CHAPTER - 8

NEW TREND OF INDIAN JUDICIARY IN DISPENSING ENVIRONMENTAL JUSTICE IN INDIA
NEW TREND OF INDIAN JUDICIARY IN DISPENSING ENVIRONMENTAL JUSTICE IN INDIA

The preceeding chapter has demonstrated how Indian Judiciary has played an activist role to control the pollution problems in India and how such Judicial activism has contributed to the development of a new philosophy of law for providing environmental justice to the public at large by introducing public interest litigation within the Indian legal framework. Ultimately such public interest litigation has emerged as a most popular and effective weapon with its new scope and ambit as explored by the Indian Judiciary. As a result, environment protection measures within the purview of constitutional mandates, specially the provision of Article 21 of the constitution of India providing 'right to life', have been well established in a very extended manner and in enlarged form in conformity with the contemporary socio-economic needs and prospects in India and ultimately under these facts and circumstances, the concept of sustainable development has become the main guiding force in adjudicating the environmental issues under new judicial perception. Therefore it is essential to discuss in detail regarding new trend of Indian Judiciary in Dispensing environmental justice in India.
8.1 Scope of 'Right to Life' Guaranteed by the Constitution of India and Environmental Justice

8.1.1. General Overview

Indian Judiciary has brought a remarkable change in Indian legal system by promoting Public interest litigation as an useful instrument for redressal of public grievances arising out of environmental pollution. Both Supreme Court and different state High Courts by invoking the power of writ jurisdiction, as vested under article 32 and article 226 of the constitution of India respectively, have given considerable impetus upon, the Public Interest Litigation, to check the immediate and also the future assault on the environment and its natural resources.

In modern welfare state, like India, while delivering justice, judiciary should assess the social needs and aspiration of the common people and under this perspective, Indian judiciary has acted elegantly in protecting environment from the disastrous effect of pollution. In this regard judiciary has introduced a new trend of judicial approach.

While entertaining Public Interest litigation under the writ jurisdiction, judiciary of both Appex Court and different state High Courts have been interpreting the constitutional, as well as other legislative provisions made for environmental protection, in such a way that public at large may be benefitted and as a result they can be able to protect themselves from the emence effect of pollution. Here provision of Article 21 of the constitution of India has been interpreted by the judiciary in such a way in various public interest litigation, including in

---

1. Article 21 of the constitution says as follows— "No person shall be deprived of his life or personal liberty except according to procedure established by Law."
many individual writ petitions, filed both in Supreme Court and state High Courts, so that common people get benefit out of it and may get protection from the hazardous effect of pollution in the environment.

Supreme Court and various State High Courts in India, had extended the scope of 'Right to Life' and 'personal liberty' as guaranted under Article 21 of the constitution of India through its various judicial pronouncement as made from time to time in various cases either in public interest litigation or in other writ petitions filed under individual capacity for the better living of the common people of India. In all those cases, Article 21 has been interpreted in a new dimension and in popular way.

In this regard Manaka Gandhi's case\(^2\) is considered as a classic one where right to life and personal liberty, as laid down under the Article 21 of the constitution of India, have been interpreted liberally going beyond the four corners of the strict literal meaning of the Article. In this case, it has been held that the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which constitute the personal liberty of man and he will not be deprived of such personal liberty, except by the procedure prescribed by Law which must be right, and just and fair and not arbitrary, fanciful or oppressive.

\(^2\) Manaka Gandhi vs. Union of India & others, AIR 1978 S.C. 597.
8.1.2 Role of the Supreme Court and Environmental Justice

8.1.2.a. Liberal Interpretation of the Doctrinoe — 'Right to Life'

This liberal interpretation of 'right to life', as made in Manaka Gandhi's case, has been followed in various other cases in Supreme Court. In people's union of Democratic Rights and others vs. union of India, which is popularly known as Asiad case, Supreme Court had widen the scope of the 'right to life'. According to the Supreme Court, right to life is not confined merely to physical existence, but 'the right to life' includes within its scope and ambit of the right to live with basic human dignity and the state can not deprive any one of this precious and valuable rights guaranteed by the constitution to any one of its citizen.

In this way, during post Manaka Gandhi case period, Article 21 has been enlarged by various judicial pronouncements in different field of legal disputes relating to different social issues, including the environmental matters.

While dealing with the various environmental issues which have been coming up for adjudications before the Supreme Court and various state High Courts under the writ jurisdiction in a large number, these courts have started to invoke the scope of the provisions of Article 21 of the constitution of India with its enlarged form. In this regard Rural litigation and Entitlement Kendra and others vs. State of U.P. and others is the first case where the Supreme Court had invoked the right to life as guaranteed under the Article 21 of the constitution of India.

4. AIR 1985 S.C. 652
India in an extended way.

In the instant case, petitioner being a voluntary organisation had filed the writ petition in the nature of Public Interest litigation, being apprehended that mining activities of the lessees of the lime stone quarries might cause the ecological disturbance in the Mussoorie Hill range. In this case, Supreme Court has given this order of closure of certain types of lime stone quarries with emphasis on the necessities to protect the environment from its degradation. This Judgement of the Supreme Court has actually helped to extend the scope of right to life into the right to live in pollution free environment indirectly without specific mentioning of the provision of Article 21 of the constitution of India.

It may be mentioned here that, though recognition of right to life as fundamental right and its protection, in respect of environmental issues had not been explicitely expressed in "Rural litigation and Entilemen Kendra case", popularly known as "Doon Valley Case"5, but the spirit of such recognition had been well accepted in various other environmental cases as come up before the Supreme Court and this doctrine of "right to life' has been well enforced in extended manner in those cases in various forms, as discussed below.

8.1.2.b. Right to Life and Right to get Compensation.

In Shriram Foods and Fertilizer Industries case, Supreme Court has found some seminal questions concerning the true scope and ambit of the provisions of Article 21 and Article 32 of the constitution of India.

Questions had been raised therein that whether the liability of large enterprises engaged in manufacture and sale of hazardous products, which had been causing damage to the human beings, will be entertained under the writ jurisdiction considering its violation of the fundamental right of 'right to life' as guaranteed under the provision of Article 21 of the constitution of India.

In this case, question of liability of the big enterprise has been established in case of causing hazard to the health and well-being of workmen and the people living in the vicinity on account of escape of chlorine gas, violating the provision of "right o life" as provided under the Article 21 of the constitution of India. Ultimately, it has been made certain for payment of compensation by the Management of Shriram Food and Fertilizer industries for death or injury due to escape of chlorine gas from the plant.

So, in this case, the Supreme Court has manifestly referred the concept of 'right to life' to 'right to get compensation' for injury due to accidental discharge of hazardous elements including gaseous substance from the Industrial unit causing hazard to the health and well being of the people within the scope and ambit of Article 21 of the constitution of India. Here judiciary has also confirmed that the state has power to restrict hazardous industrial activities for the purpose of protecting the right of the people to live in a healthy environment. So in this way Supreme Court has enlarged the scope of the 'right to life' as provided under Article 21 of the constitution of India.

But, in connection with this case, one larger Bench of the Supreme Court, which decided the case earlier without determining the actual
quantam of compensation referred it to the Five Judges Bench, since certain important questions of seminal importance and high constitutional significance, such as whether Article 21 is available, against Shriram which is owned by Delhi Cloth Mills Ltd., a public company limited by shares and engaged in an industry vital to public interest and with potential to affect the life and health of the people, when application is made for compensation, interalia, had been raised.

Ultimately these questions were decided by the Five Judges' Bench of the Supreme Court and had given its Landmark judgement which is famous as judgement in oleum gas case as reported in *AIR 1987 S.C. 1086.* In this case, ultimately a new Principle of Law within the scope and ambit of the Article 21 of the constitution of India has been evolved by the supreme court and it is related with the payment of compensation within the scope and ambit of 'right to life' as guaranteed under the Article 21 of the constitution of India.

Finally it has been held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to any one on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas, the enterprise in 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 strict liability as settled in *Ryland vs. Fletcher case.*

In this way the principle of absolute liability has been developed in India due to the activist role of judiciary. So there is no doubt that entire

7. *(1868 (19) LT 220)*
decision has been made by the supreme court in this case\(^8\) on the basis of the extending scope of Article 21 of the constitution to keep the environment free from Pollution and other environmental Hazards. So that citizen can enjoy right to a clean and healthy environment as their fundamental Right. Actually in this case, playing activist role judiciary has moved a step forward to consider that 'right to life' includes 'right to claim compensation' for the victims of pollution within the scope and ambit of Article 21 of the constitution of India.

The principle regarding payment of compensation as developed in the aforesaid M.C. Mehta case is well known as 'Mehta Principle' and this principle has been also invoked by the supreme Court in the 'Bhopal Gas Disaster Compensation Case\(^9\) by rejecting the contention placed on behalf of the Union Carbide Corporation stating that 'Mehta Principle' of absolute liability had been evolved even before the question of compensation to the victims of Bhopal Tragedy reached the court. Supreme Court had rejected that contention with the following observation —

"The criticism of the Mehta Principle, perhaps, ignores the emerging posulates of tortious liability whose principle focus is the social limits on economic adventurism. There are certain things that a civilised society simply can not permit to be done to its members, even if they are compensated for their resulting losses."\(^{10}\)

Ultimately Supreme Court had given direction for the payment of compensation as damages of 470 millions US Dollar (approximately Rs.

---

10. Ibid at page 283
750/- crores) to victims of Vopal Tragedy after allocating sums to different categories of victims, such as fatal case, seriously injured, etc., considering it a compelling duty, both judicial and humane, to secure immediate relief to the victims.

So it had been also an remarkable example of judicial activism acting for the protection of the victims of environmental pollution caused accidental discharge of hazardous substance from the inherently hazardous industry. Actually this decision of the supreme court is also indirectly guided by that Principle that right to get compensation is also within the scope and ambit of 'right to life' and this principle will be invoked if 'right to life' is infringed by the act of any wrong doers.

8.1.2.c. Right to Life and Right to live in Pollution Free Environment.

In another M. C. Mehta case (M. C. Mehta vs. Union of India and others) which is popularly known as "Ganga Pollution (Tanneries) case"\textsuperscript{11}, through there was no direct reference of 'right to life', but at the time of delivering the judgment, Justice Kuldeep N. Singh had been pleased to observe that life, health and ecology had greater importance than unemployment and loss of revenue arising out of closure of tanneries.

Thus in this way, gradually, though not directly, but indirectly through various M.C. Mehta cases during 1980's, 'right to life', as guaranteed under the Article 21 of the constitution, has been invoked by the judiciary.

\textsuperscript{11} AIR 1988 S.C. 1037
to establish a new philosophy of law in connection with the environmental issues disseminating that 'right to life' includes right to live in pollution free environment and to enjoy the decent environment within the meaning and ambit of Article 21 of the constitution.

In another case, *Chhetriya Pradushan Mukti Sangharsh Samity vs. State of U.P. and others*,¹² which had been moved before the supreme in the form of letter addressed to this court treated as a writ petition, scope of Article 21 of the constitution of India has been dealt with along with the scope of Article 32 of the constitution.

In this case, right to life as guaranteed under the Article 21 of the constitution of India has been well extended to the right to have the enjoyment of quality of life and living. Considering it as a fundamental right within the scope and ambit of Article 21 of the constitution of India, it has been also held in this case¹³ that if anything endangers or impairs that quality of life and living of any body due to the conducte of other such people is entitled to take the safeguard of Article 32 of the constitution of India, since Article 32 is a great and saolutary safeguard for preservation of fundamental rights of the citizens.

So in this case right to have the enjoyment of quality of life and living has been well accepted as a fundamental right of the people within the meaning of 'right to life' as guaranted under the Article 21 of the constitution of India and impairment of such right of the people can be attracted for getting remedy under Article 32 of the constitution of India, as held by the Supreme Court in this chhetriya pardushan Kukti Sangharsh Samiti case.

---

¹².  *AIR 1990 S. C. 2060*
8.1.2.d. Right to life and Right to Full Enjoyment of Life with Dignity.

In another case, *Subhas Kumar vs. State of Bihar and others*\(^1\), provision of Article 21 of the constitution of India has been interpreted effectively from environmental point of view and scope of this provision of Article 21 has been well extended and enlarged by the Supreme Court.

Here it has been held by the Supreme Court that right to live is a fundamental right under Article 21 of the constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. Actually in this *Subhas Kumar's case*\(^2\), Article 21 has been enlarged suitably for the protection of environment and for the preservation of the quality of natural resources like water and air. Not only that, in this case Supreme Court has also made it clear regarding availability of judicial remedy under Article 32 of the constitution of India against the violation of 'right to life', even in its extended form within the ambit of Article 21 of the constitution of India considering it as fundament right of the citizen.

In *Consumer Education and Research Centre Case*\(^3\), Expression 'life' has been interpreted by the Supreme Court in much extended manner. In this case Supreme Court has held that the expression 'life' assured in Article 21 of the constitution, does not connote mere animal existence, but it has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in work place and

---

14. AIR 1991 S.C. 420
15. Subhas Kumar vs. State of Bihar and others. AIR 1991 S. C. 420
leisure. These are all basis of the enjoyment of the quality of life and are required to be protected for the sake of existence of life with dignity, and such protection is assured within the extended scope and ambit of Article 21 of the Constitution and as such, right to live with human dignity speaking for right to livelihood, better standard of life, hygienic condition in working place and leisure can be part of 'right to life' within the meaning of Article 21 of the Constitution of India.

8.1.2.e. Right to Life and 'Polluter Pays Principle'

In Vellore Citizens' Welfare Forum Case\textsuperscript{17}, Supreme Court has again interpreted provision of Article 21 of the constitution in a new dimension and from a new angle.

In this case\textsuperscript{18}, 'right to life' has been considered under the perspective of 'precautionary principle'\textsuperscript{19} and 'polluter pays principle'\textsuperscript{20}, the essential features of "Sustainable Development". Here scope of 'right to life' as guaranteed under the Article 21 of the constitution has been widened up to such extent that it will be considered as right to get compensation from the polluting industries for the victims of pollution and to get the cost of restoring the environmental degradation within the ambit of the polluter pays principle, since the polluting industries are absolutely liable to pay compensation for the harm caused by them to the villagers in the affected area.

\textsuperscript{17} Vellore Citizens Welfare Forum vs. Chion of India & others, AIR 1996 S.C. 2715
\textsuperscript{18} Ibid
\textsuperscript{19} See the note supra 17.
\textsuperscript{20} Ibid.
Here actually right to life has been accepted as right to remedy for the damaged environment requiring the payment of cost to the individual sufferers as well as the cost of reversing the damaged ecology.

Almost in the similar way in Taz Trapezium (TTZ) case\textsuperscript{21}, Article 21 has been interpreted and invoked. Here right to life has not only been extended to compensate the victims of pollution, but also to pay cost for restoring the environmental degradation. Actually right to life has been considered as right to remediation of damaged environment, as a part of the process of sustainable development.

\textbf{8.1.2.f. Right to Life and Obligations of the State towards the Citizen.}

In another case, \textit{M. C. Mehta vs. Kamal Nath and others}\textsuperscript{22}, Article 21 of the constitution has been also interpreted in extended manner aiming at to protect the people from the hazardous effect of the environment and to provide remedy in case of their infringement of basic fundamental right to live in pollution free environment.

In another M. C. Mehta case (\textit{M. C. Mehta vs. Kamal Nath and others})\textsuperscript{23}, again Article 21 of the constitution has been interpreted suitable and effectively, mainly for the protection of environment and ecology and here, Article 21 has been considered along with Article 48A and Article 51A (g) of the constitution for establishing the meaning of ‘right to life’. Actually for the protection of the ‘right to life’ as

\begin{itemize}
  \item \textsuperscript{21} M.C. Mehta vs. Union of India and others, AIR 1997 S. C. 734
  \item \textsuperscript{22} (1997)1 S. C. C. 388.
\end{itemize}
guaranteed under Article 21 can not be taken into consideration alone, rather it should be dealt along with the provisions of Article 48A and 51A(g) of the constitution of India. In view of this judgement, these two Articles have to be considered in the light of Article 21 of the constitution of India which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law.

In this case, while dealing with the particular issue regarding protection of "life" from the effect of pollution in the environment within the scope and ambit of Article 21, Supreme Court has interpreted Right to life as right to have environmental elements, namely air, water and soil without any disturbance and without any pollution as far as practicable.

So, in this case, Supreme Court has considered disturbance in Environment elements, like air, water and soil as 'hazardous to life', within the scope and ambit of Article 21 of the Constitution of India and as such, in order to protect the 'life', environment should be protected and in order to protect environment, its elements namely air, water and soil shall be protected.

In order to protect the 'life' and its fundamental right, as laid down under Article 21 of the constitution, i.e. 'right to life' from the hazardous effect of pollution causing disturbance of ecological balance in the environment. Supreme Court has prescribed for awarding exemplary damages against those persons who have been responsible for disturbing the ecological balance following the pollution pays principle.

8.1.2.g. Right to Life and Right to get protection from Hazardous effect of pollution

In another case, *Murli S. Deora Vs. Union of India and others*, which is popularly known as 'Cigarettes Smoking' Case, Supreme Court has interpreted Article 21 in very effective manner in connection with an environmental issue regarding the adverse effect of passive smoking on account of acts of the smokers in public place.

In this case, Supreme Court has been pleased to direct and prohibit smoking in public places and issue directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in public places namely:

"1. Auditoriums
2. Hospital Buildings.
3. Health Institutions
4. Educational Institutions.
5. Libraries
6. Court Buildings
7. Public Office
8. Public Conveyances, including Railways".

While, passing these directions, as stated above, Supreme Court has also interpreted Article 21 of the constitution of India, suitably to ensure the protection of life under the prevailing environment issues involved in the present case. Here right to life has been extended to such extent that non-smoker should be protected from being afflicted

by various diseases including lung cancer or heart diseases due to effect of passive smoking in public place on account of acts of the smokers within the scope and ambit of Article 21 of the Constitution of India. So here right to life has been considered as right to get protection of life from the hazardous effect of the passive smoking in the environment.

8.1.2.h. Right to Life and Right to Preserve Forest and to Protect Ecology.

In a very recent reported case, T.N. Godavarman Thirumalpad (87) vs. Union of India and others\textsuperscript{26A} which had been filed much before under the writ jurisdiction of the Supreme Court being Writ Petition (C) No. 202 of 1995, for the large depletion of forest and threat to the ecology, 'Right to life' as guaranteed by the constititution of India, has been interpreted in quite different way.

In this case, scope of article 21 of the constitution of India has been extended in a quite different manner. Here threat to the ecology due to depletion of forest has been considered as a cause behind violation of the right to life of enjoyment of healthy life, as it appears from the following observation of Supreme Court in the present case — "......any threat to the ecology can lead to violation of the right of enjoyment of healthy life guaranteed under Article 21, which is required to be protected."\textsuperscript{27}

So from the aforesaid observation of the Supreme Court it is clearly understood that fundamental right as laid down under the Article 21 of

\textsuperscript{26A} T.N. Godavarman Thirumalpad (87) vs. Union of India and others (2006) 1 S.C.C.1

\textsuperscript{27} T.N. Godavarman Thirumalpad (87) vs. Union of India and others (2006) 1 S.C.C.1
the constitution of India i.e. 'right to life' is extended here to right of enjoyment of healthy life, which is required to be protected by way of protecting the forest and its ecology within the ambit of Article 21 of the constitution of India.

So in this way Supreme Court has been interpreting the 'right to life', the fundamental right of people in India as guaranteed under the Article 21 of the Constitution of India and gradually enlarging its scope and ambit effectively to protect the people from hazardous effect of the environmental pollution.

8.1.3. Role of the High Courts and Environmental Justice

8.1.3.a. Liberal Interpretation of the Doctrine — 'Right to Life'

It may be mentioned here that like Appex Court, various State High Courts in India enthusiastically have been also playing a very effective role in interpreting Article 21 in popular way and liberally and as such, 'right to life' has been enlarged in such a manner by those State High Courts by invoking their power of writ jurisdiction as vested under Article 226 of the Constitution of India, that it includes the right to environment aiming at to protect the quality of life of the Human being from the immense effect of pollution within the scope and ambit of Article 21 of the constitution of India.

Perhaps the case of T. Damodhar Rao and others Vs. the Special Officer, Municipal Corporation of Hyderabad, and others28, is the first case of such type where any state High Court by invoking its power

under the Writ jurisdiction specifically and explicitly recognise the scope of 'right to life' as guaranteed under Article 21 of the Constitution of India, in respect of environmental issues.

8.1.3.b. Right to Life and Right to Enjoy Quality Environment.

In T. Damodhar Rao’s Case, High Court has considered right to get protection and preservation of environment and its enjoyment as the 'right to life' as guaranteed under Article 21 of the constitution of India, as it appears from the following observation of the Andhra Pradesh High Court——

"................., it would be reasonable to hold that the employment of life and its attainment and fulfilment guaranteed by Art 21 of the constitution embraces the protection and preservation of nature's gift without (which) life can not be enjoyed".

It has been also further considered by the High Court in this case that slow poisoning of the life due to environmental pollution is the violent extinguishment of life and as such it is amounting to violation of Article 21 of the constitution.

So it appears from the aforesaid observations that in this T. Damodhar Rao’s Case, Andhra Pradesh High Court has clearly and without any ambiguity considered the right to environment is the part of 'right to life' as guaranteed under Article 21 of the Constitution.

31. See the Note Supra 29.
Karnataka High Court has also expanded the Scope of Article 21 of the Constitution of India while entertaining a writ petition filed as public interest litigation, under the jurisdiction of Article 21 of the Constitution of India, in connection with the environmental issues.

Being aggrieved by the location and operation of industries and industrial enterprises in residential area of Ashokanagar in Karnataka and persistent pollution arising out of such industrial operation, a writ petition had been filed by V. Lakshmipaty and others in Karnataka High Court. Ultimately that case has been adjudicated by the High Court and reported in AIR 1992 Kant. 57 (V. Lakshmipathy and others Vs. State of Karnataka and Others).

In this particular case, while deciding the issue in connection with the persistent pollution problem due to industrial operation in the aforesaid locality, Karnataka High Court had interpreted the Article 21 of the Constitution of India extending its scope and ambit within the domain of Writ Jurisdiction under Article 226 of the Court of India.

In this case 'right to life' as guaranteed under Article 21 of the Constitution of India, has been extended a right to have an 'environment of quality' which is the basic requirement for getting a 'qualitative life'. Actually here it has been considered that maintaining the qualitative life is possible only in an 'environment of quality' and the existence of qualitative life is the necessary condition for the existence of 'life' within the scope and ambit of Article 21 of the constitution of India and the protection of this fundamental right as guaranteed under Article 21 is the duty of the judiciary as vested within its writ jurisdiction under the public

32. V. Lakshmipathy and others Vs. State of Karnataka and others. AIR 1992 Kant. 57.
33. Ibid.
law domain, known as 'epistolary jurisdiction'.

8.1.3.c. Right to Life and Right to maintenance of Health and Environment.

In connection with the issue relating to the protection of public health, another case may be referred here and that is *K. Ramakrishnan and another Vs. State of Kerala and Others*.

In the instant case, a writ petition, being O.P. No. 24160 of 1998 had been moved by the petitioners in Kerala High Court for issuance of writ of Mandamus and to declare that smoking for Tobacco in any form, whether in form of Cigarette, cigar, beedies or otherwise in public places is illegal, unconstitutional and violative of Article 21 of the constitution of India.

Considering the gravity of the situation when one million Indians die every year from tobacco-related diseases, ultimately Kerala High Court has delcared and held that public smoking of tobacco in any form whether in the form of cigarettes, cigars, beedies or otherwise, is illegal, unconstitutional and violative of Article 21 of the Constitution of India and directed the District Collectors of all the Districts of the State of Kerala to prohibit public smoking considering it as public nuisance as defined under section 268 of the Indian Penal Code.

While deciding this case, Kerala High Court has interpreted the provision of Article 21 of the Constitution of India in a very extended manner following some Appex Court decision, such as *M/s. Shantistar Builders Vs. Narayan Khimalal Totame* where 'right to life' as

34. AIR 1999 Ker. 385.
36. AIR 1990 SC. 630.
provided under Article 21 of the Constitution has been interpreted as 'right to decent environment'. Here in this case, Categorically Kerala High Court has expressed that life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally, so in this way meaning of "life" has been extended to cover almost every facet of human existence, though constitution has not literally defined it. Here Judiciary has given wide meaning to the expression "life", as laid down within the provision of Article 21 of the Constitution, to enable a man not only to sustain life but to enjoy it in a full measure.

8.1.3.d. Right to Life and Right to Enjoy Pollution Free Environment.

In the case of Kholamuhoana Primary Fishermen Co-operative Society and others etc., vs. State of Orissa and others, popularly known as "Chilka Bachao" case37, filed due to massive degradation of eco-system in Chilka due to intensive prawn culture, Article 21 of the Constitution has been also interpreted in a very extended manner in connection with environmental issues.

While deciding the case, Orissa High Court has given emphasis on the interpretation of the fundamental right, the 'right to life' since the existence of life had been very much related with the main issue of this case, such as protection of livelihood of the people.

Here 'right to live', conferred by Article 21 of the Constitution of India, had been interpreted by the Court as the right of enjoyment of

37. AIR 1994 Ori. 169.
pollution free atmosphere. So here scope of 'right o life' has been extended, even to include the right to enjoy the 'pollution - free environment and the maintenance of pollution free environment and its proper enforcement in terms of the constitutional obligation to the people of this country.


In another case, L. K. Koolwal Vs. State of Rajasthan and others\textsuperscript{38}, which had been filed in Rajasthan High Court, as Public interest litigation by invoking the Writ jurisdiction as vested under Article 226 of the constitution of India, Article 21 had been interpreted within its' scope and ambit.

Actually in this case, 'right to life', as guaranteed by the Article 21 of the Constitution, has been interpreted as right to maintenance of health, preservation of the Sanitation and environment within the scope of Article 21. This interpretation of 'right to life' within the scope and ambit of Article 21 of the Constitution of India has been justified by the High Court with this notion that insanitation will cause adverse effects upon the life of the citizens amounting to slowpoisoning and reducing the life of the citizens, if it is not checked and as such life of the citizen will be protected if proper public health and sanitation is maintained and preserved.

So existence of life will be fulfilled if proper public health is maintained and sanitation is preserved and environment is protected

\textsuperscript{38.} AIR 1988 Raj 2.
and as such right for the protection of life as guaranteed by the constitution will be invoked for the enforcement of right to protect public health and hygiene sanitation and environment from its degradation as it appears from the extended meaning of Article 21 of the constitution as it is established by the Rajasthan High Court in this *L. K. Koolwal case*\(^3\).  

8.1.3.f. Right to Life and Right to Live with Human dignity.  

In another case, *Dr. K. C. Malhotra Vs. State of M. P. & Others*\(^4\), Article 21 of the constitution has been also interpreted in an extended manner.  

In the instant case, a public interest litigation has been moved by the Petitioner, who was a medical practitioner, for the want of proper Public Health and Hygiene in the locality of Pardi Mohalla at the State of Madhya Pradesh, due to open drain, filthy water, heaps of dirt and contaminated water and rubbish and for the spread of epidemic of cholera in the locality resulting death of large number of children of the locality.  

In this case\(^4\), Right to life has been interpreted as right to live with human dignity and such right is considered as the fundamental right of every Indian citizen. In this regard it has been held that, every person is entitled to a quality of life consistent with his human personality and as such the right to life enshrined in Article 21 can not be restricted to mere animal existence. As per interpretation of the Court, it means

\(^{39}\) *L. K. Koolwal Vs. State of Rajasthan & Others, AIR 1988 Raj 2.*  
\(^{40}\) *AIR 1994 M.P. 48.*  
\(^{41}\) *Dr. K. C. Malhotra Vs. State of M. P. & Others, AIR 1994 M.P. 48.*
something much more than just physical survival, rather it includes even
the right to 'adequate nutrition, clothing and shelter over the head and
facilities of reading, writing and expression one self in diverse forms,
freely moving about and mixing and commingling with fellow human
beings.

In another case, *M.P. Rambabu & Others etc. etc. vs. the District
Forest Officer, E.G. District and Others etc.*\(^{42}\) while delivering the
judgement, Andhra Pradesh High Court has also interpreted 'right to
life', guaranteed under Article 21 of the constitution of India, as right to
live a descent life, a good environment and maintenance of ecology and
such interpretation has been made to find a link between the
environmental hazard affecting the 'life' of the people and the Shrimp or
prawn Culture or any type of acquaculture. It has been also considered
in this case that the state is obligated, in terms of Article 48A of the
constitution, to protect such right of the people within he scope and
ambit of Article 21. Here Article 51A(g) has been also taken into
consideration by the High Court to explain the duty of the citizen to
protect the environment and the life of the living beings.

It may be mentioned here that in this particular case\(^ {43}\), Division
Bench of Andhra Pradesh High Court presided by Chief Justice S. B.
Sinha has acknowledged the view of Appex Court, as taken in various
cases in this regard, specially in *Shrimp Culture Case (Jogannath's
Case)*\(^ {44}\) regarding enlargement of the scope of 'right to life', as
guaranteed under Article 21 of the Constitution of India, which has been
interpreted as 'the right to pollution free environment and protection of

\(^{42}\) *AIR 2002 A.P. 257.*
\(^{43}\) *M.P. Rambabu & Others etc. etc. vs. the District Forest Officer, E.G. District and Others etc AIR 2002 A.P. 257.*
\(^{44}\) *S. Jagannath vs. Union of India & Others, AIR 1997 S.C. 811.*
ecology and introduced such view in the instant case and set a perfect example how, 'right to pollution free environment' has become a part of 'right to life' as guaranteed under Article 21 of the Constitution and became a fundamental right within the scope and perview of Part-III of the Constitution of India.

So in this Case⁴⁶, 'right to life' as guaranteed under Article 21 of the Constitution of India, has been interpreted as right to live 'a dignified and civilized life' and such right would be protected within the scope and ambit of the Article 21 of the Constitution.

8.1.3.g Right to Life and Right to get protection from Noise.

In P.A. Jacob Vs. the Superintendent of Police, Kottayam and antoher⁴⁶, Kerala High Court had interpreted Article 21 in connection with an issue involving noise pollution, whether use of Loud Speaker at Public Meeting was claimed as fundamental right.

While deciding this case, Kerala High Court held that compulsory exposure of unwilling persons to dangerous and disastrous level of noise, would amount to a clear infringement of their constitutional guarantee of 'right to life' under Article 21 of the Constitution of India. Here Article 21 has been inerpreted as right to a safe environment, including safe air quality, safe from noise, considering exposure to high noise is detrimental to the life. Here Article 21 has been invoked with its extended scope for the protection of 'life' from the hazardous effect of noise.

⁴⁵. M.P. Rambabu & Others etc. etc. vs. the District Forest Officer, E.G. District and Others etc. AIR 2002 AP 257.
⁴⁶. AIR 1993 Ker. 1.
It may be mentioned here that almost a similar type of interpretation of Article 21 of the Constitution of India has been made by the Calcutta High Court in *Burrabazar Fire Works Dealers Associations case*\(^47\) in connection with the environmental pollution arising out of Noise.

A writ petition, being W.P. No. 2725 of 1996, filed by the Burrabazar Fire Works Dealer's Association against the imposition of ban on certain items of noisy fire works on the ground of violation of the fundamental rights of the fire works Dealers to carryon trade and business guaranteed under the Article 19(1)(g) of the Constitution of India\(^48\), had been heard along with another writ petition, being C.O. No. 4303 (W) of 1995, moved for getting permission of manufacturing, selling, dealing and / or trading and staring of fire works without any restriction.

In this case\(^49\) 'right to life' has been enlarged by the court upto such extent that 'right to live peacefully', 'right o sleep at night' and 'right to leisure' have been also considered as necessary ingredients of 'right to life' within he meaning of Article 21 of the Constitution of India. Here, in this case, a relationship has been established between Article 21 and Article 19(1)a which speaks for the right to freedom of speach and expresison. Here both the fundamental rights, 'right to life' and 'right to freedom of speach and expression' have been considered togther and invoked for the same purpose, to protect the life from the noise pollution and both have been blended with each other for a resulting interpretation of life which is extending upto 'right of a decent environment'\(^50\).

---

48. 19(1)(g) of the Constitution of India says as follows — "All Cityzens shall have the right — to practice any profession or to carry on any occupation, trade or business.
49. See the Note Supra 179.
Ultimately in this case, High Court directed the West Bengal Pollution Control Board discussing with the expert committee already appointed, to take a decision on the point of disputes after considering all the aspects of the matter including the suggestions and recommendations made by the National Committee on Noise level control.

It is relevant to mention here that the High Courts decisions on noise pollution were subsequently also followed by the Supreme Court in number of occasions.

In this regard, one case may be referred here and that is the case of Church of God (Full Gospel) in India\(^{51}\), in which case Supreme Court by playing its activist role has tried to prevent noise pollution. In this case, though Article 21 has not been directly invoked for the protection of life from the effect of Noise pollution, but indirectly the spirit of 'right to life' has been involved in the decision of this case.

In this case\(^{52}\), it has been held by the Supreme Court, that no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums and in any case if there has been such practice, it should not adversely affect the rights of others including those not to be disturbed in their activities. In this regard Supreme Court has been also pleased to observe that a particular fundamental right can not exist in isolation in a water-tight compartment and one fundamental right to a person may have to be co-exist in harmony with the exercise of another.


\(^{52}\) Ibid.
Under these consideration regarding fundamental rights of an individual, it has been held by the Supreme Court that in a civilized society in the name of religion, activities which disturb old or infirm persons, students, or children having their sleep in the early hours or during day-time or other persons carrying on other activities can not be permitted. It has been further held that it should not be forgotten that babies in the neighbourhood are also entitled to enjoy their natural right of sleeping in a peaceful atmosphere and a student preparing for his examination is entitled to concentrate on his studies without being disturbed unnecessarily by the neighbours and similarly, old and infirm are entitled to enjoy reasonable quietness during their leisure hours without there being any nuisance of noise pollution.

So, all these observations though not directly, but indirectly speak for the 'right to life' which even includes right to enjoy natural right of sleeping in a peaceful atmosphere, right to concentrate on the study by the student without any unnecessary disturbance committed by the neighbour and to enjoy reasonable quietness by the old and infirm during their leisure hours and to protect these rights from the hazardous effect of the noise pollution within the scope and ambit of 'right to life'.
8.1.3.h. Right to Life and Right to Preserve Forest and to Maintain Ecology.

In another case, the Goa Foundation and another Vs. the Conservator of Forests, Forest Department, Panaji, Goa and others though not directly but indirectly 'right to life' has been invoked to preserve forest land from deforestation and to prevent environmental degradation.

While deciding the case, High Court has invoked the fundamental right of the Citizen, the 'right to live' to prevent environmental degradation due to deforestation in the forest land and changing use of forest land and ultimately 'right to life' has been extended even up to the 'right to preserve forest land from deforestation' and 'to maintain ecology', and to prevent hazardous effects of environmental degradation and ecological disbalance on 'life. So in this case, 'right to life' has been enlarged as right to preserve forest and to prevent environmental degradation.

So it appears from the various decisions of both Supreme Court and different State High Courts, as discussed above, that Indian Judiciary has been gradually developing a new approach of adjudication to protect the environment and to abate and control the pollution in the atmosphere. Judiciary has introduced Judicial interpretation of various constitutional mandates and statutory provisions made for the protection of environment and for the protection of the basic fundamental right, i.e. 'right to life' to fulfill the social needs and obligations to keep the

53. AIR 1999 Bom. 177.
54. The Goa Foundation and another vs. The Conservator of Forest, Forest Department, Panaji, Goa & Others, AIR 1999 Bom. 177.
environment pollution free.

The "right to life", as guaranteed Article 21 of the Constitution of India has been invoked with its extended scope and ambit by which various environment issues had been dealt with effectively to resolve the environmental crises in connection with various matters.

'Right to life' has been extended to right to have an environment free from any pollution hazard and also in some cases, 'right to life' has been interpreted as right to live with proper health and hygiene within the environment. In addition, the Supreme Court Court and also by different State High Courts in exercising its inherent power as vested under Article 32 and Article 226 of the Constitution of India respectively, had also interpreted 'right to life' as right to receive damages from those, who had been responsible for disturbing the ecological balance either by running industries or any other activities by invoking the "Precautionary Principle" and "polluter pays principle", the two basic component of the principle of sustainable development.

So in this way, Indian Judiciary have been interpreting the Scope of 'right to life' as guaranteed under Article 21 of the Constitution of India and extending its scope coming out from four corners of statutory and procedural compulsion upto such extent that it will protect the right of the citizen to live in the pollution free environment.
8.2 Doctrine of sustainable development and New Activist Role of Indian Judiciary.

8.2.1. General Overview

As it appears from the foregoing discussions of this chapter, Indian Judiciary has played an outstanding role in protecting the environment and controlling the pollution in the atmosphere by way of Judicial activism in India. By entertaining Public Interest litigations and various other writ petitions filed in individual capacity in connection with various environmental issues and by giving some effective and timely decision in connection with those cases, Supreme Court, as well as different state High Courts have unveiled a new horizon of adjudication system in India.

For the protection of "life" of the human being including other living organisms from the hazardous effect of the pollution, 'right to life' as guaranteed under Article 21 of the constitution of India has been interpreted very effectively and liberally by the Supreme Court and various State High Courts and such provision of 'right to life' has been invoked by the Judiciary with its extended scope and ambit to protect the life of the human beings from the hazardous effect of pollution.

It appears from the various decisions of both, Supreme Court and the State High Courts that initially Indian Judiciary was very much strict and rigid in it's standing in protecting the environment and they were not in a position to compromise with the issue in connection with the environment protection matter. In all these cases, protection of life has been taken into consideration with high priority and accordingly the provision of Article 21 of the Constitution of India has been invoked for
this purpose with strict judicial notion of environment protection. In this regard a glaring example is *Ganga pollution (Kanpur Tanneries) case*\(^5\), where it has been observed by the Supreme Court that they are conscious that closure of Tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people.

But gradually this strict judicial notion of environment protection has been changed into a new liberal judicial approach to tackle the environmental issues from development point of view and as such Indian Judiciary has began to consider not only the environment protection aspect but also the development aspect of the society in view of the latest trend of sustainable world economy attributable specially to the developing countries, like India. In this regard, *Chhetriya Pradushan Mukti Sangharsh Samiti’s case*\(^6\) is one of the notable earliest decisions where Supreme Court explicitly introduced this concept of sustainable development to deal with environmental issues under Indian perspective in following words :-

"It is necessary to recognise the danger in order to strike a balance between the quality of life to be preserved and the economic development to be encouraged"\(^7\)

The expression, 'sustainable development' implies integrated human developments with minimum adverse effect upon the surroundings. It means meeting the basic needs of all the people living in the society and extending the opportunity to all of them to fulfill their

---

57. Ibid at page 2061.
aspiration for better livings. Actually the concept of sustainable
development has been articulated by the World Commission on
Environment and Development (WCED), 1987, in its report which is
popularly known as Brundtland Report, named after the Chairman of the
commission, Mr. G.H. Brundtland, Prime Minister of Norway. As per
Brundtland Report, sustainable development means the process of
development that meets the needs of the present without compromising
the ability of the future generation to meet their own needs.

The concept of sustainable development, in connection with the
environmental issues, has been internationally recognised at an
International conference, the United Nations Conference on
Environment and Development (UNCED), known as earth summit, held
at Rio-de-Janerio, Brazil in June 1992. In this world conference the
principle of the sustainable development has been recognised as an
effective means to resolve the environmental crisis in the prevailing
socio-economic condition in all-over the world specially in the
developing countries, like India.

8.2.2. Evolution of the Doctrine of Sustainable Development

It may be mentioned here that though the concept of sustainable
development has been invoked explicitly by the Supreme Court in
Chhetriya Produshan Mukti Sangharsh Samiti's Case\textsuperscript{58}, which has
been come out as one of the earliest decision in this regard, but
actually the seed of this concept of sustainable development has been

\textsuperscript{58} See the Note Supra 56.
sown in *Dehradun quarrying case* or "*Doon Valley Case*" and gradually this concept has been developed in more constructive way in subsequent cases in connection with environmental issues, come up for adjudication before the Supreme Court and various State High Courts. As a result of Justice delivery system in India in connection with the environmental issues which had stepped into the new era.

*Doon Valley case (Rural Litigation and Entitlement Kendro & Others Vs. State of U.P.)* was the first case of its kind in India involving issues relating to both, the environment protection and economic development.

Considering the report of "Bhargav Committee" appointed by the Supreme Court and also the report of a working group on mining of lime-stone quarries in Dehradoon-Mussorie area, appointed by the Government of India, some time in 1983, Supreme Court had given direction of closing down the "C" Category Lime stone quarries as classified in Bhargav Committee Report. Along with this Category of lime stone, some of the "B" categories of lime stone quarries had been also directed by the Supreme Court to close down. It has been also directed by the Supreme Court that the lime stone quarries falling within category "A" of Bhargav Committee Report and falling outside the city limits of Mussorie, should be allowed to be operated subject to the observance of the requirement of Mines Act, 1952, the Metalliferous Mines Regulations, 1961 and other relevant statutes, rules and regulations.

60. AIR 1985 S.C. 652.
These directions of the Supreme Court, as given in this *Doon Valley Case*\(^{61}\), clearly indicate that in this case, Supreme Court had been influenced by the concept of sustainable development, though explicitly it was not mentioned therein. Actually in this case decision of the Supreme Court regarding closure of certain types of quarries, but not the all type of quarries as operated in the Mussorie - Dehradoon Hill region, was not at all against the development process, but was very much against the hazardous effect of the development activity, if any, upon the environment.

This concept of sustainable development had gradually been incorporated by the Supreme Court subsequently in various other cases. In this regard *Oleum Gas case or Shriram Food and Fertilizer Industries Case*\(^{62}\) may be referred here. Like Doon Valley Case, in this case also though concept of sustainable development was not explicitly invoked by the Judiciary in this case, but indirectly it was considered therein.

While deciding the issue in connection with the determination of the principle of liability which would be applied in case of environmental accident, arising out of leakage of hazardous substance from inherently hazardous industries, causing damage to the human being, Supreme Court had formulated a new indigenous principle of liability, that is principle of absolute liability which is quite different from the strict liability as developed in *Ryland Vs. Flether Case*\(^{63}\) which is subject to exceptions, such as act of God, act of default of the plaintiff, consent

---

63. (1868) L.R. 3 H.R. 330.
of the plaintiff, independent act of third party, to the liability of the person held responsible of damage, if any, caused to the person who sustained injury due to environmental accident. Actually in absolute liability, any person holding responsible for any environmental accident arising out of any inherently dangerous and hazardous industry, shall be liable absolutely without any exception.

During this time, Supreme Court has directed the Shriram Food & Fertilizer Industries to shift and to relocate its caustic chlorine plant to some other place and it has been allowed to restart at that place after taking necessary safety measures as directed by the Supreme Court in that plant to minimise the chance of environment accident causing threat and danger to the health and well being of the community though it has been found guilty for the leakage of oleum gas from its caustic chlorine plant in Delhi.

Actually this decision of the Supreme Court allowing the management of the Shriram Foods and Fertilizer Industries to restart its caustic chlorine plant in a newly relocated place where it has been directed to shift its caustic chlorine plant, has been guided by the concept of sustainable development which speaks for the carrying on the progress of sciences and technology and economic development in the society with minimum disturbance to environment and ecological balance.

In another case, Sri Sachidanand Pandey and another Vs. The State of West Bengal and others, popularly known as Taj Bengal Case\(^\text{64}\), which had been come up before the Supreme Court as an

\(^{64}\text{AIR 1987 S.C. 1109.}\)
Appeal, being Civil Appeal No. 378 of 1987, after being granted special leave under Article 136 of the Constitution of India, moved against Division bench Judgement of the Calcutta High Court upholding the Judgement of the Learned trial Judge of the same High Court dismissing a writ petition filed in the name of public interest challenging the arbitrary decision of the State Government for granting leave of four (4) acres of land of 'Begumbari' property belonging to Calcutta Zoological Gardens, to Taj Group of Hotels for the Construction of a 'Five Star Hotel' at Calcutta.

While delivering judgement in this case, after considering all the pros and cons of all the facts and circumstances of the case, Supreme Court had been satisfied in this regard that the Government of West Bengal acted bonafide in granting the lease of Begumbari Land, which had been belonged to the zoo authority, to the Taj Group of Hotels for the construction of a five star hotel in Calcutta and its action was not against the interest of the zoological garden or not against the best interests of the animal inmates of the zoo or migrant birds visiting the zoo. Rejecting the contention of the Appellant that the financial interests of the State were, in the way, sacrificed either by not inviting tenders or holding a public auction or by adopting the 'nett sales' method for calculating compensation payable to the Government, Supreme Court held in this case that "Even on a primafacie view, there appears to be nothing wrong or objectionable in the 'nett sales' method". In the result,

65. Art 136 of the Constitution of India says as follows :- "(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter, passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgement, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

the judgement of the Learned Single Judge and the Division Bench of the Calcutta High Court had been affirmed and the Appeal in Supreme Court was dismissed.

In this particular case, Supreme Court has invoked the concept of sustainable development. Here Supreme Court has encouraged the development process but off course being satisfied with the steps taken for environmental protection and maintenance of ecological balance.

Almost at the same time, like Supreme Court, different State High Court had also initiated their effort to invoke the principle of 'sustainable development' in various cases which used to come up for adjudication before the High Court in connection with environmental matters.

In Kinkri Devi and antoher Vs. State of Himachal Pradesh and Others67, Himachal Pradesh High Court has taken into consideration the principle of sustainable development to resolve the environmental disputes raised in Shivalik hill region in Simaur District in Himachal Pradesh arising out of operation of Mines under Lease posing danger to the adjoining Lands, water resources, pastures, forests, wildlife, ecology, environment and inhabitants of that hill region.

Ultimately it has been held by the Himachal Pradesh High Court that no lease for the mining of lime stone will be granted or renewed the temporary permits, if any, would be issued in District Sirman till the committee, as appointed as per court's order, as submitted its report regarding condition of the mines and its operation and in addition, it has been also directed by the Supreme Court to maintain strict superintendence and supervision over the exploitation of the mines under the existing leases. While decidng the case, Himachal Pradesh

---

67. AIR 1988 H.P. 4
High Court has actually, invoked the spirit of sustainable development in the present case by giving emphasis on the necessities of maintaining proper balance between the protection of environment and utilisation of natural resources required for the development and growth of industry.

It may be mentioned here that during these periods, specially during 80's, principle of sustainable development had not been explicity invoked by the Indian Judiciary in various cases, come up for adjudication before the court of law, involving environmental issues, rather in indirect manner carrying its true spirit. Ultimately judiciary has began to invoke it explicitly in different cases involving certain environmental issues having emmence socio-economic importance. In this regard *Chhetriya Pradhushan Mukti Sangharsh Samiti's Case*\(^{68}\) is the glaring example where straight way principle of sustainable development has been invoked by the Appex Court in India with the observation that it has been necessary to recognise the danger in order to strike a balance between the preservation of quality of life and economic development.

In another case, *Dahanu Taluka Environment Protection Group Vs. Bombay Suburban Electricity Supply Company Ltd.*\(^{69}\), Supreme Court has also considered the concept of sustainable Development.

In this case Supreme Court has given a clearance to the Construction of a thermal power plant in an ecological fragile area, situated within 25 km. after tropical forests considering immence public interest at large as involved in this particular thermal power project and

\(^{68}\) See the Note Supra 56.

\(^{69}\) 1991(2) S.C.C. 539.
possibility of out breaking environmental pollution, such as water pollution, on account of the hot water discharge from cooling plant and the atmospheric pollution due to outlet of gases. Actually by this decision, Supreme Court has tried to make a balance between environmental concerns and development issues.

In *Goa Foundation and another Vs. the Kankan Railway Corporation and others*\(^70\), which had been moved before the Bombay High Court under the writ jurisdiction as Public Interest litigation apprehending the possible environmental disorder and ecological disturbance in Goa due to passing of Alignment of broad gauge railway line proposed to be setting from Bombay to Mangalore with the possibility of further extension upto the State of Kerala, the principle of sustainable development has been invoked by the Bombay High Court.

Ultimately writ petition had been dismissed by the Bombay High Court after declining to exercise of the writ jurisdiction.

While delivering the judgement in this case\(^71\), Supreme Court has applied the principle of sustainable development by accepting the need of development for the public purposes and for the interest of the people without denying the necessity of environment protection as it appears from the following observation of the Supreme Court made in this case — "No development is possible without some adverse effect on the ecology and environment but the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment."\(^72\)

---

70. AIR 1992, Bom. 471.
71. Goa Foundation and another Vs. the Kankan Railway Corporation and Others, AIR 1992 Bom. 471.
72. Ibid at page 474.
So in this way gradually Indian judiciary had been approaching towards a new dimension of judicial thought by which concept of sustainable development was introduced in India resolving the environmental disputes under the new socio-economic perspective condition attributable to developing countries, like India.

8.2.3. Recognition of the Doctrine of Sustainable Development

Ultimately in "People United for better living in Calcutta Public and antoher Vs. State of West Bengal and others, popularly known as East Calcutta Wet Land case\textsuperscript{73}, the concept of sustainable development has been invoked by the Indian Judiciary in a classical way.

In the instant case, a public interest litigation had been moved in Calcutta High Court by people United for better living in Caclutta public against the proposed reclamation of wet land situated in East Calcutta region, which had been rich in biodiversity and a perfect example of sustaining ecosystem, by the Government of West Bengal for establishing a World Trade Centre in Calcutta and expansion of township.

After hearing the case, High Court had been pleased to issue an order of injunction restraining the State Respondents from reclaiming any further wetland and also prohibiting the respondents from granting any permission to any person what so ever for the purpose of changing the use of the land from agricultural to residential or commercial in the specified area. In this regard State Respondents had been also further directed to maintain the nature and character of the Wetlands in their

\textsuperscript{73} AIR 1993, Cal. 215.
prevailing form and to stop all encroachment of the wetland area.

At the time of delivering the judgement in the *East Calcutta Wetland case*\(^7^4\), Justice U.C. Banerjee has made certain observation regarding the relationship between the environment protection and the urban development and such observation in its letter and spirit actually speaks for the judicial effort to introduce the concept of sustainable development in dissolving the environmental crisis in India.

In this case it has been held by the Justice U.C. Banerjee that there should be a proper balance between the protection of environment and the development process. According to him, the society shall have to prosper, but not at the cost of the environment and in the similar vein, the environment shall have to be protected but not at the cost of the development of the society and there shall have to be both development and proper environment and as such, a balance has to be found out. It has been also held by the justice Banerjee that in a developing country, there shall have to be developments, but that development shall have to in closest possible harmony with the environment, as otherwise there would be development but no environment, which would result in total devastation.

Thus in this way, concept of sustainable development has been developed in its full length in this wetland case for the protection of environment under sustainable economic system in the society.

In *Indian council for Enviro-legal Action Vs. Union of India, popularly known as Coastal Zone Protection Case*\(^7^5\), filed as public

---

\(^7^4\) People united for better living in Calcutta public and another Vs. State of West Bengal and Others, AIR 1993 Cal 215.

\(^7^5\) (1996)5 S.C.C. 281.
interest litigation before the Supreme Court alleging a gross violation of environmental norms as made through the notification of the Ministry of Environment and Forest for the protection of coastal zones, by illegal setting up of industry causing serious damage to the environment of ecology of the area, Supreme Court has invoked the Doctrine of sustainable development to resolve such environmental disputes.

It has been held by the supreme court in this case\textsuperscript{76}, that while economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation, at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. It has been also held that both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice-versa but there should not be development while taking due care and ensuring the protection of environment.

The Supreme Court has further observed in \textit{Vellore Citizens' Welfare Forum Case}\textsuperscript{77}, regarding the necessities of invoking the principle of sustainable development to improve the quality of human life as well as to eradicate the poverty and hardship of the common people who are living in disadvantagious conditions in the society.

In the instant case, while adjudicating a public interest litigation filed by Vellore Citizens' Welfare Forum for the necessary direction against the pollution caused by enormous discharge of untreated effluent by the

Tanneries and other industries in the state of Tamil Nadu, Supreme Court has invoked the principle of Sustainable development.

So from these observations, it appears that Indian Judiciary has begun to accept the reality about the necessities of harmonious relationship between the development and ecological balance and the traditional concept of hostility between the development and ecology is no more acceptable in the present developing world. Not only that, to eradicate poverty and to improve the quality of life of the common people belonging to the disadvantaged group of the society, balance between the development and environment protection, the fundamentals of the sustainable development, is necessary.

8.2.4. Scope and Ambit of the Doctrine of Sustainable Development.

While dealing with the Doctrine of sustainable development in dissolving the environmental disputes, in the *Vellore Citizens Welfare Forum Case*\(^78\) Supreme Court has taken into consideration the definition of sustainable development, as set by Mr. Brundtland, the Prime Minister of Norway and the Chairman of the world commission on environment and development through its report, called "Our Common Future" also popularly known as "Brundland Report" in the following words — "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs."\(^79\)

\(^{78}\) Ibid.
\(^{79}\) Ibid at page 2720.
Ultimately, considering the acceptance of sustainable development as a balancing concept between ecology and development, as a part of the customary International law, Supreme Court has invoked this principle of sustainable development to protect the environment from the hazardous effect of the pollution without disturbing the poverty eradication process through socio-economic development in the society.

In this case\textsuperscript{80}, principle of sustainable development, as called out from Brundtland Report, has been considered on the basis of two principle, namely, "The precautionary principle"\textsuperscript{81} and "the polluter pays principle\textsuperscript{82} and here principle as sustainable development has been invoked as an effective instrument to make good the harm, caused to environment by the "wrong doers", by awarding compensation to the victim of pollution and also to provide cost of restoring the environmental degradation based on the 'polluter pays principle' supported by the 'precautionary principle'. Here actually 'polluter pays principle' and 'precautionary principles' have been introduced not to stop development process rather to carry on the development process.

So in this way, in \textit{Vellore Citizens' Welfare Forum case}\textsuperscript{83}, concept of sustainable development has been invoked by the Appex Court introducing a new viable judicial approach in the present socio-economic condition to protect the environment and to protect the quality of life from the hazardous effect of pollution, arising out of growing industrial activity in our country.

\textsuperscript{80} See the note Supra 77.
\textsuperscript{81} Vellore Citizens Welfare Forum Vs. Union of India & Others, AIR 1996 SC. 2715 (2721).
\textsuperscript{82} Ibid.
\textsuperscript{83} See the note Supra 77.
Concept of sustainable development has been also invoked by the Supreme Court in *M.C. Mehta Vs. Union of India and others, popularly known as Taj Trapezium (TTZ) case*\(^\text{84}\).

Being, concerned with the deterioration and damage of the Tajmahal, the finest achievement of the Moghul Art and values, not only due to the traditional causes of decay but also due to the continuous gaseous emissions from the small and large scale industries situated within the close vicinity of the Taj Mahal and also due to the emissions from Brick Field Kilns, diesel generating sets and vehicular traffic, M.C. Mehta had moved a Public Interest litigation praying necessary directions to save this wonderful architectural skill of Moghul period in India.

Ultimately in this case\(^\text{85}\) Supreme Court had issued certain directions after considering the report of National Environment Engineering Research Institute (NEERI) and various other reports of different scientific and technological committees. It has been directed by the Supreme Court that 292 identified industries as per schedule, shall change over to the natural gas as an industrial fuel.

The industries, which are not in a position to obtain natural gas connection shall stop functioning with the aid of coke / coal in the TTZ and may approach / apply to the corporation (UPSIDC) / Government before 28th February, 1997 for allotment of alternative plots in the industrial estates outside TTZ and may relocate themselves. The corporation / Government shall finally decide and allot alternative plots before March 31, 1997 to the industries which are seeking relocation.

---

\(^{84}\) AIR 1997 S.C. 734.

\(^{85}\) M. C. Mehta Vs. Union of India and Others, AIR 1997 S.C. 734.
From the aforesaid directions, issued by the Supreme Court, it appears that Supreme Court has delivered this judgement being influenced by the Doctrine of sustainable development. Here Supreme Court instead of issuing total closure order to all the industrial unit operating in TTZ area, had given the chance of relocation and to change the traditional fuel system of coke / coal over to the natural gas as an industrial fuel and also give certain supportive direction to help those industrial units to run its operation in environment friendly way, such as direction for providing money for 100 per cent uninterrupted electricity supply to the TTZ. So all these directions as given by the Supreme Court are based on the principle of sustainable development.

Actually this judgement in TTZ case is based on the precautionary principle and polluter pays principle, the fundamentals of the Doctrine of sustainable development as discussed in various other cases as decided in the Appex Court, such as, Vellore Citizens' Welfare Forum Case86, Indian Council for Enviro-Legal Action Case87. So there is no doubt that this Taj Trapezium (TTZ) case88 is also another wonderful example where principle of sustainable development has been invoked by the Appex Court by playing its activist role to introduce new Judicial approach in dealing with environmental issue.

In another M.C. Mehta Case (M.C. Mehta Vs. Union of India and Others) popularly known as "Hot Mix plant case"89, Supreme Court has also invoked the concept of sustainable development.

By giving permission of setting up the Hot mix plant within the safe

86. See the note supra 77
87. See the note supra 76.
89. AIR 1999 S.C. 2367.
distance from the populated area near Indira Gandhi International (IGI) Airport, Supreme Court has actually invoked the principle of sustainable development. Here development process has not been disturbed by the judicial pronouncement, rather it has been encouraged by the Supreme Court. But such development activities is not unconditional. It is subject to fulfilment of certain conditions aiming at to protect environment and to provide safeguard to the people from the hazardous effect of the pollution.

In anoher case, *Goa Foundation, Goa Vs. Diksha Holdings Pvt. Ltd. and others*\(^90\), Supreme Court has tried to stirke a balance between development activities and and protection of environment.

In the instant case, an appeal being civil appeal no. 401 of 2000 had been filed in the Supreme Court against a judgement of Bombay High Court, passed in a writ petition filed earlier in the nature of Public Interest litigation making a objection against construction of hotel on a plot of land situated in the area of Nagorcem, Palolem, Taluka - Concona, Goa covered under CRZ-I where no construction is permissible. But such appeal was dismissed.

While dismissing the Appeal, Supreme Court has made an observation regarding relationship between development process and maintenance of ecological balance. Actually this observation has been made on the basis of the Doctirne of sustainable development following the decision of the case of *People United for Better Living in Calcutta Public Vs. the State of West Bengal*,\(^91\) and the decisions of the case

---

90. AIR 2001 S.C. 184.
91. AIR 1993 Cal. 215.
of Indian Council for Enviro-Legal Action Vs. Union of India\textsuperscript{92}, wherein both the cases of environmental issues in disputes have been dealt with in the light of sustainable development.

In this regard it has been observed that in the matter relating to development activities and protection of environment, the approach of the court should be to strike a balance between the two, but no activities should at all be allowed if it would ultimately lead to unscientific and unsustainable development and in that case court must scrupulously try to protect the ecology and environment.

It may be mentioned here that in vehicular pollution case\textsuperscript{93} also Supreme Court has emphasized on the significance of the Doctrine of Sustainable Development and it has been held by the Supreme Court that sustainable development is one of the principles underlying environmental law and that principle requires such development, which is ecologically sustainable, to take place and in this regard precautionary principle and polluter pays principle are considered as two essential features of sustainable development, as held by the Supreme Court in this case and such principle will be invoked by the court of law to protect the environment and to reduce the hardship of the common people, as they would have been suffering from the hazardous effect of the pollution, without disturbing the normal process of development, which is to be carried on with all necessary precautionary measures for maintaining the ecological balance in the environment.

In another case, K. M. Chinnappa vs. Union of India\textsuperscript{94} Supreme

\textsuperscript{93.} M.C. Mehta Vs. Union of India (2002) 4 SCC. 356.
\textsuperscript{94.} AIR 2003 SC 724.
Court has also observed the significance of the principle of sustainable development where conflict arises between environment protection and development process.

In this case\(^{95}\) it has been held that it cannot be disputed that no development is possible without some adverse effect on the ecology and environment and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment and the balance has been struck between the interests. In this regard it has been also held that where the commercial venture or enterprise would be brought in for the benefit of the mass, difficulty of a small number of people has to be by-passed and as such the comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get priority over comparatively lesser hardship.

This observation of the Supreme Court as held in the case of _K. M. Chinnappa vs. Union of India\(^{96}\)_ is also a perfect example of judicial approach, specially of the Appex Court, towards acceptance of the principle of sustainable development and its effective and timely enforcement in adjudicating the environmental issues under such situation when without development, existence of life will be a meaningless affair.

In another case, _Essar Oil Ltd. vs. Halar Utkarsh Samit\(^{97}\)_ Supreme Court has once again cleared its stand regarding acceptibility

95. AIR 2003 SC 724.
96. AIR 2003 SC 724.
of the concept of Sustainable development in dealing with the environmental issues.

In this case, Supreme Court had given emphasis on the necessities to remove deadlock between the development on the one hand and the environment on the other. In the opinion of the Supreme Court as obtained from this case, under the present socio-economic perspective, it has been the sole aim to make balance between economic and social needs on the one hand and environmental consideration on the other, notwithstanding the fact that each of the development project is an environmental threat, since all the environmental laws speak for harmony between development and environment protection as it appears from the following observation — "The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other."

In another very recent case, Intellectuals Forum, Tirupathi vs. State of A.P. and others, the Supreme Court has again considered a Doctrine of sustainable development in dealing with a case relating to environmental issue regarding preservation and conservation of natural resources, like water, including the land resources, etc.

While deciding the case, Supreme Court has adopted the notion of sustainable development in following manner, which is based on the Principle of Rio-Declaration — "In order to achieve sustainable development environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."
It may be mentioned here that, the decision of this Intellectual's Forum case is actually based on the view as taken by the Supreme Court in Indian Council for Enviro-legal action case which speaks as follows —

"While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment"[101]

So in this way, Indian judiciary has played an effective role by introducing a new concept of sustainable development in Indian legal system to deal with environmental maladies under present socio-economic scenario which is very much attributable to the developing economy of the country, like India. By introducing such concept, judiciary has been trying to bring up the balance between the two variables in connection with the environmental issues such as development process and environment protection.

It emerges from the foregoing discussions that due to activist role of Indian judiciary, a new approach has been developed in dispensing social justice in connection with environmental issues in India. Due to that activist role, Public Interest Litigation has emerged as a most popular and effective weapon in Indian Legal System with its extensive

101. Ibid.
new scope and ambit to redress the grievances of the public at large arising out of utter violation of one of their basic human rights, right to live in pollution free environment. Initially, during early phase of the judicial activism in India in 1980s, while dispensing environmental justice, Indian Judiciary was only concerned in controlling environmental pollution and maintaining ecological balance in the atmosphere at any cost. But due to change of socio economic condition all over the world and on account of advent of the necessity of development based on sustainable economy, specially in developing country like India, Indian judiciary has introduced the doctrine of sustainable development under Indian perspective while dispensing environmental justice to ressolve the environmetal crisis in India.