CHAPTER-VI

JUDICIAL TRENDS IN INDIA

6.1. Introduction

The environment is the resource base for all life and is the basis on which many of our fundamental rights depend,\(^1\) as humans we have the right to live in a clean and healthy environment, with clean water and unpolluted air.\(^2\) We have the right to preserve the environment for aesthetic, non-utilitarian reasons and safeguard it for future generations. Globally, environmental protection is equally important for everyone, as human life cannot be sustained in a degraded environment. As the environment significantly affects each and every one of us, its preservation warrants vital protection at a high political level. The courts have a broad range of powers to deal with environmental matters including injunctions, declarations, fines or imprisonment or remediation orders.\(^3\)

In any democratic set up, many a times the judiciary is conserved to be one of the most important pillars for balancing the other pillars.\(^4\) India has enacted various laws at almost regular intervals to deal with the problems of environmental degradation.\(^5\) At the same time in India the judiciary's role to interpret the law and where there is a doubt in the meaning and implementation of a particular legislative provision; the courts may look to the words of statutes or to public policy to imply a requirement of environmental sustainability.\(^6\) Creative interpretation of the law by the courts can help protect environmental rights and shape laws towards the principles of sustainability. In this sense, court decisions can shape laws in the legal protection in environmental

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\(^2\) Article 21 of the Indian Constitution.


rights. The courts can identify shortcomings in the law and call for law reform. Judges play a pivotal role in improving environmental protection under Article 32 and Article 226 of Indian Constitution; decisions made by judges create legal precedents thereby building a form of common law for the environment. The courts have been more effective in developing a body of procedural law than substantive environmental law. The outcomes from such litigation further promote environmental rights as it act as a deterrent for others.

In the Indian scenario, especially environment protection related matters; the judiciary has played a proactive role. Assessment of judicial role in environment environmental protection is a tough task, as judiciary has been consistently adjudicating on environment protection matter since the last three decades. there appears to be a growing consensus amongst the media and in academic circle that the general approach of the higher judiciary in environmental matters could be described as being 'activist' in nature.

Post the Bhopal gas tragedy, which can arguably be considered to be the trigger for the ambit of Article 32 and 21 in the widest possible manner. The expansive interpretation of word ‘life’ in Article 21 has led to significant development of an environmental jurisprudence in India. The Principle of Inter-generational Equity, the Principle of Precaution and Prevention, the Polluter Pays Principle, the Principle of Social Responsibility and the Principle of Sustainable Development etc., were developed into being the law of land by the judiciary through its pronouncements.

The role of a continuing mandamus has been used to monitor the implementation of orders by seeking frequent reports from governmental agencies on the progress made in the same. Judiciary has developed environmental jurisprudence in this country not only through important matters that have been brought before it through Public Interest Litigation and Judicial activism. The judiciary have done a great and

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8 Ibid.
11 DP Srivastava Memorial Lecture on ‘The Role of Judiciary In Environmental Protection’ by Justice K G Bala Krishnan (March 20, 2010) p.3.
precedental work in the area of environmental protection since decades ago and it is all possible to save the environment in India on account of judicial activism otherwise the scene would have been quite different had the responsibility to protect the environment remained in the administrative hands. The judiciary has dealt with a number of environment problems and set precedents and guidelines to save the environment.

In this chapter researcher has tried to reflect the positive activism of Judiciary. As judiciary being an apex body delivering most important pronouncements in favore of environment and seems to be protector of environment.

6.2. Judiciary Role for Environment Protection

Around 1980, the Indian legal system particularly the field of environmental law, underwent a sea change in terms of discarding its moribund approach and, instead, charting out new horizons of social justice. This period was characterized by not only administrative and legislative activism but also judicial activism. Now judiciary has taken up the challenges to curb this problem of pollution by introducing the concept of “PIL and Judicial Activism”. By which there has so many landmark judgments have been delivered by the courts of India. Therefore, researcher made an attempt to examine the role of courts in evolving a new jurisprudence in environment protection by way of judicial decisions. In the matter of A.D.M. Jabalpur v. Shivkant Shaklee, Justice Beg uncritically approved the emergency regime and mentioned that he understand the care and concern bestowed by the state authorities upon the welfare of detenus who are well housed, well fed and well treated, is almost maternal. However, the emergency brought about several atrocities, an engineering student detained in Kakayam police camp had died under police torture during the emergency period. While there were nationwide bans on food articles to be consumed or usage of other necessary facilities for the survival of human life, nobody could think of environment per se. Initially the judicial response to the problems of the environment had been far from ideal and the Courts outlook may be regarded as insensitive towards environmental issues and problems because of the unstable political scenario, secular riots and insufficient infrastructure.

13 P. Leela Krishnan, ENVIRONMENTAL LAW IN INDIA, Butterworth India, New Delhi (1999) p.111.
14 AIR 1976 SC 1349.
Till 1980s not much contribution was made by the courts in preserving the environment, but one of the earliest cases which came to the Supreme Court of India formed the foundation of judicial response. The Supreme Court of India started showing concern about environmental problems much before the Rio Treaty and long before it started reaching out to international treaties to provide a jurisprudential basis for its decisions. One such innovative interpretation of the Apex Court is extending criminal sanctions to the environmental problems e.g. the Ratlam Municipal Council case.

In *Ratlam Municipality v. Vardhichand*, Judge Krishna Iyer highlighted the need for environmental consciousness and has elaborated the scope of the criminal law concept of public nuisance. In this case the Supreme Court increased the range of section 133 of the Code of Criminal Procedure to uphold a magistrate's order directing the municipality to carry out its duty towards residents. The municipality was ordered to remove the nuisance caused to the residents of the locality by the existence of open drains and of public refuse from nearby slum dwellers. The court observed that the non-availability of funds cannot be pleaded as ground for non-performance of municipality’s statutory obligations. The case put forth the need of clean environment in all aspects.

6.2.1. Common Law and Environment Protection - The common law aspects of Environmental law in India are nuisance, trespass, negligence and strict liability. Pollution cases relating to riparian rights and prior appropriation also fall under this branch of law. Even after the independence this corpus of law continues to be valid and operative as the Constitution facilitates its continuance. The Law of Torts in India is found on English law and it had frequently been applied in India for pro-environmental issues until India acquired Independence. In that period certain courts were empowered by their charter to administer English law as such, while others were required by their incorporating statutes, to act according to “Justice, equity and good conscience” in the absence of any specific law. In *Waqhela Rai Sanji v. Sheikh Masluddin*, this phrase was interpreted to mean the rules of English law, if found applicable to Indian society and circumstances.
6.2.1.1. Nuisance -Under the common law principle the nuisance is concerned with unlawful interference with the person’s right over wholesomeness of land or of some right over or in connection with it. But for an interference to be an ‘actionable nuisance’ the conduct of the defendant must be unreasonable. Remedies for public nuisance under common law The Code of Criminal Procedure contain provisions to tackle the problems of public nuisance. For the prevention of danger to human life health or safety the magistrate can direct a person to abstain from acts. The problem that presented itself before the Court was in one sense no different from a daily spectacle in the overpopulated townships of India: the absence of proper drainage systems creating nuisance of garbage accumulation on the streets. The response of the Court was however fascinatingly different: it reached out to Section 133 of the Criminal Procedure Code that confers upon the Magistracy summary power to give directions for abatement of a public nuisance and elected the Judicial Magistrate to frame a scheme to provide a working drainage system of sufficient capacity to meet the needs of the people. The scope of this provision as an instrument of pollution control was used in early cases like Deshi Sugar Mill v. Tupsi Kahar.17

In Deshi Sugar Mill v. Tupsi Kahar,18 the Patna High Court held that the law of nuisance under Section 133 Cr. P.C. would be applicable to pollution related cases also. The Court also recognized that the magistrate has the power to proceed against the discharge of effluents injurious to the health of the community.

Earlier Case: Dattatraya v. Gopisa,19 it was alleged by the plaintiff that a construction of a cess pool and latrine constructed by the defendant had caused private nuisance to him and the other neighbors because from it offensive smell was emanated causing inconvenience and injury to their health. In this context a remit was ordered with a view to find out the degree of nuisance being committed there and what ways and means could be devised with the help of medical or sanitary expert’s evidence to prevent such nuisance.

In Raghunandan v. Emperor,20 the Allahabad High Court upheld the magistrate’s order forbidding the factory owner from operating his factory engines from 9 pm to 5 am on the ground that the noise emanated from the factory is ‘injurious to the physical

17 AIR 1926 Pat.506.
18 AIR 1926 Pat.506.
19 AIR 1927 Nag 236.
20 (1935) ILR10LUCK320.
comfort of the community. The Court held nuisance of such a nature would undoubtedly be injurious to the physical comfort and those living in the neighborhood of the factory and the matter attracts action under Section 133 of Cr. P.C.

In *Shaukat Hussain v. Sheodayal*, the Madhya Pradesh High Court limited the application of the provision of Section 133 Cr. P. C. only to actual nuisance and held that it should not be used in the case of potential nuisance.

In modern times a changing trend has been noticed and rights of persons for comfortable occupation in quite residential surroundings has been recognized. The first case in relation to this trend was reported in *Govind Singh v. Shanthi Swaroop*.

In this case Supreme Court had examined the emerging parameters of public nuisance. The case related to the nuisance of smoke from a bakery causing injury as smoke was emitted from its chimney in such a manner that it was injurious to health safety and convenience of people living in the close proximity of the bakery. The Supreme Court on special leave to appeal noted that the evidence disclosed the emission of smoke injurious to the health and physical comfort of the people living or working in the proximity of the appellant’s bakery. Approving the view of the magistrate that the use of the oven and chimney was virtually playing with the health of the people’ the Supreme Court held 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 hazards resulting from the working of the bakery. The Court did not ask for sufficient evidence’ as to whether there was public nuisance and whether the smoke would be dangerous to the people living close by in order to support the position. The Court did not go behind the findings of the local inspection nor did it insist that the magistrate should not have relied on sufficient scientific evidence nor did it ask for reports from experts. The Court relied on the findings of the sub-divisional magistrate believing him to have made a local inspection of the site.

In Municipal Council, *Ratlam v. Vardhichand and others* the Supreme Court identified the responsibilities of the municipal council towards environmental protection and developed the law of public nuisance in the Code of Criminal

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22 AIR 1979 SC 143,145.
Procedure as a potent instrument for the enforcement of their duties. When the case came before the Supreme Court Justice V.R. Krishna Iyer made a thorough examination of the two main issues. The municipal legislation which casts a duty on the municipality to maintain clean roads and clean drains, and the provisions of the Section 188 of the Indian Penal Code (1860), which prescribes punishment to a person contravening the directions of the magistrate. According to Justice Iyer, the imperative tone of these provisions demands a mandatory duty. When an order is given under Section 133 of the Cr.P.C., the municipality cannot take the plea that notwithstanding the public nuisance, its financial inability validly exonerated it from statutory liability. Further, the Court held that the processes that are envisaged under Section 133 of the Cr.P.C. have a social justice component. The remedies available, and the powers exercisable, under the provision are conducive to the demands of the rule of law necessitated by the conditions of developing countries.

In Krishna Gopal v. State of Madhya Pradesh, the Madhya Pradesh High Court has gone one step forward and ordered the closure of the factory even though the contention of the defendant was that the inconvenience to the inmates of a house is not of public nuisance but only private in nature. The High Court observed: "It is not the intent of the law that the community as a whole or large number of complainants should come forward to lodge their complaint or protest against the nuisance: that does not require any particular number of complainants. A mere reading of Section 133 (1) of Cr.P.C. would go to show that the jurisdiction of sub-divisional magistrate can be invoked on receiving a report of a police officer or other information and on taking such evidence if any, as he thinks fit. These words are important. Even on information received the sub-divisional magistrate is empowered to take action in his behalf for either removal or regularizing a public nuisance". The Court further said that smoke and noise emanated from the glucose manufacturing factory is injurious to health and physical comfort of the community, and dismissed the revision petition filed by the defendant.

In Madhavi v. Thilakan, the Kerala High Court upheld the order of the magistrate under Section 133 Criminal Procedure Code against the nuisance created by the automobile workshop in a residential area.

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23 1986 CRLJ 396 MP.
24 1989 CRLJ 499.
In *Ajeet Mehta v. State of Rajasthan*,\(^{25}\) the Section 133 Cr. P. C. was very much recognized by the Rajasthan High Court and the court upheld the orders of the magistrate in the removal of loading, unloading and stocking off fodder business near a residential locality causing serious health hazard.

*In Himmat Singh v. Bhagwana Ram*,\(^{26}\) In this case there were fodder tali in a residential colony to which fodder was brought daily during the night by trucks which were unloaded in the morning. This caused intolerable noise, emanating offensive smell and spreading dust-containing particles of fodder cut. It was held as public nuisance.

In *Pranab Kumar Chakraborty v. Mohamed Akram Hussain*,\(^{27}\) the Gauhati High Court decided that with the help of an order under Section 133 Cr. P. C. a landlord could not evict a tenant. The Court further said that magistrate must satisfy himself in an objective manner in finding out whether there is nuisance or likelihood of nuisance.

In *Jayakrishna Panigrahi v. Hrisikesh Panda*,\(^{28}\) the Division Bench of the Rajasthan High Court set a differing view on ‘public nuisance’ under Section 133 Cr. P. C. The Court held that despite the heading ‘public nuisance’ in the section the literal and unambiguous meaning shall be given to the expression ‘nuisance’ and that the provision shall apply to a case where the interest of a single individual or of a few individuals are affected.

In *Nagarjuna Paper Mills’s case*,\(^{29}\) it was observed by the A.P. High Court that the power relating to air and water pollution, the Water Act, 1974 has taken away the power of the Sub-Divisional Magistrate to pass an order to close a factory causing pollution.

In a case of *Shriram Gas Leak*, involving a leakage of Oleum gas which resulted in substantial environmental harm to the citizens of Delhi, the Apex court held that the quantum of damages awarded must be proportionate to the capacity and magnitude of

\(^{25}\) 1954 CRLJ 1596.
\(^{26}\) 1988 Cri LJ 614 (Raj).
\(^{27}\) 2002 (2)SCR.
\(^{28}\) 1992 Cri.LJ 1056.
the polluter to pay. However, the Apex Court has deviated from this test in the *Bhopal Gas Tragedy*\(^{30}\).

6.2.1.2. Principal of Strict Liability-The rule enunciated in *Rylands v. Fletcher*,\(^ {31}\) by Blackburn J. is that the person who for his own purpose brings on his land and collects and keeps there anything likely to be a mischief, if it escapes, must keep it as its peril, and if he does not do so is prima facie even though, he will be answerable for all the damage which is the natural consequence of its escape. The doctrine of strict liability has considerable utility in environmental pollution cases especially cases dealing with the harm caused by the leakage of hazardous substances.

In *M.C. Mehta v. Union of India* and *Sri Ram Food and Fertilizers Industries v. Union of India*,\(^ {32}\) in this case the Supreme Court declared the law of strict and absolute liability in air pollution gas leak cases. The court held that an enterprise which is engaged in any hazardous or inherently dangerous industry which could pose a threat to public health and the safety of the persons in or outside the factory or residing in the neighborhood owed an absolute and non-deligatable duty to the community to ensure that no harm resulted to anyone. It should conduct its hazardous and inherently dangerous activities with highest standards of safety. If any harm is caused, the enterprise would be absolutely liable to compensate for it. The enterprise will not be able to plead that it took all reasonable care and that harm occurred without any negligence on its part and directed the Sriram Food and Fertilizers Industries to deposit Rs.20 lakhs by way of security for payment of compensation to the victims of Oleum gas. Shriram Food and Fertilizer Industries, a unit of Delhi Cloth Mills Ltd., was engaged in manufacture of several chemicals like caustic soda, chlorine, sulphuric acid, alum etc. in a thickly populated area of Delhi, on 4th and 6th December, 1985 (exactly after one year of the Bhopal gas tragedy) a major leakage of Oleum gas took place from one of the units of Shriram Food and Fertilizer Industries affecting large number of workers and public, and even an advocate died due to this leakage. The court as stated above declared the law of strict liability and thereby provided relief to the victims. The court though did not allow the government to stop the caustic soda plant but ordered to comply with certain stringent conditions which


\(^{31}\) (1868) LR 3 HL 330.

\(^{32}\) AIR 1987 SC 965.
are to be applied by Shriram Food and Fertilizer Industries before starting the manufacturing process so that such incident may not take place. Giving justification for restart of industry court observed. When science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. It is not possible to adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard or risk to the community. If such policy were adopted it would mean the end of all progress and development. Such industries even if hazardous have to be set up since they are essential for economic development and advancement and of course wellbeing of the people. Further if the industrial unit is closed about 4,000 workmen will be out of employment and such closure will lead to their utter impoverishment. Further the chlorine is a must for purifying the water and as such its supply is a must and therefore various considerations on both sides have to be weighted and balanced and then the decision has been made.

6.2.2. Constitutional Interpretation of Environment

6.2.2.1. Forty Second Amendment- The 42nd Amendment to the Constitution of India added Article 48A and 51A (g) which comes under the Directive Principle of State Policy and the Fundamental Duties respectively. The Supreme Court of India in Sachidanand Pandey v. State of West Bengal33 stated that the Court is bound to bear in mind the above said articles whenever a case related to Environmental problem is brought to the Court. Article 48A34 states: “The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.” Article 51 A (g) imposes a duty upon every citizen of India to protect and improve the natural environment and confers right to come before the Court for appropriate relief.35 The Apex Court in Damodar Rao v. S.O. Municipal Corporation36 held that the environmental pollution and spoliation which is slowly poisoning and polluting the atmosphere should also be regarded as amounting to violation of Article 21 of the Indian Constitution.

33 AIR 1987 SC 1109.
34 Article 48A of Indian Constitution.
35 Article 51A(g) of Indian Constitution.
36 AIR 1987 AP 171.
6.2.2.2. The Right to Live with Human Dignity - The concepts ‘the right to life’ ‘personal liberty and procedure established by law’ contained in Article 21 of the Constitution were in a state of inertia during the year 1976 the year of the national emergency, although there were a few decisions during this period which rekindled the hope that constitutional provisions had not been rendered completely meaningless.\(^{37}\) Tables were turned by the landmark decision of the Supreme Court in *Maneka Gandhi v. Union of India*,\(^{38}\) which held that the right to life and personal liberty guaranteed under Art 21 can be infringed only by a just fair and reasonable procedure. According to the Court the right to life is not confined to mere animal existence but extends to the right to live with basic human dignity. *There are numbers of the following judgments which clearly highlight the active role of judiciary in environmental protection these are follows:*

The Supreme Court included the right to whole some environment under Article 21 of the constitution in *Rural Litigation and Entitlement Kendra Dehradun v. State of U.P.*\(^{39}\) It was the first reported case of its kind in the country invoking the issue relating to right to pollution free environment and ecological imbalance. The Court has interpreted that the right to life as a right to have a living atmosphere, congenial human existence.

*In Charan Lal Sahu Case*,\(^{40}\) The Supreme Court in this case said, the right to life guaranteed by Article 21 of the Constitution includes the right to a wholesome environment.

In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*,\(^{41}\) Bhagwati, J., speaking for the Supreme Court, stated that: “*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, shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and coming with fellow human beings.*”

\(^{37}\) P. Leela Krishnan, ENVIRONMENTAL LAW IN INDIA, Butterworth India, New Delhi (1999) p. 112.
\(^{38}\) AIR 1978 SC 597.
\(^{39}\) Ibid.
\(^{41}\) AIR 1981 SC 746.
In Subhash Kumar v. State of Bihar,\(^{42}\) the Court observed that: “The right to live is a fundamental right under Article 21 of the Constitution, and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution.”

The Supreme Court, in its interpretation of Article 21, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.

In M.K. Sharma v. Bharat Electric Employees Union,\(^{43}\) the Court directed the Bharat Electric Company to comply with safety rules strictly to prevent hardship to the employees ensuing from harmful X-ray radiation. The Court did so under the ambit of Article 21, justifying the specific order on the reason that the radiation affected the life and liberty of the employees.\(^{44}\)

In Rural Litigation and Entitlement Kendra v State of Uttar Pradesh,\(^{45}\) the Supreme Court based its five comprehensive interim orders on the judicial understanding that environmental rights were to be implied into the scope of Article 21.\(^{46}\)

In Jaganath v. Union of India & Others\(^ {47}\) (Shrimpcultur Case), the Supreme Court (while dealing with Ecology and Shrimp prawn Fishing culture industries in coastal areas) held sea-coast and beaches are gifts of nature and any activity polluting the same cannot be permitted. The Green Bench of the Madras High Court ordered closure of the STERILITE INDUSTRIES, TUTICORIN for non-compliance and directed to reopen after compliance and implementation of the direction and conditions imposed and after the Expert Committee’s Report. With reference to pollution caused by Tanneries in the Palar River Basin and Dindugal, Green Bench of Madras High Court directed the tanners to pay the compensation in bi-monthly installments after classifying the polluter Tanners into three categories and in some cases ordered closer for non-compliance and non-payment.

\(^{42}\) AIR 1991 SC 420.
\(^{43}\) 1987 (1) SCALE 1049.
\(^{44}\) Maneka Gandhi v.Union of India, AIR 1978 SC 597.
\(^{45}\) AIR 1985 SC 652.
\(^{47}\) 1997 (2) SCC 87.
In *Murli S. Deora v. Union of India*, the Supreme Court gave utmost importance to the health of the public affected by smoking and banned smoking in public places. It was stated that non-smokers cannot be compelled to become helpless victims of pollution caused by cigarette smoke.

In *State of H.P. v. Ganesh Wood Products*, the Supreme Court invalidated forest based industry, recognizing the principle of intergenerational equity as being central to the conservation of forest resources and sustainable development.

In *State of Tamil Nadu v. Hindstone*, the Supreme Court has held that rivers, forests, minerals and such other resources constitute a nation’s natural resources. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way.

In *N. Balakrishnan & others v. State of Tamil Nadu and the District Collector of Karur*, this Court held that sands which are deposited for several centuries are the natural resources to serve the benefit of the public and cannot be permitted to be exploited for commercial reasons indiscriminately since these resources, once removed, cannot be replaced in the next generation. The consequence of absence of sand in the river bed would seriously affect the ecology and the environment and hence, the Court upheld the ban on the use of machineries so as to remove sand. The Court has also directed the Government to de-limit the river banks, ban the removal of sand below a particular level, form a River Management Committee and remove the encroachments on the river bed.

In *Sterlite Industries v. Union of India*, the judiciary has expanded the scope of Article 21 from the point of environmental protection to include right to shut down the industries if there is no other measure.

In *Varadharajalu Naidu & Others v. District Collector of Tiruvellore*, the respondents were directed to take immediate action for arresting unlawful quarrying

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50 AIR 1981 SC 711.
53 2013 (4) SCC 575.
and to restore the river to its natural formation. In the very recent case of *T.N. Godavarman Thirumulpad v. Union of India*, \(^{55}\) a case concerning conservation of forests, Justice Y.K. Sabharwal, held: “considering the compulsions of the States and the depletion of forest, legislative measures have shifted the responsibility from States to the Centre. Moreover, 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. The Constitution enjoins upon this Court a duty to protect the environment. In its efforts to protect the environment, the Supreme Court and the Indian Judiciary in general have relied on the public trust doctrine, precautionary principle, polluter pays principle; the doctrine of strict and absolute liability, the exemplary damages principle, the pollution fine principle and intergenerational equity principle apart from the existing law of land.

### 6.2.3. Public Liability and Public Nuisance

The case of *M.C. Mehta v. Union of India and Ors.*, \(^{56}\) discusses the concept of Public Liability. This case is also known as Oleum Leakage Case. It is a landmark judgment in which the principle of Absolute Liability was laid down by the Supreme Court of India. The Court held that the permission for carrying out any hazardous industry very close to the human habitation could not be given and the industry was relocated. The instant case evolved the “Deep Pocket Principle”. This judgment guided the Parliament to add a new chapter to the Factory Act, 1948. The Public Liability Act was passed and the policy for the Abatement of Pollution Control was also established.

In the *Ratlam Municipal Council v. Vardhichand*, \(^{57}\) in this case the issue of public nuisance was dealt by the Supreme Court, the key question raided by the Supreme Court of India is that “whether by affirmative action a court can compel to a statutory body to carry out its duty to the community by constructing sanitation facilities?”. The Supreme Court of India promptly evoked section 133 of the Criminal Procedure Code saying that the public power of the magistrate under the code is a public duty to the members of the public who are victims of such public nuisance. The Court have also declared that a responsible municipal counsel constituted for the purpose of


\(^{55}\) 2006 (14) SCALE 87 108.

\(^{56}\) 1986 SCR (1) 312.

\(^{57}\) AIR 1980 SC 1622.
preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are the non-negotiable facets of human rights.

6.2.4. Judiciary and the Judgment on Bhopal Gas Tragedy Case - In 2010, after 26 years of the world’s most tragic industrial accident, eight accused, convicted of causing death by negligence and sentenced to two years imprisonment. However, the accused were fined about Rs 1 lakh each and immediately granted bail. It was a disturbing end to the case which has eroded the credibility and raised questions on the Indian judiciary. In the aftermath of the disaster the biases and priorities of the medical, administrative, legal and other system with poor class were exposed on many occasions. For example, according to Sarangi the claims of people under 18 were not registered and children born to gas exposed women shown to be physically and mentally retarded through medical research were not considered to be entitled to claim damages. Further, during the medical examination three most important tests viz, pulmonary function test, exercise tolerance test and ophthalmic were not carried out on over 80 percent of claimants who were medically examined. Injuries caused to the brain, reproductive and immune systems were not even considered for assessment. To add up the misery of sufferers, the claims of many affected persons have not been registered and less than one-fifth of the people whose claims have been registered have received humiliatingly low compensation: 5,325 cases related to death claims received Rs 93,000 and for personal injuries Rs 24,000. According to the Bhopal Gas Tragedy Relief and Rehabilitation Department a total compensation of Rs1548 crores has been awarded to 57,426,6 cases till 2008. The Supreme Court of India ordered the government to pay out remaining amount of 15 billion rupees, a part of the original compensation kept in reserve bank since 1992. This major industrial disaster has attracted considerable attention towards the misery of the survivors and judicial failure for providing any relief to them. Commentators have described the settlement of US $ 470 million in the Bhopal case as another calamity for the gas victims, travesty of justice, pyrrhic victory, shocking and monstrous outcome of an agreement between two wrong doers at the back of the victims. Further, in criminal proceedings, the court has given its decision based on technical grounds and evidence submitted by CBI. But the victims’ groups and activists, who had sought more serious charges, criticized the verdict. Bhopal is a case of mass devastation where justice got delayed
and denied. Bhopal disaster raised some legal and ethical questions which are still unanswered. For example, there is a lack of clarity regarding legal and social responsibility of parent companies towards their subsidiaries, norms and regulations for TNC engaged in hazardous activities and the stand of government stuck in between attracting foreign business investment while simultaneously protecting the environment and its citizens. While in race of economic development, governments may resist enforcing environmental legislations on TNCs, but NGOs have acted as the watchdogs on the TNCs. Post Bhopal disaster, some judges responded through aggressive judicial decisions and with creative innovation to develop environmental law in India. However, in some instances the inconsistent and inappropriate behavior of the courts was evident, depending upon the case and the size of the problem, before it. 

The main stimulus for environmental judicial activism came from Bhopal Gas tragedy. After which, there was a widening of existing environmental laws in the country and increase in judicial activity through PIL.

6.2.5. Judicial Activism and Environment Protection - Judicial activism in environmental matters has been well documented and analyzed threadbare. The judicial activism can mean many things: interpretation of legislation, the creation of a new law or the exercise of policy by extensive judicial review of executive action. The revolutionary decisions of few liberal judges took up the task of developing mechanisms for having a check on environmental and human rights violation through judicial activism. There have a correlation between Environment and Judicial Activisms. Judiciary keeps active role in protecting environment. Keeping in mind the correlation the Supreme Court of India have come forwards and pronounced a number of judgments and issued various directions with the objectives of securing the protection and preservation of Environment and Ecosystem. The Supreme Court of India worked from case to case for making environment as a fundamental right and then extending its meaning to right for compensation, clean water and air.

judicial activism is used to refer to the extended arm of judiciary' or the increasing active interest that the judiciary is taking in our everyday life. This activism' on the part of the judiciary derives its constitutional legitimacy from Art. 141 of the Constitution which lays down that the Supreme Court's declaration of law is final and Art.13 which empowers the judges to declare any law null and void if it was found to be against the provisions of Part III of the Constitution. Its areas of activity are widening such as Public Interest Litigation, Writ Petitions under Article 32, and interpretation of Articles 12, 14, 19, 21 etc. 62The court has taken significant measures, for example, shifting tanneries from Kolkata and Kanpur in order to save river Ganges, forcing commercial vehicles to convert to Compressed Natural Gas (CNG) and shifting polluting industries out of Delhi to improve air quality of the city by way of judicial activism and PIL. 63

6.2.6. Public Interest Litigation and Environment Protection - The most significant procedural innovation in the field of environmental jurisprudence has been the incorporation of the well-known concept of Public Interest Litigation (PIL). PIL is a result of judicial activism and a mechanism to agitate public issues before the courts within the confines of legal and constitutional mould.64 Litigation in India, till the early 1970s can be said to be in its rudimentary form for the reason that it could only be used for obtaining remedy against violation of private vested interests. The drastic change came into the Indian judiciary in 1980s that liberalized the concept of locus standi65 and gave rise to the very important concept i.e. Public Interest litigation. The first PIL was filed 40 years ago in case Mumbai Kamgar Sabha v. M/s Abdulbhai Faizullahbai and others.66 The seed of the PIL was sown by Justice V.R. Krishna Iyer and Justice P.N. Bhagwati in an attempt to bring within its ambit wider issues largely affecting the interest of the general public. It would be pertinent to note that earlier there was no provision as such in the environmental legal framework by way of which a third party may approach the Court in case the party was not the direct victim of the environmental problems. The judiciary evolves methods to bring justice to the victims by providing locus standi to persons or voluntary organizations that act in public

65 Locus standi-meaning of this term "only the aggrieved can approach the court not the public spirited person".
66 1976 (3) SCC 832.
interest by taking up cases on behalf of affected people. As a leading Indian jurist Dr. Upendra Baxi said that for the first time, the Supreme Court of India became a Supreme Court of Indians. Now citizens can challenge environmentally unsound practices on behalf of others, even though they may not directly suffer any harm. A plethora of PIL’s are filed regularly before the Supreme Court and the High Courts and they have played a pivotal role in creating environmental jurisprudence. The courts monitored implementation of existing laws and policies and issued directions in various types of cases to ensure a safe and clean environment along with development. For the first time indication towards a wholesome environment as part of life was given in the *R.L and Kendra, Dehradun v. State of U.P.*, popularly known as Dehradun Quarrying Case. The case categorically emphasized that the right to life without clean and hygienic environment is meaningless. In this case the court observed that industrial development is necessary for economic growth of the country. If, however, industrial growth is sought to achieve by haphazard and reckless working of mines, resulting in loss of life, property and basic amenities like the supply of water, creating thereby an ecological imbalance, there may ultimately be no real economic growth and no real prosperity. It is necessary to strike a proper balance. Often, financial deficiency, political pressure, technical and manpower incompetence serve as reason for non-performance of government agencies. The court can intervene through appropriate order to make implementing agency work, which deliberately not performing its duties. Subsequently the Ganga Water Pollution case, Delhi Vehicular Pollution case, Oleum Gas Leak case, Tehri Dam case, Narmada Dam case, Coastal Management case, and T.N. Godavarman case, all of which came to the attention of the court through the mechanism of PIL. Most of these cases were initiated by the Non-Governmental Organisations (NGOs) and activists on behalf of individuals, groups or public at large, in order to ensure stricter implementation of constitutional provisions various statutory enactments particularly aimed at protecting the environment as well as the enforcement of fundamental rights. As per records out of 104 environment relating cases from the year 1980-2000 in the Supreme Court, 54 were filed by individuals not directly affected and 28 filed by NGOs. Thus it can be

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68 AIR 1985 SC 1259.
inferred that recognition and growth of Public Interest Litigation has become a catalyst for environmental justice.\textsuperscript{70}

In September, 2014, the supreme court while acting on PIL filed by M.C Mehta for cleaning drive of river Ganges, alleged government by saying that it seems that the steps taken so far will not lead to the cleaning of the countries holiest river even after 200 years and asked for formulating stage wise plan.\textsuperscript{71} The high volume of pollution in the river Ganges poses a severe threat to its health and life. The situation is critical and cleaning of river is a subject of political agenda. About Rs. 20,000 core has been spent on the cleanup programme called Ganges Action Plan, which was launched under the then prime minister Rajiv Ghandi in 1985, but with little to show on the ground\textsuperscript{72}. The project is reinvigorated following Prime Minister Narendra Modi’s personal commitment to clean up the river and the center has given clearance for six new sewage treatment plants (STPs). A number of case on the issue of ganga pollution have been initiated through PIL in Supreme Court, in where the Central Government, state pollution boards were asked to monitor the enforcement of its orders.

In the case of Ratlam Municipal Council v. Vardhichand,\textsuperscript{73} where the Municipal body of the city of Ratlam, had failed to perform its duty of ensuring establishment of a proper drainage system on the grounds of paucity of funds, the Supreme Court had introduced the concept of PIL for the first time and had observed that a responsible Municipal Council constituted for the precise purpose of preserving public health, cannot escape from its primary duty by pleading financial inability.

In 1985, M.C. Mehta filed the first river pollution case as a writ petition under Article 32 of the Indian constitution. Among other thing, the petition was directed at the Kanpur Municipality’s failure to stop sewage from polluting the Ganga River. Mehta in his PIL asked the court to give directions to the government authorities and tanneries in Khanpur to prevent polluting the river with waste water and trade effluents. Justice Kuldeep Sings expanded this petition to include all large cities in the

\textsuperscript{72} Supreme Court for Stage-wise Plan to Restore Ganga to its Pristine Glory, The Economic Times (2014).
\textsuperscript{73} AIR 1980 SC 1622.
Ganga basin. In Ganga pollution (tanneries) case, the Supreme Court noticed industries were inevitably disregarding the instructions of pollution board and deliberately violating the consent conditions for their operation. It also observed negligence of boards in their functioning. According to Mehta the court ordered more than 5000 industries located in the Ganga Basin to install effluent treatment plants (EPT) and air pollution control devices.\(^{74}\) In this case a wide range of offenders, the Court has on its own taken it to be considered as a representative action thereby issuing orders and binding the entire class. In a case to prevent pollution of river Ganga filed against Kanpur tanneries and Kanpur Municipal Council, notices were issued by the court to all concerned industries and authorities requiring them to make an appearance.\(^{75}\)

In *L. K. Koolwal v. State of Rajasthan*,\(^{76}\) the Rajasthan High Court observed that a citizens duty to protect the environment under Article. 51-A (g) of the Constitution bestows upon the citizens the right to clean environment. The judiciary may go to the extent of asking the government to constitute national and state regulatory boards or environmental courts. In most cases, courts have issued directions to remind statutory authorities of their responsibility to protect the environment. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns and cities.

In *Indian Council for Environ-legal Action v. Union of India*,\(^{77}\) Supreme Court felt that such conditions in different parts of the country being better known to them, the high courts would be the appropriate forum to be moved for more effective implementation and monitoring of the anti-pollution law.

In *Subhash Kumar v State of Bihar*,\(^{78}\) the Supreme Court upheld that affected persons or even a group of social workers or journalists, but not at the instance of a person or persons who had a bias or personal grudge or enmity could initiate PIL for environmental rights.


\(^{75}\) M.C. Mehta v. Union of India, AIR 1988 SC 1037.

\(^{76}\) AIR 1988 Raj 2.

\(^{77}\) AIR 1996 SC 1446.

\(^{78}\) 1991 AIR 420.
The apex court in landmark judgment of *S.P. Gupta v. Union of India*,79 elucidated in the following words: "but we must hasten to make it clear that the individual who moves to court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activated at the instance of such person and must reject his application at the threshold".

In *Tarun Bharat Sangh v. Union of India(The Sariska Case)*,80 the petitioner through a public interest litigation (PIL) brought to the notice of the Court that the State Government of Rajasthan, though professing to protect the environment by means of the notifications and declarations, was itself permitting the degradation of the environment by authorising mining operations in the area declared as "reserve forest". In order to protect the environment and wildlife within the protected area, the Supreme Court issued directions that no mining operation of whatever nature shall be carried on within the protected area.

Similarly, T.N. Godavarman Thirumulpad filed a petition in the Supreme Court to protect the deforestation of the Nilgiris forest by illegal timber operations.81 From a mere matter of preventing illegal operations in one forest, the SC expanded this case as a means to reform the country’s forest policy.

Some of the important judgments of the courts which come through the PIL, an individual, a group of individuals, or an executive magistrate, suo motu, can move the courts. This provision has proved to be a potent weapon for regulatory measures82, as well as affirmative action83 by the government and local bodies for protection of the environment, provided that the executive magistrates exercise their discretion independently without undue influence from their bureaucratic or political superiors. These PILs have given the judiciary enormous scope for intervening in environmental matters. Indian courts have been categorical in their adoption of the values of sustainable development and the precautionary principle, which asserts that a lack of scientific certainty should not be used as a reason for postponing measures to prevent

79 AIR 1982 SC 149.
80 1992 Supp (2) SCC 448.
83 Municipal Council, Ratlam v. Vardhichand, AIR 1980 SC 1622, where local bodies were directed to provide amenities.
environmental degradation where there are threats of serious and irreversible damage if the action is not taken. The range of issues addressed by PIL has been very broad. It extends from compassion to animals, privileges of tribal people and fishermen, to the ecosystem of Himalayas and forests, ecotourism, land use patterns, and vindication of an eco-malady of a village. The cause of environment being taken up through PIL was championed by a wide spectrum of people in society. Lawyers, association of Lawyers, environmentalists, groups and centers dedicated to environmental protection and forest conservation, welfare forums including those for tribal welfare, societies registered under the Societies Registration Act and consumer research centers have successfully agitated environmental issues before courts. Urban social activists, the women's wing of a society for animal protection, chairman of rural voluntary associations and residents of housing colonies were also involved in advocating environmental issues. While in some cases letters were considered as writ petitions and in some others paper reports induced judicial action. The powers of the Supreme Court to issue directions under Article 32 and those of High Courts to issue directions under Article 226 have attained great significance in environmental litigation.

84 Satyavani v. Andhra Pradesh Pollution Control Board, AIR 1993 AP 257.
90 Pradeep Krishen v. Union of India, AIR 1996 SC 2040.
94 Nagarahole Badakatu Hakku Shapana Samithi v. State of Karnataka, AIR 1997 Kant 288
98 Satyavani A v. Andhra Pradesh Pollution Control Board, AIR 1993 AP 257.
In Resident of Sanjay Nagar and others v. State of Rajasthan and others case,\textsuperscript{103} court ordered to unauthorized slaughter house to be closed. In this case the petitioner sought a direction to the respondents to close down the slaughter houses illegally operating in Sanjay Nagar and also for a direction to the State Pollution Control Board, Rajasthan, India to take step for preventing creation of air pollution generated by functioning of the slaughter houses in the area in question. According to facts and circumstances, Rajasthan High court held decision that having regard to the circumstances of the case and keeping in view the health of the residents, we are having the view that unauthorized and illegal slaughter houses in the area should be closed immediately. Bringing environmental awareness by means of education as a compulsory subject of study shall be implemented at least from 2004- 2005.\textsuperscript{104}

In Essar Oil Ltd. v. Halar Utkarsh Samiti & Ors.\textsuperscript{105} Essar Oil Ltd. sought to lay pipelines to pump crude oil from a single buoy mooring in the sea across a portion of a Marine National Park and Marine Sanctuary to their oil refineries in Jamnagar District. On the basis of public interest litigation petitions the High Court had held that Essar was not allowed to lay its pipelines. The Supreme Court had to answer the question whether pipelines carrying crude oil could be permitted to go through the Marine National Park and Sanctuary. The answer to the question depended on an interpretation of the provisions of three statutes, the Wild Life (Protection) Act, 1972, the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986. The court emphasized that the interpretation had to be done keeping in mind the Stockholm Declaration of 1972 which had been described as the "Magna-Carta of our environment". It stressed the importance of maintaining a balance between economic developments on the one hand and environment protection on the other. But in a sense all development was an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population had resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which people were breathing. However, there needed not necessarily be a deadlock between developments on the one hand and the environment on the other. The objective of all

\textsuperscript{103} AIR 2004 Raj 116 DB.
\textsuperscript{104} Amit Dubey and B.K Tiwari, "Role Of The Judiciary In Environmental Protection" 7 (1) Journal of Environmental Research and Development (July-September 2012).
\textsuperscript{105} AIR 2004 SC 1834.
laws on environment should be to create harmony between the two since neither one could be sacrificed at the altar of the other. The State had to, while directing the grant of a permit in any case, see that the habitat of the wild life was at least sustained and that the damage to the habitat did not result in the destruction of the wild life. That was the implicit major premise contained in the definition of the word "sanctuary" in the Wildlife Protection Act. It could not be said, however, that the invariable consequence of laying pipelines through ecologically sensitive areas has been the destruction or removal of the wild life. There was no a priori presumption of destruction of wild life in the laying of pipelines. These observations however were not meant as a general licence to lay a net work of pipelines across sanctuaries and natural parks.

In *State of Uttranchal v. Balwant Singh Chaufal* 106 In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

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106 AIR 2010 SC 2550.
(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.¹⁰⁷

In *Zulfiquar Hussain v. Government Of Nct Of Delhi*,¹⁰⁸ The present writ petition has been filed as a public interest litigation seeking issuance of directions to Ministry of Environment, Government of NCT of Delhi-Respondent to take steps under the provisions of Environment (Protection) Act, 1986 and other relevant Acts to prohibit the manufacture, use, sale and purchase of synthetic manja /nylon kite thread and all similar synthetic threads used in kite flying and to enforce the prohibition throughout Delhi. The contention is that the thread used for flying of kites which is made of nylon or synthetic material and other toxic materials, often referred to as "Chinese manja" though it has nothing to do with China, being razor sharp is very dangerous and is capable of causing severe injuries to birds and humans.

The positive approach of the court towards environmental litigations by allowing third party representations has led to dramatic transformation of the environmental jurisprudence in India, both in form and substance.¹⁰⁹ Often, judicial proceedings are a costly affair therefore, by allowing the NGOs and other public-spirited people to make representations for the poor and disadvantaged people of the society; the court has made an attempt to secure the rights of the people while granting compensation and other remedies to those affected by environmental degradation.

Unlike other litigations, the frequency and different types of orders/directions passed periodically by the Supreme Court in environmental litigation and its continuous engagement with environmental issues has evolved a series of innovative methods in

environmental jurisprudence.\textsuperscript{110} One of the most important concerns is that the PIL mechanism is becoming increasingly personalized, individualistic and attention-seeking. Thus the judiciary developed the PIL in environmental matters with the help of numerous methods as the relaxing of standing, suo motu actions, interpreting the law in a manner congenial to environmental protection, framing various remedies and applying international environmental law in the national legal system and evolved the important guiding principles for the protection of environment.

\textbf{6.2.7. Principles and Doctrines Propounded By the Indian Judiciary-} The Supreme Court has laid down that the Precautionary Principle and the Polluter Pays Principle are essential features of Sustainable Development. These concepts are part of Environmental Law of the country.

\textbf{6.2.7.1. Doctrine of Absolute Liability-} The Bhopal Gas Leakage tragedy and Shriram Foods & Fertilizers Industries' cases had awaken the environmentalists, social workers, the general public and government institutions towards a new thinking and initiations regarding the environment issues. These types of tragedies compelled the legislature to take firm measures to prevent the mass tragedies and environment hazards. Such galvanization led to legislative and administrative activism in India. Industrial accidents involving environmental hazards gave rise to judicial concern also. In India the Rule of absolute liability for the harm caused by industry engaged in hazardous and inherently dangerous activities is a newly formulated doctrine free from the exceptions to the strict liability rule in England. The Indian rule was evolved in \textit{MC Mehta v. Union of India},\textsuperscript{111} which was popularly known as the Oleum Gas Leakage case. It was public interest litigation under Article 32 of the Constitution of India filed by a public spirited lawyer seeking the closure of a factory engaged in manufacturing of hazardous products. While the case was pending oleum gas leaking out from the factory affected several persons. One person living in the locality dies. Applications were immediately filed for award of compensation to the victims. The Supreme Court could have avoided a decision on their applications by asking parties to approach the appropriate subordinate court by filing suits for compensation. Instead of it the Court proceeded to formulate the general principles of liability of industries engaged in hazardous and inherently dangerous activity.


\textsuperscript{111} AIR 1986 SC 1086.
In Union Cambridge v. Union of India,112 (Bhopal Gas Leakage Case)

In the midnight on December 3rd 1994, the worst industrial tragedy occurred in Bhopal, in the Union Cambridge chemical plant. About 40 tons of toxic methyl isocyanate gas leaked into the atmosphere which caused the death of 3500 people and about 2 lakhs people injured grievously. In 1995 the Indian government sued the parent company namely the Union Cambridge Company at New York. The American court held that the local court does not have jurisdiction to try the case. Hence the Union Government filed a case in the District Court of Bhopal claiming 3,900 crores as compensation. The district judge ordered for a sum of 350 crores which was reduced as 250 crores by the High Court. In the appeal before the Supreme Court of India a compromise settlement was effected for a sum of 470 million US dollars payable to Indian Government on behalf of the victims as full and final settlement. It is to be noted that after the settlement the Union Cambridge Company was allowed to continue to function, as the court was satisfied that all the safety and control measures had been fully complied with by the company. The Court has successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the concerned statute. There have also been occasions when the judiciary has prioritized the environment over development, when the situation demanded an immediate and specific policy structure.113

6.2.7.2. The Precautionary Principle - The precautionary principle or precautionary approach states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action.

This principle allows policy makers to make discretionary decisions in situations where there is the possibility of harm from taking a particular course or making a certain decision when extensive scientific knowledge on the matter is lacking. The principle implies that there is a social responsibility to protect the public from

exposure to harm, when scientific investigation has found a plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result.

In *Vellore citizen welfare forum v. Union of India*,\(^ {114}\) It was one of the milestone cases which was famously called as the Tamil Nadu Tanneries Case. There was a large-scale pollution caused due to the high volume of discharge of untreated effluent by the tanneries in Tamilnadu. They affected agricultural lands, waterways, rivers and also the underground water sources. Because of this the availability of drinking water had become scarce and the agricultural lands became unfit for cultivation. The tannery owners contended that there was a gig foreign exchange earnings due to the tannery business. The Supreme Court in a way to harmonise the balance between economic development and welfare of the people urged all the High Courts to constitute a ‘Special Green Bench’ to monitor and deal with the matter of environment cases. The Supreme Court in this case directed the central government to constitute an environment protection fund as per the ‘Polluter Pays Principle’ a polluter fine of Rs10,000/- in each case of pollution is collected and deposited in the fund. The fund is used to compensate the affected persons and also to restore the damaged environment.

This authority shall implement the precautionary principle and the polluters pays principle, and identify the

(1) Loss to the ecology/environment;

(2) individuals/families who have suffered because of the pollution, and then determine the compensation to reverse this environmental damage and compensate those who have suffered from the pollution. The Collector/District Magistrates shall collect and disburse this money.

The precautionary principle came to be directly applied in *M.C. Mehta v. Union of India*,\(^ {115}\) for protecting the Taj Mahal from air pollution. Expert studies proved that emissions from coke/coal based industries in the Taj Trapezium (TTZ) had damaging effect on the Taj. The court observed that the atmospheric pollution in TTZ has to be eliminated at any cost. They stated that not even one percent chance can be taken

\(^{114}\) AIR 1996 SC 2715.

\(^{115}\) 1997(2) SCC 353.
when-human life apart-the preservation of a prestigious monument like Taj is involved. They further stated that “the environmental measures must anticipate, prevent and attack the causes of environmental degradation. The “onus of proof” is on an industry to show that its operation with the aid of coke /coal is environmentally benign. It is rather proved beyond doubt that the emissions generated by the use of coke/coal by the industries in TTZ are the main polluters of ambient air.

Beginning with Vellore Citizens’ Welfare Forum v. Union of India116, the Supreme Court has explicitly recognized the precautionary principle as a principle of Indian environmental law.

More recently, in A.P. Pollution Control Board v. M.V. Nayudu,117 the Court discussed the development of the precautionary principle.118 Furthermore, in the Narmada case119, the Court explained that “When there is a state of uncertainty due to the lack of data or material about the extent of damage or pollution likely to be caused, then, in order to maintain the ecology balance, the burden of proof that the said balance will be maintained must necessarily be on the industry or the unit which is likely to cause pollution.”120

6.2.7.3. Polluter Pays Principles - “If anyone intentionally spoils the water of another ... let him not only pay damages, but purify the stream or cistern which contains the water...” – Plato

Polluter Pays Principle has become a very popular concept lately. ‘If you make a mess, it’s your duty to clean it up ‘- this is the fundamental basis of this slogan. It should be mentioned that in environment law, the ‘polluter pays principle’ does not allude to “fault.” Instead, it supports a remedial methodology which is concerned with repairing natural harm. It’s a rule in international environmental law where the polluting party pays for the harm or damage done to the natural environment.

The polluter pays' principle came about in the 1970's when the importance of the environment and its protection was taken in world over. The polluter pays' principle as interpreted by the Court means that the absolute liability for harm to the

116 AIR 1996 SC 2715.
117 AIR 1999 SC 812.
118 S. Jagannath v. Union of India (Shrimp Culture case) AIR 1997 SC 811.
environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

The Supreme Court has come to sustain a position where it calculates environmental damages not on the basis of a claim put forward by either party, but through an examination of the situation by the Court, keeping in mind factors such as the deterrent nature of the award. However, it held recently that the power under Article 32 to award damages, or even exemplary damages to compensate environmental harm, would not extend to the levy of a pollution fine. The “polluter pays” rule has also been recognized as a fundamental objective of government policy to prevent and control pollution. Vellore Citizen’s Welfare Forum v. Union of India, The Supreme Court has declared that the polluter pays principle is an essential feature of the sustainable development.

6.2.7.4. Public Trust Doctrine—The Public Trust Doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership. To further justify and perhaps extract state initiative to conserve natural resources, the Court enunciated Professor Joseph Sax’s doctrine of public trust, obligating conservation by the state. In M.C. Mehta v. Kamal Nath, the Court held that the state, as a trustee of all natural resources, was under a legal duty to protect them, and that the resources were meant for public use and could not be transferred to private ownership. The public trust doctrine, as discussed by court in this judgment is a part of the law of the land.

The Right to Pollution Free Environment was declared to be a part of Right to Life under Article 21 of the Constitution of India in the case of Subhash Kumar v. State of Bihar and Ors. Right to Life is a Fundamental Right which includes the Right of enjoyment of pollution free water and air for full enjoyment of life. The applicability of the public trust doctrine to groundwater was discussed in a recent case Perumatty.

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121 See also the explanation for the principle of absolute liability in M.C. Mehta v. Union of India (Oleum Gas case), AIR 1987 SC 965, and its subsequent application in Indian Council for Environmental Legal Action v. Union of India, (1996) 3 SCC 212.
124 AIR 1996 SCC 212.
125 (1997) 1 SCC 388.
126 1991(1)SCC 598.
Grama Panchayat v. State of Kerala,\(^\text{127}\) and Hindustan Coca-Cola Beverages (P) Ltd v. Perumatty Grama Panchayat.\(^\text{128}\) The issue is not yet resolved and the appeal against the decision of the High Court of Kerala is pending before the Supreme Court.

6.2.7.5. Doctrine of Sustainable Development and Inter-Generational Equity- As per Brundtland Report, Sustainable development signifies “development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.\(^\text{129}\)”. There is a need for the courts to strike a balance between development and environment. The definition of sustainable development which is used most often comes from the report of the Brundtland Commission, in which it was suggested that the phrase covered “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” However, different levels of societies have their own concept of sustainable development and the object that is to be achieved by it. For instance, for rich countries, sustainable development may mean steady reductions in wasteful levels of consumption of energy and other natural resources through improvements in efficiency, and through changes in life style, while in poorer countries, sustainable development would mean the commitment of resources toward continued improvement in living standards.\(^\text{130}\)

How has this phrase been understood in India? Perhaps the answer lies in the decision of the Supreme Court in Narmada Bachao Andolan v. Union of India,\(^\text{131}\) wherein it was observed that “Sustainable development means what type or extent of development can take place, which can be sustained by nature/ecology with or without mitigation.” In this context, development primarily meant material or economic progress.

In N.D. Jayal and Anr v. Union of India and Ors\(^\text{132}\), the apex court noted that "the adherence of sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. The courts have attempted to provide a balanced

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\(^{127}\) 2004 (1) KLT 731.
\(^{128}\) 2005 (2) KLT 554.
\(^{129}\) S. Shamla Kumar, ENVIRONMENTAL LAW AN INTRODUCTION, Surya Publication Chennai (2001) pp. 122, 123.
\(^{131}\) 2000 (10) SCC 664 at p.727.
\(^{132}\) AIR 2004 SC 867.
view of priorities while deciding environmental matters. As India is a developing country, certain ecological sacrifices are deemed necessary, while keeping in mind the nature of the environment in that area, and its criticality to the community. This is in order that future generations may benefit from policies and laws that further environmental as well as developmental goals. This ethical mix is termed sustainable development, and has also been recognized by the Supreme Court in the *Taj Trapezium* case.133

In *State of Himachal Pradesh v. Ganesh Wood Products*,134 the Supreme Court invalidated forest-based industry, recognizing the principle of inter-generational equity as being central to the conservation of forest resources and sustainable development.135

*In Rural Litigation and Entitlement Kendra v. State of UP*136 The court for the first time dealt with the issue relating to the environment and development; and held that, it is always to be remembered that these are the permanent assets of mankind and or not intended to be exhausted in one generation.

*In Vellore Citizen’s Welfare Forum,*137 In this case, the Supreme Court observed that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-system. In *Sachidanand Pandey v. State of West Bengal*138, the Supreme Court observed “whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48.

In *Karnataka Industrial Areas Development v. Sri C. Kenchappa & Ors,*139 the respondents are agriculturists, who possessed grazing lands for cattle, were affected by the acquisition of lands by KIADB. These lands were part of the green belt in the comprehensive development plan and also included lands reserved for the residential purposes. They filed a petition under Article 226 for restraining appellant from converting land of for any industrial or other purpose as they wanted to retain their

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133 *M.C. Mehta v. Union of India*, AIR 1997 SC 734.
134 AIR 1996 SC 149.
135 *Indian Council for Enviro-Legal Action v. Union of India* (CRZ Notification case), (1996) 5 SCC 281. The Court noted that the principle would be violated if there were a substantial adverse ecological effect caused by industry.
136 AIR 1987 SC 1037.
137 AIR 1996 5 SCC 647.
138 AIR 1987 SC 1109.
139 AIR 2006 SC 2038.
land for grazing of cattle. The Karnataka High Court quashed the acquisition proceedings under Section 3 (1) of the Karnataka Industrial Areas Development Board Act, 1966 to extent of land which were reserved for grazing cattle, agricultural and residential purpose. It held that for maintaining ecological equilibrium and pollution free atmosphere of the villages, KIADB had to leave land of 1 km. as a buffer zone from the outer periphery of the village in order to maintain a green area towards preservation of land for grazing of cattle, agricultural operation and for development of social forestry. This measure would preserve the ecology without hindering the much needed industrial growth, thus striking a balance between the industrial development and ecological preservation. The Court had also directed that whenever there was an acquisition of land for industrial, commercial or non-agricultural purposes, except for the residential purposes, the authorities must leave 1 km. area from the village limits as a free zone or green area to maintain ecological equilibrium. The present appeal is directed against this judgment. According to the appellant, the effect of the impugned judgment will be that, in future, the appellant would not be able to acquire lands for the establishment and development of the industrial area in the State of Karnataka. It also submitted that the High Court has exceeded its jurisdiction under Article 226 of the Constitution by issuing blanket directions which tantamount to judicial legislation, and has failed to appreciate that the lands in question have lost their agrarian character a few decades ago and the villages have become part and parcel of the city of Bangalore and that the entire developmental work has been completed. The apex is of the considered view that before acquisition of the land; the appellant must carry out necessary exercise regarding the impact of development on ecology and environment and that it should be made mandatory for the allottee to obtain necessary clearance for the project from the Karnataka State Pollution Control Board and the Department of Ecology and Environment before execution of the agreement. Consequently, the appellant is directed to incorporate this condition in the letter of allotment requiring the allottee to obtain clearance before putting up any industry. The said directory condition of allotment of lands is converted into a mandatory condition for all the projects to be sanctioned in future. The Supreme Court, in addition to dealing at length with the principles of sustainable development, polluter pays, precautionary principle, public trust doctrine, also emphasized on the requirement of carrying on an impact assessment and obtaining necessary clearance from the State Pollution Control Board
and the Department of Ecology and Environment before execution of an industrial activity. The importance and awareness of environment and ecology is becoming so vital and important that the Court asked the appellant to insist on the conditions emanating from the principle of 'sustainable development' and directed that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment.

In *Court on its own motion v. Union of India*, the significance of environmental protection and the dimensions of the right to a clean and decent environment has been the subject matter of various judicial decisions by the Supreme Court of India. Causing environmental degradation and disturbing the ecology may even result in impinging upon the protected fundamental rights of the citizens. The State has to, therefore, endure to provide clean and decent environment and ensure that its wholesomeness is maintained. In this case the Supreme Court had the occasion to discuss these aspects in some elaboration whereupon the Court held as "The scheme under the Indian Constitution unambiguously enshrines in itself the right of a citizen to life under Article 21 of the Constitution. The right to life is a right to live with dignity, safety and in a clean environment. It has undoubtedly and indisputably come on record that the rights of yatris to the holy shrine enshrined under Article 21 of the Constitution of India are being violated. There is admittedly lack of basic amenities and healthcare. The walking tracks are not only deficient but are also not safe for the pedestrians. The management and arrangements for the yatris at the glacier and near the Holy Shrine are, to say the least, pathetic. Keeping in mind the number of yatris who come to pay their homage at the Holy Shrine every year, the management suffers from basic infirmity, discrepancies, inefficiency and ill-planning. The Government of India, State of Jammu and Kashmir and the Shrine Board are under a constitutional obligation to provide free movement, protection and health care facilities along with basic amenities and proper tracks to be used by the yatris. Doctrine of sustainable

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140 JT 2012 Vol. 12 SC 503.
development and precautionary principle could be the guiding factor for the courts to pass such direction.\footnote{SC Tripathi, ENVIRONMENTAL LAWS, 6\textsuperscript{th} edn. Central Law Publication Allahabad (2017) p.17.}

6.2.8. Interference of Courts in Reasonable Cases- In Calcutta Taj Hotel Case the apex court made it clear that it will interfere only in the reasonable cases. In this case the question was whether the government of west Bengal has shown lack of awareness of the problem of environment in making an allotment of land for construction of a five star hotel at the expose of zoological garden that it warrants interference by the court. responding to the vital question the court held that ‘bearing in mind the proper approach we have to make when questions of ecology and environment are raised, an approach we have mentioned at the outset, we are satisfied that the facts and circumstances brought out by the appellants do not justify an interference that the construction of the proposed hotel would interfere in any manner with animals in the zoo and the birds arriving at the zoo or otherwise disturb the ecology.\footnote{Sachidanand Pandey v. State of West Bengal, AIR 1987 SC 1109.}

- **Delhi High Court** ;Taking cognizance of far reaching effects of air pollution suo motu, the Court asked the Governments of States of Punjab, Haryana, UP, Rajasthan, NCT of Delhi and the centre to file affidavits before the Court explaining the steps that are being taken within their jurisdictions to minimize air pollution. The affidavits were filed before a Division Bench comprising of S. Ravindra Bhat and S.P. Garg, JJ.\footnote{Saba, Delhi High Court takes suo motu action in relation to growing air pollution in NCR region available on ahhttp://blog.scconline.com/post/2017/08/04/delhi-high-court-takes-suo-motu-action-in-relation-to-growing-air-pollution-in-ncr-region/(accessed on 23\textsuperscript{rd} September 2017).}

In the aforementioned affidavits, the States gave detailed explanation of the educating and awareness programmes which are in effect along with measures taken to detect and punish persons engaged in stubble burning. The Court, after due regard to all affidavits, gave the direction to the States to file periodic status reports through further affidavits. The affidavits are to be filed not later than by the second Tuesday of every alternative month, the next date being before 14th November, 2017. The affidavits are to be standardized and are to include the following particulars:

- **Steps towards education and awareness relating to ills of stubble burning.**
- **Notifications, if issued, along with amendments/modifications if applicable.**
• The number of times Standing Committees met during the interregnum period to monitor the progress of work done and progress, along with copies of the minutes.
• The number of persons booked for stubble burning.
• Progress achieved in regard to research and development or alternative practices.\textsuperscript{145}

The Court further stated that it required the Union Secretaries, Ministry of Environment, Forest and Climate Change, Ministry of Science and Technology and the Ministry of Agriculture and Farmer’s Welfare to explore the possibility of creating a fund for innovation in farming techniques in coordination with such educational or technical institutions as are feasible to innovate new methods which are efficient and environment friendly. The Court directed the three Secretaries to hold a meeting in this regard within three weeks. The Central Government may also create a fund and a Task Force in this regard, said the Court.\textsuperscript{146}

\begin{itemize}
  \item Assessment of Environmental Degradation and Impact of Hydroelectric Projects during the June 2013 Disaster in Uttarakhand
\end{itemize}

A recent landmark report by an expert committee of the Ministry of Environment and Forests (MoEF), set up under the direction of the Supreme Court, makes this connection. It is the first independent ‘official’ report acknowledging the destructive nature of hydropower projects and linking them to the floods that raged through Uttarakhand last year. In its report, \textit{``}, the committee recommends the rejection of 23 HEPs in the Alaknanda and Bhagirathi river basins in Uttarakhand.\textsuperscript{147}

6.2.9. \textit{Writ Jurisdiction and Environment Protection} - In environmental matters writ of Mandamus is proved to be more effective in securing the public authorities action to improve the environment especially in urban areas. Mandamus can also be issued to undo what has been done in contravention of a statute. This writ can issue against an administrative, quasi judicial or judicial authority. Writ of Certiorari may be issued against a municipal authority that permits constructions contrary to the development

\textsuperscript{145} \textit{Ibid.}
\textsuperscript{146} \textit{Court on its own Motion (Air Pollution in Delhi) v. Union of India}, 2017 SCC Online Del 9428.
\textsuperscript{147} Jamwal, This Supreme Court appointed committee explains why the Uttarakhand flood available on https://www.scribd.com/document/229932439/This-Supreme-Court-Appointed-Committee-Explains-Why-the-Uttarakhand-Floods-Happened-Yahoo-News-India (accessed on 23rd June 2017).
rules or violation of zoning or wrongly authorizes construction of building in a reserved area for parks or any recreation facilities or against pollution control boards that sanction any industry to discharge pollutants beyond prescribed levels. The writ of certiorari and prohibition are issued where an authority (1) acts in excess of jurisdiction (2) acts in violation of the rules of natural justice (3) acts under a law which is unconstitutional (4) commits an error apparent on the face of the record and (5) reaches factual findings that are not supported by the evidence.

In *Municipal Corporation v. Advanced Builders Pvt.Ltd.*\(^{148}\) The question whether the supreme court could issue a mandamus to the municipal board to construct the sewers and drains for the discharge of domestic including dirty water as well as rain water came up before the supreme court . answering in the affirmative the court laid down that there can be no doubt if the water and filth are allowed to be accumulative for a long time the place would become a breeding ground for mosquitoes ,insects and is liable to become cause for spread of disease . in these circumstances it would be proper and reasonable in the present case if the municipal board is directed to perform its statutory duties in this respect.

6.2.10. Judiciary on Water Pollution - The writ petition filed by the activist advocate M.C. Mehta in the Supreme Court highlighted the pollution of the Ganga river by the hazardous industries located on its banks. Justice ES Venkataramiah gave a historic judgment in “*M.C. Mehta v. Union of India*\(^{149}\)” ordering the closure of a number of polluting tanneries near Kanpur. In this judgment it was observed that just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot setup a primary treatment plant cannot be permitted to continue to be in existence. The fundamental right to water has evolved in India, not through legislative action but through judicial interpretation. In *Narmada Bachao Andolan v. Union of India and Ors.*, the Supreme Court of India upheld that “Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India and the right to

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\(^{148}\) AIR 1972 SC 793.

\(^{149}\) AIR 1988 SCR (2) 538.
healthy environment and to sustainable development are fundamental human rights implicit in the right to life.\[150\]

6.2.10. Judiciary on shifting of Stone Crushers - Environmental pollution is also caused by the stone-crushing activities and thus affects the right of the citizens to fresh air and to live in pollution free environment.

In *M.C. Mehta v. Union of India*,\[151\] the Supreme Court issued directions for stopping mechanical stone-crushing activities in and around Delhi, Faridabad, and Ballabhgarh complexes. However, keeping in view the sustainable development, directions were also issued for allotment of sites in the new "crushing zone" set up at village Pali in the State of Haryana to the stone crushers who were directed to stop their activities in Delhi, Faridabad and Ballabhgarh complexes.

This case was relied upon and followed by Punjab and Haryana High Court in *Ishwar Singh v. State of Haryana*.\[152\] The High Court issued the directions for closing down the stone crushing business of those which were not situated within the identified zone. The Court further directed that those who wanted to carry on their business of stone-crushing, should shift to the identified zones. One of the most important directions given by the High Court was regarding the claim of compensation for those persons who had suffered due to the pollution caused by stone-crusher owners.

6.2.11. Judiciary on Illegal Mining - In *R.L. & E. Kendra, Dehradun v. State of U.P.*,\[153\] (popularly known as Doon Valley Case) was the first case of its kind in the country involving issues relating to environment and ecological balance which brought into sharp focus the conflict between development and conservation and the court emphasized the need for reconciling the two in the larger interest of the country, mining which denuded the Mussoorie Hills of trees and forests cover and accelerated soil erosion resulting in landslides and blockage of underground water which fed many rivers and springs in the river valley. The Court appointed an expert committee to advise the Bench on the technical issues and on the basis of the report of the committee; the Court ordered the closure of number of limestone quarries. The Court was also conscious of the consequences of the order which rendered workers


\[151\] (1992) 3 SCC 256.

\[152\] AIR 1996 P&H 30.

\[153\] AIR 1985 SC 652.
unemployed after the closure of the limestone quarries and caused hardship to the
lessees. The Court observed that "this would undoubtedly cause hardship to them, but
it is a price that has to be paid for protecting and safeguarding the right of the people
to live in healthy environment with minimal disturbance of ecological balance and
without avoidable hazard to them and to their cattle, homes and agricultural land and
undue affectation of air, water and environment.

In A.R.C. Cement Ltd. v. State of U.P., 154 the Supreme Court did not permit the
cement factory to run in the Doon Valley area where the mining operation had been
stopped and in order to restore the Doon Valley to its original character it was
directed to be declared as non-industrial. However, the government was asked to
provide an alternate site for shifting the cement factory of the petitioner.

In Tarun Bharat Sangh v. Union of India(the Sariska case), 155 the petitioner through a
public interest litigation (PIL) brought to the notice of the Court that the State
Government of Rajasthan, though professing to protect the environment by means of
the notifications and declarations, was itself permitting the degradation of the
environment by authorising mining operations in the area declared as "reserve forest".
In order to protect the environment and wildlife within the protected area, the
Supreme Court issued directions that no mining operation of whatever nature shall be
carried on within the protected area.

6.2.12. Judiciary on Wildlife and Forest Protection - The livelihood of forest
dwellers in the Nilgiri region of Tamil Nadu was affected by the destruction of
forests. The Supreme Court in “TN Godavarman Thirumulpad v. Union of India and
Ors.” passed a series of directions since 1995, till the final judgment in 2014.

The Apex Court decided to set up a Compensatory Afforestation Funds Management
and Planning Authority (CAMPA) to monitor the afforestation efforts, to oversee th
compensation who suffered on account of deforestation, and to accelerate activities
for preservation of natural forests. A writ petition was filed by the Tarun Bharat
Sangh in the Supreme Court to stop mining activities in the Sariska Wildlife
Sanctuary. The Court in the case of “Tarun Bharat Sangh v. Union of India and Ors.
(1991)” banned all the mining activities in the Sanctuary.

154 1993 Supp (1) SCC 57.
155 1992 Supp (2) SCC 448.
6.2.13. Judiciary on Animal Welfare - In Rajiv Ranjan Singh 'Lalan' & Anr v. Union of India & Ors.\textsuperscript{156} This PIL relates to the large scale defalcation of public funds and falsification of accounts involving hundreds of crores of rupees in the department of animal husbandry in the State of Bihar. It was said that the respondents had interfered with the appointment of the public prosecutor.

The Hon’ble Supreme Court in prohibited Jallikattu and other animal races and fights. It was observed that the Bulls cannot be performing animals in the case of “Animal Welfare Board of India v. A. Nagaraj and Ors.”\textsuperscript{157}. The court alluded to the section 3 and section 11 of the Prevention of Cruelty to Animals Act, 1960 and declared that animal fights incited by humans are illegal, even those carried out under the guise of tradition and culture. The Court listed various recommendations and overhauled the penalties and punishment in the Prevention of Cruelty to Animals Act, 1960 to function effectively.

In these cases Ramesh Sharma v. State of Himachal Pradesh and Others,\textsuperscript{158} Mehar Singh v. State of Himachal Pradesh and Others,\textsuperscript{159} Sonali Purewal v. State of Himachal Pradesh and Others,\textsuperscript{160} The Himachal Pradesh high court brought to an end the age-old practice of sacrificing animals during religious ceremonies and festivals in the hill state with its order on Monday. The order prohibits sacrifices both in temples and in buildings adjoining places of worship. A division bench of HC called animal sacrifice barbaric and directed all deputy commissioners, superintendents of police and station house officers to ensure that the order is complied with. Three different people had filed petitions on the issue in 2010, 2011 and 2012. The high court disposed of all three petitions and based its order on the petition filed by Sonali Purewal in 2012. The bench in the order said startling revelations had been made on the manner in which thousands of animals were sacrificed every year in the name of religious worship. It added that sacrifice causes immense pain and suffering to innocent animals. "Compassion is basic tenets in all religions. The practice of animal sacrifice requires to be curbed," order added.\textsuperscript{161}

\textsuperscript{156} (2006) 6 SCC 613.
\textsuperscript{157} (2014) 7 SCC 547.
\textsuperscript{161} TNN, Himachal Pradesh high court axes animal sacrifice to appease deities, The Times of India (September 3, 2014).
6.2.14. Judiciary on Industrial Pollution - A monumental judgment was delivered by the Supreme Court in *M.C Mehta v. Union of India*\(^{162}\) Bhopal catastrophe is only a manifestation of the potential hazards of all chemical industries in India, none of which are amenable to effective regulation. Hardly had the people got out of the shock of the Bhopal disaster when a major leakage of oleum gas took place from one of the units of Shriram Chemicals in Delhi and this leakage affected a large number of persons both amongst the workmen and the public. In this case the Court has evolved many principles which are new to the Indian "environmental jurisprudence".

At the very outset the Court disposed of the 'question as to whether the plant could be allowed to recommence the operation in the present state and condition and if not what measures were required to be adopted against the hazards of possibility of leaks, explosion and pollution of air and water etc. for this purpose. The Court gave priority to this question because some other important consequences were related with it which required the immediate attention. Firstly, because about 4000 workmen were thrown out of employment because of the closure of the plant.\(^{52}\) Secondly, the short supply of chlorine which was being produced by the said plant could have affected many activities in Delhi. Thirdly, the production of downstream products would have also been seriously affected resulting to some extent in short supply of these products.

The Supreme Court appointed an expert committee to suggest certain measures to remove the existing defects in the plant. After the Court was satisfied that all the safety and control measures had been complied with by the management in a satisfactory manner, it was held that pending consideration of the issue of relocation or shifting of the plant to some other lace, the plant should be allowed to be restarted subject to certain stringent conditions and the provisions of the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 981 should be strictly observed.

It is submitted that the above approach of the Supreme Court was in consonance with environment protection and sustainable development. In this case the Supreme Court though deliberated upon but did not answer the question whether private enterprises carrying inherently dangerous hazardous activities could be considered "State" within

\(^{162}\) AIR 1987 SC 965.
the meaning of article 12 of the Constitution of India so as to allow a public interest litigation under the writ jurisdiction. However, by allowing the writ petition under article 32 of the Constitution, it impliedly treated the private enterprises like Sriram Chemicals as the "State".

*In Indian Council for Enviro-Legal Action v. Union of India,*\(^{163}\) is a monumental judgment on environment protection and sustainable development. In this case a PIL was filed alleging environmental pollution caused by private industrial units. The PIL was filed not for issuance of writ, order or direction against such units but against the Union of India, State Government and State Pollution Board concerned to compel them to perform their statutory duties on ground and that their failure to carry out their duties violated the right to life of citizens under article 21 of the Constitution.

In this case the industrial units were located in Bichhri village in Udaipur (Rajasthan). They were producing certain chemicals like oleum (concentrated form of sulphuric acid) and H-Acid *etc.* They had not obtained the necessary clearances/consents/licences nor did they' install any equipment for treatment of highly toxic effluents discharged by them. The highly toxic effluent of these industries percolated deep into the bowels of the earth polluting the ground water and making it unfit for drinking by human beings and cattle and for irrigating the land. The soil became unfit for cultivation. In fact, it spread diseases, death and disaster in the village and the surrounding areas. Some industries had closed or stopped manufacturing of "H-Acid" yet the consequences of their action remained—the sludge, the long lasting damage to earth, to underground water, to human beings, to cattle and the village economy.

The Supreme Court while affirming the earlier case of *M.C. Mehta v. Union of India* held that the contention that the respondents being private corporate bodies and not "State" within the meaning of Article 12, a writ on under article 32 would not lie against them, cannot be accepted. In if the Court finds that the government or authorities concerned have not the action required of them and their inaction has affected the right to life of the citizens, it is the duty of the Court to intervene and the Court can certainly issue the necessary directions to protect the life and liberty of the citizens. They Court has also considered the effect of *Idgah* Slaughter House on ecology.

\(^{163}\) (1996) 3 SCC 212.
In *Buffalo Traders' Welfare Association v. Maneka Gandhi*, the court considered it as one of the hazardous industries operating in Delhi and it to stop functioning in the city of Delhi in the interest of environment protection. It was allowed to operate only for certain period provided certain conditions were fulfilled and that the slaughter houses were kept clean and till the alternate site was arranged.

In *Him Privesh Environment Protection Society v. State of Himachal Pradesh through Secretary Industries and Ors.*

- In 2010, an NGO, filed a petition before the Himachal Pradesh High Court alleging that in gross violation of environmental laws, especially the EIA notifications of 1994 and 2006, a Cement plant had been set up by a large Industrial House in the Solan District.
  - It also complained that the village common land was wrongly transferred by the State government to the Company without conducting a proper public hearing.
  - To circumvent the EIA Notification (1994), the Company had intentionally understated the cost of the plant and claimed that no environment clearance was required.
  - Vide judgment dated 04.05.2012, the High Court held the Company guilty of misrepresenting the cost of the Cement plant only to circumvent the EIA notification and that the company was put in possession of the land without any legal order or proper inquiry.
  - The environmental clearance granted by the Govt. to the Thermal plant was quashed and the company was directed to dismantle it within three months.
  - Invoking the “Polluters Pay Principle”, a penalty of Rs 100 crore i.e., 25% of the total cost of the project was imposed on the Company for falsely obtaining the clearance and flouting environmental laws.
  - However, the Court balanced the equities and permitted the Cement plant to operate on the ground that it would adversely affect the livelihood of the people in the hill region.

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165 CWP No.586 of 2010. Decided on 04.05. 2012.
• The damages imposed were directed to be utilized for improving the ecology and environment of the area and to ameliorate the sufferings of the local residents by building hospitals and other facilities.

• The State Govt. was directed to use Rs10 Crores to compensate the villagers by creating common facilities such as schools, community halls etc. and to file detailed accounts on a biannual basis till the same was exhausted.

• The aforesaid decision was challenged by the Cement Plant owner before the Supreme Court but the appeal was dismissed in the year 2013.

In National Trust for Clean Environment v. Union of India and others, (2010) High Court of Madras and Supreme Court (2013)

• Writ petitions were filed by various organizations and representatives of political parties in the Madras High Court challenging the establishment of a Copper Smelting plant by Sterlite Industries (India) limited at Tuticorin.

• Tuticorin is a coastal town in the state of Tamilnadu, in the Gulf of Mannar region, that abounds in biodiversity. About 2000 species of marine forms and 200 species of plants are reportedly found in the region.

• In the year 1986, 21 Islands near Tuticorin were declared and constituted as Marine National Parks to protect the unique and fragile flora and fauna in the region.

• The petitioners stated that Tuticorin was gradually being afflicted by industrialization and both, the Central & State government had hastily accepted the Company’s proposal to set up a Copper Smelting plant ignoring that the said proposal was already rejected by three other States in the country.

• The petitioners claimed that while accepting the proposal, the Govt. had completely overlooked the aspect of its impact on the environment and health of the people.

• The High Court invoked the Directive Principles of State Policy read with Article 21 (Right to Life) of the Constitution of India & ruled that it is imperative that a healthy and hygienic atmosphere be maintained.

• Vide judgment dated 28.09.2010, the Madras High Court directed closure of the plant on the ground that it was established within a radius of 25 km from an ecologically fragile area and the Company had failed to develop a green belt, 250 metres wide around the plant.
• Aggrieved by the said decision, the Company appealed to the Supreme Court where initially, a stay was granted on the plant’s closure till 18.10.2010.

• Subsequently, the Supreme Court ordered NEERI, CPCB, TNPCB and the State Government to inspect, evaluate and submit their reports/recommendations.

• Finally, vide judgment dated 02.04.2013, keeping in mind that it would not be in public interest to close the plant, the Supreme Court set aside the Madras High Court’s judgment.

• Taking note of the magnitude, capacity and prosperity of the Company, a hefty penalty of Rs.100 crores (Rs.1 Billion) was imposed for causing massive pollution and the local authorities were directed to utilize the said amount to restore the environmental damage caused over the years.

• Further, liberty was granted to TNPCB to issue directions to the Company, including directions for closure for the protection of environment.

• Incidentally, on 23.3.2013, a major gas leak took place in the plant due to which the residents living near by suffered from itching skin and burning eyes. TNPCB directed immediate closure of the plant.

6.2.15. Judiciary on Shifting of Hazardous and Heavy Industries-Industries are necessary for development. At the same time they are also a source of environmental pollution. In order to minimize the harm of environmental pollution to the people, the Courts have consistently taken the view that the industries must not be situated in the populated area or near the residential area. A study of the following cases will show that the Courts have issued the necessary directions for the shifting/relocation of the existing hazardous/noxious/heavy industries to a separate zone marked for this purpose.

The Supreme Court in *M.C. Mehta v. Union of India*,\(^\text{166}\) has held that in order to reduce the element of risk to the community from industrial hazards, the Government of India should evolve a national policy for location of chemical and other hazardous industries in areas where population is scarce and there is little hazard or risk to the community, and when hazardous industries are located in such areas, every care must

\(^{166}\) AIR 1987 SC 965.
be taken to see that large human habitation does not grow around them. There should preferably be a green belt of 1 to 5 Km. width around such hazardous industries.

In *V. Lakshmipathy v. State*,\(^{167}\) the Karnataka High Court in public interest litigation (PIL) directed the Municipal Corporation to stop the industries set up in the residential area. The Court also observed that the land which is earmarked for residential purposes should not be used for setting up the industries.

**6.2.16. Judiciary on Tanneries and Discharge of Effluents**—Under the laws of the land the responsibility for treatment of the industrial effluents is that of the industry. However, it has been noticed that various tanneries operating in different parts of the country have not been complying with the laws of land. They have been discharging effluents without any treatment and thus becoming one of the major sources of pollution. The Courts in such cases have issued directions to such tanneries to either install primary treatment plant or stop working. The judiciary in India has followed the path of sustainable development in such cases as well.

In *M.C. Mehta v. Union of India*,\(^{168}\) (popularly known as Ganga Water Pollution case or Kanpur tanneries case), a public interest litigation was filed, *inter alia*, for the issuance of directions restraining the tanneries from discharging trade effluent into the river Ganga till such time they put up necessary treatment plants for treating the trade effluents in order to arrest the pollution of water in the said river.

The tanneries discharging effluents in the river Ganga did not set up primary treatment plant in spite of being asked to do so for several years. Nor did they care to put up an appearance in the Supreme Court expressing their willingness to set up pre-treatment plant. Consequently, the Supreme Court directed them to stop working. The Supreme Court further observed:

“The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from the tannery to the river Ganga would be

\(^{167}\) AIR 1992 Kant. 57.

\(^{168}\) AIR 1988 SC 1037.
immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure”.

In Vellore Citizens' Welfare Forum v. Union of India,169 (popularly known as T.N. Tanneries case), is a landmark judgment of the Supreme Court where the principle of sustainable development has been adopted by the Court as a balancing concept.

This case was also filed as public interest litigation (PIL) and was directed against the pollution which was being caused by enormous discharge of untreated effluents by the tanneries and other industries in the State of Tamil Nadu. Due to untreated discharge of the effluents, entire surface- and subsoil water of river Palar had been polluted resulting in the non-availability of the portable water to the residents of the area. According to a survey, nearly 35,000 hectares of agricultural land in the tanneries belt had become either partially or totally unfit for cultivation. These effluents had spoiled physio-chemical properties of the soil and had contaminated the ground water by percolation. Nearly 350 wells out of total of 467 used for drinking and irrigation purposes had been polluted.

The Supreme Court pointed out that the traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. The Supreme Court after explaining the salient principles of sustainable development expressed the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of sustainable development and that they have been accepted as part of the law of the land.

The Supreme Court also held that in view of the constitutional provisions contained in Articles 21, 47, 48-A and 51-A (g) and other statutory provisions contained in the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986, it had hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.

6.2.17. Judiciary on Urbanization Matters - The Indian judiciary has shown its concern to the problems of urbanization and need for protecting and preserving the environment.

In *M.L. Sud v. Union of India*,\(^1\) it was alleged that the Delhi Development Authority (DDA) was denuding the forest by cutting trees and putting up construction and laying roads in the city forest area which was shown in the Master Plan as "Green" and was to be maintained as city forest. The Supreme Court issued the necessary directions to the concerned authorities for maintaining the city forest.

In *People United for Better Living in Calcutta v. State of West Bengal*,\(^2\) the Calcutta High Court held that it is the duty of the Court to find balance between development programme and environment. In this case the High Court highlighted the importance of wet land and part played by it in the proper maintenance of environmental equilibrium in the city of Calcutta. In view of the facts and circumstances of the instance case, the High Court granted injunction against reclamation of the wet land. It was further held that wet lands are important in maintenance of environmental equilibrium and necessary to preserve the environment.

### 6.2.18. Judiciary and Rights of Tribals/ Adivasies

Tribals or *Adivasies* are a primitive community or pre-literate society in which kinship plays a very important role. In India there is a large population of tribes which is scattered in almost all parts of country. They live in forests and use forest area as their habitat. In fact tribes and forests are closely associated with each other. Forests are their home. Tribal people used to have many traditional rights over forests. They earn their livelihood from forests. They depended on forests for almost everything. They protected the forests and forest protected them.

Illegal felling, smuggling, grazing, forest fire and cutting of branches of trees for fuel are some of the examples of the activities of the tribals which have adverse impact on the ecosystem.

In the case of *Banwasi Sewa Ashram v. State of U.P.*,\(^3\) the *Adivasies* and other backward people (tribal forest dweller) were using forests as their habitat and means of livelihood. Part of the forest land was declared as "reserved forest" and in respect of other part acquisition proceedings were initiated as the government had decided that a super thermal plant of the National Thermal Power Corporation Ltd. (NTPC) was to be located there.

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\(^1\) 1992 supp (2) SCC 123.

\(^2\) AIR 1993 Cal 215.

\(^3\) AIR 1987 SC 374.
**In Pradeep Kishen v. Union of India,**173 A PIL was filed against the order issued by the Govt. Madhya Pradesh permitting collection of tender leaves from the forest by the local villagers/tribals. However Supreme Court did not interfere with the said order but directed the authorities to look to the aspect that only bonafide villager can collect tender leaves and to take necessary steps to protect the shrinkage of forest.

**6.2.19. Judiciary on Coastal Management** The Supreme Court of India had the opportunity to scrutinize various aspects of coastal zone management. One case related to the attempt of the Central Government to dilute Coastal Regulatory Zones (CRZ) norms for beach resorts and another was the indifference of coastal states and union territories to prepare Coastal Zone Management Plans on time. The other case related to indiscriminate aquaculture practices resulting in environmental degradation in the coast.

In *Wadehra v. Union of India,*174 the Supreme Court issued several directions to government and other pollution control agencies particularly the municipal authorities in Delhi who were found to be remiss in performing their statutory duties of collecting and disposing garbage and waste. Significantly the Court took the view that government should construct and install incinerators in all hospitals and nursing homes with 50 beds and above. Efficiency in disposal of hospital wastes is a matter which requires urgent attention because it is an irony that hospitals meant for treating and curing diseases become sources for generating and spreading diseases by exposure to dangerous bio-medical waste. In *MC Mehta v. Union of India,* popularly called as Ganga Pollution Case,175 Supreme Court notices the utter indifference of the tanneries to the orders to stop the discharge of trade effluents into the river Ganga. Noting that the immense adverse effect on the public at large by the discharge of trade effluents would outweigh any inconvenience caused to the management on account of the closure the Court gave specific directions to the tanneries either to set up at least Primary Treatment Plants (PTP) or to stop their functioning. It asked the Central Government state pollution control board and the District Magistrate to monitor the enforcement of its orders. Assignment of such a watch dog function to the authorities was unprecedented. It gave them more awareness and strength for taking up anti-

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173 (1996) 8 SCC 599.
175 AIR 1988 SC 1037.
pollution measures. In *MC Mehta v. Union of India*,\(^{176}\) popularly called as Second Ganga Pollution Case. Supreme Court issued guidelines to the Kanpur Municipality to tackle about the tanneries around River Ganges. In this case the facts are like this. The sewerage system in Kanpur was in complete disarray. Therefore, the level of pollution of the river Ganga at Kanpur was higher. Water became unfit for drinking, fishing, or bathing. The Supreme Court fixed the responsibility on the Nagar Mahapalika of Kanpur and asked it to improve its sewerage system within six months with better interaction with the state board. General directions issued by the Supreme Court in the case are notable. High Courts were asked not to grant stay to proceedings to prosecute industrialists and other persons who pollute the water in the river Ganga. In extraordinary circumstances the High Court should dispose of such cases within two months from the date of institution. These directions were particularly significant as the court said that they applied mutatis mutandis to all other nagarapalikas and municipalities which had jurisdiction over the areas through which the river Ganga flows. Although the observations and directions were related to the pollution of the river Ganga had the force of law in relation to similar cases of pollution throughout the country. They pointed to the need for quick prosecution of criminal proceedings against industrialist’s official and other persons responsible for pollution.

6.2.20. Judiciary on Environmental Impact Assessment-Justice Jeevan Reddy in the landmark judgment of *Indian Council for Enviro-Legal Action v. Union of India*,\(^{177}\) held that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution by adopting the “Polluter Pays Principle”.

The Court set a time limit for the coastal states to formulate coastal management plans and banned industrial or construction activity within 500 metres of the High Tide Line. Municipal Solid Waste Management Rules, 2000: The court orders in various matters have led to the development of many rules and regulation, such as the Municipal Solid Waste Management Rules or MSW Rules which were formulated by MoEF on the court’s direction in response to *Almitra H. Patel v. Union of India*.\(^ {178}\) The PIL argued that government agency neglected their statutory obligation in relation to proper management and hygienic disposal or recycling of MSW. The rules

\(^{176}\) AIR 1988 SC 1115.

\(^{177}\) AIR 1999 SC 1502.

\(^{178}\) WP 888/1996.
are the first set of comprehensive legislation which ensures proper collection, storage, segregation, transportation, processing, and disposal of municipal solid wastes. However, according to Planning Commission of India, in 128 cities except for street sweeping and transportation, compliance was less than 50 percent and in respect of disposal compliance was a dismal 1.4 percent. Further, except for 22 States which have set up processing and disposal facilities, the rest of the States have made no effort till 2013. A close examination of rule reveals that although they direct recycling, but ignore recyclers and rather encourage private sectors that in lieu of profit making did not recycle, but mostly dumps the waste. Some NGOs observe that the MSW rules lack any incentive or mechanism either to encourage recycling or to reduce waste while contracting the private firms. The informal recycling sector, which constitute a major part of waste economy have never been considered by the court. In other words the rules are techno legal rather than social legal. Further, some critics argue that the time limit set by the courts was unrealistic and thus far from being achieved.

6.2.21. Judiciary on Environmental Awareness and Education -There is no means for any law, unless it’s an effective and successful implementation, and for effective implementation, public awareness is a crucial condition. Therefore, it is essential that there ought to be proper awareness. This contention is additionally maintained by the Apex Court in the instance of M.C. Mehta v. Union of India,179 ordered the Cinema theatres all over the country to exhibit two slides free of cost on environment in each show. Their licenses will be cancelled if they fail to do so. The Television network in the country will give 5 to 7 minutes to televise programmes on environment apart from giving a regular weekly programme on environment. Environment has become a compulsory subject up to 12th standard from academic session 1992 and University Grants Commission will also introduce this subject in higher classes in different Universities.

6.2.22. Judiciary on saving the Monuments-The pride of India and one of the wonders of the world i.e., Taj Mahal, was facing threat due to high toxic emissions from Mathura Refineries, Iron Foundries, Glass and other chemical industries. The acid rain was a serious threats to the Taj Mahal other historic monuments within the Taj Trapezium. The Apex Court in “M.C. Mehta v. Union of India (Taj Trapezium

Case) delivered its historic judgment in 1996 giving various directions including banning the use of coal and cake and directing the industries to Compressed Natural Gas (CNG).

In M.C. Mehta v Union of India &Ors,\(^{180}\) The Supreme Court, at the very initial stage, through its order on August 21, 2003 in the Taj case, asked the CBI to verify “their assets because it was alleged that an amount of Rs. 17 crores was released without sanction”. The SC, which studied the CBI’s report of the inquiry, also directed the agency to file FIRs against the BSP supremo and the then environment minister, Naseemuddin Siddiqui. A project known as Taj Heritage Corridor Project was initiated by the Government of Uttar Pradesh. One of the main purpose for which the same was undertaken was to divert the River Yamuna and to reclaim 75 acres of land between Agra Fort and the Taj Mahal and use the reclaimed land for constructing food plazas, shops and amusement activities. The said activities on the part of the Government of Uttar Pradesh was brought to the notice of this Court.

6.2.23. Judiciary on Noise Pollution -In Church Of God (Full Gospel) In India v. K.K.R. Majestic Colony Welfare,\(^{181}\) in these days, the problem of noise pollution has become more serious with the increasing trend toward industrialization, urbanization and modernization and is having many evil effects including danger to the health. It may cause interruption of sleep, affect communication, loss of efficiency, hearing loss or deafness, high blood pressure, depression, irritability, fatigue, gastro-intestinal problems, allergy, distraction, mental stress and annoyance etc. This also affects animals alike. The extent of damage depends upon the duration and the intensity of noise. Sometimes it leads to serious law and order problem. Further, in an organized society, rights are related with duties towards others including neighbours. Court held in this Case that no religion prescribes or preaches that prayers are require to be performed through voice amplifiers or by beating of drums.

6.3. Need for Environmental Court

One of the most significant factors necessitating the formation of specialised courts in India is that the general courts lack the expertise to deal with matters relating to the environment especially those which involve scientific uncertainty. The Supreme

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\(^{180}\) (2007) 1 SCC 110.

\(^{181}\) AIR 2000 SC 2773.
Court of India has, in three landmark cases\(^{182}\), expressed in the following words the difficulties arising because of the lack of expertise:

“The cases involve the correctness of opinions on technological aspects expressed by the Pollution Control Boards or other bodies whose opinions are placed before the Courts. In such a situation, considerable difficulty is experienced by this Court or the High Courts in adjudicating upon the correctness of the technological and scientific opinions presented to the Courts.....or in regard to the need for alternative technology or modifications as suggested by the Pollution Control Board or other bodies.”

Looking from a holistic perspective, the necessity of a ‘green’ court can be best expressed in the following words:

“The costs and administrative changes involved in setting up such a Tribunal to handle the majority of existing appeals would be modest compared to the policy gains to be made. Such a Tribunal would bring a greater consistency of approach to the application and interpretation of environmental law and policy ...the Environmental Tribunal would lead to the better application of current environmental law and policy, a more secure basis for addressing future challenges, increased public confidence in how we handle environmental regulation, and the improved environmental outcomes which should follow.”\(^{183}\)

6.4. Recent Trends of Courts in Protection of Environment

In *Mohd. Salim v. State of Uttarakhand & Others*,\(^{184}\) The mining in river bed of Ganga and its highest flood plain area is banned forthwith. The extraordinary situation has arisen since Rivers Ganga and Yamuna are losing their very existence. This situation requires extraordinary measures to be taken to preserve and conserve Rivers Ganga and Yamuna. The Uttarakhand High Court decided this case taking these considerations in mind that the Rivers Ganges and Yamuna are worshipped by Hindus. These rivers are very sacred and revered. The Hindus have a deep spiritual connection with Rivers Ganges & Yamuna. According to Hindu beliefs, a dip in River

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Ganga can wash away all the sins. The Ganga is also called ‘Ganga Maa’. It finds mentioned in ancient Hindu scriptures including ‘Rigveda’. The river Ganga originates from Gaumukh Glacier and River Yamuna originates from Yamnotri Glacier.

“The observations of the Division Bench has been in our view true to the Shastras and we do lend our concurrence to the same. If the people believe in the temples’ religious efficacy no other requirement exists as regards other areas and the learned Judge it seems has completely overlooked this aspect of Hindu Shastras - In any event, Hindus have in Shastras "Agni" Devta; "Vayu" Devta - these deities are shapeless and formless but for every ritual Hindus offer their oblations before the deity. The Ahuti to the deity is the ultimate - the learned Single Judge however was pleased not to put any reliance thereon. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrates the image”. It is well known that “Ganga Jal” is considered to be the sacred water and the only water which can be kept for longer duration and do not stink comparatively to other water taken from other source.185

Essentially, every human person is a person. If we trace the history of a "Person" in the various countries we find surprisingly it has projected differently at different times. In some countries even human beings were not treated to be as persons in law. Under the Roman law a "Slave" was not a person. He had no right to a family. He was treated like an animal or chattel. In French Colonies also, before slavery was abolished, the slaves were not treated to be legal persons. They were later given recognition as legal persons only through a statute. Similarly, in the U.S. the African-Americans had no legal rights though they were not treated as chattel. “With the development of society, ‘where an individual’s interaction fell short, to upsurge social development, co-operation of a larger circle of individuals was necessitated. Thus, institutions like corporations and companies were created, to help the society in achieving the desired result. The very Constitution of State, municipal corporation, company etc. are all creations of the law and these "Juristic Persons" arose out of necessities in the human development. In other words, they were dressed in a cloak to be recognized in law to be a legal unit.

Operative part of the judgment—“All the Hindus have deep Astha in rivers Ganga and Yamuna and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of Indian population and their health and well being. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial. Rivers Ganga and Yamuna have spiritual and physical sustenance. They support and assist both the life and natural resources and health and well-being of the entire community. Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountains to sea. Thus, to protect the recognition and the faith of society, Rivers Ganga and Yamuna are required to be declared as the legal persons/living persons”.

In Arjun Gopal v. Union of India, on the oral request of learned counsel for the petitioner the apex court ordered that it appears that no standards have been laid down by the CPCB with regard to air pollution by the bursting of fire-crackers. Dr. Akolkar says that it will take some time to arrive at the standards and it will be done by 15th September, 2017 at the latest. In the meanwhile, Supreme Court directs that no fire-crackers manufactured by the respondents shall contain antimony, lithium, mercury, arsenic and lead in any form whatsoever. It is the responsibility of the Petroleum and Explosive Safety Organisation (PESO) to ensure compliance particularly in Sivakasi.

Recently the Uttarakhand High Court gave guidelines in protection of environment in case of Shri Sai Nath Seva Mandal v. State of Uttarakhand and Ors. These are as follow;

(i) All the streets, public premises such as parks etc. shall be surface cleaned on daily basis, including on Sundays and Public holidays by Municipal Corporations, Nagar Panchayats, Municipal Councils and Panchayati Raj Institutions.

(ii) All the workers deployed for cleaning the streets and removal of garbage including bio-degradable medical waste should be provided with necessary equipment including uniforms, shoes, gloves and other implements etc. for winters and summers
separately and also proper uniforms which have reflectors and be provided with ID cards also.

(iii) All the streets and roads falling within the municipal areas, municipal corporation/Panchayati Raj institutions should be surface cleaned in the morning.

(iv) The state government is directed to take decision on all the proposals sent to it by the municipal bodies for managing the solid waste in their territorial jurisdiction within four weeks from today.

(v) The municipal corporation/municipal bodies, throughout the state, may consider to provide two dustbins (for collection of dry and wet bio-medical waste), free-of-cost, to all the households in the Municipal area, depending on their financial health.

(vi) All the local bodies, including village Panchayats, are directed to ensure door to door collection of segregated solid waste from all households including slums and informal settlements, commercial, institutional and other non residential institution.

(vii) All the local bodies are directed to put suitable hoardings at tourist destinations to appraise local as well as tourists not to dispose of any waste such as paper, water bottles, liquor bottles, soft drink canes, tetra packs etc. on the streets or into water bodies or down the hills.

In M.C. Mehta v. Union of India & Ors. The operative portion of the order is as follows: “Accordingly, for detailed reasons that will follow, we direct that:

(a) On and from 1st April, 2017 such vehicles that are not BS-IV compliant shall not be sold in India by any manufacturer or dealer, that is to say that such vehicles whether two wheeler, three wheeler, four wheeler or commercial vehicles will not be sold in India by any manufacturer or dealer on and from 1st April, 2017.

(b) All the vehicle registering authorities under the Motor Vehicles Act, 1988 are prohibited for registering such vehicles IA Nos.487/2017 etc. in WP (C) No.13029/1985 Page 1 of 30 on and from 1st April, 2017 that do not meet BS-IV emission standards, except on proof that such a vehicle has already been sold on or before 31st March, 2017.” To place the matter in perspective, it is clear that the Government IA Nos.487/2017 etc. in WP (C) No.13029/1985 Page 8 of 30 was quite

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determined to introduce BS-IV emission norms in respect of all vehicles manufactured on and from 1st April, 2017 onwards. The implementation of this policy was gradual, starting with the NCR Region and ten mega cities and this was extended from time to time to other cities. The intent was made clear that with the progress in the implementation plan there would be an increase in the number of cities where the sale and registration of vehicles that are not BS-IV compliant would be prohibited. The rapid growth in automobile industry and the increasing number of vehicular population have become one of the major causes in the phenomenal rise of air pollution in India. Though air pollution is caused by several factors, the dramatic rise in the vehicular emissions has compounded the problem.”

6.5. The Impact of Environmental Judgments at the Implementation Level

Most of the targets of the Supreme Court’s environmental decisions have been environmental regulatory authorities and other implementing agencies that are supposed to enforce environmental laws and policies. In a number of cases, the Court has come down heavily on these implementing agencies for not performing their constitutional and statutory duties. Although the courts have always been active in pronouncing landmark environmental judgments, the implementation of these judgments faces several constraints. But in some cases the court judgment leads to make a new legislation for the benefit of the victims of pollutions as well as for the polluters also. So we can say that post-judgment period can produce effective results through a democratic, transparent and participatory process. The development of the laws in this area has been seen a considerable share of initiative by Indian judiciary, particularly the higher judiciary consisting of Supreme Court of India, and the High Court of the states. Judicial activism has forced the implementation of various laws related the protection of environment. The failure of the state agencies to effectively enforce the environmental laws apart from non-compliance with statutory norms by the polluters resulted into further degradation of the environment. It has affected the health of the people which forced the environmentalists and the residents polluted

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areas as well as the NGOs to approach the judiciary, particularly the higher judiciary, for the suitable remedies. Speedy justice led to the establishment of specialised tribunal for dealing with environmental matters in the form of National Green Tribunal which was established through the National Green Tribunal Act, 2010.

6.6. Conclusion

Thus the researcher reached on the conclusion that the Indian judiciary has occupied an important position in the nation’s politics.\textsuperscript{192} The contribution of the Courts in protecting the environment and ecology, forest wild life, etc. has been phenomenal. Despite the limitations of jurisdiction, the Court played a vital role in this regard. More importantly what is needed from an environmental angle is a vision for the future. The Supreme Court of India has made a tremendous efforts and progress in upholding the right of citizens to environment justice. Through judicial activism and public interest litigation the judiciary actively promote the environmental jurisprudence for the land. Innovative methods are used by adopting doctrinal aspect the judiciary removes the crisis between the legislature and executive functioning. It gave various directions, guidelines and orders to check the menace of the environmental pollution. On the whole, one may appreciate the bold attempts made by the Indian Judiciary to ensure the establishment of a clean, pollution-free environment. The recent pronouncements of the Supreme Court have stated about its new approach based on eco-centric for the purpose of maintaining environmental ethics. The problem of environmental justice cannot be solved only by giving the opportunity to access the court for seeking justice unless and until the judicial pronouncements are enforced effectively to provide environmental justice and put justice in place of injustice done to the public. Therefore, there is a need for fair, honest, competent and responsive enforcement machinery. However, the judiciary had, in an attempt to make access to justice environmentally benign, reflected upon the need to set up specialized courts, which ultimately took shape in 2010 with the constitution of the National Green Tribunal. All these are welcomes step but we have miles to go to achieve the goal i.e. pollution free India.