CHAPTER - V

ROLE OF JUDICIARY IN THE
PROTECTION OF ENVIRONMENT

In the previous chapters the focus was on the role of legislative institutions at the national and international levels which developed the law on the subject of environment. The prescriptions made by those authorities ultimately came before the judicial institutions of our country in the form of disputes between the individuals and the authorities of the State, and in deciding these disputes the Judiciary has interpreted the principles and the rules of environmental law on the subject of environment protection and prevention of pollution. The role of Judicial Institutions explains to us the work of the judicial institutions in the context of interpreting the rules on the subject of environment protection.

This chapter describes the part played by the Judiciary of India in dealing with matters of protection of environment and the problems of environmental pollution. In addressing these problems the Judiciary has interpreted the Constitution and Statutes on the relevant subjects and explained the scope of the law on these matters. The Judiciary has through
its dicta explained the nature and scope of the rights of the individuals and the powers of the State with regard to matters affecting the Environment.

In order to know whether the State was justified in adopting any principle and implementing the same in its own way and how the State has been pursuing the policy of preserving the environment it is necessary to know what the Courts have said in their decisions regarding the provisions of law pertaining to the question of pollution. Pursuing this objective the researcher has studied the decided cases decided and a gist of such cases and the principles followed in that behalf is given hereunder:-

I. ROLE OF THE COURT IN INTERPRETING THE APPROACH OF THE CONSTITUTION

(a) Protection to life under Article 21 and the Right to Pollution free environment:

The backbone of the law on environment protection and prevention of pollution is India's Constitution. The Constitution did not include any specific provision relating to environment protection or nature conservation. Presumably, the acute environmental problems being faced now in the country were not visualized by the framers of the Constitution. However, the past five decades have witnessed two major developments in this connection.
The first development took place when the Constitution (Forty-second Amendment) Act, 1976, was adopted in the mid-seventies. Specific provisions relating to certain aspects of the environment, more especially for the protection of the forests and wildlife in the country, were incorporated in Part IV- Directive Principles of the State Policy – and List III – The Concurrent List – of the Seventh Schedule of the Constitution. As a result, the Constitution has now the following provisions specifically relating to environment protection and nature conservation: Part IV: Directive Principles of State Policy (Article 48A): Protection and improvement and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Part IV-A: Fundamental Duties (Article 51-A): It shall be the duty of every citizen of India – (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. 

Seventh Schedule (Article 246) List III - Concurrent List Item no. 17 Prevention of cruelty to animals, Item no. 17A Forests, Item no. 17B Protection of wild animals and birds.

The second major development in the sphere of judicial protection to environment has been the jurisprudence arising from certain remarkable judicial pronouncements in recent years, more specially relating to Article 21 of the Constitution dealing with 'the right to life'. If one is asked which is the most important of all the articles in the Indian Constitution, one can only say - Article 21, which says no persons shall be deprived of his life and liberty –
which is the guiding light of India. All the other articles are subservient to this. In other words all articles have been formulated for keeping up this theme song of the Indian Constitution — 'life and liberty' — no person - not just a citizen — no person in India shall be deprived of life and liberty. It is not included as a mere platitude because over the years this article, which was a throbbing article, which was the most dynamic of all articles gathered flesh and with the help of Article 21 - the life and liberty of individuals are protected". Article 21 is the celebrity provision of the Indian Constitution and occupies a unique place as a fundamental right for the people of India. It protects the life and personal liberty. It envisages and aims that no person shall be deprived of his life or personal liberty except to a procedure established by law. Here, right to life includes right to health, right to food, right to pollution free environment, etc. In simple words, Article 21 provides an inbuilt guarantee to a person for right to live with human dignity.

The judiciary of our country has rendered very important judgment in recent years in regard to the problem of environment protection. A few of them may be mentioned by way of illustration on various matters covered by the Constitution as follows:-

Article 21 of the Indian Constitution states: 'No person shall be deprived of his life or personal liberty except according to procedures established by law.' Article 21 is the heart of all other fundamental rights. Article 21 has very expansive scope and has immense content into of with
lesser words. Law is never still, it is ever evolving and ever changing accordingly to meet the challenges of time. Therefore constitution provisions, especially fundamental rights and in particular Article 21 has been broadly construed by the judiciary. The court attempted to expand the reach and ambit of Article 21 rather than accentuate their meaning and content by judicial construction. Thus the judiciary broadened the concept of life, extended the scope of personal liberty so as to include within itself all the varieties of rights which go to making the personal liberties of man. Basic principles were compiled to understand procedure established by law. The judiciary has resolved most of the environmental cases where they considered right to good environment as fundamental for life and upheld as fundamental right. Thus we can consider article 21 as mandate for life saving environment. This article focuses on some of the landmark cases that have a bearing on the person’s right to life and right to pollution free environment.

The constitution makers themselves construct the fundamental rights in its broad sense especially to right to life. The Supreme Court of India has given essence to the right so that every person can enjoy life to its fullest extent. The Indian Supreme Court came out of the shackles of mechanical and rule bound justice and provided impetus to the expanded horizons of the fundamental right to life and personal liberty guaranteed in Article 21. Two methods are used by Supreme Court to strengthen Article 21 and to interpret unenumerated rights under Article 21, it required laws affecting personal liberty to pass the tests of Article 14 and 19 of the constitution, there by
ensuring that the procedure depriving a person of his or her personal liberty be reasonable, fair and just. The court recognized several matriculated rights that were implied by Article 21. It is by this method the Supreme Court interpreted the right to life and personal liberty to include the right to wholesome environment and all other rights. Thus Courts have undertaken to explicate the development of ideology of environment as being part of the right to life by various judicial pronouncements.

The judicial craftsmanship attempted to expand the reach and ambit of Article 21 rather than accentuate their meaning and content by judicial construction. Thus the judiciary broadened the concept of life. Thus extended the scope of personal liberty so as to include within itself all the varieties of rights which go to make the personal liberties of man. Right to life extended its scope to include right to wholesome environment and right to sustainable development. Indian democracy wedded to rule of law aims not only to protect fundamental rights of its citizens but also to establish an egalitarian order. Law being an instrument of social engineering obliges the judiciary to carry out the process established by it.

Environmental deterioration could eventually endanger life of present and future generations. Therefore, the right to life has been used in a diversified manner in India. It includes, inter alia, the right to survive as a species, quality of life, the right to live with dignity, right to good environment and the right to livelihood. In India, these rights have been implicitly
recognized as constitutional rights. The right to healthy environment has been incorporated, directly or indirectly, into the judgments of the court. Thus it is clear that article 21 has a multidimensional interpretation. Any arbitrary, whimsical and fanciful act on the part of any state, depriving the life or personal liberty would be against Article 21 of the Indian constitution.

(ii) JUDICIAL INTERPRETATION OF THE RIGHT TO LIFE AND ENVIRONMENT:

The right to healthy environment has been incorporated, directly or indirectly, into the judgments of the court. Link between environmental quality and the right to life was first addressed by a constitutional bench of the Supreme Court in the Charan Lal Sahu Case\(^1\). In 1991, the Supreme Court interpreted the right to life guaranteed by article 21 of the Constitution to include the right to a wholesome environment. In Subash Kumar\(^2\), the Court observed that ‘right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.’ Through this case, the court recognized the right to a wholesome environment as part of the fundamental right to life. This case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment. This was reaffirmed in M.C. Mehta v. Union of

\(^1\) AIR 1991 SC 420.  
\(^2\) Air 1998 SC 589.
India\textsuperscript{3}. The case concerned the deterioration of the world environment and the duty of the state government, under article 21, to ensure a better quality of environment. The Supreme Court has held that life, public health and ecology have priority over unemployment and loss of revenue. The Supreme Court ordered the Central government to show the steps they have taken to achieve this goal through national policy and to restore the quality of environment. In another case\textsuperscript{4}, the Supreme Court dealt with the problem of air pollution caused by motor vehicle operating in Delhi.

Article 21 of the Constitution of India guarantees to every citizen the right to life and personal Liberty. The Indian judiciary interpreted Article 21 progressively for the protection and preservation of environment. The court has held that the right to life enshrined in Article 21 cannot be restricted to more than just physical survival and every person is entitled to a quality of life consistent with human dignity.

In M.C. Mehta v. Union of India\textsuperscript{5} (popularly known as the Ganga Pollution (Tanneries) case the Supreme Court in no uncertain terms observed, "We are conscious that closure of tanneries may bring not only unemployment and loss of revenue but also loss of life, health and ecology which have great importance to the peoples".

\textsuperscript{3} Air 1991 SC 813.  
\textsuperscript{4} AIR 1992 SC 86.  
\textsuperscript{5} 1987 (4) SCC 463
In T. Damodhar Rao v. The Special Officer, Municipal Corporation of Hyderabad the High Court of Andhra Pradesh had expressed itself as to the approach which the Court should adopt in dealing with the problems of environment and the relationship that should be kept in view between the Fundamental Right as given in Article 21 of the Constitution and the Right to Unpolluted Environment. The Court said,

"Its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature’s gift without which life cannot be enjoyed. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of Article 21 of the Constitution”.

In Consumer Education and Research Center v. Union of India, the Supreme Court held that Article 21 which deals with the Right to Life also includes protection of health and strength of workers industry whether public or private as well as the State is enjoined by the Court to take all such measures which will promote health, strength and vigor of the workmen during the period of employment and leisure even after retirement as essentials of life with health and happiness."

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6 2000 (2) SCC 599
Chemical or other hazardous industries which are essential for economic development may have to be set up. But measures should be taken to reduce the risk of hazard or risk to the community by taking all necessary steps for locating such industries in a manner that would pose the least risk or danger to the community and for maximizing safety requirements in such industries. The Supreme Court directed the High Court to set up a Green Bench; Vellore Citizens Welfare Forum v. Union of India.7.

**Use of Hazardous Chemicals** Certain directions regarding hazardous chemicals were given by the Supreme Court in M.C. Mehta v. Union of India,8 relying partly on article 21. In the above judgment, there are dicta that life, public health and ecology have priority over unemployment and loss of revenue.

In Subash v. State of Bihar the Supreme Court held that the Right to pollution free air falls within Article 21 of the Constitution.9 It was also observed by the Supreme Court in M. C. Mehta v. Kamal Nath that any disturbance of the basic environment elements, namely air, water and soil, which are necessary for “life”, would be hazardous to “life” within the meaning of article 21 of the Constitution.10

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8 AIR 1987 SC 1087.
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It was a public interest petition and the court made several directions towards the Ministry of Environment and Forests. Decisions such as this indicate a new trend of the Supreme Court to fashion novel remedies to reach a given result, although these new remedies seem to encroach on the domain of the executive. In Shanti Star Builders vs. Narayan Totame, the Supreme Court held that right to life is guaranteed in a civilized society would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.

In Subhash Kumar vs. State, of Bihar the Supreme Court held that right to life is a fundamental right under Art. 21 of the Constitution and it include the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws

11 1990 (1) SC 520.
12 (1991) 1 SCC 598.
a citizen has recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to life.

In M. C. Mehta vs. Union of India & Ors.\textsuperscript{13} (the Oleum Gas Leak case), the Supreme Court established a new concept of managerial liability – 'absolute and non-delegable' – for disasters arising from the storage of or use of hazardous materials from their factories. The enterprise must ensure that no harm results to anyone irrespective of the fact that it was negligent or not.

In Vellore Citizens Welfare Forum vs. Union of India\textsuperscript{14}, the Supreme Court held that industries are vital for the country's development, but having regard to pollution caused by them, principle of 'Sustainable Development' has to be adopted as the balancing concept. 'Precautionary Principle' and 'Polluter Pays Principle' has been accepted as a part of the law of the country.

In Indian Council of Enviro-Legal Action vs. Union of India,\textsuperscript{15} (the Bichhri pollution case), following the decision in the Oleum Gas leak case and based on the polluter pays principle, the polluting industries were directed to compensate for the harm caused by them to the villagers in the affected areas, specially to the soil and to the underground water.

\textsuperscript{13} 1987 SCR (1) 819
\textsuperscript{14} AIR 1996 SC 2715.
\textsuperscript{15} 1996 (3) SCC 212.
Enunciating the doctrine of 'Public Trust' in M. C. Mehta vs. Kamal Nath the Supreme Court held that resources such as air, sea, waters and the forests have such a great importance to the people as a whole that by leasing ecologically fragile land to the Motel management, the State Government had committed a serious breach of public trust.

The changing trajectory of environmental rights in India, from a historical perspective Active judicial intervention by NGOs, community groups, and others, have also set a series of important precedence’s that go beyond what the bare laws provide. There are many initiatives in Public Interest Litigation (PIL). Some of these include the cases against the construction of the Tehri Dam on the right of citizens to inspect official records (this was before the Right to Information Act came into force) (Goa Foundation and Ors. vs. North Goa Planning and Development Authority and Ors. Against forest logging and other environmental aspects of Andaman and Nicobar Islands. The judgments in other cases have set important precedents and directions for the further development of policy, law and practice. For instance, the Godavarman and the WWF vs Union of India

16 (1997) 1 SCC 388.
17 (Tehri Bandh Virodhi Sangharsh Samiti vs. State of Uttar Pradesh, 1992 SUP (1) SCC 44) and Narmada Dams (Narmada Bachao Andolan vs. Union of India AIR 1999 SC 3345); against deforestation (T. N Godavarman Thirumulpad vs. Union of India, 2000 SC 1636, a case that has since then spawned dozens orders pertaining to forests in India); against mining in the Aravallis (Tarun Bharat Sangh, Alwar vs. Union of India 1992 SC 514, 516); against mining in the Dehra Dun hills (Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh, 1985 SC 652); against mining in adivasi lands of Andhra Pradesh (Samatha vs. State of Andhra Pradesh, 1997, a judgment with important consequences for acquisition or use of adivasi lands elsewhere too); on implementation of the Wild Life (Protection) Act 1972 (WWF vs. Union of India, WP No 337/95); on implementation of Coastal Regulation Zone measures (Indian Council for Enviro-Legal Action vs. Union of India, 1996(3) 579); on protection of the coastal area against destructive practices (Prof.Sergio Carvalho vs. The State of Goa and Others, 1989 (1) GLT 276);
18 1995 1 GLT 181.
cases have led to the orders that no forest, National Park or Sanctuary can be
dereserved without the approval of the Supreme Court, no non-forest activity
is permitted in any National Park or Sanctuary even if prior approval under the
Forest (Conservation) Act, 1980 had been obtained. New authorities,
committees and agencies have been set up such as the Central Empowered
Committee (CEC) and the Compensatory Afforestation Management and
Planning Agency.

Some judgments not directly related to environmental cases, also have
significant implications for the struggle to establish environment as a human
right. Mention should especially be made of a number of cases in which the
Constitutional Right to Life (Article 21) has been interpreted widely to include
a series of basic rights that include environment and livelihoods.

In Francis Coralie vs. Union Territory of Delhi\(^\text{19}\) Justice Bhagwati
observed: "We think that the right to life includes the right to live with human
dignity and all that goes along with it, namely, the bare necessaries of life
such as adequate nutrition, clothing and shelter over the head and facilities
for reading, writing and expressing oneself in diverse forms, freely moving
about and mixing and co-mingling with fellow human beings.

\(^{19}\) AIR 1981 SC 746
In Shantistar Builders vs. Narayan Khimalal Totame, the Supreme Court said: "Basic needs of man have traditionally been accepted to be three – food, clothing, and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in."

In Olga Tellis case the Supreme Court observed "An important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.... That which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life." Environmental crisis is causing enormous disruption of lives and livelihoods, threatening the collapse of its entire life-support system. The poor and disprivileged classes of humans and the other non-human species unfortunately have to bear the main brunt of these environmental problems. Ironically, the crisis is rooted deep in social, economic and political structures, more specifically in relations of inequity of three kinds: Intra-generational inequity, Intra-generational inequity, and Inter-species inequity. Inequities in the relations between people and countries have also allowed the imposition of unsustainable and destructive models of 'development'. The process of

20 AIR 1990 SC 630
'development' has been characterised by the massive expansion of energy and resource-intensive industrial and urban activity, and major projects like large dams, commercial forestry, and mining and chemical-intensive agriculture. The resource demand for the economic progress of a minority of people has lead to the narrowing of the natural resource base for the survival of the economically poor and powerless. This has happened either by direct transfer of resources into cities and industrial complexes, or by the destruction of life-support systems for rural communities everywhere.

In Re Noise Pollution case\textsuperscript{22} the cries of a rape victim for help went unheeded in the blaring noise of loudspeaker in the neighborhood. The victim committed suicide. Public interest litigation was filed. The court said that article 21 of the constitution guarantees life and personal liberty to all persons... it guarantees a right of persons to life with human dignity. Therein are included, all the aspects of life which go to make a person's life meaning full, complete and worth living. The human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasures. Any one who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance. How and when a

\textsuperscript{22} (2005) 5 SCC 733.
nuisance created by noise becomes actionable has to be answered by reference to the degree and the surrounding circumstances, the place and the time.

In Research Foundation for science Technology and Natural resources Policy v. Union of India and Another\textsuperscript{23} Dumping of hazardous waste, whether directions shall be issued for destruction of consignments with a view to protect environment and, if not, in what other manner consignments may be dealt with it was held, precautionary principles are fully applicable to facts and circumstances of the case and only appropriate course to protect environments is to direct destruction of consignments by incineration as recommended by Monitoring Committee.

In Intellectuals Forum, Tirupathi v. State of AP and others\textsuperscript{24} Leave granted. The present matter raises two kinds of questions. Firstly, at a jurisprudential level, it falls on this Court to lay down the law regarding the use of public lands or natural resources. In this case the Court has reiterated the importance of the Doctrine of Public Trust in maintaining sustainable development which has been declared as inalienable human right by UN General Assembly.

\textsuperscript{23} AIR SC 2005 735
\textsuperscript{24} (2006) 3 SCC 500.
In MC Mehta v. Union of India and others\textsuperscript{25} whether mining activity carried out in Villages Khori Jamalpur and Sirohi in District Faridabad in Haryana are in violation of the orders passed by this Court on 6th May, 2002 was in question. It was held, it does not appear that area in question falls under any category of prohibition for carrying out mining activity. But another aspect that remains to be examined is about impact of mining in the villages in question on environment. Merely on basis of photographs or plying of large number of trucks per day, a direction can not be made for stopping mining activity Monitoring Committee constituted in terms of directions in M.C. Mehta’s case is directed to inspect the mining activity being carried on in 75.05 hectares in village Khori Jamalpur and in 50.568 hectares in village Sirohi in Faridabad district and report the impact. In Karnataka Industrial Areas Development Board v. C. Kenchappa and others in consonance with the principle of ‘Sustainable Development’, a serious endeavour has been made in the impugned judgment to strike a golden balance between the industrial development and ecological preservation.

(b) Protection of the Right under Article 19

The right to know is also included in the Article 19(1)(a) which is closed linked with the article 21. Right to know or access to information is the basic right for which the people of democratic country like India is hope for. The right to know plays a very important role in environmental matters. Any

\textsuperscript{25} (2006) 3 SCC 378
governmental plan or project which is likely to affect environment or
unsustainable use of natural resources or environmental degradation must be
widely published. On many occasions government has failed to perform such
duty. Therefore courts has broadly interpreted the Art.19(1)(a) and recognized
right to know as a fundamental right.

In L.K. Koolwal v. State of Rajsthan\textsuperscript{26}, the High court held that a citizen
has a right to know about the activities of the State, the instrumentalities, the
departments and the agencies of the State. The privilege of secrecy which
existed in the old times that the State is not bound to disclose the facts to the
citizens or the State cannot be compelled by the citizens to disclose the facts,
does not survive to a great extent. Freedom of speech is based on the
formation of freedom of right to know.

In Bombay Environmental Action Group v. Pune Cantonment\textsuperscript{27}, the
petitioner was a registered society and filed writ petition to obtain information
from the respondent. The petitioner argued that under Art.19(1)(a), a citizen
has a right to get such information, particularly, when they being an action
group want to help the Cantonment Board in maintaining the environmental
balance. The Bombay High Court held that peoples' participation in the
movement for the protection of the environment cannot be over-emphasized
and held that the petitioner has a right to know under Art.19(1)(a) of the

\textsuperscript{26} AIR 188 Raj 2.
\textsuperscript{27} Writ pet. No. 2733 of 1986. Unreported. Referred from the book 'Environmental Law' by Dr. P.S.
Jaswal. p. 63.
Constitution and hence enforceable in writ jurisdiction which is speedy and inexpensive remedy provided it is made bona fide and for genuine purpose.

Article 19(1)(g) guarantees all citizens the right to practice any profession or to carry on any occupation, trade, or business. The major cause of the environmental pollution is the industrial and other commercial activities which release pollutants in the atmosphere. To run such activities is their fundamental right; but on the other hand detrimental to the nature.

The right conferred by the Art.19(1)(g) is not absolute but subject to some restrictions. Art.19(6) states that:

'Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause.

In Abhilash Textile v. Rajkot Municipal Corporation²⁸, the petitioners were discharging dirty water from the factory on the public road. The court held that one cannot carry on the business in the manner by which the business activity becomes a health hazard to the entire society. No citizen can assert his right to carry on business without any regard to the

²⁸ AIR 1988 Guj 57.
fundamental duty under Art. 51A(g) to protect and improve the natural environment.

In M.C. Mehta v. Union of India\(^{29}\), tanneries were discharging effluents from their factories in the river Ganga and polluting it. There was no treatment plant in such tanneries. In the judgment J. Singh opined that;

"Tanneries at Jajmau area near Kanpur have been polluting the Ganga in a big way. Though notices were issued many industrialists have not bothered either to respond to the notice or to take elementary steps for the treatment of industrial effluent before discharging the same into the river. Those tanneries which have failed to take minimum steps required for the primary treatment of industrial effluent are directed to be closed. No doubt closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people".

Therefore it is clear that the right to trade and business is not the absolute right and subject to restrictions. The Courts has considered the protection and improvement of environment as matter of general public interest and used his tool in putting reasonable restrictions on the citizen's right to trade and business.

\(^{29}\) AIR 1988 SC 1037.
(iii) ROLE OF THE COURT IN INTERPRETING THE ANTI-POLLUTION LAWS

At present the anti-pollution laws in the form of ordinary laws, special laws and local laws are plenty in number. The provisions of these laws have come in for interpretation by the courts on various occasions in various contexts.

The view held by the Supreme Court has been that public nuisance arising due to pollution is a challenge to the social justice component of Rule of Law and Social Justice demands that the people are able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under Sec. 133 of the Code of Criminal procedure, 1973.

The judicial interpretation on the nature and scope of Sec, 133 of the Code of Criminal Procedure, 1973 began with the case of Ratlam Municipality v. Vardhi Chand\textsuperscript{30} which was the first case to deal with the powers of the Divisional Magistrate in regard to anti-pollution laws.

In this case, the Supreme Court upholding the order of the Sub- Divisional Magistrate issued supplementary directions, "specifically enjoining upon the Municipal authorities and the State Government to carry out certain directions which included the direction that the Municipal Council and the

\textsuperscript{30} AIR 1980 SC 1622, 1980(4)SCC162
State Government shall take steps to stop the pollution caused by the alcohol plant and the sub-Divisional Magistrate will use his powers under Sec. 133 of the Criminal Procedure Code to abate the nuisance so created. While commenting on the plea of the Municipality that it lacked the necessary funds to deal with the problem and prevent the nuisance. Krishna lyer,J, remarked, "A profligate statutory body or pachyderm governmental agency may legally defy duties under the law by urging in self-defense a self-created bankruptcy or perverted expenditure budget."

Following the ruling of the Supreme Court in Ratlam's case the Madhya Pradesh High court enlarged the scope of environment protection strategies. In Krishna Gopal v. State of Madhya Pradesh a drug factory licensed in disregard of the objections from the local residents, caused noise and air pollution, disturbing the peace of a heart-patient living nearby. On a complaint by the patient's wife, the District Magistrate issued orders for the removal of the factory. The High Court endorsed this order. The plea of the factory Management was that the act amounted only to private nuisance and not to public nuisance. The Court held that whether or not it affects one individual or more, hazardous activity with the potential to do harm to more than one is to be viewed as public nuisance and the remedy under the law should be made available.
In M.C. Mehta v. Union of India\textsuperscript{31} (Oleum Leakage case) involving the Shriram Enterprises the District Magistrate of Delhi, on December 6, 1985 had made an order under Sec. 133 of the Code of Criminal Procedure, 1973 requiring the Shriram Enterprises within two days from the date of that order to cease carrying on the occupation of manufacturing and processing the hazardous and lethal chemicals and gases including Chlorine, Oleum, super chlorine, phosphate etc. at their establishment and within seven days to remove such chemicals and gases from the said place, and not to keep again or store them at the same place and to show cause why the order should not be enforced.

The Supreme Court on perusing the order pointed out the inadequacies in that order which had the effect of virtually dividing the urgency of the action to be taken. But the Court never doubted the competence of the District Magistrate in exercising that jurisdiction which remains in tact in the face of Sec. 52 of the Air (Prevention and Control of Pollution) Act. In this case, in addition to the provisions of Sec. 133 of the Code of Criminal Procedure those of the Factories Act, 1948 were also invoked.

The observations of Mrs. Jesudurai. J, in M. Ramaswamy v. Sub Divisional Magistrate, Coimbatore\textsuperscript{32} though made with reference to the Air Prevention and Control of Pollution act, 1974 vis-a-vis Sec. 133 of the Code

\textsuperscript{31} 1986(2) SCC176
\textsuperscript{32} 1988 (15) Indian Judicial Reports. Mad. 497.
of Criminal Procedure, 1973 equally hold good in respect of Water (Prevention and Control of Pollution) Act, 1974 vis-a-vis Sec. 133 of the Code of Criminal Procedure, with the result that there is no inconsistency or repugnancy between the two legislations so as to infer an implied repeal of the relevant provisions of the Code by virtue of the over-riding provisions contained in Sec. 52 of the Act. The two legislations are complementary to each other and are intended to function side by side in their parallel channels; they do not even overlap.

(iv) ROLE OF JUDICIARY IN INTERPRETING THE PRINCIPLES OF ENVIRONMENTAL LAW

(i) The Polluter Pays Principle

In Indian Council for Enviro-Legal Action v. Union of India\(^3\) the principle was adverted to, and it was stated by the Court:

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\text{"... We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. ... Once the activity carried on its hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity}\\ \]

\(^3\) (1996) 3 SCC 212
irrespective of the fact whether he took reasonable care while carrying on his activity.”

In Vellore Citizens’ Welfare Forum v. Union of India\textsuperscript{34} the Supreme Court said,

“... The Polluter Pays Principle’ as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of the pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of ‘Sustainable Development’ and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.”

(ii) The principle of Absolute Liability:

In the Oleum Gas Leak Case\textsuperscript{35} the Supreme Court laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and to those residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be absolutely liable to

\textsuperscript{34} (1996) 5 SCC 647
\textsuperscript{35} AIR 1987 SC 1986
compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without negligence on its part. The larger and more prosperous the enterprise, greater must be the amount of the compensation payable for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise. By declaring so the principle laid down in Rylands v. Fletcher\(^{36}\) modified.

By virtue of this modification it was no longer permissible in the case of injury by use of hazardous substances to prove merely that the injury was not foreseeable or that there was no unnatural use of the land or premises by the factory as was the position under the law laid down in Rylands v. Fletcher.

The above principle (called the ‘no-fault liability principle was in fact incorporated in Sec.3 of the National Environmental Tribunal Act, 1995 read with the special definition of the words ‘accident’ in Sec.2 (a) and ‘handling’ in Sec.2 (e) and ‘hazardous substances’ in Sec.2 (f) of that Act. Sec.2 (a) and 2 (e) refer to hazardous substances which are used or handled and which cause the accident. Section 3 dealing with the principle of liability states as follows:

\(^{36}\) LR 3 HL 330.
"Sec. 3 Liability to pay compensation in certain cases on principle of no fault:

(1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident, the owner shall be liable to pay compensation for such death, injury or damage under all or any of the heads specified in the Schedule.

(2) In any claim for compensation under sub-section (1) the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person. ...

The application of this principle to the cases decided by the Court could be seen in the case of Indian Council for Enviro-Legal Action v. Union of India37 and certain other cases decided by the Supreme Court of India.

(iii) The Precautionary Principle

The "precautionary principle" requires the State to anticipate, prevent and attack the causes of environmental degradation; M.C Mehta v. Union of India38.

37 (1996) 3 SCC 212.
38 1997 (3) SCC 715.
In Vellore Citizens' Welfare forum v. Union of India the Supreme Court of India referred to the Precautionary Principle and declared it to be part of the customary law of our country.

In A.P. Pollution Control Board case the Supreme Court referred to this principle and said:

"There is nothing to prevent decision-makers from assessing the record and concluding \texttt{that there} is inadequate information on which to reach a determination. If it is not possible to make a decision with 'some' confidence, then it makes sense to err on the side of caution and prevent activities that \texttt{may cause serious or irreversible harm}. An informed decision can be \texttt{made} at a later stage when additional data is available or resources permit further research. To ensure that greater caution is taken in environmental management, implementation of the principle through judicial and legislative means is necessary."

(iv) The principle of Burden of Proof.

In the Vellore Case the Supreme Court observed,

\begin{footnotesize}
\begin{enumerate}
\item[(39)] (1996) 5 SCC 647.
\item[(40)] (1992) 2 SCC 718.
\item[(41)] (1996) 5 SCC 647
\end{enumerate}
\end{footnotesize}
"... the onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign".

In A.P. Pollution Control Board case it was observed by the Supreme Court that the 'Precautionary Principle' has led to the new 'Burden of Proof' principle. In environmental cases where proof of absence of injurious effect of the action is in question, the burden lies on those who want to change the status quo. This is often termed as a reversal of the burden of proof, because otherwise, in environmental cases, those opposing the change could be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less polluted state should not carry the burden and the party, who wants to alter it, must bear this burden."

(v) The Principle of Sustainable Development

In Vellore Citizens Welfare Forum case it was stated that there is today no conflict between 'development' and safeguarding ecology; it is a viable concept which has been developed after two decades from Stockholm to Rio; it is a principle which seeks to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystem.

42 (1999) 2 SCC 718.
43 1996 5 SCC 647
In Narmada Bachao Andolan v. Union of India\textsuperscript{44} it was pointed out that when the effect of a project is known, then the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to preserve the ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation."

\textbf{(vi) The principle of public trust}

The public trust doctrine was referred to by the Supreme Court in M.C. Mehta v. Kamal Nath\textsuperscript{45}. The doctrine extends to natural resources such as rivers, forests, sea shores, air etc. for the purpose of protecting the ecosystem. The State is holding the natural resources as a trustee and cannot commit breach of trust. In the above case, the State's order for grant of a lease to a motel located on the Bank of the River Beas which resulted in the Motel interfering with the natural flow of water, was quashed and the public company which got the lease was directed to compensate the cost of restitution of environment and ecology in the area.

\textsuperscript{44} 2000 10 SCC 664.
\textsuperscript{45} 1997 1 SCC 388.
In the exercise of their jurisdictions under the ordinary laws and the constitutional law the Courts have dealt with various kinds of problems affecting the environment; they have dealt with the cases brought before them by the affected parties and the cases brought before the courts in public interest. In some cases the courts have determined the rights of the parties and in some others they have called upon independent agencies to examine the related issues and report the matter back to the court. The decisions of the Courts in all such cases show a new phase of jurisprudence.

The problems dealt with by the Courts have been analysed as belonging to two categories; one pertaining to the problems of Environment Pollution and the other pertaining to the problems of Environment Protection. In both the cases the approach adopted by the courts for dealing with the matters has been highlighted.

A - Problem of Environmental Pollution:

1. Environmental Pollution arising from unhygienic conditions:

The first case of considerable importance in this regard is the case of Ratlam Municipality v. Vardhichand[46]. The facts of the case were that the

[46] AIR 1980 SC 1622
Residents of a locality within limits of Ratlam Municipality tormented by stench and stink caused by open drains and public excretion by nearby slum dwellers moved the Magistrate under Sec.133 of the Code of Criminal Procedure to require Municipality to do its duty towards members of the public. The Magistrate gave directions to Municipality to draft a plan within six months for removing nuisance. In appeal, the Sessions Court reversed the order. The High Court approved of the order of the Magistrate. In further appeal, the Supreme Court also affirmed the Magistrate's order.

The High Court had observed, where there existed a public nuisance in a locality due to open drains, heaps of dirt, pits and public excretion by humans for want of lavatories and consequential breeding of mosquitoes, the Court could require the Municipality under Sec.133 of the Code of Criminal Procedure and in view of Sec.123 of the Municipalities Act to abate the nuisance by taking affirmative action on a time bound basis. When such order was given, the Municipality could not take the plea that notwithstanding the public nuisance financial inability validly exonerated it from statutory liability.

The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, Section 123 of the Municipalities Act has no saving clause when the Municipal Council is penniless. Otherwise, a profligate statutory body or pachydermic governmental agency may legally
defy duties under the law by urging in self defence a self-created bankruptcy or perverted expenditure budget. That cannot be.

When the matter came before the Supreme Court by way of Criminal Appeal the Supreme Court relied upon Article 47 which Article is in Par IV of the Constitution as a Directive Principle of State Policy and refers to improvement of Public Health. The Supreme Court observed that the High Court has taken a correct view and followed the observations of this Court in Govind Singh v. Shanti Sarup 47 where it has been observed: We are of the opinion that in a matter of this nature where what is involved is not merely the right of a private individual but the health, safety and convenience of the public at large, the safer course would be to accept the view of the learned Magistrate, who saw for himself the hazard resulting from the working of the bakery.

The Supreme Court observed, "Public nuisance because of pollutants being discharged by big factories to the detriment of the poor sections, is a challenge to the social justice component of the rule of law. Likewise, the grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature's pressure, bashfulness becomes a luxury and dignity a difficult art. A responsible municipal council constituted for the precise purpose of preserving public

47 AIR 1979 SC 143
health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self governing bodies. Similarly, providing drainage systems—not pompous and attractive, but in working condition and sufficient to meet the needs of the people, cannot be evaded if the municipality is to justify its existence. A bare study of the statutory provisions makes this position clear."

The principles laid down in the above case were followed in B.L. Wadhera v. Union of India\textsuperscript{48} and directions were issued to the Municipal Corporations of Old Delhi and New Delhi, for removal of garbage etc.

1. Environmental Problem arising from Water Pollution:

The case of Indian Council for Enviro Legal Action v. Union of India\textsuperscript{49} is one of the landmark judgments of the Court. This case was concerning serious damage to Mother Earth by certain industries producing toxic chemicals. It was found that the water in wells and streams turned dark and dirty rendering it unfit for human consumption or even for cattle and also for irrigation. The Court gave several directions including the closure of industries. The decision in the M.C. Mehta v. Union of India\textsuperscript{50} – Oleum Gas Case, as to absolute liability in the case of Pollution or damage to life by

\textsuperscript{48} AIR 1996 SC 1969
\textsuperscript{49} (1996) 3 SCC 212.
\textsuperscript{50} (1987) 1 SCC 395
hazardous industries, was reaffirmed. The view of one of the Judges (Ranganatha Misra CJ) in Union Carbide Corporation v. Union of India\(^{51}\) that the principle of absolute liability laid down in Oleum Gas Case was obiter was held to be wrong. A Committee of Experts appointed by the Supreme Court concluded that there was direct correlation between the sludge from the industries, contamination in the wells and streams. Objections to the expertise of the members of the Committee for arriving at the above conclusion were rejected by the Court. The Court referred to Article 48A and Article 51-A (g) of the Constitution of India and to the Statement of Objects and Reasons appended to the Bill which later became the Water (Prevention and Control of Pollution) Act, 1974, to the Air (Prevention and Control of Pollution) Act 1981 and the Environment Protection Act, 1986 and to its Preamble and finally to the Hazardous Wastes (Management and Handling) Rules, 1989. The Court then referred to the ‘Polluter Pays Principle’. It said that Sections 3 and 5 of the Environment (Protection) Act, 1986 enabled the Central Government to provide remedial measures in this behalf. The Court gave a number of directives. .."

In M.C. Mehta v. Union of India\(^{52}\) the matter that had come before the Supreme Court was about the tanneries discharging untreated noxious and poisonous effluent into Ganga River. Referring to the Water (Protection and Prevention of Pollution) Act, 1974 and the Environment Protection Act, 1986 and the Polluter Pays Principle, the Supreme Court directed closure of the

\(^{51}\) (1991) 4 SCC 5894
\(^{52}\) (1997) 2 SCC 411
tanneries, relocation and payment of compensation to the employees. The
Court observed:

"Water is the most important of the elements of the nature. River
valleys are the cradles of civilization from the beginning of the world.
Aryan civilization grew around the towns and villages on the banks of
the River Ganga. Varanasi which is one of the cities on the Banks of
the River Ganga is considered to be one of the oldest human
settlements in the world. It is the popular belief that the River Ganga is
the purifier of all but we are now led to the situation that action has to
be taken to prevent the pollution of the water of the River Ganga since
we have reached a stage that any further pollution of the River water is
likely to lead to a catastrophe. There are today large towns inhabited
by millions of people on the banks of the River Ganga. There also
large industries on its banks. Sewage of the Towns and the Cities on
the Banks of the River and the trade effluents of the factories and other
industries are continuously being discharged into the river. It is the
complaint of the petitioner that neither the Governor nor the people are
giving adequate attention to stop the pollution of the River Ganga.
Steps have, therefore be taken for the purpose of protecting the
cleanliness of the stream in the River Ganga which is in fact the life
sustainer of a large part of the northern India."
In another case: M.C. Mehta v. Union of India\textsuperscript{53} the Supreme Court dealt with the problem of 'ground water' management. It directed the Ministry of Environment & Forests, Government of India to appoint the Central.

3. Environmental Problem arising from Air Pollution:

Right to clean air and the need for slowly eliminating 'diesel' for motor vehicles came up in M.C. Mehta v. Union of India\textsuperscript{54} Right to life was held to include right to good health and health care. M.C. Mehta v. Union of India\textsuperscript{55}.

Vehicular pollution in Delhi City, in the context of Articles 47 and 48 of the Constitution had come up for consideration in M.C. Mehta v. Union of India\textsuperscript{56} It was held that it was the duty of the Government to see that the air was not contaminated by vehicular pollution. It was held that the Right to clean air stemmed from the Right to Life.

As a result of the intervention of the Supreme Court in this matter the following measures were taken by the concerned authorities at Delhi in controlling pollution to some extent:

i. Lowering of sulphur content in Diesel;

ii. Ensuring the supply of only lead free petrol;

\textsuperscript{53} (1997) 11 SCC 312.
\textsuperscript{54} (1999) 6 SCC 9.
\textsuperscript{55} 1999 (6) SCC 9.
\textsuperscript{56} (1998) 6 SCC 60
iii. Requiring the fitting of catalytic converters;
iv. Directing the supply of pre-Mix 2T oil for lubrication of engines of 2 wheelers and 3 wheelers.
v. Directing the phasing out of grossly polluting old vehicles;
vi. Directing the lowering of the Benzene content in Petrol.;

In M.C. Mehta v. Union of India57 the Supreme Court directed the introduction of 'lead free petrol supply, and phasing out of commercial vehicles which were more than 15 years old.

B - ENVIRONMENT PROTECTION:

Complex issues of Science and Technology arise in Court proceedings concerning Water and Air Pollution. For example, we have serious problems of cleansing our rivers, streams and lakes, and cleansing, disposal or recycling of waste and sewage, disposal of toxic waste, hospital waste, nuclear waste, radio active material, removal of the effect of detergents, waste-oils, dealing with genetically modified organisms, adverse effects of pesticides, asbestos etc. A variety of industries like Steel, Textiles, Leather post different types of problems of pollution. Air pollution from industries and from traffic today is quite grave. Then we have problems of climatic changes,

depletion of ozone etc. We have serious problems of noise both at the workplace and in residential areas. There are no proper systems for Environment Impact Assessment. There are problems faced in the matter of protection of forests and wild life. The list of such issues is unending.

(i) The role of the Court in protecting the Ecology

In Sachidanand Pandey v. State of West Bengal\textsuperscript{58} the Supreme Court laid down a policy decision as to its approach towards the problems brought before the Courts regarding Ecology:

\textbf{"Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48-A of the Constitution. and Article 51 A (g) \ldots\"} When the Court is called upon to give effect to the Directive Principles and the Fundamental Duties the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded, In appropriate cases, the Court may go further but how much further must depend on the circumstances of the case. The Court may always give necessary directions."

\textsuperscript{58} AIR 1987 SC 1109.
In M.c.Mehta v. Union of India\textsuperscript{59} the Supreme Court held that one of the principles underlying environmental law is that of sustainable development. This principle has the meaning that such development which also sustains ecology can take place. The essential features of sustainable development are (a) Precautionary Principle, and (b) the Polluter Pays Principle.

In Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh\textsuperscript{60} the Supreme Court referred to the ancient civilization of our country. In this case the exploitation of limestone from the Himalayas and its adverse effect on the ecology and environment had came up for consideration. The Supreme Court stated:

"Over thousands of years, man had been successfully exploiting the ecological system for his sustenance but with the growth of population, the demand for land has increased and forest growth has been and is being cut down and man has started encroaching upon Nature and its assets. Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken. The consequences of such interference with Ecology and Environment have now come to be realized. It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain."

\textsuperscript{59} (2002) 4 SCC 356.
\textsuperscript{60} AIR 1987 SC 359.
The top soil may be preserved without being eroded and the natural setting of the area may remain intact. ... tapping of (natural) resources have to be done with requisite attention and care, so that ecology and environment may not be affected in any serious way (and) there may not be any depletion of the water resources and long term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation. ... Preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation and let us reminds every Indian citizen that it is his fundamental duty as enshrined in Article 51 (A) (g) of the Constitution."

(ii) Role of the Court in Protecting the Forest

In Rural Litigation & Entitlement Kendra v. State of UP 61 the Supreme Court was concerned with the problem of Mining that was going in the Forest Area in Doon Valley. Dealing with the problem the Supreme Court quoted the following from the Ancient Scriptures of India,
"Man's Paradise is on Earth; This living world is the beloved place of all; it has the blessings of Nature’s bounties; Live in a lovely spirit." (Atharva Veda, 5.30.6).

The Court pointed out that it was in these forests in the Himalayas that thousands of years ago, our Saints did penance and lived. In ancient times, the trees were worshipped as gods and prayers for the upkeep of forests were offered to the Divine. With the developments in Science and the outburst of population, the degradation of forests started. The Earth’s crust was washed away and places like Cherapunji in Assam which used to receive an average rainfall of 500 inches in one year started facing drought occasionally. After referring to the contribution of forests for rainfall, pure air, good health and to the unfortunate cutting of forests which was responsible for the washing away every year of nearly 6000 million tones of soil the Supreme Court referred to the Amendment of the Constitution in 1976 when Article 48-A and 51 A (g) were inserted and ‘Forests’ were shifted from Entry 19 of List II to List III.

As to preservation of forests, a series of orders were passed by the Supreme Court in T. N. Godavarman Thirumalpad v. Union of India62 Directions were given under the Forest (Conservation) Act, 198. In yet

another case dealing with the preservation of forests the Supreme Court appointed a High Powered Committee.

In Tamil Nadu Godavarman Thirumulpad v. Union of India The felling and removal of felled trees in the State of Jammu & Kashmir was prohibited by the Court.

(iii) Role of the Court in the Preservation of the Ancient Monument (Taj Mahal at Agra):

In M.C. Mehta v. Union of India – also known as the Taj Trapezium Case-- the Supreme Court, after accepting the report of NEERI directed that, with a view to balance industry and environment, the coke/coal industry within Taj Trapezium Zone must changeover to the use of natural gas or otherwise the industries should stop functioning or shift. The Court gave directions regarding the compensation payable to workmen who may be discontinued pursuant to the directions. It relied upon the Dr. Varadarajan Committee Report of 1995.

(iv) Preservation of Tourist Spots:

The preservation of Tourist Spots near Delhi at the Badkal and Surajkund lakes (located in Haryana bordering Delhi) had come up in M.C.

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63 (1997) 7 SCC 440.
64 AIR 1988 SC 2553
65 (1998) 2 SCC 416
Mehta v. Union of India. The Supreme Court referred to Articles 47, 48A and 51A (g) as well as Article 21; the Concept of Sustainable Development and the Precautionary Principle and banned construction activities within the radius of 1 km. from the Lakes. It clarified that, in view of the Reports of Experts from NEERI and the Central Pollution Control Board, it was not advisable to permit large sale construction activity in the close vicinity of the lakes because if such construction is permitted, it would have an adverse impact on the local ecology. It could affect water levels under the ground and could also disturb the hydrology of the area. NEERI had recommended a green belt of 1 km., radius. The Court however clarified that where plans were already sanctioned they should have the further clearance of the Central Pollution Control Board and the Haryana Pollution Control Board.

(v) Waste Management:

The issue of Urban solid Waste Management had come up for consideration in Almitre H. Patel v. Union of India and the Court appointed a Committee to go into this question.

The appointment of a Committee by the Supreme Court for management of hazardous wastes lying in the docks/ports/ICDS had come up in Research Foundation for Science v. Union of India. The authorities having custody of wastes were directed not to release or auction the wastes

67 (1999) 1 SCC 223
until further orders. This was in the context of the Hazardous Wastes

In State of Madhya Pradesh v. Kedia Leathr and Liquor Ltd.\textsuperscript{68} the
Supreme Court pulled up the Madhya Pradesh state Pollution Control Board
for not taking any interest and, in fact, acting negligently in the matter of
discharging its functions since various industries were discharging pollutants
in contravention of the provisions of the law.

Pollution arising from effluents from distillery attached to a Sugar
Industry was considered in Bhavani River Sakthi Sugars Ltd. RE\textsuperscript{69}.

In M. C. Mehta v. Union of India\textsuperscript{70} the Court criticized the casual
manner in which the Pollution Control Board gave its consent. The Supreme
Court referred to the constitution of an appropriate authority under Sec.3 (3)
of the Environment Protection Act for the National Capital Territory.
Regarding such committees for other States, directions were again issued in
T. N. Godavarman Thirumalpad v. Union of India\textsuperscript{71}.

\textsuperscript{68} (2001) 9 SCC 605.
\textsuperscript{69} (1998) 6 SCC 335.
\textsuperscript{70} (1998) 2 SCC 435
\textsuperscript{71} (1999) 9 SCC 151.