CHAPTER-IV: JUDICIAL APPROACH TO ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION

4.1 General

In India, the issues and policies pertaining to environment and biodiversity had undergone swift changes in recent period. The primary agency for bringing these changes is judiciary unlike many other nations where Legislature and Executives are at the helm of the affairs in order to plan, implement and handle issues related to environment and biodiversity. The Supreme Court has laid down new principles to protect the environment, re-interpreted environmental laws, created new institutions and structures and conferred additional powers through a series of directions and judgments\(^1\). Consequent upon increase in public sentiments towards environment and wildlife, several PIL turned into historical judgments. It is claimed by proponents that the Apex court has become a symbol of hope for the people of India. On the one hand, such judicial activism was appreciated by some, there are others, on the other hand, which suggest that access of judicial activism resulted in a tool for limiting development. It is observed that even after a stay related to an infrastructure project is vacated, or a court order gives a green signal to certain project, new issues become grounds for court notices and new PIL.\(^2\) The

Environmental Policy of India has undergone drastic changes as a result of increasing arm of the UN and allied bodies and emergence of new laws.

There has always been a conflict between development and environment. The integration between environment and development has emerged as an extremely significant problem. Considering the interdependence between these two elements, the UN in 1982 adopted the World Charter for Nature, which emphasizes the intrinsic value of specimens and ecosystems. To bring out the balance between the two the United Nations Commission on Environment and Development (UNCED) has arrived at the concept of sustainable development as a guiding force to strike the balance between the two considering that the concept would help in bringing economic growth without disturbing the resource base seeking to meet the needs and aspiration of the present without compromising the ability to meet those of the future. This commission has tried a theoretical foundation to control the over-development acts in every sector. It is that kind of approach that ‘integrates production with resource conservation and enhancement’ is intended to provide for all adequate livelihood and equitable access to resources. Despite some progress, the increasing loss of biodiversity has continued to be a major concern globally. It is well said that “this is true of the efforts not only at the international and regional levels but also within the national and local limits of a country”.

The word ‘Environment’ has been defined by the Environment (Protection) Act, 1986 ‘includes water, air and land and the inter-relationship, which exists among and between water, air and land, and

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human beings, other living creature, plants, micro-organism and property’. Thus we are interlinked to other factors of life as well as, a proper planning is needed to preserve these factors. So, we need the help of society to queer the pitch for sustainable growth and ecological integrity. Needless to say, that man’s relationship with other living creatures, plants and microorganism requires orientation, towards ecological security and protection of other species. There are host of ecological problems in a developing country like India. They pose vital questions regarding the survival and living conditions of the people.  

The conservation of biodiversity along with the protection of environment from degradation are two of the essential elements of the concept of sustainability. Although sustainable development drives much of contemporary environmental law, it is by no means certain what are its functions and its status within the legal system. It is in some respects an outcome to be achieved by the detailed methodology of decision making prescribed by the legal system. How this is incorporated within the legal system is an ongoing challenge. Despite a significant number of responses to this challenge, there is no clear or consistent doctrinal approach from the perspective of the law.

Unregulated individual and collective use of natural resources has threatened the sustainability of the environment and biodiversity. There has been intensive exploitation of resources which is encouraged by policies and strategies. The latter are basically formulated to enhance growth rates

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4 Id. at 81.
and economic development. Several countries have benefited from the alteration of natural ecosystems to human-dominated ones and the exploitation of biodiversity. Its consequences being an unequal development between underdeveloped and developed nations as well as within nation states. Also, such policies have been neither efficient nor equitable in addressing the problem of poverty and its manifestation. With a swelling population in the midst of poverty, industrialization and urbanization, the path of development for the South (underdeveloped nations) is beset by powerful drivers causing and contributing to the persistence of major environmental issues. The poor largely depend directly on natural resources and functioning ecosystem services for their livelihood. They are, at the same time, vulnerable to natural hazards, such as droughts, floods, landslides etc. Furthermore, the continued depletion of the resource base, on which development depends, goes on unabated. Poverty-environment linkage needs to be addressed in efforts to eradicate this scenario and effective conservation and use of biodiversity cannot avoid this. Improving environmental governance to generate an enabling environment for resolving poverty-environment concerns and increasing the asset base of the poor can enlarge sustainable livelihoods and reduce vulnerability.

Inspired by the global concern for the protection and improvement of the environment, the nation has devised many strategies for the executive and legislative agencies to follow. In this scenario, the judiciary could not afford to remain resigned and cloistered. Acting in tune with the changing
mores of the day, the judiciary took up the challenge and made significant contribution to the growth of environmental law.\(^6\)

The courts rendered new interpretations to old laws, scrutinized and explained grey areas in statutory provisions, decided constitutional issues, evolved and explained doctrines, examined environmental process and demarcated the limits of judicial review. There was a wide range of issues such as changing over to CNG vehicles, finding out the contours of tribal rights in and around national parks, permitting running of sawmills, promoting eco-tourism, managing coastal zones, approving land use change and evolving and applying new doctrines. The growth of law was slow and steady. As the days passed by, the courts went deeper and deeper into the problems of ecological integrity and a pollution-free environment. The focus turned very often from pollution control to ecological security. No doubt, this trend indicates a growing awareness about the various components of the environment.

### 4.2 Dimensions of Environment Jurisprudence in India

The most important trigger for the evolution of environmental jurisprudence in India was perhaps the aftermath of the Bhopal Gas Leak tragedy. It involved to disasters, one being the huge loss of life and other the absence of a clear legal framework to bring relief to those affected by this. It was in this setting that the Supreme Court evolved the doctrine of ‘absolute liability’\(^7\) which marked a clear departure from the reliance on traditional tort law concepts such as ‘public nuisance’ and ‘strict liability’.

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\(^6\) *Ibid.*

\(^7\) *The concept of ‘absolute liability’ was articulated in M. C. Mehta v. UOI, (1987) 1 SCC 395.*
The Indian Constitution mandates protection and improvement of environment and safeguards of forests and wildlife under Article 48-A as Directive Principles of the State Policy and fundamental duties of the citizen under Article 51-A. The Supreme Court of India has declared Right to Decent and Clean Environment as a Fundamental Right falling within the ambit of Right to Life under Article 21 of the Indian Constitution. The National Green Tribunal Act mandates that any person could enforce any legal right relating to environment or raise any substantial question relating thereto by instituting a civil base before the Tribunal.

The decisions pertaining to environmental issues and biodiversity by national or state courts in India have been influenced by the international environmental law and vice-versa. Under Article 38 (1) of the statute of the ICJ, the state courts are ‘subsidiary sources’ and their decisions may lead directly to the development of ‘customary rules’ of international law. Likewise, the state courts have often created national environmental jurisprudence by taking inspiration and clues from the international environmental laws. Article 245 of the Constitution of India deals territorial jurisdiction of the legislative powers, confers the power to the parliament to make laws for the whole or any part of the territory of India. While Article 246 pertains to the subject matter of laws and empowers the parliament to have exclusive power to make laws on all conceivable international matters which have been enumerated under the Union List. The main entries, under this list, pertaining to international matters are:

Foreign affairs (Entry 10); United Nations Organization (Entry 12);
Participation in international conferences, associations and other bodies (Entry 13); Entering into treaties, agreements and conventions with foreign countries (Entry 14).

In India several significant environmental statutes have been enacted to ratify or to fulfill national obligations under the international environmental and biodiversity treaties, conventions etc. These have been discussed in the previous chapter. Here it would be pertinent to point out some general perception that the ratification or enactment of environmental statutes in India has resulted into judicial intervention and activism. Prof. M. K. Ramesh opined that in India such ratifications or enactments have often been accomplished without necessary national preparation or under compulsion to conform to the conditionality of international financial institutions like World Bank.  

Under Article 253 the parliament has exclusive power to make any law for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. These provisions indicate that the parliament has sweeping power to legislate on international matters. However, according to the Supreme Court, this power of parliament cannot override the fundamental rights embodied under Part III of the Constitution. This decision was clearly projected by the Apex Court in the case of Magambhai Isharwarbhai Patel v. Union of India. Under the constitutional scheme, the executive power of the union government is co-extensive to the legislative

9 (1970) 3 SCC 400
power of the parliament as per article 73 of the Constitution. According to 
the Apex Court treaty making is regarded as an executive power rather than 
legislative activity.\textsuperscript{10}

Though Articles 37 to 51 (Part IV) of the Constitution, designated 
as Directive Principles of State Policy, are not enforceable by any court but 
principles contained therein are fundamental in the governance of the 
country and it shall be the duty of the State to consider these principles 
while making laws. Article 51 of the Constitution specifically deals with 
international law and international relation, \textit{inter alia}, defines that ‘the state 
shall endeavor to foster respect for international law and treaty obligations.’ 
To comply with the principles of the Stockholm Declaration adopted by the 
International Conference on Human Environment (held in June, 1972), the 
Government of India, by the Constitutional 42\textsuperscript{nd} Amendment Act, 1976 
made the express provision for the protection of the environment by the 
introduction of Article 48-A and 51-A (g). This amendment provided the 
following:

(i) “The State shall endeavor to protect and improve the environment 
and to safeguard the forest and wildlife of the country” (Section 
10, Article 48-A).

(ii) “It shall be the duty of every citizen of India to protect and improve 
the natural environment including forests, lakes, rivers and 
wildlife and to have compassion for living creatures” (Section 
11, Article 51-A).

\textsuperscript{10} \textit{Ibid}
These provisions in the Constitution provide: (a) directive to the State for the protection and improvement of environment, and (b) that the citizens owe a constitutional duty to protect and improve natural environment. These provisions are of immense significance because with the activist approach of judiciary in India the legal aspect of the Directive Principles jurisprudence has regularly increased in the constitutional set-up.

The 11th Schedule, added to the Constitution by the constitutional 73rd Amendment Act, 1992, which assign the functions of soil conservation, water management, drinking water, social and farm forestry, fuel and fodder etc. to the Panchayats for better environment management.

The 12th Schedule of the Constitution added by the 74th Amendment Act, 1992, which provide the Urban Local bodies with the function of protection of environment and promotion of ecological aspects.

The constitutional changes effected in the 7th Schedule by the 42nd Amendment Act, 1976 are considered as milestone steps in the direction of environment protection. Earlier, the subject of forest was in the State list as entry 19, this lead to varied policies by the State so as to protect the forests. Now by placing the forest item in the concurrent list as entry 17-A, along with the state, parliament has acquired a law creating power. Because of this change, in order to have a uniform policy for the management of forests, in 1980, the Government of India set up the Ministry of Environment and Forests. Then the parliament enacted the central legislation, Forest Conservation Act, 1980, which was amended in 1988. Likewise, the incorporation of entry 17-B in the concurrent list
has empowered the parliament to enact law for the protection of wild animals and birds. Another entry 20-A in the concurrent list empowers the parliament to regulate the excessive population growth, which is considered as one of the main causes of environmental degradation and pollution.

The judiciary’s dynamic interpretation of fundamental rights have resulted into the rights to healthy environment, as evident from the following:

“State shall not deny any person equality before the law or the equal protection of the laws within the territory of India” (Article 14).
“State is empowered to make any law imposing the interests of general public, reasonable restriction in the exercise of freedom to practice any profession, or to carry on any occupation, trade or business” (Article 19).
“No person shall be deprived of his life or person liberty except according to procedure established by law” (Article 21).

Then right to life and liberty under Article 21 was creatively interpreted to include a ‘right to clean air and water’ as well as the ‘right to a clean environment’. Some of the most cited cases from this phase are those which resulted in the relocation of hazardous industries from the National Capital Region (NCR) and the closure of foundries in the proximity of Taj Mahal in Agra. Similarly the Supreme Court’s order in 1988 resulted in all buses in Delhi to convert to Compressed Natural Gas (CNG). Though this order drew some initial criticism on the ground that it would be too costly for Delhi Transport Corporation and the private operators thereby affecting large number of persons who depend on public transport, in the long-run this measure has succeeded in reducing the air
pollution levels. Thus occasionally, judges may take some unpopular decisions in order to pursue long-term objective of protecting the right to a clean environment\textsuperscript{11}.

The right to live in healthy environment is one of the golden feather of Article 21. The Supreme Court in \textit{Maneka Gandhi Case}\textsuperscript{12} has revolutionized the ambit and scope of the expression right to life embodied in Article 21 of the Constitution. The Apex Court, in 1980, indirectly conceived this right in a monumental judgment in the case of \textit{Ratlam Municipality v. Varidachand}\textsuperscript{13}. In this case the Court held that the neglect of sanitation of the town of Ratlam by Municipal Council is a health hazard. The decision of the court was founded on its earlier decision in \textit{Govind v. Shanti Sarup}\textsuperscript{14}, where Section 133 of Code of Criminal procedure was used by the Court to preserve the environment in the interest of health, safety and convenience of public at large. The Supreme Court, in its judgment, has no where mentioned Article 21 but obviously the judgment is based on the right to live with decency and dignity as provided in the right to life.

In \textit{Telephone Tapping Case}\textsuperscript{15} the Supreme Court by invoking Article 51 developed ‘Right to Privacy’ as a fundamental right under Article 21. But in environmental cases, it seems, that no such use of Article 51 has been invoked by the courts. However, it may be mentioned here that the courts have invoked Article 48-A (Duty of the state to protect environment)

\textsuperscript{12} AIR 1978 SC 597.
\textsuperscript{13} AIR 1980 SC1622.
\textsuperscript{14} AIR 1957 SC 1943.
\textsuperscript{15} People’s Union for Civil Liberties v. Union of India (1997) 1 SCC 301.
to develop a fundamental right to environment as part of the right to life under Article 21. This has happened in many leading cases, for instance to name a few cases are: *T. Damodar Rao v. Municipal Corp. Hyderabad*\(^{16}\); *Sachindanda Pandey v. State of W. B.*\(^{17}\); *M. C. Mehta v. Union of India*\(^{18}\); *Kinkri Devi v. State of H. P.*\(^{19}\); *Rural Litigation and Entitlement Kendra v. State of U. P.*\(^{20}\); *Bichhri Village Case*\(^{21}\) etc.

In one of the above mentioned cases, *Rural Litigation and Entitlement Kendra v. State of U. P.* (vide supra), the striking feature of the decision is that the Apex Court converted a letter in the writ petition under Article 32, without referring to any Article from the Chapter on Fundamental Rights. Apparently the Court restrained itself from invoking Article 21 directly, but regarded the right to live in healthy environment as a part of fundamental right.

In the case of *Subhash Kumar v. State of Bihar*\(^{22}\), a PIL was filed for ensuring enjoyment of pollution free water and air. The Court held that “Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution for removing the pollution of water or air.”

\(^{16}\) AIR 1987 A. P. 171 at 181.
\(^{17}\) AIR 1987 SC 1109 at 1114-1115.
\(^{18}\) AIR 1988 SC 1037 at 1038.
\(^{19}\) AIR 1988 H. P. 9.
\(^{20}\) AIR 1988 SC 2187 at 2199.
\(^{21}\) AIR 1966 SC 1446 at 1459.
\(^{22}\) AIR 1991 SC 424.
4.3 Role of Judiciary in Environmental Protection and Biodiversity Conservation

There has been a sustained focus on the role played by judiciary in recent years in formulating and monitoring the implementation of various measures for pollution control, conservation of wildlife and forests. To handle problems related to environment and biodiversity, devices such as public Interest Litigation have been prominently relied upon. For effective implementation of environmental and biodiversity laws judiciary is the key mechanism. Since the laws pertaining to environment and biodiversity are expanding very rapidly in recent times both at the national and international level, the role of judiciary becomes very critical in such cases. A well prepared and informed judiciary is pivotal in successful conclusion of environmental and biodiversity cases especially those involving transnational crimes. Role of judiciary is very crucial for the enforcement of environmental rights including right to information and allowing access to the public and civil society to judicial procedures. This may be accomplished through coherent networking among judiciaries and sharing judgments and information on environmental cases and international jurisprudence.23

In the recent years, there seems to be a growing consensus amongst the media, academic circles and to some extent in the general public that the approach of higher judiciary in environmental litigation can be assigned as ‘activist’ in nature. A pertinent instance of such activism in evaluating the environmental impact of commercial activities is justified in the name

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of development is the decision given in the *Dehradun Valley Case*\(^{24}\), in which the Court itself appointed a committee to look into the adverse effects of the illegal and indiscriminate mining activities. The respondent government was also asked to show the national importance of the lime stone obtained from those quarries so as to determine whether the demand could be satisfied by mining in other areas. A similar approach was followed in the case of *Tarun Bharat Sangh, Alwar v. Union of India*\(^{25}\), where the Court adopted a firm stand against the owners of mines that were being operated inside the reserve forest areas.

According to Justice Hima Kohli, “The judiciary has come up with the ‘judge-driven implementation’ of environmental administration in India. It has isolated specific environmental law principles upon interpretation of Indian Statues and Constitution. Public Interest Litigation which is the result of the relaxation of the ‘locus standi’ rules by the judiciary, is the characteristic feature of the environmental litigation in India.”\(^{26}\) However, there is some criticism of the growing environmental jurisprudence in India. Some argue that frequent judicial interventions have reduced the incentive for executive agencies to improve their functioning. It has also been alleged that there seems to be a certain clique of persons who have come to specialize in filing frivolous PILs. Hon’ble former Chief Justice of India, Mr. K. G. Balakrishnan, has rightly opined, “We must realize that the traditional notion of legal rights in the common-law


\(^{25}\) *AIR 1992 SC 514.*

tradition was mostly oriented around the idea of private property. This is so because individuals are especially vigilant about protecting their property rights and litigation is an effective means of securing them. However, this rationale cannot be applied in the context of environmental protection – since the ‘right to a clean environment’ is a public good. Since individuals are less inclined to mobilize themselves to protect such public goods, the onus is placed on the government and the legal system to do the same. This philosophy of ‘public trust’ find place in our constitutional commitments and our judiciary is committed to upholding the same. This is precisely why judges are frequently called on to weigh individual interests on the scales of social justice. The conservation of forests and wildlife, as well as the reduction of pollution-levels are vital components of such considerations of social justice. It is on account of these considerations that the higher judiciary must continue to play a vigorous role in the domain of environmental protection.”

The PIL cases are characterized by a collaborative problem solving approach. Acting either own or at the instance of the petitioners, the Supreme Court has invoked Article 32 of the Constitution to grant interim relief such as stay orders and injunctions to restrain harmful activities in many cases. Reliance has also been placed on the power to do complete justice under Article 142 to issue detailed guidelines to execute agencies and private parties for ensuring the implementation of various environmental statues and judicial directions. Starting with the Municipal Council Ratlam v. Vardichan 27 case where the Apex Court directed a local

27 (1980) 4 SCC 162.
body to make proper drainage provisions, there has been many cases where such positive directions have been issued. The adjudication and monitoring of environmental cases has also benefited from the inputs of fact-finding commissions and expert committees which are usually constituted to explore a particular problem pertaining to environment. The Court also relies on then services of the leading members of the bar who provide assistance in their capacity as ‘amicus curiae’. The tool of ‘continuing mandamus’ has been used to monitor the implementation of orders by seeking frequent reports from governmental agencies on the progress made in the same. In cases involving vehicular pollution, solid waste management and forest conservation, the court-appointed committees have conducted substantial empirical research and provided valuable insights in such cases.

A perusal of past decisions depicts that there have been different judicial approaches taken by different courts in cases involving environment-related objections against the construction of infrastructural projects. These judicial approaches have evolved over the last three decades or so. These can broadly be put into three categories:

(i) Pro-project approach, wherein the judges tend to emphasize the potential benefits of a particular project.

(ii) Judicial restraint, wherein the judges defer to the determinations made by executive agencies and experts with regard to the environmental feasibility of a project.

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Rigorous judicial review, wherein the judges tend to scrutinize the environmental impact of particular activities. It is in this form of judicial intervention that the services of expert committees, amicus curiae and NGOs prove to be a valuable asset.

An example of ‘judicial restraint’ would be the Kerala high Court judgment in the *Silent Valley Case*\(^{29}\) where the Court refused to second-guess the State government’s position relating to environmental impact of a hydel-power project. The judgment mentions that the project was unanimously supported by the legislature of Kerala and it would be improper for the judiciary to interfere. This, however, led to agitation and subsequently there was a re-think on the viability of the project.

In the *Tehri Dam case*\(^{30}\) and the *Dahanu Thermal Power Plant case*\(^{31}\), a relatively robust standard of ‘judicial review is discernible from the litigation. Even though the eventual decisions were in favour of the project proponents, the Supreme Court did inquire into diligence of the government in ascertaining the environmental impact of the proposed projects. An instance of the Supreme Court adopting a rigorous standard of judicial review is in the *Calcutta Taj Hotel Case*\(^{32}\) where the Apex Court inquired extensively into the government permission granted for the construction of a medium-rise hotel against objections that the building would interfere with the flight path of migratory birds.

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\(^{29}\) Society for Protection of Silent Valey v. Union of India and others, AIR 1980 SC 1128.


\(^{32}\) AIR 1987 SC 1109.
A very broad range of fields comprising water, air, soil, wastes of various types, mining, forests and wildlife are covered in the orders of the Apex Court and the High Courts in India. Disputes pertaining to environment are treated as cases related to violation of fundamental rights, rather than claims under the law of torts. For interpretation of environmental statues the judges have used the policy statements of the government which otherwise are not enforceable in courts. In the course of time several Doctrines have been evolved by the courts.

4.31 Doctrines Evolved by the Court

(i) Absolute Liability Principle

The principle was adopted to compensate victims of pollution caused by inherently dangerous industries in the Oleum Gas Leak Case (M. C. Mehta v. Union of India33).

(ii) Public Trust Doctrine

In a case, M. C. Mehta v. Kamal Nath34, where an attempt was made to divert flow of a river for augmenting facilities at a motel, it was held that State and its instrumentalities as trustees have a duty to protect and preserve natural resources.

In an another case, MI Builders Pvt. Ltd. v. Radhey Shyam Sahu35, a city development authority was asked to dismantle an underground market built beneath a garden of historical significance.

33 AIR 1987 SC 1086.
34 (1996) 1 SCC 38.
35 AIR 1996 SC 2468.
(iii) Precautionary Principle

The principle was adopted to check pollution of underground water caused by tanneries in Tamil Nadu (*Vellore Citizens Welfare Forum v. Union of India*). The Supreme Court, in the case of *Narmada Bachao Andolan v. Union of India* 37, held that the Precautionary Principle could not be applied to the decision for building a dam whose gains and losses were predictable and certain.

(iv) Polluter Pays Principle

The objective of this principle was to make the polluter liable for the compensation to the victim as also for the cost of restoring of environmental degradation. In the *Vellore Citizens Welfare Forum Case* (*vide supra*), it was held that the Precautionary Principle and the Polluter Pays Principle are part of environmental law of the country.

(v) Sustainable Development

In the Taj Trapezium Case (*M. C. Mehta v. Union of India* 38), the Supreme Court, while taking note of the disastrous effects that the emissions from the Mathura Oil Refinery had on Taj Mahal, applied the principle of Sustainable Development and apart from passing various directions, stepped into execute and supervise the consequent actions.

In the case of *State of Himachal Pradesh v. Ganesh Wood Products* 39, the Apex Court invalidated forest based industry, recognizing the principle of inter-generational equity and sustainable development.

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36 AIR 1996 SC 2718.
37 AIR 2000 SC 375.
38 AIR 1997 SC 734.
39 AIR 1996 SC 149.
The judicial approach needs to be more sound in case of developmental projects that may lead to displacement of tribal communities from their traditional lands. However, the judiciary has consistently invoked the ‘precautionary principle’ in regard to developmental activities that may degrade the environment and cause harm to the local communities. Still judicial oversight is needed to ensure that the requirement of Environmental Impact assessment (EIA) is conducted in a transparent and consultative manner. It has been clearly laid down that the onus is on the project developers to take preventive measures for minimizing the environmental damage. The impact on local communities can only be accurately assessed if their concerns are appropriately heard through methods such as ‘public hearings’. The judicial directions in the past for the payment of compensation and rehabilitation have been the right antidote for governmental apathy.

4.4 Important Cases

It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well-being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally. Parliament has considerably responded to the call of the nations for conservation of environment and natural resources and enacted suitable laws. The judicial wing of the country, more particularly the Supreme Court, has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The environmental protection and conservation of
natural resources has been given a status of a fundamental right and brought under Article 21 of the Constitution. In India there are many NGOs and public motivated persons who have moved courts to seek relief against many fold problems created by unchecked vehicular and industrial pollution, negligence in management of solid waste, large developmental projects and increasing deforestation and wildlife. The device of PIL was devised by the Supreme Court in order to improve access to justice for poor and disadvantaged sections of society. Though the use and misuse of PIL has been a matter of debate, there are procedural flexibility and innovative remedies that have come to be associated with this form of litigation.

A.P. Pollution Control Board v. MV Nayudu

The Supreme Court in this case expressed the need for the establishment of environmental courts consisting of judicial and scientific expertise. It suggested amendments in environmental status to ensure that in all environmental courts, tribunals and appellate authorities, there is always a judge of the rank of a High Court judge – sitting or retired – and scientist or group of scientists so as to help a proper and fair adjudication of environment-related disputes. The case involves the grant of consent by A.P. Pollution Control Board for setting up an industry by the respondent company for the manufacture of Hydrogenated Castor Oil. The company applied to the A.P. Pollution Control Board seeking clearance to set up the

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41 D. P. Shrivastava Memorial Lecture on 'The role of judiciary in environmental protection' by Hon'ble Mr. K. G. Balakrishnan, Chief Justice of India at High Court, Chattisgarh, Bilaspur on March 20, 2010.
42 AIR 1999 SC 812.
unit under section 25 of Water (Prevention & Control of Pollution) Act. The Board rejected the application for consent on the ground that the unit was a polluting unit and would result in the discharge of solid waste. The respondent company appealed under section 28 of the Water (Prevention & Control of Pollution) Act. The Appellate Authority decided that the respondent industry was not a polluting industry and directed A.P. Pollution Control Board to give its consent for the establishment of the respondent industry on such conditions as the Board may deem fit.

The Court held Environmental concerns arising in the Supreme Court or in the High Court are of equal importance as the human rights concern. Both are to be traced to Article 21 which deals with the fundamental right to life and liberty. While environmental aspects concern “life”, human rights concern “liberty”. In the context of emerging jurisprudence relating to environmental matters, it is the duty of the Supreme Court to render justice by taking all aspects into consideration. With a view to ensure that there is neither damage to the environment nor to the ecology and, at the same time ensuring sustainable development, the Supreme Court while dealing with environmental matters Article 32 (or the High Court under Article 226) can refer scientific and technical aspects for investigation and opinion to statutory expert bodies having combination of both judicial and technical expertise in such matters, like the Appellate Authority under the National Environmental Appellate Authority Act, 1997. This comes very close to the ideals set by the Supreme Court. The Authority, being combination of judicial and technical inputs, possesses expertise to give adequate help to the Supreme Court and High Courts to arrive at decision in environmental matters. The court in above case
referred the issue of determination of the hazardous nature of the respondent industry to the Appellate Authority.

The apex court felt an immediate need that in all States and Union Territories, the Appellate Authorities under the Water Act, 1974 and Air Act, 1981 or other rules, there should always be a judge of High Court and a scientist or group of scientists to help in the adjudication of environment-related disputes. The court pointed out the need of amending notifications under these Acts as well as notification under Rule 12 of the Hazardous Wastes (Management and Handling) Rules, 1989.

*M.C. Mehta v. Union of India (CNG Vehicles Case)*

The Supreme Court was faced with the problem of vehicular pollution and regretted inaction of Union of India and other governmental authorities to phase out non-CNG buses and setting up facilities to ensure adequate supply of CNG. The Supreme Court observed that “permission to use automobiles has environmental implications, and thus any “auto policy” framed by the Government must, therefore, of necessity conform to the constitutional principles as well as overriding statutory duties cast upon the Government under Environment Protection Act. The “auto policy” must adopt the ‘precautionary principle’ and make informed recommendations which balance the needs of transportation with the need to protect the environment and reverse the large scale degradation that has resulted over the years, priority being given to the environment over economic issues.”

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*AIR 2002 SC 1696.*
The court then observed that the emission norms stipulated by the Government have failed to check air pollution, which has grown to dangerous levels across the country. Therefore, to recommend that the role of the Government be limited to specifying norms is a clear abdication of the constitutional and statutory duty cast upon it to protect and preserve the environment.

In 2000, the European Commission dealt with the various aspects of implementing the precautionary principle and stated that it would be applicable where preliminary objective scientific evaluation indicates that there are reasonable grounds to believe that the potentially dangerous effects on the environment and human, etc. may be inconsistent with the high level of protection chosen for the community.

Though precautionary principle has emerged as a bask guidelines for the exercise of governmental discretion, the problem is that there is not much consensus on the exact scope of the principle. Every activity is laden with certain risks and there can never be full scientific certainty.

*Indian Council for Enviro-legal Action v. Union of India (Bichhri Case)*\(^{44}\)

In this case a writ petition filed by an environmentalist organization brings to light the woes of people living in the vicinity of chemical industrial plants in India in Bichhri village in Rajasthan. The toxic slug was thrown in open which contaminated water in wells and streams which turned dark and harmful to human consumption.

The Court observed:

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\(^{44}\) *AIR 1996 SC 1446.*
(I) Fundamental right to life – The Supreme Court has power and
duty to intervene and protect right to life of citizens, when an
industry is established without obtaining the requisite
permission/clearances and is continued to be run in blatant
disregard of law to the detriment of life and liberty of the citizens
living in the vicinity. Further, the court has to ensure the
observance of law and of its orders as a part of enforcement of
fundamental rights.

(II) Chemical industries are main culprit – The court observed: Since
the chemical industries are the main culprits in the matter of
polluting the environment, there is every need for scrutinizing
their establishment and functioning more rigorously. No
distinction should be made in this behalf as between a large-scale
industry and a small-scale industry. On account of their
continuous, persistent and insolent violations of law the
respondent industries, being characterized as “rogue industries”,
which had inflicted untold misery upon the poor, unsuspecting
villagers, despoiling their land, their water sources, and their
entire environment, were ordered to be closed down.

(III) Environment Act, 1986, and remedial measures- Even if it is
assumed that Supreme Court cannot award damage against the
private companies responsible for causing pollution in
proceedings under Article 32 that does not mean that it cannot
direct the Central Government to determine and recover the cost
of remedial measures from such companies. Read with the wide
definition of “environment” in Sec. 2(a), Sub-sec. 3 and 5 of the
Environment Act, the Central Government will have all such powers as are “necessary or expedient for the purpose of protecting and improving the quality of the environment”.

The Supreme Court directed the Central Government to determine amount required for remedial measures. The amount so determined is to be paid by the chemical industries. The Court directed the attachment of factories, plant etc. of these industries, and also directed their closure.

*M.C. Mehta v. Kamal Nath (Span Motel Case)*

A news item appeared in Indian Express stating that a lease granted by the State Government of riparian forest land for commercial purposes to a private company having a Motel located at the bank of river Beas (the family of Kamal Nath, a former Minister for Environment and Forests, had direct link in the company). The Motel management interfered with the natural flow of river by blocking natural relief/spill channel of the river, ostensibly to save the motel from future floods.

The Supreme Court taking note of the news item and consequent writ petition held that the State government committed a breach of public trust by leasing the ecologically fragile land to the Motel management. The court quashed the lease and prior approval granted by Govt. of India.

The Supreme Court observed:

(i) The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristics is finding its way into law of the land. The doctrine of public trust primarily rests on

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*45 (1997) 1 SCC 388.*
the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life.

(ii) The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

(iii) Though the public trust doctrine under the English Common Law extended only to certain traditional uses viz. navigation, commerce and fishing, the US Courts in recent cases expanded the concept of the public trust doctrine.

In *Mono Lake Case*[^46], the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests, is clearly apparent. The observations made therein to the effect that the ‘protection of ecological value is among the purposes of public trust, may give rise to an argument that the ecology and environment protection is a relevant factor (and not the public enjoyment only) to determine which lands, waters, etc. are protected by the public trust doctrine. The US Courts are thus expanding the public trust to encompass new types of lands and waters. There is no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources.

[^46]: 33 Cal 3d 419.
(iv) The resolution of ‘environment-development’ conflict in any given case is for the legislature and not the courts. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

(v) Our legal system – based on English Common Law – includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. Thus, the public trust doctrine is a part of the law of the land.

“While it is true that in a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment, as otherwise there would be development but no environment, which would result in total devastation… There has to be a proper balance between the development and environment so that both can coexist without affecting the other.”

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**M.C. Mehta v. Union of India (Aravali Hub Range Case)**

In this case, the illegal mining of Aravali Range was challenged. According to environmentalists, these mining activities at a large scale would lead to hindrance in wind movements, enlargement of desert area causing irregular rainfall and disturbed seasons. The Court held that:

“The development and the protection of environment are not enemies of each other. If without degrading the environment or minimizing adverse effects thereupon by applying stringent safeguards, it is possible to carry development activity applying the principles of sustainable development, in that eventuality, the development has to go on because one cannot lose sight of the need for development of industries, projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck.

Some times, in such matters, the option to be adopted is not very easy. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest”.

**Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh**

The Supreme Court was faced with the problem of the mining activities in the lime stone queries in Dehradun - Mussoorie area. This was the first case of its kind in the country involving issues relating to

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48 2004 AIR SCW 4033.
49 AIR 1985 SC 652.
environment and ecological balance and brought into sharp focus the conflict between the development and conservation. In this case, the Supreme Court emphasized the need for reconciling development and conservation in the larger interest of the country.

According to the court the hardship caused to the lessees is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazards to them and to their cattle, homes, etc.

The court, however, was concerned about the effect of closure on other national interests ..., as it observed; mining of this area has to be stopped as far as practicable, we also make it clear that mining activity has to be permitted to the extent necessary in the interest of the defense of the country as also for the safeguarding of the foreign exchange position.

In 1988, the court directed that all mines in the Dehradun valley remain closed, except three operations. The court concluded that continued mining in the valley violated the Forest (Conservation) Act. The court issued orders to reforest the valley. The court was also concerned with the welfare of mine operators and workers left unemployed by closure of mines, as it ordered that such mine lessee be given priority for leases in new areas upon to limestone mining. The workmen to be provided employment in the aforestation programmes in the region.

Further, the court conducted a comprehensive environmental review and analysis of the national need for mining operations, appointed several expert committees, passed various comprehensive interim orders, and provided for funding and administrative oversight of reforestation of the region.
The highest judiciary, playing an activist role, strengthened the constitutional mandate and recognized for the first time that right to a wholesome environment is an implied fundamental right under Article 21 of Constitution. Although Article 21 is not referred to in the court’s judgment, but since the exercise of jurisdiction under Article 32 presupposes the violation of a fundamental right, it becomes necessary to reasonably derive the fundamental right (i.e. Article 21) that the court had in view.

*Kinkri Devi v. State of Himachal Pradesh*\(^{50}\)

This case involves indiscriminate grant of mining lessees especially in Himalaya region which can have evil consequences on natural wealth and natural resources of the country. The court followed the observations of the Supreme Court in Dehradun Quarrying case and pointed out that if a just balance is not struck between development through tapping of natural resources and the protection of ecology and environment, there will be a violation of fundamental right conferred by Articles 14 and 21 of the Constitution.

The court further observed:

“There is both a constitutional pointer to the State (Article 48A of Directive Principles) and constitutional duty of the citizen (Article 54-A (g) of Fundamental Duties) not only to protect but also to improve the environment. The neglect or failure to abide by the pointer or to perform

\(^{50}\) AIR 1988 H.P. 9.
the duty is nothing short of a betrayal of the fundamental law which the State, and indeed, every citizen is bound to uphold and maintain”.

The court concluded that till the government evolves a long term plan based on a scientific study with a view to regulate the exploitation of the minerals in the State without detriment to the natural resources, environment and the local population, the court will be left with no alternative but to intervene effectively by issuing appropriate writs, orders and directions including the direction as to closure of the mines, and the total prohibition of the grant or renewal of mining leases. In General Public of Saproon Valley v. State of H.P., the court issued similar directions to the State Government, in relation to the protection of Saproon Valley from the mining operations.

*M.C. Mehta v. Union of India (Shriram Gas Leak Case)*

On behalf of those affected by the gas leak, the Delhi Legal Aid and Advice Board and the Delhi Bar Association filed applications for compensation in the original petition by M.C. Mehta. When these applications for compensation came up for hearing it was felt that since the issues raised involved substantial questions of law relating to the interpretation of Articles 21 and 32 the case should be referred to a larger bench of five judges.

Observations and Decision – While the 3-judge bench extended the scope of the right to life and said that the State had power to place restrictions on carrying on of hazardous industrial activities for protecting the right of the

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51 AIR 1993 H.P. 52.
52 AIR 1987 SC 1086.
people to live in healthy environment, the judge bench made further extension of the right and held that the right to life contains the right to claim compensation to victims of pollution hazards. The court observed that apart from issuing directions, it can, under Article 32, forge new remedies and fashion new strategies designed to enforce fundamental rights, the power under Article 32 is not confined to preventive measures when fundamental rights are threatened to be violated but it extends to remedial measures when the rights are already violated (vide *Bandhua Mukti Morcha v. Union of India*)\(^{53}\). The court however held that it has power to grant remedial relief in appropriate cases i.e. where violation of fundamental right is gross and patent and affects persons on a large scale, or where affected persons are poor and backward.

Regarding the measure of liability of an industry engaged in hazardous or inherently dangerous activity in case of an accident, the court examined whether the rule in *Rylands v. Fletcher*\(^{54}\) would be applicable in such cases. This rule laid down that if a person who brings on to his land and collects and keeps there anything likely to do harm, and such thing escapes and does damage to another he is liable to compensate for the damage caused. The liability thus is strict and it is no defense that the thing escaped without that person’s willful act, default or neglect. The exceptions to this rule are that it does not apply to things naturally on the land or where the escape is due to an act of God, act of a stranger or the default of the person injured or where there is a statutory authority.

\(^{53}\) *AIR 1984 SC 802.*

\(^{54}\) *1868 (19) LT 220; 1868, L. R. 3 H. L. 330*
The court held that the rule in Rylands with all of its exceptions is not applicable for the industries engaged in hazardous activities. The court observed: “This rule, evolved in the 19th century at a time when all these developments of science and technology have not taken place… We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy.”

The court introduced a new “no-fault” liability standard (“absolute” liability or “stricter than strict” liability). An enterprise engaged in hazardous activities which poses a potential danger to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone. Such enterprise must conduct its activities with the highest standards of safety, and if any harm results, the enterprise must be absolutely liable to compensate for such harm. It should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed would not be in a position to isolate the process of operation from the hazardous preparation of substance that caused the harm, the enterprise must and held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous activities. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards.

It was also held that the measure of compensation must be correlated to the magnitude and capacity of the enterprise so that the compensation
will have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it (“Deep-pocket theory” i.e. hand deeper into the pocket of the polluter). The court did not order payment of compensation to the victims since it left open the question due to lack of time to adjudicate, whether Shriram, a private corporation, was a State or other authority which could be subjected to the discipline of Article 21.

The ‘absolute liability’ standard as enunciated by the Supreme Court could be supported by two arguments: (I) Imposing absolute liability ensures that the cost of injuries from toxics are borne by the manufacturers who use, market and profit from these products. Cost internalization is intuitively just, in that victims obtain compensation from those who profit from their harmful activity. Moreover, cost internalization deters future tortuous conduct. (2) Absolute liability guarantees that hazardous industries become insurers against risk of injury arising from their activity and through higher prices, the cost of injuries arising from their activity and through higher prices, the cost of injuries caused by the toxic substances is then distributed among the public as part of business costs rather than borne in entirety by the injured individual. Loss spreading is fair because everyone in society benefits from the products that the hazardous industries manufacture and, therefore, everyone should pay for a portion of the harm associated with these products.

In many cases, however, the size of a company is not directly proportional to its potential to cause harm. A smaller company may have greater capacity to cause harm in such cases. Thus, even when we propose a deterrent theory, the amount of compensation should be proportionate to
the potential of the enterprise to cause harm, not just to its monetary capacity. However, liability of a company is limited to its assets and that of shareholders to their invests.

Despite the above criticisms, the absolute liability principle became the precursor of the internationally accepted “polluter pays” principle in India. The absolute liability principle with some modifications (viz. a determinate sliding scale in view of indemnification by insurance companies, a mandatory insurance scheme fixing the amount of liability, an Environment Relief Fund to take care of accidental emergencies, etc.) found expression in the Public Liability Insurance Act, 1991, and the National Environment Tribunal Act, 1995.

*M.C. Mehta v. Union of India* (Taj Trapezium Case)\(^5\)

The Supreme Court, after taking into consideration reports of various technical authorities found that the emissions generated by the coke and coal consuming industries are air-pollutants and have damaging effect on the Taj and the people living in the Taj Trapezium Zone (TTZ). The atmosphere pollution in TTZ has to be eliminated at any cost.

The court observed:

The “Precautionary principle” and “Polluter Pays Principle” have been accepted as part of the law of the land. The ‘onus of proof’ is on industry to show that its operation with the aid of coke/coal is environmentally benign. It is, rather, proved beyond doubt that the emissions generated by the use of coke/coal by the industries in TTZ are

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\(^5\) *AIR 1999 SC 3192.*
the main polluters of the ambient air. The court held that 292 industries located and operating in Agra must changeover within fixed time schedule to natural gas as industrial fuel or stop functioning with coke/coal and get relocated. The industries not applying for gas or relocation are to stop functioning with coal/cope from 30.04.1997. The shifting industries shall be given incentives in terms of the provisions of Agra Master Plan and also the incentives normally extended to new industrial units. Regarding the rights and benefits of workmen employed in such industries, the court directed that an additional compensation of six years wages to be given to employees of industries which are closed. A shifting bonus to be given to employee who agree to shift with industry. The Supreme Court further directed that all emporia and shops functioning within the Taj premises to be closed. On 28 August, 2015, the Taj Trapezium Zone Authority took the decision that all car buyers in Agra will have to furnish proof of owning a garage or a slot in a parking area in order to get their vehicles registered; this is to ensure that the air emissions remain within prescribed norms for the safety of the Taj Mahal.\(^{56}\)

\textit{Intellectuals Forum, Tirupathi v. State of Andhra Pradesh and Others}\(^{57}\)

In this matter court was required to lay down the law regarding the use of public lands of natural resources, which have a direct link to the environment of a particular area, by the Government and not to allot such land for trade and business purposes.


\(^{57}\) AIR 1987 SC 986.
The Supreme Court stated: The responsibility of the State to protect the environment is now a well-accepted notion in all countries. It is the notion that, in international law, gave rise to the principle of “State responsibility” for pollution emanating within one’s own territories. This responsibility is clearly enunciated in the United Nations Conference on the Human Environment (Stockholm Convention 1972), to which India has been a party.

Article 48-A of the Constitution mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wildlife of the country. Article 51-A of the Constitution enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. These two articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constituent including Articles 14, 19 and 21 and also the various laws enacted by Parliament and the State Legislatures.

The debate between the development and economic needs and that of the environment is an enduring one, since if the environment is destroyed for any purpose without a compelling developing cause, it will most probably run foul of the executive and judicial safeguard. In response to this difficulty, policy makers and judicial bodies across the world have produced the concept of “sustainable development”.
Tehri Bandh Virodhi Sangarsh Samiti v. State of Uttar Pradesh\textsuperscript{58}

A social action litigation was filed by a non-governmental organization in which they opposed the construction of dam on Tehri by the then Government of Uttar Pradesh. The court observed that the facts clearly show that the Union of India considered the question of safety of the project in various details more than once. In the circumstances, it is not possible to hold that the Government has not applied its mind or has not considered the relevant aspects of safety of the dam. This court does not possess the requisite expertise to render any final opinion on the rival contentions of the experts. The court can only investigate and adjudicate the question as to whether the Government was conscious to the inherent danger as pointed out by the petitioners and applied its mind to the safety of the dam. The Court concluded: “We appreciate the petitioner’s concern for the safety of the project which is of prime importance to the general public, however, in view of the material on the record we do not find any good reason to issue a direction restraining the respondent from proceeding ahead with the implementation of the project”.

It appears that the Central Government took a political decision to proceed with the Tehri Project and then structured ad hoc administrative framework that would secure expert opinion to support that decision.

**Narmada Valley Project**

The Narmada Valley Project, if and when completed, will rank as the largest irrigation project ever planned and implemented as a single unit

\footnote{\textit{JT 1990(4) SC 519}.}
anywhere in the world. The project envisages 30 major dams, 135 medium
dams and 3,000 small dams. It aims to create 2,450 MW of hydel capacity,
irrigate up to 5 million hectares, and provide drinking water to thousands of
cities and villages. The project covers the State of Gujarat, Madhya Pradesh
and Maharashtra. The project enjoys wide support in Gujarat (among those
not displaced).

But, the project is strongly opposed by the social activists and
environmentalists. Because, the project will displace thousands of people
from 237 villages, and will cause immense environmental damage: the
ecological loss due to submergence of forests; the changes in the
downstream ecosystem; the damage due to backwaters; the impact on
health due to the spread of water bond diseases. The most controversial of
the major dams are the colossal Sardar Sarovar Project (SSP) in Gujarat and
the Narmada (Indira) Sagar Project in Madhya Pradesh.

Major Issues:

(i) Cost – benefit ratio - the Planning Commission requires that all river
valley projects must have a minimum cost’ benefit ratio of 1:1.5 i.e.
for every rupee spent there must be a return of at least one-and-one-
half rupees.

The cost-benefit ratio for Narmada Project is 1:1.5, according to the
Planning Commission. However, according to Late Baba Amte, a
noted social activist, the ratio is less, so the project is not worth
pursuing. The cost of construction is much more and the
environmental and rehabilitation casts could not be offset by the
benefits. Costs of preventing water, logging of health measures, of
catchments area treatment, of the environmental loss of forest
submergence, and many other such major aspects of the projects were nor even included in the original cost-benefit analysis presented to the Planning Commission.

(ii) Submergence of forests – It is a real concern, as biodiversity cannot be recreated or replicated. However, Government stand is that much of the area classified as forest is a barren one because of depletion by overgrazing and population pressure. Also, studies have been made to determine ways and means by which the wildlife could be evacuated from submerged areas through “corridors” into suitable habitats. Moreover, ‘compensatory afforestation’ will be done to plant trees on an equivalent amount of non-forest land.

It is very much doubtful that the environmental impact of such massive deforestation on soil conservation, water replenishment, micro-climatic stabilization and the storage of genetic pools, could be overcome by such complex artificial measures as envisaged by the Government. Further, no study on the carrying capacity of adjoining forests (to accommodate the ‘shifted’ wildlife) has been undertaken.

(iii) Displacement and Rehabilitation – The SSP and NSP projects will displace over 200,000. Gujarat has the best resettlement and rehabilitation policy for the oustees. Even in Gujarat, resettled people are complaining of severe shortages of fuel wood, fodder, employment opportunities, fragmentation of families, conflicts with local populations etc. A careful planning, design and implementation, with adequate
participation by those affected is required for a successful rehabilitation.

(iv) Health hazards – Inadequate drainage and water logging due to dams may result in spread of water-related diseases like malaria, filarial etc.

(v) Water logging – Several agricultural experts have warned against large-scale canal irrigation in the Narmada basin, since black soils are highly water absorbent and susceptible to water logging, in the case of the completed Tawa dam in the Narmada basin, crop yields have declined after the introduction of irrigation.

(vi) Funding problems – Other kinds of social and economic development will suffer because of the financial drain that Narmada will create (SSP and NSP are estimated to cost Rs. 16,000/- crores, and the whole project should cost twice as much). Ultimately, the consumers and taxpayers of Gujarat will be subsiding the 4.3 million farmers who hope to benefit.

World Bank is partly financing the project (about 10%). Morse Report (an independent review committee headed by Mr. Morse, former United Nations Development Programme (UNDP) official, set up by World Bank has recommended the suspension of work on the Narmada project. It has criticized the project on three ground: (i) project authorities have grossly underestimated the severity of rehabilitation and health problems, a rehabilitation is simply impossible under prevailing circumstances; (ii) the hydrological data is incorrect e.g. backwater effect of sedimentation in reservoir was not even considered; (iii) subordination of environmental
concerns to engineering/construction demands, however, the World Bank has decided to fund the project with certain changes i.e. to accommodate resettlement and environmental concerns to the extent possible.

The work on the Narmada Project is going on unabated, despite the massive protests by various environmental organizations. The Narmada Bachao Andolan filed a case in this regard, which has been recently decided by the Supreme Court in *Narmada Bachao Andolan v. Union of India*.  

The court disposed of the Narmada Bachao Andolan petition, declaring that the dam shall be built as envisaged by the Narmada Tribunal Award given way back in 1979. The court observed:

> The loss of forest because of any activity is undoubtedly harmful. But these large dams also cause conversion of wasteland into agricultural land and making the area greener. Large dams can also become instruments in improving the environment.

However, Justice, Bharuchi dissented that:

> “Notes prepared by the Ministry of Water Resources and Ministry of Environment and Forests leave no manner of doubt the requisite data for assessment of environment impact of the project was not available when the environmental clearance thereof was granted’.

The majority view in this case, however, opined that the Narmada dam deals with known facts:

> “Merely because there will be a change is no reason to presume that there will be an ecological disaster. In a democratic set-up, it is for

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the elected Government to decide what project should be undertaken for the benefit of the people”.

*Bhagwan Bhoi v. State of Orissa*\(^{60}\)

The fact of this case is that directions were issued by Divisional Forest Officer calling an owner of a private piece of land to stop falling of trees on his property. So, the owner filed a suit for issuance of a writ of *certiorari* against the Government. Now, the question arose before the Orissa High Court whether the Forest (Conservation) Act, 1980, applies to private forests also? But after listening to the contentions of parties, it was held that Forest (Conservation) Act, 1981, applies to private forests as well.

*Forest Friendly Camps Pvt. Ltd. v. State of Rajasthan*\(^{61}\)

The appellants filed a Civil Special Appeal before the Division Bench of the Rajasthan High Court against the orders of the single judge of this High Court who dismissed the writ petition filed by the appellants. The appellants, Friendly Campus Private Limited, were the owners of hotels and were running the business of arranging tours for the tourists from all over the country and the world. A tiger project was established in Ranthambhore National Park by the State of Rajasthan with a view to attract the tourist of the country and the world to see the tigers in the sanctuary. The Government of Rajasthan introduced Roster System for regulating tourism business by controlling vehicular entry of private vehicles in the National Park. Under the Roster System, the tourist had to be accommodated in the

\(^{60}\) AIR 2002 Orissa 201.

\(^{61}\) AIR 2002 Raj 214.
vehicle with the guide provided by the Forest Department and not in accordance with the choice of the hotelier or the person organizing the tour or the tourists themselves. The system contained stringent regulatory norms for the entry of vehicles in the National Park. The appellants challenged the Roster System and alleged that it hampered the tourism and resulted in affecting the earning of the foreign exchange.

But this decision was an effort of judiciary to protect the flora and fauna of the environment, which is beneficial for human race also.

*Indian Handicrafts Emporium v. Union of India*\(^{62}\)

In this case guidelines were framed by Government of India for ivory stock disposal. It was observed by the Hon’ble Court that under section 49-C(1), (3) and (5), the issued guidelines were inefficient. Appellants were directed to hand over the ivory to the respondents and they were to be kept in the museum. It was a remarkable step to manage the deteriorating condition of our environment consisting various flora and fauna.

*K. Purushottam Reddy v. Union of India*\(^{63}\)

Andhra Pradesh High Court was faced with the problem of handling disposal of used oil for re-finishing or reprocessing. The court held that possessing by hazardous substance without taking adequate care and precaution would not only give rise to ecological problem but might seriously affect quality of potable water and therefore, strict compliance

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\(^{63}\) AIR 2005 NOC 138 (AP)
with the Hazardous Waste (Management and Handling) Rules, 1989 would be necessary. Accordingly, the court directed the state Pollution Control Board to take steps for cancellation of authorization of person found to be unauthorisedly handling hazardous waste products.

*Manoj Kumar Roy v. Appellate Authority*\(^6^4\)

The petitioners filed writ petition and alleged that close to their building, there was a showroom of Digjam, a well known concern carrying on the business in textiles and dress materials. In the showroom, there were huge air conditioning machines, the running of which caused air and noise pollution. The petitioners had earlier also filed a writ petition which was heard by the Green Bench of the Calcutta High Court which passed an order on 2\(^{\text{nd}}\) of July, 1999, and directed that a cooling tower should be built at the top of the building where the air conditioners were installed to avoid emanation of hot air from the air conditioners. The Green Bench requested the Board to oversee the construction. The Board was also authorized that at liberty to take directions were not fulfilled, they were at liberty to take appropriate action against the erring party in accordance with Law. On 7\(^{\text{th}}\) October, 1999, the Pollution Control Board passed the order directing the closure of the air conditioning machines on the ground as the direction of the Green Bench of the High Court was not followed and the air conditioners were functioning without erecting cooling tower. Against the said order, an appeal was filed before the Appellate Authority. On 15\(^{\text{th}}\) May, 2001, the Appellate Authority directed the appellants to fix up split

\(^6^4\) AIR 2002 Calcutta 216.
type air conditioning machine so that pollution load might not affected the neighbouring people. After hearing the parties further on 26th June, 2001, the Appellate Authority revised the earlier order and directed the Pollution Control Board to make necessary inspections and pass appropriate directions. An application for review was filed before the Appellate Authority for the review of the order dated 26th June, 2001. In the review proceedings, the Appellate Authority took a complete volte face and held that there was no pollution and the order of the Pollution Control Board was set aside. In the present writ petition, the petitioners challenged the jurisdiction of the Appellate Authority to entertain the review petition in view of the fact that the Air (Prevention and Control of Pollution) Act, 1981, did not provide for review of its decision by the Appellate Authority. It is not in dispute that the Appellate Authority is an authority created under the statute. As an authority created under the statute, “it has certain quasi-judicial functions and it is vested with certain features or trappings of a court but it is certainly not a court nor is it a superior tribunal. It is not in dispute that the Appellate Authority has to act within the four corners of the statute and must act as an inferior tribunal.

*Sitaram Chhaparia v. State of Bihar*\(^\text{65}\)

The Patna High Court held that protection of the environment is a fundamental duty. The petition was filed as Public Interest Litigation alleging that an industrial unit consisting of a tire rethreading plant set up in the residential area was emitting carbon dioxide gas and other obnoxious

\(^{65}\) AIR 2002 Patna 134.
gases from its furnaces causing harm to the environment of the locality. The court regretted that the State Government of Bihar and the Bihar State Pollution Control Board paid service to their obligations under the Law to monitor and prevent environmental pollution especially under the Constitution of India and the Environment (Protection), Act 1986 which require strict vigil on matters of environment and ecology. The court termed such impervious approach and attitude by State functionaries as ‘anti-nature’. Notices were served on the authorities responsible for monitoring environmental degradation and ecological imbalance that the tire rethreading plant set up in the residential area was discharging large volumes of carbon dioxide gas and other pollutants. The Court, however, lamented that the muscle power of vested interest made their presence felt regardless of the laws which obliged the state to control pollution and take steps for environmental protection. The High Court of Patna finally held that protecting the environment is a fundamental duty under Article 51A of the Constitution of India.

The judiciary has treated environmental protection as emergency situation and therefore, treated directive principle contained in Article 48A as complimentary to fundamental rights. The obligation of the States to protect and improve the environment flows from Article 48A of the Constitution. The Constitutional obligation of the States to protect and improve the environment has two folds, namely compensation to the victims of pollution and the restoration of ecology.

Article 51A (g) of the Constitution which contains a social obligation impose fundamental duty on citizens to protect and improve the environment. It imposes constitutional obligation on the polluter to bear the
costs of pollution by compensating the victims of pollution and adoption of the ecological remediation measures. Thus, Article 51A(g) gives effect to the well known fundamental principle of the international environmental jurisprudence, namely, “Polluter Pays Principle” by requiring the polluter to bear the costs of pollution. Article 48A treats the state as ‘deemed polluter’ if it fails to abide by the mandate of protection and improvement of the environment.

_Vellore Citizens Welfare Forum v. Union of India_66

A writ petition was filed by way of public interest litigation alleging that the untreated effluents discharged by the tanneries in Tamil Nadu into agricultural fields, roadsides, water-ways finally entered the river and resulted in the pollution of its water. The Supreme Court refused to accept the traditional concept that development and ecology were opposed to each other and projected the relevance and importance of the concept of sustainable development which, during the two decades from Stockholm to Rio, emerged as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. The Supreme Court emphatically held that sustainable development as a balancing concept between ecology and development has been accepted as a part of the customary international law. The Supreme Court further held that the ‘precautionary principle’ and ‘polluter pays principle’ constituted fundamental principles of the international environmental law and stated that ‘precautionary principle’,

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66 _AIR 1996 SC 2718._
the ‘polluter pays principle’ and the special concept of onus of proof have merged and govern the law of our country as is clear from articles 47, 48A and 51A(g) of the Constitution and that, in fact, in various environmental status, such as Water (Prevention and Control of Pollution) Act, 1974, the Environment (Protection) Act, 1986 and other statues, these concepts are implied. ‘Precautionary principle’ underlies sustainable development and requires that the developmental activity must be stopped and prevented if it possesses threat of serious and irreversible environmental damage”. The principle emphasizes that where there are threats of serious or irreversible environmental damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The “polluter pays principle” basically means that the producer of goods or other items should be responsible for the costs of preventing or dealing with pollution, which the process causes. This includes environmental costs as well as the direct costs of people or property. The principle insists at internalization of the environmental cost of economy activity. It encourages developers to invest in preventive, restorative or compensatory measures. The Supreme Court held that the ‘precautionary principle’ and the ‘polluter pays principle’ are a environmental law in India in view of articles 47, 48A and 51A(g) of the Constitution, Water (Prevention) Act, 1986 and other environmental statues. The Supreme Court further held that even otherwise, ‘precautionary principle’ and the ‘polluter pays principle’ are a part of customary international law and therefore, part of Indian domestic law. The Supreme Court, in a public interest litigation, not only treated the ‘precautionary principle’ and the ‘polluter pays principle’ as a part of the Indian environmental law but also directed the Central Government to
establish authority under section 3(3) of the Environment (Protection) Act, 1986.

_Law Society of India v. Fertilizer & Chemical Travancore Ltd_67.

The Supreme Court in this case extensively quoted the Rio Declarations, 1992. The Court gave preference to environment over employment and revenue generation. Thus strengthening the then nascent fundamental right to clean environment with minimal disturbance to ecological balance. International environmental law was used substantively in such cases and the Apex Court developed a unique domestic environmental jurisprudence by blending the Indian environmental law with the international environmental law.

_Goa Foundation, Goa v. Diksha Holdings Pvt. Ltd._68

Public interest litigation was initiated against construction of a hotel/beach resort at Nagocrem Beach, Goa as it would disturb the environmental equilibrium and biodiversity in the coastal area. The Supreme Court attempted to strike a balance between environment and development and held that no activities which would ultimately lead to unscientific and unsustainable development and ecological destruction should at all be allowed and the courts must scrupulously try to protect the ecology and environment and should shoulder greater responsibility. However, in the present case, the environmental clearance of the Central

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67 _AIR 1994 Ker 308_.
68 _AIR 2001 SC 184_.

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Government was obtained and the Court did not find any illegality in the grant of environmental clearance by the Central Government.

\textit{Citizen Consumer and Civic Action Group v. Union of India}^{69}

Public interest litigation was initiated in the Madras High Court against construction of multi-storied buildings consisting of basement and nine floors. It was, however, submitted that the permission of all the concerned authorities and the environmental clearance under Section 3 of the Environment (Protection) Act was obtained. The Madras High Court held that balance had to be struck between environment and development activities. In the opinion of the Madras High Court, while the courts have social accountability in the matter of protection of environment, there should be a proper balance between the same and development activities, which are essential for progress. There is no dispute that the society has to prosper but it shall not be at the expense of the environment. In the hike vein, the environment shall have to be protected but not at the cost of development of the society. Both the development and the environment shall co-exist and go hand in hand. Therefore, a balance has to be struck and administrative actions ought to proceed in accordance therewith and not \textit{de hors} the same. In the present case, the Madras High Court held that the proposed construction of multi-storey complex was legal and the builder was entitled to building permit.

\footnote{AIR 2002 Madras 298.}
In a popular CNG litigation initiated by way of public interest, the Supreme Court was faced with the problem of vehicular pollution and regretted inaction of the Union of India and other governmental authorities to phase out non-CNG buses and in setting up of principles underlying environmental law is that of sustainable development. The principle requires such development to take place which is ecologically sustainable. The court pointed out that the two essential features of sustainable development are: (i) the ‘precautionary principle’, and (ii) the ‘polluter pays principle’. Accordingly, the Court held that the auto policy must: (a) focus upon measures of anticipate, prevent and attack the causes of environmental degradation in this field, (b) in the absence of adequate information, lean in favour of environmental protection by refusing rather than permitting activities likely to be detrimental, (c) adopt the precautionary principle and thereby ensure that unless an activity is proved to be environmentally benign in real and practical terms, it is presumed to be environmentally harmful, and (d) make informed recommendations which balance the needs of transportation with the need to protect the environment and reserve the large scale degradation that has resulted over the years, priority being given to the environment over economic issues.

The above cases demonstrate that the Supreme Court became so active in public interest litigations that the fundamental principles or international environmental jurisprudence, namely ‘sustainable development’, ‘precautionary principle’ and ‘polluter pay principle’ have

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70 AIR 2002 SC 1696.
been treated by the Supreme Court as a part of the Constitution of India as well as the environmental statutes and were applied to make the developmental process ecologically sound and sustainable.

*AP Pollution Control Board v. MV Nayudu*\(^\text{71}\)

Various issues including the issues concerning Sections 25 and 28 of the Water (Prevention and Control of Pollution) Act were involved. The respondent company moved on application under section 25 of the Water (Prevention and Control of Pollution) Act before AP Pollution Control Board for the grant of consent to set up an industry for the manufacture of hydrogenated vegetable oil ‘vanaspati ghee’. The process of hydrogenation of vegetable oil involved use of nickel as catalyst. The Board refused the permission on the ground that the unit was a polluting industry falling under the red category in as much as the production of hydrogenated vegetable oil would lead to solid waste containing nickel which was hazardous under Hazardous Waste (Management and Handling) Rules, 1989, along with the emission of sulphur dioxide and nitrogen oxides. The categorization of industries and forests, Government of India and the respondent industry fell in the red category, the respondent company appealed under section 28 of the Water (Prevention and Control of Pollution) Act before the Appellate Authority. Before the Appellate Authority, various affidavits were filed. M. Shantappa (Prof.), a retired Scientist and technologist stated, in his affidavit, that the respondent had adopted latest eco-friendly technology using all the safeguards regarding

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\(^{71}\) *AIR 1999 SC 812.*
pollution. Dr. Siddhu, former Director General of Council of Scientific and Industrial Research (CSIR) and the Managing Director of the Company also submitted their affidavits explaining the details of the technology employed in the erection of the plants. The Appellate Authority allowed the appeal of the company and directed the AP Pollution Control Board to give its consent for the establishment of the factory on such conditions as the Board might deem fit. The respondent company filed a writ petition in the High Court for directing the AP Appellate Authority. The High Court referred to the affidavit filed by Dr. Siddhu before the Appellate Authority wherein Dr. Siddhu deposed that even if the hazardous waste was a byproduct, the same could be controlled if the safeguards mentioned in the Hazardous Wastes (Management and Handling) Rules, 1989, were followed. The rules made under the Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules, 1989, also permit industrial activity provided the safeguards mentioned therein are taken. The Chemicals Accidents (Emergency Planning, Preparedness and Response) Rules, 1991, supplement the MSIHC Rules 1989 on accident preparedness and envisage a 4-tier crisis management system in the country. Therefore, merely because an industry produced hazardous substances, the consent could not be refused. Accordingly, the High Court allowed the writ petition filed by the respondent company and directed the grant of consent by the Andhra Pradesh Pollution Control Board. However, such chemicals industries should not be allowed to be operated in or near human habitations and proper environment impact assessment be made.
Enkay Plastics Pvt. Ltd. v. Union of India and Others\textsuperscript{72}

In this case the Delhi High Court upheld the order of the Delhi Pollution Control Committee for closure of certain polluting industries, and held the direction of close down the industry which is creating air pollution.

Mahesh Kumar Vijibhai Trivedi v. State of Gujarat\textsuperscript{73}

The Gujarat High Court pointed out that no one has a right to enter / possess a land in sanctuary except under a permit granted by Chief Wild Life Warden as per the scheme provided under Section 27 and 28 of the Wildlife Protection Act, 1972. In this case, the government allotted land in 1978 to the petitioners under a scheme for rehabilitation of the Pakistani nationals who crossed over to India in 1971. Later on, a wild Ass Sanctuary was declared in 2001 under the Wildlife Protection Act, covering the land area allotted to the petitioners. They challenged this declaration and demanded that they may be permitted to live at the allotted land even if it may be inside the sanctuary. The Court declared that the petitioner cannot claim any right to live there and continue to have the possession of the land as the land was within the same sanctuary.

Kamal Kant Pandey v. Prabhagiya Van Adhikari\textsuperscript{74}

It was made clear by the court that under Sec. 29 the state is empowered to curtail mining operations in protected areas and can terminate lease pre-maturely. Such power to cancel the lease is quasi-

\textsuperscript{72} 2000 (56) DRJ 828.
\textsuperscript{73} AIR 2006 Guj 35
\textsuperscript{74} AIR 2005 All 136
judicial in nature and not merely an administrative power. In case a mining lease is granted under the Mines and Minerals (Regulation & Development) Act, 1957 the permission of wildlife authorities is must.

The Hon’ble Supreme Court in *Essar Oil Ltd. v. Halar Utkarsh Samiti*\(^{75}\) examined the applicability and scope of Section 29 and declared that this section ‘bars anyone from completely, irreparably and irreversibly putting an end to wildlife or to the habitat in a sanctuary.’ Before granting license, the state government must ask for and obtain an ‘Environment Impact Assessment’ from expert bodies and further the application must be accompanied with a environmental management plan which must be cleared by the expert to prevent possible further damage. In this case the State permitted the being of oil pipe lines inside the Jamnagar National Park and Sanctuary to the Essar Oil Ltd. It was, however, challenged as this could destroy the natural habitat and ecology of the area. The Court approved the permission granted with certain conditions.

*Consumer Education and Research Society v. Union of India*\(^{76}\)

In this case, the Supreme Court made it clear that a legislature has also the right to reduce the area by issuing a notification. Such reduction in area by the legislature cannot be invalidated even when it is taken in haste, ‘unless there is material to show that it will have irreversible adverse effect on the wildlife and environment.’ In this case the Gujarat Legislature reduced the area of Narayan Sarovar Chinkara Sanctuary from 765.79 km\(^2\)

\(^{75}\) (2004) 2 SCC 392; AIR 2004 SC 1834  
\(^{76}\) (2002) 2 SCC 599
to 442.23 km$^2$. This notification was challenged but the Court upheld the reduction notification of the State Government.

*Deepak Nitrite Ltd. v. State of Gujarat*\textsuperscript{77}

The court declared that the compensation to be awarded must have some broad correlation not only with the magnitude of the risk and the capacity of the enterprise, but with harm by it. The Polluter Pay Principle can be applied only where it is proved that some damage has been caused to the man and material or to the environment by the industrial unit by their activity. Mere violation of legal provisions laying down the standards does not attract this principle. In this case a PIL was filed alleging that large scale pollution has been taking place by the industries located in Gujarat Development Corporation Estate of Nandesari as the effluents discharged by the industries exceeded the parameters fixed by the Gujarat Pollution Control Board. The High Court passed an order directing industries to pay one percent of the maximum turnover of the past three years by applying the Polluter Pay Principle without ascertaining whether there is degradation of environment or any of the component of environment.

*Balram Kumawat v. Union of India*\textsuperscript{78}

In this case, the Supreme Court has declared that the objective of Parliament was not only to ban trade in imported elephant ivory but ivory of every description so that poaching of elephants can be effectively restricted. The Act has put a complete prohibition on trade in ivory by

\textsuperscript{77} (2004) 6 SCC 402.
\textsuperscript{78} (2003) 6 SC 264; AIR 2003 SC 3268.
amending the Act. It was also made clear that a complete prohibition is a reasonable restriction within the meaning of Clause (6) of Article 19 of the Constitution of India.

*Kamal Kant Pandey v. State of U.P.* 79

In this case, the Court observed that if a lease has been granted in wildlife sanctuary area, lease shall be cancelled. Any money deposited as lease money, stamp duty shall be refunded to the lessee. A permit holder has been prohibited from setting fire to a sanctuary, entering with a weapon except with the prior permission of the Chief Wildlife Warden and using chemical explosives or any substance which may cause injury to or endanger wildlife.

*M. C. Mehta v. Union of India* 80

In this case, it was held that if the residential buildings are converted to commercial use, it amounts to violation of Municipal Laws, Master Plan and Environmental Laws. Therefore, the Supreme Court ordered for sealing such residential premises. It was observed that persons do not have right to carry on any trade profession in flagrant violation of regulatory provisions on massive scale that would also result in environmental pollution. Thus the Court ensured that the inhabitants receive a clean, pollution free environment.

79 *AIR 2006 All 92.*
80 *(2006) 3 SCC 399.*
State of M. P. v. Kartar Singh Bagga\textsuperscript{81}

Here, the Court made it clear that even if ‘Patta’ has been granted, it does not include the permission to fell trees, when the land in question falls within a ‘protected forest land.’ It was a clear violation of Section 2 of the Forest (Conservation) Act, 1980. The Court further directed the State Government to constitute a committee consisting of Conservator of Forests and others to decide how many trees could be cut in the area.

Nature Lover’s Movements v. State of Kerala\textsuperscript{82}

The Kerala State Government took a policy decision on March 11, 1992 to assign forest land which had been in the possession and enjoyment of encroachers prior to January 1, 1977. Evidently, the assignment of the forest land related to land encroached upon prior to the commencement of the Forest (Conservation) Act, 1980 i.e. December 27, 1980. The Court declared that the Act does not operate retrospectively. It is to check ‘future deforestation.’ Therefore, no prior approval is required for past encroachments. It implies that this requirement is not applicable to the deforestation or encroachment which has already taken place. The term ‘future’ used in the Section on objects / research makes it amply clear that it is not applicable to pre-act contravention. The Court examined the intent of legislature by examining legislative discussions, the objects and scope of the Act, terms used in the Act and general rules of interpretation. Then it was declared by the Court that the State was entitled to divert forest land

\textsuperscript{81} AIR 2006 (NOC) 868 (MP).
\textsuperscript{82} AIR 2000 Ker 131.
for non-forest purpose prior to Jan. 1, 1977, the date on which the ordinance on Forest Conservation was promulgated.

The basis, scope and nature of the State responsibility for the protection of natural resources was discussed by the Supreme Court in *Intellectuals Forum Tirupathi v. State of A. P. & Others*\(^8^3\). The Court was required to deal with the question at the jurisprudential level as it related to the conflict between the competing interests of protecting environment and social development. The Court held that:

The responsibility of the State to protect the environment is now well accepted notion in all countries. It is this notion that International Law gave rise to the principle of State responsibility for pollution emanating within one`s own territories. This responsibility is clearly enunciated in the United Nations Conference on Human Environment, Stockholm 1972 to which India was a part.

The Court declared that there is a responsibility bestowed upon the Government to preserve and protect the natural resources. To explain and buttress its conclusion the Court discussed doctrines of sustainable development, public trust doctrine, principle of intergenerational equity and their origin and application. To arrive on this conclusion, the Court referred the ‘Our Common Future’ (Brundtland Report). Under Public Trust doctrine, the State as a trustee is under the legal duty to protect the natural resources. It is an affirmation of the duty of the State to protect the people`s common heritage of streams, lakes, marsh land and tide lands; surrendering

\(^{8^3}\) (2006) 3 SCC 549
the right only in those rare cases when the abandonment of the right is consistent with the purpose of trust.

*Murli S. Deora v. Union of India*\(^ {84} \)

The Hon`ble Supreme Court, in this leading case, hold that smoking in any form in public places is a health hazard and violation of right to life under Article 21.

*M. C. Mehta v. Union of India*\(^ {85} \)

In this case, also known as CNG fuel case, the Supreme Court made it clear that Article 21 over-rides provisions of every statue including the Motor Vehicles Act, 1988. If the Statutes militate against constitutional mandate of Article 21, they shall be struck down. Norms fixed under the Motor Vehicles Act, 1988 are in addition to and not in derogation of the requirements of the Environment (Protection) Act, 1986. In this case, the Court refused to extend the deadline fixed to convert the buses to CNG fuel as it would amount to permitting premium on the lapse and inaction of the administration.

*N. D. Jayal v. Union of India*\(^ {86} \)

The Supreme Court, in this case, gave wider interpretation to right to life. It declared that right to clean environment is a fundamental right. On the other hand, right to development is also one. Here the right to

\(^ {84} (2001) 8 SCC 765 \)
\(^ {85} (2001) 3 SCC 756 \)
\(^ {86} (2003) 6 SCC 573 \)
‘Sustainable Development’ cannot be singled out. Therefore, sustainable development is to be treated an integral part of ‘life’ under Article 21. It was also made clear that this right to development encompasses much more than economic well being and includes within its definition the guarantee of fundamental human rights. In this case the petitioner urged the Court to issue necessary directions to conduct further safety tests to ensure the safety of the dam at Tehri for hydel power and look into the rehabilitation aspect of the migrants. It was made clear by the Court that the right to have clean and healthy environment is a fundamental right under the Article 21 of the Constitution.

_M. C. Mehta v. Union of India_\(^87\)

In this case, also known as Ganga Pollution Case, Justice Singh declared in unequivocal terms that the closure of industries (tanneries) may bring unemployment and loss of revenue to the State, but ‘life, health and ecology have greater importance for the people.’

_Vilas Shankar Donode v. State of Maharashtra_\(^88\)

In this case, the Bombay High Court declared that use of forest land for construction of road was a non-forest purpose. Construction was declared illegal and the Court ordered to close the road and get the site reforested. Further, the Court declared that the cost of reforestation, cost of damage to forest, expenditure for laying the electricity line in forest area

\(^{87}\) ([1987] 4 SCC 463).
\(^{88}\) _AIR 2008 Bom_ 10.
and the incidental charges be recovered from the M. L. A. of the ruling party.

*The case of the Czech Entomologists in India*[^189]  
In September 2008, two Czech entomologists, Petr Svacha and Emil Kucera were arrested for collection of beetles and butterflies without a valid permit from the Singalila National Park in west Bengal, a violation of Indian wildlife (Protection) Act, 1972 and the Biological Diversity Act, 2002. It is alleged that they were in possession of a large number of specimens (> 1500) of butterflies, including the endangered *Delias sanaca*, at the time of their arrest. Svacha was fined Rs. 20,000 and Kucera was sentenced to three years of imprisonment and fined Rs. 60,000. The Czechs disregarded Section 3 of the BD Act, 2002 which expressively requires a foreign citizen to seek prior approval of India’s National Biodiversity Authority for collection of a biological resource for research or commercial use.

The conviction – the first under the Indian BD Act, 2002 – has laid the foundation of the boundary demarcating academic research and biopiracy. It has established law regulating the conditions under which science can secure equitable access to biological resources and share the benefits that arise from these resources[^190]. The Indian government prosecuted a straightforward violation of its laws. These laws were established in accordance with international treaties to meet the conflicting demands of

[^190]: Ibid at 49.
expanding Intellectual property Rights regimes and the need to affirm sovereign authority over natural resources.

Hope the case will facilitate the increasingly difficult task of governments to promote conservation and the sustainable use of its biological resources.

Kehar Singh v. State of Haryana

In this case the applicant claimed to be the owner in possession of fertile land in the village Nilokheri, Tehsil Thanesar, District Kurukshetra, Haryana. The respondents proposed to set up an STP on that area. According to the plan, the STP is to be located at a distance of only 35 meters from the residential colony. Adjacent to the land of the applicant, there is an old Hanuman Mandir of immense religious significance for the entire locality. The STP, besides causing serious environmental concerns, is also hurting the religious feelings of people. The Trust, Bhishma Pitamah Baan Ganga Mandir Society, had also passed a resolution stating that the construction of the STP very close to the 26 feet statue of Shri Hanuman Ji would damage the historical significance of the temple. Also, the sewage from STP is a very potent pollutant. It can cause tremendous health hazard and damage to the environment including intolerable odour. It carries pathogenic organisms and can transmit diseases to humans and animals, it may also lead to eutrophication (algal bloom due to excessive chemicals) of receiving water bodies, thus can damage the ecosystem. On the contrary, it may prove to be a futile exercise if the plant is established and still it is

91 NGT Order on 12 September, 2013 (Available at www.wwfindia.org/?9922).
unable to treat the mixed waste of different components which come from the drain to the site of plant. So the Hon’ble Court said that it would not order to remove the to the extent to which it has already been constructed at the site as all acts done so far and that may be done hereafter would be subject to the grant of EC to the project in question by the competent authority.

Labhuben Keshavlal Vadaliya v. Gujarat Pollution Control Board

In this case, the officials of Gujarat Pollution Control Board visited the factory premises of the said firm on 16-11-1990 and accordingly, the inspection report was prepared as provided under Section 23 of the Water (Prevention and Control of Pollution) Act, wherein it was found that the effluent is being discharged without taking any consent and a sample came to be collected as can be culled out from the said inspection report, so, a criminal case was made against them. By considering the submissions as well as judgments cited, it was clearly borne out from the complaint that no specific role is attributed to the petitioners and hence they cannot be held vicariously liable for the alleged offence.

M/s Krishna Stone Crushers v. Haryana State Pollution Control Board and Others

All the appellants were carrying on the business of stone crushing under different names and styles in the State of Haryana. All of them

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92 Application No. 5773/2012, Gujarat High Court Order on 10 May, 2013 (Available at indiankanoon.org/doc/21877047).
93 NGT Order on 9 January, 2014 (Available at www.wwfindia.org/?106621)
challenge the legality and correctness of the order passed by the Haryana State Pollution Control Board on March 15, 2012 which was upheld by the Appellate Authority vide its order dated January 24, 2013. The said appellant carried on the business of stone crushing, located in district Yamuna Nagar of the State of Haryana and falls under the jurisdiction of HSPCB. Due to certain guidelines being modified by HSPCB, their stone crushing business came into depredating condition. But at last, some licensee were allowed to continue their work, while some were denied because of their interference with nature.

\textit{Jal Mahal Resorts Pvt. Ltd. Jaipur v. K. P. Sharma and Others} \textsuperscript{94}

It was an application by way of special leave which have been prepared against the common judgment and final order dated 17-05-2012 passed by the High Court of Judicature for Rajasthan at Jaipur Bench. Three Public Interest Litigation petitioners, K. P. Sharma, Dharohar Bachao Samiti and Heritage Preservation Society filed a Public Interest Litigation to cancel the Monument Improvement/ preservation and Tourism Development Project at Jaipur by declaring it illegal. By applying Environment Impact Assessment under Environment Protection Act, notice has been issued there under to Rajasthan Pollution Control Board. The High Court has directed immediate dismantling and removal of entire project and diversion of two drains which was done to purify waters of a man-made artificial water body and detritus.

\textsuperscript{94} (2014) 8 SCC
S. Kumar v. District Collector 95

A part of land was given to some Mr. Radhakrishan under a license by the government to quarry rough stone and jelly. Upon coming to know of the mining lease granted to the above said person and his Company, a person by the name of S. Kumar, who owns a land of 2 acres there, seek the issue of writ of mandamus to direct the District Collector, the Public Works Department and Assistant Director of Geology and Mining to consider his objections. So the writ petition was admitted on 18-03-2013 and at last by considering all facts and figures which were going to destroy the biodiversity, the license granted was quashed by the Court.

Chaudhary Noor Jamal v. The State of M. P. and Others 96

A writ petition No. 6145/2002 was filed as Public Interest Litigation praying for the direction against the respondents to remove encroachments and restore the natural beauty of Siddique Hassan Tank in public interest. In response to it, the interim applications have been filed by the alleged unauthorized occupants and owners of the unauthorized structures standing on the site in question. Finally, it was ordered that the encroachments which are unauthorized shall be cleared by the administration.

Charidesha Krusak Surakshya Sangh v. State of Orissa and Others 97

A writ petition was filed by the petitioner submitting that the part of land over which the thermal power plant of 5 KVK is to come up is

95 Madras High Court Order on 28 April, 2014 (Available at indiankanoon.org/doc/113119029).
96 AIR 2014 Jab 6145.
97 Odisha High Court Order on June 26, 2012 (Available at www.business-standard.com/article).
classified as forest land and such land is covered under Section 2 of the Forest Conservation Act, 1980 as determined by the Hon’ble Supreme Court in the case of T. N. Godavarman, and such forest land cannot be put to in a ‘non-forest activity.’ After listening and considering all submissions by both sides of parties, it was ordered that the project area does not form any part of any National Park, Bio-reserve, Wildlife Sanctuary and none of these come across 10 km of proposed site, so the power plant can be constructed. Consequently, petition was dismissed.

_T. N. Godavarman Thirumulpad v. Union of India_98

In this case, use of 0.6556 ha of forest land falling in Kutch Desert Wildlife Sanctuary by Boarder Security Force for the construction of Repeater Station as recommended by Standing Committee of National Board for Wildlife, allowed subject to conditions. Similarly, use of 124.054 ha of forest land within Majathal Wildlife Sanctuary in Himachal Pradesh for construction of hydroelectric Project by National Thermal Power Corporation, permitted as cleared by Standing Committee by National Board of Wildlife and by CEC subject to conditions. Further, permission for use of 11.541 hectare of forest land falling within Tadgarh-Raoli Wildlife Sanctuary for up-gradation and widening of existing NH 8 between Beawar and Gomtipur Chauraha also granted, subject to conditions laid down by Chief Wildlife Warden.

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98 (2014) 6 SCC 167
Suresh Chander Gupta v. Ministry of Environment and Forests

On 15-02-2015, Central Information Commission (CIC) issues a show cause notice to the MoEF asking why maximum penalty should not be imposed for rendering ‘false and misleading’ information in response to an RTI application seeking information on the harmful effects of electromagnetic radiations emitted by Cell phone towers on human beings. This is a vital issue of public importance. The applicant sought to know if ministry has conducted any study to gather data of Electro Magnetic Fields (EMF) to measure the harmful biological effects of EMF on humans and if it has declared radio frequency electro-magnetic fields as a source of Air Pollution. The ministry had submitted that it had not undertaken or sponsored any study to gather data to measure the alleged harmful biological effects of EMF on humans from Cell phone towers. During proceedings before CIC, however, it was found that an inter-ministerial group was constituted by ministry of Communication and Information Technology and Department of Telecommunication in 2010, which had reported that EMF can have adverse effects on humans and had also suggested that Cell phone towers not be installed near schools, residential colonies and hospitals. While reprimanding the officials of Ministry for providing false information, Commission noted, “The answer of the CPIO in response to this RTI request is false and misleading. They said: (a) there is no study, but there is study, (b) there is no adverse impact on humans, but report confirmed adverse impact of EMF, (c) were not aware of, but they knew or presumed to have known the contents of both reports by WHO and

Inter-Ministerial Group, as these reports were placed on their official website.” Further, “The Commission is surprised that the respondent authority knew that the report was submitted by the Inter-Ministerial Group, but officers neither cared to submit the copy of the report nor read it. The Commission could trace the report from the website of Department of Telecommunication and DDA,” noted CIC and issued a show cause notice upon MoEF in the matter.

Greenpeace India Society v. Union of India¹⁰⁰

On 21-01-2015, Delhi High Court while disposing a petition in which Greenpeace India Society, a Non-Governmental Organization (NGO) working in the area of environment is not allowed to access the funds remitted to his concerned account in IDBI Bank Ltd. for its work towards environment and other expenses by Green Peace International and Climate Works foundation (GPICWF) based on the directions of ministry of Home Affairs (respondents) on the ground that GPICWF is on the watch list of the respondents and therefore, respondents were holding inspection of account or records under Section 23 of the Foreign Contribution (Regulations) Act, 2010. (FCRA), the court held that just stating that GPICWF is on the watch list of the respondents is not enough as no material on record is placed by the respondents for reaching such conclusion. It was further held by the Court that NGOs often take positions which are against the policies of the Government but that in itself cannot be said to be against national interests and the Government is free to execute

¹⁰⁰ 2015 SCC OnLine Del 6725
its policies irrespective of the different point of view of NGOs. Accordingly the court allowed the access to the petitioner to access its FCRA account and to maintain it and also the details of the manner of utilization of the amount so accessed in accordance with FCRA.

Very recently, according to a critic, Felix Padel- an eminent anthropologist and sociologist, and the great-great grandson of Charles Darwin (who formulated the theory of organic evolution)- “There is something deeply ironic about a government that claims to represent India for Indians inviting a rapid increase in foreign investment, that is actually looting the country of its non-renewable mineral resources, damaging India`s ecosystem and sources of water, and thereby the health of future generations.” He further opined, “More and more I understand what is fundamentally to blame is the system of economics that grew up in Britain and the USA that emphasizes short-term profit, self-interest and a ‘free market’ that is not free at all, far above the environmental sustainability that human life on earth depends on.\(^{101}\)

With 2.4 percent of world`s land area, India supports 18 percent of the global population. Despite this, its overall per capita consumption is low, but as the economy is growing, the consumerist patterns are greatly increasing. However, a large portion of our population remains exceedingly dependent on biodiversity and natural resources for meeting basic needs. There is substantial pressure on municipal resources in urban areas to meet

\(^{101}\) Vandana Shukla, ‘Survival of fittest not Darwin`s phrase’. The Sunday Tribune, vol. 135, No. 232, p. 13, 23 august, 2015.(Felix Padel has been actively involved in various people`s movements for conservation of forests; he is visiting professor at NE India Study Programme in the School of Social Sciences, JNU, Delhi).
health, sanitation and environmental standards, while in rural areas, ecosystem services have degraded due to neglect and ignorance. Though a large gap will continue, India is on track to meet its poverty alleviation targets under the Millennium Development Goals by 2015\textsuperscript{102}. India fully supports a move towards ‘Green Economy’ and strengthening the institutional framework for Global Environmental Governance\textsuperscript{103}.

4.5 CONCLUSION

Environmental awareness is increasing not only globally but at the national, regional and local levels also. This has resulted in a positive influence on the emerging environmental jurisprudence. The courts seem to be proactive and deliver judgments. This will definitely result in better environmental protection and will reduce its degradation. In the enforcement and compliance of environmental laws Indian Judiciary has played a pioneering role. The Constitution establishes a welfare state and provides for a governance model founded on the principle of rule of law and democratic decision-making. The Indian Supreme Court has equated the right to a clean environment with the right to life. Consequently, the Indian courts have created ground breaking laws for effective environmental compliance and enforcement. The Indian Judiciary has played a proactive role in environmental enforcement and compliance. India has a large body of well-developed environmental legislations. Indian courts enacted several programs for healthy environmental management

\textsuperscript{103} U.N. General Assembly Preparatory Committee for the UN Conference on Sustainable Development. Report of the Secretary-General, Conf. 217/7. 20 December 2010.
and capacity development to protect biodiversity and regenerate forests and wildlife and abet air pollution, noise pollution, water pollution, and promote eco-development, environmental research, education and awareness. However, India faces challenges in keeping a balance between economic development and meeting environmental obligations. Patterns of resource use and their management pose an increasing risk to India`s rich biodiversity. India`s bio-capacity potential represents its greatest asset and sustainable development is a key concern.