperscript{115}, the Karnataka High Court had issued directions upon the Municipal Corporation of the city of Bangalore and its health officer to abate the pollution in the said locality and also issued directions upon the Bangalore Development Authority to stop operation of the industrial units and to carry out the lay-out work in accordance with law and to remove all encroachments in public lands and roads in the area in question:

While delivering the Judgment, it has been observed by the Karnataka High Court in this case\textsuperscript{116} that Environment protection is not a preoccupation of the educated and the affluent and It has socio-political dimensions. It has been also observed that the disposal and control of toxic waste and governmental regulation of polluting industries are public interest oriented and the effective implementation of environmental legislation is a social learning process which could fundamentally change the character of public administration in the country. In this regard it has been also observed by the Karnataka High court that from Global perspective, the struggle to preserve a 'livable environment' is a part of a broader struggle to create a more just Global Society both within and between nations.

6.2.4.c.ii. Modern Trend of the High Courts

As it appears from the foregoing discussions, Indian Judiciary, even that of the State High courts had began to promote public interest litigation for environment protection. But gradually judicial approach had

\textsuperscript{115}. V. Lakshmipathy and others vs. State of Karnataka and others AIR 1992 Kant. 57.
\textsuperscript{116}. Ibid.
been changing from strict sense of environment protection to liberal consideration for sustainable development aiming at restructuring and building a welfare society in India.

A public spirited organisation, Bombay Environmental Action Group had moved a writ petition, being writ petition No. 4550 of 1989, in the Bombay High Court in the nature of public Interest litigation challenging the permission granted by the both state and Central Governments to the Bombay Suburban Electric Supply Company for establishing a 500 mega watt thermal power station at Village Agval, Taluka Dahanu, District Thane apprehending the possible environmental disorder. With similar contentions, another writ petition, being Writpetition No. 993 of 1990, had been also moved by an public spirited person. Ultimately both the writ petitions had been heard together and dismissed on 12-12-1990 and it has been reported in *AIR 1991 Bom. 301 (Bombay Environmental Action group and another vs. State of Maharashtra and others).*

Giving the priority to the increasing demand for power generation for economic activity all around the country for irrigation, domestic requirements, industry, etc. in the developing country like India, while dimissing the aforesaid writ petitions, the Bombay High Court has made the following observation in the present case —

"Environmental issues are relevant and deserve serious consideration. But the needs of the environment require to be balanced with the needs of the community at large and the needs of a developing country"117.

So with these observations, Bombay High Court has tried to establish this notion that notwithstanding taking effective measures to protect the environment from the hazardous effect of pollution, spirit of development of industry should not be looked down upon and it should by carried on with high esteem and in this way effectiveness of the Public Interest Litigation may be maintained.

Being afraid of encroachment of east Calcutta Wetlands, which is rich in biological diversity and a perfect example of sustainable ecosystem and a gift from the nature for the residents of the Calcutta. For the development of industries and expansion of township including setting up of World Trade Centre in Salt Lake, a non-government organisation, namely People United for Better Living in Calcutta. Public had moved one writ petition in the nature of Public Interest Litigation for the greater interest of the public at large residing at Calcutta.

While deciding the case sitting in the Writ Jurisdiction of the Calcutta High Court, Justice U.C. Banerjee has held as follows:-

"There shall have to be a proper balance between the development and the environment so that both can co-exist without affecting the other. On the wake of the 21st Century, in my view, it is neither feasible nor practicable to have a negative approach to the development process of the country or of the society but that does not mean, without any consideration for the environment".118

In the light of the aforesaid observation, an order of injunction had been passed by the High Court restraining the state Respondents from

reclaiming any further Wetland and prohibiting the respondents from granting any permission to any person whatsoever for the purpose of changing the use of the land from agriculture to residential or commercial. It had been also directed the State Respondents to maintain the nature and character of the Wetlands in their prevailing form and to stop and encroachment of the wetland areas, as indicated in the writ petition.

Here in this way gradually different High Courts also have started to entertain Public Interest litigations under the writ jurisdiction of Article 226 of the constitution of India and gradually had been expanding the scope of this Article 226 of the constitution of India in different way through the Public Interest Litigation.

In this regard, case may be referred here and that is D.D. Vyas and others vs. Ghaziabad Development Authority, Ghaziabad and another. In this particular case, point of locus standi in public interest litigation had been further extended to meet the social need for the preservation of free air and for the protection of environment.

Here, a writ petition, had been filed by a group of people of the locality situated in Raj Nagar Sector, Ghaziabad, to redress their grievances against the Ghaziabad Development Authority, GDA for its inaction in developing the Adu Park, as situated in Raj Nagar Sector, into a public park. Ultimately it has been held by the High Court that neither the Authority nor the State Government can amend the Plan in such a way so as to destroy its basic feature allowing the conservation of open

119. AIR 1993 All. 57.
space meant for public parks. In addition, a direction has been also passed upon the State authorities to expedise the development of said Adu Park.

In this particular case\textsuperscript{120}, highlighting the decision of a Supreme Court case, 
\textit{Subhash Kumar Vs. State of Bihar}\textsuperscript{121}, the locus standi in public interest litigation had been further widen by the Allahabad High Court by giving opportunity to the outsider to a locality to file a Public Interest Litigation in connection with any environmental problem of such area in exercising the writ jurisdiction as vested under Article 226 of the constitution of India.

Another Public Interest litigation, popularly known as \textit{Sapron Valley Case}\textsuperscript{122}, may be discussed now. In this Public Interest Litigation, it was alleged that minning of lime stone in the Sapron valley, situated in the district Solan of Himachal Pradesh, caused much damage to the environment and ecology of the entire region leading to pollution of water and soil erosion of the surrounding land and ecological imbalance.

Finally having regard to the nature of the Sapron valley, its vegetation fertility, aesthetic appeal and proximity to the growing town of Solan, which is an important place in the State of Himachal Pradesh and considering the report Submitted by the expert committee, where in all the mines of the region categorised as "A" and "B" and recommended stoppage of "B" category mines, High Court had permitted only the 'A' Category of mines to continue their mining operation under the watchful

\textsuperscript{120} D.D. Vyas and Other Vs. Ghaziabad Development Authority, Ghaziabad and Others, AIR 1993 All 57.
\textsuperscript{121} AIR 1991 S.C. 420.
\textsuperscript{122} General Public of Sapron Valley and others, etc. Vs. State of Himachal Pradesh & Others, AIR 1993 H.P., 52
eye of a Monitoring Committee, to be set up by the Government of Himachal Pradesh. Actually in this particular case\textsuperscript{123}, Himachal Pradesh High Court had invoked the principle of sustainable development by allowing the mines to carry on their mining activities which is subject to fulfilment of the recommendation of the expert committee as appointed by the State Government as per the direction of the High Court instead of direction of closure.

In this way public interest litigation has entered into a new era with a new spirit honouring the eagerness of judiciary to keep the development and progress in good momentum without damaging the environment.

7.2.4.d. Restriction in Public Interest Litigation

When gradually public interest litigation had been emerging as an useful weapon to redress the grievances of the common people, who had been suffering lot from the hazardous effect of the pollution on environment and ecology, a large number of public interest litigations, filed under the writ jurisdiction of both Supreme Court and different State High Courts, had been coming up for adjudication since late 1980s and those had been just like wave of ocean coming one after another in neverending way. But some time it appeared that in some cases of Public Interest litigation had been moved to fulfil the personal grudge and vendata rather than to redress the grievances of the public at large and for the welfare of the common people, specially who belonged to the disadvantaged section of the society. That is why judiciary began to think in otherwise. They tried to settle the parameter

\textsuperscript{123}. Ibid.

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in entertaining public Interest litigation in respect of subject mater. Like Supreme Court, as mentioned earlier, State High Courts had been also become activised in this regard.

Here a case, which have been adjudicated by the High Court of Punjab and Haryana, may be referred. In this particular case, Ishwar Singh Vs. State of Haryana and others\textsuperscript{124}, High Court of Punjab and Haryana had fixed certain point of material considerations for entertaining public interest litigation.

In the instant case\textsuperscript{125}, being aggrieved by and dissatisfied with the non-shifting of stone - crushers units from Naurangpur Village, district Gurgaon of Haryana inspite of the directions, given by the Supreme Court in a case, M.C. Mehta Vs. Union of India\textsuperscript{126}, the Petitioner, Ishwar Singh, had moved a Writ petition, being Civil Wit Petition No. 7418 of 1994 in Public interest and prayed for issuence of direction upon the respondents to close stone crushing business in village Naurangpur, District Gurgaon with immediate effect and shift their business to the area earmarked for the purpose of stone crushing. Ultimately this writ petition had been admitted and subsequently disposed of with certain directions. It has been directed that the private respondents, who are owners of the stone crushers, shall close down their stone crushing business and shift themselves to the identified zones positively within a period of one month from the date of this judgement.

In this case, Punjab and Haryana High Court has tried to maintain the spirit of Public Interest intact and has also made it clear that to allow

\textsuperscript{124. AIR 1996 P & H. 30.}
\textsuperscript{125. Ishwar Singh vs. State of Haryana and Others, AIR 1996 P. & H. 30.}
\textsuperscript{126. (1992) 3 S.C.C. 256.}
the litigation in public interest, emphasis would be given on the subject matter rather than 'Locus Standi'. In this regard, it has been observed by the High Court that before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy-body or persons or groups with malafide objective of either for vindication of their personal grievances or by restoring to black-mailing or considerations extraneous to public interest.

So in this way being earmarked by the Judicial pronouncement public interest litigation has attained such a level of maturity where it can only be used and invoked for the protection of the interest of the common people and for their welfare in connection with the protection of environment and preservation of natural resources and by this judicial pronouncement it has been also categorically ascertained that the politicians or other busy-bodies should not be allowed to abuse this precious weapon for political ends or unrelated objectives including the personal grudge and enmity.

It may be mentioned here that ultimately the decision of famous 'Gauhati' case (Pranatosh Roy and others Vs. State of Assam and others)\textsuperscript{127} has given the final touch to the public interest litigation regarding its parameter for acceptance and maintainability under the writ Jurisdiction of both, the Supreme Court and various State Highcourts on the basis of guideline as framed and circulated by the Supreme Court.

At Gauhati High Court, a writ petition being Civil Rule No. 5546 of 1998 had been filed challenging the decision of the Public Interest

\textsuperscript{127.} AIR 2000 Gau. 33 (34).
Litigation Cell (PIL Cell) to the effect that the petition filed by the petitioners, namely Pranotosh Roy and others, earlier, does not fall within the guidelines provided for entertaining litigation in the public interest.

While disposing this writ petition, taking into consideration of ten guidelines for entertaining letters / petitions received in the Court as public interest litigation, circulated by the Hon'ble Supreme Court, it has been observed by the Gauhati High Court that there is no doubt that some letters / petitions sent to High Court can well be taken cognizance of and entertained as public interest litigation, but as to keep a check on frivolous letters / petitions some guidelines have been evolved in the light of which a cell has been constituted which scrutinises the letters or the petition received as to whether they fall in the category of Public Interest Litigation or not. Such guidelines, as circulated by the Hon'ble Supreme Court, has been mentioned in this case, as follows:

"1. Bonded Labour matters.
3. Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases).
4. Petitions from Jails complaining of harassment, for premature release and seeking release after having completed 14 years in Jail, death in Jail (sic) released on personal bond, speedy trial as a right.
5. Petitions against police for refusing to register a case, harassment by police and death in police custody.

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6. Petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping, etc.

7. Petitions complaining of harassment or torture of villagers by co-villagers or by police from persons belonging to Scheduled Castes and Scheduled Tribes and economically backward classes.

8. Petitions pertaining to environmental pollution, disturbances of ecological balance, drugs, foods adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance.


10. Family pension

It may be also mentioned here that in this case certain matters have been also held to be excluded from the purview of public interest litigation by the High Court as stated below —

“1) Landlord-Tenant matters.

2) Service matter and those pertaining to Pension and Gratuity.

3) Complaints against Central / State Government Deptts. and Local Bodies except those relating to item Nos. (1) to (10) above.

4) Admission to medical and other educational Institutions.

5) Petitions for early hearing of cases pending in High Courts and Subordinate Courts.”

129. Ibid.
This fixation of parameter for entertaining public interest litigation had been necessary to stop abuse of this instrument. Since public interest litigation become popular, large number of litigations in the name of public interest has been filed in both Supreme Court, as well as different State High Courts in respect of various social issues including environmental matter, but in some cases, writ petitions had not been filed in public interest in real sense, rather it has been filed by the petitioners either for personal benefit or to fulfil their personal enimity. So it was necessary to prevent this type of abuse of this precious weapon.

In this regard a very recent observation of the Supreme Court, as made in Dattaraj Nathuji Thaware vs. Stats of Maharashtra and others, may be mentioned here.

In this case, the Supreme Court had observed that the public interest litigation is a weapon which has to be used with great care and circumspection and the Judiciary has to be extremely careful to see that behind the beautiful veil of public interest and ugly private malice, vested interest and/or publicity seeking has not been lurking. In this case it has been also observed by the Supreme Court that it (public interest litigation) is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens and the attractive brand name of public interest litigation should not be used for suspicious products of mischief and it (public interest litigation) should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded an personal vendetta. Finally, in this case it has been indicated

by the Supreme Court that court must be careful to see that a body of persons or member of public, who approaches the court, is acting bonafide and not for personal gain or any private or political motivation or other oblique considerations and court must not allow its process to be abused for oblique considerations by masked phantoms who use to monitor from behind.

Recently, while disposing the Narmada Bachao Andolan case (supra)\textsuperscript{132}, the Supreme Court with has observed that Public Interest Litigation (PIL) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves, but it should not be allowed to degenerate to becoming 'Publicity Interet Litigation or Private Inquisitiveness litigation'.

This observation of the Supreme Court has been expressed its deepest concern and commitment to maintain high potential value of this precious weapon, the public interest litigation and not to allow it to be abused for vested interest and personal gain or for self publicity.

It emerges from the foregoing discussion that by playing its activist role with great care and caution, Indian Judiciary has introduced a new philosophy of Law for providing Justice to common people to redress their grievances arising out of environmental pollution and as a result a new jurisprudence, a progressive and public oriented jurisprudence, has been developed in the field of environmental law in India.

\textsuperscript{132} Narmada Bachao Andolan etc. etc. vs. Union of India & Others. AIR 2000 S.C. 3751.