Chapter-5

Legal Regime Relating to Conservation of Land

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India presents a puzzling paradox of poverty in the midst of abounding natural resources. Saving the natural resources is a big challenge. Equitable access to the basic resources\textsuperscript{739} is an ingredient of the right to development.\textsuperscript{740} Development does not mean development of the elite urban class but development of the mass of people in the villages, mountains, hills, forests and coastal regions. Inevitably a haphazard, unplanned and unscientific development without considering the aspirations of the people living in these sectors is anathema to a national policy, which aims at economic growth without disturbing the resource base. The World Commission on Environment and Development observed:

‘what is required is a new approach in which all nations aim at a type of development that integrates production with resource conservation and enhancement, and that links both to the provision for all of an adequate livelihood base and equitable access to resources’.\textsuperscript{741}

The Commission stressed on sustainable development and asked for a reorientation of international relations based on the principle that every human being has the right to life and to a decent life.\textsuperscript{742} How far are these ideals followed in India in her administrative and legislative policies towards utilization of natural resources, especially land will be the main focus of the forthcoming chapter.

5.1. Land Use Scenario in India

The problem of land conservation is well connected with sustainable management of forest, which is necessary for retention of soil, avoidance of floods, stability of hydrological cycle and retention of ground water. While Forest is now in the concurrent list that enables the Union and

\textsuperscript{739} The UN Declaration on the Right to Development imposes on State parties, an obligation to undertake all necessary measures for the realization of the right to development, and to ensure inter-alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing and employment. Declaration on the Right to Development, 1986, Art 8(1).

\textsuperscript{740} \textit{Ibid.}

\textsuperscript{741} Our Common Further [1987], pp 39,40.

\textsuperscript{742} \textit{Ibid.} pp 40, 41.
the State to legislate, both ‘land’ and ‘water’ are matters for State legislation in the Indian Constitution. Constituted of different States with law making power, the Indian republic may find it difficult to implement a comprehensive legislative policy relating to land and water resources despite it having a quasi-federal character. For both land use and conservation of water resources, a State is left to adopt its own legal policies and mechanisms. These policies and mechanisms may differ from one State to another. Absent national consensus and comprehensive legal controls, the dilemma is to manage land and water uses in a scientific or sustainable manner.

Proper management of land and water resources is an important element of maintaining eco-balance, as well as achieving economic growth without disturbing the resource base. For soil conservation and quality of land, unhindered supply of water is essential. Inevitably, a sound land use policy will have to take into account the various methods of water management. In India, both land and water are matters, which come under the state list in the Constitution. Land legislation in certain states provides multiple agencies, at State, district or local levels, that formulate schemes for preservation and improvement of soil, reclamation of wastes and water logged areas, various techniques of cultivation, maintenance of tree growth, improvement of water supply and consolidation of holding for better land use. A scheme for land development should aim at maintenance of soils and ecosystem. It should neither upset the socio-economic conditions under which the people live nor should it block future growth and development of the regions. The burden of this development lies with the local bodies as per the 73rd and 74th amendment to the Constitution. Although a specific mention is made of power to states to legislate on environmental protection and ecological aspects, the said power is

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743 The Constitution of India, Seventh Schedule, Entry 17-A in list III introduced by the 42nd Amendment provides for legislation on forest. Items 17 and 18 of List II contains legislative powers of States on water and land. Only the States can enact legislation on water and unless the demand [Art. 252] for a central law comes from States or unless the Central Government decides to implement an international treaty, convention or decision in an international conference on such matters [Art. 253]. For instance, Wildlife Protection Act and Water [Prevention and Control of Pollution] Act 1974 were brought on request from States while Air Act 1981 and Environmental [Protection] Act 1986 were passed to enforce the decisions of the Stockholm Conference on Human Environment.


745 For example see the Kerala Land Development Act 1964, as per P Leelakrishnan, Environment Law in India, p. 65.

746 Constitution of India, 12 Schedule, Item 8.
only given to municipalities. The responsibilities of protection and maintenance of land quality could be given both to panchayats and municipalities under local bodies legislation.

5.2. Land Resource: Absence of vision

The causes of land degradation in India are many, ranging from the direct [water and wind erosion, loss of forest cover and water logging, landfill waste dumping in urban cities] to the indirect [fragmentation of land holdings, inadequate tenure rights, wasteful subsidies on agricultural inputs such as water and power]. Land use pattern has undergone tremendous transformation due to the impact of urbanization and industrialization. Changes in the land use pattern bring associated ecological changes. The Scientific Advisory Committee to the Prime Minister gave a clear warning when they recognized the need for preserving the inherent quality of soil in a particular region. They said in 1990,

‘The land use pattern must pay attention to soil conservation and fertility restoration so that intensive use can be achieved in a sustainable manner. Land use plans must ensure that land is used, but not abused’.

Once the quality of the land is lost, the returns from the land definitely diminish. The resources on which the rural life thrives are depleted. A need is felt for quicker development of the backward regions predominantly inhabited by the rural poor. A modern welfare state has every responsibility to develop the backward regions and to help them improve their lot and stand on their feet. Development can never be in a manner that affects the potentiality of the natural resources. Inevitably, it should be sustainable development, which goes a step ahead of the right to development of the present generation and recognizes similar rights of the future generations.

747 Id, Eleventh Schedule. The States can enact legislation endowing the panchayats with powers to look after agriculture [item 1], land improvement, land consolidation and soil conservation [item 2] and social and farm forest [item 6].
748 Id, 12th Schedule. Laws are enacted giving powers to municipalities in the field of urban planning [item 1], regulation of land use and construction of buildings [item 2], planning for economic and social development [item 3], slum improvement and upgradation [item 10] and provision of urban amenities and facilities such as parks, gardens and playgrounds [item 12].
750 Base, Vasudev Gupta and Sinha, TERI Report No. 97/ED/52 [1997].
751 Scientific Advisory Council to the Prime Minister, Department of Science and Technology, Government of India, Perspectives of Science and Technology, Vol. II [1990].
The use of agricultural land for purposes other than cultivation of food crops may disturb the ecological security of land. What is needed is the implementation of schemes in particular regions for improving the quality of agricultural production. The very design of schemes should contain in-built safeguards for the maintenance of soil and preservation of the eco-system. They should neither upset the socio-economic conditions under which people live nor should they hinder future growth and development.

The use of agricultural land for purposes other than cultivation of food crops disturbs the ecological security of the land. Attempts at converting paddy lands into brick kilns and other agricultural lands into housing or industry site are specific examples of unsustainable use of land leading to eco-imbalance. Needless to say that the regulatory powers of the State are to crack down on such instances and check violations of the right to a healthy environment and to development.

It is true that the law on forest conservation aims at checking deforestation and regulating use of forest for non-forest purpose. Nevertheless, there is no specific legislation against abuse of other lands than forestlands and against infringement of the fertility and conservation of such lands. Mechanism of vonversion under the Land Revenue Laws [Agricultural land into non agricultural activity] is found to be not effective at all as indiscriminate conversion of paddy fields into either garden lands or living units, dabas, educational institutions goes on unhampered in certain regions of the country. In recent times, courts do interfere and stop changes in land use such as those from residential complex to industrial site\textsuperscript{752} or from open space to housing colony or private hospital.\textsuperscript{753} The obvious grounds on which they interfere are that these changes are not in consonance with sustainable development, that they violate the values of both environment and development and that they infringe the right to a healthy environment. The same rationale is equally applicable for preventing use of agricultural lands for extraneous purposes. The Draft National Environmental Policy 2004, prescription of adoption of ‘science –based and traditional land use practices’ developed ‘through research and development’ for combating land degradation is too vague and general. Further, land degradation is often the result of unsustainable and incompatible land use engineered by the

\textsuperscript{752} V. Lakshmipathy v State AIR 1992 Kant. 57.
market. The progressive deterioration of tracts once under cultivation into pastures and barren lands is a common feature in India.\textsuperscript{754}

5.3. Land Acquisition: Absence of Property right over Land

The Land Acquisition Act of 1894 was an important legal instrument of economic control, oppression and exploitation promulgated by the British imperialist government. By using the concept of ‘public domain’ the British were able to theorize and legitimize their control over land, which was the most fundamental resource for people’s survival.\textsuperscript{755}

As is obvious from its title, Land Acquisition Act 1894 is more than a 100 years old. Though several amendments have been brought about in this Act from time to time, the acquisition procedure remains as it used to be when this law first came into existence. In a nutshell the procedure has been\textsuperscript{756}:

1. one requiring body places a request for land acquisition before the government represented by the district collector;
2. the collector after studying the proposal notifies the same;
3. the probable land losers are identified, their land measured and compensation calculated;
4. if the government/collector is satisfied, compensation is awarded, notified land is acquired and transferred to the requiring body, even though the land loser may not have accepted the compensation; and
5. those land losers who are not satisfied with either the measurement of land, the declared compensation and the apportionment of the said compensation between interested persons can approach the courts for redressal.

As is evident from the procedure itself, the law gives no room to the land losers to contest and prevent their land from being acquired. Once the requiring body has convinced the collector of the necessity of the acquisition, the proceedings can move unhindered. Also the question of

\textsuperscript{754} Two tragic manifestations of inappropriate land use are the spate of suicides in farming communities in Andhra Pradesh and Karnataka and the migration of the rural poor to urban areas in search of employment. Dr. M S Swaminathan, noted Scientist calls them ‘eco-refugees’. For more see Down to Earth, CSE, March 2003.

\textsuperscript{755} Walter Fernandes and Vijay Paranjpye, Rehabilitation Policy and Law in India, Hundred Years of Involuntary Displacement in India, CEERA, Library, NLSIU.

\textsuperscript{756} The above is the overview of the sections in the LAA.
propriety\textsuperscript{757} is not sufficiently addressed and neither are the land losers called to participate in the decision-making process. The existing law compels them to accept and fall in line with the conclusions arrived at by the collector. Non-participation of the land losers at any stage of the process was no cause for concern in view of the undemocratic nature of governance during the British rule. This unilinear and collector-centric paradigm suited the colonial interests. As for the land losers, they rarely had the nerve to demur at the revenue administration’s decisions.\textsuperscript{758}

The LAA has a short and sharp purpose \textit{viz.} to take away privately owned land for a public purpose. Payment of compensation is only ancillary to the basic aim. The LAA empowers the Government to acquire land for ‘public purpose’. The definition of the term ‘Public purpose’ is neither vaguely nor loosely defined and this has been grossly misused by the power of the government under ‘eminent domain’. In Karnataka, the 1994 amendment empowers the government to acquire agricultural land for non-agricultural, industrial, floricultural and other purposes also.

The LAA confers a limited right to object to acquisition. This right has to be exercised within one month of receiving the notice under Sec. 4. While no specific grounds are mentioned in Sec. 5-A of the Act, the case law that has been built up and the executive instructions issues by various State Governments reveal that the following objections can be raised:

a. that one’s land is not needed/suitable for that purpose;
b. that it is not a public purpose;
c. that more land has been acquired than necessary;
d. that the acquisition will destroy historic monuments or places of public interest or that it will desecrate religious buildings;
e. without objections to the acquisition one can object to the omission of one’s name from the list of persons having an interest in a particular land; and
f. later, one can object to the low quantum of compensation.

\textsuperscript{757} The Problem of propriety is not limited to compensation only. Other aspects like the purpose of acquisition, the extent of acquisition, the problem uses of the acquired land are equally questionable. This has been a norm rather than an exception in the case of industrial estates, where the State Industrial Infrastructural Development bodies acquire land, set up an industrial estate and then search for entrepreneurs interested to use the facilities. Because of this, many a time, industrial estates have remained vacant for years.

\textsuperscript{758} Mohammed Asif, Land Acquisition Act: Need for an Alternative Paradigm, Economic and Political Weekly, June 19, 1999.
The grounds mentioned in points a, b, c and d are very difficult to evoke without knowing exactly how much land is being acquired and exactly for which purpose. All the land is acquired for a project, say, a power plant. But much of it does not go under that project.\textsuperscript{759}

In a modern democratic society, no right or authority even when acquired through ostensibly democratic procedures, can be unlimited or absolute. Each right is inseparably linked to a duty. In the case of the LAA 1894, one would have expected another law locating the responsibility of rehabilitation on the State Authority to be enacted to counterbalance it. But no such Act or policy existed till the end of colonial rule, because it was never the intention of the British to be truly benign or just.\textsuperscript{760}

The welfare state must have the well being of the people as its guiding spirit. It must intervene in every sphere of life to accord protection or help to the citizen from cradle to grave. Consequently, the objectives and frequency of acquisition in the name of development have increased.\textsuperscript{761}

5.4. Agrarian Reforms: Impact on Conservation

Nowhere is it indicated in the Constitution of India that India is a "welfare state". However, the policies\textsuperscript{762} adopted by the State seem similar to those of a "welfare state". The economic policy, adopted by the State, has its roots in a mixed economy, where the state enjoys control over most natural resources, including land. It must be remembered, however, that this does not prohibit individuals from holding these natural resources. Nevertheless, certain restrictions on the quantity of resources that the individual can hold have been put in place. In order to prevent the control of resources from falling in the hands of a few, the Constitution grants the state the power to take over the property of an individual. The state, in its role of welfare state, must ensure that all the material resources are equally divided and that all the citizens will derive some benefit from these resources.

Land reforms in post-independence India find their \textit{raison de etre} in the Constitution. It begins with the Preamble, which is based on the four cornerstones of justice, liberty, equality and

\textsuperscript{759} Vasudha Dhagamwar, The Land Acquisition Act: High Time for Changes, Rehabilitation Policy and Law in India, CEERA Library Documentation, NLSIU, p. 115.
\textsuperscript{760} Supra at n 18, p. 80.
\textsuperscript{761} Supra at n 22, p. 110.
\textsuperscript{762} Reading of the Directive Principles of State Policy may give us this connotation.
fraternity. A later amendment to the Constitution, introduced in January 1977, declared India to be a ‘Socialist Democratic Republic’. These essential features of the Constitution that aimed at securing an egalitarian socio-economic order were further strengthened by certain specific provision of Part IV, which enumerates the Directive Principles. Land Reform measures were among the most significant aspects of the efforts of the State to achieve these goals.

In the scheme of distribution of legislative power between the Union and the States in the Seventh Schedule of the Constitution, enactment and implementation of land reforms was assigned to the States, constituting Item 18 List II required to be read with Entry 45. These two Items respectively read:

1. *Land, that is to say, rights in or over land, land tenures including the relation of the landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvements and agricultural loans; colonization.*

2. *Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights and alienation of revenues.*

The sixties ushered in an era of agrarian reforms in India. Land was made available to the landless, the tiller was made the land holder, ceilings were fixed on land holdings, land-tenancy was abolished and an income limit was fixed for any one to derive benefits out of the reforms package. Karnataka joined the national bandwagon of agrarian reforms in a very big way by passing the necessary legislation. Implementation of the legislative dictate also began in right earnest. The effort was further strengthened when certain changes were affected in the Land Reform Act in the mid-seventies. Necessary changes were effected in the Constitution [Art. 31 A, 31 B and 31 C], and by placing all the legislations on the subject in the Ninth Schedule, it was ensured that the law could not be challenged as being violative of fundamental rights. This provided the necessary insulation and protection for the exercise that aimed at economic upliftment of the rural poor.

5.5. Decision-Making: Coordinating Authorities

At the national level, for effective coordination and management of land resources of the country, a "National Land Use and Wasteland Development Council (NLWDC)" has been constituted under the Chairmanship of Prime Minister. The Secretariat of the NLWDC is

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located in the Department of Land Resources of the Ministry of Rural Development. The following three Boards are constituted under the Council for effective coordination on matters of land resources:

National Land Use and Conservation Board (NLCB) - Located in the Ministry of agriculture, Department of Agriculture and Cooperation, to serve as policy planning, coordinating and monitoring agency at national level for issues concerning health and management of Land Resources.

National Wastelands Development Board (NWDB) - Located in the Department of land Resources, Ministry of Rural Development for matters related to wasteland in the country.

National Afforestation and Eco-Development Board (NAEB) - Located in the Ministry of Environment and Forests for the matters related to the land belonging to forests.

At the local level, Panchayats, Watershed Committees, Self Help Groups, NGOs, State implementing agencies etc. are fully involved in decision making for planning, implementation, post care maintenance activities etc. for land resources. All this has seen performance on record and not on the ground, hence there is no statistical or any data to show the nature and extent of the working of these bodies.

5.5.1. Decision-Making: Legislation and Regulations

The National Land Use and Conservation Board (NLCB) in the Department of Agriculture and Cooperation functions as the policy planning, coordinating, and monitoring agency for issues concerning the health and scientific management of the country's land resources. State Land Use Boards (SLUBs) are set up in each State to implement the policies and guidelines issued by the NLCB.

State Governments are responsible for policy implementation and the formulation of laws to conserve and manage land resources with encouragement to local communities, Panchayats, and district authorities. State Governments have been directed to enact suitable legislation in this regard.

Under India's federal structure, land is a State subject, and there is so far no national legislation. The NLCB is considering the enactment of a composite Land Resources Management Act encompassing various aspects of land use. Andhra Pradesh has already enacted the A P Land Trees and Water Act 2002.

764 National Land Use Policy outlines have already
been prepared which take into account environmental, social, demographic, economic, and legal issues. The policy has been circulated to all concerned for its adoption and implementation.

It has generally been the policy of the State to conserve good agricultural lands and this is reflected in guidelines under the Land Acquisition Laws. Diversion of agricultural lands to non-agricultural use is also regulated under the land revenue codes. For effective management of forest resources, the Central Government has brought the subject under the concurrent list and enacted the Forest (Conservation) Act (1980). Under this Act, all cases of diversion of forestlands are required to be approved by the Central Government.

States have their own legislation such as the land revenue code, which apart from dealing with issues of land administration, regulate the use of land resources. On agrarian matters, there are several statutes dealing with tenancy, ceilings on land holdings, etc. A major programme for the consolidation of fragmented plots of land has been established to promote effective and scientific management of land resources, though progress has been uneven in different states.

In order to check indiscriminate diversion of forestland for non-forestry purposes, Forest Conservation (Act) was enacted in the year 1980. As per provisions of this Act, no forestland can be diverted for non-forestry purposes without prior approval of Government. Such permission is given on case-to-case basis after detailed scrutiny of the proposal as per laid down procedure. Permission is given only for site-specific projects provided, no alternative is available. One of the important conditions stipulated while according such approval is to carry out compensatory afforestation over equivalent non-forest land or in case of its non-availability or for certain category of projects, it can be raised over degraded forest area twice in extent to the area being diverted.

5.5.2. Decision-Making: Strategies, Policies and Plans

The State Land Use Boards were established in the 1970s to ensure that scarce land resources are put to optimal use. Progress in this matter varies between States. An apex body, the National Land Resources Conservation and Wastelands Development Council, was established

765 Also see the Goa Land Revenue Code 1968.
766 Sec. 2(ii) of the Forest Conservation Act 1980. Between 1950 and 1976, 4.135 million hectares of forestlands had been diverted for other purposes, such as agriculture, river valley projects, roads and industries. Decisions about land-use were made by the States, and the release of forest land for agriculture and the regularization of encroachments upon forest lands were easy ways to gain electoral support for incumbent governments.
under the Chairmanship of the Prime Minister in 1985-86. Recently, this has been changed to the Central Land Use Council, under which the National Land Use and Conservation Board and the National Wastelands Development Board operate. These two bodies are expected to deliberate on the evolution of effective guidelines for planning and management of land resources including appropriate modifications to existing legislation. The recommendations of these bodies are discussed with State Governments.

In order to strengthen planning and management systems, the existing NLCB is being restructured. The NLCB is engaged in the preparation of zonal perspective plans for conservation, development, and management of land resources in order to adopt a strategic framework for sustainable land use planning and integration of both development and environmental goals. In all developmental programmes, planning is completed on a watershed basis. Remote sensing techniques are adopted for interpretation and integrated analysis of data on land use and land resources.

The National Land-Use Policy Outline (NLPO) was established in 1986. The development objective of the National Land Resource Management Policy Outline follows the stated underlying principle that aims at the transition from resource use to resource management. Since land is a State subject, all States have been requested to prepare Policy for Land Use for enactment. However, only few States, namely, UP and Kerala have prepared Draft Land Use policy so far. There is no information in respect of other States. The National Land-Use and Wasteland Development Council in its first meeting held in February 1986 approved the National Land-Use Policy Outline and the 19-point Action Programme, which were circulated to all States for implementation. Follow up action is undertaken with all States regularly.

In rural development projects and programmes, the importance of focusing on the household level is based on the recognition that rural communities are not homogenous. Providing for locally determined basic needs through own-production and income generation, are the two basic components of the rural livelihood strategy. A holistic approach to understanding the livelihoods of rural households, especially in marginal agro-climatic zones can provide the basis for sustainable rural poverty alleviation and natural resources management together and simultaneously.

The National strategies and Action plans are catalysed by the Conventions on Biodiversity, Desertification and Climate change. These need to be further integrated with sectoral plans to
develop a comprehensive national land resource strategy. In the past, land resources, land use and socio-economic conditions were surveyed differently. More recently, however, integrated community oriented approaches such as Participatory Landscape-Lifescape Appraisal (PLLA) and Participatory Rural Appraisal, are being introduced. Such strategies are developed at landscape scale and focus on the interaction of human activity with the biophysical environment.

The land management policies focus and closely relate to poverty reduction activities in the country. The employment generation schemes are linked with land management. This subject is more dealt by the Ministry of Rural Development. In India, since the First Five Year Plan, Land Reforms have remained a major issue of the National Agenda for achieving agrarian reforms for reconstruction of rural economy, ensuring social justice to actual tillers as well as land less rural poor and thus creating sustainable base for overall growth of industrial and tertiary sector of our economy. Generating greater access to land for the landless rural poor is considered important for poverty alleviation in rural areas.768

5.5.3. Decision-Making: Major Groups Involvement

At the local level, Panchayats, Watershed Committees, Self Help Groups, NGOs, State implementing agencies etc. are fully involved in decision making for planning, implementation, post care maintenance activities etc. for land resources.769

At the district level, the concerned development Departments along with people’s representatives take decision on land management issues. The role of women has been fully recognized in integrated planning and management of land resources. Land ownership and tenure rights of individual farmers were the basic maladies of agrarian structure at the dawn of Independence. Thus, in all States, the policy of abolishing all intermediary interests and giving land to the recorded tenants was adopted soon after independence followed by a programme of providing security tenure to the sub-tenants. As Land is a State subject, the States have exclusive rights to legislate on the subject.770

768 Ibid
769 This is true in states, which have actually devolved powers to the Local Bodies under the 73rd Amendment in 1992. Karnataka has followed suit in successful implementation of Decentralized Environmental Governance. For more see chapter 6 of the present thesis.
5.6. Green Revolution

The introduction of the green revolution was premised on principles, which differ completely from the rationale for the introduction of patents on plant varieties. Indeed, HYVs\textsuperscript{771} were the outcome of public research efforts based on the principle of free exchange of germplasm with a view to foster food security across the world.\textsuperscript{772} The promoters of the green revolution did not specifically promote commercial exploitation for profit. In the case of HYVs, farmers are not technically bound to purchase new seeds each year but the yield of saved seeds is clearly much lower even in the second year. This, thus, constitutes a very strong incentive for yearly purchase.\textsuperscript{773}

The introduction of the green revolution package has significant impacts for farmers and agricultural management. Indeed, one of the main problems associated with HYVs is that they perform well only when all the necessary inputs are available in sufficient quantities. Thus, if water is not provided at the opportune time in sufficient quantity, the crop may fail to produce the desired results. Consequently, in the case of paddy, for instance, the introduction of hybrid must be accompanied by reliable irrigation. The ‘Green revolution’ has already seen a reversal in states like Punjab where the soil has been degraded due to excessive fertilization and insecticides used to increase yields.\textsuperscript{774} The Green revolution has come about with a definite environmental cost which might be difficult to redo the damage.

\textsuperscript{770} Supra at n 30.
\textsuperscript{771} High Yield Variety.
\textsuperscript{772} http://www.un.org/esa/agenda21/natlinfo/countr/india/natur.htm#agro.
\textsuperscript{773} In the case of patented varieties, farmers are not supposed to replant saved seeds. In practice, in a country like India, most small farmers will be able to carry on the practice of saving seeds because, unlike in the US where agriculture is mostly a large scale activity, litigation of the millions of small farmers by seed companies is simply not feasible. This loophole may, however, soon disappear if seed companies manage to produce seeds for staple foods with the so-called terminator technology. Vandana Shiva, The Violence of the Green Revolution 1991. Shiva has argued that the future for India and other developing countries lies with organic agriculture, not with GM crops monopolised by multinationals, and that the so-called ‘green’ revolution launched in the 1960s using high-yielding crop varieties has also failed to deliver food security to the poor.
\textsuperscript{774} To ensure availability of effective pesticides, a comprehensive Central Legislation Insecticides Act, 1968 - is being implemented. Central Insecticides Laboratory, Registration Committee, Central Insecticides Board and Regional Pesticides Testing Laboratories are the principal wings for implementation of the Act at the Central level. To save the Indian agriculture from exotic pests and diseases, legislative measures on Plant Quarantine are being enforced through 26 Plant Quarantine Stations located at International Airports, Seaports, Land Frontiers. These Stations also discharge the responsibility of phytosanitary certification to help export of agricultural commodities.
Land and Soil Conservation

A study by UNEP in 1992 shows that an area of 1.2 billion hectares, nearly eleven per cent of the earth’s vegetated surface, suffers from soil degradation. This has been defined as ‘a process that describes human-induced phenomena which lower the current and/or future capacity of the soil to support human life’ and occurs as light degradation [good soils show signs of degradation but can be restored using good conservation practices]; moderate degradation [allows continued agricultural use but with greatly reduced productivity, and restoration requires major changes in land use practice]; severe degradation [agricultural use is no longer possible and restoration is possible at a high cost]; and extreme degradation [the area is unsuitable for agriculture and is beyond restoration]. Apart from wind and water erosion, soil degradation results from chemical deterioration due to salinisation, acidification and pollution, or from physical deterioration due to compaction, water logging or subsidence of organic soils. These are caused principally by agricultural activities, deforestation, overexploitation, industrial and bio-industrial activities, and overgrazing; the rate of soil degradation has intensified significantly over the past forty five years.

International legal response to address soil degradation have been limited. Apart from the commitments which establish general obligations and a solitary EC Directive, no legally binding instruments have been adopted which have, as their primary aim, specific measures to conserve, improve and rehabilitate soil, and prevent erosion and other forms of degradation.

Some non-binding instruments establish general guidelines. The FAO Council World Soil Charter adopts agreed principles and guidelines to improve productivity, conservation and rational use of soils, and to promote ‘optimum land use’, recognizing the responsibility of governments to ensure long term maintenance and improvement of soil productivity.\(^{775}\) UNEP has subsequently adopted a World Soils Policy,\(^{776}\) developed environmental guidelines for the formulation of National Soil Policies, and adopted an Action Plan on Drought and Desertification.\(^{777}\)

One aspect of soil degradation which is now more firmly on the international legal agenda after UNCED is drought and desertification, which is a particularly serious form of soil degradation.

It is defined by Agenda 21 as ‘land degradation in arid, semiarid and dry sub humid areas resulting from various factors, including climatic variations and human activities’, and encompasses soil degradation and associated changes in vegetation in arid and semi-arid areas.

Chapter 12 of Agenda 21 [Managing Fragile Ecosystem: Combating Desertification and Drought] establishes six programme areas to combat land degradation [including soil degradation] and drought. These are intended to combat land degradation through intensified soil conservation, afforestation and reforestation and through developing anti-desertification programmes and drought preparedness and relief schemes, including programmes to cope with environmental refugees. In December 1992, at the request of UNCED, the UN General Assembly established an intergovernmental negotiating committee to elaborate an international convention to combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa.

5.7. Conversion of Land: Law and Policy

Over thousands of years, humans have occupied most of the land surface of the planet, affecting its ecosystems in ways that have ranged from the subtle management of forests to the total transformation involved in creating the urban environment. Too often humankind has tamed nature by destroying it. However, new land management strategies that seek to answer human needs while respecting natural ecosystems offer some solutions.

For much of human existence, the land available for human use has appeared limitless. Wherever population densities rose too high for comfort, or the natural resource base declined, people moved on to occupy new lands, whether a neighboring woodland or a few country.

The global economy has grown, more land has been cleared, drained or irrigated to plant cash crops for export, such as sugar and palm oil, coffee and rubber, or to grow food crops for livestock. With the potential for new colonization reduced in much of the world, farming has increasingly invested in intensification, through purchases of fertilizers, high-yield seeds and machinery. Most of this investment has not been by subsistence farmers, however, but by commercial farmers, both large and small, responding to market conditions. Intensification – and extensification where it is still possible – became dependent on markets, with demand driven by increased consumption per person as well as population growth. While

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777 UNEP/GC.17/5, Annex Section K [1993].
less important in terms of area, mining, industrial development and urbanization have also contributed to the transformation of natural ecosystems into human landscapes. For instance, the second half of the 20th century saw an unprecedented covering of the landscape with urban concrete and tarmac, destroying or displacing wildlife and causing major disruption to drainage and rivers by preventing natural seepage.

Human population pressures on land and government subsidies are causing higher-quality (higher-rainfall) grazing lands to be converted to low-quality croplands (a primary reason for the increasing wind erosion on croplands); lands normally considered to be shrub desert are becoming low-quality grazing lands, and forests are being converted to grazing lands.

In the 90s, the economic policy of India underwent a radical change. Consequently, an important and far-reaching decision was taken. It was thought fit to liberalize, privatize and decentralize the economy. This affected all the sectors though the changes that occurred were slow and gradual. The Center formulated the Urban Land (Ceiling and Regulation) Repeal Act, 1999. This Act stated that any state in India could repeal the Urban Land Ceiling Act, 1976. Many states have done away with this Act. Few states like Maharashtra are on the verge of repealing the said Act. This Act was repealed in order to encourage construction activities and to open the construction sector for Foreign Direct Investment and private builders. Now, it becomes necessary to examine the need to repeal the Act. This statute is applicable to land ownership as well as tenancy and mortgages. Besides these aspects of property holding, it deals with the holding of land under an irrevocable power of attorney or under a hire-purchase agreement or even partly in one capacity and partly in other. However, it is essential that the vacant land that falls under the purview of this Act should not be agricultural land, or any other land where it is ruled that no construction is allowed or, where no development control regulations are applicable. It is very clear from the provisions of the Act that the ceiling on land is not absolute. Exemptions, related to the ceiling limit, are allowed if certain circumstances are found to exist. In fact, it is not actually necessary to repeal the Act as it vests adequate powers and authority with the state when it comes to granting exemptions as well as imposing restrictions.

The Karnataka Land Revenue Act, 1964, sec. 95 regulates the aspect of conversion in the State. Under amended section 95 (3B) of the Act no permission to divert any agricultural land lying within the limit of the green belt to any other purpose can be granted. Exercise of power under
sec. 95 of the Act is subject to the provision of the Karnataka Town and Country Planning Act 1961 [sec. 76M]. The sanction for conversion of agricultural land cannot be accorded imposing restriction to comply with planning regulations.\textsuperscript{779} For the conversion of agricultural land to non-agricultural purposes, the Deputy Commissioner can grant permission for conversion on the payment of requisite revenue fee under the Karnataka Land Revenue Act. Under the 1994 amendment to the Land laws in Karnataka, the Government can convert any agricultural land for non-agricultural purposes and this could include for industrial, commercial or other purposes.\textsuperscript{780} In the absence of proof of communication of the order refusing permission to convert within 4 months, permission applied should be deemed to have been granted. There is no obligation to file an appeal against an order communicated after 4 months.\textsuperscript{781} The DC\textsuperscript{782} cannot grant the permission without holding an enquiry and without hearing the applicant and the persons who are likely to be affected by the grant of such permission. Permission to divert may be refused by the DC on the ground that the diversion is likely to cause a public nuisance or that it is not in the interest of the general public or that the occupant is leviable or unwilling to comply with the conditions that may be imposed. Under Sec. 95 [3A], the State Government may, with a view of protecting and improving the environment, by notification, declare as ‘Green belt’, any area lying within the limits of or within the prescribed distance from the limits of the cities under the Karnataka Municipal Corporations Act 1976. Sec. 95 [3B] states that notwithstanding anything contained in this section, no permission shall be granted to divert any land or part thereof assessed or held for the purpose of Agriculture lying within the limits of the Green belt to any other purpose. Conditions may be imposed on diversion in order to secure the health, safety and convenience, and in the case of land which is to be used as building sites, in order to secure in addition the dimensions, arrangement and accessibility of the sites are adequate for the health and convenience of occupiers or are suitable to the locality and do not contravene the provisions of any law relating to town and country planning or the erection of buildings.\textsuperscript{783}

\textsuperscript{779} \textit{State of Karnataka v Jayashree}, ILR 1986 (1) Kar. 820.
\textsuperscript{780} The idea of Globalization saw the liberalization of the Land regime and open access to private investment in the agricultural sector, including corporate farm management, plantation forestry.
\textsuperscript{781} \textit{Narayana Sheety v Deputy Commissioner}, 1974 (1) KLI SN 87.
\textsuperscript{782} District Collector of the District is the final Authority to arbiter on revenue matters in that District.
\textsuperscript{783} Sec. 94 (4).
Sec. 96 imposes penalty for using agricultural land for other purpose without permission. On such diversion, the owner may be summarily evicted or demolition of the construction erected thereon.  

5.8. Open Lung Areas: Conservation Strategies by Courts

Open space is an important feature of the urban environment, especially in cities, densely populated, where many people do not have access to a private garden. Many types of open space exist within the city, fulfilling a variety of different recreational and amenity purposes. Open spaces also help to define townscape character, and provide visual relief from the harsher built environment by providing a green 'backdrop' to the urban area. They are often important for nature conservation, and can serve as a sanctuary for wildlife in the city. Open spaces can also have an important effect on the way in which an urban environment is perceived, and can thus have a positive influence upon the image of a city.

The characteristics of open spaces vary considerably according to their purpose and location. Significant differences exist between small-scale open spaces which are of value to the immediate local environment and those of a larger scale which may be of city-wise or sub-regional importance. Through the preparation of development plans, local planning authorities are expected to first assess and define local needs for recreational facilities and then identify deficiencies in the provision of public open space in relation to these needs. Local plans should include specific policies on public access to open space which has recreational value. Wherever possible, plans should ensure that public rights of way are retained, and take into account the particular recreational needs of the elderly and the disabled.

In Karnataka, the Karnataka Parks [Preservation] Act, 1975 obligates the State Government to preserve and maintain as horticultural gardens, and to take action to improve the utility of such parks as gardens. Further the Act stipulates that no land or building within the parks to which this Act applies shall be alienated by way of sale, lease, gift, exchange, mortgage or license for the use of any such land or building in contravention of this Act.

In Bangalore Medical Trust v B. S Muddappa, a site near the Sankey’s Tank in Rajmahal Vilas Extension in the city of Bangalore was reserved as an open space in an improvement scheme adopted under the City of Bangalore Improvement Act, 1945. However, pursuant to the orders of the State Government in 1976, the BDA allotted the open space in favour of the appellant, a medical trust, for the purpose of constructing a hospital. This site is stated to be the

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784 For more see the Karnataka Land Revenue Act, 1964 or the Goa Land Revenue Code 1968.
785 Sec. 4 of the Act. This Act is short and consists of only six sections.
786 AIR 1991 SC 1902.
787 Bangalore Development Authority Act, 1976.
only available space reserved in the scheme for a public park or playground. Resident of the locality challenged this allotment in the writ petition. ‘Amenity’ under the Bangalore Development Act, 1976, includes roads, streets, lighting, drainage, public works and such other conveniences as the Government may by notification, specify to be an amenity for the purpose of the Act. It is manifest that amenity indicates a convenience or facility having a public characteristic. Even though the definition is inclusive and a hospital has been included vide Sec. 2 (bb) in 1984, a private nursing home, unlike a Government hospital, cannot be called a civic amenity. This is because a private nursing home cannot fulfill the essential public characteristic. The Supreme Court has therefore recognized as a fundamental environmental norm that the power conferred under an environmental statute may be exercised only to advance environmental protection and not for a purpose that would defeat the object of the law. The Court held that the direction issued by the Karnataka Chief Minister was a breach of public trust since it deprived Bangalore residents of a public park. 788

Unfortunately this same principle was not followed, neither referred to in Suresh Mehta v State in 1993 789, wherein the petitioner urged that the land in dispute had been left out for the use for a park and that the Urban Improvement Trust had no power to let it out to Jodhpur Medical Research Centre Trust for construction of the hospital. The Court held that the allotment of the land to the Trust was eminently just and perfectly suited to the public cause. To interfere with that allotment order at the stage when construction worth lacs have already been made would result in doing injustice.

The Bombay and Allahabad High Courts have also followed the Supreme Court case and preserved and created green belts in Nagpur and Ghaziabad. In Hariyan Layout Sudhar Samiti v State of Maharashtra 790, the Court held that conversion of park into a housing area could not be permitted as it would disturb the basic feature of the Nagpur plan. Similarly in DD Vyas v Ghaziabad Development Authority 791, the Court reminded the authority of its statutory duty to develop public spaces into parks with garden, trees, promenades and so on. The Court

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788 Suresh Mehta v State of Rajasthan [unreported]. This case provides a startling contrast to this case. Mehta petitioned the High Court to quash the allotment of open land to the Jodhpur Medical research Centre trust, which proposed to establish a hospital on the plot. The petitioner asked for a public park at that spot as the Government had promised in a previous case. On this assurance the pervious petition had been dismissed. This time in the absence of a land use map designating the site as a park, the High Court refused to hold the Government to its assurance. The division bench made light of the Bangalore Medical Trust case, ‘each decision is an authority [for] what it decides’.

789 AIR 1993 Raj. 62.

790 1997 (2) Mah L J 98.
observed, “Good parks extensively laid out are not only for aesthetic appreciation, but in fast developing towns having conglomeration of buildings, they are a necessity. In crowded towns where a resident do not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and factories, the efficacy of beautifully laid out parks is no less than that of lungs to human beings. It is the verdant cover provided by public parks in green belts in a town, which renders considerable relief to the restless public. Hence the importance of public parks cannot be under-estimated”.

A public park is a gift of modern civilization, and is a significant factor for the improvement of the quality of life…. Open space for a public park is an essential feature of modern planning and development as it greatly contributes to the improvement of social ecology. The Court further observed that the respondents, being an instrumentality of the State, have failed to discharge the fundamental duties under Art. 51A (g) and 51A (j). Hence, the Court issued the writ of mandamus and also gave certain directions for the development of Adu Park.

The Rajasthan High Court in another decision—*Nizam v Jaipur Development Authority* 792 was more vigorous in applying the Supreme Court precedent. In that case, Justice Tibrewal saved a Jaipur park from being changed into a school. The Court held that residents of the area had a right to be heard which was in conformity with the above case.

In *M. C Mehta v Union of India* 793, the Court investigated the fundamental concerns in Urban planning. The question of environmental pollution and pressure on civic resources that were caused by the chaotic growth of Delhi, and which were present to some degree in any Indian metropolis. The problem was recognized as early as 1962, when the first ‘master plan’ for Delhi was formulated, funded in part by the Ford Foundation. This plan was based on an elaborate idea of ‘Zoning’ wherein residential, commercial and industrial zones were spatially segregated. The industrial zones provided for plots to house machines but had no provision for the workers who would be brought into these areas. Consequently, there was no way to halt mushrooming of ‘illegal’ squatter settlements. 794

791 AIR 1993 ALL 57.
792 AIR 1994 Raj. 87.
793 AIR 1996 SC 2231.
794 In order to deal with continuous pressures of in-migration planners in the 1970s mooted the idea of developing a number of satellite or ‘ring’ towns around Delhi, which would provide employment opportunities to people. The
In *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu*\textsuperscript{795} the High Court set aside and quashed the relevant resolution of Lucknow Nagar Mahapalika permitting the respondent, M. I. Builders Pvt. Ltd. to construct underground shopping complex in the Jhadewala Park in Lucknow. The Court stated that section 114 of the Municipality Corporation Act, impose an obligation on the part of Mahapalika to maintain public places, parks and plant trees to construct and maintain parking lots. By allowing the underground construction Mahapalika had violated the provision.

In *M.V.P. Social Workers Association, Visakhapatnam v. V.U.D.A. Visakhapatnam*\textsuperscript{796}, the Court dismissed the petitioner’s allegation that a permanent construction near VUDA Park at Visakhapatnam beach line, to establish an electronic and video games complex (amusement park), affected the environment of the Coastal Zone of Visakhapatnam city and violative of the provisions of Environment (Protection) Act, 1986. The grievance of the petitioners is that the area wherein the disputed construction is alleged to be made falls in Category-III of the said notification. Category III (CRZ-III) will include coastal zone in the rural areas (developed and undeveloped) and also areas within municipal limits or in other legally designated urban areas which are substantially built up.

In *Balappa Basamanappa Kosji v. State of Karnataka*,\textsuperscript{797} the residents of Aiwan -E- Shahi Colony in Gulbarga filed the Writ Petition in public interest challenging allotment of a land by the Corporation. Certain area in the colony was reserved for open space and the same came to be vested with the Corporation under Section 174 of Karnataka Municipal Corporations Act, 1976. The respondent, Municipal Corporation on an order of the State Government granted, allotment of site in the open space to a third party. The petitioner aggrieved by such allotment filed this Writ Petition.

The counsel for the petitioners argued that the open site was a park within the definition of Karnataka Parks, Play fields, and Open space (Preservation and Regulation) Act, 1985 and alienation of the land earmarked for the purpose of developing into a park was prohibited and was null and void.

\textsuperscript{795} AIR 1999 SC 2468.
\textsuperscript{796} W.P. 26085/2001(2002.01.23).
\textsuperscript{797} AIR 2002 Kar. 44.
However, the counsel for the respondents argued that land did not come within the definition of the Park.

The Court observed that the definition was an inclusive definition. It would include any land which was not covered by any building. The fact that the land in question was a piece of land not covered by any building was not disputed. It would also include a piece of land maintained as a place for the resort to the public for recreation, air or light. It was not essential that the area must have been laid out a garden with trees, plants or flower beds or as lawn or as a meadow. To understand it in any other way would amount to doing violence to the tenor of the definition.

Moreover the park was listed under list of parks by a Government Order under Section 3 (2) of the Act. The crux of the case was whether a piece of land designed as a park by the State could divested for any other purpose by the local body on its own or acting under the direction of the State. The Court held “any private property which vests in the Corporation by virtue of Sec. 174 of the Corporations Act, is held by the Corporations as a trustee and in its capacity as a trustee, the Corporation is expected to deal with and apply it only to sub-serve the purposes of the Municipal Corporations Act and residents at large of the that corporation. Being a trustee, the Corporation had no legal right to barter any property that came to be vested in it, by virtue of Sec. 174 of the Corporation Act, to any third party. Sole purpose of vesting a certain land in favour of the Municipal Corporation is to ensure that the land concerned is put to a certain and a definite use in advancing the object for the attainment of which the Municipal Corporations Act was promulgated. The land in question in present case belonged to a co-operative society and the society parted with this piece of land on the understanding that it would be with the corporation for public purpose, which would in turn ensure to the benefit of the residents of the layout. The corporation having thus come into possession of the land in the position of a trustee could not have dealt with it as if it has acquired ownership over the land. The land is not only divested for a purpose other than the one for which it was earmarked which is quite in contravention of the statutory provisions of the Act but the land has also been alienated to the third respondent. The alienation of such piece of land by the Corporation is thus, without legal authority and therefore is not valid in law.
In yet another incident of encroachment, a park commonly known as Green Park, was situated adjacent to Ramakrishna Street, old City, Visakhapatnam, it was alleged by the petitioner that the respondent Corporation had converted the said park into Garbage Dumping yard. The A.P Pollution Control Board had received a complaint from the petitioner about the dumping of garbage in the park by the corporation and the same was brought to the notice of the Commissioner. It was alleged in the complaint that the dumping of the garbage was affecting the health of the residents, which was originally designated for a park; it would tend to increase infectious diseases like Cholera, malaria. It was requested to shift the dumping yard to a safer locality. Though the Court has accepted the request of the petitioners the same was being implemented at a very slow pace.

All the above cases and incidents cited are only instances of the growing inadequacy of planning urban cities and settlements. Cities are choking up and there is a growing concern for cleaner environment, which can only be seen through less concrete jungles and more green areas. Open spaces are important lung areas in any urban place, its realization is nothing new, but lack of concern is. The Courts have taken the initiative to protect the urban Indian, but the ground realities have not changed. Playgrounds are still a major problem, though big concrete stadiums have been provided. These in the long run will worsen the situation for Green City.

5.9. Tree preservation in Urban areas

Maintaining social forestry scheme and planting tree in urban localities to maintain urban ecological balance is an important role of the public administration. This is important, due to the fact that it involves land and natural resource conservation and management in Urban areas. The trees planted have both economical and social values and are most close to the urban mindset.

In Karnataka, The Preservation of Trees Act 1976, establishes Tree Authority to regulate felling of trees for domestic use. Under this law no person shall fell any tree for domestic use unless he has had a written permission from the Tree Officer, whether in urban areas or in Coffee, tea, or rubber plantations. For urban areas, the Tree Authority shall consist of Mayor, Divisional Forest officer and other personnel. The Chief Conservator of Forests shall appoint a

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798 Smt. C Uma Devi v Government of A. P AIR 2001 A. P 460
799 Sec. (f) to fell a tree: means severing the trunk from the roots, uprooting the tree and includes burning or cutting or girdling or applying arboricides to a tree to cause substantial damage thereto or destruction thereof.
Tree Officer who shall have the power of preservation of all trees within his jurisdiction. He would also be required to carry a census of the existing trees and develop and maintain nurseries, supply seeds, saplings and trees to persons who desire or are required to plant new trees or to replace trees which have been felled.

The grant of land does not cover and does not amount to the grant of ownership of the trees standing on the land granted. Unless the authorities of the forest department assess the market value with reference to the prevailing market rate and the grantees pay the same, no right accrues to the grantees to cut and remove the trees standing on the land granted to them. Sec. 8 imposes restriction on cutting of trees, whether situated on the land owned or occupied by the person concerned. No tree can be cut without permission, whether it is situated on a Government land or private land. Act of cutting amounts to an offence. Permission to fell shall not be refused if the tree –

i) is dead, diseased or wind-fallen or

ii) has silviculturally matured or

iii) constitutes a danger to life or property or

iv) constitutes obstruction to traffic or

v) is substantially damaged or destroyed by fire, lightning, rain or other natural causes or

vi) is required in rural areas to be removed either for extension of the cultivation in areas specified in Sch. II or for the bonafide use of the applicant.

Where permission to fell a tree is granted, the Tree Officer may grant it subject to the condition that the applicant shall plant another tree or trees of the same or any other suitable species on the same site or other suitable plant within thirty days from the date the tree is felled or within such extended time as the Tree officer may allow.

Against the order of the Tree Officer, an appeal shall lie to the Tree Authority. A person who has cut the trees standing on his own land, in contravention of the provisions of the Act is liable to pay the value of the trees in addition to the compounding fees payable under Sec. 21(1)(a) of the Act. Notwithstanding the fact that the trees belonged to the person who had cut them, he is

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800 Sec. 5 (i).
801 Sec. 7 (d).
802 Adiveppa Babappa Kulseva v Divisional Forest Officer ILR 1989 (2) Kar 1228.
803 Jose Chacko Mrakattu v The Tree Officer AIR 1989 Kant 189; 1988 KLJ 380.
804 B. M Ranji Kariyappa v State, 1990 (2) KLJ 351.
805 Sec. 8(5).
liable to pay the value of the trees estimated by the Officer. The Tree Officer should specify the amount of compounding fees as well as the value of the product of the trees and/or other properties. The tree Officer may arrest without warrant any person reasonably suspected of having been concerned in any offence under this Act.  

5.10. Waste Lands: Review

Historically, wasteland development was perceived as a case of resource sustainability. For instance, the issues of developing wastelands was recognized way back by the National Commission on Agriculture in 1976. The Commission then recognized the need for preserving forests by dissuading the states from diverting for non-forests uses, developing soil and water conservation strategies, restricting free grazing, promoting social forestry for fuel wood and small timber needs and so on. Among other things, the Commission also recommended that forests should have an adequate share of land for productive, protective and aesthetic functions.

When the National Wastelands Development Board was set up in May 1985, its own mission was, once again, one of bringing under productive use of wastelands in the country through a massive programme of afforestation and tree planting. Recent thinking has, however, changed to resource and livelihood sustainability. Today there are two nodal agencies at the governmental level to deal with the problems of degradation of land, namely the National Waste Land Development Board [NWDB] in the Ministry of Rural Areas and Employment and the second as National Afforestation and Eco-Development Board [NAEB] in the Ministry of Environment and Forests. The mission of both these two agencies are nearly the same, except, they deal with two different types of lands. The NWDB concentrates on regenerating wastelands under the revenue departments, private ownerships and other public bodies. NAEB deals with degraded forest lands. As a mission of regenerating degraded and wastelands, the issues are quite the same between forest and other lands. The institutions involved, legal differences, departments involved in implementation are however, different. Both the Ministries have changed their focus from pure regeneration to livelihood support to the locals first, resource sustainability to follow next.

806 Sec. 17; Jose Chacko Mrakattu v The Tree Officer AIR 1989 Kant 189; 1988 KLJ 380.
807 Gopal K Kadekodi, Regeneration of Degraded and Waste Lands, Institute of Economic Growth, New Delhi, 1.1.
‘Waste Land’ means, degraded lands which can be brought under vegetative cover, with reasonable effort and which is currently lying as under-utilised and the land which is deteriorating for lack of appropriate water and soil management or on account of natural causes. In a sense, The wastelands would include all such lands ‘that are degraded and presently lying unutilized except as current fallow due to different constraints’. They have classified wastelands into two categories namely, cultivable and uncultivable waste. A brief account of them are given below.

Cultivable wasteland would include those, which are unutilized, partially utilized or misutilised. [undulating land with and without shrubs, surface water logged and marshy lands, salt affected lands], and waste lands based on ecological limitations [shifting cultivation area, degraded forest land, degraded pastures/grazing land, strip lands, sands, mining spoils, industrial waste etc.]

Uncultivable wastelands are more or less unavailable [e.g. Barren rocky, stony waste steep sloping area, snow covered glacial area].

This definition is comprehensive enough to refer to the ecological factors behind and the economic approach to deal with the problem. Wastelands are distinguished broadly by three dimensions: productivity, ecological sustainability and economic recoverability factors. The estimated area of wasteland in the country is about 600 to 1300 lakh hectares, which is a significant size of land holdings in India.

Common property resources are to be distinguished from wastelands. Common property resources seem to have gone down in several states. Again, comparison over time is rendered difficult for want of consistent time series of data from the same source. A number of indicators can be developed to monitor the use and abuse of CPRs. Waste lands are to be viewed from the point of productivity, ecological sustainability and economic recoverability. Common Property resources are based on ownership and management practices [property rights]. Some of the CPRs can be wastelands and vice-versa.

5.11. Land degradation through waste dumping:

Most of the raw materials that enter the production process, eventually emerge as waste. Although, it can be argued that municipal solid waste, or garbage is not a new phenomenon, yet

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what industrialization and economic growth has contributed is not only a tremendous increase in garbage generation, but above all, changes in its characteristics. Thus, aluminum, plastics and other relatively newer substances are increasingly displacing traditional material. The most startling change has been in plastics. Many modern consumer products also contain toxic substances that poses disposal problems: battery contains heavy metals such as lead acid, mercury and cadmium; household cleaners, solvent, paints and pesticides often include hazardous chemicals.

Traditional waste disposal methods have been proved to have dangerous implication on the environment. Landfill, which still remains the most common method of waste disposal, eventually leaks, thus releasing into ground water an often-toxic soup of rainwater and decomposing waste called ‘leachate’. This may contain a wide variety of hazardous substances, including heavy metals and organic chemicals. Decay of garbage in oxygen starved dumps also produces methane gas, which is both a major contributors to global warming and fire hazard.

In B. L Wadhera$^{809}$ and Almitra Patel$^{810}$ cases the Apex Court took stock of the waste dumping, treatment system in the country. The Court asked the Government to frame rules for the management and disposal of municipal solid waste through scientific means. The passing of the Municipal Solid Waste management Handling Rules 2000 can be attributed to the Apex Court directive in the Almitra Patel series of Judgments.

In Ramji Patel v Nagrik Upabhokta Mar, the Court asked the Central Water Pollution Control Board to depute specialist who would inspect the area near the city of Jabalpur, where the water had been contaminated due to the existence of dairies, which were storing cow dung and urine in a unhealthy manner. After hearing arguments from all sides the Court held: ‘supply of pure drinking water is the statutory duty of the Municipal Corporation and the supply of such water has to be ensured to every citizen. In a situation where the interest of the community is involved, the individual interest must yield to the interest of the community or the general public’.

Waste Dumping on land:

$^{809}$ B. L Wadhera v Union of India 1996 (2) SCC 594.
$^{810}$ Almitra Patel v Union of India 1998 2 SCC 416. Also see the Directions given by the Supreme Court in March 2003 and November 2003 in the above case.
‘Wastes are substances that are disposed of or are intended to be disposed of... by the provision of national law’.\textsuperscript{811} In Research Foundation for Science \textit{v} Union of India\textsuperscript{812} the Court ordered the Government to relook at the Hazardous Waste Rules and to make necessary amendment to the same, so as to make it more effective.

In Dr. Ashok \textit{v} Union of India\textsuperscript{813}, the Court ordered that the Government should comprehensively regulate hazardous substances, in the form of insecticides and other pesticide. The Supreme Court treated a letter as a petition under Art. 32, and issued ban orders against hazardous insecticides such as DDT and others. The Court observed that the use of insecticides and chemicals hazardous to health should be regulated. The most dangerous crises in the present day modern world is that of global atmospheric pollution. The ecosystem has become imbalanced by uncontrolled use, abuse and misuse of natural resources and manufacture and use of hazardous products and chemicals resulting in endangering the very existence of human race. The excessive use of chemicals and pesticides for optimizing agricultural production has created alarming danger to the health and safety of living beings in general and agricultural workers in particular. The Court directed constitution of a committee of four senior officers from four different ministries involved which would have deliberations at least once in three months and take suitable measures in future in respect of insecticides and chemicals found to be hazardous for health.\textsuperscript{814}

The recent controversy of pesticide residue in bottled water [packaged drinking water] is just the warning this case had illustrated. Today it is reality, notwithstanding the fact that the Government in the disguise of farmer’s rights is pumping in more and more of chemical fertilizers and insecticides into the land which is giving a U-turn to the Green revolution in

\textsuperscript{811} Art. 1 of the Basel Convention.
\textsuperscript{812} [1999] 1 SCC 223.
\textsuperscript{813} AIR 1997 SC 2298.
\textsuperscript{814} The Bio Safety Protocol entered into in Montreal and ratified by India, enlists more than 135 dangerous chemicals, which shall be banned from use, either in Agriculture or scientific research. This Protocol was adopted in Montreal in accordance with the precautionary approaches that contained in principle 15 of the Rio declarations on environment and development. The objectives is to contribute to ensuring an adequate leave of protection in the field of the safe transfer, handling and use of living modified organism resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking into account risks to human health and .......... specially on transboundary movement. The provision of the biosafety protocol examine sharing mechanism that is intended to provide countries with the necessary means to take transboundary movement of living modified organisms. Take the example of the meat hormone case. The meat hormones case is an important consideration of the precautionary approach, the EC explained in detail how they understood the bio-diversity protocol and the sanctuary and photo sanitary agreement to be reference to the “provisional” nature of measures adopted pursuant to Art s.7 of the SPS agreement “is not bound up with a time limit but with development of scientific knowledge”.

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some of the States, like Punjab. The fact remains that the finding of pesticides residue in packaged drinking water is nothing new, the amount of pesticide residue is. Pesticide is something which cannot be segregated from water, they remain in water and contaminate the same, as these are dangerous and toxic chemicals used to kill insect in vegetables and crops. The controversy of ‘endosulphan’ in coastal Kerala and Karnataka was ignored by the Government and this insecticide continues to be in the market contaminating land and ground water. As most of these packaged drinking water is tapped from underground resources, the pesticides residue spread on land is percolated into ground and is not reversible.  

5.12. United Nations Convention to Combat Desertification

International concern over the issue predates the UNCED. The first All Africa Seminar on the Human Environment convened in August 1971, under the auspices of the UN Economic Commission for Africa was the first international forum to make specific recommendations to combat the spread of deserts in Africa. It was subsequently suggested under Chapter 12 of Agenda 21 that the General Assembly establish an inter-governmental negotiating committee for a convention to combat desertification in June 1994.

Desertification is the diminution or destruction of the biological potential of land, and can lead ultimately to desert-like conditions. It is an aspect of the widespread deterioration of ecosystem and has diminished the biological potential, i.e. plant and animals production, for multiple use purposes at a time when increased productivity is needed to support growing populations in quest of development’.  

Desertification is land degradation in arid, semi-arid and dry sub humid areas resulting from various factors, including climatic variations and human activities’. The problem is more acute in the dry land, which stretches across more than a third of the Earth’s land surface. It is here where the soils are especially fragile, vegetation is sparse and the

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815 Scientific uncertainty still exist on this.
816 This seminal meeting and its recommendations increased international action to respond to the problem. The UN by General Assembly Resolution 3337 in 1974, decided to convene a UN Conference on Desertification in 1977. The conference resulted in the adoption of the UN Plan of Action to Combat Desertification in the same year.
817 UNCOD 1977.
818 Is the Thar desert of Rajasthan increasing? Yes, say many experts it is increasing at the rate of 3 km per year. UNEP Annually Report 2002.
819 Art 1(a) of the Convention on Desertification.
climate is particularly unforgiving that desertification takes hold. 820 The convention in Art 2 states that the objective is to combat desertification and mitigate the effects of drought through action at all levels, supported by international cooperation and partnership arrangements, with the aim of achieving sustainable development in affected areas.

5.13. Mining

India produces as many as 84 minerals comprising 4 fuel, 11 metallic, 40 non-metallic industrial and 20 minor minerals. Their aggregate production in 1999-2000 was about 550 million tonnes, contributed by over 3,100 mines producing coal, lignite, limestone, iron ore, bauxite, copper, lead, zinc etc. More than 80 percent of the mineral production comes from open cast mines and therefore, one must add the quantity of overburden to that of the mineral production in order to assess the total amount of annual excavation in India’s mining sector.

The problem of mining is manifold. The destruction of the preexisting habitat for the mining industry undermines the possibility of any other use of the other resources of the area. The Mining Industry is wide spread and severe adverse impacts are visible from small scale rat hole mining and stone quarrying to large open cast and deep underground mines.

The social and political implications of mining assumes far reaching implications when this principal mineral wealth lies in the most forested regions and those homelands traditionally inhabited by Dalit and Indigenous Peoples. 821

In recent times, the impetus to the mineral development was imparted in the country only after the political independence came in the year 1947 when the significance of role of minerals was realized in nation building. In 1948, the government introduced the Industrial policy resolution. The resolution emphasized the importance to the economy of securing a continuous increase in production and its equitable distribution and pointed out that the State must play a progressively active role in the development of industries. In 1954 the Indian Parliament accepted the socialistic pattern of society as the objective of social and economic policies. The adoption of socialistic pattern of the society as the national objective as well as the need for planned and rapid development required that all industries of basic and strategic importance should be in the public sector. The industrial policy was comprehensively revised and adopted

820 Some 70 percent of the 5,200 million hectares of the dry lands used for agriculture around the world are already degraded. This is almost 30 percent of the total land area of the world. UNEP Environmental Law Handbook 1999, p. 184.
in 1956. The exploration of minerals was intensified and the Geological Survey of India was strengthened for that purpose. The Indian Bureau of Mines (IBM) was established to look after the scientific development and conservation of mineral resources. IBM was also assigned the responsibility of conducting exploration with more emphasis on coal, iron ore, limestone, dolomite, and manganese ore keeping in view the requirement of the proposed steel plants.

Later, in 1972, when the Mineral Exploration Corporation was established, this function was transferred to it. In the Eighth Plan, greater emphasis was laid on mineral exploration by adoption of improved technologies like remote sensing, geo-techniques etc., particularly for those minerals in which the resource base of the country is poor such as gold, diamond, nickel, tungsten, rock phosphate, sulphur etc.

India embarked on major structural economic reforms in 1991 encompassing almost all sectors of the economy viz., Industry, trade as well as financial sector. The National Mineral Policy, 1993 facilitated the growth of mineral based industries through investment in the private sector. As per the policy, processing units which desire to develop captive mines to secure assured supplies of raw material are allowed foreign equity participation in the manner and to the extent applicable to such processing units.

5.13.1. National Mineral Policy

Minerals are valuable natural resources being finite and non-renewable. They constitute the vital raw material for many basic industries and are a major resource for development. Management of mineral resources is the responsibility of the Central and State Government in terms of Entry 54 of the union List [List I] and Entry 23 of the State list [List II] of the Seventh Schedule of the Constitution. Management of mineral resources has therefore, to be guided by long-term national goals and perspectives. The country is not endowed with all the requisite mineral resources. It is, therefore, imperative to achieve the best use of available mineral resources through scientific methods of mining, beneficiation and economic utilization. These aspects constitute the essentials of the National Mineral policy, which has evolved over the years and was formulated in 1993, in line with the liberalization and the globalization of the Indian economy. The National Mineral Policy excludes fuel minerals which are dealt separately by the respective ministries. The policy also emphasizes certain new aspects and elements like

821 In the State of Chhattisgarh, 60% of its population is tribal and it is India’s most mineral rich State.
mineral exploration in sea bed, development of proper inventory, proper linkage between exploitation of minerals and development of mineral industry, preference to members of the Scheduled Tribes [indigenous people] for development of small deposits in Scheduled Areas, protection of forests, environment and ecology from the adverse effects of mining, enforcement of mining plan for adoption of proper mining methods and optimum utilization of minerals, export of minerals in value added form and recycling of metallic scrap and mineral waste.

5.13.2 Regulatory Framework


The Mineral Concession Rules, 1960 outline the procedure and conditions for obtaining a prospecting License or Mining Lease. The Mineral Conservation and Development Rules, 1988 lays down guidelines for ensuring mining on a scientific basis, while at the same time, conserving the environment. The provisions of Mineral Concession Rules and Mineral Conservation and Development Rules are, however, not applicable to coal, atomic minerals and minor minerals. The minor minerals are separately notified and come under the purview of the State Governments. The State Governments have for this purpose formulated the Minor Mineral Concession Rules.

Mineral Concession Rule stipulates that the ‘mining plan’ shall incorporate a plan of the area showing the water courses, the limits of reserved and other forest areas, the density of trees, an assessment of impact of mining activity on forest land surface and environment including air and water pollution, details of scheme of restoration of the area by afforestation, land reclamation, the use of pollution control devices and such measures as may be directed by the Central or the State Government from time to time. All these requirement are incorporated in an Environmental Management Plan which forms an integral part of a mining plan.

the sector. While on the one hand, the economy demanded stimulation, there was also a need to safeguard the national interest in the area of conservation, environment and scientific development. As a result of this, the following broad features emerge:

1. The new policy stipulates that the induction of foreign technology and participation in the arena of exploration and mining in case of high value and scarce minerals shall be pursued.
2. Any Company registered or incorporated in India can apply for a prospecting license or mining lease to concerned State Government. All thirteen mineral earlier reserved for exploitation by the public sector [iron ore, manganese, sulphur, gold, diamond, copper, lead, platinum] have been opened for private and also foreign investment.
3. The maximum period for which the mining lease is granted has been made 30 years and the minimum period is 20 years. Each period of renewal is also 20 years.
4. No mining lease can now be granted to a private or public party without a proper mining plan including environmental management plan approved by Indian Bureau of Mines. The mining plan shall be reviewed after 5 years and a mining scheme shall be submitted for next 5 years.

Further, amendment to MM [RD] Act, 1957 were carried out on 20.12.1999 and thereafter in MCR 1960 and MCDR 1988 on 17.1.2000. These amendments are summarized below:

1. The name of the Mines and Minerals [regulation and Development] Act, 1957 has now been changed to Mines and Minerals [Development and Regulation] Act, 1957 in order to emphasize that the stress is on development rather than on regulation.
2. The reconnaissance operations as distinct from prospecting have been defined. Conditions, criteria, area limits, scope of operations, etc. in regard to reconnaissance operations have been introduced in the relevant rules.
3. State Government are now authorized to renew Prospecting license.822

The following notification was also issued under E P823 Act to restrict the mining activity.

i) Restriction on mining on Dehradoon Valley.
ii) Restriction on mining in Aravalli Hill range in Gurgaon & Alwar districts.
iii) Restrictions on mining in Coastal Regulation Zone (CRZ) i.e. within 500 m from high tide lines (HTL).

822 TERI Report No 2001 IEE42.
iv) Restriction on mining in wild life, sanctuaries, national parks, near to national monuments, areas of cultural heritage, also in ecologically fragile areas rich in biological diversity, gene pool etc.

Till January 1994, obtaining ‘Environment Clearance’ [EC] from Ministry of Environment & Forests (MOEF) was only an administrative requirement for large public sector projects and their expansions and also for obtaining forest clearance under F C Act 1980 over 20 hectares, both for public and private sector.

But in January/May'94 a notification on "Environmental Impact Assessment (EIA) of Development Projects" was issued, covering all industries, mining, power projects etc. As per this notification all mining projects of major minerals with lease area of more than 5 hectares will require environment clearance from MOEF, (GOI). In addition, site clearance will be necessary for all mining irrespective of area and prospecting areas above 500 hectares.

5.13.3. The Judicial Response

The contradictory policies of the government which on the one hand emphasizes conservation of natural resources, while at the same time destroying these resources is clearly brought out in the case of Banwasi Sewa Ashram v State of UP. In this case the State Government, first of all, declared large part of the forestland on which depended the life of the Adivasis as a reserved forest, under section 20 of the Indian Forest Act, 1927. This declaration not only deprived the Adivasis of all right to collect forest products but also made them liable to be evicted from the forest areas. However the eviction from the forest areas were challenged in the Court, and the Court had issued directions not to dispose the occupants of the said land pending investigation of their claims over the forest. Meanwhile the Government of Uttar Pradesh initiated proceedings for acquisition of the above forest area for the construction of a super thermal power station by the NTPC. The NTPC also requested the Court to lift its order prohibiting eviction of local people and allow it to take possession of the forestland for the project. The Court tilted the balance against the purpose of environment. Although, the Court noted that ‘forests’ are a much wanted national asset’, yet in view of the fact that the ‘country has suffered a tremendous setback in industrial activity for the want of energy’, hence, ‘a scheme to generate electricity is equally of national importance and cannot be deferred’.

Even though the Court allowed the acquisition of the land, it instructed that it could be done only after the NTPC agreed to provide the facilities approved by the Court to the ousted forest dwellers. The Court, however, did not address the primary issue in the petitioners claim: whether the local people could assert as claimants to the forest arising out of their traditional dependence on the forest. Besides the court stated that the claimants could attempt to establish

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824 AIR 1987 SC 374.
their right ‘in any other appropriate proceeding’. The Court, however, gave no indication of what other proceeding are available to the claimants.

Following a public interest petition addressed to the Supreme Court by the Rural Litigation and Entitlement Kendra of Dehra Dun in the State of Uttar Pradesh\(^{825}\), the Court directed that all fresh quarrying in the Himalayan region of the Dhera Dun District be stopped. Subsequently, acting on the basis of the reports of the Bandyopadhyay Committee and a three man expert committee, both of which were appointed by the Court, the Court ordered the closure of several limestone mines in the area. The Court stated that this case brought into sharp focus the conflict between development and conservation and served to emphasise the need for reconciling the two in the larger interests of the country. The environmental disturbance caused by limestone mining had to be weighed in the balance against the need of limestone quarrying for industrial purposes.

In *M. C Mehta v Union of India*\(^{826}\), the issue of pollution caused by stone crushing, pulverizing and mining operations in Faridabad-Ballabhgarh area in the State of Haryana was considered. The Court opined that Mining activities in the vicinity of tourist resorts were bound to cause severe impact on the local ecology. It brought extensive alteration in the natural land profile of the area. Rock blasting, movements of heavy vehicles, caused considerable pollution in the shape of noise and vibrations.\(^{827}\) The ambient air in the mining area gets highly polluted. The mining activities in the vicinity of tourist resorts may disturb the rain water drains and in turn may badly affect the water level as well as their water quality of the water bodies. It may also cause fractures and cracks in the sub-surface, rock layer causing disturbance to the aquifers which are the source of ground water. This may disturb the hydrology of the area. The Court held that all mining activity within the vicinity of 2 km radius of the tourist resort of Badkal and Surajkund should be stopped. The Forest department was asked to develop ‘green belt’ regions. No construction of any type within 5 kms radius of Badkal and Surajkund lakes was to be allowed henceforth.

In *Kinkri Devi v. State of H. P*\(^{828}\), the petitioners sought an order of the Court to have a mining lease cancelled, to restrain the respondents from operating the mines covered by the lease in

\(^{825}\) *Rural Litigation and Entitlement Kendra v Union of India (Doon Valley Limestone Quarrying case -II) AIR 1985 SC 652.*

\(^{826}\) JT 1996 (5) SC 372; 1996 (8) SCC 462.

\(^{827}\) Also see *The High Court on its own motion v State of Himachal Pradesh AIR A1 HC 1475.*

such a manner as to pose a danger to the adjoining lands, water resources, pastures, forests, wildlife, ecology, environment and the inhabitants of the area, and for compensation for the damage caused by the uncontrolled quarrying of the limestone. The Court observed that “the operation whereof is proving to be hazardous and the total prohibition of the grant or renewal of mining leases till the Government evolves a long-term plan based on a scientific study with a view to regulating the exploitation of the minerals in the State without detriment to the environment, the ecology, the natural wealth and resources and the local population. However, the need for judicial intervention may not arise even in those cases where the Court's jurisdiction is invoked, if the administration takes preventive, remedial and curative measures”.

The Country since independence has not witnessed any policy initiative on this. In *M C Mehta v Union of India*[^829], the Supreme Court asked the Government to relook at its policy on brick kilns and its adverse impact on land degradation and soil erosion. Brick factories are the greatest threat to topsoil erosion and loss. It is but unfortunate that in a country, which heavily relies on agriculture, brick-making industry has flourished at the cost of loss of vital fertile topsoil and government has shown no interest in its conservation.

In *Goa Foundation v Konkan Railway Corporation*[^830], PIL before the Bombay High Court, it was alleged that alignment of the Konkan railway in certain parts of Goa would cause ecological woes such as erosion of soft rocks, disturbance to the unique mangroves and fish life, deterioration of land quality, destabilization of the tidal basin. The Court, though did not accept the contention of the petitioners, however hoped and re imposed faith and trust that the project undertaken would take necessary precautions and take care of the above interest.

### 5.13.4. Diversion of Forest Land

Mining including underground mining is a non-forestry activity. Therefore, prior approval of the central Government is essential before a mining lease is granted in any forest area. The Forest Conservation Act 1980 applies not only to the surface area, which is used in mining but also the entire underground mining area beneath the forest. No mining activity is permitted in National Parks and Sanctuaries. All proposals involving forest land more than 20 ha. in plains and more than 5 ha in hills must be accompanied by a cost-benefit analysis to determine whether diversion of the forest land for non-forest use is in the overall public interest. The

[^829]: JT 1998 (7) SC 460.
[^830]: AIR 1992 Bom 471.
parameters according to which the cost aspect will be determined and the parameters for assessing the benefits accruing are given in MoEF document. If the project involves displacement of people, a detailed rehabilitation plan shall be submitted along with the proposal.

Compensatory afforestation is one of the most important conditions stipulated by the Central Government while approving proposals of de-reservation or diversion of forest land for non-forest land. This land should be close to reserve forest or protected forest to enable the forest department to effectively manage the newly planted area. The identified non-forest land has to be transferred to the ownership of the State Forest department and declared as Protected Forests so that the plantation raised can be maintained permanently. This transfer must take place prior to the commencement of the project.\footnote{Overview of Mining and Mineral Industry in India. TERI, New Delhi December 2001 No. 185.}

In \textit{Ambica Quarry Works v. State of Gujarat},\footnote{AIR 1987 SC 1073.} the State Government rejected an application for renewal of a mining lease under section 2 of the Forest (Conservation) Act 69 of 1980, which required permission to be obtained from the Central Government for using forest areas for non-forest purposes. The appeal in the Supreme Court centered on the question of a proper balance between the need of exploitation of the mineral resources lying within forest areas, the preservation of ecological balance, and curbing the growing environmental deterioration. In dismissing the appeals, the Supreme Court said that the rationale underlying the Forest (Conservation) Act was recognition of the serious consequences of deforestation, including ecological imbalances, and the prevention of further deforestation. The Court observed that in this case the renewal of the mining leases would lead to further deforestation or at least would not help reclaiming the areas where deforestation had taken place. The primary duty, the Court said was to the community and that duty took precedence in these cases. The obligation to the society must predominate over the obligation to the individual.

In \textit{Upendra Jha v State of Bihar},\footnote{AIR 1988 Pat 2631.} the question was whether the renewal of a mining lease granted before the commencement of the FCA, would require the prior approval of the Central Government. The Court held ‘...even if any part of reserved forest or forest land was part of any lease-hold and such reserved forest has been broken or forest has been cleared on the basis of the lease granted prior to the coming into force of the Act, no renewal of that lease or fresh grant in respect of that area can be given by the State Government without prior approval of the Central Government’.
The Supreme Court has, on numerous occasions, attempted to strike the balance between industries and parks. The challenge arose for the first time in the *Sariska case*. The question was whether the mining lease in the notified areas was illegal. The petitioner argued that as the area where mining was being carried on was notified as a tiger reserve under the Rajasthan Wild Animals and Birds Protection Act, 1951, as a National Park and Sanctuary under the Wildlife Act 1972 and as a reserve forest under the Forest Act, the mining leases were contrary to law. In this case, some mines fell squarely within the protected area whereas others were partly inside and partly outside. The Court interpreted Sec. 2 of the Forest Conservation Act and held that any mining lease in the protected area without the prior approval of the Central Government was invalid. Even if the protected area was wasteland, it enjoy legal protection against mining as protection is meant not just for the existing forest but also afforestation.

The Court directed that the Central government examine the proposal of the government to delete the mining area and replace it with other lands.

The Gujarat High Court in *Jamnagar Marine Park* case assessed the laying of pipeline across the park by Reliance as being ultravires Sec. 29 and other provision of the WLPA. The Court interpreted Sec. 29 to mean that it was only in the case of destruction, exploitation or removal of wildlife that the state government needs be satisfied that it was for the improvement and better management of the wildlife therein. In case of damage to the habitat of animals, the permission of the state government was not required and the wildlife warden might grant the necessary permit. Though this judgment has invited criticism on the way in which the Judge interpreted sec. 29 without looking into the overriding object of the Act, what is found is that the Judge was overridden with the notion and concept of ‘development’.

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835 Another relevant fact was that the Central Government had issued a notification under Sec. 3 of the EPA prohibiting mining in the Sariska National park. Hence, the mining leases were also illegal on this ground. The mining lease also violated Rule 4(6) of the Rajasthan Minor Mineral Concession Rules 1986.


837 Sec. 29 reads: Destruction, etc., in a sanctuary prohibited without permit: No person shall destroy, exploit or remove any wildlife from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by the Chief Wild Life Warden.
In *Nagarhole Budakattu Hakku Sthapana Samiti v State of Karnataka*[^1] the lease of forest land to a private company for the construction of a tourist resort was challenged by the petitioners. The reason being that the land in question formed a part of the Nagarhole National Park. The Court quashed the lease on the ground that it was made in violation of sec. 2 of the FCA and the WLPA 1972. According to the Court, once the Government has declared its intention to declare an area as a national park under Sec. 35(1) of the WLPA, no person can acquire any right in or over the land comprised therein. The significance of the case lies in the fact that the Court orders that saved the flora and fauna of the Nagarhole National Park from the large scale disturbance, which would surely have been caused, had the resort been allowed to come up, was due to the efforts of a tribal welfare organisation. This clearly exemplifies the fact that tribal groups see their fate as clearly linked to the fate of wild flora and fauna. It is therefore, recommended that wildlife activist take the help of local tribal groups while arguing for the protection of forest and wildlife rather than to regard them as a threat to the forest.

Andhra Pradesh has huge deposit of bauxite around 700 million tonnes. To have an access to these bauxite deposits around 25 major tribals villages had to be displaced, around 10,000 trees had to be pulled out, and the State would lose around Rs. 1520 crores in terms of environmental degradation like soil erosion etc. When an

local NGO, SAMATA [Now with name and style of Mines, Minerals and People] filed a plea in the Executive Magistrate’s Court at divisional level for restoration of tribals, rights over land stating that no Government was above the Constitution, and thus tribal could not cannot be alienated in Scheduled Area as referred to in Fifth Schedule of the Constitution. SAMAT, also challenged the Land Acquisition Act and the FCA. The Divisional Court and the Apex Court supported tribal rights and after a battle of two and half years, the full bench of the Supreme Court in a Special leave Petition no 17080-81 of 1995 made a historical judgment in favour of tribals. The 1997 judgment found, among other things, that Government lands, forest lands and tribal lands in "Scheduled Areas" were not allowed to be leased out to "non-tribals" or to private companies for mining/industrial operations. It established that all mining leases granted by the state government in certain "Scheduled Areas" were illegal and null and void and the Court "asks the state government to stop all industries from mining operations." The judgment stated:

[^1]: AIR 1997 Kar. 288.
1. Government lands, forestlands, and tribal lands in the scheduled area cannot be leased out to non-tribals or private industries.

2. Government cannot lease out lands in scheduled areas for mining operations to non-tribals as it is in contradiction of the Fifth Schedule.

3. Mining activity in scheduled areas can be taken up only by Andhra Pradesh State Mineral Development Corporation or a Co-operative of tribals and that if they are in compliance with the FCA and the EPA.

4. The Court recognized the 73rd Constitutional amendment and the A.P Panchayat Raj [Extension of Scheduled Areas] Act by stating that the gram sabha should be competent to safeguard and preserve community resources and thereby reiterated the need to give the right of self governance to tribals.

5. If necessary, the Court felt that other state Governments too should pass such laws restricting the areas of schedules areas to mining activities.

This case gave the mark for the formulation of PESA\textsuperscript{839}.

In the *T. N Godavaraman* series of directions, the Supreme Court has directed the Chief Secretary, State of Haryana and Chief Secretary, State of Rajasthan to ensure that no mining activity in the Aravalli hills was carried out, especially, in that part which had been regarded as forest area or protected under the Environment (Protection) Act.

Recently in the *Kudhermukh case*,\textsuperscript{840} an I. A Filled by Chinnappa in the now famous *T. N Godavarman case*, the Supreme Court\textsuperscript{841} asked the Kudhermukh Iron Ore Company to stop and vacate the mining operations in the National park by 2005 and to restore the ecological balance of the region. This Judgment of the Court closed down India’s longest working iron ore company in a Forest region.

\textsuperscript{839} The Panchayats Extension of Scheduled Areas Act 1996. For more on PEA, see chapter on Decentralized Environmental Governance.

\textsuperscript{840} The campaign against mining in these rich tropical rainforests, located in one of world’s top 25 biodiversity hotspots was initiated as far back as 1984, through a wildlife survey by WCS scientist Ullas Karanth who detected significant populations of globally-threatened lion-tailed monkeys in Kudremukh, leading to the notification of the National Park by the Government of Karnataka in 1987.

\textsuperscript{841} In a landmark judgement, the Hon’ble Supreme Court of India has upheld the sanctity of Kudremukh National Park by rejecting Kudremukh Iron Ore Company’s plea to mine at Kudremukh for another 20 years but allowed it to continue only till the end of 2005; subject to fulfillment of recommendations made by the Central Empowered Committee on ecological and other aspects. The Court has also clearly held that the exclusion of the company’s land (37 sq kms) while issuing the final notification of the Kudremukh National Park was not in order though the same was being used for mining and further, has rejected the company’s plea that compliance of Section 2 of the Forest Conservation Act is not required in case of renewal of a mining lease.
This judgement delivered by a three-judge bench comprising Chief Justice of India B.N.Kirpal, Justice Y.K.Sabharwal and Justice Arijit Pasayat will be recognized as a historic milestone in protecting seriously depleted wildlife habitats and water resources of the country.  

5.14. Conclusion

Land has played a pivotal role in the history of mankind. In the conflict of interest in different land use pattern, the judicial approach was always a balanced one. It is necessary that the basic qualities of land have to be kept intact for succeeding generations. ‘Land’ is to be used, not abused. The sustainable use of land is a concept that should guide the judicial process dealing with land use change.

A National Strategy needs to be evolved which would act as a guideline for the conservation of land resource in the country. The strategy should cover such major elements as food security (e.g. right of every citizen to have access to safe food and nutrition and enhancement of agriculture production potential of lands to meet these needs); rural development (e.g. rural employment and income generation opportunities, local participation, tenure security etc.); viability of rural areas (e.g. reduced migration to urban areas, preservation of rural landscapes, promotion of eco-tourism in rural areas etc.); environmental aspects (e.g. minimisation of negative environmental impacts of human-induced activities such as unsustainable agriculture practices on marginal lands, regulation of productive lands and urban land use zoning and enhancement of positive impacts on the environment through better land use and management practices); and social aspects (e.g. increased public awareness/common vision of sustainability issues, promotion of participation of a wide range of stakeholders, improved self-esteem of natural resource users).

Have the courts totally solved the environment-development dilemma posed in the land use changes discussed in the aforesaid cases? Will these cases be lodestars for the legal battles, which have not yet ceased? Or will they be brushed aside and new vistas of land use jurisprudence developed in a different trajectory of judicial wisdom and craftsmanship? Only time and the combined eco-will of the Indian polity will tell.

Conservation and regeneration of degraded waste land was the main purpose behind the establishment of the Waste Land Development Board. This Board does not produce any documentation of the nature of work undertaken and the statistics of waste land regenerated. Thus as population pressure increase, people may look at land conservation with some serious approach. The State also needs to consider investing its machinery in conservation of soil, which important not only for agricultural productivity but also to ensure vital food security for its population.

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842 This judgment was in response to an Interlocutory Application -IA 670 in WP 202 filed by KM Chinnappa, Trustee, Wildlife First through the Amicus Curiae Harish Salve who brilliantly argued the matter. The Hon'ble Court has also directed that modalities to be adopted to ‘effectuate’ the order.