CHAPTER 6

JUDICIAL TRENDS AS REGARDS TO ENVIRONMENTAL POLLUTION FOR PROTECTION OF HUMAN HEALTH
INTRODUCTION

One cannot say that the environmental decision-making process is entirely different from the administrative process in general. While reviewing environmental decisions made by the government and its agencies, courts cannot ignore the general constraints on judicial review. In most cases, matters impacting on the environment come before the higher judiciary by way of writ appeals. Seldom do they come as appeals from subordinate courts. Environmental cases directly reaching the high courts do face procedural limitations, such as existence of alternative remedies, laches, bias, and locus standi.

The powers of the Supreme Court to issue directions under Art 32 and that of High Courts to issue directions under Article 226 have attained great significance in environmental litigation. Courts have made use of these powers to remedy past maladies and to check immediate and future assaults on the environment. There is many a mile stone in the path.

JUDICIAL ATTITUDE TOWARDS PROTECTION OF ENVIRONMENT

The Court formulated certain principles which created congenial conditions for developing a better regime for protecting the environment. In MC Mehta v. Union of India¹ the Supreme Court formulated the doctrine of absolute liability for harm caused by hazardous and inherently dangerous industry by interpreting the scope of the power under Article 32 to issue directions or orders. According to the Court, this power could be utilized for forging new remedies and fashioning new strategies. ² The new remedy, based on the doctrine of absolute liability, was later focused on in the sludge’s case when the people in a village suffering from lethal waste left behind by a group of chemical industries were asked to file suits in forma pauperism and the State Government was directed not to oppose the application for leave to sue in forma pauperism.³
The polluter has been held responsible for compensating and repairing the damage caused by his omission. This is the quintessence of the 'Polluter Pays Principle'. Absolute liability of hazardous and inherently dangerous industry is the high water mark of the development of this principle. Despite its deterrent impact on potential polluters, the doctrine is limited in the sense that it can be applied only at the remedial stage, i.e. after pollution has taken place. On the other hand, the precautionary principle emphasized by the Rio Declaration of Environment and Development signifies a preventive approach. It states:

"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 postponing cost effective measures to prevent environmental degradation."  

The polluter pays principle and the precautionary principle are accepted as part of the legal system in the sledge case and the Velour Citizens Forum's case, where the Court directed assessment of the damage to the ecology and environment and imposed on the polluters the responsibility of paying compensation. Though in the latter case the Supreme Court ordered the closure of all tanneries in certain districts, which are connected with common effluent treatment plants (CETPs), the precautionary principle came to be directly applied in MC Mehta v Union of India for protecting the Taj Mahal from air pollution. Expert studies proved that emissions from coke/coal based industries in the Taj Trapezium (TTZ) had damaging effect on the Taj. The Court observes:

The atmospheric pollution in TTZ has to be eliminated at any cost. Not even one percent chance can be taken when human life apart-the preservation of a prestigious monument like the Taj is involved.  

The onus of proof is on an industry to show that its operation with the aid of coke/coal is environmentally benign. However, the Taj decision is an instance of judicial strategy of applying a norm formulated at the international level into the facts of the case and accepting it as part of the legal system.  

At the same time, in view of the demands of ecological security and integrity courts have given directions for disciplining the developmental processes, keeping. In one of the cases, Rural Litigation Kendra that posed
an environment-development dilemma\textsuperscript{11} the Supreme Court has given directions to avert an ecological imbalance. Directions given in Banwasi Seva Shram v State of U.P. \textsuperscript{12} included rehabilitation of people who had been displaced due to the implementation of a development project. Although the Court gave clearance to a thermal power plant in an ecologically fragile area in Dahanu Taluka, an attempt was made at balancing environmental concerns with developmental issues. \textsuperscript{13}

The rights to livelihood and clean environment have been of grave concern to the courts whenever they issue a direction in an environmental case. Laborers engaged in the asbestos industry were declared to be entitled to medical benefits and compensation for health hazards which were detected after retirement.\textsuperscript{14} Whenever industries are closed or relocated, laborers losing their jobs and people who are there by dislocated were directed to be properly rehabilitated.\textsuperscript{15} The traditional rights of tribal people and fisherman are not neglected when courts issued directions for protection of flora and fauna near sanctuaries or for management of coastal zones.\textsuperscript{16}

In most cases, courts have issued directions to remind statutory authorities of their responsibility to protect the environment. Such directions are even to local bodies especially municipal authorities to remove garbage and waste and clean towns\textsuperscript{17} and cities.\textsuperscript{18} This was done following the decision in Ratlam\textsuperscript{19} which looked at environmental degradation from the point of view of the law of public nuisance. The courts always wanted pollution control authorities to function effectively in the shires allotted to them by law. By entrusting them directly with the responsibility of studying the state of the environment and ecology, like identification of hazardous industry, and asking them to issued notice of closure or relocation of industries, courts have moulded the bodies into dynamic independent environmental protection agencies.\textsuperscript{20} In some cases courts issue directions to fill yawning gaps in existing law,\textsuperscript{21} in others they may go to the extent of asking the government to constitute national and state regulatory authorities or environmental courts.\textsuperscript{22}

The Supreme "Courts has issued directions in various types of cases relating to protection of the environment and pre-vegetation of development
and to deal with issues like the local conditions. In India Council for Environ-legal Action v Union of India,\textsuperscript{23} the Supreme Court felt that such conditions in different parts of the country being better known to them the High Courts would be the appropriate forum to be moved for more effective implementation and monitoring of the anti pollution laws. The Supreme Court said. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues, which parting to the geographical reaps within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same, can in a number of cases, be effected, if the High Courts concerned assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution leading to degradation of ecology.\textsuperscript{24} An example of such situation is Velour Citizens Welfare Forum v. Union of Indi\textsuperscript{25} case in which after issuing various directions for closure and relocation of tanneries in Tamil Nadu, the Supreme Court entrusted the Madras High Court with the responsibility of monitoring matters as if they are part of a petition to the High Court under Article 226. The notable request made by the Supreme Court to the Chief Justice of the Madras High Court was to constitute a special bench- a green bench to deal with the case and other environmental matters as is done is Calcutta, Madhya Pradesh and in some other High Courts.\textsuperscript{26}

The directives of the Supreme Court went to the extent of spreading environmental awareness and literacy as well as the launching of environmental education not only at school level, but also at the college level. In MC Mehta v Union of India, \textsuperscript{27} the Supreme Court stressed the need for introducing such schemes. The Court also required every state Government and education board to take steps for environmental education. It is also to be noted that in tune with these directions various authorities have taken up meaningful schemes of environmental education. At the same time people should be made aware of the indispensable necessity of their conduct being oriented in accordance with the requirements of law. \textsuperscript{28} The directions of the Court to All India Radio and
Doordarshan, to focus their programmes on various aspects of the environment, have been immediately complied with.

The liberal use of PIL against assaults on the environment does not mean that every allegation even if it is tainted with bias, ill will or intent to black mailing will be entertained by the courts. In Satyavani v AP Pollution Control Board, the Andhra High Court held that the sentimental objection of head of a Society for Animal Protection were not sufficient ground for interference, where the project for an abattoir and meat processing unit had allow the in-built safeguards prescribed by pollution control agencies. In Chhetriya Pradushan Mukti Sangh Samati v. State of UP. The Supreme Court laid down the aims and limits of PIL in environmental cases as follows:

"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 circumspection and caution. Where it appears that this is only a cloak to feed fat ancient grudge and enmity it should not only be refused but strongly discouraged. While it is the duty of this court to enforcing fundamental rights, it is also the duty of this court to ensure that this weapon.......should not be misused or permitted to be misused...."

When the primary purpose of filing a PIL is not public interest, courts will not interfere. In Subhash Kumar v State of Bihar, the petitioner asked for an injection against the West Bokaro Collieries and sought for himself an interim relief for his right to collect the slurry alleged to have been discharged into the river by the respondent company. It was found that the petitioner, a businessman, who used to purchase slurry from the colliery, had put pressure through various means on the company to supply more quantity of slurry; thereafter, without proper authorization, he had removed slurry and had approached the courts many times against the respondent company. Dismissing the petition on the basis of the report of the Pollution Control Board that the discharge did not affect river water adversely, the Supreme Court held that PIL for environmental rights could be initiated, by affected persons or even a group of social workers or journalists, but not at the instance of a person or persons who had a bias or personal grudge or enmity.
COMMITTEES AND COMMISSION

The assessment of the impact on the environment is of recent origin and in statutory form, is limited in many respects. In many cases the Court has appointed committees to obtain correct and scientific information. In the Doon Valley's case the Court wanted information on whether indiscriminate mining continued under a legally valid license, had any adverse impact on the ecology. Several committees, consisting of experts, were appointed to go into the question. On the basis of their reports, certain mining operations were ordered to be closed immediately and others in a phased manner. In one of the M. C. Mehta cases, the Court sought the help of committees, appointed by the Court and the government, to permit restarting of a caustic chlorine plant, temporarily stayed, in a hazardous industry and suggested constitution of a committee of workers to oversee safety arrangements. In another Mehta's case, disturbed by the lethargy of authorities in compelling tanneries on the bank of the holy river Ganga to observe regulatory conditions strictly, a committee was appointed to oversee whether the regulatory agencies carried out their functions properly and in accordance with the mandates of the law.

Committee has also been constituted to help the Court to ascertain the true position when facts alleged by one party are denied by another. Such as in Tarun Bharat Sangh, Alwar v. Union of India the Supreme Court appointed a committee not only to oversee compliance of notifications and orders, but also to identify the limits of the protected area in a reserved forest, to find out whether mining was carried on within that area as alleged and to find out alternative sites for mining during the period of license. In Banwasi Seva Ashram v State of UP, where a tribal habitat was about to be transformed in to a site for a thermal plant, the court wanted to appoint a committee to study the problem. However, in the end the Court approved the acquisition of land but laid down an exhaustive scheme for rehabilitation of the native tribal people, under the supervision of commissioners appointed by the Court. On the other hand in the sledges case the Court relied on the reports of experts not only from the Ministry of Environment and Forests but also from the State
Pollution Control Board and from NEERI to determine whether the waste left behind by the chemical industries had an adverse impact upon the health of the villagers and to fix absolute liability on such rogue industries for the damage caused. Intensive and semi-intensive aquaculture which had attained the character of an industry rather than that of agriculture, were declared to be environmentally, harmful by the court, on the basis of studies by the Central Pollution Control Board and by the expert committees at the national and international levels. In Jagannath v Union of India,\textsuperscript{40} the Supreme Court suggested the establishment of an aquaculture authority. In Godavarman Thirumulpad,\textsuperscript{41} the Court asked the state Government and the Central government to appoint committees to study several problems and to oversee implementation of orders relating to forest protection.

The judicial technique of appointing committees and commissions is ingenious, as this results in more light being shed on areas of environmental and ecological knowledge. The feedback helps courts substantially to arrive at correct conclusions and to issue appropriate orders. Commissions are appointed when the courts feel that there is a need to find out the true nature of existing environmental problems. Usually, the government and other agencies are asked to make appropriate decisions on the criteria highlighted by the reports of such commissions. Pollution Control Boards were criticized in the past as institutions representing governmental interests, acquiescing in under official bias and lacking in functional freedom. Courts entrusted them, in some cases, with the responsibility of directly reporting to and helping the courts on environmental questions.\textsuperscript{42}

**Expert Committees Appointed By Government**

Judiciary usually relied upon expert opinions. For example, in Tehri Bandh Virodhi Sangarash Samiti v State of Uttar Pradesh,\textsuperscript{43} the allegation was that the Tehri Dam project was prepared without taking into account safety aspects. The site of the dam was prone to earthquake. The seismic experts in India and abroad were quoted to show that this part is likely to be affected by a large earthquake in future. The Central Government countered the plea and brought relevant materials before the court that the
environmental appraisal committee of the Ministry of Environment and Forests came to the unanimous conclusion that Tehri Dam project did not merit environmental clearance. A high level committee of experts considered all safety aspects, and opined that the design of Tehri dam incorporated adequate defensive measures and well evolved seismic design for a high dam in accordance with the recommendations of the International Congress of large dams. However, there was one dissenting note in the Committee. The government reconsidered, but did not agree with the dissent. According to the Supreme Court, the Union of India went into the question of safety of the project in various details more than once, and satisfied itself by obtaining the reports of experts. The ND Jayal v Union of India\textsuperscript{44} is a continuation of Tehri Bandh Virodhi Sangarsh Samitis case. The Supreme Court followed the law set by Narmada Bachao Andolan case. The Court has observed:

"The necessity or effectiveness of conducting 3D Non-Linear Test or Dam Break Analysis were taken into account by the Government and if the Government decided not to go for such tests upon the opinion of the concerned bodies, then the court cannot advice the Government to go for such tests unless mala fides, arbitrariness or irrationality is attributed to the decision".\textsuperscript{45}

**Expert Committees Appointed by Court**

The courts adopted a policy of appointing expert committees when they were not sure of the technical and highly complex questions of potential degradation of the environment. Tehri Bandh Virodhi Sangh Samiti v State of Uttar Pradesh,\textsuperscript{46} is a case where the expert committees took completely opposing view points on the safety aspects of the dams. Still the court gave a green signal for completion of the dam. In MC Mehta v Union of India,\textsuperscript{47} the Supreme Court elicited expert opinions to direct relocation of industries away from Taj Trapezium. In Rural Litigation & Entitlement Kendra v State of Uttar Pradesh,\textsuperscript{48} there were different committees to enlighten the court to take action, and stop the mining of limestone in Mussoorie in a phased manner.

In Andhra Pradesh Pollution Control Board v NV Nayudu,\textsuperscript{49} the apex court candidly expressed its inability of making decisions on matters requiring expertise and technical knowledge. The court referred to the
National Environment Appellate Authority (NEAA) and other expert organizations that could examine the matters, and advise the court on the question of locating a hazardous industry in an ecologically fragile area. ND Jayal v Union of India\textsuperscript{50} went on the same lines. It also adopted a hands-off approach to the decisions relating to the simultaneous execution of the construction of dam, and rehabilitation of oustees.

In Niyamavedi v Union of India,\textsuperscript{51} Kerala High Court did allow alienation of evergreen forest to a private agency in order to get over the contempt of court proceedings. In MC Mehta v Union of India\textsuperscript{52} the Supreme Court was firm in using the contempt power against the violators of environmental norms.

**Law Commission for Environment Courts**

At present state of affairs, the fusion of diverse expertise in planning, science, technology, environment, law and public policy into a new institution for environmental decision-making is essential for integrating environmental values with developmental issues. Partick Mc Auslan had already championed this cause of establishing specialized environmental courts in England.\textsuperscript{53}

Over the years, in India the Apex Courts made similar suggestions, and laid stress on the need for specialized courts and tribunals. Again in the case of M.C. Mehta v. Union of India,\textsuperscript{54} the Supreme Court has suggested the Government of India to set up Environment Courts since cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources are increasingly coming up for adjudication. The relevant extract from the judgment reads thus:

"There is also one other matter to which we should like to draw the attention of the Government of India. We have noticed that in the past few years there is an increasing trend in the number of cases based on environmental pollution and ecological destruction coming up before the courts, many such cases concerning the material basis of livelihood of millions of poor people are reaching this court by way of public interest litigation. In most of these cases, there is need for neutral scientific expertise as an essential input to inform judicial decision making. These cases require expertise at a high level of scientific and technical sophistication. We felt the need for such expertise in this very case and we had to appoint several expert committees to inform the court as to what measures were required to be adopted by the management of Shriram tr..."
safeguard against the hazard or possibility of leaks, explosion, pollution of air and water, etc. and how many of the safety devices against this hazard or possibility existed in the plant and which of them. Though necessary, were not installed. We had great difficulty in finding out independent experts, who would be able to advise the court on these issues. Since there is at present no independent and competent machinery to generate, gather and make available the necessary scientific and technical information, we had to make an effort on our own to identify experts who would provide reliable, scientific and technical input necessary for unsatisfactory exercise. It is, therefore, absolutely essential that there should be an independent centre with professionally competent and public spirited experts to provide the needed scientific and technological input. We would in the circumstances urge upon the Government of India to set up an Ecological Sciences Research Group consisting of independent, professionally competent experts in different branches of science and technology, who would act as an information bank for the court and the Government departments generate new information according to the particular requirements of the court or the concerned Government departments. We would also suggest to the Government of India that since cases involving issues of environmental pollution, ecological destruction and conflict over natural resources are increasingly coming up for adjudication and these causes involve assessment and evaluation of scientific and technical data, it might be desirable to set up Environment Courts on the regional basis with one professional judge and two experts drawn from the Ecological Sciences Research Group keeping in view that nature of the case and the expertise required for its adjudication. There would of course be a right of appeal to this Court from the decision of the Environment Court. 

This led the Law Commission of India to seriously think over the matter, and make a proposal to constitute environment courts. There were several factors, which induced the Commission to do so. The uncertainties of scientific, inadequacy of the knowledge of judges on the issues, and the need for a system of independent expert advice to the court are some of them. Proper balances between development and environment control and between closure of polluting industries and avoidance of effective unemployment are explicit aspects of an objective environmental decision making. The establishment of environmental courts would further develop the law independently, and help reducing the burden on the High Courts and the Supreme Courts. The Commission observes:

"It cannot be disputed that environmental matters have to be taken up early, monitored from time to time and be finally disposed off by a procedure quicker than that obtaining now."
The Law Commission suggested\textsuperscript{60} amending, Air Act, Water Act, EPA, and Public Liabilities Insurance Act 1991 (PLIA); and repeal National Environment Appellate Authority (NEAA) Act and Environment Tribunal Act so as to provide environment courts at the state and national levels. Further, the court in the state will be a court of original jurisdiction on all environmental issues, and should hear appeals from the decision of the state environment agencies. The National Environment Court shall hear appeals from state environment courts both on law and facts, experience assisted by three Commissioners well-versed in environmental science and related discipline.\textsuperscript{61}

The commissioners' function as envisaged by the Law Commission is only advisory. As the Air Act, Water Act, EPA, and PLIA are laws enacted by the Parliament under Article 253 to implement decisions in International Conferences, the Law Commission found no difficulty in incorporation appellate machinery under these laws. However, Water Act, being the product of art 252 enacted on requests from states, the Commission found it difficult to amend and establish a court as such under the Water Act. However, the Commission is of opinion that the law implements the Rio Declaration, which asks to provide effective access to, judicial and administrative proceedings, including 'redress' and 'remedy'.\textsuperscript{62}

According to the Commission, it is sufficient to vest civil jurisdiction with the environment courts and they will have no criminal appellate jurisdiction, or the power of judicial review. The Law Commission hopes that the high courts may decline to interfere in environment matters on the ground that there is an effective alternative remedy of appeal on law and facts to the Supreme Courts. The Supreme Court held that exclusion of jurisdiction of High Courts and the Supreme Court under arts 226 and 227 as envisaged under s 28 of the Administrative Tribunals Act 1988 violate the doctrine of judicial review as the basic structure of the Constitution.\textsuperscript{63}

ENVIRONMENT COURT

The inherent limitations of the judicial system to review substantive questions relating to the environment makes it desirable to establish an alternative forum, with an alternative strategy. Conferring environmental
decision making power entirely on scientists and administrators is untenable in a rule of law society. Fusion of diverse expertise in planning, Science, technology, environment, law and public policy into a new institution for environmental decision making is essential for integrating environmental values with developmental issues.\textsuperscript{64} As early as 1987 the supreme Court was convinced of the need for scientific and technological expertise as a essential input inform judicial decision making.\textsuperscript{65} The court urged the government of India to set up an Ecological Sciences Research Group, with professional competent and independent experts who would act as an information bank for the court and government departments and could generate correct and unbiased information\textsuperscript{66} going a step forward and urging the Government of India to establish environment courts the supreme courts said.

"..since cases involving issues of environmental pollution ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evaluation of scientific and technical data, it might be desirable to set up Environment Courts on the regional basis with one professional judge and two experts drawn from the Ecological Science Research Group keeping in view the nature of the case and the expertise required for its adjudication."\textsuperscript{67}

In a later case, though the need for establishment of environment courts to deal with all matters civil and criminal relating to the environment was reiterated,\textsuperscript{68} the court expressed the view that it should be manned by legally trained persons or judicial officers. The need for scientific and technological inputs might not have come to the courts mind probably because in this particular case all the governmental and non-governmental experts agreed with the petitioner's plea and were of the unanimous view that having acted negligently in not disposing off the sludge, the concerned respondents were absolutely liable for the damages. For review of environmental decisions, it is necessary to have a mechanism of environment courts or tribunals competent enough to analyze, in an objective manner, environmental, legal and policy issues. The national Environmental Tribunal Act 1995 provides such a structure.\textsuperscript{69} However, the jurisdiction of the tribunal is limited to determination of compensation for accidents while handling hazardous substances whereas, there are a host of other problems to be decided examined and reviewed. A draft bill
was prepared in 1990, called the Environment Courts Bill, which was to a great detriment in line with the need for a new alternative forum and strategy.\textsuperscript{70} It provided for institution of environment commissions to help the environment courts in investigation. Above all it guaranteed environmental groups the access to information. However, the draft bill was not introduced in parliament for enactment.\textsuperscript{71} Coupled with a system of compulsory impact assessment in all cases of environmentally sensitive projects and programmes, legislation on his line is a must for rehabilitating and strengthening our environmental regime in its path towards sustainable development.

**PROTECTION OF ENVIRONMENTAL POLLUTION THROUGH PUBLIC INTEREST LITIGATION (PIL)**

Public interest Litigation (PIL) has come to stay in India. Contrary to the past practices,\textsuperscript{72} today a person acting bonafide and having sufficient interest can move the courts for redressing public injury, enforcing public duty, protecting social and collective right and interests and vindicating public interest.\textsuperscript{73} In the eighties and nineties there has been a wave of environmental litigation. Most of such cases were in the form of class action and PLI, obviously because environmental issues relate more to diffuse interests than to ascertainable injury to individuals.

The concept of class action is embodied in the code of civil procedure 1908\textsuperscript{74} where if numerous persons have common interests, one or more of such persons can file a suit. A recent example of class action is the Bhopal disaster litigation.

It has been mentioned earlier that community interests can also be agitated under the law of public nuisance incorporated in the Code of Criminal Procedure. An individual a group of individuals or an executive magistrate suo motu, can move the courts. This provision has proved to be a potent weapon for regulatory measures\textsuperscript{75} as well as affirmative action by the government and local bodies for protection of the environment.

The ability to invoke the original jurisdiction of the Supreme Court and the High Courts under Arts 32 and 226 of the Constitution is a remarkable step forward 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 this progress was made with the aid of PIL. Thus in order to reap the benefits of substantive environmental rights, courts has opened a path of procession justice, without enslaving themselves to procedural compulsions. In Tarun 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. Upholding the contention, the Supreme Court observed this litigation should not be treated as the usual adversarial litigation. Petitioners are acting in aid of a purpose high on the national agenda. Petitioners concern for the environment, ecology and the wildlife should be shared by the government.

The observation of the Court is important as it emphasis the rationale of PIL in environmental issues; It is the duty of the 'State to protect the environment-a duty imposed by the Directive Principles and Fundamental Duties, introduced by the 42nd Amendment of the Constitution. Any person, who raises an environmental issue, whether individual group or institution, is equally concerned with the problem. Such litigation can never be considered as one of adversarial confrontation with the state.

The range of issues has been very broad. It extends from compassion to animals and privileges of tribal people and fisherman to the eco-system of the Himalayas and forests eco-tourism land use patterns and vindication of an eco-malady of a village. The cause of environment being taken up through PIL was championed by a wide spectrum of people in society. Lawyers, association of lawyers, environmentalists, groups and centers dedicated to environmental protection and forest conservation welfare forums including those for tribal welfare, societies registered under the Societies Registration Act and consumer research centres have successfully agitated environmental issues before Courts. Urban social activists, the women's wing of a society for animal protection, chairmen of rural voluntary associations and residents of housing colonies were also involved in advocating environmental issues.
While in some cases letters were considered as writ petitions, in some others paper reports were responsible for judicial action.

**DEFERENTIAL ATTITUDE TO ENVIRONMENTAL DECISIONS**

Judicial deference to substantive aspects of administrative decisions is a legitimate phenomenon in a welfare state. This is so not only because of the role of the state as a referee in the contest between individual rights and public interests but also because welfare programmes should not be blocked or delayed. Judicial non-interference is also necessary for the quick and viable implementation of the demands of administrative policy and expertise. Social, economic and structural transformation inherent in the process of technological advancement brought multidimensional conflicts of rights and duties, which threw up a host of unprecedented challenges to the administration and courts. In the changed scenario, the old Administrative State has given way to the new Technological State. The traditional role of courts as arbiters of individual rights has become exceedingly complex the state role as referee has also become difficult.

It is pertinent to take into account of factors such as scientific material highly technical data socio-economic fats, health hazard aspects and ecological moors of the region before taking decisions relating to the environment. The construction of a dam may affect the ecology. Administrators may lack insight into these aspects. Even technocrats within the administrative hierarchy may fall prey to the influence of bureaucratic and political elements and be reluctant to put their independent views. It is because of these reasons that traditional administrative mechanisms and strategies become unsuitable for environmental decision-making in many instances. The problem becomes very difficult and complicated when courts adopt a restrained approach, with a review of the procedural irregularities. Maintaining law fact distinction, the courts may keep themselves aloof from examining substantive criteria and look only at the legality of decisions; they may not decide whether the opinion of the decision making authority was right or wrong.
The hands off approach to administrative decisions by the judiciary in environmental questions were evident in the early eighties whereas the entire decade thereafter witnessed a tide of judicial activism in environmental matters. The traditional adjudicator model, which allows judicial review of only the legality and not the correctness of administrative decision, looks at environmental decisions as mere administrative matters and not as complex environmental problems. For example, in the Silent Valley’s case, a hydroelectric project designed to be located by clearing a virgin forest, rich in diversity, was accorded judicial approval by the Kerala High Court in spite of preponderance of evidence of ecological imbalance likely to be caused. According to the Court, the government had already examined the matter in detail and there was limited scope for interference with such policy decision. The possibility of discrimination towards a backward region that desperately needed facilities similar to those of other regions might have been on the courts mind when it refrained from making an active stance. Obviously, the lack of expertise to scan and evaluate scientific and technical data stood in the way of adjudication on merits. In rural Litigation Kendra, the Supreme Court admitted this fact and has observed.

“It is for the government and the nation and not for the Court to decide whether the limestone deposit should be exploited at the cost of ecology and environmental considerations or industrial requirements should be otherwise satisfied. It may be perhaps possible to exercise greater control and vigil over the operation and strike a balance between preservation and utilization that would indeed be a matter for an expert body to examine and on the basis of appropriate advice. Government should take a policy decision and firmly implement the same.”

Despite the observation on the governments’ duty and competence to make policy decisions by balancing values, in many cases, the Supreme Court prevented further damage to the ecology of the area in question by passing orders for closure of mining operations.

There are other instances where the deferential and hands off approach of the judiciary towards executive wisdom in designing and implementing development projects dampened the spirit of judicial activism. In Sachidanand Pandey v State of West Bengal, a proposal for a five star hotel near a zoological garden was challenged on the ground that
the hotel would disturb the migrant birds visiting the region. The Supreme Court refrained from interfering with the project, observing that the State Government had perused all objections, expressed the willingness to remove difficulties, if any, in the management of the zoo and thus, had applied its mind to the environmental consequences of the project. The fact that there were tall structures already existing in the vicinity and the assurance that the maximum height of the hotel building would not go beyond a certain point, seemed to be the deciding factors to reinforcing the view that the flight of migratory birds would not be affected. In the circumstances, the Court held that the lease of land to the hotel was a confide decision after taking into account all relevant considerations. The executive makes decisions after balancing development needs and environmental factors; Courts do not carry out such balancing acts. The Supreme Court found itself justified in accepting the decision of the administration because it had balanced all relevant considerations. 101

One may ask the question whether this deference to administrative expertise helps the evolution of a safe environment. There is a prevailing view that courts perform only an ombudsman’s job without taking any effective and final decision. It is true that the court, wearing an ombudsman’s mantle, constantly watches the administrative process and tries to rectify the mistakes. The courts do recognize and rightly so, that the balancing functions is not their job, but that of the administration. Without entering the administrative thicket, courts act as catalysts and help the administration to consider the objective criteria on which the administration has to base its decision.

On account of its possible impact on the people, other living beings, and natural resources and on future generations, environmental decision making stands on an entirely different foundation. A judicial hand off policy may leave environmental questions unexamined. Slow and subtle degradation of environment may be the result, if there’s no expert scrutiny of administrative decisions, which more often than not are bordering on or are influenced by narrow political or regional considerations,
JUDICIAL CONTRIBUTION

As is very clear from the above exerts that our Supreme Court has expressed\textsuperscript{102} its views several times that it shall not interfere in policy matters of the government. But the court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's Fundamental Rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means over run in costs and the decision to undertake a project, if challenged after it's execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time.

The Supreme Court observed that PIL should not be allowed to degenerate to becoming publicity interest litigation, or private inquisitiveness litigation. While exercising jurisdiction in PIL cases, the court has not forsaken its duty and role as a court of law dispensing justice in accordance with law. It is only where there has been a failure on the part of any authority in acting according to law or in non action in violation of the law the court has stepped in. No directions are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent. Inaction would results in violation of the Fundamental Rights or other legal provisions.

At the same time, the Supreme Court observes that In respect of public policies and projects initiated by the government, the court should not become an approval authority. If a considered policy has been taken, which is not unlawful or mala fide, it will not be in public interest to require the court to go and investigate those areas, which are the functions of the executives.

According to \textit{Narmada Bachao Andolan} case\textsuperscript{103} the availability of drinking water would benefit about 1.91 lac people residing in 124 villages in arid and drought prone border areas of Barmer and Jalore districts of
Rajasthan which had no other source of water, and were suffering grave hardship.

The majority in Narmada Bachao Andolan case laid stress on judicial deference to policy decisions. In their very next breath, they set out on a search for a justification for the submergence of the lands. This submergence is certain when the dam is completed at the height for which it was originally planned. Possibility of increasing population near the porous border with Pakistan was listed as one of the benefits. One wonders whether these observations do not show that the majority was entering a political thicket. Was no the majority relying on a weak foundation for building up a case for large dams, especially when the dam generates several social, economic and ecological problems?

The majority did not deny the petitioners the locus standi to agitate their contentions. Still they made adverse comments on PIL. Are they not obiter and irrelevant in such a situation? Who can deny that these words gave an unnecessary and unkind blow to PIL? On laches too, the comments of the majority seemed to miss an important aspect. It cannot be denied that environmental violations have Fundamental Rights dimensions. In a case, where the violation of the right to live is specifically alleged, laches can hardly be applied. The dissenting view on this question is more acceptable.

In Dhanu Taluka Environment Protection Group v BSES,104 the question of clearance for construction of a thermal power plant was involved. Part of a forest area needed to be cleared. Tribal people had to be rehabilitated. Two environmental groups filed writ petitions in Bombay High Court challenging the decision of go ahead with the scheme.

The court held:

We have already referred to the fact that on June 29, 1990 an affidavit and memorandum were filed on behalf of the Union, meeting every one of the objections that were sought to be raised. We are not concerned with the question whether the decision taken is right or wrong; the question is whether it has been taken after a consideration of all relevant aspects. It is clear that in the circumstances outlined above and having
regard to all the material that has been made available, it is not possible to agree with the counsel for the petitioners that the government decision should be faulted as it runs counter to the views of the EAC or that the government has not applied its mind to all relevant aspects of the setting up of a thermal power station at Dahanu.\textsuperscript{105}

Another grievance of the petitioners was that the clearance in respect of the site in question has been issued contrary to the Environmental Guidelines for Thermal Power Plants issued by the Government of India in the year 1987. The guidelines lay down various criteria, two of which, according to the petitioners, are very important. These are: first, thermal power plants should not be located within 25 km of the outer peripheries of metropolitan cities, national parks, and wildlife sanctuaries and ecologically sensitive areas like tropical forests; and secondly, that in order to protect coastal areas, a distance of 500 meters from high tide line (HTL) and a further buffer zone of 5 km from the seashore should be kept free of any thermal power station. The court opined that the distance in the former is only intended as a safeguard against possible pollution affects, and cannot be treated as rigid and inflexible. As a result of discussions with the Government of India, the company submitted a plan, which met with approval of the high court as the buildings shown in the plan did have a clearance of 500 metres from the HTL on all sides. Therefore, the Supreme Court was satisfied that the clearance to the thermal power station was granted by the Central Government after fully considering all relevant aspects, and in particular the aspects of the environmental pollution. Sufficient safeguards against pollution of air, water, and environment have been insisted upon in the conditions of grant.

Judicial review in public interest is a procedure in equity jurisdiction has to be invoked with great care and caution. It can never be used by anybody to wreak vengeance on a viral.

In Chhetriya Pardushan Mukti Sangharsh Samiti v State of Uttar Pradesh,\textsuperscript{106} a letter written to Supreme Court was treated as a writ petition under art 32 of the Constitution of India. The petitioners alleged in the letter a catena of complaints against environmental pollution in the area.
Jhunjhunwala Oil Mills and refinery plant are located in the green belt area, touching three villages and Sarnath 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 to be a health hazard. The people were finding it difficult to eat and sleep due to smoke and foul smell, as well as the highly polluted water. The lands in the area had become waste, affecting crops, and the orchards damaged. Diseases like TB, Jaundice and other ailments were said to be attaining an epidemic form. The growth of children was affected. The schools, nursing homes, leprosy homes and hospitals situated on the one kilometer long belt touching the oil mills and the plant were adversely affected. It was stated that licenses had been issued to one industrialist for these industrial units, thereby risking the lives of thousands of people without enforcing any safety measure either to cure the effluents discharged from the plants, or to check the smoke and the foul smell emitted from the chimneys. The whole area was expected to be ruined due to any explosion or gas leakage, the petitioners complained.

It was held: Article 32 is a great and salutary safeguard for preservation of fundamental right of the citizens. Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Art 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to be taken recourse of Art 32 of the Constitution. But this can only be done by any person interested genuinely in the protection of the society of behalf of the society of 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 a cloak to 'feed fact ancient grudge' and enmity, this should not only be refused by strongly discouraged. While it is the duty of this court to enforce fundamental rights, it is also the duty of this court to ensure that this weapon under Art 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental right being considered
by the court. That would be an act or a conduct which will defeat the very purpose of preservation of fundamental rights.¹⁰⁷

It is in Chhetriya Pardushan Mukti Sangharsh Samiti case¹⁰⁸ that the apex court has come forward to say beyond any doubt that every citizen has a Fundamental Right to enjoy the quality of life and living as contemplated by art 21 of the Constitution. Anything, which endangers of impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is a genuine cause of action under art 32 of the Constitution.

However, the court could not apply the principle in the case. The facts show that the petitioner fields the petition out of mere bias and enmity towards the respondent company. Will this not be a warning a clear warning to those who advise the public interest litigants when they are up in arms against the real existence of pollution and environmental degradation?

In the next case, Subhash Kumar v State of Bihar¹⁰⁹ one finds a more confused situation where although allegation of pollution by a giant company was specific, the case was lost. The real exercise of bias was proved against the petitioner.

In Subhash Kumar’s case¹¹⁰ the petitioner field a writ under art 32 of the Constitution for a direction to ‘West Bokaro Collieries and Tata Iron and Steel Co’ in Bihar to stop discharging slurry from the washeries into Bokaro river. The slurry is stated to make water unsafe for drinking. It affects the fertility of the adjoining lands. The State Pollution Control Board said that the effluents were disposed off under the conditions of a valid consent, and under its continuous monitoring. After the case was filed, the Board inspected the premises. Bokaro river is dry for nine months in a year; there is no scope for polluting the river. The slurry was collected in four separate ponds, and sold by the management. All directions of the Board were complied with.

The court observed: Since the respondent company prevented the petitioner from collecting slurry from its land and as it further refused to sell any additional quantity of slurry to him, he entertained grudge against
the respondent company. In order to feed his personal grudge he has taken several proceedings. These facts are quite apparent from the pleadings of the parties and the documents placed before the court. In fact, there is intrinsic evidence in the petition itself that the primary purpose of filing this petition is not to serve any public interest instead it is in self interest as would be clear from the prayer made by the petitioner in the interim stay application.\textsuperscript{111}

In view of the above discussion, the court was of the opinion that the petition has been filed not in any public interest, but for the petitioner's personal interest, and for those reasons the court dismissed the same along with the direction that the petitioner shall pay Rs. 5,000/ as costs.

**CONTEMPT AGAINST VIOLATION OF ENVIRONMENTAL LAWS**

The trend to sleep over the orders of the court regarding the imposition of environmental standards is frequent. This scenario might have worked as the inarticulate premises on which many forget to implement the standards. It is highly essential for the judiciary to step in, and distinguish clearly between development needs, and environment values, while it leans heavily on sustainable development, or when it hastens of consider and environmental litigation as private interest litigation. In a few remarkable cases, the judiciary has seized of the dire need to punish constant violators of environment using the weapon of contempt power. Casting away the self imposed limitations, courts need to become active in carrying out the Constitutional mandate to protect and improve the environment.

In Niyamavedi v Union of India\textsuperscript{112} the question was whether the state has power to hand over evergreen forest to a private agency and that too, to get over the contempt of court proceedings. The applicant claimed 29 acres of the land from being exempted from the purview of the legislation that vested private forests in the state. There was a hidden fraud and misrepresentation in the claim. Without knowing this, the forest tribunal and the High Court made an order in favour of the applicant. The lands claimed in the documents were different; plan submitted in the case was different; and the boundary described differed. A vigilance inquiry proved
this discrepancy. The Forest Department also confirmed this fraud. A contempt case was filed later. In order to save its forest officials from contempt, the state handed over 210 acres of ever green forest to the applicant. The said property was lying 650 meters west of the property which the applicant had purchased, but which he had alienated subsequently even before he filed the original petition for exemption before the forest tribunal. The properties being different, the Forest Department prayed in the present case to review the order in the contempt case. A PIL was filed by a public interest lawyers' forum. Allowing the petition, Kerala High Court described the PIL as a 'a classic struggle between members of the public who would like to preserve forest and those changed with administrative responsibilities and the property grabs'. Stressing on the public trust doctrine as laid down in Kamalnath case the Court held that the state government has no power to hand over the evergreen forest without prior approval of the Central Government, to any body in order to get over contempt proceedings. There is suppression of material facts. Fraud was practiced. The applicant had no title over the property discussed in the document produced before the court. Hence, no relief could be allowed for him. Public interest was jeopardized by the manner in which the case was conducted before the tribunal and the court. The Court held that it could suo motu condoned the delay in filling the revision petition, as there was suppression and fraud in the case:

"We are happy we could correct an error committed by this Court due to mis-representation of facts and this Bench is happy since we could rectify the mistake committed by this Court lest posterity would point its finger at us, which we would avoid at any costs."

The court did not order heavy cost as it found that in the earlier part of the proceedings, forest officials then in-charge as well the counsel engaged at that time were not properly conducting the case.

The facts in one of the MC Mehta cases did allow the Apex Court to take liberal attitude towards contempt. In MC Mehta v Union of India the Apex Court wanted to strike an effective blow to this trend. An expert committee of the Central Pollution Control Board (CPCB) found that 'hot-mix plants' belong to the category of hazardous industries. According to the Master Plan, all hazardous/noxious industries have to be shifted out from
the Union Territory of Delhi. The Board issued notice of shifting to 43 plants. In accordance with this notice, the court directed that those who were not relocated should stop operation from 28 February 1997. Being not included in the list of 43 plants, the respondent unit continued to operate its plant within the area. However, the court clarified later that this unit should also fall in line with others. The Regional Town Planner allotted an alternative site for relocation of the unit. However, these measures deter the plant from stopping the operation in its old location. Delhi Pollution Control Committee (DPCC) to whom the Central Pollution Control Board had delegated its powers under s 31-A of the Air Act, interfered and ordered to cease the operation forthwith. It sealed the unit. The Delhi High Court stayed the order of sealing of the unit, but made of categorically clear that this would not affects the order of closure of the of ending unit. The Supreme Court was surprised at the fact that the High Court had admitted the writ petition. It asked the High Court to dispose it off within two months. It is interesting to note that all these days the unit continued operating its plant with impunity. In view of these developments, the Apex Court had no other way except issuing orders for urgent action against the unit. In the meantime the High Court dismissed the writ petition.

The Supreme Court issued contempt notice on 25 November 1999. In reply, the respondent found fault with the orders of the apex court saying that they were passed without looking into the complete facts. It was also alleged that the court passed the orders at the instance of interested persons, and at the behest of DPCC. The court took a serious view, and held that these statements are 'all the more contemptuous'. To say that all the orders passed by the court were at the behest of DPCC and not in the public interest is itself contumacious. The court noted that there was not even a whisper of an apology, much less unconditional apology, not to speak of remorse and contrition.\textsuperscript{119} The contention of the unit was that it was excluded from 43 plants which were to be dismantled. This was contrary to facts. As pointed out earlier, the Supreme Court included it in a subsequent order and even asked the state government to make available a re-location site, which was since then granted. The court observed:
"... it is apparent that the contemner was taking the Court for a ride by raiding one court of the other deliberately with oblique motive to circumvent the court's orders thereby salvaging himself by feigning ignorance of this court's order which was in the knowledge of the contemner."\textsuperscript{120}

The respondent contended that neither did he get a copy of the order of the Supreme Court, nor did he know of the allocation of the alternative site. In the court's view, this statement was false, and filing false affidavit/statements would amount to criminal contempt. Holding that the apology could not be accepted in such instances, the court observed:

The conduct of the contemner, as recited above is beyond condonable limit. It is now a well-settled principle that an apology is not a weapon of defense to purge the guilt of the contemner. At the same time, the apology must be sought at the earliest oppportunity.\textsuperscript{121}

The apology tendered by the respondent is at a belated stage. It was to escape punishment. In one part of the affidavit he has stated that he has not committed any contempt and defended his action. In another he tendered unconditional apology. Therefore, the court held that the apology so tendered by the contemner is not a product of remorse or contrition.

The contemptuous act of the respondent is of grave nature. The act is not only in violation of the court's orders, but also of the law relating to air pollution. The court has observed:

"The pollution of air is causing deleterious affects on the health of entire society. We have also considered the larger interest of the society and orders passed by this court in the interest of the society at large. Liberty of an individual, which is so dear to every citizen of this country, must necessarily, be balanced with the duties and obligations towards his fellow citizens. Every citizen of this country has freedom to breathe unpolluted air. In air pollution related matter or in any matter relating to environmental hazard, the orders of the highest court are disobeyed as sought to be done in this case, the health of the entire society is at risk. We are, therefore, convinced to send strong signal by imposing exemplary punishment so that like-minded people would not repeat and such recurrence thwarted."\textsuperscript{122}

The court punished the respondent to one-week simple imprisonment and imposed Rs. one lakh as costs. Half this amount was to go to DPCC, and the other half to the Amicur Curiae who assisted the
court. To those polluters who flout the orders of court, this is a strict warning.

**APPELLATE AUTHORITY**

Can an authority vested with quasi-judicial and administrative powers review its own decisions even if the statute does not confer such a review power?

In Manoj Kumar Roy v Appellate Authority, the petitioners' grievances was that close to their building there was a showroom of Digjam, a well known concern carrying on business in textile and dress materials, and in the said showroom there were huge air conditioning machines causing air and noise pollution. The petitioners sought redress by filling complaint before the Pollution Control Board. When the case came before it, a Division Bench of the Supreme Court accepted the suggestion of one of the parties that a cooling tower should be built at the top of the building to avoid emanation of hot air from the two air conditioners.

In the context of the clear proposition laid down by the Supreme Court, Calcutta High Court found in difficult to accept the contention that the power of review of the state appellate authority must be implied from the power of review given to NEAA under express statutory provision. The power of review has to be expressly conferred, or the same should appear by way of necessary implication from the language of the statute. The same cannot be conferred on the basis of certain observations which are made in a judgment in which the power of review is not even remotely discussed. All that has been stated in the Supreme Court judgment in Andhra Pradesh Pollution Control Board v NV Nayudu was a mere observation of the Supreme Court on the necessity of immediate constitution of an appellate body, and nothing else.

Where there is damage or loss to the property of an individual by the action of his neighbour, the party may take recourse to private law remedy. The problem may attain such a dimension that it leads to the violation of Fundamental Rights. A private law remedy may neither be effective, nor expeditious. In MP Rambabu v District Forest Officer small agriculturists had complained that aquaculture raised in the neighbours'
property caused pollution on the lands, and contended that this had a
direct impact on their Fundamental Rights. The court seems to say that for
the enforcement of a right under art 21 of the Constitution 'a writ petition
may be maintainable even against a private person'. It is true that
mandamus cannot lie where the rights are purely of a private character,
and where the person against whom mandamus is sought is purely a
private body with no public duty. Referring to the decisions of the Supreme
Court, the court quoted Rohtas Industries Ltd v Rohtas Industries Staff
Union.\footnote{126} In Shri Anadi Mukta Sadguru SMVSJMS Trust v VR Rudani\footnote{127}
the apex court clarified the jurisdiction of the high court in issuing a
mandamus under art 226 of the Constitution of India vis-à-vis art 12. The
Andhra Pradesh High Court in MP Rambabu held that even in such an
instance, mandamus could not be denied where the party has no other
equally convenient remedy. It also championed for a liberal interpretation
of the terms 'any person or authority' used in art 226, so that the remedy
need not be confined to statutory authorities and instrumentalities of the
state, but should go to any other person or body performing public duty.
Thus, an adjacent owner of agricultural land has locus standi to challenge
the extensive use of his neighbouring land for prawn culture that has made
his land saline and unfit for agriculture. Having regard to the nature of the
problem involved, which has larger public interest, the court held that it
has jurisdiction to issue appropriate writ or direction or orders as may be
found necessary in greater public interest.\footnote{128}

The decision of Kerala High Court on the Silent Valley hydroelectric
project is one of the earliest cases where the court adopted a hand off
approach. The court relied completely on the government's view over the
design and impact of the project. The expert opinion was that the project
was environmentally malign. However, this did not influence the court.
Although it was not reported, the Silent Valley case\footnote{129} reveals how the
courts death with the environmental issues during the early days of the
growth of green jurisprudence in the country. The Kerala High Court had
to deal with a stretch of forest, nearly 8952 hectares in extent, known as
the 'Silent Valley'. The name is apparently derived from the peace, quiet
and serenity of the place. Interestingly, the hustle and bustle was over the
hydro electric project sought to be set up in this valley. These writ petitions sought to forbid the state from proceeding with the project. The Government of Kerala decided to deforest the Silent Valley, and to construct a dam for hydro electric project for power generation and supply of electricity. This venture has been represented as fraught with adverse consequences deleterious to the public. Experts have warned against the proposed construction of the dam, and processing of the project. Scientists and technologies have joined in the denunciation of the project.

The adverse effects from the conversion of the Silent Valley into a hydro electric project were listed thus: first, the deforestation was bound to affect the climatic conditions in the state and even outside, by depriving the state of its legitimate share of rain during the monsoon; secondly, the preservation of the forests was needed for conducting research in medicine, pest control, breeding of economic plants, and a variety of other purposes; and thirdly, deforestation was bound to interfere with the balance of nature, as between the forest land on the one side and arable and other types of land on the other.

There was then an argument that the Silent Valley project conflicts with the Wildlife Act. It was also argued that the petitioners have the legal right to breathe pure air and drink pure water, and that the proposed deforestation of the Silent Valley would vitally affect this right. The protection of environment granted by various countries such as America, and England was stressed upon. It was held:

It is not for us to evaluate these considerations again as against the evaluation already done by the Government. It is enough to state that we are satisfied that the relevant matters have received attention before the Government decided to launch the project. There has been non non-advertence of the mind to the silent aspects of the project. We are not to substitute our opinion and notions on these matters for those of the Government.

According to a critic on the Silent Valley case, lack of proper appreciation of environmental information may often lead to decisions going against the interest of the general public. The Silent Valley, one of the
tropical evergreen forests, had 50 millions years of evolutionary history with diverse and complex flora and fauna. Scientists from the Central Government, environmentalists and conservationists in India and abroad warned against the project. Earlier, the state had turned down all the representations from experts, when it decided to go ahead. The author of the article criticized the government's stand on exhibiting its ecological illiteracy by filing affidavit that the forests do not avert floods and droughts in the plains. The court relied more on the government's stand than on the above mentioned views, and, therefore, adopted hands off position.

**Reference to National Environment Appellate Authority**

The judges may not be experts to decide the issues involving scientific and technological matters in environmental cases. What is the way out on such occasions? Judicial hands off approach may lead to injustice on more occasions than one, especially when there are diametrically opposite views of two experts on the same question. What strategy has the Supreme Court evolved to get over this difficulty on such an occasion? Should not the strategy by followed up by the high courts in a similar circumstance?

In MV Nayudu case\textsuperscript{131} these Andhra Pradesh Pollution Control Board objected to giving a no-objected-certificate as it held that the respondent company was planning to establish its industry within the prohibited zone of 10 kilometers width on the banks of the lakes. The Board held the view that the industry was in the red category and its bye-products had pollution potential. The company went for a statutory appeal. The appellate authority was a one man authority-a judge who had retired from the high court. The appellate authority, on the basis of reports and affidavit filed by an experienced scientist, found that the respondent industry is not a pollution industry, and directed the Board to give consent with such conditions as were deemed necessary. The high court did not think it proper to sit in appeal over this order. It held that the Board should not have refused consent merely because an industry was producing hazardous substances, but could have given consent with conditions and safeguards envisaged under Hazardous Wastes (Management and Handling) Rules, 1989, and Chemical Accidents (Emergency Relief,
Preparedness and Response) Rules 1996. Appeals against these orders were preferred by Andhra Pradesh Pollution Control Board as well as by a public interest society. The gram panchayat, which had filed a write petition before the high court also, went in appeal before the Supreme Court.

Surprisingly, the facts show that sometime when the matter was before the courts, the state government had relaxed the zoning restrictions, and supported the application of the respondent company. Interestingly, this manifestly patronizing stance of the state government hardly moved the Board to toe the government line, and give clearance.  

Judicial Review of Environmental Problems — Reference to National Environmental Appellate Authority for Investigation and Opinion

In a large number of matters coming up before the Supreme Court either under art 32 or under art 136, and also before the high court under art 226, complex issues relating to environment and pollution, science and technology have been arising. In some cases, courts found difficulty in providing adequate solutions, to meet the requirements of public interest, environmental protection, and elimination or of pollution, and sustained development. In some case, the Supreme Court had been referring matters to professional of technical bodies. The monitoring if a case as it progresses before the professional body was creating complex problems. Consideration of objection raised by affected parties to the opinion given by these professional technical bodies was again causing complexity. Further, these matters required day to day hearing resulting in further difficulty. Urgent decisions become a distant possibility in these instances, having regard to the other workload of the court.

In such a situation, it is quite natural that the court felt the need for an alternative procedure, which can be expeditious and scientifically adequate. Questions is whether, in such a situation, involving grave public interest, the judiciary could seek the help of other statutory bodies which have an adequate combination of both judicial and technical expertise in environmental matters, for instance National Environmental Appellate Authority (NEAA).
Manifestly, NEAA had only limited jurisdiction, namely, to hear appeals against environmental impact clearance given under EIA Notification. How can NEAA be entrusted to do a job, which it cannot do within the limits of the law that created it? In this connection the Supreme Court in MV Nayudu case cited Paramjit Kaur v State of Punjab, wherein the court had held that though barred by limitation under law, National Human Rights Commission (NHRC) could be directed under art 32 to probe into human rights violation alleged to have happened long before. The powers of the Supreme court under 32 of the Constitution to issue directions to the statutory authority can never be curtailed by statutory limitations. In such instances the statutory authority can act sui juris free from the constraints imposed by limitations. Applying the dictum, the court in MV Nayudu entrusted NEAA to examine the question from the perspective of an expert body. The court said:

“In our view in the context of emerging jurisprudence relating to environmental matters, as it is the case in matters relating to human rights, it is the duty of this court to tender justice by taking all aspects into consideration. With a view to ensure that there is neither danger to environment not to ecology and at the same time, ensuring sustainable development, the court can refer scientific and technical aspect for investigation and opinion to expert bodies such as the appellate authority under the National Environmental Appellate Authority Act 1997. The said authority comprised of retired judge of the Supreme Court and members having technical expertise in environmental matters whose investigation, analysis of facts and opinion on objections raised by parties, could give adequate help to this court or the High Court and also the needed reassurance, Any opinions rendered by the said authority would of course be subject to the approval of the Supreme Court. On the analogy of Paramjit Kaur’s case, such as procedure, in our opinion, is perfectly within the bounds of the law. Such a procedure, in our view, can be adopted in matters arising in this court under Article 32 or under Article 32 or under Article 136 or arising before the High Courts under Article 226 of the constitution of India.”

The Supreme Court finally disposed of the problem when the case came back after NEAA and other experts entrusted by the court examined it from different angles.

In Andhra Pradesh Pollution Control Board v Prof MV Nayudu, also known as the second Nayudu case, it was held that s 19 of the After Act permitted the state to restrict application of the Act to a particular area, if need be, but it did not enable the state to grant exemption to a
particular industry within the are prohibited for location of polluting industries. The Supreme Court stated, 'exercise of such a power in favour of a particular industry must be treated as arbitrary and contrary of public interest and in violation of the right to clean water under Article 21 of the Constitution of India.'

The Supreme Court of India was one of the first courts to develop the concept of right of 'healthy environment' as part of the right to 'life' under art 21 of the Constitution. This principle has now been adopted in various countries.

In today's emerging jurisprudence, environmental rights that encompass a group of collective rights are described as 'third-generation' rights. The 'first-generation' rights are generally political rights such as those found in the United Nations International Convention on Civil and Political Rights, while 'second-generation' rights are social and economic rights as found in the United Nations International Covenant on Economic, Social and Cultural Rights.

The court examined the environment and human rights jurisprudence of other countries, which had accepted the concept of healthy environment, and the right to development as part of the Fundamental Rights. The court made a further reference for expert study after it got the report from NEAA. This shows the anxiety of the apex court in getting a clear and objective assessment of the situation where the challenges and counter-challenges relating of the potential pollution are made.

The Andhra Pradesh Pollution Control Board acted with courage. This is unprecedented. The stem stand it took disproves the usual accusation that the statutory provisions do not make the Board a powerful independent agency of pollution control. In MV Nayudu's case, it is found that the Board did not toe the government line. Nor did it support the local bodies who wanted to help the industry, whose byproducts do have pollution potential. The state government and the local body feared to go against the industry. The Board, however, acted differently.
The further reference by the court to the University and National Geophysical Research Institute (NGRI), after the report from NEAA was received, shows the judicial determination to get an objective assessment of the project in a situation where experts have conflicting views about the pollution potential of an industry.

The two MV Nayudu cases opened the way to show how an impartial judiciary without the technical know-how on pollution potential cane gets itself enlightened with the assistance of expert bodies and persons. By rendering sufficient information and recommendations, the experts helps courts in making decisions conducive to the protection and improvement of the environmental decisions more often than not, the court may find out many anomalies on the government’s part. At times the government and local bodies find no difficulty in shifting their stand and in approving environmentally malign projects that they had once disapproved.

The first MV Nayudu case is a rare instance, when the Pollution Control Board stood for the protection of environment, while the other governmental agencies faltered in carrying out the Constitutional mandate. Rightly, the court has pointed out the change in the policy of the government in protecting the ten-kilometer no-development zone, and the grant of an exemption in favour of a particular individual was wholly arbitrary and violate of art 21.

The second MV Nayudu case is a sequel to the first one. In this case, the court examined the reports of experts in detail. Fortunately, all the reports are in the same vein. All of them were against establishment of the industry within the ten-kilometer limit of the lakes. Would the balance swing around if one of the reports held a different view? This was what happened in Tehri Bandh Viurodhi Sangarsh Samiti case, where the court approved some experts, while it did not agree with others. Will this be conducive to the precautionary principle formulated in Vellore Citizens Welfare Forum case, and explained in the two Nayudu cases? 138

**CONCLUSION**

It is not that we had no provisions for pollution control or its removal in our laws, but the gravity of pollution problem was not realized in the
past. Acts, statutes and rules regarding the preservation and control of environment pollution have been there. There are provisions in our Constitution in the form of Directive Principles and Fundamental Duties. But till seventies of the last century these sections were either not used for this purpose or if used, were interpreted narrowly. In seventies, when the gravity of pollution has been realized on global level, the judicial trend has also shown a positive signal. The judgment delivered by V.R.Krishna lyer and O.Chinappa Reddy, JJ in Ratlam Municipality case is an example where the judiciary realized the gravity of pollution while observing, public nuisance because of pollutants being discharged by big factories to the detriment of poorer section is a challenge to the social justice component of the Rule of Law.

The dynamics of the judicial process has a new enforcement dimension. Thus, the said decision has highlighted the importance of judicial process and its role to fill the gaps and has also desired that the judiciary should be informed of broader principles of access to justice necessitated by the conditions of developing countries. An in depth study of the judgments related to the environment pollution shows that the judiciary also has started realizing the gravity of pollution problem and has come forward to play its important role in the field. The Supreme Court, using it power conferred under Art 32, and High Courts, under Article 226, have been issuing directions to courts in environmental litigation. Courts have made use of these powers to remedy past maladies and to check immediate and future assaults on the environment. Further, the Court formulated certain principles which created congenial conditions for developing a better regime for protecting the environment. Among them, the doctrine of 'absolute liability' and the 'Polluter Pays Principle' for harm caused by hazardous and inherently dangerous industry are landmarks among the recent decisions taken by the Apex Court.

Since environment pollution cases are very complicated ones requiring scientific, technological and social expertise. Because of
this fact, the Court has appointed committees to obtain correct and scientific information in many cases. In the Doon Valley's case is a good example. At present state of affairs, the fusion of diverse expertise in planning, science, technology, environment, law and public policy into a new institution for environmental decision-making is essential for integrating environmental values with developmental issues. The inherent limitations of the judicial system to review substantive questions relating to the environment makes it desirable to set up Environment Courts on the regional basis with one professional judge and two experts drawn from the Ecological Science Research Group keeping in view the nature of the case and the expertise required for its adjudication. Another feature which fulfilled the objective of the social justice is Public Interest Litigation (PIL) entertained by the superior courts. Contrary to the past practices, at present a person acting bonafide and having sufficient interest can move the courts for redressing public injury, enforcing public duty, protecting social and collective right and interests and vindicating public interest. In a few remarkable cases, the judiciary has seized of the dire need to punish constant violators of environment using the weapon of contempt power. The Supreme Court examined the environment and human rights jurisprudence of other countries, and is one of the first courts to develop the concept of right of 'healthy environment' as part of the right to 'life' under Art 21 of the Constitution. This principle has now been adopted in various countries.

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