CHAPTER – VII
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1. INTRODUCTION

The Hon’ble Supreme Court and the Hon’ble High Courts stepped in the environmental scenario by way of invoking the inherent jurisdiction under Article 32 and 226 of the Constitution respectively. The Environment Protection Act, 1986 is umbrella legislation for curbing environmental hazards. The Supreme Court and the Hon’ble High Courts invoked the Environment Protection Act and the Constitution of India for safeguarding the environment and for checking pollution.

The judicial innovativeness to use the existing legislations proves to be inadequate in facing the challenges posed by the environmental degradation. The courts in India, particularly higher judiciary, have played an active role by judicial innovations. The courts have constructively contributed for better enforcement of the legislations. A reference can be made to the decision in Centre for Social Justice vs. Union of India where the Hon’ble High Court introduced implemented the spirit of public hearing process. The discussion in this chapter revolves around the Constitutional mandates for promoting right to healthy environment. The chapter deals with new principles of environmental governance under the provisions of The Environment Protection Act and the rules framed there under.

The legislations, which have been discussed so far were specific legislations for curbing pollution and halting Environmental Degradation. In this Chapter the principles of Environmental Jurisprudence developed by the Apex Court after the Bhopal tragedy and under Environment Protection Act and the Constitutional mandates are discussed at length.
2 EMERGENCE OF ENVIRONMENTAL JURISPRUDENCE

2(A) Development of Environmental Jurisprudence in India

Environmental jurisprudence existed in India during the regime of Kautilya. The rulers wanted to protect forests, may be, for the security of the state. Wild life was protected during those days also. The Upanishads have categorized that the Temples and Shrines should be located in such a way that they give protection to the subjects. Water sources could not be disturbed nor could trees be cut.

As can be seen today we find old shrines and temples in remote places in forests and or mountains. Different Kings formulated their own rules. The Kuran has stated, "Don't make mischief on the earth" and the mythologists adequately conveyed the value of the environment.\(^2\)

The degrading environment, which posed problems for the survival of living beings, gave rise to environmental legislations and the Indian judiciary took cognizance of the pollution explosions and this has given rise to the decisions of the higher courts for safeguarding the environment.

2(B) Emergence of Environmental Jurisprudence in Gujarat

Emergence of Environmental Law or Environmental Jurisprudence is of recent origin in the State of Gujarat with specific Legislation. Environmental norms were available in Indian society but there were no specific laws that were meant for safeguarding environment. After the formation of the State of Gujarat, the High Court of Gujarat was concerned about the safety of
people, and human rights. In 1963 The Hon'ble High Court of Gujarat was concerned about stopping the use of loudspeaker, if used without permission from authorities.³

Inter relationship connection of all three wings Legislative, Executive and Judiciary can be very well understood in the context of environmental jurisprudence. If any one wing becomes non-functional, it can cause lot of problems. The Courts strike the balance by inventing innovative methods. The critical and analytical approaches by Courts have brought solutions for upgrading the moral fabric of present society. The legislature has done its duty by legislating laws for protection and conservation of the environment. The courts are interpreting the legislations for betterment of society, especially in Gujarat. The High Court of Gujarat undertakes the concern for environment in Gujarat. Reference may be made to Narul Dyeing and P.S. Patel’s cases.

3 STEPPING OF JUDICIARY IN ENVIRONMENTAL ISSUES.

The citizens feel that there are legislations to protect them, with far reaching ramifications for people who breach the law. The executive wing enforces these laws so as to ensure smooth, impartial and effective governance, but it is the judicial approach, which normally conforms to the principles of equality and rule of law in order to achieve the guarantee of legitimate rights of the citizens. To quote Sir Leslie Scarman regarding the role of the judiciary,

"If as a profession we respond to the needs of society and show by our practice and thinking that we have socially relevant and helpful contribution to make to the management and regulation of our society,
as it appears to enter the 21st century, we shall be wanted and respected."

The judiciary had to step in for the protection of the public and the sanitation rights of citizens in the year 1980 in Municipal Council, Ratlam vs. Vardichand.\(^5\)

The Hon’ble Supreme Court and the Hon’ble High Court of Gujarat have helped the people so that they may get a healthy living environment as enshrined in Article 21 of the Constitution of India. The judgments of the Supreme Court in MC Mehta vs. Kamalnath (1997), MC Mehta vs. Kamalnath (2000) and reference to the decision of the Supreme Court in S Jagannath v. Union of India, (1997) 2 SCC p-87 go to show that particular Minister Mr. Kamalnath was personally involved in the Span Hotel matter. The Supreme Court evolved the principle of polluter pays and directed the concerned minister to pay for the encroachment and environmental degradation. These aspects would go to show that the judiciary had to review the duty of the State and held that it is the duty of the State to secure the health of the people, improve and protect the environment.

The maintenance of judicial power is essential and in dispensable for the welfare of the society. The Hon’ble High Court of Gujarat exercised its jurisdiction for controlling and monitoring the traffic hazards of Ahmedabad way back in the year 1992 by passing orders in petition being SCA No. 8061 of 1992 between Lok Adhikar Sangh vs. State of Gujarat\(^6\) and exercise of suo motu jurisdiction in Sp. C.A. 9988 of 1995 Suo Motu vs. Secretary Home Department.\(^7\) In the year 1996 once again the Hon’ble High Court was faced with the problem of pollution by industrial units. In the case of Dyeing
Bleaching and Finishing Workers Union vs. State of Gujarat and Others
SCA 3844 of 1997, \(^8\) road safety, traffic hazards and other environmental hazards like three wheelers plying with kerosene, treatment of the accident victims, formation of high level committees, and thereafter, monitoring the same are very important. The High Court was concerned about the industrial houses, which had chocked up Ahmedabad's Kharicut Canal in the year 1995. The High Court of Gujarat in SCA No. 770 of 1995 popularly known as P.J. Patel's case, 1995 (1) GLR 1210\(^9\) controlled polluting units in and around Ahmedabad. The principle of polluter pays propounded in the petition is being contested. The problem of pollution in Kharikat canal has resurfaced as per the reports published in a daily newspaper Gujarat Samachar during January, February and June, 2004. Photo plates showing effluents in Kharikat canal in the year 2004 are marked as plate 7.1, 7.2, 7.3 and 7.4 annexed as 'Annexure – VII-A'.

4 CONSTITUTIONAL MANDATES AND THEIR IMPLICATIONS ON GRIM ENVIRONMENTAL SCENERIO OF INDIA AND GUJARAT

The framers of Constitution gave the fundamental rights to the citizens. No section on fundamental duties of the citizen was incorporated in the original Constitution. The preamble of the Constitution enshrines justice, both social, economic as well as political. The basic feature of equality is the cornerstone of constitutional mandate. As per the 42\(^{rd}\) Constitutional amendment made in 1976, India became socialist democracy. The principal aim of socialist democracy is to eliminate inequality and raise the standard of life. The basic framework of social democracy is to provide decent standard of life to all. Socialism is mix blend of Marxism and Gandhism. We are leaning more towards Gandhian Socialism as held by Hon’ble Supreme Court in

Article – 37 enshrines freedom to profess and practice occupation, trade or business. The Directive Principles of the State Policy, which are not enforceable in any Court of law. The fundamental rights have to be read along with the Directive Principles and blending of both would constitute the conscience of India Constitution.

After the Stockholm Conference held in the year 1972, Article 48 (A) was introduced in the Indian Constitution, with this, a Chapter on fundamental duties was introduced by way of Part –IV –A. Wherein Article 51 (1) (g) speaks about the duties of every citizen to protect and improve the environment which would include forests, lakes, rivers and wild life along with compassion for living creatures. Article 51 (1) (g) is introduced so that Indians may care for the environment, which we did not till 1975 and either knowingly or unknowingly created such an atmosphere which degraded and spoiled earth’s natural environment.

5 CURBING OF HAZARDOUS ACTIVITIES BY LEGISLATIVE AND JUDICIAL INTERVENTIONS.

The Bhopal Holocaust where more than 3000 people died and ten times more people suffered injuries and even after two decades, people are experiencing nightmarish effects. The multiple adverse effects of show the magnitude of the pollutants causing hazards to environment.
The Hon’ble High Court of Gujarat in a petition initiated suo motu on a note circulated by the G.P.C.B. against industries of Vatva, directed the Board to take action on its own which included its duties for checking dumping of the hazardous substances. A recent photograph of such dumping of hazardous substances is annexed as ‘Annexure VII-B’ This gives an idea that despite the directions of the Hon’ble High Court, Pollution Control Board and the authorities are unmoved.

The Central Government has under the Environment Protection Act framed rules, which are enumerated in Chapter – 3.

These rules are for curbing the hazardous waste.

Judicial Activism, as far as hazardous and toxic wastes are concerned, can be seen in the decision of the Hon’ble High Court of Gujarat in D.S. Rana vs. Ahmedabad Municipal Corporation; AIR 2000 Guj. 45 in the said decision Hon’ble High Court directed all foundries in the city limits to stop functioning. The working of foundries had adversely affected the health of the people. The judgment in P.J. Patel’s case has regulated the functioning of industries producing H acid, which is highly hazardous to health. The Hon’ble High Court of Gujarat in Abhilash Textile vs. Rajkot Municipal Corporation; 1987 (2) GLR 13 tried to curb the hazards caused by Textile printing (Sarees) industries. These industries have now been put to strict check by the mandate of Hon’ble High Court of Gujarat. The hazardous activities and their after effects have caused serious problems. The Hon’ble High Court of Gujarat has tried to lessen the damage caused by such hazardous industries by invoking power under Article 226.
6. MEGA TRAGEDIES: SOCIAL AND LEGAL ASPECTS

Industrialisation has brought about comfort to humans but with it discomfort for animals, forests and the atmosphere. Industrialization would mean modernization but it has brought with it sorrows.

While going through the Textbooks 'Mega Tragedies' is not a word used by the authors. The etymology of the word disaster would mean "event of considerable misfortune which may include disaster caused by negligence. It would mean calamity, tragedy, fiasco, holocaust" and Mega would mean of a large magnitude. In the last two decades, India has witnessed three mega disasters. Two of them are man made. The first occurred in the year 1984 at Bhopal in M.P.. The second occurred due to green house effect of Shree Ram Gas, the third natural disaster in the form of earthquake causing unprecedented damage to life and property in Gujarat. These are considered important from the judicial point of view, because the Hon'ble Supreme Court propounded the theory of absolute liability diverting from the theory of strict liability propounded in Rylands vs. Fletcher. The mandate of appointing Judicial Officers as Ombudsman for each District to look after the disbursement of amount paid to the victims of earthquake by the Hon'ble High Court of Gujarat in the case of B.J. Diwan vs. State of Gujarat reported in 2001 (2) GLR 1394. The decisions of the Supreme Court in Union Carbides Corporation vs. Union of India; AIR 1990 SC 273 and Union Carbides Corporation vs. Union of India; AIR 1992 SC 248 are path breaking, leaving the British counterpart behind. The importance of Gujarat Judiciary came to be felt even in the review judgment when the Supreme Court decided that the compensation should be disbursed on the lines
suggested by the Hon’ble High Court of Gujarat in *Muljibhai vs. United India Insurance Co. Ltd.; 1982 (1) GLR 756*.

American Company Union Carbide met great ridicule as they refused to accept the jurisdiction of Indian Courts. They refused to accept the liability, refusing to accept the fact. The security system being prone to failures was not easily conceded to. The Union Carbide Corporation claimed that it was due to unusual events.

The Bhopal catastrophe is considered here so as to show the callus attitude of a Mega company like Union Carbide. The saving of Judicial Time by Hon’ble Supreme Court while deciding the matter finally but reviewing its view of quashing criminal proceedings by its decision in the review petition setting aside of the judgment of the criminal proceedings. The Government agency was appointed for disbursement of amounts, which was to be made under the supervision of Claim Commissioners. The main aspect for which the Hon’ble Supreme Court is to be applauded is on the legal side. The Hon’ble Supreme Court seeing that Union Carbide was a mighty organisation, would not pay any compensation to the victims as it had even refused to acknowledge its liability to the Indian public at large when the appeals were preferred against the order of the District Judge dated 17th December, 1987. It had contended that the order was an interim order and Union Carbide Corporation was not under any duty to pay the amount. The order was challenged, the High Court of Madhya Pradesh reduced the interim compensation to Rs. 250 crores but Union Carbide even challenged the High Court order. The Hon’ble Supreme Court was alive to the doctrine of damages to be awarded according to the status of the wrongdoer.
6(A) Reiteration of Principle to Compensate on Status of Wrongdoer

For centuries before the British came to India, the common law in India required a person who had injured another pay damages, not according to the status of the victim but according to the status of the wrongdoer. This law has never been repealed. This rule of the ancient common law of India, enforced by many rulers in the last thousands years and more, is still a law of India.19

It would be seen in the post accident analysis that Union Carbide nowhere accepted that earlier even in Bhopal there were isolated incidences, However, Union Carbide Corporation’s stand was not accepted and it could not avoid liability. Union Carbide tried to avoid liability by propagating its theory of sabotage, and thereby tried to got way with the payment of compensation. The Supreme Court in the litigation applied the theory of payment as per status of wrongdoer and the old rule was reiterated while awarding compensation.

6 (B) Emergence of Doctrine of `Parens Patriae’

The Bhopal accident is believed to be due to human failure disorder. The assessment of quantum of compensation for the loss, mental agony, suffering, and death was an arduous task.20 The nature of the legal proceedings goes to show that the stark realities were accepted both by the Central Government and the Hon’ble Supreme Court. It was the Central Government which hurriedly passed two legislations (a) The Bhopal Gas Leak Disaster (Processing of Claim) Act, 1985 which conferred on the Union of India responsibility for suing on behalf of victims and (b) Umbrella Legislation i.e. Environment Protection Act, 1986.
The multiplicity of the parties was to be avoided. It was on this principle that the legislation was enacted. The legislation came to be challenged in *Charan Lal Sahu vs. Union of India; AIR 1990 SC 1480*\(^2\)\(^1\). However, it was an unsuccessful challenge. Can Hon’ble Supreme Court accept that they have done some wrong? Hon’ble the Chief Justice conveyed that some wrong was done. The principle of ‘*Parens Patriae*’ came to be accepted by the legislature and the Union of India took responsibility to sue on behalf of victims. This principle normally is employed where the person is totally disabled or incapacitated. This principle was watered down because the Union of India considered certain aspects for the overall settlement, which took place between the parties. The Supreme Court while according its seal on the settlement invoked the doctrine of ‘*Parens Patriae*’.

Despite the settlement in 1989, an amount of 470 million US dollars was placed at the disposal of the Union of India, but an amount of over Rs. 1,000 crores is still lying undistributed. The victims have not received compensation. They are entitled to and in many cases their claims have not been adjudicated. A long wait has meant that the victims have had to live on borrowings or on dole. It is indeed ironical, there being no payment of interest on the final sum awarded to the victim and the amount of interim relief was to be deducted at the time of disbursal of final compensation\(^2\)\(^2\).

6(C) Emergence of Principle of Absolute Liability

The principle of absolute liability in contrast to that of the principle of strict liability propounded in the decision of *Rylands vs. Fletcher* can be said to have been applied in the case of *Oleum Gas Leak*, which occurred, after one year of Bhopal tragedy on 4\(^{th}\) and 6\(^{th}\) December, 1985 which was after
`Bhoposhima'. [See for a brilliant critical exposure of the Bhopal mass disaster, Krishna Iyer on Union Carbide’s `Bhoposhima’ and Indian justice in `Somnocoma’, in R.P. Anand, R. Khan and S. Bhatt (eds) Law, Science and Environment, (1987, New Delhi) at 192-219.] M.C. Mehta brought this disaster immediately to the notice of the Supreme Court\(^3\) and the decision shows that once again judicial activism had to play its role. Apprehension about such hazard was brought to the notice of the Government but nothing was done. It was once again the Supreme Court, which decided the issue, and the principle of absolute liability was propounded. The Supreme Court decided that principle of strict liability should be replaced by the principle of absolute liability. The Supreme Court in Indian Council of Enviro-Legal Action vs. Union of India, AIR 1996 SC 1446 approves this\(^4\). The Supreme Court even co-related the awarding of compensation on the basis of magnitude of the accident in its subsequent order reported in M.C. Mehta vs. Union of India; AIR 1987 SC 1087\(^5\). In its first order dated 17/02/1986, the Supreme Court decided to permit restarting of Shri Ram Food with a long list of conditions. However, in its second part the standard of reasonable behaviour coupled with doctrine of strict liability gave rise to the new doctrine of absolute liability based on compensation, holding that rule Rylands vs. Flatcher had its limitation. This was something innovative by Hon’ble Chief Justice Bhagvati. However, this judicial mandate has its own limitations. The term `without knowledge’ takes the person out of the purview of the Act and liability.

After the Bhopal tragedy, the Supreme Court reiterated its view and took a view that the thousands of suffering victims would have to wait for compensation if the case is remanded for trial, as the judicial process in India is slow. Due to the judicial activism the matters have been settled otherwise
the matters would have still continued as Union Carbide, being a mighty organization would have challenged even interim orders, as it did in the beginning.

The principle of absolute liability propounded by the Hon’ble Supreme Court in *M.C. Mehta vs. Union of India; AIR 1987 SC 965 & 1087* came very handy when Union Carbide came before the Supreme Court challenging an interim order. The Supreme Court reiterated the principle embodied in the Indian system of compensation according to the status of the wrongdoer and not that of the victim. The Hon’ble Supreme Court directed not the Union Carbide (India) but the parent us Union Carbide Corporation to pay 470 million dollars, which was approximately three times than what was ordered by the Hon’ble High Court. However, it was towards full and final settlement of the claims of the victims and people of Bhopal.

6(D) Appointments of Judicial Officers as ‘OMBUDSMAN’

The State of Gujarat faced Mega Disaster, an unprecedented tragedy due to a Natural Calamity on the Republic Day in 2001. A public spirited Ex-Chief Justice B.J. Diwan wanted that the people affected by E.Q. should be given effective assistance. The Hon’ble High Court of Gujarat while exercising jurisdiction under Articles 21, 226 and 283 of the Constitution of India brushed aside the objections of the State which were as follows:

“It is emphatically stated that this Court should refrain from supplanting the Government machinery by any regulatory commission or super committee. The submission made is that grant of any such direction or relief to the petitioners in this so-called public interest
litigation would indirectly harm public interest by demoralizing the Government officials and members of staff in the Government who are actively and sincerely engaged in relief and rehabilitation operations.”

The Hon'ble High Court through Justice Dharmadhikari (as he then was) heading the Division Bench spelt out the role of Ombudsman as follows:

“Constitution of India, 1950 - Arts. 21 & 226 - Relief and rehabilitation efforts and redressal of grievances in that regard - Institution of Ombudsman evolved to provide a means of redress - Role of Ombudsman spelt out - District Judges to function as Ombudsman to act in co-operation with Government and other voluntary agencies to ensure effective relief and rehabilitation - Other directions issued to set up a separate fund of contributions received for quake relief and rehabilitation to be maintained by the Authority specially constituted for Disaster Management etc.”

Even in this decision the Supreme Court's view regarding doctrine of 'Parens Patriae' has been spelt out. The Hon'ble High Court has given a wider consideration holding that the State has the inherent power and authority to provide protection to the person and property of 'non sui juris' and it would mean state is the guardian of the society. It is not only right of the sovereign but casts duty on the sovereign to be the rightful protector. The concept about protection of the human rights and wider concept of life under Article 21 is taken within the sweep of the writ jurisdiction. This decision assumes importance in the light of the fact that it paved way for the legislation of the Disaster Management Act of the year 2003 by the State of
The new principle of liability and the judicial innovation gave fillip to the legislation to come out with the Public Liability Insurance Act. The judicial verdict in the decision reported in AIR 1990 SC 1480, suggested the constitution of a tribunal having its own procedure, so as to compensate victims of mega industrial disaster or accidents. The Public Liability Insurance Act 1991 was enacted holding the owner’s liability and liability to cover insurance. The provisions embodied on absolute liability and that of penal compensation has not been legislated. It takes within it sweep only the owners carrying on business in hazardous substances. The Act had to be hurriedly amended so as to exclude accident due to war and radioactivity. The term accident takes within it sweep sudden or un-intended occurrence while handling any hazardous substances which would result in conditions reported or intermittent exposure to death or injury to a person or damage to any property. There was an amendment to provide for relief fund, which was to be constituted by the Central Government.

The Supreme Court also suggested that a National Policy on environment and prevention of disasters be framed. It was directed that a different forum meaning thereby the Environment Court or Tribunal or Commission be set up. After 10 years of Bhopal and Oleum Gas Tragedy, the legislation came out with the National Environment Tribunal Act, 1995. After 3 years of debates the Tribunal Act came into being. However, despite the Supreme Court ruling in M.C. Mehta’s case the Act is confined to strict liability for
damage arising out of hazardous substances. Once again both these legislations i.e. of 1991 and 1995 do not provide compensation for damages due to pollution, contamination or environmental hazards.

The Bhopal accident made legislature hurriedly enact the Environment Protection Act 1986. There was an amendment hurriedly made to the Environment Protection Act. The sub-ordinate legislation was to be framed, terming them to be Hazardous Waste Management and Handling Rules. The Factories Act was amended in the year 1987 for taking safety measures for protection of the workers from hazardous process. Even hazardous chemicals came to be hurriedly regulated by framing Rules in the year 1989.

8. **ENVIRONMENT PROTECTION ACT, 1986 AND NOTIFICATIONS THEREUNDER**

The scheme under the Environment Protection Act, 1986 can be graphically explained in brief in below mentioned Figure 7.1:

![Diagram](Source: Environmental Legislation and Administration in India; Critical Appraisal by Shri Hardik Shah)
Environment (Protection) Act, 1986

The Environment Protection Act, 1986, umbrella legislation, has been enacted by the Parliament exercising the powers conferred on it under the Article 253 of the Constitution of India. India has been a signatory in the first international conference on "Human Environment" held in Stockholm in 1972. After the Bhopal tragedy, the Central Government felt a strong need for a comprehensive legislation to cover various uncovered environmental issues including hazardous waste management, handling of hazardous chemicals, etc.

Objects of the Legislation:

a) The Act is legislated with the objective to provide a general legislation for environmental protection. The Water Act and the Air Act were not much effective in areas other than Water and Air Pollution. The Hon’ble High Court of Gujarat in SCA No. 770 of 1995 has observed that the Environment Protection Act is more comprehensive with respect to achieving the objectives and aim of stoppage of environmental degradation.

b) The Parliament conferred upon the Central Government powers to make Rules. The powers to constitute an Authority on all the subjects related to environment for discharge of the functions under the Act. The Parliament also empowered the Central Government to delegate its powers to any authority or officer, though subject to certain conditions. The legislation has framed several subordinate legislations by invoking provisions of Environment Protection Act.
c) It is under the legislative framework that the Central Government, through the Ministry of Environment and Forests, has framed various Rules for regulation, control, protection and abatement of pollution and management of environment in critical areas like Coastal Zone Hazardous Waste Management and Bio Waste disposal.

d) The Act even empowers the Central Government to prescribe the standards for the quality of environment as well as emission / discharge of pollutants from different Industries and to keep pollution in check.

e) Provisions are made for the research, development, training, collection and dissemination of information on various aspects of environment and pollution in the umbrella legislation. The State Government has been empowered to establish and recognize laboratories. Rules have also been laid down with respect to collection and analysis of the samples.

f) It was for the first time that the power to issue directions to any person, authority or officer to close down the industry, process or operation was given to the regulatory Authority.

**Benefits of the Legislation:**

The legislation is considered to be an umbrella one and even when the Water Pollution (Amendment) Act is not adopted by a State, the definition of environment in Section 5 of the Environment Protection Act can be interpreted to take within its sweep water and its pollution. Therefore, in the decision of *P.J. Patel vs. State of Gujarat and others reported in 1995 (2) GLR 121*²⁹ His Lordship Justice B.N. Kirpal (as he then was) held as follows:
"The Environment (Protection) Act, to a certain extent, overlaps the Water Act. The reason for this is that the word 'environment', as defined in Sec. 2(a) of the Environment (Protection) Act includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. Under Sec. 23, the Central Government may, by Notification, delegate its powers under this Act to any Officer, or the State Government or other authority. It is not in dispute that under this provision, the power of the Central Government under this Act has been delegated to the State Government. One of the provisions contained in this Act is Sec. 5, which gives the Government power to issue directions. This provision, which is applicable in the State of Gujarat, is analogous to the aforesaid Sec. 33A of the Water Act, which, however, is not applicable here. Nevertheless, even with regard to water pollution, because of the definition of the word 'environment', Sec. 5 of the Environment (Protection) Act can be invoked whenever the occasion arises."

Taking recourse to the Environment Protection Act solves several Problems of pollution. Some decisions, which are based on the interpretation of the Environment Protection Act require to be looked into. In The Narula Dyeing and Printing Workers vs. Union of India; 1995 (1) GLH 679 the High Court of Gujarat held that the State Government had the power to issue directions for stopping the hazardous manufacturing activities and after taking precaution for discharge of waste water the industry could start manufacturing. The judgment is a deviation from the doctrine of 'Audi-Altem Partem' under the administrative law. The decision has been.
appreciated because the doctrine is held not applicable on the touchstone of public good. There was a likelihood of grave injury to the public at large. The Environment Protection Act has repeatedly being invoked by public-spirited people. The Supreme Court through His Lordship Justice B.N. Kirpal (as he then was) in 1996 (3) SCC 212 widened the scope of challenge under Article 21 and 32. His Lordship took the view that it was a writ initially directed against the Union of India as they had failed to carry out their statutory duties. The principle of strict liability was substituted with that of absolute liability. The principle of polluter pays was also applied.

Though a period of 8 years has lapsed after the above decision, no Environment Court is still available in the State of Gujarat. The lack of environmental court or a green bench in the High Court has contributed to the high pendency of the environmental matters. Ordinary courts are overburdened with other litigations and very less time is devoted to environmental litigation. The environmental court if established in Gujarat, would expedite clearance of pending environment cases. The environmental court can have the services of a technical expert and with the help of judicial officer, can solve the environmental problems. Thus, an environmental court as per the decision of the Supreme Court would serve the purpose of halting environmental pollution. The difficulty faced by the regular courts in dealing with the environmental matters can be overcome. The Supreme Court in Narmada Bachao Andolan Case (2000) 10 SCC 664 explained that when there is lack of data or material about the damage which the industry may cause, the burden will be on the industry to prove that the project is environmentally benign. This aspect can very well be taken care of, if there is an establishment of environmental court or tribunal, as it would have specialized persons along with a judicial member. The environmental
court should be consisting have multifaceted and multi disciplinary body. A reference can be made to the decision of A.P. Pollution Control Board II vs. M.V. Nayudu; AIR 1999 SC 812\(^3\) where the Hon’ble Supreme Court has referred to the Article by Robert Cranworth QC\(^3\) wherein he has emphasised need for a specialized court with a simple procedure which may take form of a court with an expert panel.

An environmental court in Gujarat would fulfill the objects of the decision of the Supreme Court in the case of M.C. Mehta vs. Union of India and in Citizens Welfare Forum vs. Union of India.\(^4\) The environmental court would serve the purpose envisaged in the decision of the Supreme Court in A.P. Pollution Control Board vs. Prof. M.V. Naydu\(^5\), the reason being that the environmental court would be set up with experts having experience in environmental laws.

Environment Protection Act even takes within its umbrella other legislations where their application is not made or such areas are not declared to be sensitive zones. Sections 5 and 20 of the Act have been invoked to fill such lacuna. The Act has been held to be empowering the board to prevent hazardous waste being dumped or thrown. The High Court deprecated the act of the Pollution Control Board in approaching the Hon’ble High Court in Suo Motu vs. Vatva 1999 (3) GLR 2758. His Lordship Justice R.K. Abichandani heading the Division Bench directed closure of industrial units, which were functioning without licenses and discharging their untreated affluent in municipal drainage.

Section-31 lays the procedure for appeals. The State Government may constitute an Appellate Authority. A person aggrieved by order of the State
Board has a right to prefer an appeal. The Appellate Authority is given power to condone the delay. The Authority may consist of a single person or three persons as per the mandate of the State Government. It should be noted in Gujarat Appellate Authority is consisting of more than one member. Section 31 A has been brought on the statute book by the 1987 amendment Act giving power of directions to the Board and such directions would include closure, prohibition or regulation of any industrial operations or process or to stop or regulate supply of electricity, water or any other services.

The final directions in P.J.Patel’s case can be briefly summarized as follows:

A. Issue a writ of mandamus to the State of Gujarat to direct the closure forthwith of the manufacturing operations of:

B. Those polluting industrial units, manufacturing the seven specified items viz.

C. Acids;

Vinyl Sulfate.

Naphthalene based other intermediates;

Pigments- (a) CPC blue (alpha); and (b) CPC green and Phathalocynine blue,

Which requires fully operative E.T.P. of their own but do not have such E.T.P. or have either only primary or secondary treatment plant but do not achieve the G.P.C.B. norms, till those units are able to achieve the G.P.C.B. norms; these observations were monitored in subsequent applications filed by the industrialists for reopening the industries.
Drawbacks of the Legislations:

The Public Liability Act provides minimum relief to the person affected by accident due to handling of hazardous substances. However, after four years of such legislation being brought on the statute book, the Tribunals were constituted under National Environment Tribunal Act of 1995, which were empowered to award compensation. Till 2003 there were many Acts, Rules and Notifications issued from 1986 to 2003 under the Environment Protection Act.

Civil Courts have no powers to entertain any suit against any order / directives issued under EPA Act by the State or Central Government or person / authority authorized by it. The directives under Section 5 could be challenged in the High Court only by way of writ petition. Since there is no criminal offence involved in this, the criminal Court also cannot be approached.

There are loopholes and weaknesses in the existing legislation. The definition clause of does not include light radiations, gama radiations and does not take within it sweep nuisance created by industries which cause noise by way of vibrations. The industries or the agencies, which are polluting the atmosphere by these non-inclusive agents have to be prosecuted either under Law of Torts or Criminal Procedure Code.

The Atomic Energy Legislation still holds field as far as radiations emitted by radio active substances are concerned. This legislation does not protect us from waste. The proviso in Section 24 (2) takes out nuclear from the Criminal Sanctions as normally Criminal Trial is under two or more
legislations, and therefore, due to the proviso, the person cannot be directed to pay penalty up to Rs. 1 lac.

There is no uniform quality for discharge of pollutants. Legislation only gives the powers to boards to prescribe stringent standards within which such discharge may be permissible.

The most fantastic legislation, The Water Act, The Air Act and this Act give breathing time of 60 days to the offender to do the needful from the date he is given notice and before some action can be taken.

The public hearing policy is made nugatory by authority themselves due to lack of proper administration. Environment Assessment Policy though on the statute book is far from convincing. The impact assessment systems are also not properly and justifiably regulated. In most of the cases, courts have to appoint independent committees or rely on the report of NEERI.

**Analysis and Suggestions for future:**

Directions should have been given to the State under Section 5 of the Environment Act, requiring the G.I.D.C. and the industries to make the area inside and surrounding the industrial units more "GREEN" by plantation on open plots.

The State should have been directed to evolve a policy framework for the location of chemical and other hazardous industries in such a way, that they are located in areas, where population is scarce to minimize the risk to the community. It should be ensured that large human habitations do not grow
around the units. All hazardous units should have a compulsory green belt around them.

The Government might have considered the setting up of a State-level Ecological Science and Research Group, consisting of independent persons, professionals and experts in different branches of science and technology to act as INFORMATION BANK to the Environment and Industries Departments of the Government. Advice from such a group would be relevant on the question of “INDUSTRIALISATION WITH ENVIRONMENT PROHIBITION”.

The State should have been directed to consider proposals contained in Bhanujan Committee Report for shifting highly polluting and water-intensive units to suitable alternative sites, nearer to the coastline.

A Committee should have been set up by the State to study the aspect of safety and health hazards of the labour employed in the polluting industries, including their working conditions. The units should be required to comply with the labour welfare legislations and appropriate action should be taken on the recommendations of such study.

Since last number of years, pollution, has adversely affected the 11 Kalambandi village of Kheda, as also Villages of Lali, Navagam, Bidaj, Sarsa, Aslali, Jetalpur, Bareja, Vinzol and Vatva comprised in Dascroi and Mehamadabad Taluka. A lump sum payment should be made by the 756 industrial units calculated at the rate of 1% of their one year’s gross turnover for the year 1993-94 or 1995-96(sic) whichever is more. The amount should be kept apart by the Ministry of Environment and should be utilised for the
socio-economic uplift of the aforesaid villages and for the betterment of educational, medical and veterinary facilities and the betterment of the agriculture and livestock in said villages. Payment should be quantified by the G.I.D.C. within three months and collection made within two months thereafter.

Hon’ble Court has held that closure of the units at any point of time due to their not meeting the G.P.C.B. parameters should not result in the denial of wages to any of the workmen. This will not mean a closure under the Industrial Disputes Act, 1947.

The biggest difficulty is that the nature of 1% levy and its legal significance of the character of the levy are still not understood. The Gujarat Industrial Development Corporation [GIDC] though was under the obligation to construct CEPT has not done so. The 1% levy has now given rise to various litigations before the Supreme Court. The Ahmedabad Municipal Corporation has failed to lay the necessary pipeline even after taking the areas within its jurisdiction. The rationale for 1% payment is also bit inconveniencing. No rules have been framed. Even monies are lying with the Government.

9. **COASTAL ZONE MANAGEMENT**

The legal regime of coastal management in India came into force in the year 1991. The Central Government issued the CRZ Notification\(^\text{36}\) by virtue of its powers under the EPA. The Supreme Court and High Courts have been very strict in interpreting the CRZ notification and have stopped all illegal activities in and around the coastal zone.
The Central Government issued a notification declaring certain coastal stretches to be Coastal Regulation Zones. The notification provided for regulating activities in the said zones. These notifications came to be issued under Section 3(1) and 3(2)(v) of the Environment Protection Act, 1986 and Rule 5(3)(D) of the Environment Protection Rules, 1986. The physical limits of zones have also been suggested. As usual notification lays down certain exceptions to the prohibition. However, these prohibitions do not apply to the transfer of hazardous substances from ships to ports, terminals and refineries and vice versa. Search of petroleum products are allowed in the zones with certain safeguards. All activities thus exempted, are to be undertaken without adverse impact upon the ecology of the coastal zones. Prohibition against fish processing units does not extend to fish cultivation and natural fish drying in separate areas or to their modernisation, so conditional exemption is granted in these cases.\footnote{37}

The Supreme Court has tried to solve the problem of traditional fishermen and the fishing industries affecting General Marine Life as well as the ecological balance in State of Kerala vs. Joseph Antony 1994 (1) SCC 301 is a landmark judgment where the Supreme Court protected the marine life without depriving people of their livelihood\footnote{38}.

The Supreme Court in \textit{Indian Council of Enviro-Legal Action vs. Union of India}, \textit{AIR} 1996 SC 1446 indicated the activities, which were declared as prohibited in the Regulation Zones. The Supreme Court further directed the Coastal States and Union Territory Administration to prepare plans identifying and clarifying the Regulation Zones. The Supreme Court directed that economical, social, ecological, cultural interest and concept of
sustainable development to be kept in view before permitting development in coastal zones. It emphasized the role to be played by the High Courts for implementing the anti pollution laws.

In *S. Jagannath vs. Union of India*; (1997) 2 SCC 87: AIR 1997 SC 811 the Supreme Court has held that The Environment (Protection) Act, 1986 enacted under entry 30 list I Schedule VII read with Article 253 would override and prevail over any State Act. In this case, the Supreme Court constituted the committee and did not permit operation of shrimp farming in coastal areas. The Supreme Court directed that the concerned authority must assess the environmental impact.

Gujarat has the longest seacoast of the country. The coastline of Gujarat consists of mangroves, rocky beaches and even sandy beaches. Gujarat is proud to have the first Marine National Park of the country. 42 Islands in the Gulf of Kutch are the wonders, which the nature has bestowed on Gujarat. It would be geographically seen that the coastline extends from Western Ghats in Valsad in the South to the Koricreek of the coast of Kutch in the north. There are two gulfs, Gulf of Kutch and Gulf of Khambhat. There are nine GIDC estates located in coastal districts of the State. There is lot of urbanization along coast of Gujarat. Dredging operations are enhanced due to more ports and jetties; oil spillage is affecting marine animals, coral reefs and also damaging mangroves.

The major sources of depletion of the coastline are the coastal developments that take place in and around the coast. The case reported in *Kosamba Gram Panchayat vs. State of Gujarat and Others*; 2000 (2) GLR 978 brings to focus online coastal development. The Port Trust Authorities can regulate
maritime trade. The decision of Hon’ble High Court of Gujarat in Halar Maritime Agencies vs. Gujarat Maritime Board; 1992 (20 GLR 819)\textsuperscript{41} shows that Port Authorities have the right of controlling trade in the coastal regions.

In *Piedade Filomena Gonsalves vs. State of Goa and others*; (2004) 3 SCC 445\textsuperscript{42} the Supreme Court directed removal of structure constructed by the infringers of coastal regulation zone notification, as the construction was not in conformity with the coastal zone regulation. It was an encroachment and hence the activity was not condoned. No construction activity in the high tide line in CRZ area can take place without securing permission from the competent authorities. The Gujarat High Court held so in *Piedade Filomena Gonsalves (Supra)* of construction raised by the petitioner and directed for its demolition. The Goa State Coastal Committee for Environment, the then competent body constituted a sub committee, which reported that the entire construction raised by the appellant fell within 200 meters of the HTL and construction had been carried on existing sand dunes. One of the contentions urged on behalf of the appellant before the Supreme Court was that unless and until the HTL had been determined in compliance with the direction issued by the High Court in the *Goa Foundation and Anr. vs. State of Goa and Ors*; 1998 (1) Goa L.T. 364\textsuperscript{43}, the construction raised by the appellant should not be demolished. But the direction of the High Court was based on the amendment dated 18/11/1994 introduced in the 1991 notification, whereas, the appellant’s construction was completed before the date of the amendment. The Supreme Court therefore found no irregularity with the judgment of the High Court holding that the CRZ notifications have been issued in the interest of protecting environment and ecology in the coastal area and hence construction raised in violation of such regulations could not be lightly condoned.
Hon’ble High Court of Gujarat in *Raghu Nath R. Dalwadi vs. Divisional Controller* decided by Justice K. Sreetharan and Justice S.K. Keshote in PIL directed the State Government to take effective steps against unauthorized and illegal encroachers to the extent of 500 Hectars of land for construction of jetty. In SCA No. 10605 of 1995 preferred by Late Ajit D. Padival (Advocate) the coastal land use and the policies made or evolved by the State of Gujarat for developing the coastal zone. The High Court in its final direction directed that the Central Government.

Before parting with the cases, we think it proper to impress upon the Central Government the industrial backwardness of Kutch District, the largest District in the whole of India, which also constitutes about one-fourth of the total area of Gujarat. The said area badly requires economic development. Rich mineral resources are available in that District. After taking due care to protect the environment of that area, resources present there have to be tapped for the benefit of the humanity. Virtually, the entire population in that area falling within Lakhpat and Abdasa Talukas live below poverty line 3.39 million hectares (approx.), i.e. 74% of the total area of Kutch, enveloping the whole of western Kutch is arid / Semi-arid desert wasteland and is tabulated as non-cultivable. Their condition can be improved only by industrial development. As per the estimate, more than 5000 million tones of mineral deposits of limestone and 200 million tones of Lignite are available in that District. Exploitation of these resources with proper environment management should be resorted to for the benefit of the Nation. The case of the Government of Gujarat, that mineral based industries, like Cement, are to be set up in the above-mentioned Talukas of Kutch District, should receive proper consideration at the hands of the Central Government.
While dealing with the issue on the sanction to be given to Sanghi Cements, the Central Government must necessarily take into consideration the opinions given by Experts on the question of environment protection. As regards the present project, no Committee till date recommended absolute ban of all construction activities in the area on the ground of pollution or as endangering ecology.

The Supreme Court has tried to safeguard the coasts but in laying pipelines in Gujarat in *Essar Oil Ltd. vs. Halar Utkarsh Samiti & Ors.* in 2004 (2) *GLR* 1027 It has relied on the principle of sustainable development, development has been given importance to environment. As the Supreme Court noted in Essar Oil Ltd, the laying of pipelines is one of the exceptions to the general bar against any construction in CRZ-I areas. The court refused to accept that the invariable consequence of laying pipelines through ecologically sensitive areas would be destruction or removal of the wildlife.

The higher courts have held that the courts cannot substitute the conclusions of expert bodies. The Court have held that expert bodies have been presumed to know the nature and character of the problem and decision arrived by such a body cannot be casually interfered with under Article 226 of the Constitution of India. The Andhra Pradesh High Court in *MVPS W. Association vs. Visakhapatnam UD Authority*; AIR 2002 AP 195 refused to interfere with the establishment of the amusement park as the conditions mentioned in the guidelines for development of beach resort/hotels in CRZ III had been strictly adhered to and necessary arrangements were made for treatment of effluents as incorporated in the deed of license.
10. PUBLIC PARTICIPATION UNDER THE ENVIRONMENT PROTECTION ACT

Public Hearing under Section 25: -


The pedantic approach of the authorities concerned is once again highlighted in the judgment under analysis. The notification issued by the Central Government in the year 1994 amended in year 1997 envisaging public hearing to the affected persons was sought to be implemented under Article 226 of the Constitution. Such hearings and their futility were brought to the notice of the Hon'ble High Court by the Center for Social Justice under Section 25 of the Water (Prevention and Control of Pollution) Act. The judicial review of administrative action by the Hon'ble High Court was resisted by G.P.C.B. The doctrine of natural justice in absence of statutory provision has been invoked, which has given fillip to persons working for the betterment of the environment. The Hon'ble High Court has rightly relied on the decision in _Swadishi Cotton Mill vs. Union of India; 1981 (1) SCC 684_ which laid down the principle of public hearing way back in the year 1981. The public notices are required to be widely circulated. The scope of judicial review was widened. The Court has rightly held that grievance of the public at large was to be met. Though the rule making authority laid down procedures, there was arbitrary approach by G.P.C.B. The Hon'ble High Court of Gujarat has made inroads to the pedantic approach taken by Pollution Control Board as if they were the aggrieved industrialists.
A simple analysis would show the pedantic approach taken by the State of Gujarat, the Gujarat Pollution Control Board and a Senior Advocate like M.D. Pandya one of the persons had headed the committee to monitor pollution in Ahmedabad. Despite plethora of judicial pronouncements available, Advocates did not permit the Court to decide the matter expeditiously. They were filing affidavits and reply and a completely negative approach for not giving copies of the minutes of the hearing made. The Court intervened and gave directions. The petition was for implementation in letter and spirit of the notifications regarding doctrine of public hearing. The Court noticed that publishing hearing notice was in a paper called as "Nyaya Padkar" which had a low circulation instead of publishing it in a paper having a large circulation.

Centre for Social Justice have been working very hard for getting public participation in environmental public hearing. There is a role of the Panchayat, which also required to be looked into. The objects of the public participation are based on public relations, information, and solving disputes. However, there are advantages and disadvantages of public participation in the environmental impact assessment process which include: (1) Identification of issues and impact; (2) Conducting of baseline studies of the environment; (3) Prediction and evaluation of impacts; (4) Planning of mitigation; (5) Comparison of alternatives; (6) Decision making relative to the proposed action; (7) Study documentation through the preparation of an Environment Assessment (EA) or an Environmental Impact statement (EIS). The High Court has seen that protection and conservation of environment with the help of peoples' participation is the only way to stop industries functioning without proper facilities to discharge pollutants.

The Hon'ble High Court issued directions regarding:
(1) Venue of public hearings; (2) Publication and intimation; (3) Access to documents; (4) Quorum at the public hearings; (5) Nomination of persons to the panel; (6) Minutes of the public hearing; (7) Number of public hearings; (8) Environmental clearance certificate; (9) Expenses.

This would show that the decision under analysis is such, which takes within its sweep the important aspects, which the judicial pronouncement should undertake.

It would be seen that even after this yeomen decision, the Gujarat Pollution Control Board has been trying to hold back certain information and hold public hearings hurriedly.

11. ENVIRONMENT IMPACT ASSESSMENT AND AUDIT SCHEME

The Tiwari Committee was set up in February 1980 for suggesting legislative and administrative measures to be taken for protection of environment. The Report of the committee was submitted in September 1980. One of the recommendations, which needed immediate attention for the protection of environment was, environmental pollution and environment impact assessment. In modern world, environmental degradation and development needs are in constant conflict with each other. The conflict requires to be resolved so as to augment sustainable development. Environmental Impact Assessment (EIA) is an instrument of reconciliation. The Council on European Economic Committee, in its directive to the member states, highlights the objectives of EIA in the following words:
The effects of a project on the environment must be assessed in order to take account of the concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource of life.53

Environment impact assessment i.e. as to what harmful effect a particular operation would have on the environment is also essential. With the experience, which has been gained, it is possible now to anticipate on the establishment of a particular manufacturing unit, the effect on the environment. If it is going to have an adverse effect then a decision has to be taken as to whether to permit particular scheme to be implemented or not.

On account of the experience gained in the last century and on account of advancement in the field of science, it is now possible to anticipate as to what consequences are likely to ensue on the establishment of a particular activity or operation. It is this anticipation for taking care of environmental consequences of harmful activities as far as practicable before they commence is the guiding spirit behind the principle of Environment Impact Assessment.54

Some cases involve the correctness of opinion on technological aspects expressed by the Pollution Control Boards or other bodies whose opinions were placed before the courts. In such a situation, considerable difficulty was experienced by the Supreme Court of India, and the High Courts in adjudicating upon the correctness of the technological and scientific opinions presented to the Courts or in regard to the efficacy of the technology proposed to be adopted by the industry or in regard to the need for
alternative technology or modifications as suggested by the Pollution Control Board or other bodies. Need to have scientific data were suggested in *A.P. Pollution Control Board vs. M.V. Nayudu*; (1999) 2 SCC 718: AIR 1999 SC 812.55

The setting up of industry should be environmentally benign, if that is not so, it would be difficult for the people staying in the area. Therefore, a new procedure is envisaged which would take within its sweep the impact, which the industry or the project would have on the environment where it is to be located. Therefore, Environment Clearance Procedure is very important. The Environmental Clearance has to be obtained before establishing a new industry or expansion modernization of an existing industry. Environmental Impact Assessment Process depends on the nature, type and location and the project. 2001 notification dated 01/08/2001 simplifies the procedure. It would be significant to refer to certain decisions, which consider the principle for environmental audit and its impact. The Environmental Impact Assessment can be said to be a tool for managing environment and its quality.


The audit scheme under impact assessment system formulated by the High Court of Gujarat in the decision cited above is very important. The Audit scheme is a species of genes of Environment Impact Assessment. By ordering audit scheme the Court also directed that the CEPT must be setup
by the industries associations. The audit scheme, unfortunately, overlooked the fact that it is A.M.C. and G.I.D.C. who were to pay for the construction of CEPT. The impact and the audit scheme formulated at least are doing good and are for the improvement of the industrial areas. Environment Audit Scheme has also been formulated in the judgment itself, which would show the pragmatic attitude of the Hon’ble High Court of Gujarat.

The judgment in Deepak Nitraite vs. Ajit Padival being CA No. 327 of 1997 reported in 1997 (1) GLH 1062 speaks about Environment Impact by payment of 1%. The mega projects are also now subjected to audit scheme.

In the year 1997, there was an amendment to the EAI notification. The Pollution Control Boards were given powers for clearing proposal and getting the opinion of the Board. The Board is under an obligation to give public hearing. The mandatory aspect of this notification enjoins a duty on the Board to grant EIA only after hearing the persons affected by the project. It is now understood that the projects, which may not involve pollution would also require the clearance of EPA.57.

The Narmada project came for scrutiny before the Supreme Court in Narmada Bachao Andolan vs. Union of India; AIR 1999 SC 334558 which ultimately rejected the petition of the Narmada Bachao Andolan Activists and held in favour of the State of Gujarat and the project. The analysis of the said decision is only done on touchstone of assessment of its impact and the Supreme Court having found that the project should go on.

As far as large projects are concerned, environment impact assessment gives benefit of anticipating and weighing pros and cons of the projects. Narmada
Project came for scrutiny before the Supreme Court. The Sardar Sarovar Project on river Narmada can be said to be meeting the challenges of development. The needs of drinking water of 814 urban places and River base are met by the project. The award is also path breaking in adopting a national participation for harnessing water resources, by allocating five lakh acre-feet waters to Rajasthan. Though not a riparian State the drought prone districts Barmer and Jalore, which have no other dependable source of water have been allotted waters:

The award was accepted and notified by the Government of India in December, 1979, giving it a finality and binding to all parties as mandated by Article 262 of the Indian Constitution and Interstate Water Disputes Act of 1956\textsuperscript{59}.

`Lok Hitrakshak Samiti' challenged the action of the State authorities in constructing the road from Baroda to Halol. The un-registered organisation which represented the people challenged the action by way of SCA 3844 of 1999 on 20\textsuperscript{th} December, 1999 in un-reported decision \textit{Lok Hit rakshak Samiti vs. State of Gujarat and others}. Whether environmental clearance for the project was required or not was the question. The Hon’ble High Court refused to interfere despite the fact that production of notification for prior clearance was violated. The Hon’ble High Court accepted the communication of the State Government dated 02/07/1998 that the project did not pass through any ecologically sensitive area, and therefore, environmental clearance was not necessary. The communication was not challenged before National Environment Appellate Authority. The court held widening of the road was in pursuance to the Agenda-21 of the Stockholm Declaration.
In M C Mehta v. Union of India, the Supreme Court held that circulars couldn’t notify a statutory notification. The EIA Notification issued under EPA came into force on 27 January 1994. The Ministry of Environment and Forests contended that the mining lessees had already violated the EIA Notification, but the ministry had, by issuing a few circulars, extended the deadline to file application for EIA to 3 March 1999 and again to 30 June 2003. The court took a serious note of these attempts and observed:

Further, if Ministry of Environment and Forests intended to apply this circular also to mining activity commenced and continued in violation of this Notification, it would also show total non-sensitivity of Ministry of Environment and Forests to the principles of sustainable development and the object behind the issue of Notification. The Circular has no applicability to the mining activity.

EIA is affording to anticipate, measure and weigh the socio-economic and biophysical changes that may result from a proposed project. It assists decision-makers in considering the proposed project’s environmental costs and benefits. Where the benefits sufficiently exceed the costs, the project can be viewed as environmentally justified.

12. Cases Before Hon’ble Supreme Court Arising Out of Orders in Petitions in High Court of Gujarat on Quantum of 1% Compensation!

The Torrent Gujarat Biotech Ltd has preferred Civil Appeal No. 1524 of 2001 before the Hon’ble Supreme Court. Though the units are permitted to manufacture and reduce the capacity, they have not paid required amount.
They have paid only Rs. 22 lakhs and disputed the order of 1% payment. This shows that the big industries like Reliance and Torrent are before the Supreme Court. The Hon’ble High Court knew the local conditions and shouldered the responsibility in tackling environmental problems. The direction of awarding compensation for the damage caused and to safeguard the environment is upheld.

In the case of Deepak Nitrite (CA No. 1521 of 2001) the High Court appointed the Modi Committee (28.01.1997) (Vol. III page 38) to inspect the petitioner’s Nitro Aromatic Plant and subsequently the Neeri Committee which gave two reports (31.10.1996 Vol.-I, page 141) and (22.02.1997, Vol-I, page 162). The High Court initially restrained the unit from removing its products from its plant without prior permission of the High Court, and thereafter the unit itself suspended operation of its expanded capacity of the polluting Nitro Aromatic Division. On 29.01.1997 the High Court after having considered further reports of Neeri and Modi Committees and GPCB permitted the unit to re-start the additional capacity plant in Nitro Aromatic Division on a trial basis for a limited period. At the same time, it stated “with regard to 1% payment an order will be passed after the details are furnished by the Learned Counsel. The Court ordered further monitoring of the unit.

In the case of Torrent Gujarat Biotech Ltd. Civil Appeal No. 1524 of 2001, the High Court on the basis of the reports of ESP and GPCB directed closure of the unit, as the reports “were hopelessly bad and therefore there was no alternative but to pass an order of closure”. An application made by the unit to permit manufacture at reduced capacity with the condition that the units itself would monitor by testing its trade effluent. The Unit was permitted to resume reduced production by the High Court by its order of 24.09.1997. As
part of this order the High Court recorded that the unit undertook to pay the 1% amount aggregating to Rs. 96,25,000 which would be paid within a period of 10 weeks. Thereafter, the unit sought for extension of time of six months on 11.02.1998. Torrent has now disputed the order for directing payment in appeal.

In *Deepak Nitrate vs. State of Gujarat* reported in (2004) 6 SCC 402, the Supreme Court has once again directed the Hon’ble High Court to investigate in each of the cases and find out broadly whether the hazardous substances had caused any environmental damage or not? It is not spelt out on for what reasoning has been 1% payment. This researcher with profound respect feels that remanding of the matters holding that the fact that the industrial units in question have not conformed to the standards prescribed by GPCB. The Supreme Court has held that whether it has caused damage or not is doubtful. This reasoning of the Supreme Court requires to be mentioned here because once again the matter is remanded without deciding what should be done about the 1% order passed by the Hon’ble High Court of Gujarat. The Supreme Court while remanding the matter to the High Court has overlooked the fact that the High Courts’ judgments can be justified as it arrived at its decision on the basis of the reports of the committees, finding that the industries had committed pollution and it ordered that the units which do not confirm to the norms laid down by the GPCB as far as PH value, TDS, SS, BOD, COD and the other prescribed parameters under the Water Act. They discharged their effluents into certain rivers, and therefore, one time payment of 1% compensation was passed on the findings of environmental degradation. The Hon’ble High Court of Gujarat based its conclusion on the decision of the Supreme Court in the case of *M.C. Mehta vs. Union of India reported in 1987 (1) SCC 395* at
page 421 where the concept of absolute liability was enunciated. The Supreme Court held that the measure of compensation must be co-related to the magnitude and capacity of the enterprise so as to have a deterrent effect. Why the said deterrent effect is not meted out in cases before the Hon'ble Supreme Court is difficult to comprehend. The decision of the Hon’ble High Court of Gujarat is based on the obligation reposed under Article 226 of the Constitution for issuing appropriate writs, orders and directions for the enforcement of any of the rights conferred by Part-III or for any other purpose.

13. ROLE OF LEGAL SERVICES AUTHORITY FOR BETTERMENT OF ENVIRONMENT

The Legal Services Clinics established in the State of Gujarat have solved several problems and enlightened the people of their rights. Now a days Gujarat has come up with a novel idea of a mobile clinic, which goes to remotest places in Gujarat for inculcating in the people, their right and access to justice with the aid of legal aid counsels. The right of effective access to justice has emerged with the 'new social rights' doctrine. It is of paramount importance for the enjoyment of traditional as well as new social rights, to have mechanism for their effective protection. Such effective protection is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can be, thus, seen as most basic requirement - the most basic 'human right' - of a system of justice, which purports to guarantee legal rights.

The Legal Services Clinic in Gujarat has shown that justice can be delivered, and matters can be settled by counseling, and that downtrodden can have access to justice. The judicial system would make justice delivery system
more people oriented even for environmental up keeping. The people from far off villages belonging to the lower strata of society do not even have knowledge about their rights. In a recent speech Justice D.S. Sinha, Hon’ble Chief Justice of Gujarat has criticized the pendency of cases in the Courts and has prayed to the Great Architect of Universe to protect and preserve our Justice Delivery System, so that it reaches the remotest village in the country through Legal Aid Programmes. Environmental education can be imparted in such literacy camps.

With access to justice which India is pursuing literacy camps, it will soon be realized that "Equal Justice and Free Legal Aid" are not more words which rest only in the Constitution. There appears to be an endeavor so as to see that the downtrodden people come to the pre-litigation Courts with their grievances about environmental hazards and try to get their grievances resolved. Conferring rights on human beings in this manner can be said to be conferring Human Rights for better environment, though not defined under any statute. The aforesaid aspects would give Indian democracy a real meaning that there is fundamental faith in the foundation of democracy. The Legal Services Act and the Legal Services rendered under the Gujarat State Legal Services Authority have undertaken such a great task to see that each and every downtrodden person gets the right of free counseling. The work in disaster rehabilitation is worth appreciating. The people at large can get equal access to Justice Delivery System. It would be necessary to quote from the article "Voicing the Voiceless" Ensuring `Equal Justice to All' which by itself is a basic human right, runs like a seamless thread throughout the Legal Services Authority Act, 1987. The Act, though belatedly implemented in Gujarat in 1997, even in a brief span of hardly five years, has enveloped within its broad and expansive sweep, every district, taluka and village and
the people's problems are being solved. The central motivating force behind it rapid growth has been our compelling concern to reach out to the last man, woman and child among the weaker and the disadvantaged section of our society. Towards this end our propelling force has been a consensual, cooperative and constructive approach in the running of the Lok Adalats, Legal Aid Camps and Legal Literacy Projects and special schemes and programmes. Statistical data go to show that Gujarat is much ahead by providing such knowledge to the weaker sections and inculcating in them legal knowledge about environment which would provide proper access to Justice delivery system. Where a party had no access to such counsel the criterion of welfare state would assume greater significance if the person is not given any legal aid. The entire scheme coined by Hon'ble Patron-in-Chief and Chief Justice of India would be useful for the upbringing of people. It is highlighted that free and competent legal aid concept be liberally construed so that the provisions are made applicable to every person because urban populous is ignorant about their rights, even though they may be literate.

The Supreme Court and the High Courts have considered that citizens have right to know about the activities of the State, the instrumentalities, the departments and the agencies of the State. The privilege of secrecy, which existed in old times, (namely) that the State is not bound to disclose the facts, does not survive now to a great extent. Under article 19 there exists the right of freedom of speech. Freedom of speech is based on the foundation of freedom of right to know. The State can impose and should impose reasonable restrictions in the rights to know. The State can impose and should impose reasonable restrictions in the rights where it affects the national security or any other matter affecting the nation's integrity. But the
right is limited and particularly in the matter of sanitation and other allied matters, every citizen has a right to know how the State is functioning and why the State is withholding such information in such matters; L.K. Koolwal vs. State of Raj., AIR 1988 Raj 2.

Citizens have a right to know about affairs of Government. But the right is not absolute, Secrecy can be legitimately claimed in respect of transactions with repercussions on public security; Dinesh Trivedi vs. Union of India, (1997) 4 SCC 306 (Case relating to Vohra Committee Report)

Reasonableness in this context covers substantive reasonableness, as well as procedural reasonableness. Thus, in ordinary circumstances, it will be unreasonable to make the exercise of a fundamental right depend on the subjective satisfaction of the executive. Decisions on this point are

(a) Khare vs. State of Delhi, (1950) SCR 519.
(b) Gurbachan vs. State of Bombay, (1952) SCR 737, 742;
(c) Virendra vs. State of Punjab, AIR 1958 SC 986.

The Supreme Court has laid emphasis on the right to freedom of information in a democratic country like India in Union of India vs. Association for Democratic Reforms. Article 19(1)(a) of the Constitution guarantees freedom of speech and expression to the citizens of India. Right to information is derived from the freedom of speech and expression. These Judgments show that the India has adopted the 1998 Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters. (Ref: to the convention in Chapter-III dealing with access with justice)
14. CONCLUSIONS

It is indeed true that the legislature cannot visualize all the situations, which would arise in future. In such situations, which would come before the courts a occasions arise showing that the existing laws are deficient so as to provide solutions at that time. It is here that the Supreme Court and the High Courts have developed the law and have provided solution to the difficulties faced. This theory of judicial activism is, of course, within bounds of legal sanctity. However, the vacuum has to be filled so as to protect the needs of the society at large and thus the Supreme Court evolved new principles time and again. There is a total turn around from view taken in A. K. Gopalan vs. State of Madras; AIR 1950 SC 27\textsuperscript{70} and in Maneka Gandhi vs. Union of India; (1978) 1 SCC 248. \textsuperscript{71} This was under the realm of Article 21 of the Constitution of India. However, more public oriented judges did not stop there. In the year 1981 His Lordship Justice P.N. Bhagwati in Francis Coralie Mullin vs. Administrator, Union Territory of Delhi; (1981) 1 SCC 608\textsuperscript{72}:

The stepping in of the Judiciary in environmental issues and their activism and decisions for betterment of degrading environment are discussed and analysed. The hypothesis is answered partly in the affirmative because legislations coupled with judicial mandates have benefited the common people at large and the environmental jurisprudence is developed on the touchstone of the Constitution and the Environment Protection Act.

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**Even Refer:**
