CHAPTER - 5
International efforts for the protection and preservation of the global environment started with the convening of the Stockholm Conference on Human Environment in 1972. The journey from the Stockholm to the Rio Summit led to the recognition that all human beings are entitled to a healthy and productive life in harmony with nature. It was this recognition that was responsible for the enactment of various environmental laws in India, which are designed not only to preserve and protect the environment, but also to prevent environmental pollution. In the enforcement of these laws, the Indian judiciary has played a seminal role and used public interest litigation as a convenient tool to create a new environmental jurisprudence in the country.

The range of issues has been very broad. It extends from compassion to animals, and privileges of tribal people and fishermen, 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 Associations, environmentalist groups and centres dedicated to environmental protection and forest conservation welfare forums, including those for tribal welfare, societies registered under the Societies Registration Act and Consumer Research Centers, have successfully advocated 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 other newspaper reports were responsible for judicial action.

5.1 Legislative Measures for Environmental Protection in India

Environmental legislation is an instrument to protect and improve the environment and to control or prevent any act or omission of pollution or likely to pollute the environment. India is one of those few countries, which paid attention to environmental issues right from the ancient time. In ancient times it was the ‘dharma’ of each individual in the society to protect the nature. The people worshipped the objects of nature. The trees, water, land and animals gained important position in the ancient times. Some important trees were even elevated to the position of God. Manu imposes a duty on mankind to protect the forests.

In 1860 an attempt was made for the first time to control environmental pollution, in particular water and atmosphere through criminal sanction. The chapter on public health and safety in the Indian Penal Code (IPC) deals with the problem of pollution. The main object of this chapter is to safeguard public health, safety and convenience. These acts, which make environment polluted threatening the life of the people, have been made punishable. As regards water pollution, Section 271 of the IPC provides as follows:

“Whoever voluntarily corrupts or fouls the water of any public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with simple or rigorous imprisonment for a term extending to three months or fine of five hundred rupees or with both”.

Similarly, Section 278 of the IPC also provides penalty for air pollution:

“Making atmosphere noxious to health—whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying business in the neighbourhood along a public way, shall be punished with fine which may extend to five hundred rupees”.

Section 290 of IPC deals with punishment for public nuisance in cases not otherwise provided for. It provides:

“Whoever commits a public nuisance in any case not otherwise punishable by this code, shall be punished with fine which may extend to two hundred rupees”.

After independence the Central government has passed various laws to check environmental pollution. Generally, industries polluted water by the discharge of effluents into the watercourses or through a municipal sewer. Air pollution is caused by dark smoke emitted by industries, which contain harmful particles. In pursuance of the rising importance of the environment, important legislations have been enacted.

Following are the most important legislations for the protection of the environment in India.

1. Factories Act, 1948

The First Act after the independence is the Factories Act of 1948, which is deeply concerned with industrial safety, discharge of pollutants and the occupational health of workers employed in factories. The occupier of the factory is required to make effective arrangements for the treatment of wastes and
effluents due to manufacturing process carried on therein, so as to render them innocuous, and for their disposal, in accordance with the rules framed by the State government.

The general penalty for offences is contained in section 92 of the Act. In case of contravention of any of these provisions of the Act, the occupier of the factory shall be guilty of an offence punishable with imprisonment for a term, which may extend to three months or fine, which may extend to five hundred rupees or both.

2. The Water (Prevention And Control of Pollution) Act 1974

This Act came into force on 23 March 1974. It was passed with the following objectives:

- To provide, for the prevention and control of water pollution and maintaining or restoring of wholesome water (in the streams or wells or sewer or on land). To establish control and state boards with a view of carrying out the aforesaid purposes; and

- For conferring on and assigning to such boards powers and functions relating thereto and matters connected therewith.

This Act provides for penalties, fines and imprisonment for non-compliance with certain provisions of the Act. Moreover, this Act extends its sphere for violation committed by companies, certain corporate employees and officials.

3. Air (Prevention And Control of Pollution) Act 1981

Air pollution is as old as industrialization. The source of air pollution is mainly industrial and human activities. The former includes the discharge of
effluents originating from industrial manufacturing processes like those of combustion of coal and oil in industrial heating and steam generating plants. Human activities include burning of fuel for cooking purposes, heating, driving automobiles and the like. Nowadays it is a matter of grave concern and in future it will require a serious thought and endeavours of the nations.

Some provisions of the following enactment deal with air pollution: The Boilers Act 1923, the Factories Act 1948, the Industries (Development and Regulation) Act 1951, and the Mines and Minerals (Regulation and Development) Act 1957.

But under these Acts the subject of air pollution has been given secondary importance and it was realized that the existing laws were totally inadequate to achieve the effective control of air pollution. Therefore the parliament enacted Air (Prevention and Control of Pollution) Act, 1981. It deals exclusively with the preservation of air quality and control of air pollution. The Act provides for the prevention, control and abatement of air pollution. For this provisions were made for the establishment of Central and State Boards with a view to carrying out the aforesaid purposes. Sections 20, 21, 22, 22-A, 23, 26 and 31 are noteworthy provisions of chapter IV of this Act dealing with prevention and control of air pollution.

**4. Environment (Protection) Act 1986**

Realizing the inadequacy of existing legislation regulating the environmental pollution, the Government of India has enacted a new Act named as Environment (Protection) Act, 1986, not only to protect and improve the environment in general, but also to prevent the hazards to human beings, other living creatures, plants and property. This Act provides for limits of water quality
and control of water pollution. It also provides for checking of air pollution. This Act was the first environmental statute to give the Central government authority to issue direct written orders, including orders to stop or regulate the supply of electricity, to close, prohibit or regulate any industry, water or any other service. Other powers granted to the Central government to ensure compliance with the Act include the power of entry for examination, testing of equipment and other purposes, and the power to take samples of air, water, soil or any other substance from any place for analysis. This Act provides for severe penalties for a person who fails to comply with and contravenes any of the provisions of the Act, rules, orders, or directions issued under the Act. Such a person shall be punished for each failure and contravention, with imprisonment for a term upto five years or a fine upto Rs.1 lakh or both. The Act imposes an additional fine upto Rs.5000/- for every day of continuing violation.

Besides, the Public Liability Insurance Act, 1991 and National Environment Tribunal Act 1995 are noteworthy in this connection. Both the Acts provide for safety of the public from environmental pollution. The Water (Prevention and Control of Pollution) Act, 1977, the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927, the Forest (Conservation) Act, 1980, play an eminent role in combating environmental pollution.

5.2 Constitutional Provisions

Art.253 of the Constitution empowers parliament to make laws implementing India’s obligations as well as any decision made at an international conference, association or other body. It states: “Notwithstanding anything in the foregoing provisions of this chapter, parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty,
agreement or convention with any other country or countries or any decision made at any international conference, association or other body”.

After the Constitution Forty Second (Amendment) Act, 1976 environmental consciousness got momentum at the global level. It tailored certain significant concepts into the fundamental law of the country. Art.48-A was added to the Directive Principles of State Policy. It declares: “The state shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.” Under Art.51-A (g) a fundamental duty has been imposed on every citizen: “to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.”

Together the provisions highlight the national consciousness on the importance of environmental protection and improvement and the foundation of jurisprudence of environmental protection

5.3 The Directive Principles of State Policy

Although unenforceable by a court, the Directive Principles are increasingly being cited by judges as complementary to the fundamental rights. In several environmental cases the language of Art.48-A has guided the courts.

Indeed the Supreme Court has held:

“Whenever a problem of ecology is brought before the court, the court is bound to bear in mind Art.48-A of the Constitution and Art.51 A (g)........ When the court is called to give effect to the Directive Principles and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy and
so it is a matter for the policy-making authority. The least that the court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the court may go further, but how much further will depend upon the circumstances of the case. The court may always give necessary directions. However the court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations the court may feel justified in resigning itself to acceptance of the decision of the concerned authority.  

Similarly, the Andhra Pradesh high court has interpreted Art. 48-A as imposing “an obligation” on the government including courts, to protect the environment.

5.4 International Awareness

The world had not noticed any remarkable movement for a balanced ecology prior to the year 1992. Scientist had been aware that there exists a vital nexus between environment and life. The main components of environment are soil, water, and air. The balance of these components is the pre-requisite for a healthy existence and consequently the preservation of the essential ingredients of life require a stable ecological balance. It is not denying the fact the said balance is upset by misuse, abuse and depredation of natural resources, putting into jeopardy the human beings. The danger to environment is anathema incurred in the hectic role of industrialization. This awareness has now alarmed the world at large. The heads of States are now crying for looking at the environmental issues from a global point of view rather than a national, because it is the issue, which has cut across barriers of religion, language and the frontiers of nations.
Thus having become conscious of the worldwide problem of keeping the environment safe for human existence, the United Nations held its conference on Human Environment at Stockholm in June 1972. India was one of the parties of the conference. The UN General Assembly has passed a resolution 2977 on December 15, 1972 with eloquent emphasis on the need of active cooperation among the states in the field of human environment and designated June 5 as the World Environment Day.

The Stockholm Declaration is considered as **Magna-Carta** of Environment. The Conference *inter-alia* declared:

- The pollution of the Sea be prevented.
- The heritage of wildlife and its habitat should be safeguarded.
- The economic system should be protected and struggle against pollution should be supported.
- Water resources to be safeguarded for the benefit of the present and the future generations through a careful planning or management.
- Man bears a solemn responsibility to protect and improve the environment for present and future generations.
- Man has the fundamental right to freedom, equality and adequate condition of life in an environment of quality that permits a life of dignity and well being.

Moreover, a recommendation was made for environmental awareness. Mobilization of public opinion in each and every country was sought for finding out a solution for this serious crisis. Besides this, the UN, like the Earth Summit adopted several declarations and conventions in 1992 at Rio De Janiero. The Rio
Declaration of June 1992 proposing a long list of environmental measures for 21st century, if taken seriously, will go a long way in protecting the atmosphere, the forests, flora and fauna and in ensuring safe and clean technology. At this Earth Summit environmentalists from all over the world emphasized the need to cultivate environment friendly habits among the people. At the summit Butrous Butrous Ghali, the former Secretary General mooted the “polluter pays” principle and blamed the rich nations for harming the environment of the poor and developing nations.

5.4 Landmark Judgements on Environmental Protection

Public Interest Litigation has appreciably contributed to environmental protection. The Supreme Court has held that the right to live under Article 21 includes the right of enjoyment of pollution free water and air for full enjoyment of life. The court has ruled that the “right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed” and held that “hygienic environment is an integral facet of right to healthy life”. The judicial grammar of interpretation has made “right to live in healthy environment” as the sanctum sanctorum of human rights.

1. Mehta Cases

In the First M.C. Mehta14 case the court enlarged the scope of the right to live and ensured that the state had power to restrict hazardous industrial activities for the purpose of protecting the right of the people to live in a healthy environment. In this case the court had to deal specifically with the impact of activities concerning manufacturing of hazardous products in a factory. The activities were a threat to the workers in the factory, as well as members of the
general public living outside. It was alleged that the leakage of oleum gas resulted in the death of a person and affected the health of several others. In doing so the court found that the case raised some seminal questions concerning the scope and ambit of Article-21 and 32 of the Constitution.

The Second M.C. Mehta case modified some of the conditions, the Third M.C. Mehta case took a step forward and held that read with the remedies under Article-32 including issuance of directions for enforcement of human rights, the right to live contains the right to claim compensation for the victims of pollution hazards. The Fourth M.C. Mehta case came before the court under Article-32 of the Constitution, concerning the tanning industries located on the banks of Ganga alleging to be polluting the river. In the Fifth M.C. Mehta case locus standi was the issue. Thus, it is quite evident that, in these cases, the court issued directions under Article-32 of the Constitution, which is the provision to enforce human rights: to protect the lives of the people, their health and the ecology. Commissions were appointed to report to the courts so that they could get more insight into the situations before making any final decisions.

2. Right to Live in a Healthy Environment

Ratlam Municipality V. Vardichand is a monumental judgment where the Supreme Court followed the activist approach and provided flesh to the dry bones of statutory provisions. In this case the residents of a locality within the limits of Ratlam Municipality tormented by stretch and stink caused by open drains and public excretion by nearby slum-dwellers moved the magistrate under section 133 of Criminal Procedure Code to require the municipality to do its duty towards the members of the public. The magistrate
gave directions to the municipality to draft a plan within six months for removing nuisance. In an appeal by the municipality, the session court reversed the order. The High Court approved the order of the magistrate. In further appeal, the Supreme Court also affirmed the order of the magistrate. The Supreme Court also rejected the plea of the municipality of insufficiency of funds. The court pointed out that the financial inability cannot validly exonerate the municipality from statutory liability and it has no juridical base. The court further observed: “Human rights under Part III of the Constitution have to be respected by the state regardless of budgetary provisions.”

The right to life and personal liberty includes the right to live with decency and dignity. In this context the Supreme Court pointed out that the grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under nature’s pressure, bashfulness becomes a luxury and dignity a difficult art. The court observed: “Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies.”

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

3. Quarries Closed to Save Hill

Rural Litigation and Entitlement Kendra V. State of U.P., is a landmark case, which demonstrates the activist role of the Supreme Court with regard to environmental issues. In this case the Supreme Court entertained environmental complaints alleging that the operation of lime stone quarries in the
Himalayan Range of Mussoorie resulted in degradation of the environment affecting ecological balance. The Supreme Court entertained the writ petition under Article 32 regarding the environmental issues and ordered the closure of some of these quarries on the ground that their operation was upsetting the ecological balance.

At first instance, the court set up an expert committee to inspect the limestone quarries and report to the court. It submitted three reports and divided the quarries into three groups. The quarries in the A group, which were most harmful to the environment, were ordered to be closed down permanently. The State Government shall not have any liability for the termination of the leases. The court set up another committee to study the impact of the B category quarries and those operating within the city limits of Mussoorie. Category C quarries, which did comparatively less harm and were outside the city limits, were allowed to operate subject to the Mines Act rules and regulations.

The Supreme Court discussed the consequences of the closure of the quarries. The closure would "undoubtedly cause hardship to the owners but it is a price that has to be paid for protecting the right of the people to live in a healthy environment. In other words, the Supreme Court read, and rightly so, Art.48-A into Article 21 of the Constitution and regarded the right to live in a healthy environment as a part of life and personal liberty of the people. In order to mitigate the hardships, the court directed the Uttar Pradesh Government that if any other area was thrown open to limestone quarrying, those who lost their sites in Mussoorie shall be given priority in allotment. The closure of the quarries also affected workers. However, the quarries, which had been closed down, will have to be reclaimed and afforested. Therefore the court directed the government
to take immediate steps to reclaim the area and employ those who had lost their work due to the closure of the quarries.

4. Ganga Water Pollution Case

*M.C. Mehta v. Union of India*[^23^]. A PIL was filed by a lawyer M.C. Mehta in 1985 seeking to restrain some tanneries in UP from discharging industrial effluents into the Ganga. This case marks the beginning of a series of orders passed by the Supreme Court to stop the pollution of Ganga waters by industries and municipalities along the river, which flows through eight states. The Supreme Court closed down nearly 30 tanneries in UP for causing pollution; several others were given a six month deadline to set things right. The judgement recalled Article 48–A of the Constitution which enjoined the government to protect and improve the environment. Article 51–A made it the duty of every citizen to do the same. The court invoked the provisions of the Water (Prevention and Control) Act 1974, Environment (Protection) Act 1986 and the proclamation adopted by the UN Conference on the Human Environment at Stockholm in 1972 to justify the judicial intervention. The court received expert opinion from scientists who suggested primary and secondary treatment plants to be set up to clean the water. The court gave time to the tanneries to set up at least primary units. The court said that the financial capacity of the tanneries should be considered irrelevant while requiring setting up treatment plants. The court also directed the Central government, the UP Water Pollution Control Board and the district magistrate to enforce the order faithfully. In defending the judgement, Justice K.N.Singh observed that the pollution of the river Ganga is affecting the life, health, and ecology of the Indo-Gangetic plain. He also concluded that the closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people.
The Supreme Court on 19 December 1996 ordered the relocation of 550 tanneries in East Calcutta to new sites being built by the State government. The owners of the tanneries were asked to deposit 25 per cent of the land cost by February 28, 1997. A Division Bench comprising of Justice Kuldip Singh and Justice S. Saghir Ahmad ordered the West Bengal Government to appoint a commissioner to assess the ecological damage and impose fines on the polluting units. The penalty and environmental damages recovered from the tanneries would be used to form "Environmental Protection Fund", which would be utilized to restore the environment in the areas. This judgement was delivered on a petition filed by M.C. Mehta. He contented that the tanneries were polluting the Hooghly River in the absence of effluent treatment facilities.

5. Vehicular Pollution in Delhi

The court-recourse to prevent vehicular pollution in Delhi has been an important event for the year 1991. In *M.C. Mehta V. Union of India*²⁴, a PIL was brought before the Supreme Court to prevent vehicular pollution in Delhi caused by increasing number of petrol and diesel driven vehicles. A Bench comprising Ranganath Misra CJ, M.N.Venkatachaliah and A.M.Ahmadi directed the Delhi Administration to place before it a complete list of the prosecution launched against the vehicles for causing pollution by infringement of various requirements of the law with particular reference to the vehicles, nature of the vehicles, dates of prosecution and the nature of the offences for which prosecution has been launched and results, if any, of such prosecutions from 1.4.1990. The particulars of vehicles, registration of which have been suspended had also to be provided to the court.
The court advised the Ministry of Environment to carry out appropriate experiments with the device brought out by the National Environment Engineering Research Institute, Nagpur, for reducing pollution. The court directed that the government take steps that every vehicle to be manufactured after 1.4.1990 or 1.7.1990 should have the aforesaid device as an inbuilt mechanism to reduce pollution. The operating vehicles were also expected to adopt the same pollution-reducing device, the court said.

According to Ashish Kolhar, an environmentalist, the major pollutant in Delhi is vehicular emissions, responsible for sixty percent of air pollution. Two million odd vehicles in Delhi release about one thousand tones of pollutants. In other countries the burden of pollution control is on the manufacturers of vehicles. The Supreme Court has, therefore, made a welcome endeavour to see that only environmental friendly vehicles are manufactured. It said that like in other countries, India should also have a comprehensive legislation placing the burden of pollution control on the manufacturers of vehicles. Thanks to several petitions filed by M.C.Mehta, Delihites got introduced to new automobile technologies, which do not cause air pollution. The new categories of cars, Euro-I & II, CNG-run buses and other vehicles, were all launched on Delhi roads after the Supreme Court gave its verdict. According to a white paper published by the Government of India, vehicular pollution contributes 70% of the air pollution as compared to 20% in 1970. Taking note of this decline in environment quality, the Supreme Court from time to time issued directions to tackle the problem. In this regard on 7 January 1998 a committee was constituted under the chairmanship of Bhure Lal, known as “Environment Pollution (Prevention and Control) Authority for National Capital Region (NCR) to study the situation. But despite the direction given by the Supreme Court, the
Delhi government failed to discharge its liability. Approving the conditions of Bhure Lal committee on 28 July 1998, the Apex court ruled that all the city buses were to be converted to single fuel mode of CNG by 31.3.2001. Another direction was that no 15-year-old buses were to ply except on CNG or other clean fuel. This order included all commercial vehicles, autos and taxies.

6. Stone Crushing Units Closed

In *M.C. Mehta V. Union of India*\(^2\), the Supreme Court took note of environmental pollution due to stone crushing activities in and around Delhi, Faridabad and Ballabgarh complexes. The Court was conscious that environmental changes are the inevitable consequences of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area. Showing deep concern to the environment, the court reiterated, “Every citizen has a right to fresh air and to live in pollution free environment.” Thus, the Supreme Court once again treated it as violation of Article 21 of the Constitution and passed the order in absolute terms under Article 32 directing the stone crushing units to stop their activities in those areas. The Court further directed the government to rehabilitate these stone crushers in “crushing zone” within the period of six months.

7. Slaughter Houses

The tussle between the needs of meat eating population and the livelihood of those in the industry on the one hand and the concern of health and hygiene on the other continued to dominate the cases concerning
slaughterhouses. Courts tended to view the environmental concerns as non-compromisable leaving the alleviation of the related problems to the government.

The closure of the Idgah Slaughter House in Delhi in 1995 was ordered by the Delhi High Court in *Maneka Gandhi V. Union Territory of Delhi*. The maximum number of animals that were permitted to be slaughtered per day was pegged at 2500 and even that only where the abattoir was able to maintain the minimum standards of hygiene and sanitation. Thereafter in an appeal by the Buffalo Traders Welfare Association, the Supreme Court appointed a committee to look into the related aspects of requirements of meat, and livelihood of those employed in the trade, keeping in mind the environmental aspects and directed the reports of the committee to be placed before the High Court.

The committee in its report observed that the abattoir had out lived its utility and that the only solution was the construction of a modern mechanized slaughterhouse. The High Court after considering the report held, that it was not possible to increase the maximum number of animals to be slaughtered per day beyond 2500 without compromising on the minimum standard of cleanliness and hygiene. Although this was hardly adequate even for domestic consumption, the court felt that there should be no problem in getting supplies from other places. As regards those employed in the trade, the court reiterated its earlier order directing the government to frame a scheme for rehabilitating those rendered jobless on account of the abattoir’s closure. The Union of India and the Delhi Government were directed to set up a modern mechanized abattoir and the Idgah Slaughterhouse was directed to be closed on or before 31.12.1995.
The Supreme Court in the PIL by M.C. Mehta also echoed the concern about slaughterhouses in regard to the pollution in and around the Taj Mahal. The court in *M.C. Mehta V. Union of India* stated "the construction of slaughter house at Agra is most important for environmental protection, pollution control and tourism purposes. The Taj Mahal at Agra attracts a large number of tourists every year. The city has to be kept clean and pollution free. We are of the view that the construction of slaughterhouse at Agra has to be taken up separately and with utmost urgency".

8. Environmental Awareness through Media

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

The court also advised the University Grants Commission to consider the feasibility of making environment a compulsory subject at every level of college education.

9. Polluter Pays Principle

The polluter pays principle and the precautionary principle were accepted as part of the legal system in the Sludges case and the Vellore 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. In the Sludges case, 56 industries in Andhra Pradesh functioning in the Patancheru Bolaram districts in Andhra Pradesh were found to have discharged untreated effluent into the river Nakkavagu. The court on the consideration of a report of National Environmental Engineering Research Institute, Nagpur (NEERI) held by an order dated 19.11.1995 that these industries would be responsible to compensate the villagers in 10 villages which had been estimated by the state government at Rs. 28.34 lakhs. The court found that industrialists had contributed only 7.5 lakhs out of which only 6.5 lakhs had been disbursed to the farmers. The court directed the state government to deposit the differential amount and recover it from the industrialists.
In Vellore Citizens Welfare Forum V. Union of India, 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 relating to the enormous amount of untreated effluents into the water resources, thereby endangering the lives of the people, as if they are part of a petition to the High Court under Art.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 in Calcutta, Madhya Pradesh and in some other High Courts.

The Supreme Court only made a request to the High Court to constitute a ‘green bench’. However the rationale of such request is obviously admission and an approval of the need for experienced judicial institutions with the requisite environmental expertise, at the regional and state levels, to deal with environmental and ecological issues of local and regional significance.

The ‘Polluter Pays’ principle was also applied in S. jagannath V. Union of India, by the Supreme Court when it directed the closure of prawn farms functioning within the coastal regulation zones in Orissa, Andhra Pradesh, Tamil Nadu and other coastal states. It directed the industries operating in Chilka and Puliket Lake areas in the eastern coast to compensate the affected persons according to the above principle. This case arose from a PIL, which complained that the shrimp farms coming up all along the seacoasts were damaging the ecology and rendering the traditional farmers unemployed. They were also being ousted from the coastal belt. The court passed 16 elaborate directions in this case. It directed the central government to constitute an authority under the Environment Act to look into the ecology of the coastal areas.
Precautionary Principle was 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 said:

> The atmospheric pollution in TTZ has to eliminate 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 observation of the Court signifies the need to find an immediate solution to the tragedy to protect ‘the wonder in marble’ from further degradation. The court continued:

> The onus of proof is on an industry to show that its operation with the aid of coke/coal is environmentally benign.

The court ruled that industries, identified by the Pollution Control Board as potential polluters, had to change over to natural gas as an industrial fuel and those that were not in a position to obtain gas connections—for any reasons—should stop functioning in TTZ and relocate themselves in alternative plots outside the demarcated area within a stipulated time. International treaties, agreements, conventions and decisions taken at international conferences have to be incorporated into the law of the land by parliamentary legislation. However the *Taj* decisions are 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.

### 10. Closure of Industries

*M.C. Mehta V. Union of India and Others*, a PIL was filed under Articles 32 and 21 of the constitution. The court directed closure of 168
industries in *M.C. Mehta V. Union of India.* 39 The main concern in this case were the directions issued which are as follows:

The workmen employed in the above mentioned 168 industries shall be entitled to the rights and benefits as indicated here under:

- The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment.

- The period between the closure of the industry in Delhi and its re-start at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service.

- All those workmen who agree to shift with the industry shall be given one year’s wages as shifting bonus to help them settle at the new location. The workmen employed in the industries, which fail to relocate, and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched w.e.f. 30.11.1996 provided they have been in continuous service (as defined in section 25-B of the Industrial Disputes Act 1947) for less than one year in the industries concerned before the said date. They shall be paid compensation in terms of section 25-F (6) of the Industrial Disputes Act, 1947. These workmen shall also be paid; in addition, one year’s wages as additional compensation.

- The management before 31.12.1996 shall pay the ‘shifting bonus’ and the compensation payable to the workmen in terms of this judgement.

- The gratuity amount payable to any workmen shall be paid in addition.
References:

1. The Supreme Court on 19 December 1996 ordered relocation of 550 tanneries in East Calcutta to new sites being built by the state Government. The vehicular pollution in Delhi MC Mehta v. Union of India, 1991 (2) SCC 353.


   (d) Mining in the Sariska Tiger sanctuary Tarun Bharat Singh v. Union of India, 1992 Supp (2) SCC 448.


   (f) Setting up of a thermal power plant in Dahanu, Maharashtra Dahanu Taluka Environmental protection Group v. Bombay Sub Urban Electric supply company Ltd.’ 1991 (2) SCC 539.

   (g) In Vellore citizen welfare v. Union of India and others AIR 1996 SC 2715.


5. Section 11 of the same Act.

6. Section 15 (1).
18. M.C. Mehta v. Union of India AIR 1988 SC 1115. The petition was moved for the enforcement of the statutory duties of municipal authorities and the boards constituted under the special laws.
20. Ibid. at 1628.
21. Ibid. at 1629 also see Govinda v. Shanti Sarup AIR 1979 SC 143, where the provision of the sections 133 of the Code of Criminal Procedure was used by the court to preserve the environment free from pollution in the interest of “health, safety, and convenience of public at large”.
22. AIR 1985 SC 652.
25. The Times of India, Delhi, 23 Nov. 2000.
27. 54 (1994) DLT 190.
32. AIR 1997 SC 811.
33. AIR 1997 SC 734.
34. Ibid. p 761.
35. Ibid. p 762.
36. Ibid.