CHAPTER VI

WATER POLLUTION: JUDICIAL RESPONSE

Environmental pollution is a social problem. It affects entire society without any discrimination. Considering the growing awareness and the impact of this problem on the society in regard there-to, Law Courts should also rise up to the occasion to deal with the situation as it demands in the present day context. Law Courts have a social duty since it is part of the society and as such, must always function having due regard to the present day problems which the society faces. It is now a well settled principle of law that social-economic conditions of the country cannot be ignored by a Court of law because the benefit of the society ought to be the prime consideration of Law Courts. Thus, the Courts must take cognizance of the environmental problem.1

Judiciary is playing the role of a commander, by delivering pro-environmental decisions. There are two fold reasons of this, first, the collapse of responsible government by the political branches of government and Courts stepping in the vacuum created. The second reason lies in the judiciary’s anxiety to be relevant and creative in the social changes in a developing society and indeed to actually contribute to it on its own2. In India Courts take strict action against those who use their lands unnaturally due to which water resources are getting polluted. The similar view was expressed by the Court in *Mukesh Textiles*

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Mills (P) Ltd. v. H.R. Subramanya Sastry. The brief facts of this case were that the crops of the respondent were damaged due to the discharge of polluted water by the appellant mill in a canal the water of which was used by the respondent for irrigation of his fields. The Karnataka High Court granted damages of Rs. 12,200/- to the respondent for the loss incurred to him due to the act of the appellant.

The appellant was held liable on two grounds, firstly, that he did not take reasonable care to maintain his tanks which were filled with molasses; secondly, the land was used for non-natural use of land and the High Court applied the rule of strict liability, which was laid down in Raylands v. Fletcher it emphasis, that if the negligent act of the defendant allows the escape of anything dangerous which the defendant brought on his land, then such act would also constitute nuisance.

The writ of mandamus, lies against the municipality, if it fails to operate properly sewers, drains and clear garbage from the streets and other places. In Rampal v. State of Rajasthan, the brief facts of this case were that dirty water which consisted of domestic dirty water and rain water used to be collected in the residential area, where the petitioner was putting up, because there was no drain for the discharge of the accumulated water, due to which there was growth of moss and insects, and there was possibility of spread of epidemics.

In this case the Court issued writ of mandamus against the State Government for the improvement of the urban ecology. The Court held respondent liable by applying section 98 of the

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3 AIR 1987 Kant. 87.  
4 (1868) LR 3HL 330.  
5 AIR 1981 Raj. 121.
Rajasthan Municipalities Act 1959, which provides that the Municipal Board should make reasonable provisions for the cleanliness of public streets, sewers and removing filth, rubbish and other noxious matters and construct the sewers etc.

It was held by the Court that all the water closets, cess pools, sewers fall under the control of Municipality, thus the primary responsibility for the maintenance of sanitation and for taking proper steps for creating and maintaining healthy conditions within the Municipal area lies on the Municipality.

It was further held, that the statute imposes a duty, on the Municipality the performance or non-performance of which is not a matter of discretion, but it is mandatory. If the Municipality fails to perform the same then, the Court has power to issue writ of mandamus directing the local bodies to do what the statute requires to be done. Laying stress on the duty of the Municipality, it was emphasized by the Court that if the Municipality will shirk from it’s responsibility and allow the water to accumulate for a long time which will effect health of people. It would be liable to take appropriate steps for controlling the spread of diseases in the locality.

_U.P. Pollution Control Board v. Mohan Meakins Ltd._6, in this case the respondent company was polluting river Gomati by discharging trade effluents into it, which raised pollution level of the river beyond permissible limits.

The Apex Court held, that those who discharge noxious polluting effluents into streams may be unconcerned about the enormity of the injury, which it inflicts on the public health at large, therefore, to restrain them from polluting rivers, the courts

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6 AIR 2000 SC 1456.
will share the parliamentary concern on the escalating polluting level of our environment.\textsuperscript{7}

The Managers and the Directors of the company were also held responsible for contamination of water of river Gomati. They were held liable under The Water (Prevention and Control of Pollution) Act, 1974. The plea of long delay in deciding the complaint against the respondent was rejected by Court, and the Court emphasized that in environmental matters lapse of very long time is no reason to absolve the accused from the trial, because the courts could not afford to deal leniently with cases involving water pollution.\textsuperscript{8}

The Court further held that when offence under the Water (Prevention and Control of Pollution) Act, 1974 is committed by the company then the punishment of imprisonment could not be awarded, but only punishment of fine can be awarded.\textsuperscript{9} The courts in India are doing their best to eliminate the menace of water pollution. To attain this goal courts do not hesitate even to invoke fundamental rights to win the battle against ecological menace. The similar view was expressed by the Court in \textit{A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Others.}\textsuperscript{10}

The brief facts of this case were that Surana Oils and Derivatives (India) Ltd. (hereinafter SODL) was facing difficulties in the establishment of a factory for the manufacture of castor oil derivatives. The factory was located close to Himayat Sagar lake which supplied water to Hyderabad. The SODL moved an application before the Andhra Pradesh Pollution Control Board for its consent for the establishment of factory, which was denied

\begin{itemize}
  \item \textsuperscript{7} Id., at 1457.
  \item \textsuperscript{8} Id. at 1460.
  \item \textsuperscript{9} Ibid.
  \item \textsuperscript{10} AIR 1999 SC 812.
\end{itemize}
by the Board on the ground that it would pose threat to environment. The SODL challenged the refusal before the appellate authority and adduced evidence to show that it had adopted the latest eco-friendly technology with all safeguards. The appellate authority held that the industry is not polluting and directed the Pollution Control Board to grant consent to the SODL for the establishment of the factory. The decision of the appellate authority was challenged before the High Court in a public interest litigation. The High Court declined to interfere in the decision of the appellate authority, therefore, the present appeal was filed before the Supreme Court.

The Apex Court had the view, that the ecological concerns which arise under articles 32, 136 or 226 of the Constitution are equivalent to human rights. In other words both are covered under article 21 of the Constitution, which deals with fundamental rights to life and liberty.\textsuperscript{11} The Court further expressed its view that in the context of emerging jurisprudence in relation to environmental matters, the Court has the same duty as in the matters of human rights to render justice by taking all aspects into consideration with a view to ensure that there is no danger to environment. The Supreme Court had the thought that the courts can refer scientific and technical aspects for investigation and opinion of expert bodies in environment related matters. However, it would of course be subject to approval of the Court.

The Apex Court also ordered, the Central Government to amend existing environmental laws and rules and emphasized for the issuance of notifications by the Central and State

\textsuperscript{11} \textit{id. at 825.}
Governments respectively in this regard.\textsuperscript{12} It was also observed by the Court that since the courts are already over-loaded with cases, therefore, courts are handicapped to decide environmental matters urgently. It requires an alternative procedure for the expeditious disposal of environmental relating matters. Due to grave public interest in the ecological matters, the courts could seek the help of other statutory bodies, which have an adequate combination of both judicial and technical experts like the Appellate Authority under the National Environment Appellate Authority Act, 1997.

Laying emphasis on the importance of the Water (Prevention and Control of Pollution) Act, 1974, the Court held that although section 19 of the Act permits the State to restrict the application of the Act to a particular area, if it is necessary, but it did not enable the State to grant exemption to a particular industry within the area, which is prohibited for the commission of polluting that area, if the State do so, it would be arbitrary and against the interest of general public and in transgression of the rights to clean water under article 21 of the Constitution.\textsuperscript{13}

In this case, the Court also gave reference of the U.N. Conference which was held in November 1980 titled, “International Drinking Water Supply and Sanitation Decade”, which emphasized on the importance of purity of water, India also signed this Declaration. The Court emphasized that the right to access to drinking water is fundamental to life and there is duty on the State under article 21 of the Constitution to

\begin{footnotesize}
\textsuperscript{12} \textit{Id. at} 823.
\textsuperscript{13} \textit{Ibid.}
\end{footnotesize}
provide clean water to people. In this case the Apex Court laid down some objectives for the supply of pure drinking water to it's citizens. These are following:-

(i) To laying emphasize for the prevention and control of water pollution and maintaining the wholesomeness of water.

(ii) Providing penalties for the contravention of the provisions of the Water (Prevention and Control of Pollution) Act, 1974.

(iii) To confer and assign the Central and the State Boards such powers and functions which help in preventing and controlling water pollution.14

The Court clarified that before the establishment of any industry it is mandatory to take prior permission from the Pollution Control Boards.

In this way the courts are trying their best to eliminate the menace of water pollution but without the participation of general public against the havoc of water pollution, Courts can not achieve their goal.

**A. Public Interest Litigation and Judicial Response to Water Pollution**

Traditionally only those persons had right to move to Court, whose rights were transgressed. This rule of locus standi has now been relaxed by the Supreme Court and the High Courts. The courts now allow public interest litigations at the instance of public spirited citizens for the enforcement of Constitutional and other legal rights. The pollution is such a

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14 *Id.* 820.
problem, which affects not only a particular individual but the entire society. In other words we can say it may be in any form, i.e. liquid, solid or gaseous, which also covers water, soil, air etc. it can not be localized. Therefore, now any person on behalf of the general public can approach to Court, if there is transgression of environmental rights.

Generally, environmental law provides for a system of regulation by statutes. However, in India most of the environmental jurisprudence has been developed through writ jurisdiction. Judicial activism and the development of the concept of public interest litigation under the writ jurisdiction of the Supreme Court and the High Courts have brought a mutation change in processual jurisdiction and it has played a pivotal role in developing and providing impetus to environmental jurisprudence with human rights approach. This remedy is preferred over tort action or public nuisance remedy because it is relatively speedy, cheaper and provides direct approach to the higher judiciary thereby reducing the chances of further appeals. The relaxed rules of locus standi and evolution and recognition of epistolary jurisdiction by the Supreme Court and High Court has further ensured the public participation in matters like environment protection.15

Justice Bhagwati of Supreme Court opined:

“If public duties are to be enforced and social collective diffused” rights and interests are to be protected, we have to utilize the initiative and zeal of public minded persons and organizations by allowing them to move the Court and

act for a general group interest, even though they may not be directly injured in their own rights. It is litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, “diffused” rights and interests and any citizen who is acting bona fide and who has sufficient interest has to be accorded standing.\textsuperscript{16}

In India public interest litigation has played a remarkable role in the protection of environment and in the enforcement of Minimum National Standards (MNS) of water and soil pollution. Of course public interest litigation can be filed for ensuring enjoyment of pollution free water etc. but [sic] if anything endangers and impairs the quality of life in derogation of laws a citizen has the right to have recourse to article 32 of the Constitution for removing pollution of water and air which may be detrimental to the quality of life.\textsuperscript{17}

Justice Krishna Iyer highlighted the importance of public interest litigation in these words:

“Participative democracy is the most seminal dimension of environmental justice. Social action groups are the spinal centers for activating the people and linking them with the legal process. Public interest litigation is the forensic manifestation of judicial remedies, so necessary in the environmental law.”\textsuperscript{18}

The Supreme Court emphasized the importance of public interest litigation in \textit{Bandhu Mukti Morcha v. Union of India}.\textsuperscript{19}

\begin{itemize}
\item \textsuperscript{16} S.P. Gupta \textit{v. Union of India}, AIR 1982 SC 149.
\item \textsuperscript{17} N.S. Dhyan, \textit{Management of Environmental Hazards}, 166-167 (1993).
\item \textsuperscript{19} AIR 1984 SC 802.
\end{itemize}
In this case the Court held, that the public interest litigation is not adversary to any one, rather it provides opportunity to Government to make basic rights meaningful. A citizen of India can bring to notice of the Apex Court or the High Courts under articles 32 and 226 of the Constitution respectively, any matter which effects the environment in pernicious manner by way of writ petition.

Entitlement to clean environment is one of the recognized basic human rights and human right jurisprudence cannot be permitted to be thwarted by status quoism.20

The Apex Court first time treated an environmental problem differently from an ordinary tort or public nuisance in Municipal Council, Ratlam v. Vardhichand and Others21. The facts of this case were that the residents of a locality within the limits of Ratlam Municipality moved the Sub Divisional Magistrate, Ratlam to take action under section 133 of the Criminal Procedure Code to abate the nuisance of stench and stink caused by open drains and public excretion by nearby slum dwellers, by ordering the Municipality to construct drain pipes with flow of water to wash the filth and stop the stench. The Magistrate found the facts proved and made the directions to Municipality, but the Municipality did not comply with the order of the Magistrate. Afterwards scared by the prospect of prosecution under section 188 Indian Penal Code, for the violation of the order under Criminal Procedure Code, the Municipality rushed from Court to Court, then the Municipality

21 AIR 1980 SC 1622.
filed appeal to the Sessions Court. The Sessions Court reversed the order. Afterwards the respondents filed appeal in the High Court against the order of the Sessions Court. The High Court approved the order of the Magistrate. Against the order of the High court the Municipality approached to the Supreme Court.

In this case the monumental judgment was delivered by Hon'ble Justice V.R. Krishna Iyer, he observed that, where there existed a public nuisance in a locality due to open drains, heaps of dirt, pits and public excretion by humans for want of lavatories and consequential breeding of mosquitoes, the Court could require the Municipality under section 133 of the Code of Criminal Procedure and in view of the Municipalities Act to abate the nuisance by taking affirmative action on a time bound basis. When such order was given, the Municipality could not take the plea that not with standing the public nuisance, financial inability validly exonerated it from statutory liability.

The Apex Court further held:

The Criminal Procedure Code operates against statutory bodies and other regardless of the cash in their coffers, even as human rights under part III of the Constitution have to be respected by the State regardless of budgetary provision. The Municipalities Act has no saving clause when the Municipal Council is penniless.21

The section 133 of Criminal Procedure Code seems to be discretionary, but in reality it is categorical. Judicial discretion

21 Id., at 1631.

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cannot be exercised when facts for its exercise are present and becomes mandatory. The Court expounded, that when the Magistrate has information and evidence, which disclosed the existence of public nuisance, and on the material placed, he considered that such unlawful obstruction should be removed from any public place, which is lawfully used by public, therefore, the judicial power of the Magistrate, shall pass through the procedural barrel, fire upon the nuisance, triggered by the jurisdictional facts.

The power of the Magistrate under section 133 of Criminal Procedure Code was highlighted by the Apex Court by observing that the Magistrate is vested with public duty, to exercise his power on behalf of the general public for their well being. Therefore, if there is any nuisance at public place which causes pollution the Magistrate can order for it’s removal within a fixed period. If the person to whom directions are issued by the Executive Authority, fails to comply with those directions, then he would be punished under section 188 of Indian Penal Code.22

The Court held therefore, in the present case, the Municipal Commissioner is bound by the order of the Magistrate under section 133 of Criminal Procedure Code and shall obey the directions, because disobedience, if it causes obstruction to any person lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed by section 188 of Indian Penal Code. However, the offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of section 133 of Criminal

22 Id. at 1624.

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Procedure Code, read with the punitive temper of section 188 of Indian Penal Code, it makes the prohibitory act as mandatory.

The grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slumdwellers to ease in the streets, on the sly for a time, and openly, thereafter, because under nature's pressure, bashfulness becomes a luxury and dignity a difficult act.

The Supreme Court held:

The primary duty of Municipal Council is to preserve public health, it cannot ignore it, on the ground of financial difficulties. Decency and dignity are non-negotiable facts of human rights and are a first charge on local self governing bodies. The Municipality is bound to provide drainable systems, which should be in working condition and sufficient to meet the needs of people.23

Social justice is due to the people and therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under section 133 of Criminal Procedure Code. In the exercise of such power, the judiciary must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obliged by article 38 of the Constitution of India. The Apex Court equated section 133 of Criminal Procedure Code along with the statement of Prof. Kojima, which stated that “the urgent

23 Id. at 1627.
need is to focus on the ordinary man, one might say the little man”. The Court finally affirmed the orders of the Magistrate.

From this case, it is clear that the Indian judiciary has started taking positive steps to control the menace of pollution by entertaining public interest litigation.

The Ganga Pollution Cases are the most significant water pollution cases till (sic) date. A social activist and Supreme Court advocate first time invoked the jurisdiction of Supreme Court against the pollution of river Ganga in *M.C. Mehta v. Union of India*26. This case is popularly known as *Tanneries Pollution Case-I*. In this case public interest litigation was filed by an active social worker and environmentalist. The brief facts of this case were that the tanneries at Jamau near Kanpur were discharging effluents of their factories with sewage in river Ganga without setting up primary treatment plant in spite of being asked to do so for several years. The petition was filed against the Municipal Council Kanpur, because it failed to prevent waste water from polluting river Ganga.

The Court held, since the tanneries failed to establish primary treatment plant, therefore, the order should be passed to direct them to stop working, till primary treatment plants are established. It was observed by the Court that the effluent discharged from a tennary is ten times noxious than the domestic sewage water which flow into the river.

24 Id at 1628.
26 AIR 1988 SC 1037.
The Apex Court had the view that the leather industry is one of the three major industries, besides paper and textiles consuming large quantities of water for processing of hides and skins into leather, as waste water. The waste water contains putrescible organic and toxic inorganic materials which when discharged as such will deplete dissolved oxygen content of the receiving water courses resulting in the death of all aquatic life and emanating foul odour. Disposal of these untreated effluents on to land will pollute the ground water resources. Discharging of these effluents without treatment into public sewers results in the choking of sewers.\textsuperscript{27}

The tanneries pleaded that due to their financial incapacity, they were handicapped to establish primary treatment plant at their tanneries, but the Court rejected their plea and held:

The financial capacity of the tanneries should be considered as irrelevant while, requiring them to establish primary treatment plants just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence, for the adverse effect on the public at large which is likely to ensure by the discharging of the trade effluents from the tannery to river Ganga would be immense and it will outweigh any inconvenience that may

\textsuperscript{27} Ibid.
be caused to the management and the labour employed by it on account of its closure.28

Justice K.N. Singh observed, it is tragic that the Ganga, which has since, time immemorial, purified the people is being polluted by man in numerous ways by discharge of effluents, dumping of garbage. The pollution of the river is affecting the life, health and ecology of the Indo-Gangatic plain. The Court further observed that the Government as well as Parliament both have taken a number of steps to control the water pollution, but nothing substantial has been achieved. No law or authority can succeed in removing the pollution unless the people co-operate. The tanneries informed the Court that at Jajmau in Kanpur they have formed an association with the following objective:-

(i) To establish, equip and maintain laboratories, workshops, institutes, organisations and factories for conducting and carrying on experiments and to provide funds for the main objects of the company.

(ii) Procuring and importing wherever necessary the chemicals etc. for the purpose of pollution control in tanning industries.

(iii) To set up and maintain common effluent treatment plant for member tanners in and around Jajmau.

(iv) To make periodical charges on members for the effluent treatment based on the benefit it derives from time to time to meet the common expenses for maintenance, replacement incurred towards effluent treatment.29

28 Id. at 1045.
29 Ibid.
In this case Justice E.S. Venkataramiah observed:

If we have to make our environment pollution free then it will demand the acceptance of responsibility by citizens and communities and institutions at every level all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields by their values and the sum of their actions, will shape the world environment of the future.\(^{30}\)

The emphasis was also laid down on international co-operation in order to raise resources to support the developing countries carrying out their responsibilities in this field. The emphasis was laid down on a growing class of environmental problems, because they are regional or global in extent will require extensive co-operation among nations and action by international organizations in the common interest.

The Court attracted the attention of the tanneries towards the Management Investment Report, 1976 issued by the Leather Research Institute Madras, which indicated the treatment technologies for various types of leather processing technique, quantity of effluents etc. including the cost of treatment. The Court suggested the tanneries, to consult the above said Report for the problem which they were facing. The Strict Liability Rule was also applied in this case. The Court observed that the strict liability should be adhered to in some cases, where clusters of small industries located in a contiguous area near the river bank

\(^{30}\) Id. at 1039.
and causing direct pollution to the river such as the tanneries in Jajmau in Kanpur is a case in point.\footnote{Id. at 1040.}

In the end the Court held, we are conscious that closure of tanneries may bring unemployment, loss of revenue but life, health and ecology have greater importance to the people.\footnote{Id. at 1047-1048.} The Apex Court reviewed the progress of Ganga Action Plan which it laid down in previous case in \textit{M.C. Mehta v. Union of India (II)}.\footnote{AIR 1988 SC 1115.}

The brief facts of this case were that the petitioner, an environmentalist, residing in Delhi, filed public interest litigation, this petition was filed in continuation with the Kanpur Tanneries Ganga Pollution Case, in that case Court had laid down an action plan to be implemented in six months. The Court examined several reports, which showed that water in the river Ganga near Kanpur was not safe for drinking. These pollutants consist of sixteen drains, which were discharging untreated water into the river including dung and fodder waste from cattle population, night soil collected from unsewered areas and thrown into drainage, eighty tanneries, dhobi ghats and defecation by the poor people. The petitioner, pointed out the progress report of the Ganga Action Plan, which showed the seriousness of the problem.

The Supreme Court held that a person who is not riparian owner, but living in Delhi, brought action against the Municipal Corporation was entitled to a hearing to enforce the duties of the Municipal Authorities. He is a person interested in protecting the lives of the people who use the Ganga water. It is a public
interest litigation, because the nuisance caused by the pollution of the river Ganga is a public nuisance, which is widespread in range and indiscriminate in its effect. Therefore, it would be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large.\textsuperscript{34}

The Apex Court pointed out that the Nagar Mahapalika of Kanpur has to bear the major responsibility for the pollution of the river near Kanpur. The Court further observed, that the Kanpur Nagar Mahapalika should take action under the provisions of the U.P. Nagar Palika Adhiniyam, 1959 to prevent the pollution of the water in the river Ganga on account of the waste accumulated at the dairies. It should also take immediate action to prevent the collection of manure at private manure pits inside the city. Steps should be taken immediately to increase the size of the sewers in the labour colonies so that the sewage may be carried smoothly through the sewage system.\textsuperscript{35}

The Court also had the thought that, the Mahapalika should drop the idea of levying any charge for making use of public latrines, because this is the reason for the poor people not using the public latrines and urinals. The cost of maintenance of cleanliness of those latrines and urinals has to be borne by the Nagar Mahapalika. It is duty of the Kanpur Nagar Mahapalika and the police authorities to ensure that dead bodies or half burnt bodies are not thrown into the river Ganga.

The Court also passed directions to the High Court that normally they should not stay the action taken against any one

\textsuperscript{34} Id. at 1125.
\textsuperscript{35} Ibid.
who is committing nuisance, but try to dispose of such matter as fast as possible, say in about two months. The Apex Court also directed the Pollution Boards not to grant licences to new industries, which do not establish effluent treatment plants. The Court also called for environment awareness in school syllabus, so that students can understand the importance of clean environment from their very early age. Emphasis was laid down to observe cleanliness week and such other measures which spread environment awareness amongst general masses.\textsuperscript{36}

The Apex Court further held that these directions should be followed with appropriate changes by Civic Authorities in the rest of the country. In this landmark judgement the Supreme Court tried to involve the entire society which includes politicians, members of judiciary, Pollution Control Boards, Municipalities, educational institutions above all general masses for the preservation of our water sources from further degradation.

The Court also takes serious action against the industry, which deliberately disobeys the orders of the Court. The Court imposes compensatory fine and costs on such industry. For example in \textit{Vineet Kumar Mathur v. Union of India},\textsuperscript{37} in this case the petitioner filed public interest litigation, alleging that the water of river Gomati was getting polluted due to discharge of effluents from the Mohan Meakin Ltd. Distillery. Although the distillery had installed effluent treatment plant, but it was not working properly, therefore, the distillery requested to Court for

\textsuperscript{36} Id. at 1130.
\textsuperscript{37} (1996) 7 SCC 714.
the grant of time to remove defaults from the effluent treatment plant.

The Court granted time to the distillery to remove the deficiencies from the effluent treatment plant, but the distillery failed to comply with the orders of the Court. The distillery on the next hearing requested for the apology for committing contempt of Court. The Apex Court rejected the plea of unconditional apology and directed the distillery to pay a fine of Rs. 5 lakhs within 4 months in the Court. The Court held that the said amount of fine would be utilized for the cleanliness of river Gomati.38

If water pollution caused by any industry is more harmful to the health of people and degrades the fertility of land, than the benefit to the government from the revenue paid by the polluting industry, rather than, let it to play with the life of innocent people. The similar view was expressed by the Gujarat High Court in Pravinbhai J. Patel v. State of Gujarat39. The brief facts of this case were that the large scale water was being polluted by 756 industrial units situated at Gujarat Industrial Development Corporation (hereinafter GIDC) of Vatva, Naroda and Odhav and also by some textile units and processing houses situated in and around Narol. The pollution has been caused more than 15 years with the continued discharge of trade effluents into Kharicut canal by these industries. Due to this pollution the salinity and degradation of quality of soil was increased, which drastically reduced agricultural produce of at

38 Id. at 725.
least 11 villages around Kharicut canal. Therefore, the present writ petition was filed by petitioners who were agriculturists and effected by the pollution caused to Kharicut canal. It has also been termed as a “public interest litigation”, because the pollution caused by above said industries was not only effecting the petitioners but was effecting nearly 10 lacs of people. It was alleged that the water of the wells of the villages was turned red, even when it was from the depth of about 300ft. Even animals, sheep etc. were adversely effected due to consumption of water from Kharicut canal. It was further alleged that representations have been filed before the Gujarat Pollution Control Board (hereinafter GPCB) since 1978 against the pollution of canal, but no action is taken by the concerned authorities. It was also alleged that this is violation of petitioners fundamental right under article 21 of the Constitution.

The Court held:

Hundred of industrial units which were engaged in large scale pollution and had made little or no effort to comply with the law. “Neither the industry which causes pollution, nor the Government nor the GPCB or the GIDC have made more than lip service to the Environmental Laws. It will not wrong to say that the continued violation of the law by the industrial units has become a habit and condoning it by government authorities a practice.”40

The Court was dismayed by the role of enforcement agencies: “since 1980 till today not a single unit or person has been convicted of having violated any of the pollution laws. In fact, not a single case have the prosecution proceedings been

40 Id. at 1220.
completed”. The Court observed that government “has abetted or collaborated with the industry in breaking the law and the GPCB had neglected its duties despite citizen complaints.”

The Court further held that, no doubt closure of some industrial units would cause them a financial set back. About 25,000 workers were employed. The main revenue, which was contributed by this group of industries is by way of sales tax to the State Government, approximately Rs. 6.50 corers per year. As against this pollution which is being caused by these units is adversely affecting nearly 10 lacs of people. At the same time, large scale damage perhaps, some of it irreversible, is being done to the soil and sub-soil and river water.41

The Court observed, that such cases relating to environment cannot be merely regarded as being cases of lis between the petitioners and the respondents. The problem which are sought to be tackled are with regard to the effects which today’s action or inaction will have on the posterity. The loss of agricultural yield has been estimated to be Rs. 6.40 crores per year. Therefore, whereas a closure of the industry till it is able to mend its ways and install the pollution control plants is only temporary and the loss suffered by the villagers (agriculturists) would be of much greater magnitude and damage to environment more permanent. Hence, the industries which are causing water pollution of canal and land of the area would suspend or close their operations and may start it after obtaining consent from the GPCB.

The Court also directed the polluting industries to pay a lump sum, calculated at the rate of 1 per cent of their one year’s

41 Ibid.
gross turnover for the year 1993-94 or 1995-96, whichever is more and that amount should be kept apart by the Ministry of Environment and should be utilized for the works of socio-economic up-liftment of the aforesaid villages.\textsuperscript{42}

From this decision of the Apex Court it is clear that if due to the act or omission of any industry the water resources are getting polluted and the fertility of land is affected, then if the writ jurisdiction is invoked only by an individual for the redressal of his own grievance, then Court can treat that writ petition as public interest litigation, if due to such pollution public at large is affected.

In \textit{M. C. Mehta v. Union of India}\textsuperscript{43}, the petitioner filed public interest litigation under article 32 of the Indian Constitution. In his petition, Mr. M.C. Mehta prayed for the shifting and closure of hazardous industries operating in the national capital Delhi, which were degrading our ecology. These industries were discharging their effluents in river Yamuna, it was further alleged that apart from industry, Municipal Council Delhi was also discharging untreated sewage into the river.

These industries were total 8378 in number. The Apex Court directed the Central Pollution Control Board to issue individual notices as well as public notices to be published in two English and two vernacular Dailies, to indicate the fact to these industries that these industries, have been declared polluting by the Court and were operating in transgression of the provisions of Delhi Master Plan, which was formulated by relying upon the Delhi Development Act, 1957, the Delhi Municipal Corporation Act, 1957 and the Factories Act, 1948. In this

\textsuperscript{42} Id. at 1222.
\textsuperscript{43} (1996) 4 SCC 750.
Master Plan the area was earmarked for the establishment of industries. Doordarshan and All India Radio were also directed by the Court to make such announcements for three consecutive days. Fifteen days time was given to the industries to file objections if any before the Secretary, Environment Delhi.44

The National Pollution Control Board identified 168 hazardous industries, therefore, the Supreme Court ordered for their closure. The Court ordered relocation of closed industries expeditiously to the National Capital Region Planning Board, The National Capital territory, Delhi Administration etc. by allotting them plots and assisting in construction of factories. These industries have to be relocated in Delhi, Haryana, Uttar Pradesh and Rajasthan.45

Due to this relocation of industries number of workmen had to lose their job. The Court directed the industries to take following steps for the welfare of the workmen:-

(i) The workmen would be employed in the new industries without any break up period.
(ii) The workmen would get salary for the period of shifting the industry from Delhi to some other place.
(iii) The workmen who would shift at new places would get one year’s salary as shifting bonus.
(iv) The Court further directed that if either the employees are not willing to join at new places or the employer is not ready to take them along to new places then the workmen would be deemed to be retrenched under the Industrial Dispute Act, 1947. Then they would be

44 Id. at 754.
45 Id. at 769.
entitled to get compensation in lieu of their retrenchment and one year's wages as additional compensation.46

The Apex Court also ordered to grant incentives to industries on their relocation.

From this judgement it is clear that the Court not only tried to save river Yamuna from pollution, but also tried it's best to intact interests of innocent workmen.

In *Velore Citizens Welfare Forum v. Union of India*47, the brief facts of the case were that the petitioner filed public interest litigation alleging that the water of river Palar in Tamil Nadu was being polluted due to the discharge of effluents into it by the tanneries, besides this the untreated effluents were also discharged into open ground, water bodies, agricultural farms etc. due to which both the surface and the under ground water of Vellore area was getting polluted. Therefore, the citizens of Vellore were deprived from potable drinking water, it has also totally made the land barren. It was also revealed by a Non-Government Organization after survey of 13 villages of Dindigal and Peddiar that out of 467 wells 350 were polluted.

The Court held, no doubt it is correct that the leather industry in India has become a major foreign exchange earner. At present State of Tamil Nadu exports about 80 percent of the country's leather export. But we can not allow it to destroy our natural resources and affect health of people, we cannot permit it to continue with present production, if it does not take care to

46 Ibid.
adopt such methods which do not pose any threat to our water sources.

The Apex Court asked the High Court to constitute a special bench “Green Bench” to monitor and deal with cases on environmental matters. The Court suggested setting up environmental courts to deal with environmental matters.\textsuperscript{48} The Supreme Court further expounded “we direct that the comprehensive directions for maintaining standards stipulated by Pollution Control Board are to be maintained by the tanneries and other industries in the State of Tamil Nadu.

The Central Government was directed by the Apex Court to constitute an Authority under section 3 (3) of the Environment (Protection) Act, 1986 and shall confer on the authority, all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. These directions would be ultimately checked by the Madras High Court.\textsuperscript{49}

From this judgement, it is crystal clear that the Apex Court has realized that no doubt a number of legislations have been passed for the control of pollution but without the initiative of courts these are lame. Therefore, the Courts should implement the environmental legislations properly for the eradication of the problem of environmental pollution.

\textit{Indian Council For Environ-Legal Action v. Union of India}\textsuperscript{50}, the brief facts of this case were that an Environmentalist Organization filed public interest litigation under article 32 of the Constitution. It complained the plight of people living in the

\textsuperscript{48} Id. at 669.
\textsuperscript{49} Id. at 673.
\textsuperscript{50} (1996) 3 SCC 212.
vicinity of chemical industrial plants in India and requesting for appropriate remedial measures. The fact was that in a village Bichari in Udaipur district of Rajasthan an industrial complex had developed and respondents had established their chemical industries therein.

Some of the industries were producing chemicals like oleum and single phosphate. For the establishment of industry there was need to get license and install equipment for the treatment of highly toxic effluents discharged by them. But these industries neither got license nor install any treatment equipment before their commission. Due to the discharge of highly toxic effluents water in the wells of Bichari village, they became unfit for human consumption. It spreaded diseases, death and disaster in the village and its surroundings. The villagers were annoyed with these industries, as they were facing lots of hardships due to these industries. Therefore, they revolted against these chemical industries, which resulted in stoppage of manufacturing 'H' acid and ultimately these industries were closed. But the village continued suffered from the ill effects of those chemical industries despite their closure.51

The Court found the situation of water pollution aggravated in village Bichari, therefore, to know the correct picture of the contamination of water, it requested the National Environmental Engineering Research Institute to submit its report before the Court. In the technical report, submitted by the National Environmental Engineering Research Institute in Court it was found that out of 2440 tonnes of sludge, about 720 tonnes was still there. The respondent dispersed it all over the area and

51 Ibid.
covered it with earth. When the sludge was recovered, the Court directed to remove it, but the industries gave deaf ear to the Court's order and it continued lying over the ground.\textsuperscript{52}

The Supreme Court held, that if due to the action of private corporate bodies some one's fundamental right is violated, the Court would not accept the argument that it is not 'State' within the meaning of article 12 and, therefore, action cannot be taken against it. If the Government or concerned authority fails to take the action required of them by law, which results in violation of the right to life of the citizen. Then the Court will intervene.\textsuperscript{53}


It was further held that this is social action litigation on behalf of the villagers whose right to life is invaded and infringed by the respondents as it is established by the various reports of the experts. The Apex Court held that the respondents were responsible for all the damages to the villagers in general.\textsuperscript{54}

In \textit{Narmada Bachao Andolan v. Union of India}\textsuperscript{55}, public interest litigation was filed to stop the construction of Sardar Sarovar Dam upto the height of 455 feet, as it would cause displacement of tribals. The petition was filed against the award

\textsuperscript{52} Id. at 226.  
\textsuperscript{53} Id. at 242.  
\textsuperscript{54} Id. at 252.  
\textsuperscript{55} (2000) 10 SCC 664.
of the Water Disputes Tribunal which allowed to raise dam's height up to 455 feet.

The Apex Court held, once the award becomes binding on the State it would not be opened to the third party like the petitioners to challenge the correctness thereof.

The Court expounded:

The right to water is fundamental right under article 21 of the Constitution. Water is the basic need for the survival of human beings and is part of right to life and human rights as enshrined in article 21 of the Constitution and can be served only by providing source of water where there is none.56

The Court further held:

All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.57

As we all are aware now courts have relaxed the rule of locus standi by introducing new concept of filling writ which is known as public interest litigation. According to which now any person can file petition before the Supreme Court under article 32 of the Constitution and the High Courts under article 226 of the Constitution, if right of public is infringed. But now in the garb of public interest litigation, people have started misusing it and to satisfy their personal grudges against people they file frivolous petitions. To shun this practice the courts have started taking stern action against those people who file vexatious public

56 Ibid.
57 Id at 767.
interest litigations. For example in *Subhash Kumar v. State of Bihar*, the petitioner filed a public interest litigation under article 32 of the Constitution. In his petition, the petitioner alleged, that river Bokaro was getting polluted due to discharge of sludge /slurry from the washeries of the Tata Iron and Steel Co. Ltd. (hereinafter called TISCO). The petitioner alleged that due to discharge of these effluents from the TISCO, it posed health risks to people living in the surrounding areas. It was also alleged that the sludge gets deposited on the agricultural land, afterwards it is absorbed by the land leaving on the top of the soil a carbonaceous film, due to it the fertility of the land was adversely affected.

The Bihar State Pollution Control Board filed affidavit in the Court and asserted that the TISCO washeries were following the directions given by the Board. It was disclosed that the washeries have already constructed two settling tanks for settlement of solids and rewashing the same. The counter affidavits were filed on behalf of the Directors of collieries and TISCO, it seems that the petitioner was an influential businessman and had been purchasing slurry from them for a long time, when the respondent refused to supply him slurry he removed it unauthorized and filed several petitions before the High Court under article 226 of the Constitution.

The Court held, that the primary purpose of filling the present writ petition was not to serve any public interest, but to seek directions against the State of Bihar for not prevention the petitioner from collecting sludge.

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58 (1991) 1 SCC 598.
The Supreme Court dismissed the petition and held:

Right to live is a fundamental right under article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs the quality of life in derogation of laws, a citizen has right to have recourse of article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. The public interest litigation under article 32 of the Constitution can be entertained by Court only, if it is filed by a person who is genuinely interested in the protection of the society on behalf of the community.\[59\]

The Apex Court further held that the personal interest, grudge or enmity cannot be enforced through the process of the Court under article 32 of the Constitution in the garb of public interest litigation. The court dismissed the petition and imposed a cost of Rs. 5000/- on the petitioner\[60\].

In \textit{M.C. Mehta v. Kamal Nath}\[61\], through public interest litigation, the petitioner questioned the lease granted by the State Government of riparian forest land for private purpose to a private company for the construction of a motel on the bank of river Beas. This project was interfering with the natural flow of the river by blocking natural relief channel of the river.

In this case the Supreme Court applied the doctrine of “Public Trust”, which primarily rests on the principle that certain resources like air, sea waters and the forests have such a great

\[59\] \textit{ibid} at 604.
\[60\] \textit{Ibid}.
\[61\] 1997 (1) SCC 388.
importance to the people as a whole that it would be wholly unjustified to make them a subject to private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than the permit their use for private ownership or commercial purpose.62

According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

“Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses”.63

The Supreme Court held that the State had committed a breach of “Public Trust”. The Court opined:

We have not borrowed this doctrine from America, but it is part of Indian Law and has grown from article 21 of the Constitution. The Court observed, it means the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running water and ecologically fragile lands. Therefore, the State as a trustee is under a legal duty to protect the natural resources.64

62 Id. at 407.
63 Id. at 408.
64 Id. at 413.
Some of the natural resources like sea waters, air etc. have a great importance to the people as a whole, therefore, the Court held, it would be wholly unjustified to make them subject of private ownership. From this case it is clear that the first and foremost duty of the State is to protect the natural resources for the general masses and not to pass them on to the opulent class for their degradation.

Indian courts are doing their best to control the menace of environmental pollution, public interest litigation has proved a shot in the arm of judiciary to tackle this problem, The Apex Court held in *Indian Council For Environment Legal Action v. Union of India* \(^\text{65}\), that effort of this Court while dealing with public interest litigation in connection with environmental matters is to see that the executive authorities take steps for the implementation and enforcement of law. As such the Court has to pass orders and give directions for protection of the fundamental rights of the people.

Public interest litigation has helped to a great extent to control the threat of water pollution, which has today become equivalent to cancer. As, we all are aware today pollution of water is posing threat to our living and non-living organisms. Industry and municipalities are considered the main polluters of water, besides this hospitals are also big contributors. These organizations produce large quantity of solid wastes, but do not dispose them of scientifically, rather dump it either into water bodies or in open ground, which causes both surface and ground water pollution.

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\(^{65}\) 1996 (5) SCC 281.
In *Dr. B.L. Wadehra v. Union of India*\(^{66}\), the petitioner alleged that the river Yamuna, the main source of drinking water supply, getting polluted due to dumping of untreated sewage waste and industrial waste. Besides this the city of Delhi has virtually become an open dustbin, garbage strewn all over Delhi was a common sight and most of the hospitals either did not have their own incinerators or if they have installed incinerator, they were not of enough capacity to burn the entire hospital waste, which causes water pollution to the city.

The Court held, that the residents have constitutional as well as statutory right to live in a clean city. The Court further held, that the authorities concerned i.e. Municipal Corporation of Delhi and New Delhi Municipal Council have a mandatory duty to collect and dispose of the garbage and water generated from various sources in the city. The Supreme Court held that the Municipal Corporation of Delhi and the New Delhi Municipal Council failed to perform their statutory duties. The Municipal Corporation and Council pleaded financial inability to perform their statutory duties. This plea was rejected by the Court. The Court observed:

Non-availability of funds, inefficiency of staff, machinery etc. cannot be pleaded as grounds for non-performance of their statutory obligations.\(^{67}\)

The Supreme Court issued following directions to the concerned authorities for the cleanliness of city:-

(i) The Court emphasized to have the city of Delhi scavenged and cleaned everyday. The garbage shall be lifted from the

\(^{66}\) (1996) 2 SCC 281.

\(^{67}\) *Id.* at 607.
collection centres everyday and transported to the designated places for disposal.

(ii) Construction and installment of incinerators in all the hospitals/nursing homes, with 50 beds and above.

(iii) Directions were issued to Municipal Corporation of Delhi, New Delhi Municipal Council (NDMC) to issue notice to all private hospitals/nursing homes in Delhi to make their own arrangement for the disposal of their garbage, and hospital wastes and asking them to construct their own incinerators. In case these hospitals were permitted to use the facilities provided by MCD and NDMC then they could be asked to pay suitable charges for the services rendered in accordance with law.

(iv) Instructions were issued to the All India Institute of Medical Sciences, New Delhi to install sufficient number of incinerators or an equally effective alternative to dispose of hospital waste.

(v) The Central Pollution Control Board and Delhi Pollution Committee were directed to regularly send their inspection teams in different areas in Delhi and New Delhi to ascertain that collection, transportation and disposal of garbage wastes is carried out satisfactorily.

(vi) The Government of Delhi was directed to appoint Municipal Magistrate under section 469 of Delhi Municipal Council Act, 1994 for the trial of offences under these Acts and to educate residents of Delhi through Doordarshan and by way of announcements in the localities that they shall be liable for penalty in case they violate any provision of the
Act in matter of collecting and disposal of garbage and other wastes.

(vii) Directions were given to Doordarshan to undertake a programme of educating the residents of Delhi regarding their civic duties under the law by making appropriate announcements, display on television and informing them about the penalties which can be imposed for the violation of the law.

(viii) The Union Government was directed to supply to the MCD the tippers, within three months.

(ix) Directions were issued for the revival and put in operation the compost plant at Okhla and order the MCD to examine construction of four additional compost plants.

(x) The MCD and NDMC were directed to construct additional garbage collection centres in the form of Dhaalos/Trolley/Steel Bins within four months.

(xi) The Delhi Administration, the MCD and the NDMC were directed to join hands and engage an expert body like National Environment Engineering Research Institute (NEERI) to find out alternative methods of garbage and solid wastes disposal.\textsuperscript{68}

In recent years, it has also been discovered that water pollution not only pose threat to human beings, animals and plants, but also leads to destroy aesthetic beauty of tourist spots, which also causes financial losses to the State and residents of the tourist spot as due to pollution tourists do not attract towards that area.

\textsuperscript{68} \textit{Id.} at 685-689.
*Ajay Singh Rawat v. Union of India,* in this case the public interest litigation was filed alleging water pollution of Nainital lake, due to unauthorized construction of buildings, Ballia Ravine through which outflow of Nainital lake water passes during rains was in a dilapidated condition, hill cutting and destruction of forests was going on in the catchment area of the lake, water was full of human waste, horse dung and other waste.

The Supreme Court directed, the concerned authorities regarding the preventive and remedial measures to be taken on war footing so that Nanital may regain its unsoiled beauty and attract tourists. The Court further directed that, sewage water has to be prevented at any cost from entering the lake. It was also suggested by the Court that multi storyed group housing and commercial complexes have to be banned in the town area of Nainital.

No doubt today industry has posed great threat not only to water sources, but to the entire ecosystem. However, this is also true that today we cannot do without industry, because a large number of people eke out their livelihood from it. Therefore, we cannot achieve our goal of pollution free environment by closing down industries maintaining equilibrium between ecology and development, so that we can protect our fragile environment and also walk on the path of progress alongwith the rest of the world, which is possible only through sustainable development.

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69 (1995) 3 SCC 266.
70 *Id.* at 269.
B. Sustainable Development and Judiciary

The words economics and ecology have the same root as oikos which refers to house. While economics deals with financial housekeeping, ecology deals with environmental housekeeping. Time has come to see the economic planning and environmental protection have identical goals i.e. sustainable development which therefore, must get deeply integrated in planning process. Basically, sustainable development is on a long term basis, and in common parlance would mean spending the interest while keeping the capital intact.\(^{71}\)

Today the whole world, particularly the developing countries, face a near crisis situation both economic and environmental. Policy makers find it difficult to formulate programmers that would work under the present situation of escalating population on the one hand and diminishing resources on the other. The environmental decadence inevitably weakens economy, which in turn leads to social disintegration. Kautilya said, that “stability of an empire depends [sic] on the stability of its environment.”\(^{72}\)

The link between environmental and socio-economic degradation cannot be overlooked particularly because, in the past what took hundreds of years is now getting telescoped into a few decades. In our own country, in the post independence period, our attitude was dominated by development growth and we did not have a culture of pollution control.\(^{73}\) Sustainable development is defined as development that meets the needs of

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71 T.N. Khoshoo, Presidential Address, Environmental Priorities in India and Sustainable Development, XIX (1986).
72 Id. at 5
73 Ibid.
the present generation without compromising the ability of future generations to meet their own needs. A long term perspective planning of water resources is, therefore, required to meet various competing demands on sustainable basis.

Today, two types of economies are functioning in the world, which are following:-

(i) Economies of industrialized countries which maintain their stock of natural resources while their capital stock keeps growing, which then provides finances for investment in pollution control.

(ii) Developing country’s (sic) economies which are over exploiting their natural resources but are never able to earn enough to invest sufficiently in savings and capital formation, the result of which is that their natural resources base keeps deteriorating and environment problems continue to grow.

The result of all this is that while there is continuing growth and prosperity in the industrialized countries living standards in developing countries continue to fall their natural resources get overexploited, poverty and indebtedness increase, pollution get worse and quality of the environment declines.

No doubt all the people strive for progress and better life, as these are natural instinct of man. But now question arises things which help us to lead better life and march towards the

74 Our Common Future – The World Commission on Environment and Development, 43 [1987].
77 Id. at 128
path of progress which come from nature, then is it prudent to destroy the source itself to get more and more? In this blind race of progress, we have destroyed our natural sources which include, oceans, rivers and other water resources, to great extent by dumping waste products as garbage in these water resources.

Each and every action of ours is taking the toll of our environment, which will sooner or later boom-rang upon us. Therefore, [sic] natural question arises; should the pursuit of development and better life be allowed to continue without having regard to our environment? Should the process of plundering our nature be continued? Obviously, it is not possible, because no doubt we all want progress in our life irrespective of the class we belong i.e. whether opulent or poor, but this process of progress must have concern for our water resources. Because if we let water resources to deplete at the cost of development, then it would not be sign of progress but of devastation. The old concept, that development and ecology are opposed to each other are no more relevant in this era, rather both are complement to each other.

For all round development, it is necessary that there must be economic stability, which can be achieved by increase in the agricultural and industrial activities, which ensure increase in the production of crops and other articles. All these activities of man causes disturbance in the biosphere, specially water resources and affects it’s constitution, without any interest for its replenishment.

79 Ibid.
There are certain substances in the nature e.g. coal, petroleum, minerals, etc. which are exploited by the man but he has not found their substitutes to maintain the natural equilibrium with the result that the composition of environment is badly effected. In the process of development, man has done much damage to forests, wild life, land surface, water resources and to atmosphere. Man has developed in fact but only at the cost of his environment, the effect of which is looming large on his head.80

Mahatma Gandhi was also in favour of development of India, he advocated for the installment of small scale industries because at that time, most of the Indians were not in a position to spend much on the heavy industry. Secondly, the small scale industry which he advocated at that time was less water pollution prone in comparison to the heavy industry. To achieve the goal of sustainable development, it is not enough to shun development projects, rather man should try to foster vigorous economic progress without destroying the natural resource endowment.

The Report of the World Commission on Environment and Development, usually called the Brundtland Report, rallied the nations of the world to this goal.81 It insisted that we attend to the economic needs of all the world’s people, as well as to the quality of our common environment. The report laid down its now famous definition of sustainable development that we must act to meet the needs of present without compromising the ability of future generations to meet their own needs.82

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80 Supra note 76 at 13.
81 Supra note 75 at 132.
82 Ibid.
The environment and development are means not ends in themselves. The environment and development are for people, not people for environment and development.\textsuperscript{83} To achieve sustainability, we will have to couple values like those with the knowledge that can come from our understanding of how the natural world works and what is happening to it as a result of human activities. For this to work, people must be willing to grapple with scientific evidence and basic concepts and develop a respect for the consensus that scientists have reached in most areas of environmental concern.\textsuperscript{84}

The word sustainable development was first used in the U.N. Conference on Human Environment and Development at Stockholm in 1972. The Conference emphasized that we must shape our actions through the world with a more prudent care for their environmental consequences. To defend and improve the human environment for the present and future generations has become an imperative goal for mankind a goal to be pursued together with and in harmony with, the established and fundamental goals of peace and of world wide economic and social developments\textsuperscript{85}.

Environmental problems are caused by the way people use resources, environmental damage often is driven by poverty and food insecurity (which) force individuals and communities to choose short term exploitation over long term management. Economic growth cannot be sustained if the natural resources that fuel growth are irresponsibly depleted. Conversely,

\textsuperscript{83} Supra note 2 at 87.
protection of environment and careful stewardship of natural resources will not be possible where poverty is pervasive. This is the conundrum and the opportunity of sustainable development.86

The concept of sustainable development was also reflected in the Convention on Biological Diversity, 1992 the main emphasize in this Convention was made on the Conservation of Biological Diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected there with. The concept of sustainable development was again reaffirmed at the World Summit on Sustainable Development.

The representatives of the people assumed a collective responsibility to advance and strengthen the inter dependent and mutually reinforcing pillars of sustainable development economic development, social development and environment protection at a local, national and regional and global levels, recognizing that human kind is at a cross road they resumed to make a determined effort to respond positively to the need to produce a practical and visible plan that should bring about poverty eradication and human development87.

In People United For Better living in Calcutta v. State of West Bengal88, the High Court deliberated on concept of sustainable development and held, there should be proper balance between the protection of environment and the development process. The society shall have to prosper, but not at the cost of environment and in the similar vein, the environment shall have to be protected but not at the cost of

86 Ibid.
87 Supra note 75 at 105.
88 AIR 1993 Cal. 215.
development of society there shall have to be both development and as such, a balance has to be found out and demonstrative action ought to proceed in accordance therewith and not dehors the same.

In Goa Foundation v. Konkan Railway Corporation, the brief facts of this case were that the petitioners challenged the laying of new broad gauge railway line, as this Railway alignment had to be passed through different terrain in different states and the corporation was required to construct large number of tunnels and projects over rivers. They alleged that this railway line is being laid down over rivers which would badly affect the rivers because it would be filled up with construction material which would prevent migratory birds from coming to Goa. The petitioners claimed that this project required clearance under the provision of the Environment [Protection] Act, 1986.

The Court declined to interfere and held, there is no valid proof about it. It is only imaginary apprehension. The Court held that the extent of damage is extremely negligible and a public project of such a magnitude which is undertaken for meeting the aspirations of the people on the west coast cannot be defeated on such considerations. It is not open to frustrate the project of public importance to safeguard the interest of few persons.

The Court opined that no development is possible without some adverse effect on the ecology and environment but the project of public utility cannot be abandoned and it is necessary to adjust the interest of people as well as the necessity to maintain the environment. The Court further held that however, law courts ought not to put an embargo to any development.

89 AIR 1992 Bomb. 471.
project which may be in the offing. The courts are required to strike a balance between the development and ecology and there should be no compromise with each other.90

The environmental problems are wide, it cannot be handled by some selective persons, but we all are concerned about these problems. No doubt legislature and executive are trying hard to solve this problem by discharging their duties by enacting laws, which help in handling this problem. However, these laws can be implemented only through courts. Therefore, the role of judiciary assumes utmost significance. Now, the courts in India have started applying the principle of sustainable development while deciding environmental matters. The significance of role of courts in handling environmental matters also reflects in principle 10 of the Rio Declaration of 1992, which emphasises that the State will provide effective access to judicial and administrative proceedings including redress and remedy for the handling of environmental issues.

The judiciary in India has played a very important role in the environmental protection and has applied the principles of sustainable development while deciding these cases. There are number of cases on this point, most of the environmental cases have come before the courts through “Public Interest litigations” (PIL).91 Here some of the important cases are being discussed where the courts have taken initiative to handle environmental cases by applying principle of sustainable development. These cases are following:-

90 Id. at 480.
91 Supra note 75, 118.
R.L and E. Kendra, Dehradun v. State of U.P.,\textsuperscript{92} in this case the Court emphasized on the need for reconciling between development and conservation of environment. The brief facts of this case were that there was haphazard and dangerous limestone quarrying practice in Mussoories Hills, which denuded the Mussoorie Hills of trees and forests cover and accelerated soil erosion resulting in landslides and blockage of underground water which fed many rivers and springs in the river valley.

The Court ordered for the closure of number of limestone quarries, due to the closure of quarries, workers of the quarries became unemployed. The Apex Court was also aware of the consequences of the closure order which rendered workers unemployed and caused hardship to the lessee of the quarries. The Court opined that, this would undoubtedly cause hardship to them and held that the mining activity has to be permitted to the extent it is necessary in the economic and defence interests of the country as also for safeguarding of the foreign exchange position.\textsuperscript{93}

The Government was directed by the Court to file affidavit regarding as to whether keeping the principles of ecology, environmental protection and safeguards and anti pollution measures, is in the interest of the society that the economic and defence requirements should be met by import or by tapping other alternate indigenous sources or mining activity in the area should be permitted to the limited extent.

From this case it is clear, that the courts are trying their best to adopt such methods of development, which are not anti environment.

\textsuperscript{92} AIR 1987 SC 2426.
\textsuperscript{93} Id. at 2432.
In *Kinkri Devi v. State*\(^94\), the Court observed, that natural resources have got to be tapped for the purpose of social development but the tapping has to be done with care so that ecology and environment may not be affected in any serious way. The natural resources are permanent assets of mankind and are not intended to be exhausted in one generation.

The Court further held that if the industrial growth is sought to be achieved by reckless mining resulting in loss of life, loss of property, loss of amenities like water supply and creation of ecological imbalance, there may ultimately be no real economic growth and no real prosperity. An interim direction was issued by the Court to the State Government to set up a committee to examine the issue of proper granting of mining lease and the necessity of granting leases keeping in view the protection of ecology.

From this case, it is clear that here also the Court reflected its willingness to emphasize on the principle of sustainable development.

*M.C. Mehta v. Union of India*,\(^95\) in this case tanneries, were polluting water of river Ganga by discharging untreated effluents into it. The contaminated water of the river was posing threat to the human health as well as fauna and flora. Hence, the public interest litigation was filed to stop the tanneries from discharging effluents into river.

The Court observed, we are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety

\(^94\) AIR 1988 HP 4.
\(^95\) AIR 1987 SC 1086.
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 on account of hazardous or inherently dangerous nature of the activity which it has undertaken.

The Court further held that the enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and enterprise can not say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

In this case reference was made to *Rylands v. Fletcher* case, the Court held that the principle of Strict Liability is not applicable in India and new principle of Absolute Liability was introduced. The reason was given, that if the enterprise is permitted to carry on the hazardous or inherently dangerous activity for its profit then the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising out of such activity. Secondly, persons who are harmed as a result of such hazardous or inherently dangerous activity would not be in a position to isolate the process of operation from the hazardous operation of the substance or any other related element that caused the harm and thirdly, the enterprise alone has the resource to discover and guard against such hazards and dangers and to provide warning against potential hazards.

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The Supreme Court also took into notice the principle of sustainable development and held that the hazardous industries should follow some guidelines, so that the environment can be protected and maintained against the ill effects of the hazardous industries. The Court suggested that the Government of India should set up a High Power Authority after consultation with the Central Pollution Control Board to check the functioning of hazardous industries to ensure that there is no defect in the design of plant and the machinery, the plant is being operated and maintained with due and proper care, safe devices are properly installed.97

There should be national policy which earmarks the area for the installation of hazardous industry. It should be chosen where population is not thin. There should be a green belt of 1 to 5km. around the hazardous industries. The Government should set up an Ecological Science Research Group of independent, professionally competent experts in different branches of science and technology, which would act as an information bank for the Court and Government Departments. The suggestion was also made by the Court to set up Environmental Courts on the regional basis, which would consist of one professional judge and two experts from the Ecological Science Research Groups, which would exclusively handle matters involving environmental pollution, and the appeals against the decisions of these courts would lie to the Supreme Court.98 Hence, the Apex Court delivered the above discussed judgement in accordance with the principle of sustainable development.

97 Id. at 1090.
98 Ibid.
In *Charan Lal Sahu v. Union of India*, the respondent company proposed to set up a thermal power plant at a place near Bombay, the Government okayed the proposal. The petitioners filed public interest litigation against the project, alleging that it would pose threat to the environment.

The Apex Court examined the matter in depth and found no fault with the projection of the thermal plant. The government did not find any threat to the ecology from the proposed thermal power plant.

Therefore, the Government took the decision after considering relevant aspects including environmental pollution without being influenced by extraneous or irrelevant factors. Finally, the Court refused to interfere with the decision of the government in giving clearance to the proposal of the respondent company. The Court directed the respondent to strictly comply with the provisions of Environment Protection Rules 1986.¹⁰⁰

It is evident from the above case, that the Court succeeded in proving that development is possible without harm to fragile ecology, therefore, all the developmental projects should not be stopped merely on the apprehension that it would leave negative effect on the environment without proper inquiry.

When science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, the element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate the risk of discharge of hazardous waste etc. which poses threat to our water resources. At the time of deciding the case, this

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99 (1990) 1 SCC 613.
100 Id. at 618.
Court had also in mind the principle of sustainable development and held, it is not possible to adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard to the community, if such a policy were adopted, it would mean the end of industries even if hazardous kind of industries have to be set up as they are essential for economic development and advancement of well being of the people.

After the leakage of oleum gas from one of the units of Shriram Chemicals in Delhi, the Court ordered to close down the unit. This order of the Court affected a number of workers, they were unemployed since the closure of the unit. Keeping in view the principle of sustainable development, the Court ordered for its restart with the following conditions:

(i) There will be established an expert Committee to monitor the operation and maintenance of the plant.

(ii) The Central Board is responsible to supervise the plant weekly for the prevention and control of water pollution.

(iii) The Court directed the Chief Inspector of Factories, or any inspector nominated by him, having necessary knowledge regarding inspection of chemical factories, to inspect once in a week the caustic chlorine plant.

(iv) In case the discharge of chlorine gas, the Chairman and the Managing Director of the Company would be personally responsible for the payment of compensation on the death or injury to the employee or people living nearby the plant.

(v) Committee of employees would also be authorized to check the safety arrangement in the plant, if there is any loophole
in the safety measures, it would be brought into the notice of concerned authority.

(iii) All the workers of the plant would be trained regarding the functioning of the plant, in which he is working, they would also be educated regarding what precautions have to be taken in case of discharge of gas.

(vii) Notice in English and Hindi language regarding the effect of gas on human beings and its treatment would be displayed in the premises of the plant as well as on the gates.

(viii) The Management is bound to make arrangements of loud speakers, which would help to give warning to its employees in case there is leakage of gas.101

In the above mentioned case the Apex Court has set good example of equilibrium between the environment and the sustainable development. Environment is not a separate area distinct from industry, energy or other type of development like construction etc. This aspect was reflected by the Court in *Citizen Consumer and Civic Action Group v. Union of India*.102 It was opined by the Court that, the courts have social duty to protect the ecology from destruction and to take steps for the maintenance of proper equilibrium between the environment and the development activities, which are necessary for the progress. The Court further held that there can be no dispute that the society has to prosper, but it shall not be at the expense of environment.

The Madras High Court further observed, that in the like vein, the environment shall have to be protected, but not at the

102 *AIR 2002 Mad. 298.*
cost of the development of society. Both development and 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 de-hors the same 103.

The Indian courts are adopting very positive attitude towards the perseverance and maintenance of environment without hampering development, which is best cited in Indian Council For Enviro-Legal Action v. Union of India. 104 This case is popularly known as Coastal Protection Case. The public interest litigation was filed, in which it was alleged that there was government notification for the protection of coastal zones but now the industries are being set up on the coastal zone. Therefore, this is violation of the said government notification. By doing so it would seriously damage the environment.

The Court issued directions to the various authorities including government and Pollution Control Boards for the implementation of the provisions of Environment (Protection) Act, 1986, fundamental right to life, which falls under article 21 of the Constitution.

The Court opined:

The enactment of a law but tolerating its infringement is worse than not enacting a law at all. It was emphasized, that violation of anti pollution laws not only adversely affects the existing quality of life but the non-enforcement of legal provisions often results in ecological imbalance and degradation will have to be borne by the future generations. It is responsibility

103 Ibid.
of executive authority to implement the existing environmental laws.105

Laying emphasis on the courts duty to protect the fundamental rights of the people the Court held passing of appropriate orders requiring the implementation of the law cannot be regarded as the Court having usurped the functions of legislature or the executive. The Apex Court laid stress, that the Court passes orders and issues directions in discharge of its judicial function, namely, to see that if there is a function, namely, to see that if there is a complaint by a petitioner regarding the infringement of any constitutional or other legal right, as a result of any wrong action or inaction on the part of the State, then such wrong should not be permitted to continue.106

In this land mark judgement, the Court laid stress on the sustainable development. It was observed by the Court that while economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment and vice-versa, but there should be development while taking due care and ensuring the protection of environment.107

When some projects are laid down near sea which are not detriment to the ecology, then there is no need to ban the commission of such project, the similar matter was decided in Sneha Mandal Co-Operative Housing Society Ltd. v. Union of

105 Id. at 293.
106 Id. at 294.
107 Ibid.
In this case there was proposal to launch the Backbay Reclamation Scheme by acquiring three pieces of land which were reserved under the development plan for garden, playground and the same would be used under the Backbay Scheme for the installment of Bulk Electricity Receiving Station; construction of helipad and for building housing complex. It was alleged that before changing the user of land permission was not taken from the competent authority i.e. Maharashtra Coastal Zone Management Authority.

The Court held that the Maharashtra Coastal Zone Management Authority is empowered to take certain steps for the protection and improvement of the quality of coastal environment and for the prevention and control of environment pollution in coastal areas of the State. The Bombay High Court further held, that the Authority is required to ensure compliance of all conditions laid down in the approved Coastal Zone Management Plan for the State of Maharashtra. However, the Court took very stringent view of the changes which were made in the development plan and the Court set aside the changed scheme i.e. construction of helipad and housing complex. The Bulk Electricity Receiving Station the Court held, was not going to pollute the environment, it is for the welfare of people.

The Court further held, if the electricity receiving station is going to pollute, people will have to withstand with it as a part of development scheme. Hence, by above decision, the Court tried to lay down emphasize on the point that no doubt protection of environment is the foremost duty of every person as well as institution but development without which we can not sustain is

\[108 \text{ AIR } 2000 \text{ Bomb. } 121.\]
also necessary if due to that a little damage is done to the environment, it should be ignored as, in today's world both are necessary.

_Vellore Citizens Welfare Forum v. Union of India,_109 in this case the Court delivered monumental judgement by adopting the principle of sustainable development as a balancing concept. In this case the tanneries, which were polluting water of river Palar as well as ground water by discharging untreated effluents either into river or in open ground.

The Supreme Court held:

It is no doubt correct that the leather industry in India has become a major foreign exchange earner and at present Tamil Nadu is the leading exporter of finished leather accounting for approximately 80 per cent of the country's export. Though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues, it has no right to destroy the ecology, degrade the environment and pose a health hazard. It cannot be allowed to expand or even continue with the present production unless it tackles by itself the problem of pollution created by the said industry.110

It was pointed out by Justice Kuldip Singh on behalf of the Court that, the traditional concept that development and ecology are opposed to each other is no longer acceptable, sustainable development is the answer. By laying emphasis on the concept of sustainable development, the Court held that, all the industries involved in case were required to obtain the consent of the

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109 _(1996) 5 SCC 647._
110 _Id. at 657._
Pollution Control Board. The tanneries which failed to obtain the consent would be closed down. However, it can be reopened with the permission of the authority.\textsuperscript{111}

From this case it is clear that neither Court wants to compromise with the environment issues in the name of development nor it wants to destabilize economy of the country by banning it because it poses threat to the ecology. Therefore, the Courts have found the solution which lies in sustainable development.

\textit{A.P. Pollution Control Board II v. Prof. M.V. Nayudu and Others}\textsuperscript{112}, in this case the Supreme Court once again emphasized on the concept of right to healthy environment and principle of sustainable development. The brief facts of this case were that the respondents M/s Surana Oils and Derivatives India Ltd. wanted to establish an industry for the production of BSS castor oil derivatives within a 10km. radius of two major water reservoirs in Andhra Pradesh, the Osman Sagar and Himayat Sagar. The vegetable oil and solvent extracted oils were included in the “Red” list and the same were declared hazardous industries by the Central Government and the Andhra Pradesh Government, there was also ban for the installation of industry within 10km. radius of Osman Sagar and Himayat Sagar. The Government of India granted the company a letter of intent subject to obtaining of NOC from A.P. Pollution Control Board, which rejected the application of the company on the ground that unit was a polluting industry. Then the company obtained permission from the Gram Panchayat concerned for the establishment of its industry. The company again applied for the

\textsuperscript{111} Ibid.
\textsuperscript{112} (2001) 2 SCC 62.
consent to the State Pollution Control Board under section 25 of
the Water Act. The Board again rejected the application. Then
the company approached to the State Government and got the
permission for the establishment of the industry. The State
Government issued instructions to the Pollution Control Board
to prescribe conditions for treatment or disposal of aqueous and
solid wastes. When the State Board dismissed company's
application, then the company filed appeal under section 28 of
the Water Act, 1974. The High Court dismissed the public
interest litigation and the Board filed appeal in the Supreme
Court against the order of the Appellate Authority.

The Apex Court allowed the appeal of the State Pollution
Control Board and held that the State Government cannot grant
exemption to a specific industry located within an area in which
total prohibition against establishment of industries in an area
under section 3 (2) and section 5 of the Environment [Protection]
Act, 1986 is in force.

The Supreme Court further held that, no doubt section 19
of the Water Act, 1974 permits the State to restrict the
application of the Water Act to a particular industry within the
area prohibited or location of polluting industries. Exercise of
such a power in favour of a particular interest must be treated
as arbitrary and contrary to public industry and in violation of
the right to clean water under article 21 of the Constitution113.

From the above discussion of the Supreme Court it is
evident that the Court has taken the view that the industrial
development must continue but not at the cost of environment.

113 Ibid.
This approach of the Court is in consonance with the principles of sustainable development.

C. Polluter Pays Principle and Precautionary Principle

The Polluter Pays Principle and Precautionary Principle both are integral part of sustainable development. Now not only India, but entire world is facing the problem of environment pollution. Although the Government has passed different laws for the prevention and control of pollution, but these are not proved much effective. Therefore, now the person who causes pollution to environmental sources e.g. water, air etc., would be liable to pay for the contamination. For the protection and maintenance of ecology, a set of different tools are used to achieve the object of pollution free environment.

The European Community (EC) can claim another important contribution to the development of economic instruments, it's environmental policy has always included the adoption of the polluter pays principal, although it was probably the Organization for Economic Cooperation and Development (OECD) which first popularized the idea in the early 1970s.\textsuperscript{114}

(a) The Polluter Pays Principle:

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 any pollution which the process causes. This includes environmental costs as well as direct cost to people or property. It also covers costs incurred in avoiding pollution and not just those related to remedying any

damage. Under this Principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the tax-payer.

We can say that there is potent relationship between principle and the idea that prevention is better than cure. The costs collected from the polluter, should include the full environmental costs, not just which are immediately tangible. In relation to contaminated land it is clear that someone has to pay for the contamination, either by cleaning it up, or by living with the consequences. There are essentially four possible options: the polluter could be made liable; the State could pay (i.e. through some public clean-up mechanism) this really means that the public pays through some form of taxation; or finally, the loss could lie where it falls, meaning that the environment and the local community effectively pay.

In Danielsson v. Commission, the Court held that, polluter pays principle is not directly enforceable obligation. It is not that the polluter will pay only if there is private nuisance case filed against him and damages are claimed, but polluter should pay for damage to property even where this was unenforceable.

The Polluter Pays Principle was further strengthened at Rio Declaration of 1992. Principle 16 of the Declaration provides that national authorities should endeavour to promote the

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115 Ibid.
117 Supra note, 114 at 20.
internationalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should in principle, bear the cost of pollution with due regard to the public interest and without distorting trade and investment.

_Vellore Citizens Welfare Forum v. Union of India_,119 this case is popularly known as _T.N. Tanneries Case_. In this case the Apex Court laid down the Polluter Pays Principle. It was further emphasized by the Court, that this principle is essential feature of sustainable development and the same has been accepted as part of law of India.

The Supreme Court interpreted the Polluter Pays Principle and laid down stress that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Therefore, it includes environmental costs as well as direct costs to people or property. Remediation of the damaged environment, the Court held, is part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. The Court observed, that under this principle it is not the role of government to meet the costs involved in either prevention of such damage or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the tax payer.

The Supreme Court held:

>In view of the Constitutional provisions contained in articles 21, 47, 48-A and 51-A (g) and other statutory provisions contained in articles 21, 47, 48-A and 51-A (g) and other statutory

provisions contained in the Water (Prevention and Control of Pollution) Act, 1974 and the Environmental (Protection) Act, 1986, it had, no hesitation in holding that the Polluter Pays Principal and Precautionary Principle is part of the environmental law of the country.120

The Court further observed:

Even otherwise once these principles are accepted as part of the domestic law. It is almost an accepted proposition of law that rules of customary International Law which are not contrary to the Municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law.121

The Court directed the Central Government to create an authority under section 3 (3) of the Environment (Protection) Act, 1986, which can take measures to protect and improve the environment and thus the work which was required to be done by the authority in terms of section 3 (3) read with other provisions of the Act is being done by the Supreme Court and the other courts in the country, the Court emphasized that, it is high time that the Central Government should realize its responsibility and statutory duty to protect the degrading environment. The Supreme Court issued the following directions:122

(i) The Central Government shall constitute an authority under section 3 (3) of the Environment (Protection) Act, 1986 within one month and all the necessary powers

120 Id. at 660-661.
121 Id. at 661.
122 Id. at 667-669.
shall be conferred on it including the power to issue directions under section 5 of the Act.

(ii) The above said authority shall apply and implement the polluter pays principle. The authority shall with the help of expert opinion and after giving opportunity to the concerned, assess the loss to ecology in the affected areas and shall also identify the individuals or families who have suffered because of the pollution.

(iii) The compensation shall be computed by the authority under two heads first, for reversing the ecology and secondly, for payment to individuals. The said amount could be recovered from the polluter, if necessary, as arrears of land revenue.

(iv) The authority shall direct the closure of the industry in case it evades or refuses to pay compensation awarded against it.

The Court also held liable to the State of Tamil Nadu to pay compensation of Rs. 50,000 to Mr. Mehta, the petitioner towards legal fee and other out of pocket expenses incurred by him in the case.

From the above case it is clear, that higher judiciary is determined to restore the purity of environmental sources like water etc. by taking stringent action against the polluters, if they fail to pay the fine, then Court will not hesitate even to take criminal action against them.

In *M.C. Mehta v. Union of India*\(^\text{123}\), the Court once again applied one of the principle of sustainable development i.e.

\(^{123}\) (1997) 2 SCC 411.
Polluter Pays Principle. The brief facts of this case were that the tanneries at Calcutta were discharging poisonous and noxious untreated effluents into river Ganga, which caused pollution to ground as well as river water. The Apex Court directed the tanneries to shift to some other place, so that the water of river can be saved from further contamination. The tanneries gave undertaking to the Court to relocate their tanneries to new complex. But to the surprise of the Supreme Court, despite giving undertaking to the Court regarding shifting of tanneries, they failed to do so.

The Court took stringent action against those tanneries, and held that even otherwise these tanneries had been operating in violation of the mandatory provision of the Water (Prevention and Control of Pollution) Act, 1974 and Environment (Protection) Act, 1986.

The Court further held that the Polluter Pays Principle would apply against these tanneries and accordingly issued directions to the tanneries to pay under this Principle. The directions were issued for unconditional (sic) closure of the tanneries, their relocation, payment of compensation by them for reversing the damage to the ecology and for rights and benefits to be made available by them to their workmen.124

Since the Green Bench was already functioning in the Calcutta High Court, therefore the Apex Court further directed that this case would be further monitored by the Calcutta High Court. The Court slapped cost of Rs. 25000/- on the tanneries. From this decision, it is evident, that courts are vigilant towards the water pollution done by industry and they are also aware

124 Id. at 430-433.
about the importance of water in our life. To protect water from further pollution the courts are taking strong action against the polluting industry, which would set examples for others not to contaminate precious gift of nature in the form of water.

*Indian Council For Enviro-Legal Action v. Union of India*\(^{125}\), in this case the Court delivered landmark judgement on Polluter Pays Principle. The brief facts of this case were that the public interest litigation was filed, in which it was alleged that industrial units located in village Bichhri were producing chemicals like oleum and H-acid etc., which polluted ground water of the village and posed health hazard to people.

The Supreme Court held that the contention of the respondent, that they are private corporate bodies and not State within the meaning of article 12, therefore, writ petition under article 12 of the Constitution will not lie against them is not acceptable. The Court affirmed, that in fact if the Court finds that the government or authorities concerned have not taken the action required of them and their inaction has affected the right to life of the citizens, therefore, it is duty of the Court to intervene and the Court can certainly issue the necessary directions to protect life and liberty of the citizens.\(^{126}\)

The Court also made reference of *Rylands v. Fletcher*\(^{127}\) and held that the Principle laid down in this case is not applicable in the present case and introduced one of the most essential principle of sustainable development, i.e. the Polluter Pays Principle, which means, the responsibility for repairing the damage of environment is that of the offending industry.

\(^{125}\) (1996) 3 SCC 212.
\(^{126}\) *Id.* at 238.
\(^{127}\) [1868] LR 3HL 330.
Supreme Court also invoked section 3 of the Environment (Protection) Act, 1986 and held, that the Polluter Pays Principle can be enforced by the government under this section also, which empowers the government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment. The Court further held that, section 5 of the Act, also clothes the Central Government with the power to issue directions for achieving the objects of the Act.128

The Court ordered for the closure of all such industries and directed the Central Government to determine the amount required to carry out the remedial measures including the removal of sludge from the sites of the industries and same shall be paid by the respondents. It was further held that the villagers could claim damages for the loss suffered by them by instituting appropriate suits.

The concept that the public has right to claim certain lands and natural areas like river, sea etc. to retain their natural characteristic is finding its way into the law of land. In M.C. Mehta v. Kamal Nath,129 the State Government granted the lease of riparian forest land for commercial purpose to a private company having a motel located at the bank of river Beas. The petitioner, challenged this grant of land through public interest litigation. On the ground that the motel management was interfering with the natural flow of the river by blocking natural relief/spill channel of the river.

128 Ibid.
The Apex Court held that the State had committed a breach of public trust. The Court further held, that therefore, there was no reason why the "Public Trust" doctrine should not be expanded to include all the ecosystems operating in our natural resources.

The Court explained the doctrine of Public Trust that it primarily rests on 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. It implies certain restrictions on the government, which are the property subject to the trust not only to use for a public purpose, but fruit must be available for use by the general public. The property may not be sold, even for a fair cash equivalent and moreover, the property must be maintained for particular types of users.\textsuperscript{130}

The Apex Court further observed: our legal system is based on English Common Law, therefore, public trust doctrine is included as part of India's legal jurisprudence. The Court held, that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under legal duty to protect the natural resources. These resources meant for public use and cannot be converted into private ownership.\textsuperscript{131}

The Court directed to cancel the lease of the motel because it was causing water pollution and also disturbing the ecology of India. The Principle of Polluter Pays was once again invoked by

\textsuperscript{130} \textit{Id.} at 408.
\textsuperscript{131} \textit{Id.} at 413.
the Apex Court in this case and directed that the motel owner shall pay compensation by way of costs for the restitution of the environment of the areas.132 From this decision of the Apex Court, it is clear that the higher judiciary is determined to protect our natural resources i.e. water, air etc. from pollution and to achieve this goal, it did not hesitate even to introduce foreign concepts to tackle this menance.

Vineet Kumar Mathur v. Union of India133 in this case public interests litigation was filed against Mohan Meakin Ltd., a distillery which was discharging untreated effluents into river Gomati. The Apex Court directed the distillery to remove deficiencies in the effluent treatment plant, but the distillery failed to comply with the order of the Court. It was alleged that company did so deliberately when the Court came to know about the deliberate non-compliance of its order by the distillery, the Court reacted sharply on the distillery. Then the distillery pleaded unconditional apology. The Court rejected to accept it and imposed a fine of Rs. 5 lakhs on the company and directed it to deposit the same in the Court within 4 months from the passage of order. The Court further directed that, the said amount would be utilized for the cleaning of the river Gomati. Thus, Polluter Pays Principle was given substantial meaning in this case.

In Deepak Nitrite Ltd. v. State of Gujarat and Others134, public interest litigation was filed before the Gujarat High Court, alleging large scale pollution caused by industries located in the Gujarat Industrial Development Corporation (GIDC) Industrial

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132 Ibid.
133 (1996) 7 SCC 714.
134 AIR 2004 SC 3407.
estate at Nandesari. It was alleged that effluents discharged by the said industries into the effluent treatment project had exceeded certain parameters fixed by the Gujarat Pollution Control Board (GPCB) thereby causing damage to water of the area. Although, some of the industries have set up their effluent treatment plant in their factory premises, while some of them have not.

The High Court, by an order made on 17.4.1995, directed that the chemical industries in Nandesari should be made parties to the proceedings, thereby 252 industrial units located in the Nandesari Industrial Estate, Baroda were made parties to the proceedings, apart from the State of Gujarat, Central Pollution Control Board, Gujarat Industrial Development Corporation and Nandesari Industries Association were also included.

The High Court also issued notices to the financial institutions and banks in respect of these proceedings. The High Court in its impugned order followed their decision in Pravinbhai Jashbhai Patel and Anr. v. State of Gujarat and Ors.135, it was noticed that the industrial units though aware of the requirements of law had not complied with the same nor did they meet the GPCB parameters and they were irresponsible in not wanting or caring to set up effluent treatment plants but continued to manufacture and pollute the environment and the concern shown now in meeting with the pollution control norms is only because of the threatened Court order; that pollution caused by these industrial units was adversely affecting large number of citizens residing in the adjacent cities or villages, that

in particular water pollution is not only continued to the immediate area in which the pollution is generated, but the same affects other areas as well wherever water went.

The High Court took the view that 1% of the turnover would be a good measure of assessing damages for the pollution caused by the industrial units and that amount should be kept apart by the Ministry of Environment and should be utilized for the works of socio-economic upliftment of the population of the aforesaid affected areas and for the betterment of educational, medical and veterinary facilities and the betterment of the agriculture and live stock in the said villages with certain additional directions in this regard.\(^\text{136}\)

The appellants submitted before the Apex Court that a Court has no power to either impose penalty or fine or make any levy for general betterment unless the statute authorized the same, however, in awarding damages it is permissible to make the same exemplary or penal; that award of damages is by way of restitution of the damage caused to victims and for restoration of ecology by way of punishment; that, unless a finding is given by the High Court that there had been degradation of environment and therefore, it is not open to the High Court to impose 1% of the turnover by way of damages.\(^\text{137}\)

The appellants pleaded in _Vellore Citizens Welfare Forum v. Union of India and Ors._\(^\text{138}\), that Principle of Polluter to Pay cannot be applied unless a finding has been given that the industrial unit concerned is the polluter. In what manner pollution has been caused should have been ascertained, particularly when a

\(^{136}\) Id. at 3410.
\(^{137}\) Ibid.
separate common effluent treatment plant had been erected and a channel was provided through which water would flow into river which would reach the sea thereby not causing any damage anywhere.

The industries further pleaded that there is no direct evidence of damage having taken place, therefore, the Polluter Pays Principle would not be applied. It was pleaded that in Vellore Citizens Welfare Forum’s Case (supra) it was held that in this case principle of polluter to pay has been applied and it was noticed that any principle evolved in this behalf should be simple, practical and suited to the conditions prevailing in this country; once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity, consequently, the polluting industries are absolutely liable to compensate for the harm, caused by them to villagers in the affected areas, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas; that the Polluter Pays Principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the environmental degradation; that remediation of the damaged environment is part of the process of sustainable development and thus the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.139

139 Id. at 3411.
The Court further held that section 3 of the Environment (Protection) Act, 1986 and article 21 of the Constitution have recognized the principle of polluter to pay to the affected person that one of the principle is to levy damages of a certain percentage of total turnover and the right to clean and hazardless environment has been recognized as fundamental right under article 21 of the Constitution. The Court has innovated new methods and strategies for the purpose of securing enforcement of fundamental rights. The Apex Court remanded the case to the High Court for further investigation to enquire whether there has been any damage caused by any of the industrial units by their activities in not observing the norms prescribed by law.140

(b) Precautionary Principle

The other important environmental rule, which helps in environmental decision making is the precautionary principle. The precautionary principle generally describes an approach to the protection of the environment or human health based around precaution even where there is no clear evidence of harm or risk of harm from an activity or substance. For example, the Precautionary Principle suggests that we should ban a pollutant suspected of causing serious harm even in circumstances where there is no conclusive scientific proof of a clear link between the substance and the harm.141 The development of the Precautionary Principle as a legal instrument mirrors the development of the principle of sustainable development in a

140 Ibid.
141 Supra note 114 at 47.
number of ways. The formal origin of the principle can be traced back to Germany in the 1970s with the vorsorgeprinzip.142

The “Precautionary Principle” has been recognized in almost all the major international instruments. It has been adopted by the United Nations Environment Programme. It has also been adopted by various international conferences on prevention of pollution of seas.143 In 1990 Bergen Declaration on Sustainable Development in the European Community while affirming the Precautionary Principle provided that environment related action should predict, prevent and suppress environmentally harmful factors. In 1991, “Caring for the Earth” a document jointly produced by the World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, emphasized that the Precautionary Principles be made the basis of decision on development and environment. The “Earth Summit” of Rio in 1992 recognized the Precautionary Principle in many ways.144

According to Meinhard Schroder, in interpreting the aims of Sustainable Development, the relationship between Sustainable Development and the Precautionary Principle poses a problem. He was of the view that one could well interpret Sustainable Development and Precautionary Principle as the appropriate strategy for its implementation. This interpretation takes account of the understandable view that today’s use of natural resources has for the most part reached a point where it is detrimental to Sustainable Development, with the result that

142 Ibid.
144 Supra note 2 at 113.
any further expansion of consumption is contrary to the goal of Sustainable Development and, in this respect precautionary action will have to be taken.\textsuperscript{145}

The Precautionary Principle represents a potent tool for implementing stewardship in the environmental health arena. The Precautionary Principle enables us to act to prevent some potential environmental health problems even at the risk of spending more than a problem technically deserves. The old saying, “An ounce of prevention is worth a pound of cure” capture the sense of approach.\textsuperscript{146} Where uncertainty is substantial, and especially where the penalty for being wrong is great, it would seem wise to make the Precautionary Principle a guiding principle over seeing the entire risk assessment process.\textsuperscript{147}

The ICC (International Chamber of Commerce) Charter commits to the “Precautionary Principle” although it is used in limited sense that asserts that decisions should be made on the basis of scientific and technical understanding rather then to err on the side of caution when there is no scientific certainty. Precautionary approach means to modify the manufacture, marketing or use of products or services or the conduct of activities, consistent with scientific and technical understanding to prevent serious or irreversible environmental degradation.\textsuperscript{148}

The higher judiciary in India has become one of the most progressive courts in the world when it comes to environmental

\textsuperscript{145} Ibid.
\textsuperscript{146} Supra note 84 at 412.
\textsuperscript{147} Ibid.
\textsuperscript{148} United Nation Conference on Trade and Development Division on Transnational Corporations and Investment Self-Regulation of Environmental Management. An Analysis of Guidelines Set by World Industry Associations for Their Member Firms, 66 (1996).
protection. To achieve the goal of Sustainable Development, the courts have started applying Precautionary Principle in its decisions. *Vellore Citizen’s Welfare Forum v. Union of India*\(^{149}\), in this case the Court delivered the landmark judgement and applied the Principle of Precaution. The Apex Court expressed the view that the Precautionary Principle is essential feature of Sustainable Development and has been accepted as part of the law of land. Now, this principle is accepted as part of the customary international law and hence there should be no difficulty in accepting it as part of our domestic law.

The Supreme Court defined meaning of the Precautionary Principle and held that, where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The Court further observed that environmental measures by the State Government and the local authority must anticipate, prevent and attack the causes of environmental degradation. The Court stressed that the onus of proof is on the actor or the developer/industrialists to show that his action is environmentally benign.

The Supreme Court directed the Central Government to constitute an authority under section 3 (3) of the Environment (Protection) Act, 1986 within one month and shall confer on it all the necessary powers including the power to issue directions under section 5 of the Act. The authority so constituted shall apply and implement the Precautionary Principle. It was also directed that the authority on consultation with NEERI and the Central Board shall frame the schemes for reversing the damage.

\(^{149}\) 1995 (5) SCC 647.
caused to the ecology and environment. It was also emphasized
to close all those tanneries which fail to take consent from the
Board and new industry would be set up within the prohibited
area.\textsuperscript{150}

Now courts in India not only try to control the pollution by
inflicting monetary punishment, but are also suggesting what
precautions should be taken for its eradication from the root. In
\textit{Delhi Transport Department Re.}\textsuperscript{151} the Supreme Court held that,
the Precautionary Principle, which is a part of the concept of the
Sustainable Development, has to be followed by the State
Government in controlling pollution. It was observed by the
Supreme Court that the State Government is under a
constitutional obligation to control it and if necessary
anticipating the cause of pollution and curbing the same.

No doubt various principles are laid down for the
protection and maintenance of our ecology, one of the principles
underlying environmental law is that of Sustainable
Development. According to this principle, such development
should take place, which is sustainable ecologically. Principle of
Precaution helps to a great extent to achieve this goal.
\textit{A.P.Pollution Control Board v. Prof. M.V. Nuyudu,}\textsuperscript{152} in this case
the Court delivered monumental judgment and elaborated the
“Precautionary Principle”. It was emphasized that the Principle of
Precaution involves the anticipation of environmental harm and
taking measures to avoid it or to choose the least
environmentally harm activity. It is based on scientific
uncertainty. Environmental protection should not only aim at

\begin{itemize}
\item \textsuperscript{150} \textit{Id.} at 667-669.
\item \textsuperscript{151} (1998)\textsuperscript{9} SCC 250.
\item \textsuperscript{152} (1999)\textsuperscript{2} SCC 718.
\end{itemize}

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protecting health, property and economic interests but also protect the environment for its own sake. The precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential.

The Supreme Court held, that there is nothing to prevent decision makers from assessing the record and concluding that there is inadequate information on which to reach a determination. If it is not possible to make a decision with some confidence, then it makes sense or err on the side of caution and prevent activities that may cause serious or irreversible harm. An informed decision can be made at a later stage when additional data is available or resources permit further research. To ensure that greater caution is taken in environmental management, implementation of the principle through judicial and legislative means is necessary.

From this decision of the Court it is crystal clear, that inadequacies of science is a real cause which led to the Precautionary Principle. It is based on the rule that it is better to err on the side of caution and control ecological harm, otherwise it would become irreversible. To save planet earth from further degradation, it is necessary to put some restrictions on the unmindful activities of human beings.

Today development is on the top agenda of every country. But, it is also duty of every nation not to violate human rights, while concentrating on the development projects. N.D. Jayal and Another v. Union of India and Others153, in this case the Supreme Court elaborated the meaning of sustainable development in detail. Tehri dam have been cleared for

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153 AIR 2004 SC 867.
construction in a seismically, unstable, earth quack prone area in the valley of Himalayas. Since the dam was to be located, which was highly earthquake prone zone in the valleys of Himalayas, therefore, it required all the additional safeguards to be undertaken on the precautionary principle as contained in the Rio Declaration, 1992, to which India is also party. Damage to dam by earthquakes 3-D Non linear Analysis of the dam cannot be undertaken with the assistance of foreign experts on the subject. To take care of all eventualities of damage to dam by earthquake. The Court expressed the view that it is only after 3-D Non-Linear Analysis of the dam is completed and the opinion of the experts on the safety aspect is again sought that further impoundment of the dam should be allowed.

The Court held that, the law contained in the Act, the Rules and the Notification issued thereunder contemplate imposition of condition, for clearance to a project to minimize its adverse impact on environment, the authorities granting such clearance possess a power couple with duty and obligation to ensure fulfilment of the conditions on the basis of which the environmental clearance is granted. The conditional environmental clearance was granted without monitoring the work of the project to ensue fulfilment of those conditions. The power to grant clearance even though with conditions was accompanied by duty on the part of the Ministry to have effective check on the progress of project and ensue fulfilment of the conditions in accordance with pari passu clause. The Ministry of Environment and Forest has failed to discharge its duty to exercising proper check on the fulfilment of pari passu clause of conditional clearance, therefore, it is necessary to provide an
independent mechanism through a forum of inter-departmental authorities and experts so that the project presently undertaken by the corporation with the aid, assistance and finance provided by the states, Central Government and the World Bank is allowed to progress and be complied strictly on fulfilment of the conditions on which environmental clearance was granted.

The Court expressed the view that when river projects for dams are undertaken to generate electricity and improve irrigation facilities, conflicts arise between people living upstream who have to necessarily lose their source of living and habital and those living down stream who need water and electricity for their homes, industries and agricultural fields.

The petitioner prayed the Court to issue necessary directions to conduct further safety tests to ensure that safety of the dam; secondly it was alleged that the concerned authorities have not correspondingly complied with the conditions attached to the environmental clearance dated July 19, 1990 and want us to halt the project till the same complied with, lastly there was rehabilitation (sic) aspects. The petitioner also raised the question before the Court, that when a decision had been taken in 1990 to abandone the project as to how clearance could be given on July 19, 1990? It was further alleged that on 21.10.1994 serious consequences of the implementation lagging behind was taken note of but the project was allowed to continue.

In this case the reference was made to *Narmada Bachao Andolan v. Union of India*154 and Sardar Sarovar Project Case, the

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following conditions were imposed while giving consent for the carrying out of the project:

(i) The NCA will ensure that environmental safeguard measures are planned and implemented pari passu with progress of work on project.

(ii) It was also emphasized that the detailed surveys studies assured will be carried out as per the schedule proposed and details made available to the department for assessment.

(iii) The catchment area treatment programme and the rehabilitation plans be so drawn as to be completed ahead of reservoir filling.

(iv) The department should be kept informed of progress on various works periodically.

The Court observed that this Court also examined the effect of grant of clearance subject to pari passu conditions in Sardar Sarovar Projects case. It was held in that case that there are three stages with regard to the undertaking of an infrastructural project, the first of which is the conception or planning. Second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project has to be regarded as a policy decision.

The Department of Ocean Development was constituted to examine issues concerning safety of the dam. The committee in its report established that even in the worst scenario of possible occurrence of a large magnitude earth quake of 8 + in richter scale with the probable location at a depth of 15km below the
dam site, the same would be safe. It was concluded that am
design is safer and added that all danger arising out of the
seismicity have been taken not of taken care of in the planning of
their dam project. The Government also took the opinion from
the seismic expert Prof. Jai Krishna, former President of
International Academy of Earthquake Engineering and Vice-
Chancellor of the Roorkee University, he opined that, the
proposed dam section for the point of view of seismicity of the
region.

The Court held that if the Government so desires, it could
have abandoned the project. The necessity or effectiveness of
conducting 3D Non-Linear Test or Dam Break Analysis were
taken into account by the Government and if the Government
decided not to conduct such tests upon the opinion of the
concerned expert bodies, then the Court cannot advice the
Government to go for such tests unless mala fide. The Court
further held that, it need not to re-examine the safety aspects of
the dam. It was further held that this Court cannot sit in
judgement over the cutting edge of scientific analysis relating to
the safety of any project. When the Government or the concerned
authorities after due consideration of all view points and full
application of mind took a decision, then it is not appropriate for
the Court to interfere. If the situation demands, the Courts
should take only a decision based on the pattern of the well
settled principles of administrative law.

The Supreme Court held that, the principle stated in A.P.
Pollution Control Board v. Prof. M.V. Nayudu and Others155,
cannot be applied in this case. In the present case, we are not

concerned with the polluting industry which is being established, instead a large dam is being considered. The dam is neither a nuclear establishment or a polluting industry. The construction of a dam undoubtedly results in a change of environment but it will not be correct to presume that the construction of large dam like Sardar Sarover will result in an ecological disaster. The large dams have upgraded the ecology in India.

It was observed by the Court:

The right to development is also declared as a component of article 21. The right to development cannot be treated as a mere right to economic betterment or cannot be limited to a misnomer to simple construction activities. The right to development encompasses much more than economic well being and includes the guarantee of fundamental human rights. The construction of a dam or a mega project definitely on attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development. It was further held that, therefore, the adherence of sustainable development principle is a sine qua non for the maintenance of the symbolic balance between the rights to environment and development. Right to development is a fundamental right. On the other hand right to development is also one. Here singled out. Therefore, the right to sustainable development is to be treated an integral part of life under article 21.156

156 Id. at 897.
The Supreme Court further held that, to ensure sustainable development is one of the goals of Environment (sic) (Protection) Act, 1986. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. Acknowledgement of this principle will breath new life into our environmental jurisprudence and constitutional resolve.

It was observed by the Court that the Tehri Dam Project is accorded environmental clearance subject to the following conditions:

(i) That the project authorities must get the safety aspects and the design of the dam approved by the High Level Expert Committee constituted for the purpose.

(ii) Comprehensive Management Plans must be formulated to the satisfaction of, and got approved from, the Ministry of Environment and Forests in a time bound manner.

It was also stressed by the Court that, the Tehri Hydro Development Corporation (THDC) will identify the Water Quality Maintenance by setting up water quality monitoring stations to monitor the quality of reservoir water. It will also initiate water quality modelling study to formulate the measures needed to preserve the water quality and prepare an action plan to implement the measures recommended by such a study. The Union Government fixed the responsibility on the State of U.P. to finalize the command area plan and to furnish the same to the Ministry of Environment and Forests. Command Area Development primarily aimed to avert the problems of water logging and emergence of salinity. This is very important in maintaining environmental balance.
The HRS observed that it is not in a position to go into the correctness of the scientific conclusions of various bodies on the maintenance of water quality. Therefore the Central Government decided to follow the advice of Central Water Commission pertaining to the effect of water quality due to impoundment. The university of Roorkee submitted a report, regarding water quality monitoring and its report established that water quality of reservoir shall not be harmful for aquatic life or other down stream water uses.

On the part of rehabilitation the Court observed that it is not only about extending support to re-build livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations. The reference was made to Narmada Bachao Andolan’s case, in which it was held that, the overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of outstees. They should be rehabilitated as soon as they are uprooted. Rehabilitation should take place before six months of submergence. In the present case also the rehabilitation package is prepared. It is also made clear that the rehabilitation conditions in this case are also applicable to the oustees of Koteshwar dam as well as those living on the rim of the reservoir and to all those who are likely to be affected by the project157.

Justice Dharamadhikari observed that, looking to the dimensions and implications of the case on environment and human rights a monitoring mechanism is required to be set up.

157 Id. at 902.
and activated to ensure compliance of the conditions on which clearance was granted to the construction of dam in Himalayan Valley near Tehri. He further viewed that, directions are sought to be issued to the respondents, representing the authorities and Corporation of Union and State Government, to take necessary measures for protecting environment and human rights which are likely to be adversely affected by construction of dam in the Valley of Himalayas near Tehri town of the State of Uttarakhand.158

It was further contended that, by river valley dam projects there are following down stream environment impacts:

(i) Water logging and salinity,
(ii) micro climatic changes,
(iii) reduced water flow and deposition in river, with related impacts on aquatic eco-system, flora and fauna,
(iv) flash floods and loss of land fertility along with river,
(v) vector breeding and increase in related diseases.159

On the safety aspect of the dam, particularly when the location of the dam is in a highly earthquake prone zone in the valleys of Himalayas, all additional safeguards are required to be undertaken on the precautionary principle as contained in the Rio Declaration on Environment and Development. The Apex Court issued some conditions to the respondents on which environmental clearance has been granted by MOEF for the projection of dam, these conditions are following:

158 Ibid.
159 Id. at 904
(a) The Central Government in terms of the recommendations of Expert Committee for Environment Impact Assessment as contained in schedule III of the Notification dated 27th January 1994 issued in exercise of powers under sub section (1) and clause V of sub section (2) of section 3 of Environment (Protection) Act, 1986 read with clause (8) of sub rule (3) of Rule 5 of Environment (Protection) Act, 1986 shall constitute a committee of experts and representatives of NGOs (if not already constituted) for the purpose of investigating, ascertaining and reporting whether the pari passu condition laid down in the environment clearance of the project have been fulfilled or not by the authorities of the project. The aforesaid committee will inspect and report on the status of the work of the Central Government every three months and in case the conditions as laid down in the clearance are not fulfilled recommend the remedial or corrective measures/actions.

(b) To take care of the safety aspect, until 3-D Non-linear Analysis and Dam Break Analysis are completed as recommended by the aforesaid Expert Committee is submitted to the Central Government, diversion tunnels T1/T2 for impoundment of the reservoir shall not be closed.

(c) The Expert Committee for environment impact assessment constituted under schedule III of the Notification dated 27th January 1994, will also look into and submit status report on the progress of resettlement and rehabilitation measures. There will be no impoundment of the reservoir
until resettlement and rehabilitation work is fully completed in all respects.

(d) An effective Grievance Redressal Cell headed by an independent expert in the field of social science shall be set up by the State Government with the help of Central Government for solving rehabilitation and resettlement problems of the oustees of the project. The Grievance Redressal Cell shall submit its status report every three months to the Expert Committee constituted under schedule III of the notification mentioned (supra)\textsuperscript{160}.

From this decision of the Apex Court it is clear that, if environmental aspects have taken into consideration before setting up any project, then there is nothing unlawful to okey the project, which is for the welfare of people.

For the sustenance of life both pollution free environment and development in every walk of life is necessary, which is possible only by sustainable development. For example, \textit{M.C. Mehta v. Union of India and Others}\textsuperscript{161}, in this case the Haryana Pollution Control Board was directed by order of this Court dated 20\textsuperscript{th} Nov. 1995 to inspect and ascertain the impact of mining operation on the Badkal lake and Surajkund – ecologically sensitive area falling within the State of Haryana. In the report that was submitted it was disclosed that explosives are being used for rock blasting for the purpose of mining, unscientific mining operation was resulting in lying of overburden materials haphazardly; and deep mining for extracting silica sand lumps in causing ecological disaster as these mines lie unreclaimed and

\begin{footnote}
\textsuperscript{160} Ibid.
\textsuperscript{161} AIR 2004 SC 4016.
\end{footnote}

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abandoned. The report recommended stoppage of mining activities within a radius of 5 kms. from Badkal lake and Surajkund (tourist place). The Haryana Government stopped the mining accordingly. Thereafter the Delhi Ridge Management Board field petition and prayed that the Government of Haryana be directed to stop all Mining activities and pumping of ground water in and from area upto 5 kms from Delhi – Haryana border in the Haryana side of the ridge, inter alia, stating that in the larger interest of maintaining the ecological balance of the environment.

The Court directed the Haryana Government to stop within 48 hours all mining activities and pumping of ground water in and from an area upto 5 kms. from Delhi-Haryana Boarder. The Supreme Court also directed, Environmental Pollution Central Authority (EPCA) to submit a report in the Court with regard to environment in the area preferably after a personal visit to the area without any advance notice. On August 2002, the EPCA visited the mining sites located within 5 km. radius from Delhi border. The objective of the visit as per EPCA, were as follows:

(i) Assessment to the level of compliance with the conditions laid down in the regulatory procedures like the No Objection Certificate (NOC) granted by the authorities to the mine owners.

(ii) Evidence of land and habitat degradation in and around the mining sites.

(iii) Evidence of misuse and shortage of ground water in the area.
(iv) Assessment of the implication of such activities for the local ecology and drinking water sources in the area.\textsuperscript{162}

At the time of visit there was no mining taking place. So EPCA members assessed level of compliance with some of the conditions laid down in the NOCs. There was clear evidence of violation of the following conditions:

(a) The excavated pits should be filed with fly ash or Municipal solid waste in the bottom layers. The top soil should be used as a top layer while filling the pit. Land reclamation and tree plantation should be done in a planned manner over the reclaimed nine pits.

(b) The applicant shall not discharge any effluent or groundwater outside their lease premises and shall take appropriate measures for rainwater, harvesting and reuse of water so as not to effect adversely the ground water table of the area.

(c) The green belt proposed in the environment management plan around the proposed mining lease area and along the road shall be developed.

The most serious violation by the EPCA was the continuation of mining even after reaching the ground water level which has been disallowed by the regulatory agencies. It was also noticed that the deep mining pits have tuned into large lakes of ground water. The water was blue, indicating that this was ground water and not surface water runoff collected in the pits.\textsuperscript{163} It was also noticed that configuration of water pipes laid out of draw water out of the pits to throw them over hills and let

\begin{flushleft}
\textsuperscript{162} Id. at 4021.
\textsuperscript{163} Id at 4022.
\end{flushleft}
the water flow out. This is a grave misuse of precious ground water in an area where ground water is the only source of water for the local population both urban and rural.

The Central Ground Water Board (CGWB) noticed that the mined water is not being, pumped into abandoned pits to recharge the ground water. Instead the groundwater pumped is discharged into the surrounding nalas, leading to wastage of groundwater.¹⁶⁴ It was also observed that, drainage, pattern of the area has been modified due to haphazard mining and dumping of waste material which has fearing on natural path of ground water flow in the area.

The Supreme Court held that the mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions. The Aravalli Hill range has to be protected at any cost.

The Court further held:

The development and the protection of environment are not enemies, if without degrading the environment or minimizing adverse effects thereupon by applying stringent safeguards. It is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck, if the 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 interests. In case of doubt,

¹⁶⁴ Id. at 4025.
however, protection of environment has to be precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not necessary that there should be direct evidence of harm to the environment.\textsuperscript{165}

It was suggested by the Court that, in order to draw water resource management plan, it is essential to assess the water quality of the various components of the hydrologic cycle e.g. stream, ground water, surface water etc. It has been pointed out that since the surface water potential is not promising in the district, there is increased dependence on the ground water for meeting the agricultural, domestic and industrial requirement resulting in depletion of ground water resources in the district. It has also been suggested that utmost care is required for further development of ground water in the areas where the recharge of the ground water is low.\textsuperscript{166}

It was directed by the Court that all efforts should be made to preserve the ground water resources. Water shed management and rain water harvesting to be implemented in the Aravalli hills region on war footing. In the areas where mining deeper than the ground water table of the area is to be carried out, adequate provision of pollution control and conservation of water resources should be made. There should be frequent inspections of the mining operations to ensure that these are in line with the requirement for sustainable development. The State Pollution Control Board shall undertake regular monitoring to check

\textsuperscript{165} Id. at 4045.
\textsuperscript{166} Id. at 4050.
compliance and to assess the ambient water quality and other environmental protection measures.\textsuperscript{167}

The Supreme Court directed the monitoring committee to inspect the mines in question and file a report within a period of three months with following directions:

(i) The order dated 6\textsuperscript{th} May 2002, as clarified herein-before cannot be vacated or varied before consideration of the report of the monitoring committee constituted by this judgement.

(ii) That the notification of environment assessment clearance dated 27\textsuperscript{th} January 1994 is applicable also when renewal of mining lease is considered after issue of the notification.

(iii) On the facts of the case, the mining activity on areas covered under section 4 and / or 5 of Punjab Land Preservation Act, 1900 cannot be undertaken without approval under the Forest (Conservation) Act, 1980.

(iv) No mining activity can be carried out on area over which plantation has been undertaken under Aravalli project by utilization of foreign funds.

(v) The mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions.

(vi) The Aravalli hill range has to be protected at any cost. In case despite stringent condition, there is an adverse irreversible effect on the ecology in the Aravalli hill range area, at a later date, the total stoppage of mining activity in the area may have to be considered. For similar reasons

\textsuperscript{167} \textit{Id.} at 4049.
such step may have to be considered in respect of mining in Faridabad district as well.

(vii) The Ministry of Environment and Forest (MOEF) is directed to prepare a short term and long term action plan for the restoration of environmental quality in Aravalli hills in Gurgaon district having regard to what is stated in final report of CMPDI within four months.

(viii) Violation of any of the conditions would entail the risk of cancellation of mining lease. The mining activity shall continue only on strict compliance of the stipulated conditions.168

The Court introduced the formula of payment of fine by the polluter according to turnover of the industry instead of on the principle of polluter pays because it is unjust in *Vijay Singh Puniya v. State of Rajasthan and Others*169. The brief facts of this case were that the emission of untreated waste water by the dying and printing units were depriving the citizens of access to unpolluted ground water, which was essential for their existence. The petitioners alleged that not only the ground water has been affected by the way the industrial units have been operating, but their working has also affected the quality of vegetables as well as crops which were grown in the area. The owner of the industrial units, unmindful of the environmental degradation caused disturbance to the ecological balance for their self interest and their actions were hazardous to life within the meaning of article 21 of the Constitution. Thus the said industrial units were directed to be shifted to the industrial area.

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168 Id. at 4056.
169 AIR 2004 Raj. 1.
The Court held:

While the economic growth of the State is extremely important, at the same time, it must be compatible with ecology. In order to safeguard, protect and improve the environment, it is necessary to direct the shifting of industries from the present site to an industrial area where proper arrangements for treating the affluent would be undertaken. The ecology and environment are of paramount importance and on account of monetary considerations, the ecology and environment cannot be given back seat. The Court further held that the industries have not been closed. They are being merely asked to shift to a proper location with a view to protect life and health of the citizens; to preserve ecology; and to boost sustainable development.170

The Court further observed that the waste water discharge from units also showed presence of lead (Pb.) in drinking water. According to the report submitted by the Rajasthan State Pollution Control Board, Jaipur and Department of Civil Engineering Malviya Regional Engineering College, Jaipur (RSPC), the waste water contains both chemical toxicants as well as biological oxidisable matter. The report further disclosed that the industries discharge these effluents, without any treatment, into the nearby nallah and from there these metals percolate to the ground water and contaminate it. The report makes a special reference to the presence of Cr in the water discharged by the units. It also listed the ill effects of Cr, which include “hexavalent chromium Cr+5 is highly poisonous to plants and human

170 Id. at 10.
system. In plants it causes lung cancer, eye and skin irritation, affected central nervous system, liver and kidney damage, lung and respiratory tract effects. The analysis of waste water discharged from units also showed presence of lead (Pb) in drinking water, which affects bone marrow, formation of hemoglobin, kidney, lungs etc and it replaces calcium in bones. Children can experience neuropsychological problems, retardation etc.¹⁷¹

The Court held that each of the units, within one month, shall deposit minimum pollution fine of Rs. 20,000/- with RIICO. The balance amount, depending upon the turnover, shall be paid to RIICO, within two months. In case, pollution fine is not paid within time, the defaulting units shall be sealed by the respondents.¹⁷²

It was observed by the Court that the pollution fine is very steep as it will workout to be ranging between 20% and 50% of the turnover. Where turnover of the unit holder is three lacs, he will have to pay Rs. 1,00,000/- as pollution fine and even in the case where the turnover is ten lacs, he will have to pay the same amount viz. Rs. 1,00,000/-. The Court further observed that this would create an unjust situation and persons having different turnovers will be required to pay the same amount of pollution fine. Therefore, in the circumstances, we consider it appropriate to vary the formula for determining the damages on the principles of polluter pays by directing that each of the industrial units shall pay to RIICO 15% of its turnover.¹⁷³

¹⁷¹ Id. at 9-10.
¹⁷² Id. at 11.
¹⁷³ Ibid.
The Court held:

We would like to point out that though we have used the word “polluter fine” in the judgement and order dated 7-3-2003, is essence and actually it is in the nature of damages which the industrial units are required to pay for causing disturbance to the one of the basic environmental elements, namely water, which is necessary for existence of living creatures including human beings, animals, birds, flora and fauna. Any person who disturbs the ecological balance or degrades, pollutes and tinkers with the gifts of the nature such as air, water, river, sea and other elements of the nature, he not only violates the fundamental rights guaranteed under article 21 of the Constitution but also breaches the fundamental duty, to protect the environment under article 51-A [g].

Like a prudent family which lies within its means, the family of earth citizens has to learn to live within its means. That is the only way to avoid bankruptcy. Since sustainability is such a crucially important concept in the context of both ecology and development.

Sustainable eco development calls for some strategy of conservation of natural resources. Conservation does not mean only the preservation of the wildness but also and more importantly the rational management of natural resources so that it may yield the greatest sustainable benefit to the present generation while enriching or at least maintaining its potential to meet the needs of future generations. Conservation and

174 Ibid.
development may appear to be incompatible but they are not so. The conservation strategy is particularly important for living resources.¹⁷⁶

It is necessary to maintain and protect the vital ecological process and life support systems. The most threatened of these are coastal and fresh water system, forests and agriculture. The share of water freely available in nature is almost zero during summer months in Punjab. Where in rice is now being grown during this season. The peasant uses diesel to lift huge qualities of water for irrigating the rice fields. When he eats home grown rice, he is actually eating diesel. The practice negate the principle of sustainability.¹⁷⁷

In the end it can be said that sustainable use of natural resources is the key to eco development, whereby ecology sustains development and development sustains ecology.

¹⁷⁶ Ibid.
¹⁷⁷ Id. at 65.