The present concept of 'human ecology' has emphasized on the pressing need of recognizing the ecological considerations in the formulation of developmental plans of the countries. The rapid growth of population gives rise to manifold problems, the most important of which is human settlements. The industrial civilization has led to the explosive growth of the population in developing and underdeveloped countries. These countries contain more than two thirds of population of the world and it is on the rise everyday. Industrialized world is advancing towards rapid urbanization and this has resulted in ecological mishaps. The prominent examples are uncontrolled deforestation, unplanned human settlements, ignoring the environmental balance, acute housing problems, and other associated problems with that, mostly having catastrophic effect on human ecology. Generally, the developed nations are in the terminal stage of urbanization, while developing nations are in acceleration stage. Such excessive growth of urbanization in underdeveloped or developing countries has fatal consequences some of these are as follows:

a) Unplanned and unimaginable rate of urbanization deprives the persons of opportunities for a better quality of life.

b) It increases the demand of earth's finite resources, which are exploited and the wastes are dumped in the environment. This leads to environmental pollution.

c) The mass migration from rural to urban areas results in the growth of appalling congested slums devoid of the barest necessities of a decent life.
d) Mushroom growth of unauthorized colonies with non-existing civic amenities and indiscriminate construction of buildings and shops.

Therefore, Industrialization and urbanization are serious threat to the ecological balances. Laws alone can't check such threats, not even that existing laws are not sufficient to provide ample check and balance the situation.

Article 21 of the constitution of India guarantees the fundamental right to life and personal liberty to all the people of India. This general right includes the right to have a living environment congenial to human existence. To let this right realized the State has been directed to endeavour to protect and improve the environment and safeguard the forests and wildlife of the country under Art 48A of the Constitution of India. The court of India, particularly the Supreme Court has come forward to provide to the ameliorating masses of India a basic right of human being - "right to livelihood" and "right to have living atmosphere congenial to human existence" which are inherent in the 'right to life'. The Supreme Court assumed the role of savor of the masses from environmental pollution. The Supreme Court has opened new vistas for the general public to approach the court immediately through public interest litigation. Such pronouncement of the court goes a long way in creating general awareness amongst all sections of the Society towards the right of citizens to have a living atmosphere. The general constitutional provisions and some other micro provisions and enactments dealing with the areas of 'human settlement' and 'environment' are there, which are being attracted and has drawn the attention of the Indian Judiciary particularly of the Supreme Court, from time to time giving rise to so many doctrinal concept and has opened a new environmental jurisprudence in the relevant area. The period (1986 to 1997) is an epoc making having contribution towards the society by way of Judicial Activism in creating the concept of right to
settlement and existence as part of right to life and the year 1986, is a new trend setter in the history of the human settlement, when the Supreme Court in the case of, Surat Municipality Corporation Vs Ramesh Chandra,\(^1\) delivered the judgment of great importance, reflecting the concept of social justice enshrined in the preamble of the Indian Constitution, following the Philosophy of egalitarian Society and Gandhi's Daridra Narain.

The fact of the case was that the owner of a plot, in order to develop it and thereby to get optimum return of the investment made by him, filed a case against the municipal corporation to remove the hutment dwellers, who were living on the three sides of the said plot for the last ten years, on the pavements outside the plot.

By declining to evict persons from their hutments, the court did consider not only the right to hutment dweller to stay and to have roofs over their heads in view of the Socio-Economic consequence of action but it gave new Jurisprudential approach to the 'right to life', a constitutional guarantee to a fundamental right and did a social engineering to make a balance between the right to existence of the vast majority of the poor people who are the real source of power in a democratic society in one hand and the profits and comfort of the few individuals, on the other hand. It was decided that the Plaintiff Ramesh Chandra had no cause of action. The hutment dwellers, though, were not the party to the case the court passed no order against them and thereby followed the principles of natural justice. This case has torn into pieces the Salmond's Jurisprudential approach to legal rights by the onslaught of human approach of the court in the wake of the directive principles of the State Policy and concept of social justice enshrined in the preamble of the constitution.

\(^1\) AIR 1986, Gujarat 50
K.Ramdas Shenoy Vs The Chief Officers, town Municipal Council, Udupi, a landmark Supreme Court zoning case in the early 70’s, wherein involved violation of a town planning scheme by the responsible municipal authorities when they authorized a cinema building in a residential area, raised the question—

Should a court’s desire to avoid economic waste persuade it to sanction a project which may be environmentally questionable?

The Court Held:

An illegal construction of a cinema building materially affects the right to or enjoyment of property by persons residing in the residential area. The municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorized construction. The scheme is for the benefit of the residents of the locality. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction.3

The Supreme Court in Shenoy was not at all impressed by the argument that the illegal construction should be allowed because the respondent (Cinema Developer) had spent money. Merely because money has been spent is no ground to degrade ecology and environment. The violation of environment cannot continue and upsetting an ecological balance will be judged with even more strict standard.4

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2. AIR 1974, SC 2177
4. Ibid, P. 323.
Thought behind such decision -

4.1 Collectivist jurisprudence of municipal administration:

Under the common law, the ownership denotes the right of the owner to possess the thing he owns and his right to use and enjoy the thing he owns. That right extends even to consuming, destroying or alienating the thing. Under the doctrine of right to choose the uses to which an owner can put his land belongs exclusively to his choice.

The right to use thus becomes inseparable from the right to ownership: The thrust of this concept of individual ownership is to deny communal enjoyment of individual property. This private law doctrine of ownership is comparable in its width and extent to the public law doctrine of sovereignty.5

Into the domain of the doctrine of ownership, it is the collectivist jurisprudence of municipal administration that has made its first inroads. But in the recent past the law of ecology and environment has even more seriously shaken its roots. Under the powerful impact of the nascent but the vigorously growing law of environment the unbridled right of the owner to enjoy his piece of land granted under the common law doctrine of ownership is substantially curtailed.6

It is, therefore, clear that protection of environment is not only the duty of the citizen but it is also the obligation of the State and all other State organs including the courts. In that extent environmental law has succeeded in unshackling man's right to life and personal liberty from the clutches of common law theory of individual ownership.

5. Environmental law and Policy in India, by Shyam Divan and Armin Rosencranz, at Pg. 392.
6. Ibid, P. 393.
The Case of *T. Damodhar Rao Vs Hyderabad* (Special Officer, Municipal Corporation of Hyderabad)\(^7\) involved a municipal development plan earmarking 150 acres for a recreational park. Two public agencies bought 37 of the acres to build residential homes and the Municipal Corporation had already allowed several of these homes to be built.

The court held that neither the Municipal Corporation’s permission nor the State Government’s relaxation of layout rules and building by laws could grant what the development plan prohibited.

The court examined the matter from the view of our legal and constitutional obligation to preserve and protect our ecology and environment.

The Andhra Pradesh High Court held that it is the legitimate duty of courts as the enforcing organs of constitutional objectives to forbid all action of the State and the Citizen from upsetting the environmental balance. In this case the very purpose of preparing and publishing the development plan is to maintain such an environmental balance.

The object of reserving certain areas as a recreational zone would be utterly defeated if private owners of the land in that area are permitted to build residential houses. It must therefore be held that the attempt of the LIC of India and the I.T. dept. to build houses in this area is contrary to law and also contrary to Article 21 of the constitution.

Several High Courts have explicitly recognized an environmental dimension to Article 21. While considering a writ petition to enjoin the Life

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Insurance Corporation and the Income Tax Department from building residential houses in a recreational zone. Judges of the High Courts of Rajasthan, Kerala, Himachal Pradesh, Karnataka and Madhya Pradesh too, have observed that environmental degradation violates the fundamental right to life.\(^8\)

_in Kinkri Devi Vs State of Himachal Pradesh._\(^9\) The court has been guided by the language of Article 48A of the Constitution of India, where urban environmental groups resorted to Article 14 to quash 'arbitrary' municipal permission for construction that are contrary to development regulations. (It was observed that Article 14 may be invoked to challenge government sanctions for activities with high environmental impact, where the permissions are arbitrarily granted without adequate consideration of environmental impact).

_in Rural litigation and Enlightenment Kendra, Dehradun Vs State of Uttar Pradesh_\(^10\) the first indication of the right to a wholesome environment may be traced.

A great American judge emphasizing the imperative issue of environment said that he placed Government above big business, individual liberty above Government and environment above all.\(^11\) The issues of environment must and

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\(^8\) i) L.K. Koolwal Vs State of Rajasthan (AIR 1988, Raj. 2,4).
   v) Law Society of India Vs Fertilizers and Chemicals Travancore Ltd. (AIR 1994 Ker, 308, 370).
   vi) V. Lakshmipathy Vs State of Karnataka (AIR 1994, Kar, 57, 67).

\(^9\) AIR 1988 H.P. 49,.

\(^10\) AIR 1988 SC, 2187

\(^11\) Quoted from Environmental law and Policy in India, by Shyam Divan and Armin Rosencranz, P. 41.
shall receive the highest attention from the court (Supreme Court). This approach has led the Supreme Court to derive adopt and apply a range of principles to guide the development of environmental jurisprudence.

In Subhas Kumar Vs State of Bihar, the Supreme Court held that the right to life includes the right to enjoy unpolluted atmosphere. If anything endangers or impairs the quality of life in derogation of law, a citizen has a right to move the Supreme Court under Article 32 of the constitution. Expanding upon this theme in a town planning case the court observed that Article 21 of the Constitution protects the right to life as a fundamental right. Enjoyment of life including right to live with human dignity encompasses within its ambit the protection and preservation of environment, ecological balance free from pollution of air and water and sanitation. Any contra act or actions would cause environmental pollution. Therefore hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment. There is a constitutional imperative on the State Government. And the municipalities not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man made and the natural environment.

The scope of judicial review in environmental case was explained by the Supreme Court in the Calcutta Taj Hotel Case, where a group of citizen challenged the location of a hotel on the ground that the construction would


interfere with the flight path of migratory birds. After referring to the constitutional provisions relating to environment, the court outlined the scope of judicial review thus:

Whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48A of the Constitution and Article 51A(g) when the court is called upon 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 the court may do is to examine whether appropriate consideration are born in mind and irrelevancies excluded. In appropriate cases, the court may go further, but how much further will depend on the circumstance of the case. The court may always give necessary durations. However, the court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of the relevant considerations the court may feel justified in resigning itself to acceptance of the decision of the concerned authority.\(^{16}\)

In this case the hotel project was eventually permitted to proceed because there were obvious public benefits, viz. increased revenues from tourism and general upgrading and beautification of the area. Similarly the Supreme Court agreed with the High Court and upheld its finding that Calcutta Municipal Corporation properly granted a license to the developer as the development of an underground market below a neglected city park created an ecological benefit rather than a detriment\(^{17}\) one of the favourite decisions of lawyers defending illegal building is the Supreme Court’s judgment in *Rajatha Enterprise Vs S.K.*

\(^{16}\) Sachidananda Pandey Vs State of W.B. AIR 1987 SC 1109, 1115.

\(^{17}\) Calcutta Youth Front Vs State of West Bengal; AIR 1988, SC 436.
Soon after Rajatha commenced building a shopping complex and school in Bangalore, the municipal commissioner initiated action against the builder, alleging deviations from the planning regulations. The upshot of these proceeding was an order by the commissioner directing Rajatha to reduce the height of the 6(Six) Storey building, failing which the upper three floors would be demolished. The High Court partly accepted Rajatha's contentions in a writ petition assailing the commissioner's order. The court set aside the demolition order in respect of the 4th and 5th floors. However, the demolition of the 6th floor was confirmed. In appeal, the Supreme Court set aside the 6th floor demolition as well. The Supreme Court found that the excess built up area was small and did not justify the harsh penalty of demolition since there was no evidence of any dishonesty or fraud or negligence on the part of the builder. The proposed government school in the building may have persuaded the court to take a lenient view.

Generally town- planning laws vest discretion in matters relating to the demolition of an illegal building in a high official. The Calcutta High Court has held that such discretion ought to be exercised bonafide and not on extraneous considerations. Upholding a circular issued by the Calcutta Municipal Corporation that prevented illegal construction from being regularized on the payment of a fee, the court found that such a general rule was desirable for the proper growth and development of the city. Justice Ajoy Nath Roy observed that it would be unjust for builders to buy their way out of trouble by paying penal charges where the structure was otherwise fit for demolition.19

In this particular context it is evident that the tendency of raising unlawful construction and unauthorized encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful construction are against the public interest and hazardous to the safety of occupiers and residents of multi storeyed buildings. This approach has led the Supreme Court to derive and adopt notable principles in *Pratibha Cooperative Housing Society Ltd Vs State of Maharashtra*\(^{20}\) wherein the Supreme Court evolved the fundamental norms that -

Stringent action ought to be taken against contumacious defaulters and persons who carry on industrial or development activity for profit without regard to environmental laws.

The fact of the case referred above was that Pratibha Cooperative Housing Society made some unauthorized construction in a 36 Storeyed building in a posh and important locality of the city of Bombay in violation of floor space Index (FSI) to an extent of more than 24,000sq.ft which the Bombay Municipal Corporation had ordered to demolish. The Bombay High court also confirmed the order of Bombay Municipal Council and subsequently the same order was India, which was directed against the order of Bombay High Court. The order for demolition of eight floors had attained finality right up to this court. The order for demolition of eight floor has been substantially carried out and the Supreme Court find no justification to interfere in the order passed by the High Court as well as the order passed by the Municipal Commissioner. The violation of FSI in the present case was not a minor one.

\(^{20}\) AIR 1991, SC 1453, 1456.
Therefore, this case should be regarded as a pointer to all the builders that making of unauthorized construction never pays and is against the interest of the society at large. The rules, regulations and bye-laws are made by the corporation or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizen to obey and follow such rules which are made for their own benefits.

In People United for Better Living in Calcutta v State of West Bengal,21 The Calcutta High Court made a thorough analysis of expert writings and passed a rational verdict prohibiting the reclamation and use of impugned wet lands for residential or commercial purpose. In this case parts of wetlands were being reclaimed for providing living sites and for location of World Trade Centre. The Court observed that in pollution, the metropolitan city of Calcutta tops the list in the country and the proposed World Trade Centre would not benefit Society at large and generate employment potential. The court observed that maintaining wetlands was necessary as it being bounty of nature do have a significant role to play in the proper development of society be it from environmental perspective or from economic perspective. The court considered the protection of wetlands as a social necessity from proper maintenance of environmental equilibrium. The tone and tenor of the court’s observation devotes environmental consciousness and a precautionary approach.

A full bench of the Punjab and Haryana High Court in Bakshish Kaur Saini Vs Union of India22 construed the provisions of Chandigarh’s planning laws to hold that unauthorized structures do not attain legal status by the passage of

22. AIR 1994, P and H 1.
time. The full bench overruled an earlier decision of the court laying down that an unauthorized construction gained legitimacy over time.

As town planning laws and building regulations become more stringent, developers occasionally attempt to by pass the prevailing 'regime by reaching back to building plans sanctioned a long while ago. This generally occurs where the project is delayed. In Usman Khatri Vs Cantonment Board, the Supreme Court noticed the delay and required the owners of the plot to submit fresh building plans that conformed to the prevailing building laws. The Supreme Court held that the need for housing should always be subservient with the building restrictions and regulations made in the larger interest of the inhabitants of Pune and keeping in view the influx of population, environment hazards, sanitation, provision for supply of water, electricity and other amenities.

In another Pune Cantonment Board case the Supreme Court reiterated its view that where the construction of a building was delayed and the original sanction to the building plan had lapsed, the proposed construction must conform to the prevailing scheme of building restrictions. Builders do not acquire a vested right by mere submission of a plan for construction of a building. To acquire a right, the plan should be sanctioned.

The continuing decline in the quality of the environment has spurred the Central Govt. and a few a State Governments to adopt stronger environmental policies to enact fresh legislation and to create, recognize and expand administrative agencies. In December 1988 the Union Ministry of Environment

23. AIR 1994 SC 233
and Forests constituted a committee to recommend a framework and an action plan for the conservation of resources. The committee comprised of eminent scientists, journalists, environmentalists and senior bureaucrats prepared a draft policy statement for a national conservation strategy and invited comments and suggestions on the draft from hundreds of respondents across the country. After assimilating the response received from governmental and non governmental organizations, the committee submitted a report to the union government in April 1990. Based on the recommendations of the committee the Government of India adopted a National Conservation Strategy and Policy Statement on Environment and Development in June 1992 (NCS). The preamble of the NCS adopts the policy of 'sustainable development' and declares the government's commitment to re-orient policies and action in unison with the environmental perspective. The NCS proceed to recognize the enormous dimensions of the environmental problems facing India and declares strategies for action in various spheres such as agriculture, forestry, industrial development, mining and tourism.

In February 1992, the Union Govt. published its policy for the abatement of pollution. This Statement declares the objectives of the government to integrate environmental consideration into decision making at all levels. To achieve the goal, the statement adopts fundamental guiding principle namely (i) prevention of pollution at source, (ii) the adoption of the best available

technology, (iii) the polluter pays principles, and (iv) public participation in decision making.

Expanding on the public partnership theme, the statement emphasize on the public awareness in order to enable them to make informed choices, high government priority to educate citizens about environmental risks, the economic and health dangers of resource degradation and the real cost of natural resources, to make affected citizen and NGOs play a role in environmental monitoring with their commitment and vigilance, access to information to enable public monitoring of environmental concerns.

The Policy Statements, in themselves, are not enforceable in a court of law. However, these statements represent a broad political consensus and amplify the duties of government under the directive principles of State Policy contained in Part-IV of the constitution. In the hands of a creative judge the policy documents may serve as an aid for interpreting environmental Statutes or for spelling out the obligations of government agencies under environmental laws.

For example in State of Himachal Pradesh Vs Ganesh Wood Products\(^{29}\) the Supreme Court relied upon the National Forest Policy and The State Forest Policy of Himachal Pradesh to invalidate a decision taken by the State industrial project authority, which approved the establishment of units manufacturing 'katha' from the scarce khair tree without considering factors such as the availability of Khair tree and the adverse impact on the forests in the State. The court cautioned the government departments against ignoring the forest policy and warned that disregard of these policies would imperil government decisions.

\(^{29}\) AIR 1996 SC 149.
The importance of this case i.e. Ganesh Wood case is that whereas the judges, in many instances, are reluctant to adopt a proactive approach by compelling government departments to take measures to improve the quality of the environment, in this case, a clear statement of policy has persuaded the judge to prefer an environment friendly interpretation over a more conservative approach. The Supreme Court held that a decision making authority must give due weight and regard to ecological factors such as the environmental policy of government and the sustainable use of natural resources. A government decision that fails to take into account relevant considerations affecting the environment is invalid. In the same case, the Supreme Court recognized the obligation of the present generation to preserve natural resources for the next and future generations.

In India council for Enviro-Legal Action Vs Union of India (CRZ notification case) the Supreme Court observed that environmental statutes were enacted to ensure a good quality of life for urban generations since it is they who must bear the brunt of ecological degradation.

A green bonanza came the way of Delhi citizens in 1998. M.C. Mehta, a Public Spirited Advocate asked the Supreme Court to enforce the Master Plan for Delhi, which contemplated the shifting of heavy and hazardous industry away from the city. Having regard to the polluted atmosphere and the absence of lung space in Delhi, the Supreme Court held that the land that belonged to the relocated industries ought to be used for the development of green belts and open spaces. Balancing the community need against the need of the factory

32. AIR 1996(5) SCC 281, 293.
owners who required resources to finance the shifting of industry, the court devised a land use pattern that enabled the owner to develop a part of the land for his own benefit and to surrender the remainder for a green belt.33

4.2 Public Trust Doctrine:

The Public Trust Doctrine has vast potential and may serve as a touchstone to test the executive action with a significant environmental impact. In the United States this doctrines as an environment Protection developed over a several years. In Mono Lake case (National Audubon Society Vs Superior Court of Alpine County34 the observation of the Supreme Court of California show the judicial concern in protecting all ecologically important lands. The observation of the court in Mono Lake case to the effect that the protection of ecological values is among the purposes of public trust may give rise to an argument that the ecology and the environment protection is relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Indian Supreme Court simply imported the doctrine and declared that it was a part of the law of the land. It was in December 1996 that the public trust doctrine was articulated for the first time in India in the case of M.C.Mehta Vs Kamal Nath35.

The ancient Roman Empire developed a legal theory known as the "Doctrine of Public Trust". It was founded on the ideas that the Government in trusteeship for the free and unimpeded use of the general public held certain common properties such as river, seashore, forests and the air. Our contemporary concern about the environment bears a very close conceptual relationship to this legal doctrine. Under the Roman law this resources were

34. 33 Cal. 3d, 419.
35. AIR 1997(I) SCC 388.
either owned by no one (res nullius) or by everyone in common (res communious).

Under the English Common Law, however, the sovereign could own these resources but the ownership was limited in nature. Therefore, the source of modern public trust law is founded in a concept that received much attention in Roman and English Law.

Our legal system based on English Common Law includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources that are by nature meant for public use and enjoyment. The state as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. If there is a law made by the parliament or the state legislature, the court can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or for commercial purpose.

The public trust doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made freely available to everyone irrespective of the status in life.

The concept has been considered in some details by the Supreme Court in Intellectual Forum, Tirupathi 35A case wherein it was opined:-

35A. AIR 2006 SC 1350.
This is an articulation of the doctrine from the angle of affirmative duties of the state with regard to public trust. Formulated from negatory angle, the doctrine does not exactly prohibit the alienation of the property held in public trust. However when the state holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations that attempt to restrict such free use.

"To properly scrutinize such actions of the Government, the courts must make a distinction between the government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources."

According to professor Sax the Public Trust Doctrine impose the following restrictions on governmental authority:

1st  The property subject to the trust must not only be used for a public purpose but it must be held available for use by the general public;

2nd  The property may not be sold even for a fair cash equivalents; and

3rd  The Property must be maintained for particular types of uses.

In *M.I. Builders v Radhey Shyam Sahu*,\textsuperscript{36} the Supreme Court held that allowing an underground shopping complex to come up below a public park violated the public trust doctrine. The court directed the demolition of the structures and restoration of the park.

In July, 1999, the Supreme Court delivered a strong judgment against the illegal development of an underground market below a public park in Lucknow.

\textsuperscript{36}  \textit{AIR 1999 SC 2468}.
The court observed that new construction of shops will bring in more congestion and with that the area will get more polluted. Any commercial activity now in this unauthorized construction will put additional burden on the locality. Primary Concern of the Court is to eliminate the negative impact for such unauthorized activities on environment conditions in the area and the congestion that will aggravate on account of increased traffic and people visiting the complex.

The Environment represents the living space, the quality of life and the very health of human beings, including generation to come. The apex court has not only transformed the principle of inter generational equity and sustainable development into legally enforceable norms but has also defined and explained these norms in the Indian Context and applied them in the facts and circumstances of the cases brought before it, covering all important aspects of environmental law viz. air and water, pollution, ecology and town-planning, the heritage, wildlife etc. How to avert a serious and irreversible tragedy brought about by development projects not based on environmental expertise was the real question before the Supreme Court in A.P. Pollution Control Board Vs M.V. Nayudu. The court referred to the precautionary principle laid down in Rio declaration. In the celebrated decision, M.C. Mehta Vs Kamal Nath the Supreme Court has highlighted the public trust doctrine in the context of protection of forests and preservation of natural resources as early as in 1997. The Supreme Court had the real opportunity to apply the said doctrine in a meaningful manner in M.I. Builders Pvt. Ltd. Vs Radhey Shyam Salu. In this case the

37. AIR 1999 SC 812.
39. 1997(1) SCC 38.
40. AIR 1999 SC 2468.
Lucknow Mahapalika permitted a construction of an underground shopping complex beneath a park making irreversible change to the nature of park which was violative of the doctrine of public trust. It is to be noted that by this decision of the Supreme Court public trust doctrine has become an integral part of the Indian law.  

It has been consistently held by the Supreme Court and the high courts that the right to a safe environment is implicit in Article 21 of the Indian constitution. The Supreme Court in K.M. Chinnappa Vs U.O.I. aptly stated that “Enjoyment of Life and its attainment including their 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”. Hygienic environment is thus an integral part of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment. In M.C. Mehta Vs U.O.I., the apex court emphasized the need of proper utilization of the natural resources of air, water and soil, without causing irreversible damage to environments on account of lack of effective enforcement of environmental laws and non compliance of the statutory norms. In aspects of town planning and ecological

41. AIR 1999 SC 2468, at P. 2498.
42. a) Municipal Council Ratlam Vs Virdichand, AIR 1980, SC 122;
   b) Subhas Kumar Vs State of Bihar, AIR 1991, SC 420 at 424;
   c) Vellore citizens forum Vs U.O.I. (1996) 5 SCC, 647 at 661;
   d) M.C. Mehta Vs U.O.I., 1988 SC 1037, 1048;
   e) M.C. Mehta Vs U.O.I., AIR 1991 SC 1132;
   f) M.C. Mehta Vs U.O.I., AIR 1988 SC 2693;
   g) Consumer Education and Research Centre Vs U.O.I., AIR 1995, SC 922.
43. AIR 2003 SC 724 at 731.
45. AIR 2004 SC 4016.
46. Ibid, P. 4044.
consideration, the Supreme Court and the High Courts have taken a firm and consistent stand that open spaces and parks should be protected and preserved as open spaces are the lungs of a densely populated region. The Supreme Court took this stand in Municipal Corporation, Ludhiana and others Vs Balindar Bachan Singh (Dead) by LRS and others and saved the land measuring 3.16 kanals which was reserved under the town planning scheme duly framed u/ sec. 192(2) of the Punjab Municipal Act, 1911 as open space to develop a park to provide lung space to the inhabitants of the locality.

Heritage conservation is a problem in face of modernization and urbanization in the present context. India’s heritage treasures bear the testimony of her shared knowledge, expectation and belief, inner conscience of and soul of motherland, which is our duty as well as the duty of the state to preserve and maintain as enjoined by Article 49 and 51A of the Indian constitution. Displaying a certain degree of judicial activism the apex court has recognized that the right to life extends preserving the tradition and cultural heritage and developed a rich corpus of cultural heritage jurisprudence by applying the principle of sustainable development, intergenerational equity and public trust doctrine and the precautionary principle approach. Construction in Coastal Regulation Zone (CRZ) is one among the prohibited activities. Coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action in the landward side upto 500 meters from the high tide lines (HTL) and the land between the low tide lines (LTL) and the high tide lines (HTL) have been declared coastal regulation zone (CRZ). No construction activity in the high tide zone line in CRZ area can take place without securing permission from the

competent authorities. The Gujarat High Court held so in *Piedade Filomena Gonsalves Vs State of Goa and ors.*

4.3 Right to Know:

Art 51(A)(g) of the Constitution of India makes the citizens responsible for protection of the Environment. It is, therefore, necessary that they have a right to know. The Apex Court in *Reliance Petro Chemicals Ltd Vs Proprietors of Indian Express Newspapers* held that there is a strong link between Article 21 and the right to know particularly where secret government decisions may affect health, life and livelihood. Reiterating this principle in *Essar Oil Ltd* the apex court also emphasized the role of voluntary organizations in the environment management. The right to information as an individual and group human right recognized in a number of international instruments is highly relevant to the environment. It not only constitutes an essential attribute of the democratic process and the principle of popular participation but also a key to the success of the environmental management programmes and the implementation of the laws on the environment.

4.4 Sustainable Development:

The term still is in search of a definition. Development of the Countries and eradication of poverty must be balanced against conservation of environment. Principle 3 of the Earth Summit Declaration (1992) at Rio states that

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the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations. The concept of sustainable development was mentioned in the Brundtland Report, 1987 which stated:

"Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs"

It is a principle that balances development and ecology. The Polluter Pays' principle is part of this concept.

The principle of sustainable development is at the basis of the fundamental principles of the law of environment. The principle was referred to in Vellore Citizen's Welfare Forum case. It was stated that there is today no conflict between development and safeguarding of ecology. It is a viable concept which has been developed after two decades from Stockholm to Rio.

In fact in several modern constitutions, the fundamental right to protect the environment from degradation is coupled with the right to sustainable development. The latest constitution of South Africa is an example where Article 24 deals with this aspect. It reads as follows:

"Article 24. Everyone has the right –
   a) to an environment that is not harmful to their health or well being; and
   b) to have the environment protected, for the benefit of present and future generation, through reasonable legislative and other measures that –
      i) prevent pollution and ecological degradation;
      ii) promote conservation and
iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

The National Commission to review the working of the Constitution refers to the right to safe drinking water, clean environment and proposed the insertion of Article 30D in the constitution. Article 30 D as recommended by the commission reads as follows:

"Article 30 D: Right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development. –

Every person shall have the right –

a) to safe drinking water;
b) to an environment that is not harmful to one's health or well being; and
c) to have the environment protected, for the benefit of present and future generations so as to –

i) prevent pollution and ecological degradation;
ii) promote conservation; and
iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

The National Commission states that the right to healthy environment and its protection and the right to development are “group rights” and now loosely described as “third generation rights”. The right to sustainable development has been described by UN General Assembly as an inalienable right.

“Development” is defined as a comprehensive economic, Social, Cultural and Political process which aims at the constant improvement of the well being of the entire population in development and in the fair distribution of benefits therefrom.”
The Rio Conference of 1992 declared human beings as centres of concern for sustainable development. Human being is entitled to a healthy and protective life in harmony with nature\textsuperscript{52}.

According to Johannesburg Declaration and Programme of Action 2002 economic development, social development and environmental protection are the three interdependent and mutually reinforcing pillars of sustainable development. Good governance within each country and at the international level is essential for sustainable development.

The apex court in the Vellore citizens forum stated that intergenerational equity, use and conservation of natural resources, environmental protection, precautionary principle and eradication of poverty are the essential components of the concept of sustainable development. In \textit{Narmada Bachao Andolan Vs U.O.I. and others}\textsuperscript{53} the apex court observed that sustainable development means the type of extent of development that can take place and which can be sustained by nature/ecology with/or without mitigation. At the heart of the apex court's approach to sustainable development is the recognition that both development and environment must go hand in hand, there should not be development at the cost of the environment and vice versa, but there should be development while taking due care and ensuring the protection of the environment. So the object of all laws on environment should be to create harmony between environment and development.

\textit{Ruma Pal}, \textit{I}' laid stress on this aspect in Essar Oil Ltd. in these words: "In a sense all development is an environmental threat. Indeed, the very existence of

\textsuperscript{52} Principle 1 of the Rio Conference, 1992.

\textsuperscript{53} (2000) 10 SCC 664.
humanity and rapid increase in the population together with consequential demands to sustain the population has resulted in concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at altar of the other.”

Court’s analysis of the problems relating to the environment during the year 2002 was more specific than the previous years. The constitutional perspectives were made clearer. Grey areas in the provisions of certain legislation were scrutinized and explained. Courts considered the concept of sustainable development as a guiding factor for striking a balance between environmental values and development needs. More attention was given to the pollution of ecologically sensitive areas. The attempt to tailor the doctrine of public trust in the use of regulatory powers of the State where there was no written law is notable.

The right to do business or occupation may come into conflict with the need to protect and improve the environment. In Basudev Yadav Vs State of Bihar\textsuperscript{54} such a question arose. The Patna High Court struck a balance and held that for protection of the environment, the fundamental right to trade and business under Article 19(1)(g) must be read together with provision in articles 14, 21, 48A and 51A(g) of the constitution.

\textsuperscript{54} AIR 2002 Pat 64.
In M.C. Mehta v U.O.I.\textsuperscript{55} the apex court laid emphasis on the provisions in the constitution to highlight in categorical term the duty of the state. The court said "Article 39(e), 47 and 48A collectively cast a duty on the state to secure the health of the people, improve public health and protect and improve the environment".

During the year the courts invoked and interpreted more provisions in the constitution in terms of the mandate to protect and improve the environment. The court relied on Article 162 to validate regulations, freed the right to environment from restriction of property rights under Article 300(A) and made an attempt to expand the frontiers of the writ of mandamus to stop environmental degradation. In the absence of a specific enacted law for remedying environmental maladies, judiciary seems to be ready to issue mandamus even against private persons having a public duty under the nuisance law. In a wide range of activities including ‘adopting a land use change’ or the use of agricultural land for non-agricultural purposes, wherein a citizen’s fundamental right under Article 21 of the constitution is violated and the means of livelihood are taken away the courts have not let themselves to be vociferous environmentalist. They are clear in their mind to adopt a balancing approach reconciling environment and development.

The precautionary principle doctrine lies embedded in the constitution and is now integral part of the constitutional mandate for the protection and improvement of the environment.

\textsuperscript{55} AIR 2002, SC 1696.
4.5 Vanishing Water Bodies and Judicial Intervention:

Tanks recharge ground water aquifers. This is essential for satisfying agricultural needs of the locality. There can also be other needs too. Can those facilities be ignored when tanks are filled up and transformed into residential site? In Intellectual Forum, Thirupathi Vs State of Andhra Pradesh the respondents contended that the tanks involved in the case had no water and fallen into disuse and remained barren for a long time. They argued that the proposed conversion could be allowed to reduce the congestion of Tirupati Town. The object was to develop colonies in public interests. The Andhra Pradesh High Court agreed with the respondent after distinguishing Dr.G.N. Khajuria Vs Delhi Development Authority, M.I. Builders Pvt. Ltd. Vs Radhey Shyam Sahu and Bangalore Medical Trust Vs B.S. Mudappa. The alienation in the present case doesn’t involve illegality, malafide, or arbitrariness but relates to use of lands for better environment and better satellite township. The decision of conversion was taken in public interest to promote a clean and hygienic environment.

A similar problem came before the Supreme Court in Hinch Lal Tiwari Vs Kamala Devi. In this case spaces, which originally were ponds by efflux of time became more or less level lands. The question was could they be used for housing colonies? The authorities of the state opined that this could not be done. However, the High Court disagreed and confirmed only one third of the land for the change of user. According to the Supreme Court the material resources of the

56. AIR 2001 AP 118.
57. AIR 1996 SC 253.
58. AIR 1999 SC 2468.
59. AIR 1991 SC 1902.
60. (2001) 6 SCC 496.
community like forests, tanks, ponds, hillocks and mountains need to be protected for a proper and healthy environment. The court noticed that in the records these were described as ponds. It opined that the government and other authorities should have noticed that a pond was falling in disuse and should have bestowed their attention to develop the same. Such an effort would, on one hand, have prevented ecological disaster and on the other, provided better, environment for the benefit of the public. Eternal vigilance is the best protection. In J.N. Chaturvedi Vs Commissioner, Allahabad, the court said that “in a democracy the people are supreme and hence all authorities are accountable to the citizens”.

4.6 Ecology and Planning Conflict:

In live Oak Resort (P)Ltd. Vs Panchgani Hill Station Municipal Council. The Bombay High Court examined the ecological sensitivity and large scale illegal construction and deforestation in the Mahabaleswar Panchgani region and issued certain direction to stop the ecological imbalance and avoid a biodiversity crisis. In the process the court approved the order of the first respondent municipal council to demolish the additional floor constructed by the appellants. Leaning towards balancing the ecology and development the Supreme Court disagreed with the high court. Quoting the People United for Better living in Calcutta Public Vs State of West Bengal and Goa Foundation Vs Diksha Holidays (P)Ltd the apex court held that the high court was in error because it has not distinguished the power of the municipal council to sanction or reject the building plan from that of the director, town planning, to sanction additional

62. (2002) 8 SCC 329 at 331, 332,
63. AIR 1993 Cal 215.
Floor Space Index (FSI) of buildings. The provision in 1971 circular for higher FSI to luxury hotels, the governmental advice to amend rules to the contrary and the guidance sought by the municipal council from the director of planning on the question are the factors the high court ought to have considered before it endorsed demolition. According to the Apex Court the provisions in bye laws that empowers the director to grant special relaxations to supersedes and imposes a statutory duty on the council to abide by his directions. However, the power of the director of town planning to grant additional, FSI is limited. Relaxation should not lead to adverse impact upon the health of the inhabitants in the neighbourhood. Nor should it violate fire safety, structural safety and public safety of the buildings nearby. The power is confined to the grant of additional FSI.

4.7 Environment Courts and Judiciary:

Many a time in the past the apex court emphasized the need for such courts. The attempt to realize this ambition by bringing a bill was frustrated by the lack of political will. Andhra Pradesh Pollution Control Board-Il Vs M.V. Naydu made another impassioned plea. The court referred to the other systems obtaining in Australia and New Zealand and opinion of environmental jurists. It suggested that the law commission of India should consider this particular aspect of environmental law in addition to judicial members. Will the law commission pay heed to this well thought out proposal?

In case of a change in land use pattern, it is emphasized that taking note of the environmental hazards to the adjacent agricultural lands and the procedure

for converting the agricultural lands for non-agricultural use must be followed. It also proposed that a high level expert Committee might make an inquiry to examine the topographical and geographical situation of the site after hearing the parties and the officers of the pollution control board. The committee should consider the impact of land use change on the agricultural lands before the permission for a non-agricultural purpose was given. Relying on the Article 162 of the Constitution of India, the court freed the right to environment from the restrictions of property right under Article 300(A) and made an attempt to expand the frontiers of the writ of mandamus to stop environmental degradation. In the absence of a specific enacted law for remedying environmental maladies, judiciary seems to be ready to issue mandamus even against private persons having a public duty under the nuisance law. The courts are clear in their mind to adopt a balancing approach reconciling environment and development.

i) Judgments of the Supreme Court and Various High Courts:

The Supreme Court of India has made contribution to environmental jurisprudence of our country. It has entertained quite a lot of genuine public interest litigation (PIL) cases or class-action cases under Article 32 of the constitution. So have the High Courts under Article 226 of the constitution. The courts have issued various directions on a number of issues concerning environment as part of their overall writ jurisdiction and in that context they have developed a vast environmental jurisprudence. They have used Article 21 of the constitution of India and expanded the meaning of the word 'life' in that sense as it was including 'a right to healthy environment', 'right to safety', 'right to wholesomeness of the environment', 'right to hygienic living condition', and right to shelter as was implicit in the constitution provisions.
The Supreme Court in *Sachinath Pandey Vs State of West Bengal* 65 laid down rules that whenever a problem of ecology is brought before the court, the Court is bound to bear in mind Article 48A of the constitution and Article 51A(g). When the court is called upon 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 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 must depend on the circumstances of the case. The court may always give necessary directions.

The limited nature of scrutiny is no longer followed today by the courts. Today the courts appoint independent experts and test the claims of parties on the basis of the expert advice that is given to the court.

The court referred to the ancient civilization of our country in *Rural Litigation and Entitlement Kendra Vs State of U.P.* 66 The Supreme Court stated that "over thousands of years, man had been successfully exploiting the ecological system for his sustenance but with the growth of population, the demand for land has increased and man has started encroaching upon Nature and its assets". The consequences of such interference with ecology and environment have now come to be realized. The court reminds that it has always to be remembered that these are permanent assets of mankind and are not to be exhausted in one generation. Preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must

65. AIR 1987 SC 1109.
undertake. It is a social obligation and let us remind every Indian Citizen that it is his fundamental duty as enshrined in Articles 51A (g) of the constitution.

Indian Scriptures were quoted again in the case of Rural litigation Environment Kendra Vs State of Uttar Pradesh, where the Supreme Court quoted from the Atharva Veda to the following effect:

"Man’s paradise is on earth; this living world is the beloved place of all; It has the blessings of Nature’s bounties; Live in a lovely spirit”.

The Supreme Court observed:

"Environmentalists ‘conception of the ecological balance in nature is based on the fundamental concept of nature as a series of complex biotic communities of which man is inter dependent part’ and that it should not be given to a part to trespass and diminish the whole. The largest single factor in the depletion of the wealth of animal life in nature has been the ‘civilized man’ operating directly through invading or destroying natural habitats”.

Summary:

The above judgments of the Supreme Court of India will show the wide range of cases relating to environment, particularly in the constructional activities that came to be decided by the said Court from time to time. The court has been and is still monitoring a number of cases. It is to be noted that the court constantly referred environmental issues and has been framing schemes, issuing directions and continuously monitoring them. Some of these judgments were given in original writ petition filed under Article 32 while the others were decided in appeals filed under Article 136 against judgments of the High Courts referred in writ petitions filed under Article 226.
These cases have added tremendous burden on the High Courts and the Supreme Court. The proposal for Environmental Courts is intended to lessen this burden. But the Supreme Court in the various cases referred to above, laid down the basic foundation for environmental Jurisprudence in the country.

ii) Environmental Courts in other Countries

Australia and New Zealand have taken the lead in establishing Environmental Courts that are manned by Judges and Commissioners. The Commissioners are generally persons having expert knowledge in environmental matters.

**Australia: (New South Wales)**

In Australia in the State of New South Wales, the land and Environment Court was established by legislation in 1980 under the land and Environment Court Act, 1979. At the same time, the Environment Planning and Assessment Act, 1979 was also enacted. It is a Superior Court of record and is composed of Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review, and enforcement functions in relation to environmental and planning law.

The New South Wales lands and Environment Court Act, 1979 of New South Wales states that the Court shall consist of the Chief Judge and such other judges as may be appointed by the Governor, and of commissioners who shall be appointed by the Governor and the qualifications prescribed for them are as follows:-

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68. Ibid, Section 12.
a) Special knowledge of and experiences in the administration of local government or town planning;

b) Suitable qualification and experience in town or country planning or environmental planning;

c) Special knowledge of and experience in environmental science or matters relating to protection of the environment and environmental assessment;

d) Special knowledge of and experience in the law and practice of land valuation;

e) Suitable qualifications and experience in architecture, engineering, surveying or building construction;

f) Special knowledge of and experience in the management of natural resources or the administration and management of crown lands, lands acquired under the closer settlement Acts and other lands of the crown; or

g) Suitable knowledge of matters concerning land rights for Aborigines and qualifications and experience suitable for the determination of disputes involving Aborigines; or

h) Special knowledge of and experience in urban design or heritage.

Section 12 of the said Act further States as follows:

"In appointing commissioners, the Minister should ensure, as far as practicable, that the court is comprised of persons who hold qualifications across the range of areas specified in this subsection".
Certain provisions of the Act deal with orders of conditional validity for certain development consents. It permits invalidation of consents to development for not taking steps or complying with conditions of the consent granted by the Minister under the Environmental planning and Assessment Act, 1979.

The Act states that the proceeding under the Act shall be conducted with as little formality and technicality as possible and as much expedition. The court is not bound to follow rules of evidence.

**New Zealand:**

The New Zealand Environment Court was established under the Resource Management (Amendment) Act, 1996 by amending the 1991 Act and it replaced the former Planning Tribunal. Prior to the introduction of the Resource Management Act, 1991 (RMA) the statute that applied was the New Zealand’s Town and Country Planning Act, 1977 which was based on the British Model.

The Environment Court in New Zealand under the Amendment Act of 1996 is an independent specialist court consisting of Environment Judges (who are at the level of the District Judge) and the Environment Commissioners (technical experts). In appointing the Judges and the Commissioners of the Court the Governor-General is to have regard to the need to ensure a mix of knowledge and experience-including commercial and economic affairs; local government, community affairs, planning and resource management; heritage protection; environmental science; architecture, engineering; minerals; and alternative dispute resolution processes.

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The Environment Court encourages mediation and arbitration and a high proportion of cases are resolved by such agreement, usually presided by an Environment Commissioner alone. The New Zealand Environment Court usually consists of one Environmental Judge and two commissioners.

The New Zealand Environment Court is not bound by rules of evidence and it is free to establish its own rules of procedure. Consequently the proceedings are often less formal than those in other courts, lawyers do normally represent the parties but anyone may appear in person and the court encourages individuals and groups to represent themselves.

The New Zealand Environment Court also hears references on regional and district statements and plans (development plan equivalents) and it can make declaration i.e. interpret the law, and it can enforce the RMA through civil or criminal proceedings. Local authorities are obliged to make necessary amendments in the plans to give effect to the Court’s decisions. The Court’s duties include avoiding, remedying or mitigating adverse effect on the environment and a general duty to promote sustainable management, in accordance with the RMA. Another advantage is that the court hears cases relating to enforcement and views breaches of environmental legislation seriously. It can impose and does impose significant fines. It can also hear enforcement cases referred to it by third parties – enforcement is not at the discretion of the local authorities, as it is in the UK.

The Bill of the New Zealand Amended Act of 1996 was aimed to address several components of the law one of which relates to heritage and archeology which recognize the protection of historic heritage as a matter of national
importance. The Bill introduces a new definition of environment that focuses more closely on the 'biophysical environment'.

Environment Commissioners and Deputy Environment Commissioners are contemplated by the Act. Section 253 of the Act refers to their eligibility. It states that the Environment Commissioners must have knowledge and experience in -

a) Economics, commercial and business affairs, local government, and community affairs;

b) Planning resources management and heritage protection;

c) Environmental Sciences, including the Physical and Social Sciences;

d) Architecture engineering, surveying, minerals technology, and building construction;

e) Alternate dispute resolution processes;

The act has defined the powers of the court and proceedings. It states that in proceedings before the court under the Act, the Minister, any local authority, any person having any interest in the proceedings greater than the public generally any person representing some relevant aspect of public interest and any party to the proceedings, may appear and may call evidence or any matter that should be taken into account in determining the proceedings. Other must give 10 days’ notice to the court, if they wish to appear; Section 275 refers to appearance in person or representative, and section 276 with evidence. It states that the court may receive any evidence which it considers appropriate or it may call for any evidence which it considers will assist in the making of a decision or a recommendation and call any person before it for that purpose.
United Kingdom:

U.K. has not yet established Environmental Tribunals for environmental issues. But the country is in the process of establishing such courts soon.

The Royal Commission observed that establishing an Environmental Tribunal would be a significant contribution to a more coherent and effective system of environmental regulations.

The Magistrate Courts, the Crown Courts (Appellate Courts), the courts of Criminal Appeals; the country courts and the High Court were and are dealing with the planning and environmental cases.

The Royal Commission referred to the 1990 E.G. Directive on the freedom of access to information on environment as implemented in U.K. by the Environment Information Regulations 1992 and the 1998 convention on Access to Information, Public Participation in Decision Making and Access to Justice on Environment Matters and to several aspects as to locus standi of individual and environmental organizations in respect of planning and development as well as environmental matters.

iii) Environmental Courts or Appellate Environmental Bodies in India as at Present

Apart from the Superior Courts, (The Supreme Court and the High Courts) who are exercising the wide range of powers on a variety of environmental issues under Article 32 and Article 226 respectively, the subordinate courts exercise powers in regard to public and private nuisance.

70. the Code of Civil Procedure, 1908, Section 9 and Section 91.
Criminal courts exercise powers under various sections of the Indian penal code dealing with offences relating to environment\textsuperscript{71}. But the sorry state of affairs is that the subordinate courts are already over burdened with huge pending cases and therefore, environmental cases are not normally given any priority in the matter of disposal. Of course, if the issue comes before the High Court or the Supreme Court under writ jurisdiction whether the matter is one brought by the affected party or parties or in a public interest litigation, these courts take up these matters faster but the cases are not taken up day by day as may be done by an Environmental court dealing exclusively with such cases.

It is to be noted that none of the above-mentioned courts are courts having exclusive jurisdiction as regards environmental issues and the result is that there is delay in their disposal as compared to the time within which any Special Environmental court dealing only with issues relating to environment could have taken. Further, the existing courts today lack independent expert advice on environmental matters by a statutory panel attached to the court and depend mostly on the expert evidence that may be adduced by the parties. The various Rules made under Section 3 of the Environment (Protection) Act 1986 have provided for establishing of authorities and there are authorities or in some cases appellate authorities constituted but there is no appeal to a judicial body. Nor do the appellate authorities, wherever they are constituted, have any expert assistant. They are all bureaucrats. Only in Andhra Pradesh the appeal under section 28 of the Water Act, 1974 read with AP (Water P and P) Rules 1977 lies to a High Court Judge\textsuperscript{72}. These except in Andhra Pradesh, there is no appeal to a

\textsuperscript{71} Pulling down or repairing buildings (Section 291 I.P.C.): endangering life or personal safety of others (Sections 336 to 338 of I.P.C.); Section 133, Cr. P.C.

\textsuperscript{72} A.P. Pollution Control Board Vs Prof. M.V. Nayudu, 1999 (2) SCC 718, at 735.
body that consist of a Judicial Member. There are also no experts to assist the appellate authority.

Therefore, it is noticeable that several of the Special Statutes e.g. Environment (Protection) Act, 1986; Water (P & C.P.) Act, 1974, Air (P & C.P.) Act, 1981, delegate power to the State Governments/Union Governments to designate appellate authorities. Hence, the appeal lies generally to various officers of government or Departments of Government. Except in one or two cases, the appeals do not lie to a judicial body comprising a Judicial Officer. In no case does the appellate authority have the assistance of experts in the field of environment.

Considering the existing position in India and referring to the establishment of environmental courts abroad, the law commission of India is of the opinion that the present system is not satisfactory so far as disposal of these appeals are concerned. In the view of the commission, such appeals must lie to an appellate court having special jurisdiction and must comprise of persons who have or had judicial qualifications or have considerable experience as lawyers. They must be assisted by experts in environmental science. It is now well recognized in several countries that the appeal must lie to court manned by persons with judicial knowledge and experience assisted by experts in various aspects of environmental science.

**Two other statutory environmental tribunals and defects therein**

(1) National Environmental Tribunal Act, 1995 was enacted by the parliament with one of the views to establish Tribunal for effective and expeditious disposal for cases arising from accident occurring from hazardous occupation and for giving relief and compensation for damages to person,
property and environment and for matters concerned therewith or incidental thereto. The Act provides for the composition of the Tribunal\textsuperscript{73} and clearly states the requirement of the qualification, knowledge of or experience in legal, administrative, scientific or technical aspects of the problems relating to environment. But since the Act itself has not been notified, the Tribunal has not been constituted so far. Such an important environmental Tribunal envisaged by parliament has unfortunately not come into being.

(2) The National Environmental Appellate Authority Act, 1997 was also intended to provide for the establishment of a National Environmental Appellate Authority. The Appellate Authority did not have much work in view of narrow scope of its jurisdiction. It dealt with very few cases. After the term of the first chairman was over, no appointment has been made. Thus these two National Environmental Tribunals are today unfortunately non functional. One had only jurisdiction to award compensation and never actually came into existence. The other came into existence but after the term of the first chairman ended, none has been appointed.

It is in the background of this experience with the laws made by parliament with regard to Environmental Tribunals that the law Commission of India proposes to make appropriate proposals for constitution of environmental courts that can simultaneously exercise appellate power as a civil court, and original jurisdiction as exercised by civil courts.

\textsuperscript{73} Section 9(1) of the National Environmental Tribunal Act, 1995.
iv) **Competence of the Parliament in India to make a Law on the Subject of Environmental Courts:**

Article 252 of the constitution empowers the parliament to legislate for two or more States by consent and such legislation made by the Parliament may be adopted by any other State. Article 253 empowers the Parliament 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. Entry-13 of List-I of Schedule-VII enables parliament to make laws under this entry even though the subjects may fall within the domain of the State legislatures. Article 253 gives overriding power to parliament in this behalf. In *S.Jagannath Vs Union of India* the Supreme Court observed that Article 253 is in conformity with the object declared by Article 51(C) (fostering respect for international law and treaty obligations). Thus an enactment made under entry 13, List-I, Schedule-VII read with Article 253 to implement an international agreement would override and prevail over any inconsistent State enactment.

The National Environmental Tribunal Act, 1995 was passed by the Indian Parliament to give effect to commitments to the United Nations Conference or Environment and Development held at Rio de Janeiro in June 1992. The National Environment Appellate Authority Act, 1997 was aimed at establishing a National Environment Appellate Authority. Thus there is no difficulty to constitute the Environment Courts with appellate powers by an enactment passed by the parliament, by amending or repealing provisions in those Acts namely the Air (P. & C.P.) Act, 1981; the E.P. Act, 1986; the National Environment Tribunal Act,

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74. 1997(2) SCC 87.
1995 and the National Environment Appellate Authority Act, 1997. This power of
the Parliament is an independent power and is not controlled by Article 252.

The Tiwari committee appointed by Government for recommending
legislative measures and administrative machinery for ensuring Environment
Protection recommended that a new entry as ‘environment protection’ be
introduced in List-III to enable the centre as well as State Governments to
legislate on environmental subjects. This has not been done so far.

Therefore, the constitution of Separate Environment courts by a Statute of
Parliament under Article 253 could be justified because this would be an act of
implementation of any decision taken at an International Conference. The fact
that the NET Act, 1995 and the NEAA Act, 1997 were passed by the Parliament
for the purpose of implementing the decisions at the Rio Conference of 1992 and
Stockholm Conference of 1972. And it shows that the proposed Environmental
Courts Act can also be similarly passed by Parliament because all these Acts are
intended to provide speedy adjudicatory bodies in respect of disputes arising in
environmental matters.

Principle-10 of the Rio declaration on Environment and Development, 1992 refers
to effective access to judicial and administrative proceedings including redress
and remedy.

The proposed Environmental Courts will also be referable to Article 247
read with Entry-13 of List-I.

Article 247 reads as follows:

Power of parliament to provide for the establishment of certain additional
courts—Parliament may by law provide for the establishment of any additional
courts for the better administration of laws made by parliament or of any existing laws with respect to a matter enumerated in the Union List. Text of Article 247 is taken from the Canadian Constitution. The Calcutta High Court dealt with this Article elaborately in *Indu Blusam De Vs State*, but the word ‘Additional Courts’ have not come for interpretation. The law Commission of Indian in its 186th Report, expressed its view that the words ‘Additional Courts’ must be construed widely and apply also to special courts like the proposed Environmental Courts.

v) Certain Fundamental Principles to be Followed by Environmental Courts:

The Law Commission of India in its 186th Report has suggested that the proposed Environmental Court must follow the following fundamental Principles evolved through Judicial Decisions from time to time :-

1) The Polluter Pays Principle;
2) Absolute Liability Principles;
3) Precautionary Principle;
4) The Principle of Prevention;
5) The Principle of New Burden of Proof;
6) Sustainable Development Principle;
7) The Principle of Inter Generational Equity; and
8) The Public Trust Doctrine.

*Those doctrines are explained in brief as follows:*

**The Polluter Pays Principle:**

The polluter pays principle was first adopted at international level in 1972 OECD Council Recommendation on Guiding Principles concerning the international Aspects of Environmental Policies. In international law, the
principle is incorporated in 1980 in Athen Protocol, the Helsinki Convention and a host of other treaties and conventions. The principle was first stated in the Brundtland Report in 1987. This principle was adverted to in Indian Council for Enviro-legal Action Vs Union of India 75.

"In the context of Indian Condition the principle means to state that when the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.

In Vellore Citizen’s Welfare Forum Vs Union of India 76. Kuldip Singh, J. Stated:

The polluter pays principle as interpreted by the court means that the absolute liability for harm to the environment extends not only to compensate the victims of the pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is the part of the process of Sustainable Development and as such the polluter is liable to pay the cost to the individual suffers as well as the cost of reversing the damaged ecology.

The principle is laid down in section 3 of the National Environment Tribunal Act, 1995.

**Absolute Liability Principle:**

The principle is called no fault principle that means fault need not be established. The European Commission in its white paper on Environmental

75. 1996 (3) SCC 212.
76. 1996 (5) SCC 647, at 659.
Liability stressed the liability independent of fault must be favoured for two reasons:

    First, it is very difficult for plaintiff to establish fault in environmental liability cases; and

    Secondly, it is the person who undertakes an inherently hazardous activity, rather than the victim or society in general who should bear the risk of any damage that might ensue.

    Our court or statutes have confined such absolute liability only to cases where injury to person or property is occasioned by use of ‘hazardous substances’.

    In Oleum Gas Leak Case, M.C. Mehta Vs Union of India\textsuperscript{77} the Supreme Court laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and to those residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken.

    The enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without negligence on its part. The principle laid down in Reyland Vs Fletcher was modified and the absolute liability principle was evolved by the Indian Judiciary. As per the principle of Absolute liability it is no

\footnotesize{77. AIR 1987 SC 1086}
longer permissible in the case of injury by use of hazardous substance, to prove merely that the injury was not foreseeable or that there was no unnatural use of the land or premises by the factory, as was the position under the law laid down in *Reyland Vs Fletcher*. The principle of absolute liability was reiterated in Indian Council for *Enviro-legal Action Vs Union of India*, and other cases by the Supreme Court of India.

**Precautionary Principle:**

The precautionary principle had its origin in the mid-1980s from the German Vorsorgeprinzip. The decisions adopted by the states within the North Sea Ministerial Conference mark the first use of this principle in international law. It soon came to be included as a general principle of environmental policy in the U.N. Economic Commission of Europe in 1990 (UNECE) in Bergen. It then came to be accorded universal recognition in principle 15 at Rio in the 1992 UN Conference on Environment and Development which resulted in the Declaration on Environment and Development.

**Principle 15 of Rio Conference of 1992 reads as follows:** “In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing cost effective measures to prevent environmental degradation.”

National legislations in EC Member States (Germany, France, Belgium, and Sweden) have adopted it. It is applied in U.K. because of Article 174 (2) of EC Treaty. It is applied also by US Courts and in Australia.
The Supreme Court of India in the case of *Vellore Citizen’s Welfare Forum Vs Union of India*, referred to the precautionary principle and declared it to be part of the customary law in other country. In this case Kuldip Singh, J, Stated:

“In view of the above mentioned constitutional and statutory provisions, we have no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environmental law of the country.” To ensure that great caution is taken in environmental management; implementation of the principle through judicial and legislative means is necessary.

**The Principle of Prevention:**

The Principle of prevention takes care of reckless polluters who would continue polluting the environment in as much as paying for pollution is a small fraction of the benefits they earn from their harmful acts or omissions. The concept of Sustainable Development draws support from the Prevention Principle. Environment Impact Assessment is the crucial procedure that seeks to ward off prevention.

**The Principle of New Burden of Proof:**

The UN General Assembly Resolution of 1982 on World Charter of Nature established this principle. It Stated:

“Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature.”
In the Vellore Case, Kuldip Singh, J, observed as follows:

"The onus of proof is on the actor or the developers/industrialist to show that his action is environmentally benign."

In A.P. Pollution Control Board Case, it was explained that the precautionary principle has led to the new 'burden of proof' principle. In environmental cases where proof of absence of injurious effect of the action is in question, the burden lies on those who want to change the status quo. This is often termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the change could be compelled to shoulder the evidentiary burden, a procedure that is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less Polluted State should not carry the burden and the party who wants to alter it must bear this burden.

The Principle of Inter Generational Equality:

The principles 1 and 2 of the 1972 Stockholm Declaration and the principle 3 of the Rio Declaration 1992 refer to this concept. The UN General Assembly Resolution 377 of 1980 also refers to the need for maintaining the balance between development and conservation of nature in the interest of present and future generations. The Philippines Supreme Court entertained a case by a group of citizen representing the future generations for preservation of the ecology.78 The Constitution of Philippines of 1987 confers in Article 11, Section 16 a fundamental right to a balanced and healthful ecology and mandates the state to

78. Minors Opasa Vs Secretary of the Department of Environment and Natural Resources (DENR), (1994) 33 ILM 173.
protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. The President of Philippines issued an executive order in 1987 in that behalf which specifically referred to the right so conferred not only for the present generation but for future generation as well.

In the above stated case, a group of Philippines minors named OPASA, joined by their respective parents representing their own generation as well as generation yet unborn urged the Supreme Court to enforce their and their unborn successor's constitutional right to a balanced and healthful ecology, guaranteed under Article 11, Section 16.

The Court said: "The minor's assertion of their right to sound environment constitutes at the same time, the performance of their obligation to ensure the protection of the right for generations to come. The present generation, the court opined is a trustee and guardian of the environment for succeeding generations or else, the future generations would inherit nothing but parched earth."

The Public Trust Doctrine and Sustainable Development principle had already been discussed. Hence these and other principles must be required to be applied by the Environment Courts and provision must be made there for in the Statute.

vi) The One Hundred and Twenty Ninth Report of the Law Commission of India in the Context of Urban Litigation

In the context of urban litigation, it was pointed out by the law commission of Indian in its working paper that there was tremendous congestion in dockets in urban centres on account of litigation explosion with consequent delay in resolution of disputes due to the current monolithic system of
administration of justice which offered the same model for resolution of disputes by the same long drawn procedures and thus it was felt by the commission that in certain areas of urban litigation, reform was not only overdue, but was urgently needed. The 129th Report of the Law Commission of India aimed at reinventing the system of administration of justice.

It is admitted on all hands that this monolithic approach requires to be largely abandoned. The State Court System, which has been operating in this country since the advent of the British Rule requires to be modified by inviting people’s participation in it. Therefore, a participatory model has been recommended for resolving disputes in rural areas. The working paper invited a discussion whether the same model with necessary modifications can be of help and use in dealing with urban litigation. The working paper also sets out the nature of litigation coming to Urban Courts, the causes for delay in disposal of the same and tentative suggestions for remedying the situation. The court system set up by British Rulers has continued to be operative till today with minor modifications. The system has practically become dysfunctional. The system is in total disarray. The gross and unreasonable delay in disposal of disputes has made the litigants frustrated and the landlords/promoters/developers have tendency to adopt the devices whereby they are utilizing the services of members of the underworld whose sheer threat and violence inculcate such fear in the mind of general peoples or interest groups in society.

**Neighbourhood Justice Centre**

The Law Commission has suggested in its Report an alternative suggestion to set up some form of Neighbourhood Justice Centre for disposing of
the dispute, most conveniently. Setting up Neighbourhood Justice Centre is of recent origin. By 1980 about over one hundred such centres have been set up in different parts of United States of America. His counterpart, though not wholly analogous, is Comrade’s court in the then USSR. An integrated centralized justice system has become static and there was a demand for decentralization of justice system by creating complementary system. The model of such decentralized system was almost wholly to be different from the existing system. This thinking gave rise to the concept of setting up Neighbourhood Justice Centres. The departure will be noticed that while the court has an adjudicatory approach, the Neighbourhood Justice Centre would try to reconcile the two parties and bring them to a common understanding of problems as far as possible.

The Neighbourhood Centre may consist of three local residents and if a retired judge is residing in the area preferably he should be included. Such a locally situated centre holds promise of being more conveniently located, more considerate and much faster in processing cases than the state set up court system. Legislation would be necessary to set up such centres. It would not be difficult to setup such centres in urban areas. Fairly well educated local residents would be available to work into centres. And their knowledge of local conditions, traditions, and local needs would assist them in an informal manner to resolve the dispute. And this would reduce the load on the court system considerably.

Various suggestions were made for effectively dealing with urban litigation. The law commission is of the opinion that the participatory model should be introduced along with other existing model of adjudicatory system.
vii) Proposal to Constitute Environmental Courts:

Pursuant to the observation of the Supreme Court of India in four judgments the Law Commission of India has designed an idea of a multifaceted Environmental Court with judicial and technical/scientific inputs as formulated by Lord Woolf in England recently and of an Environmental Court legislation as they exist in Australia, New Zealand and other countries. Having regard to the complex issues of fact of science and technology which arise in environmental litigation, it is now recognized in several countries that the courts must not only consist of Judicial Members but must also have a Statutory Panel of members comprising Technical or Scientific experts. The Commission in its 186th Report on 'Proposal to constitute Environmental Courts' has recommended that these courts must be established to reduce the pressure and burden on the High Courts and the Supreme Courts. These Courts will be Courts of fact and law, exercising all powers of a civil court in its original jurisdiction. They will also have appellate judicial powers against orders passed by concerned authorities under different environment related Acts. Such a proposal of Environmental Court legislation can be made under Article 253 of the constitution of India, read with Entry 13A of list I of schedule VII to give effect to decisions taken in Stockholm Conference of 1972 and Rio Conference of 1992 and the proposed Environment Courts at the State Level will, in the Commission's View, be accessible to citizens in each State.

In Indian Council for Enviro-Legal Action Vs Union of India the Supreme Court observed that Environmental Courts having Civil and Criminal


80. 1996(3) SCC 212.
Jurisdiction must be established to deal with the environmental issues in a speedy manner. In *M.C. Mehta Vs U.O.I.* the Supreme Court said that wherein environment cases involve assessment of scientific data, it was desirable to set up environment courts on a regional basis with a professional judge and two experts keeping in view the expertise required for such adjudication. As regard to the constitution of appellate authorities the commission pointed out that except in one state, in other states they were manned only by bureaucrats. These appellate authorities were not having either judicial or environmental backup on the Bench. The Supreme Court opined that the law commission could examine the disparities in the constitution of these quasi-judicial bodies and suggested a new scheme so that there could be uniformity in the structure of the quasi-judicial bodies which supervise the orders passed by administrative on public authorities, including the orders of the Government. The Supreme Court, in *M.C. Mehta v U.O.I. 1986 (2) SCC 176 (202)*, said that it was desirable to set up environment courts on regional basis with a professional judge and two experts keeping in view the expertise required for such adjudication.

The National Environmental Appellate Authority constituted under the National Environmental Appellate Authority Act, 1997; for the limited purpose of providing a forum to review the administrative decisions on Environmental Impact Assessment, had very little work. Since the year 2000, no Judicial members had been appointed. So far as the National Environmental Tribunal Act 1995 is concerned the legislation has yet to be notified despite the expiry of eight years. Since it was enacted by the parliament the Tribunals under the Act is yet to be constituted. Thus, these two Tribunal are non functional and remain only on paper. So an Environmental Court at the level of each State is proposed so as

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81. 1986(2) SCC 176 (202).
to be accessible to litigants in each State. Access to justice, particularly in matters relating to environment is an essential facet of Article 21 of the Constitution.

In a very significant manner, the Supreme Court of India observed in \textit{Tarun Vs Union of India},\textsuperscript{82} in regard to the importance of environmental issues by quoting the opinion of a Great American Judge as follows:

"A Great American Judge emphasizing the imperative issue of environment said that he placed Government above big business, individual liberty above government and environment above all".

\textbf{4.8 Judiciary on Right to Housing:}

Right to Shelter or Housing is not explicitly mentioned in the constitution or in any Statute. By the wider interpretation of Fundamental Rights in the light of Directive Principles, adopting the principles of harmonious construction\textsuperscript{83} the Supreme Court excavated some new rights to be regarded as fundamental one such as right to food, livelihood and housing from the ore of Directive Principles. The Court held that both the Fundamental Rights and Directive Principles constitute an organic document aimed at the same goal of rendering social justice, by way of eliminating inequalities in status, facilities and opportunities. The Court observed that a balance between the two is to be maintained to keep up the harmony of the constitution which is an essential features of the basic structure of the constitution\textsuperscript{84}. The Court follows that the Directive Principles contained in Article 39(b) & 39(c) shall have supremacy on the Fundamental

\textsuperscript{82} AIR 1992 SC 514.
\textsuperscript{83} In re Kerala Education Bill. AIR 1958, SC 956.
\textsuperscript{84} Minerva Mills Limited Vs U.O.I., AIR 1980, SC 1789; also Unni Krishnan Vs State of A.P. AIR 1993, SC 2178.
Rights contained in Article 14 & 19. Even the Directive Principles are more fundamental than fundamental rights. Therefore, in the light of above mentioned observation the Supreme Court recognized 'housing' as fundamental right in some specific circumstances. In these cases the Supreme Court referred Article 21 & Article 19(1)(e) of the constitution in order to recognize the human right to shelter as fundamental one emanating from those two constitutional premises. The Court further observed that State has constitutional obligation to facilitate and to give opportunity to poor masses by distributing its wealth and resources for settlement of life and creation of shelter over their heads to make the right to life, a viable and significant one.

In Olga Tellis Vs Bombay Municipal Corp the Apex Court attempts to locate a Fundamental Right to housing (Shelter) through expansive interpretation of the constitution, by conceding the right to dwell on pavements or in slums by the indigent and poor introduced the concept of right to shelter indirectly. In State of Karnataka Vs Narashimha Murthy the Supreme Court held that Article 19(1)(e) guarantees to citizens the freedom of residence which is the basis of right to Shelter and this interpretation was strengthened again in Chameli Singh V State of U.P. Where a three Judge Bench held that right to social and economic justice conjointly commingles with right to shelter as an inseparable component for meaningful right to life. Providing house sites and houses in the implementation of the directives contained in Article 38 and 39(b) of the

87. AIR 1986 SC 180; (1985) 3 SCC 545.
89. AIR 1996 SC 1051.
constitution was upheld. The constitution aims at ensuring fuller development of every child that would be possible only if an appropriate house is provided. This was observed in *Shantistar Builders Vs Narayan Khimalal Totane* 90.

However, the ultimate object of the Directive Principles is to liberate the Indian masses, free them from Centuries old coercion, ignorance, abject condition and to prevent exploitation. The Union of India in implementing the above Directive Principles in Article 39(b) and in discharging of its obligation under Article 38 & Article 46 to provide facilities and opportunities to the dalits, has allotted two acres of land in Bombay city for construction of houses to make their right to settlement and life meaningful to enable them to live with dignity of persons and provided economic empowerment of settled residence to enjoy the right to meaningful life91.

4.9 Right to Life—Oustees and better Amenities:

A question similar to *Olga Tellis*92 case with more environmental concern was before the Andhra Pradesh High Court in *Kamal Nagar Welfare Association Vs Government of Andhra Pradesh.*93 The Nandavanam project was designed to beautify Moosi river bed area which had been encroached and occupied by slum dwellers. The project was challenged as an infringement of right to life, livelihood, shelter, property, and as contrary to directive principles contained in Articles 39 and 46 of the constitution. The court found that the project was not only just for beautification but also for several other benefits such as congestion

90. AIR 1990 SC 630; (1990) 1 SCC 520.
92. Olga Tellis v Bombay Municipal Corporation, AIR 1986 SC 180
93. AIR 2000 AP 132
and provision for lung space. The oustees, though they are encroachers were rehabilitated to a more healthier and congenial habitat with better civic amenities. Aiming at larger interest of society at the cost of inconvenience to a microscopic population, such a project would never be against right to shelter declared as a basic right under international human rights Covenant nor against fundamental rights under Article Articles 14, 21 of the constitution.

4.10 Activist Role of the Apex Court in Saving the Lungs of the City*

The Apex Court expressed its view in judgment of a number of recent cases that the neglect of the importance of open spaces from the ecological and environmental angle, and the protection of wetlands and water bodies even in congested urban areas can spell doom for the residents because these green spaces are the lungs of the city and the health of residents is directly related to the ratio of built up area and open area.

Similar views were expressed by the apex court in Sushanta Tagore Vs Union of India\textsuperscript{94} while dealing with the challenge to the huge residential and commercial complexes proposed in Santiniketan/Visva Bharati, West Bengal which the honourable judges noted would change the place almost beyond the recognition of the poet.

Fact of the Case: The appellants, who are residents of Santiniketan, filed a Public Interest Litigation before the Calcutta High Court, aggrieved by the continuing process of defacement of the ambience and environment which was destroying


* Source-Supreme Court Finder 2006, Tuesday, June 26, 2007, Pg. 1-3.
the very ideals and purpose for which Visva-Bharati was conceived and founded by Rabindranath Tagore. Such encroachment upon the ambience is said to have been committed by reason of indiscriminate constructions and, in particular, construction of residential cum-commercial complexes by developers and promoters in utter disregard of, inter alia, environmental and pollution control laws and requirements which had endangered the very purpose, tradition, objective with which Visva-Bharati was established and which was thereafter sought to be preserved by the Act. The Appellants are in particular aggrieved by proposed constructions which are likely to come up in the area known as Khoai, being land created in the natural process through running rainwater for millennia which is a rare natural phenomenon and which, if destroyed, cannot be restored even with the help of science and, thus, requires preservation.

**Laws Involved:**

Constitution of India (Articles 21, 51 A (g), 48A, 49, 226 and 136)/Visva-Bharati Act, 1951 (Ss. 4, 5-A, 6 and 7)/West Bengal Town and Country (Planning and Development) Act, 1979 (Section 37)/West Bengal Estates Acquisition Act, 1953 (S.4).

**Appellants moved on the following strength of Law:**

Visva-Bharati is an institution of national importance. The purport and object for which the Act was enacted is neither in doubt nor in dispute. The preamble of the Act as well as the Statement of Object and Reasons are clear and explicit. Parliament with a view to preserve and protect the uniqueness, tradition and special features of the said university, in exercise of legislative power\(^{95}\) enacted the Visva-Bharati Act 1965 with the consent of the state of West Bengal,

\(^{95}\) Under Entry 63, List-I of the Seventh Schedule of the constitution of India.
declaring it to be an institution of national importance. The University was constituted as a unitary, teaching and residential university with a view to preserve the tradition and special features of the institution. Visva-Bharati is a sui generis. This jurisdiction of the University is not only confined to the area specified in the Second Schedule appended to the Act, as regards its academic activities but in view of Section 6(32) of the Act it may establish campuses within the territorial limits of the University as specified therein.

It is imperative that the ecological balance be maintained keeping in view the provisions of both directive principles of State Policy read with Article 21 of the constitution. Furthermore, a state within the meaning of Article 12 of the constitution of India must give effect to the provisions of Art 51A(g) of the constitution. It may be true that the development of a town is the job of the town planning authority but the same should conform to the requirements of law. Development must be sustainable in nature. A land use plan should be prepared not only having regard to the provisions contained in the State Town Development Act and the rules and regulations framed there under but also the provisions of other Statutes enacted thereof and in particular those for protection and preservation of ecology and environment. It is idle to compare Santiniketan with any other University. The SSDA should be well advised to keep in mind the provisions of the Act.

Only because some advantages would ensue to the people in general by reason of the proposed development the same would not mean that the ecology of the place would be sacrificed. Only because encroachments have been made and unauthorized buildings have been constructed the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachments if any
may be removed in accordance with law. It is trite law that there is no equality in illegality.

Therefore, the land use and future planning of Santiniketan must be done in such a manner so that the changes be brought about which would not be beyond the recognition of the poet as also the provisions of the Act. SSDA in that sense must distinguish itself from the other development authorities. It has an extra burden to shoulder. It cannot ignore the environmental impact assessment made by the Board.

**Specialty of the Visva-Bharati University:**

The Visva-Bharati founded by Dr. Rabindranath Tagore at Santiniketan in 1921 is a unique institution and has since its inception served as a centre for the study of and research in the different cultures of the East on the basis of their underlying unity and has sought to approach the West from the standpoint of such a unity of the life and thought of Asia. The institution has acquired a world-wide recognition and has attracted scholars and pupils from many countries all over the world.

The objects specified in the Act for which the Visva-Bharati at Santiniketan was founded by Rabindranath Tagore, as expressed in his own words including to see to realize in a common fellowship of study the meeting of the East and the West and thus ultimately to strengthen the fundamental conditions of world peace through the establishment of free communication of ideas between the two hemisphere.
Topography of Santiniketan:

Santiniketan admeasuring 3000 hectares bounded on the North by the Kopai River, on the West by a line running from Ballavpur and Bonuri Village to Bandhgora on the South by a line running from Bandhgora via Bolpur Dak Bunglow to the bridge over the Eastern Railway cutting and on the East by the eastern Railway line.

Respondents Contentions:

The legislature of the State of West Bengal enacted the West Bengal Town and Country (Planning and Development) Act, 1979 to provide for the planned development of rural and urban areas in West Bengal and for matters connected therewith or incidental thereto.

The State of West Bengal claims to be owner of the lands situated at Santiniketan being vested in it under the West Bengal Estate Acquisition Act, 1953. It is however not disputed that 1761 acres of land according to SSDA (1127 acres of land according to the University) were acquired for the University within the aforementioned 3000 acres of land.

The Respondents contend that the University only contains a territorial jurisdiction for the sole purpose of academic activities and Section 7 of the Act must be interpreted accordingly. Academic territorial jurisdiction, therefore, would not confer any title thereupon in the university.

The area that was in contemplation of Rabindranath Tagore is known as the “Deer Park Area”. A decision to develop the said area was taken whereupon

96. Section 4 of the said Act.
a land use map was published and objections thereto were invited. Upon consideration of such objections some modifications in land use development and control plan were made out and the same received the approval of the state of West Bengal in terms of Section 37 of the West Bengal Town and Country (Planning and Development) Act, 1979. The Government of West Bengal allegedly sanctioned long term settlement of the government land as mentioned in the government order dated 25-4-2003 in favour of Sriniketan Santiniketan Development Authority (SSDA). Pursuant thereto or in furtherance thereof SSDA entered into an agreement with Bengal Ambuja Cement Housing Development Ltd. It was contended that the proposed constructions are being made at a minimum distance of 250metres of Visva-Bharati area and in terms of the land use and development plan no development is permitted within 50metres outside the boundary of Visva-Bharati University.

The Respondent authority further contended that the proposed development of the said plot would be advantageous in all respects. Had the project not being undertaken the said plot would be occupied by encroachers and unauthorized buildings constructed by them. The nearby areas have been encroached upon by private persons and buildings have been constructed. Under the planned development much lesser area than permissible under SSDA will be covered and accordingly there will be considerable open space in addition to 3acres of land for greenery. No building will exceed permissible height as mentioned hereinabove. There will be Primary School that is very much needed in the area. Unauthorized structures on the plot have been mostly removed but still some of them exist. Revenue to be received by the SSDA out of this project is to be utilized for carrying out various other projects for public purpose. SSDA has undertaken various works of public benefit. Several roads have been developed, project for supply of potable water has been undertaken and has
been substantially implemented. Further implementation in other area is also 
under process. Genuine residents of Santiniketan will be benefited out of the said 
works undertaken by SSDA.

**High Court’s Decision:**

A division bench of the High Court dismissed the PIL holding that the 
University not being the owner of entire 3000 acres of land no relief can be 
granted. While arriving at the said finding, it was opined:

i) If it is not, Visva-Bharati’s special dominion land for setting up campuses as 
and when it is so will, then the state has authority to deal with the same in 
accordance with law, because there are no other objectors. It is not illegal to 
setup reasonably peaceful activities or abodes of citizens near or even very 
near to University.

ii) The Act contains no indication that by reason of any Spirit of the Act or the 
Spirit of the Poet, Santiniketan is to be made into such an exclusive spot 
forever. Moreover, assuming that the building activity is to take place only in 
accordance with the spirit and ideas of the poet how is such activity to be 
monitored in the practical world? The Court is of the opinion, this is an 
unreasonable and an illegal and an impractical thought. The building activity 
can be monitored and controlled only if some law says that it is to be 
monitored and controlled and also lays down specific ways in which such 
restrictions are to be imposed by specified or named authorities. Therefore, 
none of the laws prevents the Bengal Ambuja Project.

iii) Santiniketan outside the University becomes a residential town or even an 
Industrial town. The High Court arrived at a finding that the continued 
increase of building activities will slowly change the place almost beyond
recognition of the poet and the activities of Bengal Ambuja Housing Complex Ltd. will to some extent change the topography of Santiniketan in canal front. Despite holding so, the High Court observed that such changes are necessary having regard to the continued increase in population of Santiniketan and as the Act does not contain any provision to the effect that Santiniketan was required to be made an exclusive spot forever and furthermore as allowing Santiniketan in its original form would be impractical, it can be permitted to become residential town or even industrial town provided the growth is planned, systematic and in accordance with the laws relating to freedom from population.

Submissions before the Hon'ble Supreme Court:

Mr. Soli J. Sorabjee, Learned Senior Counsel appearing on behalf of the Appellants in assailing the judgment of the High Court would submit that the issues raised in the writ petition must be considered having regard to the purposes for which the Act was enacted and having regard to its objects and Reasons.

The learned counsel submitted that comparison of the Visva-Bharati University with other Universities is wholly misconceived. Mandate of the Act, provides for guidelines to maintain the ambience of entire Santiniketan which will itself be in public interest.

The learned counsel further submitted that the court should invoke the doctrine of implied prohibition for giving a true meaning of the Act. The counsel submitted that the Division Bench of the Calcutta High Court neither took into consideration the report of the West Bengal Pollution Control Board in its proper
perspective nor applied its mind with regard to preservation and protection of Khoai which was the basis for maintaining the writ petition.

Learned Senior Counsel, appearing on behalf of the Union of India, would support the Appellants contending that in the larger interests the provisions of the Act should be implemented in letter and spirit and nothing should be done so as to destroy the purport and object for which the University was founded.

**Report of the Pollution Control Board:**

The W.B. Pollution Control Board issued a direction restricting the municipal corporations etc. from sanctioning any building plan of big housing complexes without obtaining its environmental clearance. Having regard to the peculiar features and the fact that SSDA’s working area includes schedule maintenance and preservation of cultural heritage and natural environment of Sriniketan, Santiniketan and further in view of the increase in the price of land of Khoai and as people visiting Santiniketan enjoy Khoai by seeing in different climatic and scenic conditions, it was stated that increasing constructional activity in Sriniketan-Santiniketan area may cause serious disruption in natural drainage system.

As Santiniketan is getting developed as tourist place therefore, it is essential to preserve, the natural beauty and heritage that people like to enjoy. It is true that planned housing is one of the components of urbanization. There is a great demand of housing not only from the local residents but also from people outside. Many want to keep a 2nd home for use during weekend’s holidays and festivals. Housing needs supporting infrastructures also required to be constructed. Further it will require adequate water supply, sanitation and drainage, solid waste management etc.
Urbanization will have impact on ambient air quality, unless problem mitigating measures are taken properly. The rapid EIA report submitted by BPHDCL though indicated that suspended particulate matters (SPM) in ambient air at SONAR TAREE area are below maximum permissible limit, but the same near Pearson Memorial Hospital was more than the permissible limit in December. Even on some days of December. The SPM was more than the permissible limit at SONAR TAREE area. However, other parameters of ambient air are well below the permissible limit.

Therefore, the Pollution Control Board is of the opinion that SSDA should follow land use and development control plan already prepared by the Urban Development (T and CP) Department. In addition, SSDA must see to conservation of the natural heritage of the place as far as practicable. It is also true that when development of Santiniketan-Sriniketan area is a necessity due to promotion of tourism and urban pull there must be certain change in the land use pattern resulting in disappearance of Khoai landscape from certain places. Hence SSDA must look into this aspect while planning for development of area keeping changes of Khoai land formation minimal.

Among other things, the report recommended that:

i) No more housing projects are undertaken until SSDA’s perspective plan 2025 including Visva-Bharati’s special requirements were approved.

ii) Ensure minimal damage to the remaining Khoai so as to preserve its natural beauty, heritage and natural drainage system.

iii) A Satellite Township is built at a suitable distance from the Visva-Bharati area.
Determination:

In the opinion of the Apex Court, the Division Bench of the High Court was not correct in holding that in the event the building activity in the territorial area comprising Santiniketan was to take place in accordance with the spirit and ideals of Rabindranath Tagore such activity cannot be monitored in the practical world and therefore would constitute illegal and impractical way of thought and furthermore although the House complex project of the Respondent Authority would change the topography of Santiniketan in the Canal front, there was no public interest calling for restraint of such a change.

The West Bengal Pollution Control Board is a statutory body. The environmental impact assessment in terms of the provisions of laws governing ecology of the area is imperative. The W.B.P.C.B. has issued under its statutory duty certain direction for preservation and conservation for cultural, historical, archeological, environmental and ecological purposes. Such directions are binding on the State as well as SSDA. The Board opined that if any construction is carried on the Khoai, the same indisputably will destroy its unique natural and cultural heritage and thus all constructional activities must abide by the same.

It is imperative that the ecological balance be maintained keeping in view the provisions of both directive principles of State Policy read with Article 21 of the constitution. Furthermore a ‘State’ within the meaning of Article 12 of the constitution of India must give effect to the provisions of Article 51A(g) of the constitution which cast a duty upon every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.
It may be true that the development of a town is the job of the town planning authority but the same should conform to the requirements of law. Development must be sustainable in nature. Therefore, a land use plan should be prepared not only having regard to the provisions contained in the 1979 Act and the rules and regulations framed there under but also the provisions of other statutes enacted there for and in particular those for protection and preservation of ecology and environment.

The Visva-Bharati University is not to be compared with any other University in terms of its specialty which has been expressed in the statement of objects and reasons in the Act comprising it due to its environmental ambience and therefore, SSDA should be well advised to keep in mind the provisions of the Act, the object and purpose for which it has been enacted and the directions issued by the W.B.P.C.B. so its environmental ambience must be maintained.

Only some advantages would ensure to the people in general by reason of the proposed development, the same would not mean that the ecology of the place would be sacrificed. Only because some encroachments have been made and unauthorized buildings have been made the same by itself cannot be good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. It is trite law that there is no equality in illegality.

Parliamentary debates clearly go to show that the Act was enacted with particular objectives in view. Such statutory objects could not have been given a go by. It is not suggested that the Santiniketan should remain as it was in 1921 but it cannot be permitted to become full of concrete jungles and industrial hub.
For carrying out further constructional activities, the local self government which is responsible there for must take into consideration the statutory principles laid down in the Pollution Control laws as well as the Act. The land use and future planning of Santiniketan must be done in such a manner so that the changes be brought about which would not be beyond the recognition of the poet as also the provisions of the Act. SSDA in that sense must distinguish itself from the other development authorities. It cannot ignore the environmental impact assessment made by the Board. The Apex Court, therefore concluded that they are not agreed with the High Courts decision which clearly run counter to its own finding of fact.

**Concluding Remark of the Supreme Court:**

In the instant case the supreme court reached to the conclusion on the basis of its fact finding that as the state government had granted a long term settlement in favour of SSDA with a further right to the residential flat owners for the unexpired period of lease by an order dated 25-04-2003 which had given the project a green signal and on the basis of which the Respondent Authority has already spent about 1.5crores of rupees, the court do not intend to stop the construction activities which are being carried out by the Respondent Authority but the Supreme Court directs that in future SSDA must keep in mind the statutory provisions. The appeal is disposed of with these directions and no costs were ordered.

In another recent judgment in *Mrs. Susetha Vs State of Tamil Nadu and others,* the Supreme Court passed an important verdict that water bodies

97. AIR 2006, SC 2893.
(natural water storage resources) are required to be retained. Natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen in disuse. The court emphasized that the same principle cannot be applied in relation to artificial tanks. While delivering the judgment the court relied on the doctrine of sustainable development. The Apex Court is of the opinion that—

Treating the principle of sustainable development as a fundamental concept of Indian law, it indeed is a welcome feature but while emphasizing the need of ecological impact a delicate balance between it and the necessity for development must be struck, whereas it is not possible to ignore intergenerational interest. It is also not possible to ignore the dire need that the society urgently requires.

Referring to a large number of decisions\textsuperscript{98a,b,c} the court stated that whereas need to protect the environment is a priority, it is also necessary to promote development stating:

"The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point

\textsuperscript{98} a. People United for better living in Calcutta Public and Another Vs State of West Bengal (AIR 1993 Cal 215) (Wherein it was observed that Wetland acts as a benefactor to the society)

b. T.N. Godavarman Thirumulpad (99) Vs Union of India and others [(2006) 5 SCC 47] (Wherein the importance of preservation of natural lakes was highlighted).

c. Intellectual Forum, Tirupati Vs State of A.P. and others (2006) 3SCC 549, wherein the court more clearly interpreted Public Trust Doctrine, dealing with natural resources, and states that it provides a high degree of judicial scrutiny on any action of the Govt. and gave a direction that the court must make a distinction between the government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources.
Sustainable development simply put, is a process in which development can be sustained over generations. Brundtland Report defines sustainable development ‘as development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs’.

Delivering the judgment the Supreme Court referred the constitutional mandate and stated that water bodies are required to be retained and such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48A of the constitution of India. Article 51A(g) of the constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers, and wildlife.

The judgment was delivered in a writ petition filed by the Appellant before the High Court of Madras, questioning the decision of a Panchayat named Okkiam Thoraiyakkam Panchayat of constructing a shopping complex, on a tank land, well known as temple tank and which was not a lake, and admittedly was lying in disuse and in fact as an abandoned one, which was also prone to encroachments. The said tank was classified in the revenue records as a tank poramboke but it has lost its utility a long time back. It was being used as a dumping yard. There were no inlet or outlet facilities. The village wherein the tank was located is located on both sides of the main road connecting Chennai city with Mahabalipuram on the old Mahabalipuram road. The Pancahayat took the decision of constructing a shopping complex for the purpose of user thereof for
resettlement of those persons who were displaced due to expansion of a highway project. The State of Tamil Nadu also issued a Government order permitting constructions of a shopping complex therein.

By an order dated 06.12.2005, the High Court, appointed the Director, Centre for Water Resources, Guindy, Chennai, as the commissioner to inspect the tank land and submit a report in regard to the condition thereof. Pursuant to that order, an inspection was carried out at the instance of the director.

The centre for water Resources, upon inspection of the tank, drew the following conclusions:

"i) The catchment area available is 26,781 m². The present capacity of the tank is 1,861 m³. The annual runoff potential is 8.034 m³.

ii) There is no specific inlet or surplus channels for the temple tank.

iii) The water from the tank is not directly being used by the public/cattle or for any other purpose.

iv) The water contained in the tank is unfit for human consumption.

v) The tank area has not been maintained properly over the years and has been used as a dumping yard.

vi) When such water bodies are not maintained properly. They are likely to be encroached.

vii) From the interaction with the Public, the team learnt that but for recent heavy rains, the tank would have remained dry.

viii) The tank area has no access from three sides namely South, North and Eastern sides and could be accessed only from the Old Mahabalipuram road side.
ix) The tank does not contain any built up structures like steps to enter, etc. but contains building debris dumped into it.

x) There are in surrounding areas three other bigger sized tanks, two in the East and one in the West, which will be recharging the ground water in that area and the recharge contribution of this temple tank will be insignificant.

xi) The temple tank is in a dilapidated condition.”

The respondents categorically denied and disputed that there is any water shortage in the village. The village is situated near a sea and having five water tanks in and around therein. The tank in question is not a natural tank. Only rain water could be collected in it during rainy season. It has been a dumping ground for a longtime and a sewage collection pond.

The High Court in its judgment has taken into consideration all relevant factors. The Supreme Court therefore direct the State and Gram Panchayat to see that other tanks in or around the village are properly maintained and necessary steps are taken so that there is no water shortage and ecology is preserved. The Supreme Court didn’t find any reason to interfere with the impugned judgment. The appeal is dismissed without any order as to costs.

**4.11 Most Striking Judgment of Mumbai High Court**

Indian judiciary has of late become so active that it has delivered a good number of quality judgments demanding appraisal. One of the such judgment has been delivered by the Mumbai High Court on 17th October 2005 which stunned real estate developers by putting out of their reach 400 acres of land in the heart of the cramped metropolis.

In the process of urbanization the constructional activities by the developers/promoters are likely to engulf the industrial land, which are left unutilized as because of being declared as sick industries. A rash of private development projects are mushrooming on mill lands too—the most prized and controversial assets in the financial capital. Several States including Bengal have firmed up plans to unlock industrial land. The Mumbai High Court's judgment could prompt a closer look at the plans. The court ruled that whenever textile mill land spanning 600 acres in the city is sold, one-third of it should be kept aside for open spaces and another third for public housing. The court has determined the allocation of the three shares for the specific purposes by its rulings.

The verdict came on a public interest litigation99, which had challenged an order issued by the Vilasrao Deshmukh Government in 2001 that changed rule 58 of the Development Control Regulation (DCR 58).

Rule 58 of the Development Control Regulation:

The said rule came into force in 1991. It laid down the principle of three-way division of city mill land during sale and redevelopment. It said the mill owners, the Brihan Mumbai Municipal Corporation and the Maharashtra Housing and Development Authority (MHDA) should each get a one third share. The mill owners could use their share for commercial development, the corporation for building open spaces and the development authority for public housing or rehabilitating people displaced by government projects.

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The 2001 amendment altered a clause to state that only this ‘open land’ i.e., the land excluding the part on which the mill buildings and out buildings stood—was to be divided up. This came to just about a 10th of the total land.

The Mumbai High Court upheld the 1991 provisions saying that “open lands” would include lands after demolition of structures.

The two-judge bench also declared invalid the recent sale of five Sick National Textile Corporation-owned mills—standing on a combined area of about 48 acres—which had together fetched Rs. 2020 crore. One of them, the five-acre Kohinoor Mill no.3, was bought by Bal Thackeray’s nephew Raj and fellow Shiv Sena leader Manohar Joshi’s son Unmesh for 421 crore through a special purpose vehicle.

The judgment in the test case has hung a question mark on not only the five deals but also a rash of private development projects mushrooming on mill land.

Remark:

The Mumbai High Court’s judgment is an epoch making as it has a far reaching consequences in the land market. Environment activist Neera Adarkar saw it differently. This judgment is welcome because land can be put to use for the city and its problems. Although the judgment would affect Dealmakers, Developers, Realtors and Customers also sales valued at Rs. 2020 crore could be affected. Projects by several companies could be reviewed. It would have a blow to new age real estate firms and foreign investors who were banking on the mill

100. Rules 58 of the said development control regulation.
land. Several people (customers) had booked flats when the market rate was 60% lower.

However, the judgment is welcome measure to save the lung of the city. The judgment concluded that the neglect of the importance of open spaces from the ecological and environmental angle even in congested urban areas can spell doom for the residents of the city and the health of residents is directly related to the ratio of built up area and open area. The said judgment upheld the challenge raised in the PIL that the interpretation given to the Development Control Regulations which permitted defunct mill lands to be utilized largely for private purpose, thereby depriving the city of badly needed open space and housing for poorer sections of the community, was against public interest.

Thus in the Context of modern Craze of urbanization where the constructional activities are being carried on by the private developers/promoters in an unplanned and uncontrolled manner posing a serious threat to the ecological balances of the city’s landscape, and wherein the building laws and regulations are being illegally violated, the Mumbai High Court gave a remarkable verdict practically laying down a formula to maintain ecological balance between the built up area and open space ratio which must be given priority and must be upheld by the Apex Court too and it is also suggested to incorporate the provision into the legislation whenever question may come up for releasing the land blocked by mills and industries declared as sick, for the purpose of housing stock.
Housing and real estate industry has become frontline activity of urban development which is a multifaceted intervention and of which housing is one facet. The term urban development should be interpreted in a comprehensive and all inclusive sense. The term ‘housing’ is a very basic need of the human being and accepted as a basic human right. Housing is more than a shelter, which enable people to live in a dignified and sustainable manner. Housing as a basic and fundamental human right has been recognized by several international conferences and declaration. “Sustainable human settlement in an urbanizing world” and “adequate shelter for all” have been focused as the main theme of the U.N. Conference, Habitat-II. Though our constitution is silent about the housing as having made no provision directly recognizing it as a fundamental right, the ideas is verily implicit in the various provisions of the directive principles of the State Policy. The wider interpretation of fundamental rights in the light of Directive Principles by adopting the principles of harmonious construction, the Supreme Court excavated some new rights to be regarded as fundamental one, from the ore of Directive Principles; the right to housing is one of them. The global vision is whereas, to unite civil society in a shared commitment to ensure secure housing and liveable planet for all, defending and implementing the human rights linked to housing/habitat i.e. land, housing, clean water, sanitation, a healthy environment, access to health services, education, basic goods, transport and recreation, access to the means of subsistence and social protection and preservation of social, natural, historic and cultural heritage, the regional picture and governmental influence is not upto the mark. Governments have limited capacity to influence the housing market and therefore, the public and private bodies have entered the housing market to resolve this vital need. And the situation generally worsens where the failure to address just democratic and sustainable cities, Towns and Villages is prominent.
Therefore, the term development imports the idea of its sustainability up to the optimal range without disturbing the ecological balances. But it is a critical juncture where both the rights of a citizen, the right to development and the right to wholesomeness of environment confronts. Both these rights emanate from the same premise i.e. the right to life which is protected as a fundamental right under Article 21 of the constitution of India. The parameter to determine optimal range of sustainability in the issue of urbanization is too complicated to formulate by any single agency and for which a coordinated action plan is required in an integrated way. The urban development and housing activities as its one facet involves much technical aspect which require detail insight of projects. The building density and building height and consolidation of Urban Settlements so as to contain a maximum permissible limit of population density in a certain measure of area should be the key design principles that underline sustainable building for the region. The entire job is rest with the administration assigned by the laws. But the problem is in implementing machineries as the administrators may lack insight into the scientific and technical aspect of urbanization and building activities or even the technical personnel within the administrative hierarchy may fall prey to the influence of bureaucratic and political elements. Therefore, in this state of increasing affairs of developmental activities, the number of cases flouting the statutory regulations and the norms of environmental justice are on the rise and expected to escalate to a great number where the executive inefficiency and nexus with the political elements are the dominant factor.

It is to be noted that in a wide range of developmental activities including adopting a land use change or the use of agricultural land for non-agricultural purposes, wherein citizen’s fundamental right under Article 21 of the constitution is violated and ecological balance is disturbed, the Courts have not
let themselves to be exclaimed environmentalist. In the early eighties, the judicial approach towards the urbanization was pro developmental. Most of the administrative decisions favouring the developmental activities received the judicial sanction, whereas the entire decade thereafter witnessed a surge of judicial activism in environmental matters. The period 1986 to 1997 more particularly is an epoch making having contribution towards the society by way of judicial activism in creating the concept of right to settlement and existence as part of right to life. But the problem with the judiciary as traditional adjudicatory model is that it allows judicial review of only the legality of an administrative decision, not the correctness of an administrative decision, and therefore, judiciary looks at environmental decisions as mere administrative matters and not as complex environmental problems. As the right to shelter and the right to development are the two facets of the same thing i.e. the right to life both emerging from the same premises that is Article 21 of the constitution it is very much confusing to reconcile the two. The Indian judiciary has in many a occasion given the conflicting judgment. Sometimes it favoured the administrative decision, by upholding the developmental need and in some cases the judicial decisions made the illegal constructional activities, legalized by way of imposing a penalty upon the developmental agency or the private body or sometimes it gave the priority to the environmental quality at the cost of incurring losses on the part of developer, by ordering to demolish the construction. The lack of expertise to scan and evaluate scientific and technical data stood in the way of adjudication on merits. The Supreme Court admitted this fact in Rural litigation Kendra. Therefore, a separate set of Environmental Courts comprising the judges and technical hands to cooperate the judge, are required to adjudicate those cases on merit. The need of this one was felt many a time in the past and was emphasized by the Apex Court. In the recent past (the latter nineties), the Supreme Court has given a more wider and a balancing view reconciling
environment and development. The Indian judiciary has developed a number of doctrines like precautionary principle, the principle of prevention, the sustainable development principle, the principle of inter-generational equity, the public trust doctrine etc. to be applied in the environmental field whenever there is conflict between the right to development and the right to environment and the court, whenever, the issues relating to environment comes up before it refer to the constitutional mandate implicit in the Articles 48A, 51A(g),19 and 21 of the constitution of India to determine the duties of the authorities as well as of the individuals, by applying the rule of harmonious construction. This way the Apex Court and various High Courts in India have developed a separate environmental jurisprudence. The Indian judiciary has also recognized the right of a citizen to be informed in reference to environmental decision making process and emphasized the role of voluntary organization in environmental management. Therefore, the public awareness, the right to know, participatory justice—all these taken together constitute an essential attribute of the democratic process and the principle of popular participation—a key to the success of the environmental management programmes and the implementation of the laws on the environment.

In fine I would say that in the quest for justice in the field of environmental law the term sustainable development which has rocked the judicial corridor time and again, still is in search of definition and therefore subject to recurrent judicial interpretation in several occasion.