Chapter Seven

Judicial Contribution
and
Environmental Protection
CHAPTER-VII

JUDICIAL CONTRIBUTION TO ENVIRONMENTAL PROTECTION

Under this chapter the researcher is inclined to compile inferences of his investigation relating to the nature, extent, patterns and to resolve the conflicts among the content masses; lethargic, and stagnant leadership, callous bureaucracy and vibrant Judiciary. In this Chapter "Judicial Contribution to Environmental Protection", the researcher has compiled the efforts of Indian Judiciary to clean the environment. In this undaunted task the judiciary has to make innovatory and novel devices to mitigate and control the environmental pollution. A cursory view of prevailing legal system makes it clear that there is no dearth of statutes and enactments to battle against environmental pollution; however it has been the judiciary, which opened the eyes of the persons in power to evaluate the existing law and make efforts to implement them. A prominent share of the existing law relating to the environment has been developed through careful judicial thinking. In the process of adjudication of the environmental matters, the judiciary has actually come forward with the new pattern of "Judge Driven Implementation" adopting liberal view ensuring social justice and protection of human rights. Here, attempts have been made to analytically examine the contribution made by judiciary to provide protective umbrella to the suffering masses due to pollution and climatic disasters. This chapter has been classified into various heads for the sake of convenience, which include relaxation of locus standi, judicial activism, absolute liability, polluter pays principles, precautionary approach and the doctrine of public trust and principle of inter generational equity.

Constitutionalization of Environmental Right:

The tide of judicial activism in environmental litigation in India symbolizes the anxiety of courts in finding out appropriate remedies for environmental
maladies. At global level the right to live is now recognized as a fundamental right to live in a congenial atmosphere for health and well-being of human beings. In the context of such developments at international scenario, the Indian Judiciary moulded the right to life under Article 21 as inclusive of right to live with human dignity and right to live in humane environment. The Courts broadened the scope of fundamental rights so as to include the environmental rights within its fold. In Dr. Astiok vs Union of India\(^1\) the court explained that the right to life enshrined in Article 21 means right to have something more than survival and not mere existence or animal existence. It includes all those aspects of life which go to make a man’s life meaningful, complete and worth living.

**Theoretical Aspect of Right to Clean Environment:**

Principles for interpretation of the Constitution “balancing of interests” and the “intentionality” approach are referred to see how these are looked from the perspectives of expanding the horizons of the Art.21 to include the right to healthy and pollution free environment.

A very important case in this regard is *Subhash Kuman v. State of Bihar*\(^2\), in which it was observed that “Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. 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”\(^3\). Through this case, the Supreme Court recognized the right to a wholesome environment as part of the fundamental right to life. This produced a compulsion to take positive measures to improve the environment\(^4\).

The Chief Justice of Supreme Court of India Justice Y.K. Sabharwal expanded Article 21 in two ways. Firstly, any law affecting personal liberty should be reasonable, fair and just. Secondly, the Court recognized several unarticulated liberties that were implied in Article 21. It is by this second method that the
Supreme Court interpreted the right to life and personal liberty to include the right to the clean environment.

We could see the way Supreme Court interpreted this particular case and other cases that deal with the environmental matters can be easily explained using the principles of interpretation such as internationality. The internationalist should try to understand how the adopters intended a provision to apply in their own time and place is, in essence, doing history interpreter and must take further step of translating the adopter’s intentions into the present existing social and political context⁵. Justice D.M. Dharmadhikari expresses his view regarding the Article 21 in an highly structured way as “Article 21 has been one single article which by interpretation has been expanded to progressively deduce a whole lot of human rights from it, such as, “right to means of livelihood”, “right to dignity and privacy”, “right to health and pollution free environment”, “right to education”, “right to free legal aid and speedy trial” etc. Thus expanding the scope and ambit of Article 21 to cover in it, the rights which are not expressly numerated, the Supreme Court has interpreted the word “life” to cover in it “all aspects of life which go to make a man’s life meaningful, complete and worth living”. It will also cover his tradition, culture, heritage and health”.

The apex court also allowed a writ against a Private Company as it was “carrying on an industry which was intended to be carried on by the government itself, was subject to laws controlling environmental protection and was moreover, engaged in an activity which had potential to make the fundamental right to life of large sections of the people⁶. The Court accordingly held that Shri Ram Fertilizer was “state” within the ambit of Article 12 and stated that the purpose of this expansion of Article 12 was to “injact respect for human rights and social conscience in our corporate sector”⁷.

In T. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad⁸, Justice P.A. Chaudhary of Andhra Pradesh High court observed, “it would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by
Art. 21 of the Constitution embraces the protection and preservation of nature's gifts without which the life cannot be enjoyed. There can be no reason why the practice of violent extinguishment of life should not be regarded as violative of Art. 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be treated as amounting to violation of Art. 21 of the Constitution.

From the above observation of the Supreme Court, it is clear that Justice Chaudhary followed the true spirit of the Supreme Court judgments on environmental issues. The Andhra Pradesh High Court has made it explicitly clear that the polluted atmosphere caused by environmental pollution and spoliation would be regarded as amounting to violation right to life and Article 21 of the Constitution. This new interpretation will make the right to life and personal liberty under Article 21 more effective meaningful and useful to the common man. If this interpretation is accepted then the right to live in a healthy environment can be enforced by affirmative action and for the violation of this, the exemplary cost can be granted to the injured party. It is suggested that a constitutional bench of the Supreme Court as and when the occasion arises, should declare explicitly and specifically that right to live in a healthy environment is part of Article 21 of the Constitution.

In Hinch Lal Tiwari v. Kamla Devi & Others, the Apex Court has held that the material resources of community like forest, ponds, lakes, mountains etc. are nature's bounty. These need to be protected for a proper and healthy environment, which enables people to enjoy a quality of life which is the essence of the guaranteed rights under Art 21 and Art 22.

In Kinkri Devi v. State, the Himachal Pradesh High Court pointed out that there is both a constitutional pointer to the state and constitutional duty of the citizens not only to protect but also to improve the environment. The neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the fundamental law which the state and, indeed, every Indian, high or low, is
bound to uphold and maintain. The court further pointed out that if effective steps for the protection of environment are not taken with the utmost expedition, there will not only be a total neglect and failure on the part of the administration to attend an urgent task in the national interest but also a violation of fundamental right under Article 21 of the Constitution.

**Judicial Activism and PIL:**

It is heartening to note that the judiciary has provided life and vigour to statutory provisions dealing with environmental protection and improvement. During the recent years there have been many cases before the courts pertaining to environmental hazards. The judiciary in our country has played a pivotal role in making right to live in healthy environment as meaningful to all persons. In this process the courts have entertained many public interest litigation petition to settle the environmental issues and problems.

The judicial activism of the eighties is remarkable in widening the scope and ambit of the right to life. Judiciary began to recognize the right to clean environment as part and parcel of the right to life through slow and cautious deliberations. Under the ordinary law as well as the special legislations regarding the environmental protection, the individual's legal right to be protected against the environment pollution occupies an insignificant position. But with the birth of the public interest litigation or the social interest litigation, a conscious individual or a public association or union have an independent locus standi to file a writ petition before the Apex Court and the High Courts for raising the vital issues relating to the protection of environment in the interest of the community at large. This is an innovative technique to extend the arm of judicial intervention in public interest.

In S.P. Gupta case, the Supreme Court explained the doctrine of public interest litigation and the individual's right to action in clear terms. The court laid down that under the traditional law, the basis of entitlement to judicial redress
was personal injury to property, body, mind or reputation arising from violation, actual or threatened of the legal rights of the person seeking such redress. pointing out the individual’s inability and emphasizing at the same time, the protection of his interests as per justice Bhagwati the court observed that where a legal injury is caused to a person or determinate class of persons, and if, such person or class by reason of poverty, helplessness, disability, social or economic backwardness, ignorance etc. is unable to approach the court for relief, any member of the public or of a Union can come forward to file the application and the same will be maintainable and welcomed.

Public Interest litigation has played a significant role in the protection and preservation of environment. Several important environment problems and issues have been raised before the courts for logical solutions including the problems caused due to rock-blasting and quarries in Mussorie-Dehradun Hills, Oleum Gas Leakage in Delhi, the dangers caused by Hazardous Industries in Delhi, Ganga Pollution caused by ‘tanneries’ and dairies’, Taj Pollution in Agra. Coastal Pollution by Shrimp farming, vehicular pollution in Delhi, Depletion of forest cover, protection of wild flora and fauna, Solid Waste Management in Class-I Cities, etc. Most of these problems came to the Supreme Court only through PIL. The Court not only encouraged the petitioners but also appreciated their efforts in the protection and improvement of environment. The courts devised PIL to remove the sufferings all those, who did not otherwise have recourse to the judicial process and thus maintained the balance between Law and Justice.

Abuse of Locus Standi:

However, during this process, the Supreme Court has also warned some of the so-called PIL petitioners on more than one occasion that they must come with ‘clean-hands’ and without any ulterior objective, when they are approaching the court in public interest. The persons having personal grudge or interest will not be allowed by the court to plead the vital issues under the pretext of ‘public
interest' or 'social cause'. The aforesaid attitude and approach of the Court can be seen in the cases discussed below.

In Chhetriya Pardushan Mukti Sangharsa Samiti Case\(^15\) a petition was filed through a letter written to the court by the aforesaid petitioner alleging environmental pollution because of smoke and effluents caused by running of mills and plants in the area. The letter written by the Samiti alleged that the Jhunjunwala Oil Mills and refinery plant are located in the green belt area, touching three villages and the Samath Temple of International fame. The smoke and dust emitted from the chimneys of the mills and the effluents discharged from these plants were alleged to be causing environmental pollution in the thickly populated area and were proving a great health hazard. It was further stated that the people were finding it difficult to eat and sleep due to smoke, foul smell and the highly polluted water. It was further alleged that the lands in the area had become waste, affecting crops, and the orchards are damaged. Diseases like T.B., Jaundice and other ailments were stated to be spreading in an epidemic form. The growth of children was also affected. It was also alleged that the schools, nursing homes, leprosy homes and hospitals situated on the one kilometer long belt touching the oil mills and the plants are adversely affected. It was further stated that the licenses had been issued to one Dinanath for these industrial units thereby risking the lives of thousands of people without enforcing any safety measures either to curb effluents discharged from the plants or to check the smoke and the foul smell emitted from the chimneys\(^16\).

The court, after considering the merits of the case held that prima facie the provisions of the relevant Act, i.e. the Air (Prevention and Control of Pollution) Act, 1981 have been complied with and there is no conduct which is attributable to owners leading to pollution of air or ecological imbalances calling for interference by the Supreme Court and, therefore, this application is legally devoid of any merit or principles of public interest and public protection. These
applications certainly create bottlenecks in the Court, which is an abuse of process of the Supreme Court\textsuperscript{17}.

The Court further observed that Article 32 is a great and salutary safeguard for preservation of fundamental right to have the environment of quality of the life and living as contemplated by Article 21 of the Constitution. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws the quality of life and living, any person taken an action pro bono publico is entitled to take recourse of Article 32 of the Constitution. But, this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilized and invoked by the court with great deal of circumspection and caution. Where, it appears that this is only to cloak to, “feud fact ancient grudge” and enmity; this should not only be refused but strongly discouraged. While, it is the duty of the Supreme Court to enforce fundamental rights, it is also the duty of the court to ensure that the weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the Superior Court, preventing other genuine violation of fundamental rights, being considered by the court. Such types of acts or conduct, if permitted would defeat the very purpose of preservation of fundamental rights. The court found the petition was an outcome of ugly rivalry between the parties in the instant case.

In an earlier case also, the Supreme Court refused to listen the arguments favouring environmental preservation and ecological balance while hearing the matter of Scahidanand Pandey\textsuperscript{18}. In this case a petition was filed under public interest litigation to stop the State Government to allot the land for Taj Group of Hotels to construct the hotel in the vicinity of Calcutta Zoological Park. The argument put forward by the petitioner was that the hotel constructions in this area would not only shift the ecological balance in an unfavourable direction but also there would be problems to the animals’ habitation by the zoo, a question
relating to the wild life preservation. Moreover, the migratory birds come through this path, and the construction would interfere with their smooth arrival.

The Court further stated that it is only when, courts are appraised of gross violation of fundamental rights by a group or a class action or when basic human rights are infringed or when there are complaints of such acts which shake the judicial conscience then the courts, especially this court should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardship and miseries of the needy, the under doing and the neglected. This court will be second to none in extending help when such help's required, but this does not mean that the doors of this court are always open for anyone to walk-in. It is necessary to have some self imposed restrictions on public interest litigation.

In *Subhash Kumar Case*\(^1\), a petition was filed in the Supreme Court in which it was alleged that the surplus waste in the form of sludge/slurry is discharged as an effluent from the washeries of Tata Iron and Steel Co. in the Bokaro River. The water, thus, is rendered unfit for drinking and irrigation purposes. Though the petition was filed in ‘Public Interest’ but the Apex Court found from records that the petitioner has approached the court for self-interest and not for the public interest, as he was interested in collecting the sludge and slurry from the company’s washeries. The court, therefore, dismissed the petition with costs\(^2\). The court also made important observation, that, if, anything endangers or impairs the quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. Under Article 32, a petition will be welcomed and the same will be maintainable for the prevention of population only at the instance of affected persons or even by a group of social workers or journalists. But, recourse to proceedings under Article 32 of the Constitution should only be taken by a person genuinely interested in the protection of society on behalf of the community. The person should act pro bono
public. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge or enmity\(^1\).

**Emergence of Environmental Jurisprudence**:  

*Rallam Municipality v. Vardichand\(^2\)*, is a monumental judgment where the Supreme Court followed the activist approach and provided flesh to the dry bones of statutory provision. In this case the residents of a locality within the limits of Rallam Municipality tormented by stench and stink caused by open drains and public excretion by nearby slum-dwellers moved the Magistrate under Section 133 of Criminal Procedure Code to require the municipality to do its duty towards the members of the public. The Magistrate gave directions to Municipality to draft a plan within six months for removing nuisance. In appeal, session Court reversed the order. The High Court approved of the order of Magistrate. In further appeal, the Supreme Court also affirmed the Magistrate Order:

The Supreme Court appreciated the activist application of Section 133 of the Code of Criminal Procedure by the Magistrate for the larger purpose of making municipality "do its duty and abate the nuisance by affirmative action". The Supreme Court also rejected the plea of the municipality of insufficiency of funds. The court pointed out that financial inability cannot validly exonerate the municipality from statutory liability and it has no judicial base. The court further observed; that even as human rights under Part III of the Constitution have to be respected by the state regardless of budgetary provision\(^23\).

It is interesting to note that the Supreme Court did not point out that specific fundamental right under which the state can be compelled to respect the dignity and decency of the people. It seems that the Supreme Court had article 21 in its mind which guarantees right to life and that includes all attributes of life which are necessary for the enjoyment of life. The right to life and personal liberty includes the right to live with decency and dignity. In this context, the court pointed out that the grievous failure of local authorities to provide the basic
amenity of public conveniences drives the miserable slum-dwellers to cast in the streets openly, because under Nature's pressure to observe bashfulness is a luxury and maintaining dignity is a difficult art. The court observed that decency and dignity are non-negotiable facts of human rights and are a first charge on local self-governing bodies.24

Thus, from the above mentioned observations of the Supreme Court it is evident that it impliedly treated the right to live in a healthy environment as a part of Article 21 of the constitution.

In Rural Litigation and Entitlement Kendra, Dehradun v. The State of Uttar Pradesh25. The Supreme Court established the right to be free from pollution for the first time. A writ petition under Article 32 of the constitution brought to the notice of the Supreme Court that mining operations in certain limestone quarries were causing environmental and ecological imbalance to the detriment of the people living in the Mussoorie Hill range forming part of the Himalayas. In an order closing down mining operations in some of the mines, the Court upheld the right of the people to live in a healthy environment with minimal disturbance or ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment.27

It is interesting to note that although the writ petition was disposed of under Article 32, there is no reference in the whole case to the basic article i.e. Article-48A, the object of which it intended to achieve. Also article 21 was not referred to in this case by the Supreme Court. But this judgment can only be understood on the basis that the Supreme Court entertained writ petition regarding environment issues under article 32 of the Constitution as involved violation of right to life and personal liberty under Article 21 of the Constitution. In other words, the Supreme Court read and rightly so, Article 48-A into Article 21 of the constitution and regarded the right to live in a healthy environment as a part...
of life and personal liberty of the people. This approach of the Supreme Court is in consonance with the spirit of the Constitution.

**Compensation for Injury by Pollution:**

In *M.C. Mehta v. Union of India*, the right to be protected from Industrial hazards and environment pollution was established by the Supreme Court. An Advocate, M.C. Mehta, petitioned against the re-opening of certain plants of Shriram Foods and Fertilizers Industries, which were closed due to the leakage of Oleum gas from one of its units in 1985. Several persons were affected and one died. Acknowledging that Shriram manufactured and possessed hazardous and lethal chemicals and gases which posed a danger to life, the Court acknowledged also that complete elimination of the risk to the population at large lay in the relocation of the plant in an area without human habitation. However, as it was reluctant to impinge upon areas under the jurisdiction of the executive, the Court left it to the Government to evolve a national policy for the relocation of toxic or hazardous industries.

Applications were filed by the Delhi Legal Aid and Advice Board and Delhi Bar Association for the award of compensation to persons who were affected on account of escape of Oleum gas and suffered harm to their life and liberty. A preliminary objection was raised by the learned counsel appearing on behalf of Shriram that since there was no claim for compensation originally made in the writ petition, so this should not be considered by the court. The Supreme Court rejected the preliminary objection of the learned counsel. These applications for compensation are for the enforcement of the fundamental right to life enshrined in Article 21 of the Constitution and leading with such applications, we cannot adopt a hyper-technical approach which defeat the ends of justice... If this court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the court for justice, there is no reason why these applications for compensation which have been
made for the enforcement of the fundamental right of persons affected by Oleum gas leak under article 21 should not be entertained.

Thus, it becomes amply clear that the court treated the right to live in a healthy environment as fundamental right under Article 21 of the Constitution. The claim for compensation was filed on behalf of certain persons who were affected by the poisonous nature of gas which leaked out from the plant of Sriram and polluted the atmosphere. In the instant case the pollution of the atmosphere was to such an extent that it affected the life and liberty of the people, hence on behalf of these persons the claim for compensation was filed. Therefore, the applications were for the enforcement of fundamental right to live in a healthy environment.

Polluter Pays Principle (PPP):

The Polluter Pays Principle (PPP) envisages that the liability in case of harm or loss caused to the environment extends not only to compensate the victims of pollution but also includes the cost of restoring the environmental degradation. This principle is duly recognized at international level and has a global sanction. The European Community Environmental Policy sets out the main postulates of this principle in the following terms:

(a) Preventive action is to be preferred to remedial measures;
(b) Environmental damage should be rectified at source;
(c) The polluter should pay for the costs of measures taken to protect the environment, and
(d) Environmental policies should form a component of the European Community’s other policies.

The Rio Declaration, 1992 on Environment and Development also enunciates the aforesaid principles in the following terms.
“National authorities should Endeavour to promote the internationalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should in principle, bear the cost of pollution with due regard to the public interest and without distorting international trade and investment”.

In Vellore Citizen Welfare Forum v. Union of India & other (1996) 5 SCC 547, Hon’ble Justice Kuldeep Singh remarked that it is the onus on polluter industries to prove that their actions were environmentally benign.

The Apex Court articulated the Polluter Pays Principle in the environmental jurisprudence while dealing with the Vellore Citizens Forum case, involving problems of ground water pollution caused by tanneries in Tamil Nadu. The Court held that it is almost an accepted proposition of law that no rules of customary international law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by courts of law of this country. In Indian council for Enviro Legal Action v. Union of India, the court ruled the absolute liability principle is very much a settled law of the land. The court further observed that polluter pays principle is the part of the process of sustainable development and as such polluter is liable to pay the cost of the individual sufferer as well as the cost of reversing the damaged ecology.

Therefore, in short, the polluter Pays Principle as Interpreted by the Hon’ble Supreme Court of India implies that the absolute liability for harm or loss to the environment extends not only to compensate the victims of pollution but also includes the cost of restoring the environmental degradation.

It means that the liability for environmental damage would include environment costs as well as the direct costs to the people or their property. Remediation of damaged environment is part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual
sufferer as well as the cost of reversing the damaged ecology. In terms of this principle, it is not the responsibility of government to meet the cost involved in either prevention of such damage or in carrying out remedial actions, as the effect of that would be to shift the financial burden of the incidence of pollution on the tax payers.

**Precautionary Principle (PP):**

The Precautionary Principle (PP) speaks of a precautionary approach in the matters of development so as to ensure that a substance or activity posing threat to the environment is prevented from adversely affecting the environment, even if, there is no conclusive scientific proof of linking that particular substance or activity to environmental damage. The terms "substance" and "activity" here means and implies those substances and activities which are introduced as a result of human intervention\(^{38}\).

The Precautionary Principle has been well accepted by the United Nations in the declaration on World Charter of Nature, 1982 and has been recently reiterated in the Rio Declaration, 1992 in the following terms.

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing cost-effective measures to prevent environmental degradation"\(^{37}\).

The application of this principle in the municipal law would, therefore, imply\(^{38}\) that:

(i) The environmental measures by the State Government and the local authorities must anticipate, prevent and attack the causes of environmental degradation.
(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.

The Supreme Court applying this principle in the "Vellore Citizens forum case" laid down 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 Court had no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environmental law of the country. The Court also observed that even otherwise, the above said principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. The Court further observed that the burden of proof in such cases would shift on the persons who want to change the status quo i.e. the developer's etc.\textsuperscript{39}. This is a significant change in the environmental jurisprudence as traditionally the burden of proof in such cases lies on the persons who opposes development and wants a less polluted state. In A.P. Pollution Control Board v Prof. M.V. Nayudu\textsuperscript{40} the court held that order carelessly passed, without taking into account precautionary principle could have catastrophic consequences.

**Doctrine of Public Trust and Intergenerational Equity:**

The application of the Professor Joseph Sex's doctrine of public trust is another important contribution to the environmental jurisprudence by the Supreme Court of India. The doctrine of public trust calls for affirmative state action for effective management of resources and empowers the citizens to question ineffective management of natural resources. Chief Justice Y.K. Sabharwal\textsuperscript{40a} points out that when the Supreme Court has applied the public trust doctrine, it has considered it not only as an international law concept, but also as
one which is well established in our domestic legal system. 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. In the case of *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu*, it was observed by the Supreme Court that public trust doctrine have developed from the Article 21 of Constitution and is very much a part of the Indian legal jurisprudence.

This again points towards the inevitability of the judicial legislation as S.P. Sathe says that the Indian parliament has stopped legislating in the last two decades, naturally as an alternate the people started to look at Supreme Court as an institutional set-up for the enforcement of their rights or rather as a sensible agency which could hear their problems. As Upendra Baxi says that the public interest (social action) litigation and the judicial activism had given the Supreme Court legitimacy to step into the shoes of the legislator and to make the law. The doctrine of public trust, though borrowed from Professor Joseph Sax’s doctrine is a real epitome of the creation of the new principle by the Supreme Court. “In the Nature of the Judicial Process”, Cardozo says, we reach the land of mystery when constitution and statute are silent, the judge must look to the common law for the rule that fits the case. Benjamin Cardozo accepted the fact that judges do make law and he stated that:

“He (the judge) legislates only between gaps. He fills the open spaces in the law. How far he may go without travelling beyond the walls of the interstices cannot be staked out for him on a chart. He must learn it for himself as he gains the sense of fitness and proportion that comes with years of habitude to the performance of an art. The principle of intergenerational equity is referred in relation to two established doctrines i.e. (1) The doctrine of public Trust and (2) The principle of sustainable development. The principle of Intergenerational equity is a well established principle of International Law, which founded its right in Stockholm
Declaration 1972. Principle 2 of the Conference enunciates that "The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystem must be safeguarded for the benefit of present and future generations........". Herein above the principle of intergenerational equity has been referred with regards to "Public Trust Doctrine", whereas Principle 3 of Rio declaration 1992 adopts it with respect to the "Principle of sustainable development. Principle 3 proclaims that "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Our courts beautifully imbued the principle of international law into municipal law through their pronouncements. In Bittu Sehgal & Others v. Union of India45 Hon' ble Justice Kuldip Singh issued the directions to state government of Maharashtra and Dhanu Taluka authorities to protect Dahanu Taluka and also directed to consider and implement "Precautionary principle and Polluter pays principle" and also the doctrine of public trust. In intellectual forum, Tirupathi v. State of A.P. & Others46 the court was challenged to balance the competing claims of Environment and right to Shelter. The Court further explained that the principle of sustainable development and Intergenerational equity are not competing and conflicting but complimentary to each other. Balance is to be maintained between development needs asserted and environmental degradation alleged. It is our duty to protect and conserve environment for future generations.

**Nature and Extent of Liability:**

While showing its concern for the health and safety of the people, the Supreme Court pointed out that "an enterprise which is engaged in a hazardous or inherently dangerous Industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no
harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken\textsuperscript{47}. The Supreme Court further laid down that the "enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part".

Bhopal Gas Tragedy was a national catastrophe, which stirred the conscience of every righteous person, but the more pathetic state was that India had no legal answer to such problems. We had some provisions in IPC in form of nuisance and a tortuous liability based on \textit{Ryland v. Fletcher}. It was the judiciary in this hour of need that came forward to wipe out the tears of sufferers. The Supreme Court of India took a bold step and awarded an interim compensation on the basis of instant relief, but the court missed a chance to decide about the liability principle.

The Supreme Court while discussing the problems caused by leakage of Oleum gas in Delhi on a public interest litigation petition (PIL) filed by M.C. Mehta also explained the application of doctrine of strict liability laid down by the British Courts long back in \textit{Rylands v. Fletcher}\textsuperscript{48}. The Court held that an enterprise which is engaged in hazardous or inherently dangerous activity which poses a potential hazard to the health and safety of persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of such activity, the enterprises must be absolutely liable to compensate for such harms... and such liability is not subject to any of the exceptions which operate vis-à-vis the tortuous principle of strict liability under the rule laid down in \textit{Rylands v. Fletcher}.

In short, therefore, it can be stated that the undertakings which are engaged in the manufacture, sale, transportation, etc. of hazardous substances or dealing with otherwise inherently dangerous activities shall be squarely responsible and absolutely liable for the loss or damage caused to the public, if,
anything happens due to their operations. No defence of any kind is permissible including the defences pointed out by the Court in *Rylands v. Fletcher*. In other terms the defendant, in such cases, owes a non-delegable duty towards public at large and therefore cannot be excused on technical terms or defences.

In the case of *M.C. Mehta v. Union of India* (Oleum gas leakage case) Justice Bhagwati came up with the absolute liability principle. In this case the leak of Oleum gas from the factory injured several Delhi Citizens. Justice Bhagwati used this opportunity to develop the concept of absolute liability, which replaced the strict liability of *Rylands v. Fletcher*. In this judgment by Bhagwati, we could see the judicial activism of the highest order. Bhagwati held that strict liability rule was evolved in the 19th century and that “law has to grow in order to satisfy the need of the fast-changing society and keep abreast of the economic developments taking place in the country. He goes on to say “we no longer need the crutches of a foreign legal order... we in India, cannot hold back our hands and I venture to evolve new principles of liability which English Courts have not done. Justice Bhagwati also observed that law has to grow in order to satisfy the fast changing society and keep abreast of the economic developments taking place in the country.

The components of the absolute liability may be identified as follows:

1. It applies to an enterprise that is engaged in inherently dangerous or hazardous activity.
2. The duty of care is absolute.
3. The exception to the strict liability developed in the *Rylands v. Fletcher* is not applicable.
4. The liability is on the enterprisers rather than on the company (point well taken from the Bhopal gas tragedy).
5. The larger and the greater the industry greater should be the compensation payable.
The transition from the strict liability to absolute liability is considered to be an example of "constitutionalisation of the tort law. But at the end, the court could not provide compensation to the injured persons because court was unsuccessful in the attempt to determine whether Shriram Industry qualifies to be other authorities under the definition of "state" in Article 12 of the constitution.

But subsequent developments give the view that even private entities are not excluded from the liability for infringement of fundamental rights. In Indian Council for enviro legal action v. Union of India, the court went on to say that Art. 51-A(g) though prescribes a duty of citizen to maintain the environment, yet in fact confers a right on them to be enforced against the state, which in turn is available against the polluters. The German jurisprudence of Drittwirkung (fundamental rights apply horizontally between the private entities as well as vertically between state and citizen) can be referred here for the clarity of the path of the development. An epitome of this is the Consumer Education and Research Centre v. Union of India. In this case the Supreme Court ordered several asbestos mines and industries to pay compensation to any worker certified by the National Institute of Occupational Health to be suffering from asbestosis.

But a new view has come up that absolute liability has become a principle of remediation of the damaged environment, a part of the process of sustainable development, the courts had enunciated principle like polluter pays. This actually shows the existence of Judge's made law. Absolute liability is purely a brain child of justice Bhagwati. This is undisputable fact which could be easily seen from looking at the Ryland v. Fletcher rule.

"Where a person for his own purposes, brings and keeps on land, in his occupation, anything likely to do mischief, if it escapes, he must keep it at his own peril, and if he fails to do so he is liable for all damages naturally accruing from the escape". Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the
operation of such hazardous or inherently dangerous activity, then for the resulting damages such person is absolutely liable to compensate all those who are affected by the accident\textsuperscript{53}.

This description is an epitome of ‘Judicial law-making’, the creative approach of interpretation is needed for a dynamic constitution like the Constitution of India. If such an attitude is not adopted Indian Constitution will cease to be a social welfare document?

**Directional Justice and the Constitution of India:**

Art 142 of the Constitution of India empowers Supreme Court to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. It is the inherent power of the court to do the wholesome justice. This article has made the highest court a saviour and protector of the constitution and also the law giver as and when need arises. In *M.C. Mehta v. Union of India*\textsuperscript{54}, popularly known as the Ganga Water Pollution case, the same Advocate as in the Shriram case sought a petition under Article 32 of the Constitution for the Court to issue directions to all those responsible for the pollution of the river Ganga. The petition sought to fork the fundamental right to a clean and hygienic environment as part of the right to life in terms of Article 21. This case focused on the widespread pollution of the river Ganga by the discharge of trade effluents and sewage from tanneries into the river. The Court issued directions to the tanneries to stop operations and not to let out effluents either directly or indirectly into the river without subjecting them to a pre-treatment process\textsuperscript{55}. The polluted water affected the health and life of the people. The court observed that the financial capacity of the tanneries should be considered as irrelevant while requiring them to establish the treatment plants.

In the subsequent cases\textsuperscript{56}, the Supreme Court while entertaining the public interest litigation under Article 32 pointed out that the writ petition was filed by a person who was not a riparian owner but is interested in protecting lives of
people using water of river Ganga and hence the public interest litigation was maintainable.

In order to control and prevent the pollution of water of river Ganga at Kanpur and thereby protecting the health and life of the people using the Ganga Water, the Supreme Court issued certain directions by way of affirmative action for compliance by The Kanpur Municipal Corporation and other concerned authorities. The Supreme Court further pointed out that since the problem of pollution of the water in the river Ganga has become very acute; the High Courts should not ordinarily grant orders to stay of criminal proceedings to prosecute the industrialists or other persons who pollute the water in river Ganga. However, if an order of stay is made in an extraordinary case, High Courts should dispose of such within a short period say within two months from the date of the institution of such case. In Bhopal Gas Tragedy, also the Supreme Court has played a very important role; it showed its deepest concern for the life and liberty of the people which was affected by the leakage of the poisonous gas resulting into the pollution of the environment. The court directed the government to immediately provide interim relief for the victims of the gas tragedy.

In *Union Carbide Corporation v. Union of India*, the Supreme Court directed the Union Carbide Corporation to pay a sum of U.S. Dollar 470 millions to the Union of India in full settlement of all claims and liabilities related to and arising out of the Bhopal Gas disaster. The Court further explained the statement of reasons, giving basis for arriving at the just, equitable and reasonable sum of U.S. Dollar 470 million. The Supreme Court considered it a compelling duty, both judicial and human, to secure immediate relief to the victims.

The Supreme Court also emphasized that there is also need to evolve a national policy to protect national interests from ultra-hazardous pursuits for economic gains. Jurists, technologists and other experts in economics, environment, futurology, sociology and public health etc. should identify areas of common concern and help in evolving proper criteria which may receive
judicial recognition and legal sanction. The court also pointed out the criticism of M.C. Mehta principle that perhaps ignores the emerging postulates of tortious liability, whose principal focus is the social limits on economic adventurism. There are certain things that a civilized society simply cannot permit to be done to its members even if they are compensated for their resulting losses. Thus, the right to live in a healthy environment cannot be violated by anybody under the plea that if any harm is caused then the injured party shall be suitably compensated. In other words, the right to live in a healthy environment is supreme.

In Charan Lal Sahu v. Union of India60, while upholding the validity of Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, Justice K.N. Singh rightly observed:

In the context of our national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by the constitution under Articles 21, 48-A and 51 (g). It is the duty of the State to take effective steps to protect the guaranteed constitutional rights. These rights must be integrated and illumined by the evolving international dimensions and standards, having regard to our sovereignty, as highlighted by Clause 9 and 13 of U.N. Code of Conduct on Transnational Corporation. The evolving standards of international obligations need to be respected, maintaining dignity and sovereignty of our people, the State must take effective steps to safeguard the constitutional rights of citizens by enacting laws. The laws so made may provide for conditions for granting license to Transnational Corporation, prescribing norms and standards for running industries on Indian soil ensuring the constitutional rights of our people relating to life, liberty, as well as safety to environment and ecology to enable the people to lead a healthy and clean life. A Transnational Corporation should be made liable and subservient to the laws of our country and the liability should not be restricted to the affiliate company only but the parent corporation should also be made liable for any damage
caused to the human beings or ecology. The law must require Transnational Corporations to agree to pay such damages as may be determined by the statutory agencies and forums constituted under it without exposing the victims to long drawn litigation. Under the existing civil law, damages are determined by the civil courts, after a long drawn litigation, which destroys the very purpose of awarding damages. In order to meet the situation, to avoid delay and to ensure immediate relief to the victims we would suggest that the law made by the Parliament should provide for constitution of tribunals regulated by special procedure for determining compensation to victims of industrial disaster of accident, appeal against which may lie to this Court on limited ground of questions of law only after depositing the amount determined by the tribunal. The law should also provide for interim relief to victims during the pendency of proceedings. These steps would minimize the misery and agony of victims of hazardous enterprises. The Court further said, as mentioned in the Universal Declaration of Human Rights that people are born free and the dignity of the persons must be recognized and effective remedy by competent tribunal is one of the surest methods of effective remedy. If therefore, as a result of this tragedy new consciousness and awareness on the part of the people of this country to be more vigilant about measures and the necessity of ensuring more strict vigilance for permitting the operation of such dangerous and poisonous gases dawn, then perhaps the tragic experience of Bhopal would not go in vain.

If we interfere with the nature beyond the degree of tolerance then that may affect our life and livelihood. For every triumph that men make over nature, she takes her revenge. The right to life is much more than the right to animal existence and its attributes are many folds as life itself.
Public Participation:

In *M.C. Mehta v. Union of India*\(^62\), a PIL succeeded in getting a favourable opinion from the Supreme Court for educating the people about the hazards of environmental pollution. The judges agreed that law alone could not be an effective instrument for protecting environment unless there was an element of social pressure or social acceptance and the interaction would be voluntary. The court directed the central and state governments to exhibit slides in cinema halls containing information and messages on environment and for spread of relative information through radio and television and making environment a compulsory subject in schools and colleges. These messages were to be designed to educate the people about their social obligation in the matter of the upkeep of the environment in proper shape and making them alive to their obligation, not to act as polluting agents or factors. The court also directed the authorities to invariably enforce, as a condition of licence to all cinema halls; tourist cinemas and video parlours, to exhibit free of cost at least two slides/messages on environment in each show undertaken by them. The Ministry of Environment was directed to prepare slides carrying the message home on various aspects of environment and pollution. Licence had to be cancelled if a cinema hall failed to exhibit these slides. The ministry of information and broadcasting was also directed to start the production of information films of short duration. The programme controlling authorities of the Doordarshan (Television) and All India Radio were directed to take proper steps to make interesting programmes and broadcast the same on radio and television. All directions issued by the court had to be complied with from 1.2.1992. The court also advised the University Grants Commission to consider the feasibility of making environment a compulsory subject at every level of college education.

However, in *K.K. Vasant v. State of Karnataka*,\(^63\) The Karnataka High Court spelled out the limits of judicial action in environmental litigation. In this case, PIL was brought for directions to the state government to
declare the firths of any catchment area as Virgin forest, not to be subjected to any exploitation in any way. Further, directions were sought to amend the Forest Act, 1963 to express the intent of the legislature in the preamble and strict execution of the same to cancel licence and permits of the established forest based industries whose products for the consumers had substitutes in the nature of metals, iron, steel, aluminum, cotton etc. The petitioners also requested the court to issue directions to the state government to protect, preserve and conserve the rich flora and fauna and other medicinal plants in all forests and to restrain from spending revenue on expensive advertisements and divert the same for a forestation projects by proper implementation.

**Balancing of Interest Concept:**

A very important jurisprudential concept of the "Balancing of Interest" could be actually used to evaluate the cases in which the sustainable development concept is being used. In this process of interpretation, the court is more concerned with weighing the competing values of a free society's conflicting interest. The very process of balancing the competing social interests based on the constitutional values, demonstrates the essential similarities between judges and legislative character of the legislature. This again takes us into the realm of reality of the judicial law making. But it is well established that the court should not assume the role of a super-legislature. This is, in another way, described as "judicial restraint". This principle of judicial self-restraint should not be stretched too far and too often to convert the court into a virtual rubber stamp of a legislature. The reason is that the concept of democracy includes provision of those rights, which make it possible for minorities to become majorities. A system that is founded on the doctrine of the "separation of powers" and "checks and balances," necessarily calls for cooperation among governing institutions in policy making.
A very relevant discussion on this point can be referred and this is the judgment in Naramada Bachao Andolan v. Union of India\textsuperscript{66} and for that matter all of the infrastructural projects and the related policy issues. In this case it was opined by the Supreme Court that in the present case, we are not concerned with the polluting industry... what is being constructed is a large dam. The dam is neither a nuclear establishment nor polluting industry. The construction of a dam undoubtedly would result in the change of environment, but it will not be correct to presume that the construction of a large dam like Sardar Sarovar will result in ecological disaster. The experience does not show that construction of a dam... leads to ecological or environmental degradation. This signifies that the precautionary principle can be used only in the case of pollution and with reference to the sustainable development, 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". The courts have attempted to provide a balanced 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 it's critically to the community. This is in order that future generations may benefit from policies and laws that further environmental as well as developmental goals. In Intellectuals Forum Tirupathi v. State of A.P.\textsuperscript{67}, the court held that a balance is to be maintained between developmental activities and resultant environmental degradation. Some definitely is to be sacrificed to achieve the development. Now the only question is what worth are we sacrificing?

**Attitude of Judiciary towards infrastructural projects: An emerging view:**

The judicial power, in recent times, experienced by an activist interpretation of the constitution, brought out many judgments having a social justice character in the matter of environmental issues in general. But when it comes to the matter of infrastructure development, we could observe a different
approach taken by judiciary dealing with it as policy matter. Even though the judiciary is reconciling the forces of sustainable development and environmental degradation in environmental issues, the judiciary views the infrastructure development projects, especially dam building, from a totally different perspective.

The judiciary is not concerned with the question whether the decision is right or wrong; the question is whether the concerned authority has taken the decision after a consideration of all relevant aspects. In the same case, the nature of limitation on judicial review could be called more appropriately as the self-imposed restrictions of a court in considering such an issue. These points could be elaborated by adding that it is primarily for the government to consider the importance of public projects for the betterment of the conditions of living of the people. The court’s role is sustainable development. M.C. Mehta v. Union of India is one of the earliest cases where the Supreme Court had indirectly dealt with question of sustainable development and held that, “Life, public health and ecology has priority over unemployment and loss of revenue problem”.

One of the earliest cases in which the Supreme Court had to deal with the question of the Development viz-a-viz Environment, is Rural Litigation and Entitlement Kendra of Dehradun v. State of Utter Pradesh, in this case the matter related to illegal and unauthorized mining that was causing ecological imbalance and also environmental disturbance. The court rightly pointed out that “it is always to be remembered that these are permanent assets and not to be exhausted in one generation” and thus holding that the environmental protection and ecological balance also are equally important for as the economical development of the country.

The Supreme Court after much investigation, ordered the stopping of mining work and held 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. This judgment could also be considered in this context. This was first time such a question is coming before the Supreme Court.

The first case in which the apex court had applied the doctrine of 'Sustainable Development' was Vellore Citizen Welfare Forum v. Union of India. In the instant case, a dispute arose over some tanneries in the state of Tamil Nadu. These tanneries were discharging effluents in the river Palar, which was the main source of drinking water in the state. This is considered to be the most important case as far as the evolving of the environmental law and the contribution of the Indian Supreme Court in that direction, is unconnected.

In this case, the judgment given by Justice Kuldip Singh is of utmost importance, as he has observed in his judgment that "the traditional concept, that development and ecology are opposed to each other, is no longer acceptable. 'Sustainable Development' is the answer." He goes on to explain about the development of "sustainable development" as a well accepted principle at the international level. Justice Kuldip Singh observes that "we have no hesitation in holding that 'Sustainable Development,' as a balancing concept between ecology and development, has been accepted as a part of the Customary International Law...."  

While accepting 'Sustainable Development' as the part of the environmental law of the land, the reasoning given by Justice Kuldip Singh shows that the Supreme Court has a greater power to make the law rather than just to interpret the law. Justice Kuldip Singh held that "Once these sustainable development principles are accepted as a part of the Customary International Law, there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rule of Customary International Law which is not contrary to the municipal law, shall be deemed to have been incorporated in the domestic law and shall be followed by the Courts of Law." It
was also observed that “Our legal system having been founded on the British Common Law, the right of a person to pollution free environment is a part of the basic jurisprudence of the land”.

In *T.N. Godavaram v. Union of India*\(^7^5\), the Supreme Court reiterated what had been said in the *Vellore case* and has declared that the precautionary and sustainable development principles are two salutary principles that govern the law of the environment.

In *N.D. Jayal v. Union of India*\(^7^6\), the Supreme Court has declared that “the adherence to sustainable development is a sine qua non for the maintenance of symbiotic balance between the right to development and environment. This concept is an integral part of life under Article 21. In *Sothusamudram’s case*\(^7^7\), the Chennai High Court opined that industrialization created the wealth necessary for protecting the environment. On Jan. 21, 2005 the High Court dismissed a writ petition challenging Sethusamudram Shipping Canal project (SSCP) observing that there is no conflict between development and environment protection, as both go together under Art. 21.

*Goa Foundation v. Konkan Railway*\(^7^8\) emphasizes the need to maintain a balance between development and environmental pollution. In this case a public interest petition was filed by a society to stall a project undertaken by the central government for public benefit. The project involved the laying of new broad gauge railway line passing through the states of Maharashtra, Goa, Karnataka and Kerala. The Konkan Railway Corporation Ltd., a public limited company was set up to fulfill the dreams of the people residing in the west coast by providing a broad gauge railway line from Bombay to Mangalore and then to Kerala. The petitioners prayed that the corporation should be compelled to procure environment clearance, in order to pass through the state of Goa, from the Ministry of Environment and Forests, Government of India and until such clearance was secured all the work in respect of providing railway lines should be withheld.
The court declined to interfere with the project of such magnitude, undertaken for meeting the aspirations of the people. It was clarified that while examining the grievance of possible adverse effect on environment, the benefit which will be derived by large number of people by the construction of rail line could not be brushed aside. According to the court, the project was undertaken only after the approval of renowned experts from the area and the prior approval of central government under section 2(f) of The Forest (Conservation) Act, 1980 was not necessary. A Public Interest Litigation, could not be used for subserving the private interest or the interest of a local area to the detriment of the public at large, the court added.

The judicial efforts to control pollution have not so far shown any positive gains. For instance, the Supreme Court had ordered the closure of 25 units situated on the banks of Ganga for not conforming to pollution laws. Instead of setting up effluent treatment plants as directed by the court these units were found to have been merely carrying on their polluting activities as usual compelling the apex court to think in terms of initiating contempt proceedings.

It is quite clear that despite various anti-pollution laws, there have been very few instances of closure of polluting agencies. The main reason is that the state pollution control boards are hamstrung by the lack of infrastructural facilities to deal with the situation. In some states the boards have to rely on the laboratories of the polluters themselves as they lack their own facilities. In addition, to this, political pressure also deters the boards from taking action against erring units.

However in S. Jagannath v. Union of India, the court held that everything can not be allowed in the name of progress and development, Shrimp farming through merchandize method can not be allowed as it results in depletion of natural resources. The jurisprudential question “modernity versus tradition”, “ecology versus industry” were categorically answered and held that development
is to be seen vis-à-vis to the ecology and to be judged in the totality of the given circumstances.

Judicial attitude towards accountability of the government:

V. Lakshmipathy v. State of Karnataka\textsuperscript{80} underlines the importance of governmental accountability in protecting environment. The Karnataka High Court warned that “when the administrators do not mend their ways, the courts become the battle ground of social upheaval” and “if the administrators show indifference to the principle of accountability, law will become a dead-letter on the statute book and public interest will be the casualty\textsuperscript{81}.

In this case the petitioners had embarked upon PIL to prevent the state government from allowing an aggregated residential area to be used for industrial purposes. It was alleged to be gross violation of the Karnataka Town and Country Planning Act, 1961, as the government has allowed running of factories, factory sheds, manufacture of greases and lubricating oils by distillation process and also production of inflammable products. Agreeing with the petitioner, the court ruled that all the licences, permissions and certificates of change of land use issued by the administrators to various Industry owners were illegal, void and violative of Article 21 of the Constitution. Acknowledging the entitlement to clean environment as a basic human right incorporated in Article 51A (g) of the Constitution, the court remarked that the right to life does not fall short of qualitative life which is possible only in an environment of quality\textsuperscript{82}. Lakshmipathy is notable for its elaborate discussion on the hazards of environmental pollution. The court took the view that the movement of or restoration and maintenance of a livable environment required curbing the power of narrowly-oriented administrative agencies in the appropriation of the dwindling acreage of land and water not already irrevocably appropriated.

Therefore, the real problem was of rendering “big Government more responsive to the needs of the individual whom it governs”\textsuperscript{83}. The state and
society owes an onerous obligation to posterity to clean air, clean water, greenery and open spaces and these ought to be elevated to the status of birth rights of every citizen. The court further observed that the fundamental duties enshrined in the Constitution were intended to promote people’s participation in restructuring reshaping and building a welfare society. Hence protection of environment was a constitutional priority, the neglect of which would only invite disaster. Article 226 enables the citizens to move the High Court to enforce the performance of statutory obligation of any authority coming within the sweep of Article 21, namely, under anti-pollution laws.

Judiciary’s Contribution in the preservation of forests and Wildlife:

Wildlife is an other but integral part of wholesome environment, the Wildlife Protection has received great impetus in the present day due to the decline of India’s Wild animals and birds which are one of the most varied and diverse in the world and this decline has become a great cause of concern for mankind as some wild animals have already become extinct and the other are fast marching towards extinction. A need has been felt to preserve and protect the wildlife which forms an essential part of the biodiversity and is necessary for the maintenance of the ecological balance and the sustainability of the environment.

As regards the protection and preservation of wildlife one major problem which is being faced is as to how to preserve the diverse species from extinction. In the present state of biodiversity and environment, the courts cannot sit with closed eyes. Therefore, the courts have played a much activated role in constructing and enforcing the provisions relating to the protection and preservation of wildlife.

Indian judiciary has had many occasions to evaluate the provisions of the Wildlife Protection Act, 1972 and suggested many devices for conserving the environment and the wildlife. The powers of the Supreme Courts to issue directions under article 32 and that of the High Courts under Article 226 to issue
directions have attained great significance in environment litigation. Courts have made use of three powers to remedy past maladies and to check immediate and future assaults on the environment. The range of issues, dealt with by the courts has been very broad and includes compassion to animals and privileges of tribal people and fisherman to the ecosystem of the Himalaya and forest, eco-tourism in land use patterns and vindication of an eco-malady of a village. It is very much surprising that to maintain the balance of forest ecosystem, The Wild Life Protection Act, 1972 was enacted and the government has initiated many projects to save the wild life from extinction, but has our government ever thought of the plights of forest dweller more often described as tribals. To buttress the findings I refer a controversy, which was sparked by an Act drafted by the ministry of tribal affairs called “The Scheduled Tribes (Recognition of Forest Right) Bill 2005, which seeks to recognize the traditional rights of tribals in forests. The Bill in its aim divulged the necessity of passing the Act and sought to correct the historical wrong done by Britishers. This bill raised a storm of protest by the Ministry of Environment and Forest, and so much was the vehement opposition that the Prime Minlster had to intervene. Now the bill has been passed and has come in shape of The Forest Rights Act 2007. This Act has a unique feature and aims at to enlist the support of forest dwellers in the protection and conservations of forests and forest produce.

The ability to exercise the original jurisdiction of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution of India, respectively is a remarkable step in providing protection for the environment. Courts have widened the dimensions of the substantive rights to health and a clean and unpolluted environment in most cases the courts made progress towards the protection of wildlife by the means of Public interest litigations. The courts have opened a path of proconsul justice (instant justice), without enslaving themselves to procedural compulsions".
In *Taran Bharat Sangh Alwar v. Union of India* a social action group challenged the legality of granting a mining license in the protected area of a reserved forest within Sariska Tiger Project. Upholding the contention of the Petitioners, the Supreme Court observed, “this litigation should not be treated as the usual adversarial litigation. Petitioners are acting in aid of a purpose on the national agenda. Petitioner’s concern for the environment, ecology and wildlife should be shared by the government.”

This observation of the Supreme Court is important, as it emphasizes the rational of the PIL in environmental issues. The part played by courts has proved to be important, as courts have given directions, which have helped to fill the yawning gaps in the existing laws as the statutes are formulated upon by the legislatures, which provide for administrative authorities for their implementation and it is the duty of the courts to see that the administrative agencies appointed by the government effectively enforced such policies in accordance with what has been laid down in the Legislation. In certain cases the courts have gone to the extent of asking the government to constitute national and state regulatory authorities or the environmental boards. In most cases, courts have issued directions to remind the statutory authorities of their responsibility to protect the environment. The national forest policy bears the imprints of two important decisions namely, *State of H.P. & others v. Ganesh Wood Products and others* (1995) 6 S.C.C. 363 and *T.N. Goodavarman v. Union of India AIR 1997 S.C. 1233*. Both the cases though decided on different premise, yet have a common feature that is the conservation of forests and forest produces. In both the cases unlicensed saw mills, wood based industries like plywood, veneer were ordered to be closed and the directions were to be strictly complied by the state administration. It was in this backdrop that by 1995 gloom had engulfed the conservation community and the political will to govern forest lands had faded and without effective governance the plunder of India’s natural resources had increased manifold. It was all about this time that the court redefined forests to
prevent any loopholes in the law from being exploited which could result in the felling of trees or encouraging any other exploitative activity. Felling was stopped throughout India except in accordance to a working plan approved by the Central Government. The seminal issue involved is whether the approach should be “dollar friendly or Eco-friendly. The answer is anybody’s guess and is certainly the later one. The court remarked:

“The aesthetic use and the pristine glory can not be permitted to be eroded for private, commercial or any use unless the courts find it necessary, in good faith, or for public good.”

An environmentalist commented that “The ten years period from 1992 saw not less than two hundred and fifty cases decided by the Supreme Court and by various High Courts. In these cases, the judiciary has appreciated the role of the government, where it was worthy of appreciation and also exposed the concerned governments of their inactions, where they failed to discharge their duties in handling environment related matters. The study selects the present decade in particular because this decade witnessed a large scale of environmental degradation, and also it saw the largest number of environment case laws, and the central government and the state governments having made tall claims of protecting and improving the environment”.

The judiciary in cases pertaining to wildlife has to strike a balance between the rights of the forest dwellers and the wildlife. The Nature Lovers Movement v. State of Kerala, was a case, which clearly brings out the above aspect, although the case was concerned more with the Forest Conservation Act 1980. It is indirectly linked with the issue in consideration i.e. protection of wildlife, and the conservation of forest as both are inseparable. There can be no wildlife without forests.

In the Nature Lovers Case a large area of forest was invaded by encroachers. The government of Kerala sent a proposal to the Ministry of
Environment and Forests, Government of India in June 1986 for the regularization of encroachments, which had taken place before the 1st January, 1977. The pleadings before the courts bring out the fact that the Chief Minister of the State was in favour of regularizing encroachments due to political compulsions. The petitioners, a voluntary organization, functioning with the main object of protection of wildlife and ecology, approached the High Court against the government of Kerala floating the provisions of article 48-A and laws and rules relating to protection of environment. The plea taken by the State of Kerala included pressure of population, impossibility of reverting them into forest area, implementation of social forestry programme involving Rs.113 crores and the regularization of encroachments before 01.01.1977, did not attract the provision of Section 2 of the Act 1980.

The Apex Court, seems influenced by the human problem in upholding the action as valid, tried to balance environment and development in such a way that socio-economic development was given predominance over the issue of protection of environment. In coming to this conclusion the court confined its vision to pro-development case law, where judges looked to aspects other than environment.

The litigation pertaining to wildlife has mainly been filed by persons concerned over the sharp decline of species and the impact that the degradation of environment over the years has had upon the ecology and the wildlife in particular. Such litigations have been perpetuated by the decisions of the judiciary on wildlife and on its conservation and preservation thereof and the fact that protection of wildlife and development go hand in hand.

In State of Bihar v. Murad Ali Khan\(^6\), the question was whether the First-Class-Magistrate before whom a Range Officer makes a complaint, could take cognizance of the offence while an investigation by the police is pending with regard to the same offence. The allegation was that the respondents shot and stunned an elephant and removed the tusks. The Supreme Court disagreed with
the High Court and held that the magistrate can proceed with the case even while
the police investigation is pending, as the law allows the Magistrate to take
cognizance of a case on complaint by forest officials. The significance of the case
lies in the court’s observation that laws on wildlife were a result of the compelling
need to restore the ecological balance overturned by human action. The court
went on to say that the state to which the ecological imbalance and the
consequent environmental damage have reached is so alarming that unless
immediate determined and effective steps were taken, the damage might become
irreversible. The preservation of fauna and flora, some species of which are
going extinct at an alarming state, has been a great and urgent necessity for the
survival of humanity and these laws reflect a last ditch in the battle. In this
judgement, court went on to explain the object of the Wildlife Protection Act and
said that the main object of the Act was the need to restore the serious ecological
balance destroyed by the depredations inflicted on nature by man.

In an earlier case World Wildlife fund for nature v. Union of India.87. The
WWF approached the Delhi High Court seeking directions against the union
government and the states to take effective steps to protect wild animals in
particular from being poached or being illegally hunted. The petitioner also sought
directions to curb the illegal trade in animal articles. The Division Bench judgment
delivered by justice Dalveer Bhandari refers to the parliamentary debate held
preceded the enactment of the Wildlife Act and reviews India’s International
obligations under the convention on international trade in endangered species of
wild fauna and flora (CITES) and records grim statistics and trend regarding
seizures of animal skins by the wildlife department.

This judgment looked closely at the problems confronting the Tigers
Conservations; incidents of poaching were on the rise and the census figures of
poaching increased alarmingly and the census figures of tiger population
suggested that the gains made by the “Project Tiger” are being nullified by illegal
poaching.
In *Ivory trends and manufacturer’s Assn v. Union of India*, the Petitioner challenged provisions banning trade in imported ivory and articles made from this ivory on the ground that it violated their fundamental right to carry on their trade or business under article 19(1) of the Constitution of India. Answering the challenge the High Court held that prohibition was justified since the sale of ivory by the dealers would encourage poaching and killing of elephants to replenish the stocks held by the petitioners. Trade business at the cost of disrupting life forms and linkages necessary for the preservation of biodiversity and ecology cannot be permitted. The High Court expressed its concern at the serious threat to the Indian elephant particularly in South India. The International ban on the trade in the ivory of African elephant was likely to exert even a greater pressure on the Indian elephant, necessitating a complete prohibition. The High Court concluded that under the constitution, the trade in articles of ivory was similar to a pernicious activity like the business in intoxicants and could be lawfully banned. The court also rejected a plea by traders to deal in mammoth ivory, who claimed that they posed no threat to elephants. The court found that it was difficult to distinguish between the two types of ivory and hence the ban applied to dealers in mammoth ivory articles as well.

**G.R. Simon and Others v. Union of India**. In this case the petitioners who were manufacturers and dealers were engaged in retail trade of tamed cured and finished skins of animals. Petitioners were also engaged in retail trade of articles made of animal skin, and challenged the introduction of provision of Chapter V-A in the Wildlife (Protection) Act, 1972 by Wildlife Protection Amendment Act 1986 together with a notification issued thereunder as being violative of Article 19(1)(g) read with article 300 and 300A of the Constitution of India.

The petitioners claimed to have applied for licenses and were granted licenses in various categories and claimed to have carried on their business as valid license holders. The petitioners further submitted that apart from those who hunt and trap the animals and do the cutting and tanning they are wholesale
dealers of skins including snake skins, the manufacturers of the skins into articles and retail dealers of such articles. Further these animal articles were in two categories namely furs, which consist of coats caps gloves, blankets, stoles, skins and snake skin items such as bags, shoes, wallets, brief cases belts etc.

The petitioners challenged the aforesaid Amendment and argued that there was no nexus between the object of preservation of animals and banning the trade of animal skins, the amendment was colorable since the statement of the Minister in Parliament conveyed the impression that the ban would apply to specified animals and not to all animals and that the provisions preventing the holding of stocks beyond the stipulated period was confiscatory and the impugned provisions would render unemployed the petitioners who were engaged in a legitimate business. The Court rejected each of these pleas. Wildlife formed a part of India’s heritage and the Amendments were inserted on the recommendations of the IBWF. The court held that the amending act was not a colorable exercise of power and that the provisions designed to climate stocking of animal skins was necessary to prevent accumulated stocks from serving as a cover for smuggling animal articles. Asset and heritage to be preserved for future generations. It was further observed that Wildlife forms part of the cultural heritage in the same manner as other archaeological monuments, paintings and literature etc. Each and every animal plays a role in maintaining the ecological balance and therefore the contention that certain animals have no role to play, or are detrimental to human life is misconceived. Taking even the case of animals, which are referred to by the petitioners as animals of no utility, these are natural scavengers who feed on flesh of dead animals, thereby keeping the environment clean. Snakes, which have been described by some petitioners as harmful and dangerous to human life fed on rats. The mortality rate in the country due to snakebites is less than 0.00055; which is very low compared to the death and fatalities caused by other diseases and other animal bites. Snakes are natural killers of rat, who cause loss to nearly 3 million tones of stored cereals,
apart from dreaded diseases such as plague. The above discussion would show that even the most of maligned animals which appear apparently to be of no utility, have a role to play in retaining ecological balance. Besides it is only when human beings treated their natural habitat the animals react. The Wildlife Protection Act has provisions to deal with to eliminate those animals which are harmful to life and serve no useful purpose is misconceived. It is to be recognized that Wildlife is an asset\textsuperscript{90}.

In \textit{Pyarelal v. State\textsuperscript{91}}, the appellant, found in possession of trophies of Chinkara skin intended for sale, had been convicted by the trial court, despite his plea that trophies were made out of goat skin and not of any wild animal. There was no evidence to provide when exactly the appellant came in possession of the trophies. This led the Supreme Court to hold that the appellant committed only an offence of violating the law relating to declaration of the trophies in possession. According to the Apex Court the appellant did not make a declaration required under law from all dealers, hence was only liable for the reduced punishment prescribed for that offence.

From the judicial response to the wildlife protection it becomes quite apparent that wildlife protection legislation in India or anywhere else in the world for the matter cannot be examined in isolation from the legislations pertaining to protection of forests. The reasons being that judicial decision concerning forests have implication on wildlife, for wildlife cannot exist without forests and similarly decisions on the preservation of wildlife implies the conservation of natural forest, on which depends the lives of not only wild flora and fauna but millions of tribal and forest dependent communities. Another aspect which often seems to be neglected is the impact that mega development projects have had upon the conservation and preservation of wildlife. For instance, according to a report of the Controller and Auditor General of India, 238 (Vol. I, 1986-1987)\textsuperscript{92}, which was given at the time prior to litigation of the construction of the Tehri dam in Garhwal (Uttarakhand) it was reported that the construction would destroy twelve races of
endangered species, however the construction of said dam is now complete but one point which could be raised in this context was, if the activity of construction tantamount to hunting within the purview of the Wildlife Protection Act; as it led to the destruction of endangered species? The construction of the said project is now complete however the judicial response to the said problem gave no answer, as the courts were of the opinion that the government had applied its mind to the project and therefore the court did not find the need to interfere and dismissed the petition which was filed by the 'Tehri Bandh Virodhi Samiti', the objection of the petitioners had been that the appropriate authorities had not taken into consideration that safety aspect as the project posed a serious threat to ecology and environment.

Similarly in Narmada Bachao Andolan v. Union of India if the courts justified the project taking into account the greater benefit of mankind even though there were arguments forwarded by the petitioners as regards outing of tribals, submergence of agricultural land and adverse impact on the environment, however the court felt that the clearance to the project was given after taking all the factors into account.

Thus what emerges from the above discussion is that the balance between environment and development is to be necessarily maintained. The idea of sustainable development had its influence on the judiciary in interpreting the provisions of laws relating to forests and wildlife. There have been cases to which the grant of rights to the people living around sanctuaries and national parks have raised judicial anxiety; one case is Pradeep Krishan v. State of Madhya Pradesh. In this case the State Forest Department allowed the commercial exploitation of the minor forest produce by the tribals in the national parks and reserve forest. This was allowed against the reports in the newspaper about shrinking forest cover in the state. The petitioner contented that removal of anything from the forest ecosystem creates imbalance, which affects the whole evolutionary process. The court in its order allowed the tribals to collect produces
for commercial exploitation and directed forest department to take immediate steps to relocate or ensure alternatives before notifying any areas as National Parks or Reserved Forest.

The mindless and relentless assault on the very few remaining protected areas in the country by the very same government which created these protected areas is clearly exemplified in the Center for Environmental Law, WWF India v. State of Orissa. In this case the government of Orissa had allowed a series of construction activities in the Bhitarkanika wildlife sanctuary, which included the setting up of a fishing jetty. According to the petitioners such construction would cause irreversible damage. The court even though did not stop the construction of the jetty, yet it listed out a series of steps that should be complied with the order to preserve ecology as well as the inhabitants of the area. The courts have considered the issues of development and wildlife environment protection together and mostly upheld the exigencies of development. However, the courts have not restrained from giving directions for proper enforcement of the legislations.

In Animal and Environment Fund v. Union of India, Court observed that while every attempt must be made to preserve the fragile ecology of the forest area and protect the tiger reserve, the right of the Tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly every effort should be made to ensure that the tribal when resettled are in a position to earn their livelihood.

Judicial response to the conservation of wildlife has been of a mixed character for the courts have had to balance the requirements of development and the rights of the people who dwell in and around our National Parks and Reserved Sanctuaries and their needs to the sources of livelihood and most certainly if the people themselves are deprived of their basic needs of food, and shelter how can they be expected to show their concern for the wildlife and ecology. The Supreme Court had done a remarkable job. God knows what would
have been the state of affairs of Indian forest, had the court not pronounced such
bold orders.

**Inordinate delay in judgments:**

"Justice delayed, justice denied" a famous proverbial saying still holds
good and will hold same forever. Indian judiciary is plagued with the problem of
backlog, whatever the judiciary does; it is dissipated by inordinate delays in
pronouncing the judgments. The environmental cases are no exceptions, which
too mingled in this intricate web of judicial process. At one time it was felt that
Indian Courts will be more pragmatic to come forward to rescue those who bore
the brunt of poverty and illiteracy. The Trinity of Judges, Bhagwati, Krishna Iyer
and Kuldeep Singh tried to take justice to the doorsteps of the have-nots, but
their departure from the bench reversed the gear and in some cases the same
court denied the opportunity even to hear the matter. To highlight the problem in
question, the decisions of some cases can be cited as a pointer. In T.N.
Godavarman the original writ petition was filed as a civil writ petition No.202 in
1995 and the final judgment delivered on 26 Sept. 2005, and during this span of
10 years a number of interim directions had been issued by the court from time to
time making an intricate web of overlapping directions. "In Research Foundation
for Science Technology National Resource Policy" the Writ petition No.657 was
filed in 1995, the court could not decide even after the gap of 11 years, whether
the oil in question is a chemical hazardous waste or not. In this case a high
powered committee was constituted in pursuance of Supreme Court's order
dated 4.8.1997, the report of which was discussed at a number of times, but the
writ could not be disposed of finally for one or the other reason. The case M.C.
Mehta v. Union of India arose from writ petition No.13029 of 1985, and could only
be decided on April 5, 2002. The case pertains to Air pollution in NCR by diesel
buses. It took four years after The Hon'ble Court's orders, that the diesel buses
could be replaced by CNG fuel supplied buses. The decision ironically left private
owned diesel cars from its purview and which in numbers in Delhi alone, are over
fifty thousands causing a serious threat to the quality of Air in NCR region. A recent report, which will be the part of 11h five years plan, reveals the increase in Pvt. Vehicles, in between 1991-2006, as over 300% and the increase in commercial vehicles is 400%. There is no plan, no policy in sight to contain the registration of vehicles. The Taj Trapezium case was filed in 1984 while the court finally started the hearing of the case in 1992. Surprisingly for 8 years even the notices could not be issued to the polluting units. Finally 268 units were ordered either to be closed or to be shifted somewhere else leaving the major polluter Mathura Refinery untouched. The shifting of Industries is still in progress even after a gap of 23 years. That means, for 24 years the units were allowed to pollute the Taj Trapezium. *Narmada Bachao Andolan*’s case came via writ petition No.319 of 1994. The case is typical one as *Sardar Sarovar Dam* was cleared in 1987, writ petition was filed after the gap of 7 years in 1994, and the court admitted the writ petition not on the ground of Environmental degeneration, but allowed it as a breach of fundamental right of livelihood of displaced and oustees and decided on 18 October 2000. The directions of the honourable court still await implementation despite the fact that both the governments of Gujrat and Madhaya Pradesh have filed progress report in the apex court.

The apex court is also serious about the delays and has expressed its concern and requested the central government and Law Commission of India to establish the environmental courts. It is unfortunate that Indian legal system too has been swamped by lumpen money chasers. If the courts really mean business, they have to take some bold steps to get out of this state of affairs.

**Sweeping directions and the problem of Compliance:**

The courts have not been uniform while issuing the directions on environmental issues. Some times the courts have given too much importance to petty developmental projects over the mega environmental problems; while other times the situation has been vice-versa. The courts by pronouncing unconventional decisions clearly showed their concern for the improvement of
environment, but the gains were lost due to diversified approaches. In *Murli S.Deora v. Union of India*\(^{100}\) (2001) 8 SCC 765, the court held that smoking in public places is indirect deprivation of life without any process of law, smoking therefore is prohibited in public places. An Act has been legislated in pursuance of this order in 2003. Though the Act forbids the sale of tobacco and tobacco products in public places and also prohibits any advertisement promoting the sale thereof. However, the tobacco laced Gutka can be purchased from any where throughout the country. The compliance of the direction can not be ensured due to the vide range of area covered; no machinery can keep a vigil at every time and at every specified place. In CNG case, the diesel buses were replaced by CNG model buses, but the directions of the court did not include the replacement of the private diesel cars which are also causing pollution by the same standard. Moreover, the directions were issued without taking into consideration the availability of CNG supply in the city and the CNG Model Engine's availability in the market. The Delhi Pradesh government had to approach the court many times for the increase in deadline set by the court for replacement. Further-more the acceptance of Mashelkar report by Union Cabinet on January 2002 aggravated the situation, which recommended the emission norms rather than fuel engine change to control pollution. The Allahabad High Court directions for the use of Fly Ash by brick-kilns are being openly flouted. The U.P. Pollution Control Board issued the notices to comply with High Court's direction, but the same also have been ignored by Brick Kilns owners on the pretext that law does not prohibit them from using the simple clay, as the use of fly ash is a costly affair to them. Bhopal gas tragedy occurred in 1984, while the legal battle is still going on in the courts for the distribution of compensation and the disposal of toxic waste in the Union Carbide factory premises. Knowing well that this toxic waste is also pollutants the ground water, but the court refrained itself from issuing further directions. Despite its directions in 1996 in *M.C. Mehta v. Union of India*, the apex court again on January 24, 2005 had to issue notices to Haryana Government for
ignoring the repeated ban orders on mining activities in the Aravalli and in Gorgon Area and up to than the illegal mining activities were on with the fact that courts orders were also in force. The Supreme Court’s directions on 8.7.96 in M.C. Mehta’s\textsuperscript{101} famous relocation of Delhi industries case for the closure of 168 of hazardous, noxious, heavy and large industries are debatable. The court was of the opinion that these industries were operating unlawfully and in utter violation of Delhi Municipal Master Plan. The court directed Delhi Administration and MCD to prepare a list of hazardous industries. Surprisingly the administration took more than three years in preparing such list, later on it was also alleged that the officials of MCD and Delhi administration have been partisan in preparing the list and some of the industries have been left from the list intentionally. There were huge protests, dharnas and court arrests against the order of the court and at one time the legislature and judiciary came face to face, where legislature charged the judiciary for overstepping the jurisdiction. Moreover it was alleged that the directions were issued without proper remediation of the grievance of workers and small scale traders. In another \textit{M.C. Mehta} Case the apex court issued the directions to free the water of Ganga River from pollution. In pursuance of these directions millions of rupees were spent but the Holy River Ganga remained polluted as usual. The Ganga action plan is still in operation without any sign of its completion. The Ganga is a sacred and religious issue, no doubt everybody should be concerned about the impurity of the water but it is the public and society which must be involved in keeping Ganga pollution free. The courts, Govt. and the bureaucracy can play a catalytic role. We may submit that the apex court must refrain from issuing such directions which are inherently impossible to be implemented and rather should contribute in saving the public exchequer.

The right to human environment has been recognized as a part of the right to live dignified life guaranteed under the Art 21 of the constitution. Courts thus have fallen in line with the global recognition of the fundamental right to a clean and healthy environment. Traditional law doctrines have been found to be
ineffective in meeting the mounting problems that a developing country has to face in fixing the liability of hazardous and inherently dangerous industry. A new indigenous jurisprudence of strict liability has been formulated in the crucible of constitutional provisions without the guidance from a foreign legal system. The rule of locus standi has been relaxed to a considerable extent for clearing the pitch for judicial activism and public interest litigation by the Court. However some times the unscrupulous petitioners have abused the process of public interest litigations for their personal grudge. Such petitions should be diarized and discouraged and any petitioner with frivolous litigation should be penalized with exemplary costs. If the genuine effort and concern of the judiciary to make right to live in healthy environment as fundamental right is given support by the people and the administration also acts on the same wave length, then the day is not far off when right to live in healthy environment will not be a paper tiger but a living reality for all.

Two years ago, the Supreme Court had suggested ways to solve the problem of lack of scientific data and delay in proceedings in pollution cases. In the Shriram Fertilizers case, the court suggested the setting up of environment courts assisted by an ecological sciences research group. The environment courts to be set up on a regional basis should have one professional judge and two experts drawn from the research group keeping in view the nature of the case and expertise required for the adjudication. There would be right to appeal to the Supreme Court, from the decision of such courts.

Unfortunately, these suggestions have remained only on paper. The result is that the pollution control board and environmental activists have to use the voluminous, ill-drafted anti-pollution laws through the medium of magistrate’s courts. These courts lack the necessary expertise and are already overcrowded. Moreover, proceedings have to be taken against giant corporations employing the best lawyers. No wonder the proceedings are bogged down in technicalities.
Instead of tinkering with the anti-pollution laws in every parliament session, the government should take the drastic step for setting up environment courts.

Legislature, Executive and Judiciary are the three pillars of democracy. Each one has its well defined field. In India the first two organs are dependant on each other and sometime appear to be one. The judiciary being an independent institution always remains under scrutiny. Judicial activism of late has penetrated into the vein of governance and some have started talking of governance by the Judiciary. Legislature is always arbitrary, populist and power oriented, whereas judiciary is supposed to be very balanced and free from all above vices. The judgment of the court must perfectly spell out the philosophy of the court and the laws of the land. The Courts are required to be more consistent in their approach. As far as environmental activism is concerned, the courts have not been uniform; either the court is too zealous or too timid. In S.K. Gay v. State of U.P., the Allahabad High Court constituted a committee, which was illegal and amounted to create a parallel municipality, which can only be done by legislature. The whole environmental movement in India has been albeit public interest litigation.

However, it was not the whole judiciary which was involved in this crusade but only few judges of the apex court and high courts guided this movement which has its own shortcomings, which clearly dampen the impact of this movement within judiciary itself and is invisible. With the retirement of justices Bhagwati, Kuldip Singh, B.N. Kirpal, and Y.K. Sabharawal, the Supreme Court itself almost stopped entertaining PIL and even reversed its earlier orders, which amounts to a sorry reflection on judiciary. Efforts should be made to involve the whole judiciary from the highest to the lowest level in the task to have a clean and healthy environment. The judiciary may wish to consider how to innovate mechanism by which environmental issues could be redressed effectively. The courts must take a wider view and should not be guided by parochial approach as it attenuates the importance of judgments. Some times the judiciary has taken skewed approach, where it tries to be environmentally active in the cases of less
importance or where the environmentally degradation is less severe and freeze this activism where the degradation is more severe. The apex judiciary must sit together and try to evolve a common strategy and must also hold a seminar for lower judiciary so as to make them environmentally conscious at every level of judicial process.
2. (1991) 1 SCC 598.
3. Id. at 604.
7. Id. at 417.
9. Id. at 181.
9(a) (2001) 6 SCC 496.
11. Id. at 8.
12. See Article 21 of the Constitution of India. A liberal interpretation was given in Mainka Gandhi v. Union of India, AIR 1979 SC 597.
14. Ibid.
16. Id. at 2061.
20. Id. at 424.
21. Id. at 420.
22. AIR 1980 SC 1622.
23. Id. at 1628.


27. Supra note 25 p.656.


31. Id. at 1089.


33. Ibid.


36. Supra Notes 32 P.S. Jaiswal, op. cit. at 110.


38. Supra note 36.

39. Id. at 111.


40a. See Justice Y.K. Sabhwarwal "Human Rights and The environment".


42. AIR (1999) S.C.2468


44. C.M. Jariwala, 'Governments inaction in environmental matters'.

47. Supra note 30 at 1099.
54. (1987) 4 SCC 463, M.C. Mehta, II.
55. Ibid at 468.
57. Id. at 1126-1128.
59. Ibid at 309.
60. (1990) 1 SCC 613.
61. Id. at 687.
63. AIR 1992 Karnt 256.
64. M.D.A. Freedman, *Lloyd's Interpretation to Jurisprudence*.
65. Ibid.
71. Supra Note 34.
72. Ibid.
73. Ibid
74. Ibid.
78. AIR 1992 Bom. 471.
80. AIR 1992 Krnt.57.
81. Id. at 66-67.
82. Id. at 70.
84. AIR 1992 S.C.14 (Tarun Bharat Case).
87. 1994 DLT 286.
89. AIR 1997,Del 301.
90. Id. at 304.
91. AIR 1995 SC 1159.
93. AIR 1992 Supp (1) SCR 44.
94. AIR 1999 SC 3345.
95. AIR 1996 SC 78.
96. AIR 1999 Ori. 15.
97. AIR 1997 SC 1071.
98. Id. at 1074.
102. AIR 1999 All 41.