CHAPTER-V

ROLE OF JUDICIARY AND BUILDING CAPACITY OF THE PUBLIC IN ENVIRONMENT DECISION MAKING

5.1 Role of Judiciary in Implementing Environment and Pollution Laws

In modern India, Environmental Jurisprudence has gone a long way in acquiring a very seminal importance leaving behind the engraved British Juristic notions as outdated as insufficient. The damage caused to environment by poisonous gases and emissions, industrial effluents, urban sewage, garbage, plastic waste, chemicals, exploitation of natural resources like soil, forest, water etc., supplemented by other equally important factors like poverty, growing population, health hazards, degeneration in quality of life have acquired alarming proportions which cry for new environmental ethics, order and justice in Indian society. Regrettably in India, the initial phase of judicial response to the problems of environment has been of insensitivity and apathy towards environmental issues and problems.

The world ‘environment’ includes all parts of nature necessary for health and happiness of man. Nature constitutes the environment or the ecology of man. Not only the beauty but the very existence of life depends on nature. The famous hymn in the world’s oldest scripture, the Rig Veda, portrays the beauty of the morning (Ushas) and worships its glory. Our ancestors were nature worshippers because worship is a form of the greatest admiration for them in nature. This healthy approach of man to nature later suffered an eclipse with the growth of population, increasing pressure on natural resources. A truth less exploitation of nature resources created deserts, droughts and now the experiments with the atom and the entry of nuclear weapons in the space threaten even the existence of ozone and the very atmosphere with out with man cannot live at all.
The India of Bankim Chandra Chattopadhyaya-richly watered, richly fruited and richly aired with cool breath- has been witnessing a sad scenario of land becoming deforested and barren, water experiencing pollution and scarcity, the rate species of animals, birds and plants are becoming extinct and human lives are butcher at the hands of ecocides. Attempts are made to plunder, silently and secretly, the beauty of the Silent valley, Vindhya and Missouri Valleys. The greenery and public parks are converted into the commercial establishments and residential abodes. The holy rivers, Ganga and Yamuna have become unholy.

Fortunately, in the last more than one decade, the trend has changed and the judicial policing is matched by new activist stance and positive roles specially after the Bhopal Gal leak tragedy. The changed attitude and concern of the judiciary for protecting environment has ensured a new kind of environmental justice and morality in the provisions of the constitution and the declaration of the judiciary declaring the environment as a basic fundamental right or human right (M.C. Mehta V. Union of India, AIR 1989 SC 1086) enforceable in the administration management of environmental justice. So, the courts in India have expounded new principles invented innovative remedies and have also carved out new strategies for resolving complex environment management is issues and also the matters of resource conservation.

5.2 Emerging Trends in Environmental Jurisprudence in India

Environmental Jurisprudence frankly speaking does consists of such basic principles, fundamental postulates and values concerning a fine balance of harmony in environment by regulating, ordering, preventing and also controlling such human conduct by fixing standards of accountability which tend to disrupt, disturb, damage and destroy the ecological balance. Thee is no doubt, that the new approached to green philosophy is full of more eco friendly values relating to human beings, animals and plants
which are the key actors in the present environmental crises. The basic idea of the protection of environment is to envisage a fine balance of co-existence between man and nature and between living and non-living. IN India this mechanism reminds one of the ancient vedic philosophy which emphasizes that so long as the earth has mountain, forests, trees etc., the human beings will survive.

There are other vedic invocations which declare that the earth is our mother and we are its children. Truly speaking, it is not merely an extra version but invokes and highlights the central issue of human existence and survival for present and future generations. The concepts like “One Worlds”, “Global family” are common features of “Common mankind”. The future generations are the concerns to be taken case of not only by the people but also by the governments to help and sustain the environment and to develop a common culture of environmental values which would inform legal, political and economic democracy of “One World in the New Millennium”.

If we venture to discuss the Environmental Jurisprudence in Kelsenian Grundnorm pure theory, with “common future” or “one world” as the super most norm (Grundnorm), the subordinate norms as like right to life, risk to livelihood, right to clean environmental, sustainable development and prevention of pollution, elimination of poverty etc. The Indian judiciary in the recent period has been continuously found engaged in creating the environmental jurisprudence full of values for the preservation and conservation of total environment. The backdrop of the environmental philosophy which the Indian environmental jurisprudence has nurtured is the Stock Home Conference of Human Environment, 1972.

Since then, India has witnessed a series of legislative measures, administrative policy decisions, amendments of the Constitution and also a new interpretation of Article 21. The judiciary has played a commendable
role in ecology and environmental preservation and is also taking care of the need to have development under Articles 21, 48 A and 51 (g) of the Constitution.

In deciding issues of environment, the Supreme Court has not hesitated in following internationally accepted measures (Vellore citizens welfare case) which are in consonance with the ancient Indian holistic ideal of environment. The Gandhian philosophy emphasizing that “Nature has provided everything for our need but not for freed”. It is a constant source or reminder for maintaining a fine balance between humanistic development and environment. The Courts during these years have come across with very complex eco problems and have also been confronted with the problem as to how to maintain non responsive and unaccountable administration and management accountability to those affected by unchecked and unbridled development mania. The judicial policing have viewed a new eco friendly jurisprudence which amply reflect the goal of eco justice, human dignity, human concern, human right, human health, right to live and also concern to preserve the mother earth by maintaining a very delicate and fine balance between man and nature.

Many of the Justices of Supreme Court in the recent years have very carefully expressed the cause of environmental protection by making sustainable development a legal obligation. (State of H.P. Vs. Ganesh Wood Products) and Constitutional mandate for governments. The initiative taken by the judiciary has introduced transparency on the issue of clearance of projects and environmental impact assessment. It is in this context that the courts have very rightly emphasized the principle of harmony and balance between the environmental and its development. The Supreme Court decision in clear terms indicate that the Central Governments and State Governments usually intend to violate the environmental standards while granting clearance of power projects and industries etc. The Courts admitting that there can be no development
without adverse effect of environment, have also stated that a balance has to be struck between two competing interests, proper utility projects could not be abandoned nor the environment can be allowed to be destroyed.

The pre 1990 judicial trend clearly introduced Polluters Pay Principle (PPP) in Indian Environmental Jurisprudence thereby lining right to clean and unpolluted environment with right to live under Article 21. The post 1990 judicial trend gives a much better scenario of the Indian development model and environment related issued for the coming generations. The opinion of Shri Justice Jeevan Reddy in the case Bichhari\(^1\) and Shri Justice Kuldeep Singh in Tamil Nadu Tanneries case\(^2\) forms the most important juristic paradigm for a clean environment free from pollution and concern for safe earth needs not only Indians but for all men of all lands. In a nutshell, the judicial policing in Indian in relation to pollution matters and unsustainable development has been of much significant value as the principles initiated are a right step not only protecting the environment of the people, but also from all the people.

Yet there is an imperative need to go for a concerted effort to make people aware of the hazards of polluting the environment. Much more needs to be done at grass-roots level as people still do not have alternative source of energy and have to exploit nature for their survival. The task of environmental protection is difficult and complex in a country like India, which is still to travel long to usher in the industrial regime and is yet to tackle population problem, problems of food, health and water. But every effort of deal with environmental problem have to be pin pointed and local and at the same time cooperative and total.

### 5.3 Environmental Justice Delivery in India

We are witness to the occurrence of a new phenomenon. The phenomenon of the emergence of Courts of Law in India, perhaps, as the sole dispenser of environmental justice. By delivering landmark judgments,
that have, indeed, altered the common man’s perception of the court of law
as just a forum for dispute resolution and nothing else, the Indian judiciary
has carved out a niche for itself as an unique institution. This has been
especially over issues concerning protection of human rights and
environment. International legal experts have been unequivocal in terming
the Indian Courts of law as trail-blazers, both in terms of laying down new
principles of law and in the introduction of innovations in the justice
delivery system. The increasing interest in and a sense of inevitability on
and a sense of inevitability in approaching the corridors of justice, over
every conceivable environmental problem by public interest groups and
individuals, bear witness to this unprecedented occurrence. After riding the
crest wave of unusual and unprecedented popularity and global attention,
for about two decades, the superior judiciary in India, of late, is also getting
targeted as an institution that has become complacent and getting more
insensitive to constructive criticism. This requires scrutiny.

A detailed analysis of the entire phenomenon would be perfectly in
order, in getting an idea of the entire picture. As a first step in that
direction, it may be appropriate to focus on those aspects of the
phenomenon that were responsible for putting the courts on a pedestal,
which the other two wings of the government, the legislature and the
Executive slipped in public esteem. The enquiry in this paper is to
centralize the role of the justice delivery system in India in
environmental governance. More specifically, this is to examine the
rationale for the occurrence of the phenomenon of looking up to the
judiciary a the only reliable bastion of and the final hope for the common
man in securing environmental justice.

5.4 Law and Policy-Making Processes

If one goes by popular perceptions and natural expectations, every
law ought to have its roots in a felt need. The inadequacy or vacuum in the
existing system, in meeting the challenges posed by a problem situation, leads to the need to evolve newer laws and more effective tools of implementation. Legal solutions may either emerge out of a process of consultation and consensus building among the affected community or, it may also result from the government taking cognizance of an existing customary practice and strengthen it by investing it with the force of law. The local customs, traditions, practices and solutions may lead to the evolution of a board policy frame, spelling the local, regional and national principles of governance. Fashioning a body of law and a set of rules to operationalize the policy and mechanisms of implementation are the next logical steps in the system of governance. Thus, the policy, the law, the institution of implementation, the plan and programme of action and actual implementation in a sequence, in that order, complete the picture of the system of governance, in an ideal situation. Conforming to the Constitutional frame and keeping pace with its evolution, in the scheme of things, would ensure legal legitimacy and constitutional validity to the policy, law and administration.

When administrative avenues for environmental enforcement fail, the public often turns to the judiciary to uphold environmental law. In India, where the executive has sometimes abdicated its enforcement responsibilities with respect to the environment, the public has relied heavily on courts to enforce environmental requirements. The surge in public interest environmental case in the past deceased has afforded courts in India the opportunity to take an active role in environmental protection. It also has highlighted the informational and technical challenges faced by the judges when presiding over these cases. Building the Indian judiciary’s capacity to take on these challenges has become critical to its ability to effectively redress environmental harms through sound environmental decision-making. It is evidently clear that there is no dearth of legislation
on environment protection in India but the enforcement of these legislations has been far from satisfactory. What is needed is the effective and efficient enforcement of Constitutional Mandate and other Environmental Legislations. The right of a person to pollution free environment is a fundamental right under Article 21 of the Constitution of India. The Apex Court has rightly interpreted the right to life and personal liberty to include the right to wholesome environment. The apex Court has rightly interpreted the right to life and personal liberty to include the right to wholesome environment. The Apex Court has also held that the mandate of right to life includes right to clean environment, drinking water and pollution free atmosphere. The Supreme Court through various landmark judicial pronouncements has not only come to the rescue of the rescue of the common citizen, but has also protected the national heritage by directing the coal and coke based industry in Taj Trapeziun which were damaging the Taj Mahal to either change over the national gas or to be relocated outside Taj Trapeziun. The Apex Court also directed the protection of plants around the Raj by Apex Court also directed the protection of plants around the Raj by the Forest Department. The Apex Court has directed stoppage of mining activities within two kilometers radius of two tourist resorts and has also ordered the closure of a bone factory which was polluting the environment by its pungent small and making the life of the people miserable by observing that no one can do business at the cost of public health. In another case where a park which was in existence since several years was being irreversibly changed due to construction of an unergro8udn shopping complex and parking, the Supreme Court ordered demolition of the building on the site of the park and held that no authority had power to grant permission to change the land use of the site. These are but few of the judicial pronouncements but hey
reveal that the Supreme Court has played a major role in protecting and in improving the environment.

From the case law, it is evident that there has been sustained efforts by the judiciary to jettison and apply brakes to jettison and apply brakes to the callous and disastrous state action which attempted to create fast deteriorating environmental situation in the country.

It is the Public Interest Litigation and enthusiasts like S/Shri M.C. Mehta, B.L. Wadhera, D.K. Shourie and their ilk and NGOs like Indian Council for Environ-legal Action, Vellore Citizen Welfare Forum, Centre for Law and Environmental, Bombay Environmental Action Group, CHIPKO Movement, Save Nilgitris Campaign etc., and environmental activist judges like Justice Kuldeep Singh, Justice A.M. Ahmadi, Justice K. Venkataswamy, Justice N. Venkatachala and galaxy of justices who have intervened and ensured protection of the environment.

5.5 Building Capacity of the Public to Participate in Environment Decision Making.

Public interest litigation has revolutionalised the traditional adversary litigation. The mechanism of public interest litigation has enable the judiciary to shed is traditional passive attitude. Under the umbrella of public interest litigation, the judiciary has embraced activism and innovatism. The question which capture the attention of legal scholars are: what role public interest litigation has played in case involving issues of environmental protection? What innovation principles have been evolved by the Supreme Court and the High Courts during public interest litigations involving environmental issues? how the Supreme Court and the High Courts have sharpened the edges of Indian environmental jurisprudence in case concerning environmental protection initiated by way of public interest litigations?
The basic aim of public interest litigation is the protection of public interest which lies in the interest of the society or the community or class of people as distinguished from individual interest or private interest. ‘Interest’ is a general terms which is employee to denote a right, claim, title or legal share in something. ‘Public interest’ signifies something in which community at large has some interest by which their rights and liabilities are affected. Accordingly, public interest litigation means ‘litigation initiated with the object of protection of the interest of community at large and not the redressal of individual or private claim.’

5.6 Role of Public Interest Litigation in Environmental Protection

The term ‘public interest litigation’ embraces public security, public order and public morality. Therefore, public interest litigation may even be termed as ‘social action litigation’. Any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising form breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such Constitutional or legal provision.

I. Constitutional Justification

The Constitutional justification of public litigation can be traced in Article 39A of the Constitution which is a part of the Directive Principles of state policy and is inserted by way of the Constitution (Forty Second Amendment) Act, 1976 with a view to aid the State organs, more particularly the judiciary to protect and promote social justice through the instrumentality of law. This Directive principle is intended for a new egalitarian social order and to free the Indian masses from their age old

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3 Article 39A of the Constitution states: '[Equal justice and free –legal aid-The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities]

4 M Krishna Prasad, Public Interest Litigation: A New Juristic Horizon 1984 The All India Reporter I (Journal Section).
passivity. Furthermore, the expression, ‘We, the People of India give to ourselves this Constitution’ and ‘Social Justice’ contained in the preamble of the Constitution mean justice to the deprived masses of our country. Thus, the Constitution of India strives to create certain new norms and values which are to be marshalled and settled into Indian legal systems to suit the changing times and for survival of democratic polity. This led to the realization that judicially manageable standards and techniques should be evolved to meet the new assignments of law for dispensation of social justice to the masses under the Constitution. Evolving judicial strategy and technique in the process of dispensation of social justice is a constitutional and social imperative. To carry this realisation further, the Supreme Court gave shape to the public interest litigation as distinguished from the traditional adversarial litigation.

II Nature and Scope of Public Interest Litigation

1. Nature

Public interest litigation differs from the traditional litigation inasmuch as traditional litigation is bipolar and adversarial whereas the public interest litigation is not strictly adversarial and the petitioner seeks to champion a public cause for the benefit of the society. In public interest litigation, the courts are asked to deal with public grievances over flagrant violations of human right by the state or to vindicate the public policies embodied in statues or constitutional provisions. Accordingly, in public interest litigation, the Judge plays a very vital and active role in organizing and shaping the litigation.

In People’s Union for Democratic Rights v. Union of India, the Supreme Court made detailed interesting observations about the nature and

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5 Ibid.
6 AIR 1982 SC 1473
   (a) Inserted by section 78, Constitution (Forty-second Amendment) Act 1976 (w.e.f. 3 January 1977)
scope of the public interest litigation. The Supreme Court observed:

Public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate the public interest which demands that the violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of Government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality.

The Supreme Court wondered if the sugar barons and the alcohol kings have the fundamental right to carry on their business and fatten their purses by exploiting the consuming public, or the 'chamars' who belonged to the lowest strata of the society had no fundamental right to earn an honest living through their sweat and toil? The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right to exploit is upheld against the government
under the label of fundamental right, the courts are praised for their boldness and courage and their independence and fearlessness are applauded and acclaimed. But if the fundamental right of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so called champions of human rights frown upon it as waste of time of the highest court in the land, which according to them, should not engage itself in small and trifling matters. Moreover, these self styled human rights activists forget that civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living in a sub-human existence in conditions of abject poverty. Utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. The Supreme Court posed the question: what civil and political rights are to be enforced by these poor and deprived sections of humanity?

The Supreme Court suggested that the only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realize the economic, social and cultural rights. There is indeed close relationship between civil and political rights on the one hand and economic, social and cultural rights on the other. Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.

The Court pointed out that the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and low sections of the community, is one which legitimately belongs to the legislature and the executive, but mere
initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multidimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. The Supreme Court observed:

Public interest litigation is essentially a co-operative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observant of the Constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or the public authority against whom the public interest litigation is brought should be as much interested in ensuring the basis human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the court. The State or the public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority.

The Supreme Court, however, cautioned that there is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the court and adding to the already staggering arrears of cases which are pending for long years and it should not, therefore, be encouraged by the court. The Court termed the above view as a totally pervasive view smacking of elitist and status quoits approach. Those who decree public interest litigation failed to realize that the courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they also exist for the poor and the
downtrodden, the have-nots and the handicapped and the half millions of our hungry countrymen. The Court admitted that there are large numbers of cases pending in the courts and stated that there was no reason to deny access to justice to the poor and weaker sections of the community. The Supreme Court further observed:

The time has now come when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and the status quo. They must be sensitized to the need of doing justice to the larger masses of people to whom the justice has been denied by cruel and heartless society for generations. It is through pubic interest litigation that the problems of the poor are now coming to the forefront and the entire theatre of the law is changing. It holds out great possibilities for the future.

2. **Distinctive Features**

Public interest litigation is a new kind of litigation which differs from the traditional private law litigation in the following eight respects:

1. the scope of the law suit is not limited by a specific historical event, such as breach of contract or personal injury, but is consciously shaped by the court and the parties;
2. the party structure is not limited to individual adversaries but is sprawling and amorphous;
3. the fact that inquiry is not a simple investigation of past historical events but rather resembles the kind of inquiry into current problems undertaken by legislative bodies;
4. relief is not limited to compensation for a past wrong but is often prospective, flexible and remedial having broad impact on many persons not party to the law suit;
5. the relief is often negotiated by the parties rather than imposed by the court;
6. the judgment does not end the court’s involvement but requires a continuing administrative judicial role;
7. the judge is not passive but plays an active role in organizing and shaping the litigation;
8. the subject matter of litigation is not a private dispute but rather a grievance about public policy.

In *S.P. Gupta v. Union of India*\(^7\) (popularly known as Judges transfer case), Justice Bhagwati described public interest litigation as a necessary rejection of laissez faire notions of traditional jurisprudence in order to address the modern phenomenon of ‘massification’ in which important rights are not individual but diffused and metaindividual. Justice Bhagwati remarked;

Today a vast revolution is taking place in the juridical process; the theatre of law is fast changing and the problems of the poor are coming to the forefront.

In *Bandhua Mukti Morcha v. Union of India*\(^8\), the petitioner organization dedicated to the cause of release to bonded labour in the country, initiated the public interest litigation in the Supreme Court alleging that the system of bonded labour is totally incompatible with the new egalitarian socio-economic order and amounts to negations of constitutional values and basic human dignity. Under this system, one person is bonded to provide labour to another for years and years until an alleged debt is supposed to be wiped out. The system is based on exploitation by a few social and economically powerful persons trading on the mise and suffering of large number of men belonging to the lower rings of the social ladder or economically impoverished segments of the society who are held in bondage. The Supreme Court emphasized that co-operation

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\(^7\) AIR 1982 SC 149.
\(^8\) AIR 1984 SC 802.
and collaboration of the parties are the essential features of public interest litigation which is non-adversary. The Supreme Court also dispensed with all the procedural technicalities in initiating public interest litigation. The Supreme Court observed:

Where a public interest litigation alleging that certain workmen are living in bondage and under inhuman conditions is initiated, it is not expected of the Government that it should raise the preliminary objection that no fundamental rights of the petitioners or the workmen on whose behalf the petition has been filed, have been infringed. On the contrary, the Government should welcome an inquiry by the Court to put an end to the bonded labour.

According to the Supreme Court, public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Court directed that the government and its officers must welcome public interest litigation because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningless reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complainant in public interest litigation is found to be true, they can discharge their constitutional obligation, root out exploitation and injustice and ensure to the weaker sections their rights and entitlements. When the court entertains public interest litigation, it does not do so in a caviling spirit or in a confrontational mood or with a view to tilt at executive authority or seeks
to usurp it, but its attempt is only to ensure observance of social and
economic rescue programmes, legislative as well as executive, framed for
the benefit of the have-nots and the handicapped and to protect them
against violation of their basic human rights, which is also a constitutional
obligation of the executive. The Court is merely assisting in the realization
of the constitutional objectives.

3. Collaborative and Investigation Components

The non-adversarial litigation procedures developed by the Supreme
Court are of two kinds, namely collaborative litigation and investigative
litigation.  

Collaborative litigation procedure presumes that the relationship
between the parties is largely one of communication and co-operation
rather than combat. The basis of collaborative litigation is that the parties
will voluntarily reach an agreement and take necessary action. Public
interest litigation is a collaborative effort on the part of the claimant, the
court and the government or public official to see that basic human rights
become meaningful for the large masses of the people. The collaborative
litigation works fairly well when undisputed facts, once brought to light,
result in clear consensus that action is required.

In investigative litigation, parties do not collaborate but the court
steps out of the passive role typical of adversarial litigation, to play an
active role in investigating the facts. The primary criteria used by the court
in investigative litigation is the appointment of special commissions. The
appointment of special commission does not lead to collaborative
resolution, the differences between the parties may be narrowed.

III. Access Justice

1. Locus Standi

The traditional litigation is bipolar and adversarial in nature and,
therefore, the traditional concept of standing is based on the doctrine of

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9 Ibid., at p. 811.
10 Ibid.
aggrieved person. The traditional concept of locus standi was based on Anglo-Saxon jurisprudence and made justice accessible only to the persons having resources. Access to justice became beyond the reach of masses having no means. As a result, social justice made institution of justice cripple. Justice needed crutches. Poor and deprived people did not have access to justice and were forced to remain in passivity. The administration of justice became a casualty due to lack of access to justice by the poor and disabled people.

The Supreme Court became conscious of the fact that the traditional rules on locus standi based on the doctrine of aggrieved person needed to be liberalised in the backdrop of socio-economic changes contemplated through various social welfare legislations.

(A) Representative Standing

In SP Gupta V President of India11 (Judges transfer case), public interest litigation was initiated by lawyers seeking the verdict of the Supreme Court on issues relating to independence of judiciary, transfer of judges from one High Court to another, appointment of judges and some other incidental legal issues. Justice Bhagwati observed:

Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right of any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position is unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or

11 AIR 1982 SC 149.
determinate class of persons, in the Supreme Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

The Supreme Court expressed no doubt that the practicing lawyers have a vital interest in the independence of the judiciary and if any unconstitutional or illegal action is taken by the state or any public authority which has the effect of impairing the independence of the judiciary, they would certainly be interested in challenging the constitutionality or legality of such action. They had clearly a concern deeper than that of a busybody and they cannot be told off at the gates.

In Bandhua Mukti Morcha v. Union of India, the Supreme Court observed:

While interpreting Article 32, it must be born in mind that the Court’s approach must be guided not by any verbal or formalistic canons of construction but by the paramount object and purpose for which this article has been enacted as a fundamental right in the Constitution and its interpretation must receive illumination from the trinity of provisions on which permeate and energise the entire Constitution namely, the Preamble, the Fundamental Rights and the Directive Principles of State Policy. It is clear from the plain language of Clause (1) of Article 32 that whenever there is a violation of a fundamental right, any one can move the Supreme Court for enforcement of such fundamental right. Of course, the Court would not, in the exercise of its discretion, intervene at the instance of a meddlesome inter-loper or busy body and would ordinarily insist that only a person whose fundamental right is violated should be allowed to activise the Court.

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12 AIR 1984 SC 802.
Where however, the fundamental right of a person or a class of person is violated but who cannot have resort to the court on account of their poverty or disability or socially or economically disadvantaged position the Court can and must allow any member of the public action bona fide to espouse the cause of such person or class of persons and move the Court for judicial enforcement of the fundamental right of such person or class of persons. This does not violate, in the slightest measure, the language of the constitutional provision enacted in Clause (1) of Article 32.

The traditional concept of standing has been modified by the Supreme Court by allowing any member of the public to seek judicial redress for a legal wrong caused to a person or to a determinate class of persons who by reason of poverty, helplessness or disability or socially or economically disadvantaged position is unable to approach the court directly. This modification of the traditional locus standi could be termed as ‘representative standing’ assuming that the petitioner is accorded standing as the representative of another person or group of persons.

The concept of ‘representative standing’ refutes the traditional assumption that only a petitioner motivated by self-interest will present a case. Public interest litigation is brought before the court not for the purpose of enforcing the right of the individual against another, as it happens in the case of ordinary litigation, it is intended to prosecute and vindicate public interest which demands that violation of Constitutional or legal rights of a large number of people, who are poor, ignorant or socially and economically in a disadvantaged position, should not go unnoticed, unredressed for that would be destructive of the rule of law.

(B) Citizen Standing

In contrast to representative standing, a petitioner under citizen standing sues not as a representative of other, but in his own right as a
member of the citizenry to whom a public duty is owed. In public interest litigations concerning protection of the environment, the petitioner enjoys citizen standing. The cases concerning protection of the environment are not brought on behalf of a determinate group of persons who suffer from poverty or social oppression; rather the claims of the petitioners are shared by the public generally. The justification for development of citizen standing is not to improve access to justice for the poor but to vindicate rights that are so diffused among the public generally, that no traditional individual right exists to be enforced.

In practice, Indian jurisprudence demonstrates that the distinction between representative and citizen standing has vanished. Neither the court nor the parties make the distraction. Instead, the two originally separate rationales for expanded standing seen to have merged in a single doctrine of public interest standing.

2. Pro Bono Publico

The underlying condition for the initiation of public interest litigation is that it should be initiated pro bono publico, i.e. in good faith and for the benefit of the public. Public interest or community interest and good conscience are the essential features of public interest litigation. Any litigation initiated for the protection of private interest or for gaining publicity or political leverage or as a result of enmity of animosity with the respondents, loses its character of public interest litigation. The elements of private interest, public interest, political interest, jealousies, enmity or animosity are destructive of the object, purpose, and the spirit of public interest litigation.

In Bandhua Mukti Morcha v. Union of India, the Supreme Court insisted at the bona fides of the petitioner and stated that the Court would not, in exercise of its discretion, intervene at the instance of a meddlesome

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13 Ibid.
interloper or busybody. The Court termed bona fides of the petitioner as an essential condition for initiating the public interest litigation.

In *Chhetriya Pardushan Mukti Sangharsh Smaiti v. State of UP*¹⁴, a letter was written to the Supreme Court by a social organization, Chhetriya Pardushan Mukti Sangharsh Samiti, which was treated as a writ petition. It was alleged in the letter that the two plants, namely Jhunjhunwala oil mills and refinery plant were located in the green belt area and the smoke and dust emitted from the chimneys of the mills and the effluents discharge from these plants were causing environmental pollution in the thickly populated area and were proving a great health hazard. It was further stated that the people were finding it difficult to eat and sleep due to smoke, foul smell and the highly polluted water. It was also stated that lands in the area had become waste affecting crops and the orchards. Diseases like TB, Jaundice and other ailments were stated to be spreading in an epidemic form. The growth of the children was affected. It was further alleged that the schools, nursing homes, leprosy homes and hospitals situated within the one kilometer long belt touching the oil mill and the plant, were adversely affected.

The respondents, oil mill and plant owners, submitted that they have always complied with the provisions of the Air (Prevention and Control) Act 1981, and the Water (Prevention and Control of Pollution) Act 1947, and there was no complaint of any kind from any person, body or authority. The respondents have also been complying with all the orders of the Pollution Control Board. The respondents also submitted that the Court should be vigilant against abuse of its process and there was need for proper verification. The respondents asserted that the petitioners were an anti-social element having aim to extract money from people like the

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¹⁴ AIR 1990 SC 2060.
respondents as there was a long rivalry between the petitioners and the respondents.

Having considered the fact, circumstances and the nature of allegations, the Court found that there was a long history of enmity and animosity between petitioners and the respondents and prima facie the petitioners have been complying with the provisions of the relevant statutes and the orders of the Pollution Control Board and no conduct could be attributed to the respondents which led to the pollution of air or ecological imbalances calling for interference by the Court. The Supreme Court held:

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

Having regard to the ugly rivalry between the parties, the Court decided to proceed with caution. The Court held that thee was no violation
of fundamental right. The Court emphatically stated that society must be protected from the so-called protectors. The Court held that the petitioner was devoid of any merit or principles of public interest and public protection and created bottleneck in the Court and thus, amounted to abuse of process of the Court. Accordingly, the petition was dismissed.

In *Subhash Kumar v. State of Bihar*\(^\text{15}\), the petitioner, Subhash Kumar filed public interest litigation in the Supreme Court under article 32 of the Constitution for the issue of a writ directing Tata Iron and Steel Company (TISCO) to stop the discharge of slurry/sludge from their washeries which resulted in the pollution of Bokaro River. The petitioner alleged that surplus waste in the form of slurry/sludge was discharged as an effluent from the washeries of TISCO into the Bokaro river which polluted the river and made the river water unfit for drinking and agricultural purposes. The petitioner asserted that the continuous discharge of sludge/slurry in heavy quantities by TISCO from its washeries posed risks to the health of people living in the surrounding areas and the problem of pure drinking water became acute. The petitioner also alleged that despite several representations, the State of Bihar and the State Pollution Control Board failed to take any action against the Company and instead permitted the pollution of river water to continue. The respondents contested the petition and submitted that TISCO was granted consent with certain conditions by the Pollution Control Board which was duly complied with and there was no question of discharge of slurry resulting in the pollution of the Bokaro River. The management of the washeries constructed four ponds where the slurry/sludge was collected and thereafter, sold in the market. The slurry contained highly carboniferous materials considered very valuable for the purpose of fuel, as the ash contents were almost nil in the coal particles found in the slurry. The

\(^{15}\) AIR 1991 SC 420.
Company had taken effective steps to ascertain that no slurry escaped from its ponds because the slurry was highly valuable. The Company had been following the directions issued by the Pollution Control Board under the Water (Prevention and Control of Pollution) Act 1974.

The Court did not accept the allegation of the petitioner that the water of river Bokaro was being polluted by the discharge of sludge or slurry from the washeries of TISCO. On the contrary, the Court pointed out hat the petition was not file din public interest but was instead filed by the petitioner in his own interest. The Court found that the petitioner had been purchasing slurry from the respondents fro several years and wanted more and more slurry but the respondent company refused to accept his request. The petitioner entertained grudge against the respondent company due to refusal of the company to sell any additional quantities of slurry to the petitioner. In order to feed fat his personal grudge, the petitioner filed the present petition against the respondents. In fact, there was intrinsic evidence in the petition itself that the primary purpose of filing this petition was not to serve any public interest. Instead, the petition was filed in self interest as the petitioner also filed a stay application, wherein he claimed interim relief for being permitted to arrest/collect sludge/slurry with a direction to the State of Bihar, its officers and other authorities for not preventing him from collecting the sludge/slurry and transporting the same. The prayer for interim relief made by the petitioner clearly indicated that he was interested in collecting the slurry and transporting the same for the purposes of his own business.

The Supreme Court, accordingly, dismissed the writ petition filed by way of pubic interest litigaion and held that the litigation was vitiated by the considerations of self interest, enmity and animosity. The Supreme Court held:
Article 32 is designed for the enforcement of fundamental rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental rights of a citizen. Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceedings under Article 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32 are entertained, it would amount to abuse of the process of the court preventing speedy remedy to other genuine petitioners from the Apex Court. Personal interest cannot be enforced through the process of the Supreme Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceedings for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of the law.
The Supreme Court emphatically stated that a person invoking the jurisdiction of the Supreme Court under article 32 must approach the Court for the vindication of the fundamental rights of affected person and not for the purpose of vindication of his personal grudge or enmity. The Supreme Court further stated that it is its duty to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extra-ordinary jurisdiction of the Supreme Court for personal matters under the garb of the public interest litigation.

The Supreme Court dismissed the petition, inter alia, on the ground that it was apparent from the interim relief claimed in the petition that he should not be prevented from collecting the sludge/slurry flowing from the washeries of the respondent company into river water because the petitioner was interested in collecting the slurry and transporting the same for the purpose of his business. It was held that the petition was in self interest and therefore, was liable to be dismissed.

3. Dispensation of Formalities and Technicalities

The main theme of public interest litigation is to create a system which promises legal relief without cumbersome formality and heavy expenditure. Social activists who initiate public interest litigations cannot be expected to be well versed in the formalities and technicalities of law. They cannot also be expected to spend heavy amounts from their pockets for the protection of society or community or the public interest. Accordingly, volunteer social activists are allowed standing by way of writing a simple letter which is accepted as a writ petition. The court itself shoulders much of the burden of establishing the facts through appointment of commissions. In public interest litigations, judges do not act as passive arbiters of facts produced by the parties but play active role in organizing and shaping the litigation.
In *Bandhua Mukti Morcha v. Union of India*\(^{16}\), the petition was field by an organization dedicated to the cause of release of bonded labourers alleging that a large number of labourers from Maharashtra, MP, UP and Rajasthan were working under inhuman and intolerable conditions in stone quarries situated in Faridabad district of State of Haryana. On the locus standi of the petitioners, the Supreme Court observed:

Where a member of the public acting bona fides moves the Court for enforcement of a fundamental right on behalf of a person or class of persons who on account of poverty or disability or socially or economically disadvantaged position cannot approach the Court for relief, such member of the public may move the Court even by just writing a letter because it would not be right or fair to expect a person acting pro bono public to incur expenses to of his own pocket for going to a lawyer and preparing a regular with petition for being filed in Court for enforcement of the fundamental right of the poor and deprived sections of the community and in such a case, a letter addressed by him can legitimately be regarded as an appropriate proceedings.

The Supreme Court stated that the practice of invoking its jurisdiction by a simple letter has grown amongst public, in which compliant of a legal injury to the writer or to some other person or group of persons is mentioned and the Court has treated such letter as a petition under article 32 and entertained the proceedings. The Court acknowledged that it is comparatively recent that the Court has begun to call for the filing of a regular writ petition in the form of a letter. However, the Court raised alarming signal and cautioned:

Grave danger is inherent in a practice where a mere letter is entertained as a petition from a person whose antecedents and status are unknown or so uncertain that no sense of responsibility can, without

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\(^{16}\) AIR 1984 SC 802.
anything more, be attributed to the communication. There is good reason for the insistence on a document being set out in a form, or accompanied by evidence, indicating that the allegations made in it are made with a sense of responsibility by a person who has taken due care and caution to verify those allegations before making them. The Court must be ever vigilant against the abuse of its process. It cannot do that better in this matter than insisting at the earliest stage, and before issuing notice to the respondent, that an appropriate verification of the allegations be supplied. The requirement is imperative in private law litigation. Having regard to its nature and purpose, it is equally attracted to public interest litigation. While this court has readily acted upon letters and telegrams in the past, there is need to insist now on a appropriate verification of the petitioner or other communication before acting on it.

The Supreme Court, however, admitted that there may be exceptional circumstances which may justify a waiver of the rule. However, the Court stated:

All communications and petitions invoking the jurisdiction of the Court must be addressed to the entire Court, that is to say, the Chief Justice and his companion judges. No such communication or petition can properly be addressed to a particular judge. When the jurisdiction of the Court is invoked, it is jurisdiction of the entire Court.

In *MC Mehta v. Union of India*17 (Shriram Gas Leakage Case), the Supreme Court relaxed the requirement of letter or other communication to be sent to the entire Court, that is to say, the Chief Justice and his companion Judges and stated that it would not be right to reject a letter addressed to the individual Justices of the Court merely on the ground that it is not addressed to be Court or to the Chief Justice and his companion Judges. The Supreme Court observed:

17 AIR 1987 SC 1080.
The letters would ordinarily be addressed by poor and disadvantaged person or by social action groups who may not know the proper form of address. They may know only a particular Judge who comes from their State and they may, therefore, address the letters to him. If the Court were to insist that the letters must be addressed to the Court or to the Chief Justice and his companion Judges, it would exclude from the judicial ken a large number of letters and in the result deny justice to the deprived and vulnerable sections of the community.

The Supreme Court, therefore, took the view that even if the letter is addressed to an individual Judge of the Court, it should be entertained, provide it is by or on behalf of a person in custody or on behalf of a women or a child or a class of deprived or disadvantaged persons. The Court found no difficulty in entertaining letters addressed to the individual Justice of the Court because the Court has a ‘public interest litigation cell’ to which all letters addressed to the Court or to the individual Justice are forwarded and the staff attached to this Cell examines the letters and it is only after scrutiny by the staff members attached to this Cell that letters are placed before the Chief Justice and under his direction, they are listed before the Court. The Court, therefore, observed that letters addressed to the individual Justice of the Court should not be rejected merely because they failed to conform to the preferred form of address. Nor should the Court adopt a rigid stance that no letters will be entertained unless they are supported by an affidavit. If the Court were to insist on an affidavit as a condition of entertaining the letters, the entire object and purpose of epistolary jurisdiction would be frustrated because to the Court and even the social action groups will find it difficult to approach the Court.
5.7 Constitutional Aspects

In public interest litigations, the Supreme Court has demonstrated exemplary activism in treating right to environment as a part of the fundamental right to lie enshrined in article 21 of the Constitution of India. Rural Litigation and *Entitlement Kendra v State of UP*\(^{18}\) is the first public interest litigation of its kind in the country invoking the issue relating to environmental and ecological balance. The Supreme Court has delivered two orders in this litigation, one in 1985 and the other in 1987. The litigation involved the issue whether the mine lessees can be allowed to carry on mining operations without adversely affecting environment or ecological balance or causing hazard to individuals, cattle and agricultural lands. In its second order delivered in 1987, the Supreme Court held:

The consequences of interference with ecology and environment have now come to be realized. It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact. Of course, natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources has to be done with requisite attention and care so that ecology and environment may not be affected in any serious way. There may not be any depletion of water resources and long term planning must be undertaken to keep up the national wealth. It has to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation. Preservation of the environment and keeping the ecological balance unaffected is a task which not only the Governments but also every citizen must undertake. It is a social obligation and let

every Indian Citizen be reminded that it is his fundamental duty as enshrined in Article 51A (g) of the Constitution.

The Supreme Court gave effect to the social obligation to protect the environment and emphasized on the need to remind every Indian Citizen of his fundamental duty to protect the environment as contain in article 51 A(g) of the Constitution.

In public interest litigation, "Chhetriya Mukti Sangharsh Samiti v. State of UP"\(^{19}\), the Supreme Court unequivocally and emphatically held the right to environment as a part of right to life. The Court held:

Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution. Anything which endangers or impairs by conduct of anybody either in violation or derogation of laws, that quality of life or living by people is entitled to be taken recourse of Article 32 of the Constitution.

In another public interest litigation, "Indian Council for Enviro-Legal Action v. Union of India"\(^{20}\), the Supreme Court implemented the right to wholesome environment as a part of the right to life enshrine in article 21 of the Constitution. Social action litigation was initiated under article 32 of the Constitution on behalf of villagers alleging that their right to life was invaded by the pollution caused by private companies manufacturing hazardous and inherently dangerous chemicals like oleum (concentrated form of sulphuric acid) and H acid. The untreated toxic sludge discharged by the chemical manufacturing companies turned the water in the wells and streams dark and dirty rendering it unfit for human consumption. The Supreme Court found that the chemical manufacturing companies were flouting the provisions of law and the orders issued by the lawful authorities which amounted to invasion and serious infringement of the

\(^{19}\) AIR 1990 SC 2060.
\(^{20}\) AIR 1996 SC 1446
right to life of the villagers. The Court held that if the industry continued to be run in blatant disregard of law to the detriment of life and liberty of citizens living in the vicinity, the Court could intervene and protect the fundamental right to life and liberty of the citizens of the country.

In *MC Mehta v. Union of India*[^21], public interest litigation was filed by the petitioner under article 32 of the Constitution in the Supreme Court wherein the petitioner stated that the foundries, chemical/hazardous industries and the refineries at Mathura were emitting sulphur dioxide which when combined with oxygen-with the aid of moisture-in the atmosphere forms sulphuric acid called ‘acid rain’ which has a corroding effect on the gleaming white marble to Taj. The petitioner further stated that industrial/refinery emissions, brick kilns, vehicular traffic and generator sets polluted the ambient air around Taj Trapezium (TTZ) and the white marble has yellowed and blackened in places. The Supreme Court held that the emissions resulted in violation of the right to life of the people living in the TTZ as well as damaged the prestigious monument like the Taj.

In a popular public interest litigation, involving a former Minister of Environment and Forests, *MC Mehta v. Kamal Nath*[^22], the Supreme Court passed three landmark Judgments, one in 1997, second in the year 2000 and the third in the year 2002, which laid down innovative principles of environmental jurisprudence having constitutional significance. The Supreme Court took notice of the news item appearing in the Indian Express dated 25 February 1996 under the caption ‘Kamal Nath dares the mighty Beas to keep his dreams afloat.’ The report stated that a private company, Span Motels Pvt. Ltd., in which the family of Kamla Nath had direct link, had built a club on the banks of the river Beas in Kullu-Manali.

[^21]: AIR 1997 SC 734.
region by encroaching land including substantial forest land which was later regularized and leased out to the company when Kamal Nth was a minister. It was stated that the motel use earth movers and bulldozes to turn the course of the river. The effort on the part of the motel was to create a new channel by diverting the river-flow. The main allegation in the news item was that the course of the river was being directed to save the motel from future floods. The Supreme Court took notice of the news item because the facts disclosed therein, if true, would be a serious act of environmental degradation on the part of the motel. In its first judgment reported in 1997, the Court applied ‘public trust doctrine’ which primarily rests on the principle that certain resources like air, sea, waters and the forests have such great importance to the people as a whole that it would be wholly unjustified to make them the subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins a duty upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The ‘public trust doctrine’ emphasizes that the state is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The state as a trustee is under a legal duty to protect the natural resources. These resources which are meant for public use cannot be converted into private ownership. The ‘public trust doctrine’ was held to be part of the law of the land in India.

In the present case, large area of the banks of river Beas which was a part of the protected forest had been given on lease purely for commercial purposes to the motels. The areas being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership for commercial gains. The Supreme Court held that the
Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the motel management. The Court also applied ‘polluter pays principle’ and held that the motel shall pay compensation by way of cost of restitution of the environment and ecology of the area. The Court also issued notice to the motel to show cause why pollution fine, in addition, be not imposed on the motel.

In its second judgment delivered in the year 2000, the Supreme Court gave effect to right to environment guaranteed under article 21 of the Constitution and held that any disturbance of the basic environment elements, namely air, water and soil, which are necessary for life would be hazardous to life within the meaning of article 21. The court further held that in case of violation of article 21 by disturbing the environment, the Court could award damages not only for the restoration of the ecological balance but also for the victims who have suffered due to that disturbance. The Court referred to ‘polluter pays principle’ with approval and gave effect to the mandate of the principle that the polluter should pay. However, the notice issued to the Span Motel as to why the fine be not imposed upon them was withdrawn by the Court because the fine could not be imposed on the motel without there being any trial and without there being any finding that the motel was guilty of the offence under the Water (Prevention and Control of Pollution) Act, or the Air (Prevention and Control of Pollution) Act, or the Environment (Protection) Act, and therefore, liable to be punished with imprisonment or with fine. In the earlier judgment, the notice was issued without reference to any of the provisions of the Act. Fine is to be imposed upon a person who is found guilty of offence and then on being found guilty, he may be punished either by sentencing him to undergo imprisonment for the period contemplated by the Act or with fine or with both. But recourse cannot be taken to Article 32 or even Article 142 to inflict upon him this punishment, the Court held:
“Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damage to those who have suffered loss on account of the act of the offender”.

Accordingly, the Supreme Court held that the powers of the Court under Article 32 are not restricted and it can award damages in a public interest litigation. The Supreme Court further held that in addition to damages aforesaid, a person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others. Unfortunately, notice for exemplary damages was not issued to Span Motels although it ought to have been issued. Therefore, the notice for payment of pollution fine was withdrawn by the Court. Instead, the Court directed that a fresh notice be issued to Span Motel to show cause why in addition to damages, exemplary damage be not awarded.

In the third judgment delivered by the Supreme Court in 2002, the Court confined itself to the issue of awarding exemplary damages. The Court pointed out that the basis for liability of Span Motels to be saddled with the exemplary damages has been firmly and irreversibly laid down, there was no escape for the Span Motels Pvt. Ltd. Accordingly, the question for further consideration remained that of quantum of exemplary damages. The Court held:

“The various law in force to prevent, control and protect environment and ecology provide for different categories of punishment in the nature of imposition of fine as well as or imprisonment or any of them or either of them, depending upon the nature and extent of violation. The fine that may be imposed alone may extend to one lakh of rupees. Keeping
in view all these and the very object underlying the imposition of imprisonment and fine under the relevant laws to be not only punish the individual concerned but also to serve as a deterrent to others to desist from indulging in such wrongs which we consider to be almost similar to the purpose and aim of awarding exemplary damages, it would be both in public interest as well as in the interests of justice to fix the quantum of exemplary damages payable by Span Motels at rupees ten lakhs only.

It was clarified by the court that the additional amount of ten lakh rupees was fixed as exemplary cost, after the undertaking was given by the Span Motels for bearing a fair share in the ecological restoration project cost, besides the liability for exemplary damages. The court left open for further determination the question relating to the said quantum of liability for damages on the basis of the principle of ‘polluter pays’ as held earlier by this Court. The Court treated the amount of ten lakh rupees as special damages which would be remitted to the State Government for being utilised only for flood protection works in the area of Beas River affected by the action of Span Motels Pvt. Ltd.

In a public interest litigation involving the former minister, Kamal Nath, the Supreme Court applied public trust doctrine, clarified further the scope of article 21 and awarded special damages of rupees ten lakhs in addition to exemplary damages on the basis of ‘Polluter pays principle’ which would be determined separately.

The judgment of the Apex Court in *Narmada Bachao Andolan v. Union of India*23 witnessed demonstrations by some of the environmental activists and triggered controversy among various groups. The petitioners, Narmada Bachao Andolan, have been agitating since long against the

23 AIR 2000 SC 3751.
construction of Sadar Sarovar Dam which the petitioners alleged violated the rights of the tribals and polluted the environment in violation of fundamental right guaranteed by article 21 of the Constitution of India. The public interest litigation, inter alia, involved the issue: whether the execution of a large project, having diverse and far reaching environmental impact and without proper planning of mitigative measures violates fundamental rights guaranteed under article 21 of the Constitution of the affected people? The petitioners alleged that the execution of Sardar Sarovar Project without a comprehensive assessment and evaluation of its environmental impacts, amounted to a violation of the right of affected people article 21of the constitution. The Supreme Court observed that the documents and the letters on record showed that the Government of India was deeply concerned with environmental aspects of the Sardar Sarovar Project. On difference of opinion between ministries, matter was referred to the Prime Minister. Series of discussions took place in the Secretariat and conscious decision was taken to grant environmental clearance to the project. In order to ensure that environmental management plans are implemented pari passu with engineering and other works, Narmada Management authority was directed to be constituted. Prime Minister gave environmental clearance thereafter. Accordingly, the Court held that the environmental clearance to Sardar Sarovar Project cannot be said to be given without application of mind.

The Court did not agree with the allegation that Sarovar Project was not in the national or public interest in view of the need of water for burgeoning population which was most critical and important. Dams play a role in providing irrigation for food security, domestic and industrial water supply, hydro-electric power and keeping flood waters back. Narmada has a potential of irrigating over 6 million hectares of land and generating 3000 mega watts of power. The Court noticed that there would be a positive
impact of the Sardar Sarovar project on preservation of ecology. The project would be making positive contribution for preservation of environment in several ways. The project by taking water to drought-prone and arid parts of Gujarat and Rajasthan, would effectively arrest ecological degradation which was returning to make these areas inhabitable due to salinity ingress, advancement of desert, ground water depletion, fluoride and nitrite affected water and vanishing green cover. The Court pointed out that the ecology of water scarcity areas as under stress and the transfer of Narmada water to these areas would lead to sustainable agriculture and spread of green cover. There would also be improvement of fodder availability which would reduce pressure on biodiversity and vegetation. The project by generating clean eco-friendly hydropower would save the air pollution which would otherwise take place by thermal generation power of similar capacity.

The Supreme Court vehemently held that the project was not inconsistent with the mandate of sustainable development as it would result in upgradation of ecology and the ‘precautionary principle’ would be inapplicable which applies only in case of pollution or other project or industry, where extent of damage likely to be inflicted is unknown.

The Court further held that change in environment does not per se violate any right under article 21 of the Constitution of India especially when the ameliorative steps are not taken to preserve but to improve ecology and environment. In the present case, the grant of environmental clearance under section 3 of the Environment (Protection) Act 1986, was preceded by various studies to ascertain environmental impact of the project. Ameliorative steps were also taken to counter the adverse environmental impact of the project. The Court agreed that every construction of dam would result in some change of environment, and there was no reason to presume that Sardar Sarovar Project would result in
ecological disaster. On the other hand, the Court, stated, Sardar Sarovar Project would result in ecological upgradation and therefore, would not amount to violation of article 21 of the Constitution.

In popular CNG pubic interest litigation entitled *MC Mehta v. Union of India*\(^{24}\), the Supreme Court treated air pollution in Delhi caused by vehicular emissions as violation of Article 21 and therefore, the Supreme Court directed all commercial vehicles operating in Delhi to switch to CNG fuel mode for safeguarding health of the people.

In yet another public interest litigation, Church of God (Full Gospel) in *India V. KKR Majestic Colony Welfare Association*\(^{25}\), the Supreme Court held that noise pollution amounts to violation of Article 21 of the Constitution. The Court clarified that the term ‘life’ as employed under Article 21 of the Constitution does not mean basic animal existence but conveys living of life with utmost nobleness and human Dignity. Right to live has also been held to include right to health which is violated by noise pollution.

### 5.8 Hazardous Substances

The Shriram Gas Leakage case is a landmark public interest litigation wherein the Supreme Court pronounced judgment not only on the issue of dispensation of formalities and procedural requirements for filing public interest litigation but became so innovative as to lay new environmental principle on the issue of liability of the polluter for causing pollution and the quantum of compensation to be paid by the polluter. MC Mehta, an environmental activist initiated public interest litigation in the *MC Mehta v. Union of India*\(^{26}\) under Article 32 of the Constitution in the Supreme Court after the leakage of oleum gas from one of the units of Shriram Foods and Fertilizers. The Court noticed the increasing number of


\(^{25}\) AIR 2000 SC 2773.

cases relating to environment pollution and ecological destruction. Most of these cases required expertise of the high level in scientific and technical sophistication and project the need for neutral scientific expertise as an essential input in judicial decision making. In the absence an independent and competent machinery to generate, gather and make available the necessary scientific and technical information, the Court made efforts of its own to identify the scientific experts for providing the same. The Court found this exercise difficult and unsatisfactory. It was, therefore, held to be absolutely essential to establish an independent centre with professionally competent and public spirited experts provide the needed scientific and technological inputs. The Court urged the Government of India to set up Ecological Science Research Group consisting of independent, professionally competent experts in different branches of science and technology who would act as information bank for the court and the government departments and generate new information according to the particular requirements of the court or the concerned government department. The Court also suggested the Government of India that since cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources were increasingly coming up for adjudication and these cases involved assessment and evaluation of technical data, it would be desirable to set up Environmental Courts on regional basis with one professional judge and two experts from the Ecological Science Research Group keeping in view the nature the case and the experts required for its adjudication. Right of appeal would lie to Supreme Court from the decision of the Environmental Court.

On the issue of the measure of liability of an enterprise engaged in an hazardous inherently dangerous industry resulting in the death or injury to persons in an accident occurring in such industry, the Supreme Court demonstrated exemplary activism modifying the principle of strict liability
of *Rylands v. Fletcher* and evolved absolute liability principle. The Court held that an enterprise which is engaged in hazardous or inherently dangerous industry and which poses potential threat to the health and safety of the person working in the industry and residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise is under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged, must be conducted with the high standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm even though the enterprise had taken all reasonable care or that the harm occurred without any negligence on its part. The Supreme Court further held that the enterprise engaged in hazardous or inherently dangerous activity resulting in the escape of toxic gas would be absolutely liable to compensate those affected by the accident and such liability would not be subject to any of the exceptions which operate vis a vis the tortuous principle of strict liability of *Rylands v. Fletcher*.

On the issue of quantum of compensation, the Supreme Court again followed innovation approach and evolved new theory which may be termed as ‘deep pocket theory’. In case of accidents resulting from handling of hazardous substances, the Supreme Court held that the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have deterrent effect. The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise. The Supreme Court vehemently held that the quantum of
damages to be paid in case of hazardous activities would be proportionate to the financial ability of the polluter to pay.

MC Mehta filed a writ petition in the Supreme Court relating to Hot Mix Plants in *MC Mehta v. Union of India*\(^{27}\). Hot Mix Plants which were treated as hazardous industries were closed with effect from 20 February 1997, in pursuance of the order of the Supreme Court reported in 1997. In 1999, the Airports Authority of India filed an interim application for permission to install Hot Mix Plants in the vicinity of IGI Airport for a period of one year for resurfacing of the runway for the safe landing and take off of domestic and international aircrafts and for smooth handling of aircraft traffic. It was stated that resurfacing of existing runways had to be done using the bituminous overlays which necessitated the Hot Mix Plants to be installed within the vicinity of the IGI Airport or nearby sites not exceeding three to four kilometers range. The temperature of the bituminous mix at the time of laying on ground had to be maintained over 120°C and if transported from a distance of more than five kilometers, its temperature would go down below 120°C, rendering it ineffectual and useless for the purpose of resurfacing the runways.

The emission from the Hot Mix Plants contains particulate matter and sulphur dioxide besides toxic/carcinogenic hydrocarbons like benzene, formaldehyde, anthracene and toxic metals like lead, arsenic mercury and cadmium. A hot mix asphalt plant can emit large quantities of dust and polyaromatic hydrocarbons (PAHs). Exposure to PAHs can cause lung and other cancers. The process that occurs at a hot mix asphalt plant is relatively simple. The plan mixes crushed stone material (pebbles) with liquid asphalt spray (a product of crude oil distillation) in a rotating cylindrical mixer (the drum) that facilitates the coating of the pebbles with a sticky layer of asphalt. The temperature of the drum is about 155°C.

\(^{27}\) (1997) 1 SCALE (SP) 31, (1999) 4 SCALE 196.
The mixture contains about 95 per cent pebbles and 5 per cent asphalt. While the pebble-asphalt mixture is still hot, the material is loaded into trucks for transportation to the road construction site. These plants can emit enormous quantities of dust particles. As the drum rotates, it causes the dispersion of very small particles of stone (dust). The United States Environment Protection Agency (USEPA) has from time to time, issued notices to the Hot Mix Plants for causing health hazard. These notices stated that emissions from Hot Mix Plants can impair lungs especially among children and the elderly. In India also, the Expert Committee of CPCB categorized Hot Mix Plants as a hazardous industry. The permissible limit of emission of particulate matters in respect of Hot Mix Plants is 150 miligrams under the Environment (Protection) Rules. As per Master Plan-2001, all hazardous/noxious industries should be shifted out of Delhi.

In pursuance of the orders of this Court in 1996, all the Hot Mix Plants were shifted outside the vicinity of Delhi and stopped functioning within the State of Delhi from 20-25 kilometers from the IGI Airport. Such being the length of the distance, the Airport Authority of India submitted that it would be difficult to maintain the proper quality of premix material and the same might not be useful at all for laying the runway site. Moreover, very huge quantity of hot premix material, about 2,50,000 tones was required for laying the runway and over 100 trucks would be required to be deployed every day for transporting the material to the site which would pose security problems.

The Supreme Court agreed that resurfacing of Airport runways is a work of national importance which has to be carried out so that IGI Airport is operational and does not cause any operational hazard at the time of landing or take off. The Court held:

The environmental problem has to be balanced with the necessity of running an International Airport in the Capital of India. The Airport
Authority of India has already called for global tenders for job in question in which one of the eligibility criteria is that the firm must possess adequate capacity environment friendly Hot Mix Plant, electronically computerized paver finisher, Pneumatic and conventional rollers and tools and tackles.

The Court, accordingly, allowed the Airport Authority of India to set up Hot Mix Plant for resurfacing of the runways at IGI Airport, New Delhi and issued the following directions:

1. The Airport Authority of India shall, after finalizing the tenders and awarding the contract for resurfacing of runways, allow the setting up of Hot Mix Plants in the safe vicinity of IGI Airport at a distance of 3 kilometers from a populated area.

2. The Hot Mix Plants set up by the company whose tender is accepted would be examined by the Central Pollution Control Board on the environmental feasibility, specially to ensure that the particulate matter emission does not exceed the prescribed limit of 150 milligrams/normal cubic metre under the rules made under Environment (Protection) Act.

3. The vehicles on which the resurfacing material is transported shall be loaded and unloaded in the presence of the security staff of the IGI Airport who shall constantly escort these vehicles to and from the Hot Mix Plants to the work site at the IGI Airport and back so as to rule out the possibility of any security risk.

4. The Hot Mix Plants shall be operated for a period of one year from the date on which these are installed or till the resurfacing of the runways is done and completed, whichever is earlier.

Environmental jurisprudence in India has been enormously enriched by the courts while hearing public interest litigations. The judiciary in India has realised that the failure to give effect to the constitutional mandate of environmental protection would result in breach of its constitutional duty. In a bid to comply with the constitutional duty, the judiciary has
demonstrated exemplary activism and has further liberalised the concept of ‘standing’ in public interest litigation filed with the objective of environmental protection. The Apex Court has also laid down innovative principles of environmental jurisprudence which have introduced new dimensions in it.

5.9 Environment Protection Act and Public Participation

Every individual or corporate body that may propose a project makes a deliberate or at least a rough assessment of the benefits, both tangible and intangible that can be expected from the project. Also considered are the costs that will have to be borne during the construction and when the project is “on stream”, and the risks that are involved in the venture. But the costs that may have to be borne by others or by society at large, or environmental costs, do not enter into the calculations. Therefore, there is justification for the system of Government having to issue sanction, permission, clearance or licence after examining the public interest and all connected matters. At the national level, the Planning Commission gets a project Benefit-Cost (BC) Analysis conducted, and has laid down that if the BC ratio is less than a certain (arbitrarily decided) figure, the project will not be sanctioned. Calculation of the BC ratio is naturally imprecise since there are many important factors that cannot be quantified at all or even approximately. Indeed, the Planning Commission had conceded in an internal note that engineers who carry out the BC analysis can easily work the figures so that the BCR criterion is satisfied and the proposed project gets sanctioned. The opinions of people who would be affected adversely by the project are not even a factor in the decision process. People’s opinion was (and still is) part of a unconnected political process that becomes apparent only at election time and even then only in general terms, without reference to specific projects.
Thus we can conclude that when administrative avenues for environment of enforcement fail, the public often turns to the judiciary to uphold and enforce environmental law. The courts, specially the Supreme Court, through various landmark judicial pronouncements has not only come to the rescue of common citizens, but has also protected the environment. With the help of PIL enthusiasts and several NGO’s, judiciary has played a major role in protecting and improving the environment. Effective public participations is critical to India’s development and conservation efforts. Including citizen’s voices in decision making promotes governmental accountability and increases the likelihood that decisions will take into account the concerns of people directly affected by them.

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