CHAPTER IX
PROHIBITION, PUBLIC HEALTH AND HEALTHY ENVIRONMENT

A. Prelude

There is an important saying that "living precedes living well" or "being precedes well being". The truth of this saying is recognised in the directive principle contained in article 47 which provides:

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.2

Thus, improvement of public health has been considered as one of primary duties of the State. Improvement in public health contributes to the health of the people. Health is undermined by drugs injurious to health and the State is directed to bring about the prohibition of the consumption of drugs which are injurious to health. The inclusion of alcoholic liquor in the directive theoretically promotes health since alcohol is a narcotic, a depressant, and addiction to alcohol produces great economic and social consequences. But the State has been allowed to use the intoxicating drinks for the medicinal purposes. Because the medicines are also meant to promote the health. State legislatures have power to make law in this regard.5

2. Article 47 of the Constitution.
3. Narcotic means a drug(as of the opium, belladonna or alcohol groups) that in moderate doses arrests sensibility, relieves pain, and produces profound sleep but that in poisonous doses produces stupor, coma or convulsion. See Webster's New International Dictionary. See also C.R.H. Readymoney v. Bombay, 59 Bom.L.R.786 at 812-15.
4. Alcohol exerts a depressant action on the brain, it muffles the mind. It, therefore, belongs to the group of depressant drugs, of which ether and barbiturates are representative. Under the influence of alcohol, the functions of the brain are depressed in a characteristic pattern. Alcohol is sometimes thought of, erroneously, as a stimulant. See Encyclopaedia Britannica Vol.1(1970).
5. See entry 8 of List II in the Seventh Schedule.
For proper health, an healthy environment is a must. Without healthy environment, a good or proper health is impossible. Keeping in view this aspect in mind, the Constitution (Forty-second Amendment) Act, 1976 added a new directive principle in article 48-A which provides:

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.6

Another provision dealing with environment finds place in the Part dealing with Fundamental Duties.7 Article 51A(g) specifically deals with the fundamental duty with respect to environment. It provides:

It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.8

The Constitution (Forty-second Amendment) Act, 1976 also made certain changes in the Seventh Schedule and certain entries related with environment were shifted from the State List to Concurrent List.9

6. Article 48-A was added by section 9 of the Constitution (Forty-second Amendment) Act, 1976 (w.e.f. 3.1.1977).
7. Part IV-A, which deals with Fundamental Duties, was added by the Constitution (Forty-Second Amendment) Act, 1976, vide section 11 (w.e.f. 3.1.1977).
8. Article 51A(g) of the Constitution of India was added by the Constitution (Forty-second Amendment) Act, 1976.
9. In the Concurrent List after entry 17, entry 17-A was inserted which provided for 'forests'. Originally 'forests' was a subject of State List in entry 19. This change was done because no uniform policy was being followed by the States in respect of protection of forests. The subject of protection of wild animals and birds was also transferred from List II, entry 20 and was inserted in List III entry 17-B. Also the Amendment Act, for the first time introduced a new entry 20-A in List III after entry 20. Entry 20A deals with population control and family planning. Today the greatest pollutant is people. The enormous increase in population is mainly responsible for the modern environmental problems. As the problem of population is of national importance and where the states have not taken any effective measures, it is justified to put this subject in the concurrent powers of the Parliament and State Legislatures.
By virtue of article 37 of the Constitution, the directive principles are non-justiciable. But they have been declared "fundamental in the governance of the country" and it is further provided that "it shall be the duty of the State to apply these principles in making laws."10

Thus, it is the duty of the legislature to make laws which promote the objectives, inter alia, of articles 47 and 48-A. At the same time, it is the duty of the courts to apply these directives in the interpretation of various laws. Various laws have been passed by different State Legislatures to bring about prohibition or to control the consumption of intoxicating drinks. These have been questioned before the courts time and again and generally the judiciary has shown its wisdom to uphold any such legislation which gives effect to the directive principles. They have been treated as reasonable restrictions on the fundamental right to carry on the trade in liquor. Various attempts have been made at the national as well as international level to protect and promote the environment. The recent central legislation, The Environment(Protection)Act, 1986, is a step in this direction. The judiciary has also given its support to protect and preserve the environment.

With this backdrop in mind, an attempt will be made in this chapter to analyse as to what had been the judicial role in protecting and promoting prohibition, public health and the environment.

B. Prohibition and Public Health

The prohibition of intoxicating liquor had long been a part of the policy of the Indian National Congress. Mahatma Gandhi, the greatest advocate of prohibition, placed it as one of the eleven demands before the Viceroy in 1930. Its inclusion in article 47 also received support from the Mohammedan Community whose special habits were reinforced by the Koranic injunction against intoxicating liquor. In the Constituent Assembly only a feeble opinion was expressed that it was a little premature and hence misplaced and that prohibition was against the religious practices of the tribal people. However, in reply to the debate, Dr. Ambedkar did mention that whether to act on the principle and when to do so and in what stages

10. See article 37 of the Constitution.
to do so are questions left to the State and to public opinion.\textsuperscript{11}

The policy of prohibition has been questioned on many grounds including, moral, economic and administrative. On the moral ground, it is questioned that is it right for the State to enter the personal area of morality and to regulate personal tastes and habits, if they do not affect public interest, peace and order or public morals? It is submitted that the preamble of our Constitution makes it amply clear that our country is based on socialistic\textsuperscript{12} pattern of society where the State is required to pay more attention to social problems than to the individual problems. Alcoholism is one of the social problems\textsuperscript{13} and hence it is justified on moral grounds that State can impose prohibition. Justice Krishna Iyer has rightly pointed out that:

If the state vulgarizes itself by making alcoholic poison abundantly available at every street corner like ice-cream or chocolate or flavoured milk, that state is intoxicated with irresponsibility and assassimates Gandhi ji. Opportunity is pathology, especially when victims are young, vulnerable, illiterate and indigent and buy treacherous 'joy' which is lethal toy. Gandhiji suffers stabs daily by the

\textsuperscript{11} VII C.A.D. 563-64. It may be mentioned here that the first part of article 47 relating to health was taken from the recommendations of the U.N. Charter on Food and Agriculture,1943, whereas second part of article 47 relating to prohibition was added at the time of consideration of draft by the Constituent Assembly. See,S.K.Agarwala, "Content of Directive Principles in the Indian Constitution", in M. Hidayatullah,(ed.), Constitutional Law of India,Vol.1,682 at 705-06 (1984).

\textsuperscript{12} The word "Socialist" was added to the Preamble by the Constitution (Forty-second Amendment)Act,1976, vide section 2(v.e.f. 3.1.1977).The basic aim of socialism is to provide "decent standard of life to all and to provide security of life from cradle to grave! See D.S.Nakara v. Union of India, A.I.R.1983 S.C.130 at 139.

\textsuperscript{13} See Raj Chengappa, "Alcoholism The Growing Malaise",India Today,72-75, April 30,1986. It has been pointed out that in major hospitals alcoholics now form 20 to 30 per cent of the patients in psychiatric ward when five years ago they constituted only 0.2 per cent. Half the industrial workers drink daily and alcoholism has become one of the major causes of absenteeism and falling productivity . Alcoholism is a major cause of broken marriages. Relationships with wives disrupted seriously in 64 per cent of the alcoholics. Most of the alcoholic husbands beat their wives regularly. 25 per cent of the road accidents are alcohol related and a third of the drivers on the high-way are under the influence of alcohol. Id. at 73. See also P.N.Kaushal v. Union of India,A.I.R.1978 S.C.1457
State and its ministry if it pollutes every street corner, every school and college and every sanctified place by cunningly attracting these classes and masses to consume nicely served intoxicants, eventually to collapse.14

Thus, it can not be justified to say that it is morally wrong to impose prohibition.

Secondly, on the economic ground, it is questioned that in a country where there is always dearth of public funds for basic development and social welfare activities, can prohibition occupy such a high priority in the scheme of values as to lead the State to suffer substantial loss in public revenue and enforcement?

It is submitted that alcoholism can also not be justified on the ground that it brings revenue to the State where there is always dearth of public funds for basic development. Certain basic facts regarding revenue from liquor need to be born in mind. When the states are entering on the credit side of their ledger the liquor revenue, they are apt to omit from the debit side numerous expenditures involved in items like the cost of maintenance of convicted criminals in jails, or alcohol caused crimes; cost of investigation and the conduct of cases in courts in which intoxicating beverages have played a part; the damage done to the person and property; of hospitalisation because of alcohol caused diseases, of absenteeism in factories and loss of work hours which are dead loss to the production as well as to the wage earner; damage done to machines and shorter life span because of drinking.15

Thirdly, the policy of prohibition is also questioned on the administrative ground that prohibition has miserably failed wherever it has been attempted.16 It is submitted that the policy of the prohibition has

15. See the Report of the Study Team on Prohibition, 214(1964). In January 1963, the Chief Ministers of States after an informal discussion on the various aspects of prohibition came to the conclusion that there should be no relaxation of the existing system and as a consequence of this the Planning Commission appointed a Study Team on Prohibition in April 1963 with Justice Tek Chand as its Chairman. The purpose of this team was to study the working of the prohibition programmes for the country as a whole.
16. For example, in U.S.A. or even in the State of Maharashtra.
specifically been enshrined in the directive principles of the State policy which are "fundamental in the governance of the country". And what is "fundamental in the governance of the country", cannot be ignored merely on the pretext that it is not possible to achieve this because of some administrative problems. The State is under an obligation to achieve the objective of the directive principles and if it refuses to implement the directive principles on the ground that it is not possible due to administrative difficulties, then it will amount to fraud on the Constitution.

Under the Government of India Act, 1935, the Federal Court had held that the power to legislate in respect of intoxicating liquor carried with it the power to prohibit the use of trade in intoxicating liquor. In State of Bombay v. F.N.Balsara, the first prohibition case decided by the Supreme Court, the validity of Bombay Prohibition Act, 1949 was challenged, on the ground, inter alia, that it violated the petitioner's fundamental right under article 19(1)(f). The Supreme Court took support from article 47 in upholding the reasonableness of certain restrictions under article 19(5) imposed by the Act, on the right of citizen to possess, or sell or buy or consume or use spirit, or wine, or toddy. The court observed that in judging the reasonableness of restriction one has to bear in mind the directive principles set forth in article 47. The court also observed that article 47 has no direct bearing on the Act which was passed in 1949, but a reference to it supports to some extent the conclusion that the idea of prohibition is connected with public health and to enforce prohibition effectively the wider definition of the word 'liquor' will have to be adopted so as

17. See entry 31, List II of Schedule 7 of Government of India Act, 1935 which dealt with intoxicating liquors that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.
20. Article 19(1)(f) provided that all the citizens shall have the right to acquire, hold and dispose of property. This clause has been omitted by the Constitution(Forty-fourth Amendment) Act, 1978.
21. Supra note 19 at 329. The Court also took note of the fact that medicinal preparations should be excluded in the enforcement of prohibition in view of article 47. The Court did not consider it reasonable that the possession, sale, purchase, consumption or use of medicinal and other toilet preparations should be prohibited merely because there was a mere possibility of their being misused by some perverted addicts. Ibid. It is submitted that all those medicines which have high percentage of alcohol in it and which has the effect of liquor, if taken, should be prohibited in view of article 47 unless it is a life saving drug. See also infra note 57a.
to include all alcoholic liquids which may be used as substitute for intoxicating drinks, to the detriment of health. 22

It is submitted that the court in this case very rightly used the directive principle of article 47 as reasonable restriction on the fundamental rights of the citizens.

In a subsequent case of Cooverjee v. Excise Commissioner, Ajmer,23 (Ajmer) Excise Regulation,1915, was in question. The petitioner contended that his fundamental right to carry on trade or business in liquor under article 19(1)(g) had been infringed by the act of the Collector of Excise under the said Act. Rejecting the contention of the petitioner, the Supreme Court observed that he had no legal right to sell liquor and it supported the policy of prohibition under article 47 of the Constitution. It was further observed that the legislature of the State is fully competent to regulate the business of intoxicating liquor to mitigate its evil or to suppress it entirely. There is no inherent right to a citizen to sell intoxicating liquor by retail; it is not a privilege of a citizen. As it is a business attended with danger to the community, it may be entirely prohibited, or be permitted under such conditions as will limit the utmost its evils. The manner and extent of regulation rest in the discretion of governing authority.24

In Nashirwar v. State of M.P.,25 the principal question for the determination of the apex Court was whether State has the exclusive right or privilege of manufacturing and selling liquor and can it auction licences for carrying on business of selling liquor which was neither manufactured nor imported by the State Government. Ray, C.J., speaking for the court, referred to and considered the impact of various decisions 26 of the Supreme Court

22. Ibid.
24. Id. at 223. See also Narayan v. State of Travencore and Cochin, A.I.R. 1954 T & C 504.
which dealt with control of intoxicating liquor by issue of licences and the like. It was observed:

There are three principal reasons to hold that there is no fundamental right of citizens to carry on trade or to do business in liquor. First, there is the police power of the State to enforce public morality to prohibit trades in noxious or dangerous goods. Second, there is power of the State to enforce an absolute prohibition of manufacture or sale of intoxicating liquor. Article 47 states that the State shall endeavour to bring about prohibition of consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Third, the history of excise law shows that the State has the exclusive right or privilege of manufacture or sale of liquor.27

It was further observed:

That the State has the exclusive right or privilege of manufacturing and selling liquor. The State grants such right or privilege in the shape of a licence or a lease. The State has the power to hold a public auction for grant of such right or privilege and accept payment of a sum in consideration of grant of lease.28

Thus the trade in liquor has historically stood on a different footing from other trades. Restrictions which are not permissible in other trades are reasonable and lawful so far as the trade in liquor is concerned. That is why even prohibition of the trade in liquor is not only permissible but is also reasonable. The reasons are public morality, public interest and harmful and dangerous character of the liquor. The State possesses the right of complete control over all aspects of intoxicants, viz., manufacture, collection, sale and consumption. The directive in article 47 is absolute. It is not dependent upon proving circumstances which justify prohibition. Therefore, there can be no fundamental right of property or trade in intoxicating liquor.29

In P.N.Kaushal v. Union of India,30 Punjab Excise Act, 1914 section 59(f)(v) and Punjab Liquor Licence Rules, (1956), rule 37 (as amended in Punjab

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27. Supra note 25 at 365. In our country the history of excise shows that the regulations issued between 1790-1800 prohibited manufacture or sale of liquors without licence from the collector. See Ibid.
in 1978) were in question. The brief facts of the case were as under. The Punjab Excise Act, 1914, contemplated grant of licences, \textit{inter alia}, for trading in foreign and country liquor. There were various conditions attached to the licences which were of regulatory and fiscal in character. The condition of licences included restriction of various types including obligation not to sell on certain days and during certain hours. Under rule 37, the sale of liquor on Tuesday up to 2 p.m. was prohibited. It was also prohibited on the seventh day of every month. Rule 37 was amended by virtue of the powers conferred in section 59 of the Act. Under the amended rule 37, there was to be no sale of liquor on Tuesdays and Fridays of every week. The petitioner challenged section 59 of the Act which was the source of power to make rules. If this section failed the rule must fall because the stream could not rise higher than the source.\(^{31}\) Earlier this prohibition on liquor sales on Tuesdays and Fridays was applicable to hotels, restaurants and other institutions but it was not applicable to the like institutions run by the government. The Court pointed out that this was \textit{prima facie} discriminatory and violative of article 14. But during the course of hearing, the learned Additional Solicitor General readily agreed that the Tuesdays and Fridays ban would be equally applicable to all the institutions run by the government. Thereafter the Court agreed that now it was no more discriminatory and arbitrary.\(^{33}\)

The court also observed that section 59(f)(v) of the Punjab Excise Act was perfectly valid. The regulation of the number of days and the duration of hours when supply of alcohol by licencees should be stopped was quite reasonable, whether it be two days in a week or even more. The exercise of the power to regulate, including to direct closure for some days every week, was reasonable and calculated to temperance and promote social welfare and could not be invalidated on the imaginary possibility of misuse.\(^{34}\) It was also pointed out that "of all the problems in human society, there is probably none which is as closely related to criminal behaviour as is drunkenness".\(^{35}\) The introduction of prohibition in India actually

\(^{31}\) \textit{Id. at} 1439.  
\(^{32}\) \textit{Id. at} 1468.  
\(^{33}\) \textit{Ibid.}  
\(^{34}\) \textit{Id. at} 1475.  
\(^{35}\) \textit{Id. at} 1460. This was quoted from Dr. Walter C. Reckless, \textit{The Crime Problem}, at 115, 116 and 117.
caused a considerable fall in number of crimes caused by intoxication. Before prohibition, one often had to witness the miserable spectacle of poor and ignorant persons - millhands, labourers, and even the unemployed with starving families at home. These persons spent the little they earned after a hard day's toil or what little had remained with them or what they had obtained by some theft, trick, fraud or borrowing. This also resulted in leaving the wife and children starving and without proper clothes, education, and other elementary necessities of life. Thus even the partial prohibition in pursuance of article 47 of the Constitution promotes social justice.

In Satish v. State, the full bench of the Madras High Court explained the meaning of the words "medicinal purposes" in article 47. In this case, the rules issued under the Madras Prohibition Act, 1937 provided that only persons who were 45 years of age and above could apply for permits to consume liquor on grounds of health. It was argued that the said rule was in violation of article 47 which permitted consumption for medicinal purposes of intoxicating drinks. The impugned rule prohibited the use even for medicinal purposes by persons below 45 years. The full bench of Madras High Court observed:

The words 'medicinal purposes' seem to contemplate the user of liquor for making medicinal preparations and do not contemplate the free use of intoxicating drinks as medicine. In any event, the exception contained in Article 47 has to be strictly confined to cases where the consumption of alcohol in the form of intoxicating drink is necessary on medical or therapeutic grounds. Medical opinion appears to be uniform that alcohol has no medicinal or therapeutic value, except in cases where the disease itself has been brought about by long standing drinking habit.

In determining the reasonableness of the restrictions as incorporated in the impugned rule, under article 19(5) in the interests of general public, support was drawn from article 47. The Court pointed out that reasonableness of any restriction has to be tested with reference to the object of the legislation being total prohibition and the issuance of liquor permits on grounds of health being an exception to the general rule, which cannot be claimed as of right. Therefore, even assuming that alcohol has some

36. Supra note 30 at 1463. These observations were quoted from M.J. Sethna, Society and the Criminal (third edition) at 165, 166, 168 and 169.
38. Id. at 254-55.
39. Id. at 256.
medicinal or therapeutic value, unless it is shown that its use is absolutely necessary for curing a particular ailment or for maintaining good health, preventing consumption of alcohol in the course of achieving the object of total prohibition cannot be said to be unreasonable.  

Article 47 was also used for taking support in interpreting the ambit of 'public health' in entry 6 of List II of the Seventh Schedule. In Darshan Lai v. State, both medicinal and toilet preparations were held to have something to do with 'health' and, therefore, the State Legislature, more particularly, by virtue of article 47, would be well within its right to enact legislation to regulate their use in a manner so that they did not affect the health of citizens.

Gidhey Club v. Delhi Administration brought before the court a very curious situation. The question was whether directive principle contained in article 47 of the Constitution could be enforced by an administrative action of the State without resorting to the making of a law or a rule. The court answered this question in affirmative. It was observed that the directive principle embodied in article 47 could validly be implemented by executive action so long as it did not contravene any law or rule. Since the monopoly of regulating the liquor trade is vested in the government, the executive policy of the government must prevail as it does not trench on any one's legal rights. The Court relied on some other decisions and compared-

40. Ibid.
41. A.I.R.1979 Pb.&Hrn.102 at 108,112. See also Pritpal Singh v. Chief Commissioner of Delhi, A.I.R.1966 Pun.4. In Re Mohan Goud, A.I.R.1980 A.P.84 the petitioner was interested in the sale of liquor and grant of licence to itself, but did not want more licences to be issued to others in the area concerned. He contended that article 47 would be violated by giving effect to the relevant rule which provided for grant of licence subject to requirements of public order, health and safety. The High Court summarily rejected the argument on the ground that article 47 could not be used for this purpose. Id. at 85.
42. A.I.R.1980 Del.33.
43. Id. at 38.
44. Ibid.
45. V.S. Deshpande, C.J., who delivered the judgment in this case relied on the following decisions. Kesavananda Bharti v. State of Kerala, A.I.R. 1973 S.C.1461; State of Kerala v. N.M. Thomas, A.I.R.1976 S.C.490(In this case Krishna Iyer, J., in para 159 expressed that "the Court must wisely read the collective directive principles of Part IV into the individual fundamental rights of Part III"). Smt. Indira Gandhi v. Raj Narain, A.I.R.1975 S.C.1590, which was arrived at by enforcing the value considerations derived from the preamble and other non-enforceable provisions of the Constitution, R.R. Dalvai v. State of Tamil Nadu,(1976) 3 S.C.C.748, wherein the decision was based on the directive in article 351. Justice Deshpande pointed out that the directive in article 351 (conted.)
tive constitutional law and observed that the expression in article 37 that Part IV of the Constitution "shall not be enforceable by any Court" means that a writ cannot be filed to compel the government to put into action every objective set out in the preamble and to implement every directive principle. "This does not mean that the preamble and the directive principles are mere homilies or pious platitudes which can be ignored while making State policy either by legislation or by administrative action".

It is submitted that this judgment is important as it has given sharp edge to directive principles, policies in the context of which can be declared administratively, and the authorities functioning quasi-judicially have to take such declarations of policy into account.

In Jawahar Lal Jaiswal v. State of U.P., the validity of the U.P. Excise Act, 1910 and a notification issued thereunder was questioned. The notification issued by the U.P. Government on 20 December 1980 had reduced the number of country liquor shops in the State. The Allahabad High Court observed that the action of the State in reducing the number of country liquor shops was obviously in consonance with the directive principle laid down in article 47 of the Constitution. It also observed that such an action could never be termed as unreasonable.

In George Mampilly v. State, the Kerala High Court allowed a member of the public, a medical practitioner, to file a writ petition for

can not be distinguished in its nature from the directive in article 47. If article 351 can support the decision, article 47 can also do it. See supra note 42 at 36.

46. Justice Deshpande pointed out that the directive principles in Part IV of our Constitution have been taken from the Irish Constitution and that Irish Judges have treated the preamble and directive principles as substantive basis for judicial decisions, so also have the Canadian and the West German Judges. Even the French Legal system which does not have a judicial review of legislation by a superior court enables the constitutional council to declare a law unconstitutional on the ground that the said law is contrary to certain principles embodied in the Constitution rather than to any specific provision thereof. See supra note 42 at 36.

47. Supra note 42 at 36. See also supra note 14.


the maintenance and promotion of public health and averting any danger to public health. In this case the question was whether packing arrack in polythene sachet is unsafe and a health hazard and does it require a seri-

examination of the question in the light of article 47 of the Constitution. It was held that article 47, no doubt, embodies a directive principle of state policy which is quite different from a fundamental right which is judicially enforceable. Nevertheless, a directive Principle of state poli-

cy is "fundamental in the governance of the country". The ideal proclaimed is prohibition of consumption of intoxicating drinks and that ideal has relevance in regard to the rise in the level of nutrition, standard of liv-

ing and improvement of public health. It was further pointed out that in the light of the practical difficulties and realities, it may not be possible for the State at a given point of time to achieve the ideal. But, never-

theless, the ideal should always be retained as a perspective and a goal to be achieved, however hard the path may be. The essence of article 47 is raising of level of nutrition, standard of living of people and improvement of public health. Naturally the State is not expected to do any act which will not only not promote this directive principle of state policy but go against the directive. Hence, where the question is whether packing attack in polythene sachet is unsafe and a health hazard, the matter arising for -

consideration deserves serious consideration particularly in the light of article 47 of the Constitution. In the context of these observations the court did not allow the polythene sachets to be used for the packing and distribution of arrack.53

It is submitted that this case is important not only because it highlighted the importance of article 47 but also because the court allowed a member of a public having sufficient interest to maintain an action for judicial redress of public injury arising from breach of public duty or violation of some provision of the Constitution or the law and to seek enforcement of such public duty and observance of such constitutional or legal provision.54

In Vincent v. Union of India, it was pointed out by the Supreme Court that maintenance and improvement of public health have to rank high

51. Id. at 31.
52. Id. at 31-32.
53. Id. at 33.
54. Id. at 28.
as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged.

In State of M.P. v. Nandlal, the Supreme Court pointed out that liquor laws cannot violate article 14. It was held that there is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. No one can claim as against the State, the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others, the State cannot escape the rigour of article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. The State cannot ride roughshod over the requirement of article 14. But, while considering the applicability of article 14 in such a case, the Court must bear in mind that, having regard to the nature of the trade or business, the court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The court would, in view of inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or malafide.

56. Id. at 270.
57. Id. at 280. See also Organisation of P.P. of India v. Union of India, A.I.R.1987 S.C.1414. In this case, on 23 July 1983, the Central Government prohibited the manufacture and sale of specified drugs on the basis that use thereof involved risk to human beings and/or such drugs had no therapeutic value. The petitioner filed a writ for quashing the notification of the Central government on the ground that it was illegal, unconstitutional, without the authority of law and was violative of fundamental rights of the petitioner. However, during the course of hearing it was stated on behalf of the petitioner that they had no intention to challenge the government drug policy and would not like to indulge in the manufacture of such drugs and formalitious which were found to be injurious to human health. In view of this, the Court did not find any merit in this case and hence dismissed the petition.
In Dabur India Ltd. v. State of U.P., an important question relating to interpretation of article 47 of the Constitution was involved. The Supreme Court disagreeing with F.N.Balsara, to the extent of excluding medicinal preparations from prohibition, observed:

Article 47, in our opinion, does not indicate that medicinal preparation containing alcohol should be excluded in the enforcement of prohibition, even though the medicinal preparations contain high percentage of alcohol....the expression"medicinal purposes" contained in (article 47) has to be construed in the light of directive principles of state policy of bringing about prohibition of intoxicating drinks and of drugs which are injurious to health.... For the effectiveness of prohibition, the State, in our opinion, must be held to have the power to regulate the possession or consumption of such medicinal preparations containing comparatively high percentage of alcohol(24 percent in the present case) under the Excise Act. A construction to the contrary would defeat the very objective of the prohibition and at any rate, not warranted by Act 47 of the Constitution.

Since Balsara was decided by a constitution bench of five judges, and the present case was before the division bench consisting of two judges, the present case was also referred to be placed before the Constitution bench.

Thus, the judiciary has shown its concern in implementing the directive principle embodied in article 47 of the Constitution and thereby promoting prohibition of intoxicating drinks and drugs and also protecting the health of the people. As stated earlier, another aspect of good health is the healthy environment. Without a clean and unpolluted environment, good health is not possible. Now let us analyse as to how our State and judiciary have responded to provide us a healthy environment.

C. Public Health and Healthy Environment

A good health and a healthy environment are the two sides of the

57b. See supra note 21. See also Satish v. State, supra note 37.
57c. Supra note57a at 522.
same coin. It is an established fact that there exists a vital link between environment and life. For healthy existence and preservation of the essential ingredients of life requires stable ecological balance. This balance is being upset by misuse, abuse and uncontrolled use of the resources of the environment thereby endangering the very existence of human race. Environmental planning and preservation is today the concern of all. In the Western World the threat to environment comes from advanced technology and in the developing world it arises from the lack of it. The ultimate concern of the common man is, however, his survival. He must have a healthy environment. The problem of environmental pollution has posed the highest threat to human existence at present though the problem of pollution of environment is as old as the emergence of homo sapines on the planet and it was realised in the times of Plato 2500 years ago. The Bhopal gas tragedy on the night of 2nd and 3rd December, 1984 converted a pleasant, mild winter's night into a nightmare of misery, panic, sickness and, for at least 2500 people, babies and children, fathers and mothers, siblings and grand parents, a slow, painful, unnecessary snuffing out of life. And what is most unfortunate is that inspite of this unforgettable tragedy, the gas leakage has become a regular phenomenon. Most of our trivers are polluted. There is deforestation in most of the forests. Noise pollution is also at the alarming stage. Rapid increase in the population is yet another threat to the

61. It was the worst ever industrial accident in history. It was caused due to the leakage of Methyl isocyanate, a poisonous product, or Union Carbide in Bhopal industry. It took an unprecedented and still uncounted death toll and leaving no fewer than 50,000 affected. See Inderjit Badhwar and Madhu Trehan,"Bhopal City of Death", India Today,4-25(31 December 1984). See also V.R.Krishna Iyer, "Bhoposhima and Indian Law", Indian Express, 6, 18 April,1985(Chandigarh Edition).
62. There were 48 gas leakage in various parts of the country after Bhopal tragedy till January 1987. See M.J.Antony,"Future shock for polluting Units", Indian Express, 6,5 January 1987. The latest gas leak at the public sector Durgapur Chemical Limited on 10 June 1987, affected over 100 people. See editorial, Indian Express, 17 June 1987(Chandigarh Edition). According to certain environmentalist, developing countries like India will soon have to cope with a new environmental problem, i.e., acid pollution. The problem of acid rain is very much in the making in India. See The Tribune, 6, 23 June 1986.
environmental pollution. Today, the fundamental question before the world is whether we can allow the destruction of the environment leading to the destruction of all life on earth. Though, traditionally India is considered a "pollution loving nation", yet the problem of environmental pollution is not beyond our control.\textsuperscript{63} Despite our brutal exploitation of our forests, indiscriminating quarrying, pollution of our water and air it is still possible with our limited resources to arrest the damage and repair it and take preventive measures.\textsuperscript{64} With the change of traditional concept of laissez faire to the modern concept of 'social welfare state', now the state is not merely concerned with the maintenance of law and order in society but has assumed all the duties which touch public life, public welfare and hence it becomes an essential duty of the State to provide citizen a healthy environment to live in. Our Constitution contains number of provisions for protecting and preserving a healthy environment. There have been efforts at the international level to maintain healthy environment. There are numerous statutory provisions which are aimed at protecting the environment from pollution. And above all the judiciary in India has been playing a significant role in the protection and preservation of healthy environment. Let us examine and analyse each one of these.

(i) Constitutional Mandate

In the environment conscious states, environmental problems are generally handled at the legislative level. But the Indian Constitution is perhaps the first Constitution in the world has provisions for the protection of environment.

At the very outset, the preamble of the Constitution provides that our country is based on the socialistic\textsuperscript{65} pattern of society where the State

\textsuperscript{63} See Paras Diwan, "Environmental Protection: Issues and Problems", in Environment Protection, 11-17 at 11 and 14(1987). The learned author has pointed out that we pollute air by bursting crackers on Dussehra, Diwali and on the occasions of marriage and other festivals. We pollute our rivers by disposing of our dead bodies and all other human and other waste. We take so much of wood from our trees that in many areas trees have become scarce. We are a country which believes in open latrines. We are equally responsible for noise pollution by using loudspeakers in religious places and also in secular matters. \textit{Id.} at 11.

\textsuperscript{64} \textit{Id.} at 14.

\textsuperscript{65} Supra note 12.
pays more attention to the social problems than on any individual problems. Pollution is one of the social problem and the State is required under the Supreme Law to pay more attention to this social problem and march towards the avowed aim of just social order.

Article 47, which is one of the directive principles of state policy, provides, for improvement of public health as one of the primary duties of the State.\textsuperscript{66} The improvement of public health will include the improvement of environment without which public health cannot be assured. Another directive principle embodied in article 48-A provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.\textsuperscript{67} Under this article, the State may not only adopt the protectionist policy but also provide for the improvement of polluted environment. In the first case, the State may impose restrictions on the use of factors adversely affecting life and development of body of human beings, animals, plants or other organisms; whereas in the latter case, the state may adopt some means to improve the polluted environment.\textsuperscript{68} Article 48-A also provides for the safeguard of forests and wildlife because these are important factors which affect environment. For example forests maintain balance between oxygen and carbon-dioxide which constitute an important safeguard against air pollution. According to recent researches, the trees can act as an effective noise screen.\textsuperscript{69} These directive principles are not mere show pieces in the window dressing. Article 37 of the Constitution make them "fundamental in the governance of the country" and it further provides that "it shall be the duty of the State to apply these principles in making laws". Hence the State cannot treat these obligations of protecting and improving the environment as mere pious obligations. These are part of the Supreme Law of the land and they must be implemented.

\textsuperscript{66} See supra note 2.(Emphasis is of the author).
\textsuperscript{67} See supra note 6. This article uses the word "environment" which means the aggregate of all the external conditions and influences affecting life and development of organs of human beings, animals and plants. Now the word "environment" has been defined under section 2(a) of The Environment Protection Act, 1986. See infra.
\textsuperscript{69} See "Combating noise pollution with trees" in Indian Express at 8, 13 May 1985(Chandigarh Edition).
Article 51A(g) specifically deals with the fundamental duty with respect to environment. It provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, rivers, lakes and wild life and to have compassion for living creature. This article imposes fundamental duty on 'every citizen' to protect and improve 'natural environment'. It is submitted that by the use of words 'every citizen', the non citizens have been excluded from this fundamental duty which is not consonance with the spirit of the Constitution. Secondly, this fundamental duty of citizens to improve or protect the environment refers only to 'natural environment'. But in the present days the pollution is caused not only by exploiting the 'natural environment' but otherwise also. In the modern industrialised civilisation such a concept is misnomer. Hence the word 'natural' before environment in article 51A(g) should be dropped.

And finally article 21 guarantees a fundamental right to life, a life of dignity, to be lived in a proper environment, free of danger of disease and infection. The talk of fundamental rights or maintaining dignity of every person is meaningless unless they are secured with the minimum liveable environment. The judicial grammar of interpretation of this article has already travelled from north pole to south pole. And recently Justice P.A.Chaudhry of Andhra Pradesh High Court gave a clarion call in T.Damodhar Rao v. S.O.Municipal Corp. Hyderabad and observed that the enjoyment of life and its attainment and fulfilment guaranteed by article 21 of the Constitution embraces the protection and preservation of nature’s gifts without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of article 21 of the Constitution.

It is submitted that these constitutional compulsions must vitalise the rule of law into weaving a dynamic policy on environment lest the paramount law be stultified into a paper declaration.

70. See supra note 7 and 8.
71. A.I.R.1987 A.P.171. See also infra note 233.
72. Id. at 181. In a call-attention debate in the Lok Sabha on 2.5.84,an opposition M.P., Mr.Ram Vilas Paswan had strongly pleaded that health should be included in Part III dealing with Fundamental rights.
The United Nations is also very much conscious of the world wide problem of maintaining the environment safe for human beings and other living organisms. The representatives of 113 world governments participated in the United Nations Conference on Human Environment at Stockholm in June 1972. India was a party to Stockholm Declaration which evolved the principles and action plan for controlling and regulating environment degradation. This declaration is also called the Magna Carta of our environment.\(^74\)

The Stockholm Declaration provided that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permit a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.\(^75\) It directed that the natural resources must be safeguarded for the present and future generations.\(^76\) It emphasised on the safeguard of wildlife and its habitat,\(^77\) protection of ecosystem,\(^78\) prevention of pollution of sea by substances that are liable to create hazard to human health.\(^79\) It recognised that economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life. A specific stress was laid down on education in environmental matters\(^80\) and for scientific research and development in the context of environmental problem.\(^81\) It was also laid down that the states should co-operate to develop further the international law regarding liability and compensation for victims of pollution and other environmental damages.\(^82\)

And finally it provided that man and his environment must be spared from the effects of nuclear weapons and all other means of mass destruction.\(^83\)

\(^74\) Suresh Jain, Environmental Law in India, 543(1984).
\(^75\) Id. Principle 1, Stockholm Declaration, 1972.
\(^76\) Id. Principle 2,3 and 5.
\(^77\) Id. Principle 4.
\(^78\) Id. Principle 6.
\(^79\) Id. Principle 7.
\(^80\) Id. Principle 19.
\(^81\) Id. Principle 20.
\(^82\) Id. Principle 22.
\(^83\) Id. Principle 26.
Thus, in view of the above mentioned principles the Stockholm Declaration was an important milestone in the protection of environment. The principles proclaimed in the Stockholm Declaration are generally in the nature of directive principles of state policy enshrined in Part IV of our Constitution.  

On 15 December 1972, the United Nations General Assembly passed a resolution emphasising the need of active co-operation among the States in the field of human environment. The resolution designated 5 June as the World Environment Day and urged governments and organisations in the United Nations System to undertake on that date every year world-wide activities reaffirming their concern for the preservation of the environment. The charter of Economic Rights and Duties of States, 1974 provided that the protection and preservation of the environment for the present and future generations is the responsibility of all States.

On 1 August, 1975, in the Final Act of the Conference on Security and Co-operation in Europe, the participating states affirmed that the protection and improvement of the environment, as well as the protection of nature and the rational utilization of its resources in the interest of present and future generations, is one of the tasks of major importance to the well-beings of peoples and the economic development of all countries.


UNESCO in collaboration with the U.N. Environment Programme organised in October 1977 in Soviet Georgia a major inter-governmental conference on environmental education. This conference was attended by nearly 400 delegates from 74 countries. The Executive Director of U.N.Environment Programme warned that "environmental education is now a matter of life and death."

International Conference on Environmental Education was held from 16-20 December, 1981 in Vigyan Bhawan, New Delhi. This was organised by the Indian Environmental Society and the Department of Environment of the Government of India, with the active support from the participation of a number of other governmental and non-governmental agencies, including the agencies of the U.N. family. The conference stressed that environmental education should start from childhood so that the child becomes fully aware of the inter-dependence of the different components of earth. Environmental education should be both through formal curricular methods in schools and universities and through continuing education with the assistance of mass media.

International Union for conservation of Nature and Natural Resources in its fifteenth session held in New Zealand in October 1981 recognized the importance of comprehensive conservation of natural resources and environmental education.

In 1982, the World Charter for Nature reaffirmed the fundamental purpose of the United Nation for the protection and preservation of the environment. On 7 March 1983, our late Prime Minister Mrs. Indira Gandhi in her inaugural address at the Non-Aligned Conference held at New Delhi stated that some people still consider concern for the environment an expensive and perhaps unnecessary luxury. But the preservation of environment is an economic consideration since it is closely related to the depletion, restoration and increase of resources. This was for the first time in the history of the Non-Aligned Movement, that a resolution was passed concerning the environment at a Summit Conference. In 1986, international conference to consider the question of saving of trees and forests was held in Paris.

India is a signatory to practically all international Conferences and Conventions on environment. Hence it becomes obligatory to take positive steps for the preservation and protection of the environment by implementing them in the true spirit.

85. Department of Environment of Government of India was set up in 1980 on the recommendations of Tiwari Committee Report, 1980.
There are numerous statutory provisions in India which can certainly play a pivotal role in preventing and controlling all kinds of pollution. Indian Penal Code, 1860, makes various acts affecting environment as offences. Chapter XIV of the Indian Penal Code containing sections 268 to 294-A, deals with offences affecting the public health, safety, convenience, decency and morals. The sole object of Chapter XIV is to safeguard the public health, safety, convenience by causing those acts punishable which make environment polluted or threaten the life of the people. Section 268 of the Code defines 'public nuisance', and section 290 provides punishment for public nuisance in cases not otherwise provided for. Thus, under these provisions any act or omission of a person which caused any injury to another person by polluting the environment can be controlled. Under section 268 of the Code, inter alia, noise pollution can also be controlled. Sections 269 to 271 make a negligent act likely to spread infection of disease dangerous to life, punishable. Sections 272 to 276 deals with adulteration of food, drinks and drugs. Section 277 of the Code can be used to prevent the water pollution in certain cases. Similarly, section 278 provides for preventing pollution of atmosphere noxious to the health of persons in general. Section 284 to 286 can be used to prevent the negligent handling of poisonous substances, combustible matters and explosive substances. Under sections 426, 430, 431 and 432 general pollution can be prevented.

Similarly the provisions of Criminal Procedure Code, 1973, can also be invoked to prevent almost all kinds of pollution. Chapter X Part B containing sections 133 to 143 and Part C having section 144, can provide most effective and speedy remedy for preventing and controlling public nuisance polluting air, water and noise. Under section 133 of the Code, the

86. See Section 268 of the Indian Penal Code deals with public nuisance.
87. Section 290 deals with punishment for public nuisance in cases not otherwise provided for.
88. Section 270 makes malignant act likely to spread infection of disease dangerous to life punishable. Section 271 deals with disobedience to quarantine rule.
89. Section 277 deals with fouling water of public spring or reservoir.
90. Section 278 makes the making of atmosphere noxious to health punishable.
91. These sections deal with various kinds of mischief.
94. See Raghunandan, A.I.R.1931 All.706.
District Magistrate or Sub-divisional Magistrate or Executive Magistrate, if he is so empowered by the State Government, on receipt of report from police officer or other information, may make conditional order. The conditional order may be made absolute and if the concerned person fails to carry it out, he can be prosecuted under section 188 of the Indian Penal Code. So the guns of section 133 go into action whenever there is public nuisance. Although both Indian Penal Code and Criminal Procedure Code, are of ancient vintage the new social justice orientation imparted to them by the Constitution of India makes them a remedial weapon of versatile use for the protection of the public health and environment.

Section 91 of the Civil Procedure Code, 1908, allows the Advocate General or with the leave of the Court any two persons to file a suit for an injunction to prevent a public nuisance. Such a suit can be filed by persons who may not have themselves suffered any damage.

In addition to the above statutory provisions, there are various special laws which help in protecting the environment from pollution. But after the Stockholm Conference of 1972, the Indian Parliament has enacted number of laws directly relating to pollution and environment. And the latest enactment in this regard is the Environment(Protection)Act, 1986. In addition to this several states have their own laws for regulating pollution. All these laws are not faultless. Yet much more remains to be achieved in their implementation.

95. See section 133 of Criminal Procedure Code.
96. See section 136 of the Code. Even the Head of the government department or public bodies can be prosecuted for defying the orders. See also supra note 93.
97. See supra note 93 at 1628.
100. Act No.29 of 1986.
In 1980, Central Government appointed Tiwari Committee to review the environmental legislations and recommend measures for ensuring environmental protection. After reviewing the various environmental legislations, the Tiwari Committee pointed out the following shortcomings:

1. Many of the Laws are out dated;
2. They lack statements of explicit policy objectives;
3. They are mutually inconsistent;
4. They lack adequate provisions for helping the implementing machinery;
5. There is no procedure for reviewing the efficacy of laws.

On the basis of its analysis of the various environmental legislations, the Committee suggested the following measures;

1. Comprehensive review and reformation of some Central and State Acts.
2. New legislation for areas of action not covered by the present laws.
3. The introduction of 'Environment Protection' in the Concurrent List of the Seventh Schedule.

However, Chhatrapati Singh has pointed out that the Committee's observations were the results of a macro-level analysis. That is, an analysis in which the conclusions are inferred merely by looking at the formal characteristics of numerous laws and not relating itself to the actual socio-economic conditions of the implementation of these laws. He further pointed out that the experience of those who were really involved in litigation has shown that at the micro-level of actual application the nature of the problems involved in environmental legislation were of a type which were not at all covered by these observations. Hence while not disagreeing with the pertinent observations of Tiwari Committee, it must be emphasised that they

102. For example, the Insecticide Act,1968; The Water (Prevention and Control of Pollution)Act 1974; the Indian Forest Act,1927.
103. Supra note 101 at 24.
failed really to get the heart of the problems. Our environment laws are not weak laws, but are often neither effective nor conducive in the attaining of the desired goals.

According to Chhatrapati Singh, at the micro-level, following are some of the major problems in our legal policy:

1. Our environmental laws operate on a deterrent theory of criminal justice administration. However, the retributive value of the penalties fail to deter because there is total disparity between retribution and the economic benefits of non-compliance.

2. The laws fail to provide any incentive for compliance since the deterrent theory on which they operate does not take the cost–benefit analysis into account.

3. From the economic point of view, the laws are totally counterproductive. They either slow down the production or provide the industries the scope for indulging in more corrupt practices, such as manoeuvring the activities of the concerned Boards through economic or political malpractices.

4. It is easier to punish the individual but very difficult to punish intangible things such as corporations or groups when they are properly organised. It is not always easy in environmental problems to lay the responsibility on a specific person or body. This becomes more than evident in the Bhopal tragedy case, where the blame shifts from the manager to some workers and then to the incorporeal body called Union Carbide.

Ibid.

He has summarised the major problems from the point of view of litigation as under:

1. The litigation is uncertain due to the complexities of the laws. The Boards often feel frustrated in being unable to achieve their goal on account of technical legal problems—especially when the Boards are not sufficiently financed to get as good lawyer as that of the prosecuted. Moreover, the Boards can do nothing once the case is sub-judice. The environmental degradation may go on unchecked in the mean time.

2. The laws of Evidence are tortious with consideration to the infringement of environmental laws.

3. The litigation process is extremely slow. As it is, the courts in India are overburdened with pending cases. Many years pass between prosecution and decision allowing for unabated pollution in the interim period.

Id. at 52-53.

Part of this problem has been solved by making the corporate liability (conted.)
It is further suggested that for operational purposes one must assume a 'co-operative' model of the society, in which the major task of the executive becomes one of finding alternatives through which the various agencies of the society can co-operate with each other to attain the common ends. Unfortunately, we have continued with our colonial heritage of policing a conflicting society; thereby putting the Boards against the industries and the producers against the environmentalists as enemies of each other, rather than finding means by which they can co-operate. 109

It is submitted that the views of learned scholar are very well founded and if these aspects are taken care of by our policy making bodies then the problem of environmental pollution can be solved more easily. The recent enactment of the Parliament, that is, the Environment(Protection) Act, 1986, has taken care of some of the above mentioned suggestions.

(iv) The Environment(Protection) Act, 1986: An Assessment

The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nation's Conference on Human Environment held in Stockholm in June 1972. Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures had been taken for environmental protection both before and after the Conference, the need for general legislation further to implement the decisions of the Conference had become increasingly evident. 110

Although there were existing laws dealing directly or indirectly with several environmental matters, it was necessary to have general legislation for environmental protection. Existing laws were generally focused on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards were not covered. There were inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build up of hazardous

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a strict liability, by the Supreme Court in M.C.Mehta v. Union of India, A.I.R.1987 S.C.1086. The strict liability, however, is in tort; the Environment Protection Act deals with Criminal liability. The case Law, therefore, is at variance with the statutory law.

109. Supra note 104 at 57.
110. See the "Statement of Objects and Reasons" of The Environment(Protection) Act, 1986.
substances, especially new chemicals, in the environment were weak. Because of a multiplicity of regulatory agencies, there was need for an authority which could assume the role for studying, planning and implementing long-term requirements of environmental safety and to give direction to, and coordinate a system of speedy and adequate response to emergency situations threatening the environment.

In view of what has been stated above, the general legislation on environment, that is, the Environment (Protection) Act, 1986 was enacted.

The Act extends to the whole of India. Section 2(a) of the Act defines environment as under:

"environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

Thus, this definition is inclusive and not exhaustive and it dynamically recognises the inter-relationship which exists between water, air, land and human beings, other living creatures, plants, micro-organisms and property. Section 2 also defines various other terms like "environmental pollutant", "environmental pollution", and "hazardous substance" etc. All these terms or definitions are 'exhaustive' and not 'inclusive'. An inclusive definition has the distinct advantage for the exercise of vast rule making powers under the Act and for a more effective enforcement of the Act. On the other hand, exhaustive definitions, in an evolving field like environmental control, are likely to lead to recourse to judicial interpretation of highly complex scientific and technological matters, whose complexion is ever changing as knowledge accumulates dynamically. Therefore, it is, suggested that other definitions should also be inclusive and not exhaustive.

111. Ibid.
113. Section 1.
114. Section 2(b): "Environmental pollutant" means solid, liquid, or gaseous substance present in such concentration as may be, or tend to be injurious to environment.
115. Section 2(c): "environmental pollution" means the presence in the environment of any environmental pollutant.
116. Section 2(e): "Hazardous substance" means any substance or preparation which, by reasons of its chemical or physio-chemical properties or handling is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment.
117. This can be done if the word "means" is substituted by the word "includes" (conted.)
Under section 3 of the Act, power has been given to the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. It is also contemplated that the Central Government may constitute an authority or authorities by such name or names as may be specified, for the administration of the Act. The meeting of Experts, recommended the establishment of a National Environmental Protection Authority (NEPA). The Meeting recommended that NEPA should be participatory authority and its structure must be such that it should accommodate diverse channels of information concerning environmental pollution and protection. Such a participatory structure is commended by basic principles of democratic governance as well. It was further recommended that the NEPA be constituted by a collegium comprising about twenty people which should include eminent public citizens, scientists, social activities in the field of environment, representatives from the labour, industry and consumer and women's groups.

It was also suggested that National Environment Protection Authority would set up Environment Impact Assessment Group (EIAG). It would consist of eminent environmentalists and scientists with interest in public interest advocacy. Its main purpose would be (a) to keep on record and disseminate information in the field of ecology (b) to provide professional consultancy services to help investors to get technology assessment and project evaluation done and to help citizens and public interest groups. (c) to advance people's knowledge in the field of environmental law. (d) to undertake immediate techno-ecological analysis of ecological and environmental disasters. The Meeting of Experts also suggested the setting up of Standards and Enforcement Division. This division of the Authority would be an independent division of NEPA and will be responsible for setting standards associated with the protection of the environment, like emission standards, noise standards etc.

in these definitions. See Upendra Baxi, Environment Protection Act: Agenda for Implementation, 6(1987).
118. See section 3(1) and 3(2) of the Act.
119. Section 3(3) of the Act.
120. A Meeting of Experts to consider the ways in which the Environmental Protection Act, 1986 may be effectively implemented was convened by the Consumer Education and Research Centre and Indian Law Institute on 22-24 August, 1986. See supra note 117 at 1.
121. Supra note 117 at 8.
122. Ibid.
123. Id. at 9.
124. Id. at 10.
It is submitted that the above suggestions of the Meeting of Experts to set up above authorities are very good and they will cover almost all the aspects of the administration of the Environment(Protection) Act, 1986. But it is not clear what relationship these bodies or authorities will have with the State Boards. It is clear, on the other hand, that no lessons were learnt from the failure of the Boards before enacting the New Act. The new Environment Protection Act seems to be oblivious of the previous Pollution Control Acts and the Administrative Bodies set up under them. 125

One of the most important recommendations of the Meeting of the Experts is of setting up of Environmental Courts. 126 It was observed that an effective and easily accessible system of handling complaints, grievances and disputes relating to the environment is essential to the full exploitation of the potential of the Environment Protection Act, as well as all related legislations on environment. This suggestion is in consonance with the suggestion which the Supreme Court of India gave in M.C. Mehta v. Union of India. 127 The Supreme Court suggested to the Government of India that since cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evaluation of scientific and technical data, it might be desirable to set-up Environmental courts on the regional basis with one professional judge and two experts drawn from the Ecological Science Research group keeping in view the nature of the case and the expertise required for its adjudication. 128

It is submitted that this is a very healthy suggestion and Central Government must implement it at the earliest.

Section 4 gives the Central Government a power to appoint officers with such designation as it thinks fit for the purposes of the Act. Section 5 of the Act gives power to the Central Government to give directions which

125. See supra note 104 at 55.
126. Supra note 117 at 10. The Meeting recommended a single system of environmental courts invested with jurisdiction under the Environment Protection Act (and other related environmental Acts), over both criminal prosecution and civil claims for violation of the laws. It was recommended that each state and Union territory should have environmental court of first instance with single environmental appellate court with its headquarters in New Delhi. The court should have the status of a High Court, with right to appeal under article 136 of the Constitution to the Supreme Court of India. It was suggested that the Law Commission of India which is charged with priority tasks of judicial reforms in India, should assist the Central Government a detailed design of environmental courts.
128. Id. at 982.
includes the power to direct:

(a) the closure, prohibition or regulation of any industry, 
operation or process; or

(b) stoppage or regulation of supply of electricity or water 
or any other service.

It is submitted that this provision provides flexibility and range 
of deterrent and preventive mechanism to the governmental authorities for 
achieving the objective of the Act. 129

Persons carrying on industry, operation etc. are not allowed the omi-
sion or discharge of environmental pollutant in excess of the standards. 130
Persons handling hazardous substances are also required to comply with the 
procedural safeguards. 131 Where the discharge of any environmental pollutant 
in excess of the prescribed standards occurs or is apprehended to occur due 
to any accident or any other unforeseen act or event, the person responsible 
for such discharge and the person in charge of the place where such discharge 
occurs shall be bound to prevent or mitigate the environmental pollution 
caused by such discharge. 132 Such occurrence of discharge is also required 
to be informed to the authorities concerned and remidial measures should be 
taken to prevent or mitigate the environmental pollution. 133 Whatever expen-
ses are incurred in respect of such measures, shall be recovered from the 
person concerned as arrears of land revenue. 134

It is submitted that this provision will make the persons in charge 
of hazardous substances or pollutants, more responsible.

Provisions have also been made in the Act regarding the powers of 
entry and inspection 135 of the industrial plant; to take sample and procedure 
to be followed therein; 136 to set up environmental laboratories 137 and to 
appoint government analysts. 138

129. The Meeting of Experts has recommended that in order to realise fully 
the deterrent potential of this provision, number of rules should be 
framed by the Central Government. See supra note 117 at 45-45. Section 
6 authorises the Central Government to make rules to regulate environ-
mental pollution.

130. Section 7.
131. Section 8.
132. Section 9(1).
133. Section 9(2).
134. Section 9(3).
135. Section 10.
136. Section 11.
137. Section 12.
138. Section 13.
Section 15 of the Environment Protection Act, 1986 is one of the most important provisions which deals with penalty for contravention of the provisions of the Act and the rules, orders and directions thereunder. Each failure of compliance or contravention is punishable with a term of imprisonment which may extend to five years or with fine which may extend to one lakh rupees or with both. For each act of failure to comply or contravention, happening after the conviction for such failure or contravention, an additional fine of rupees five thousands per day is prescribed. And if such failure or contravention continues beyond a period of one year after the date of conviction, the offender is liable to imprisonment for a term which may extend to seven years.

It is submitted that the punishments are clearly intended to be harsh but there are some lacunae in this provision. First, no minimum punishment is prescribed. All the punishments mentioned in section 15 use the words "may extend to" and prescribed the maximum limit only. This gives wide discretion to judge and courts in awarding the sentence. It is suggested that the section should prescribe both minimum and maximum limits of the punishment. Otherwise, the wide discretion of the judges in awarding the sentence might weaken the intended deterrent impact of the Environment Protection Act.

Secondly, the liability for the punishment for continuing offences arises only "after the conviction" for the first such failure or contravention. But since the conviction can be appealed against, in some cases right upto Supreme Court, this process may consume number of years. Hence the basic purpose of awarding the second sentence is defeated. Thirdly, when violation and contravention continuing beyond one year period after conviction is punishable with enhanced term of imprisonment, there is no provision for a minimum mandatory punishment. It is suggested that if a person has committed an offence by violating the environmental law and after the trial for that has begun if a person commits another offence, even before the conviction for the first offence, then for the second offence an enhanced punishment should be awarded. This will definitely have some deterrent effect as is intended by the Environment Protection Act, 1986.

139. Section 15(1)(emphasis is of the author).
140. Section 15(2).
141. See supra note 117 at 41-42.
Section 16 adequately pierces the corporate veil. It provides that where the offence is committed by a company then every person who was directly incharge of the business of company, at the time when the offence was committed as well as the company shall be deemed to be guilty of an offence and shall be proceeded against and punished accordingly.\(^{142}\) Whenever it is proved that the offence was committed with the consent or connivance of any director, manager, secretary or other officer of the company then such person shall be deemed to be guilty of an offence and shall be punished accordingly.\(^ {143}\) However, if it is proved that such officer exercised all due diligence to prevent the commission of the offence or it was committed without the knowledge of such person, no liability of such officer shall be there.\(^{144}\)

Section 17 is an innovative provision which provides that where the offence is committed by any government department or with the connivance of the head of the such government department, then such head of the department shall be deemed to be guilty of offence and shall be liable to be prosecuted against and punished accordingly. However, if it is proved that the offence was committed without the knowledge of such head or he exercised due diligence to prevent the commission of such offence then no liability of such head of the department shall be there. The existence of such a provision will make head of the departments more careful and alert in dealing with environmental matters. When they know that they can be held liable personally, they would obviously play their role with utmost caution. This in turn should be able to bring in positive results in matters relating to environment. This provision is self sufficient in as much as it protects such officers who have acted with due diligence. Inspite of this if still the offence is committed, they would not be guilty.

It is submitted that all the good intentions of legislature of providing harsh punishment are nullified by section 24(2) the Act which provides that where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act. This provision is anomalous, since many offences would also be punishable

\(^{142}\) Section 16(1).
\(^{143}\) Section 16(2).
\(^{144}\) Proviso to Section 16(1).
under the provisions of previous pollution laws which prescribed a lesser punishment and hence in such cases the new Act will only prove to be a paper tiger.  

Recently, it has been realised that for the proper implementation of any legislation, the public participation is a must. It is this realisation, belated but crucial, which has generated the trend in the progressive legislations notably since 1985 which allocate a significant role in the implementation and enforcement of laws to concerned non-government organisations and social action groups. However, unlike other progressive legislations, the Environment Protection Act, 1986 does not recognise expressly the role of public participation in enforcement or implementation. Section 19(b) places a restriction on the powers of courts to take cognizance of any offence under the Act unless a person complaining of an alleged offence under the Act has given a notice of sixty days, of his intention to make complaint, to the Central Government or a designated authority or officer. This provision militates comprehensively against public participation in the enforcement of the salutary provisions of the Environment Protection Act, 1986. It is submitted that this limit to sixty days should be removed and then only the public participation can become useful for the enforcement of the Act.

The Act, however, clearly reflects the profound anxiety of the lawmakers to give effect to the solemn resolutions of the Stockholm Conference of 1972 on human environment.

(v) Judicial Role and Environmental Protection

The judiciary in India has played a very important role in the environmental protection and has shown its deep concern in the protection of public health. There are number of cases on this point and, therefore, it will be necessary to study and analyse a few important cases in this


area. It would help in monitoring the judicial trend in this regard.

In Govind Singh v. Shanti Sarup, the Court used the weapon of section 133 of the Criminal Procedure Code to preserve environment free from pollution in the interest of 'health, safety and convenience of the public at large'. In this case, the appellant was carrying on the occupation of a baker and the smoke omitted by the chimney constructed by him was alleged to be injurious to the health and physical comfort of the people living or working in the proximity. The learned Sub-Divisional Magistrate served a conditional order on the appellant under section 133(1) of the Criminal Procedure Code calling upon him to demolish the oven and the chimney within a period of ten days and to show cause why the order should not be confirmed. Subsequently, the conditional order was made absolute. Additional Session Judge, quashed the order of the Sub-Divisional Magistrate in the revision petition. But the High Court did not agree with the reasons of the Additional Session Judge. Finally the matter came up before the Supreme Court and it observed:

[W]e are of the opinion that in a matter of this nature (public nuisance) where what is involved is not merely the right of the private individual but the health, safety and convenience of public at large, the safer course would be to accept the view of the learned Magistrate, who saw for himself the hazard resulting from the working of the bakery.

It is submitted that the Supreme Court took a very healthy approach and rightly used the provisions of section 133(1) of the Code for preventing the public nuisance and ensuring public health, safety and convenience to the public at large.

Ratlam Municipality v. Vardhichand, is a path finder in the field of people's involvement in the justicing process. The brief facts of this case were as under. Residents of a locality within limits of Ratlam Municipality tormented by strench and stink caused by open drains, effluents from the Alcohol Plant flowing into the street and public excretion by nearby slum-dwellers moved the Magistrate under section 133 of the Criminal Procedure Code to require the Municipality to do its duty towards the members

150. Supra note 148 at 145. (Emphasis added). See also B.Venkatappa v. B. Lovis, A.I.R.1986 A.P.239 where it was held that chimney with holes emitting smoke is actionable wrong.
of the public. The Magistrate gave directions to the Municipality to
draft a plan within six months for removing nuisance. In appeal, session's
court reversed the orders. The High Court approved the order of Magistrate.
In further appeal, the Supreme Court also affirmed the order of the Magis-
trate.

Thus, the key question before the court was whether by affirmative
action a court could compel a statutory body to carry out its duty to the
community by constructing sanitation facilities at great cost and on a time
bound basis. The Municipal Council contested the issue from Trial Court
to Supreme Court, extending over a span of eight years and finally pleaded
the alibi of financial inability. In this regard Justice Krishna Iyer speak-
ing for the Court rightly observed:

Had the municipal council and its executive officers
spent half of this litigative zeal on cleaning up the
street and constructing the drains by rousing the
people's sramdan resources and laying out the city's
limited financial resources, the people's need might
have been largely met long ago. But litigation with
others' fund is an intoxicant, while public service
for common benefit is an inspiration; and, in competi-
tion between the two, the former overpowers the latter. 153(a)

The Court also appreciated the activist approach of the Magistrate'
regarding section 133 of the Criminal Procedure Code for the larger purpose
of making the Ratlam municipal body do its duty and abate the nuisance by
affirmative action. The court rightly pointed out that the plea of the
municipality that "notwithstanding the public nuisance financial inability
validly exonerates it from statutory liability has no juridical basis." 155
It was further observed:

The Criminal Procedure Code operates against statutory
bodies and others regardless of the cash in their

152. Section 123 of the M.P. Municipalities Act, 1961, inter alia, provided
that it shall be the duty of a council to undertake and make reasonable
and adequate provision for cleaning public streets, places and sewers,
and all places, not being private property, which are open to the
enjoyment of the public whether such places are vested in the council
or not; removing noxious vegetation, and abating all public nuisances;
disposing of night soil and rubbish and preparation of compost manure
from night-soil and rubbish.

153. Id. at 1624.
153(a). Ibid.
154. Ibid.
155. Id. at 1628.
coffers, even as human rights under Part-III of the Constitution have to be respected by the State regardless of budgetary provision.156

Thus, the Supreme Court pointed out the true scope of section 133 of the Criminal Procedure Code. Section 133 of the Code is categoric, although reads discretionary. This section read with the punitive temper of section 188 of the Indian Penal Code157 makes the prohibitory act a mandatory duty.

Public nuisance, because of pollutants being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law. Likewise, the grievous failure of the local authorities to provide the basic amnity of public conveniences drives the miserable slum-dwellers 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 art. Therefore, an order to abate the nuisance by taking affirmative action on a time bound basis is justified.158

The Supreme Court issued number of directions to the municipal authority to abate public nuisance and pointed out that if these directions are not complied with, the responsible officers shall be prosecuted. The Court expected that the State Government would make available by way of loans or grants sufficient financial aid to the Municipality to enable it to fulfil its obligations under this order.159

Realising the importance of the directive principles that they are "fundamental in the governance of the country", the court observed:

Why drive common people to public interest action?
Where Directive Principles have found statutory

156. Ibid.
157. Section 188 of the Indian Penal Code makes disobedience to order duly promulgated by public servant punishable.
158. Supra note 151 at 1629. Thus, the Court emphasised that decency and morality are non-negotiable facets of human life and are first charge on local authorities. However, it is interesting to note that the court did not point out the specific fundamental right under which the State can be compelled to respect the dignity and decency of its people. Article 21 which guarantees right to "life" includes all attributes of life which are necessary for the enjoyment of life. Life means something more than mere animal existence. See Munn v. Illinois, 94 U.S.113; Maneka Gandhi v. Union of India, A.I.R.1978 S.C.597; Francis Coralie Mullin v. The Administration Union Territory of Delhi, A.I.R.1981 S.C.746.
159. Id. at.1630-31.
expression in Do's and Don't's the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice.  

It is submitted that this case is a trend setter. It has rightly recognised the importance of various statutory provisions including the directive principles of state policy and also properly applied the doctrine of affirmative action.

The case of R.L. and E.Kendra, Dehradun v. State of U.P. 161 is a significant landmark in the evolution of the law and judicial practice on environmental issues in India. In this the court observed:

[T]his is the first case of its kind in the country involving issues relating to environment and ecological balance and the question arising for consideration are of grave moment and significance not only to the people residing in the Mussoorie Hill range... but also in their implementations to the welfare of the generality of people living in the country. 163

In this case, the Rural Litigation and Entitlement Kendra, Dehradun and a group of citizens filed writ petitions by way of public interest litigation against the progressive mining which denuded the Mussoorie Hills of trees and forests cover and accelerated soil erosion resulting in landslides and blockage of underground water channels which fed many rivers and springs in the river valley. Initially, the court appointed an expert committee known as Bhargava Committee to advise the bench on technical issues. On the basis of the report of the committee, court ordered the closure of number of lime-stone quarries.

160. Id, at 1631. See also Grahaka Jagruti(A Registered Society) Bangalore v. State of Karnataka, A.I.R.1985 Kant. 128(N.O.C.). In this case it was pointed out that fundamental duties enumerated in article 51A of the Constitution, are addressed to the citizen. He owes these duties to the State, the country and the nation. These duties are not made enforceable through a court of law. The legal utility of the fundamental duties is not even similar to directive principles which are addressed to the State. That being the position, it is not possible to hold that the petition can be maintained on the ground that there is a fundamental duty cast on him to safeguard the public property. It is submitted that under article 51A(g) there is a duty upon every citizen to protect the environment. Though it is not enforceable but it is similar to the duty of the state under articles 47 and 48-A to protect the environment which are also not enforceable in the court of law.

161. A.I.R.1985 S.C.652. This case is popularly known as Doon Valley case.

162. For the critical analysis of this case see Alice Jacob,"Responsible Development And Ecological Balance",27 J.I.L.I.483-486(1986). See also Nishtha Jaswal, "Comments on Rural Litigation and Entitlement Kendra v. (conted.)
The Supreme Court reconciled the conflict between development and conservation in the larger interest of country. In other words, the Court gave effect to the spirit of article 48-A which puts obligation on the State that it should endeavour to protect and improve the environment of the country. By virtue of article 37, the directive principles are "fundamental in the governance of the country", though they are not strictly enforceable in the court of law. Article 37 imposes duty on the "State" to implement directive principles by making law. Judicial action is also a "State action" and the courts are duty bound to implement directive principles. But what is surprising in this case is that although the writ petition was disposed of under article 32, there is no reference in the whole case to the basic article, that is article 48-A, the object of which it sought to achieve. Also the court did not make any reference to article 21 of the Constitution. But the disturbance of ecology and pollution and affectation of air, water and environment by reason of quarrying operation definitly affects the life of the person. However, it is implied that the Supreme Court entertained environmental complaint under article 32 of the Constitution because it involved the violation of right to life and personal liberty under article 21.

We must appreciate the consciousness of the court in dealing with the issue of workers who were rendered unemployed after the closure of the lime stone quarries and the hardship of the lessees. The court observed that "this would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural state of U.P.", (1986) 4 S.C.C.(Journal)23-26; M.K.Ramamurthy, "Environment as a Public Interest Cause: The case of Doon Valley" in J.Bandyopadhyay et. al.(ed.) India's Environment:Crises and Responses 241-44 (1985).  
163. Supra note 161 at 653. 
164. Article 141 of the Constitution provides that "the law declared by the Supreme Court shall be binding on all courts within the territory of India". Hence the Supreme Court also makes the law when it gives any judgement, because that will be binding on all the courts. 
166. See Nishtha Jaswal, supra note 162 at 23.  
166a. See infra note 232.
land and undue affectation of air, water and environment". In order to mitigate the hardship, the court directed the State of U.P. to give priority to the claims of displaced lessees of Mussoorie Hills, in other parts of the State thrown open for the quarrying of lime stone dolomite. The workmen were directed to be rehabilitated in programme of afforestation and soil conservation to be undertaken in the reclamation of this area by the Eco-Task Force of the Department of environment.

It is submitted that the Court decision has rightly reaffirmed that development is not antithetical to environment. However, thoughtless development can cause avoidable harm to the environment. In this case, the Court only passed order with detailed reasons to follow in a judgment later. It is submitted that the practice of "order first and judgment later" should be avoided because the delay in judgment leaves the parties at a loss in understanding the reasons for the order and in the long run affects the efficacy of judicial process. Even otherwise, it gives an impression that the court reached a decision without sufficient reasons. The reason recorded later may appear to be an after-thought.

After this order of the Supreme Court, several applications were filed by one party or the other who were affected by the order of the Court. The court disposed of these application by passing the second order on 13 May, 1985. In this order the Supreme Court refused the extension of time for removal of the balance of the mined lease materials which was still lying at the site of the lime stone quarry forming the subject matter of the lease. However, the Court noticed that since the mined lease material formed a part of the national wealth, it could be removed under the supervision of Eco-Task Force. The Court also permitted the removal of mined mineral without any time limit in cases where material was sacked on plots away from lime stone quarries since there was no danger or apprehension of the lessees clandestinely carrying on mining operation under the guise of the removal of the mined lease material.

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167. Supra note 161 at 656. (emphasis supplied).
168. Id. at 658.
169. Ibid.
170. The order was made on 12 March 1987.
172. Id. at 1261.
173. Id. at 1262.
It is submitted that the Supreme Court has rightly drawn a balance between the individual interest and the national interest.

The reasoned judgment was delivered by the Supreme Court on 18 December 1986. It was held that it is for the government and the nation, and not for the Court, to decide whether the limestone deposits should be exploited at the cost of ecology and environmental considerations or the industrial requirement should be otherwise satisfied. Government should take a policy decision and firmly implement the same. However, the court cautioned, and rightly so, that the natural resources have got to be tapped for the purpose of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way. Preservation of the environment and keeping the ecological balance unaffected is a task which not only governments but also every citizen must undertake. The court reminded that it is a social obligation and fundamental duty of every Indian citizen as enshrined in article 51A(g) of the Constitution.

It is submitted that this judgment of the Supreme Court is a pace-setter and would go a long way in the people's campaign or environmental protection.

Janki v. Sardarnagar Municipality, is yet another instance of judicial activism. In this case a letter written by two persons living in Chharanagar on the outskirts of the Ahmedabad city was directed to be treated as a petition. The petitioners were living in a filthy and unhygienic area which became submerged during monsoon as there was no arrangement for the purpose of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way. Preservation of the environment and keeping the ecological balance unaffected is a task which not only governments but also every citizen must undertake. The court reminded that it is a social obligation and fundamental duty of every Indian citizen as enshrined in article 51A(g) of the Constitution.

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175. Id. at 361.

176. Id. at 364. See also A.K. Thangadurai v. D.F.O. Madurai, A.I.R.1985 Mad. 104 at 111. It was observed by the Madras High Court that "safeguarding the forests" in article 48-A does not mean that the State government cannot lease out the forest lands for the purpose of cultivation and for realising the revenue therefrom. Therefore, nothing in article 48-A of the Constitution stands in the way of the State laying down its own policy and criteria for a lease of the forest lands for the purpose of the cultivation. It is submitted that by giving blanket power to the government to lease forest lands, the court has shown apathy to the needs of preserving forests which are essential for healthy development.

177. A.I.R.1986 Guj.49.
for the drainage of surface water. The High Court persuaded Municipality and State government to provide permanent sewerage and drainage system. Fortunately, unlike Ratlam Municipality, the municipality and the government of the State in this case responded with a positive attitude by working out a scheme to provide permanent sewerage and drainage system—a gesture which was appreciated by the Court also.

In Krishna Gopal v. State of M.P., M.P. High Court used the potent provision of section 133 of the Criminal Procedure Code for the control of noise pollution, an area to which the hands of the law have not so far been extended in India. In this case a glucose saline factory was licensed to operate in a residential area. The boiler that boomed round the clock and emitted smoke and ash disturbed the sleep of a heart patient living in the vicinity of the factory. His wife lodged a complaint. The Sub-Divisional Magistrate invoked section 133 of the Criminal Procedure Code and ordered for the removal of the factory as well as boiler. On appeal, the Session Judge held that only the boiler is required to be removed. On revision, the High Court ordered the removal of both factory and boiler and endorsed the order of the Sub-Divisional Magistrate.

The most bizarre aspect of this case was that despite the objections from the local residents, the municipal corporation and Chief Inspector of Boilers had given their approval for installation of the factory including the boiler in the residential area. Thus it was found that holders of public power who are obliged to make crucial and responsible decisions involving environmental consequences did not take proper care and ignored the interest of the people. Leelakrishnan has rightly pointed out that "while

178. Supra note 151.
180. See supra note 95.
181. In India there is no specific law to control the noise pollution. However, to some extent it can be controlled in certain situations under the Motor Vehicle Act, 1939. Section 268 of the Indian Penal Code deals with public nuisance under which, inter alia, noise pollution can be controlled. But even the recent Environmental (Protection) Act 1986 do not contain effective Mechanism for environmental control. For critical analysis of Krishna Gopal v. State of M.P., Ibid., see P. Leelakrishnan,"Law of Public Nuisance:A Tool For Environmental Protection", 28 J.I.L.I.,229-31(1986).
182. See also "Health hazard in the hills", The Tribune, 3, 17 July, 1987. It was reported that a drug manufacturing plant is located with the municipal limits of Solon (H.P.), from which gaseous effluents are being emitted and it has become a potential health hazard. This unit was licenced by the State Drug Controller and Department of Industries. (conted.)
meaningful and effective people" movements have grown immensely with their roots deep in Indian society, the message of environmental protection is still to enter in the closed minds of the bureaucracy whose neo-colonial attitude help industrial entrepreneurship at the cost of environmental value". 183

In Krishna Gopal, 184 the Court observed:

Manufacturing of medicines in a residential locality with the aid of installation of a boiler resulting in emission of smoke therefrom is undoubtedly injurious to health as well as the physical comfort of the community... 185

Any disturbance affecting health and physical existence of human beings or living things is to be viewed as public nuisance. Thus the Court rightly extended the scope of remedial measure under section 133 of the Code.

It is suggested that a specific statutory law prohibiting noise pollution should be enacted because in the absence of that the court will be able to give justice only in individual cases which are brought before it.

A monumental judgment was delivered by the Supreme Court in M.C. Mehta v. Union of India. 186 Bhopal catastrophe is only a manifestation of the potential hazards of all chemical industries in India, none of which are amenable to effective regulation. Hardly had the people got out of the shock of the Bhopal disaster when just after one year, that is, on 4 December 1985, a major leakage of oleum gas took place from one of the units of Shri-ram Chemicals in Delhi and this leakage affected a large number of persons both amongst the workmen and the public, and, according to the petitioner, an advocate practising in the Tis Hazari Courts died on account of inhalation of oleum gas. This leakage resulted from the bursting of the tank containing oleum gas as a result of the collapse of the structure on which it was mounted and it created a scare amongst the people residing in that area. Its building plans in the populated area were cleared by the Municipal Committee. The management claimed that they have obtained a "no objection" certificate from the State Board for the Prevention of Pollution. 183 See supra note 181 at 229.

184 Supra note 179.
185 Id. at 399.
area. The immediate response of the Delhi Administration was the making of an Order dated 6 December 1985 by the District Magistrate Delhi under section 133(1) of the Criminal Procedure Code, directing and requiring Shriram within two days from the issue of the order to cease carrying on the occupation of manufacturing and processing hazardous and lethal chemicals and gases including chlorine, oleum, super-chlorine, phosphate etc. at their establishment in Delhi and within 7 days to remove such chemicals and gases from the said place and not to bring or store them at the same place or to appear on 17 December 1985 in the Court of the District Magistrate, Delhi to show cause why the order should not be enforced.

The present petition was brought before the Supreme Court by way of public interest litigation which raised the following questions of seminal importance and high constitutional significance.

First, what is true scope and ambit of articles 21 and 32 of the Constitution.

Secondly, what are the principles and norms for determining the liability of large enterprizes engaged in manufacture and sale of hazardous products.

Thirdly, what are the basis on which damages in case of such liability should be quantified.

Fourthly, wheather such large enterprises should be allowed to continue to function in thickly populated areas and if they are permitted so to function what measures must be taken for the purpose of reducing to a minimum the hazard to the workmen and the community living in the neighbourhood.

It seems that the Bhopal disaster shook the lethargy of everyone and triggered off a new wave of consciousness and everyone became alerted to the necessity of examining whether industries employing hazardous technology and producing dangerous commodities were equipped with adequate and proper safety and pollution control devices and whether they posed any danger to the workmen and the community living around them.

187. See supra note 95.
189. Ibid.
Various Expert Committees were appointed to go into the question of existence of safety and pollution control measures covering all aspects such as storage, manufacture and handling of Chlorine in Shriram and to suggest measures necessary for strengthening safety and pollution control arrangements with a view to eliminate the community risk.

First of all, the Supreme Court disposed of the question whether the plant can be allowed to recommence the operation in its present state and condition if not, what are the measures required to be adopted against the hazard or possibility of leaks, explosion, pollution of air and water etc., for this purpose, the Court gave priority to this question because some other important consequences were related with it which required the immediate attention. First, about 4000 workmen were thrown out of employment because of the closure of the plant. Secondly, the Delhi Water Supply Undertaking was getting its supply of chlorine from Shriram and it would also have to find alternative source of supply and such sources may be quite distant from Delhi. Thirdly, the production of downstream products would also be seriously affected resulting to some extent in short supply of these products.

It was found that almost all the Expert Committees were unanimous in their view that there was considerable negligence on the part of the management of Shriram in the maintenance and operation of the caustic chlorine plant and there were also defects and drawbacks in its structure and design. The Expert Committees were also of the unanimous view that by adopting proper and adequate safety measures the element of risk to the workmen and the public can only be minimised but cannot be totally eliminated. They

190. See for example, Manmohan Singh Committee, with Shri Manmohan Singh, Chief Manager IPCL Baroda, as Chairman and 3 other persons as members; Agarwal Committee, consisting of Dr. G.D. Agarwal, Professor T. Shivaji Rao and Shri Purkayastha; Nilay Chaudhry Committee, with Dr. Nilay Chaudhry as chairman and Dr. Aghoramurthy and Mr. R.K. Garg as members; N.K. Seturaman Committee, with Shri N.K. Seturaman as Chairman and four other members.

191. Supra note 188 at 973.
192. Id. at 975.
193. Ibid.
194. Supra note 190.
195. Supra note 188 at 971.
196. Id. at 970.
expressed the view that relocation of the plant is the only long term solution if hazard to the community is to be completely eliminated. 197

After the court was satisfied that all the safety and control measures have been complied with by the management in satisfactory manner, it was held that pending consideration of the issue of relocation or shifting of the plant to some other place, the plant should be allowed to be restarted by the management of Shriram but subject to certain stringent conditions. 198

The court also pointed out that the Shriram Plant must observe the provisions of Water(Prevention and Control of Pollution) Act, 1974 and the Air(Prevention and Control of Pollution) Act, 1981. The Court regretted over the unsatisfactory state of affairs of the Delhi Municipal Corporation regarding the prevention of pollution but did not issue any direction in this behalf. 199

It is submitted that the court should have issued directions to the Municipal Corporation of Delhi to perform its function as was done in Ratlam Municipality. 200 The court is competent to take affirmative action whenever any statutory body does not discharge its function. It is also submitted that by allowing the plant to restart, after satisfactory measures were taken by the management; the Court balanced the socio-economic needs of the people, including workers, on one hand and the requirement of law on the other hand.

The Court formulated number of conditions for ensuring proper safety and control measure of the plant. 201 After the formulation of these conditions, the court pointed out that there are many other plants in Delhi

197. Id. at 971.
198. Id. at 975 and 978.
199. Id. at 977-78.
200. See supra note 151 and 159.
201. Supra note 188 at 978-80. The court formulated eleven conditions covering various aspects of the safety and control measures. Out of all the conditions, the condition 5 and condition 11 are of specific significance because they have deterrent effect on the management. Condition 5 provided that the management of Shriram would obtain an undertaking from the owner of the various units of Shriram as also from the officers who are in actual management of the plant that in case of any escape of the gas resulting in death or injury to the workmen or to the people living in the vicinity, they will be personally responsible for the payment of compensation for such death or injury. By condition 11, the Shriram management was required to deposit in the court a sum of Rs 20 lacs as and by way of security for payment of compensation claims made by or on behalf of the victims of the gas leakage. The management was also asked to deposit a guarantee of Rs 15 lacs that there will be no leakage of gas, resulting any injury or death of a person, within three years from the date of this order. It is submitted that these two conditions (contd.)
which are employing hazardous technology or are engaged in manufacture of hazardous goods and if proper and adequate precautions are not taken, they too are likely to endanger the life and health of the community. Therefore, it was suggested that a high powered authority should be set up by the Government of India, which would take necessary steps to prevent the problem of danger to the health and well being of the community on account of chemical and other hazardous industries. Such industries, even if hazardous, have to be set up since they are essential for economic development of the people.

It is also suggested that Government of India should evolve a national policy for location of chemicals and other hazardous industries in areas where population is scarce and there is little hazard or risk to the community and care should also be taken to minimise the environmental pollution. It is submitted that these suggestions should be carried out at the earliest without posing further danger to the health and wealth of the community and the environment.

The Court also noted the increasing trend of the cases based on environmental pollution and ecological destruction coming before it and the difficulty of scientific expertise involved in such cases. Therefore, the following two suggestions were made:

1. Government of India should set up an "Ecological Sciences Group" consisting of independent, professionally competent experts in different branches of science and technology, who would act as an information back for the Court and the Government departments and generate new informations according to the particular requirements.

2. "Environmental Courts" should be set up on the regional basis with one professional judge and two experts drawn from the Ecological Sciences Research Group keeping in view the nature of the case and expertise required for adjudication. There would of course be a right of appeal to the Supreme Court from the decision of the Environment Court.

are very important and impose deterrent effect on the management. This is also in consonance with the spirit of the new Environment(Protection) Act, 1986.

202. supra note 188 at 981.
203. ibid.
204. ibid.
205. Id. at 982.
206. ibid.
It is submitted that these suggestions are in consonance with the spirit of the Environment(Protection) Act, 1986. Under section 3 of this Act such a group of experts can be appointed and environmental courts can also be established.\(^{207}\) Thus, when both legislature and judicature are travelling on the same wave length, there should be no delay in the implementation of these suggestions by the executive.

The Court also very rightly appreciated the initiative of the petitioner in bringing public interest litigation before the court and fought a valiant battle against a giant enterprise and achieved substantial success. As a token of appreciation the court directed Shriram to pay him Rs 10,000/- by way of costs.\(^{208}\) It is submitted that this attitude of the court will help the public participation in the environmental protection and in the protection of hazards to public health.

Subsequent to this judgment the Shriram management made an application to the court for the modification of certain conditions of the order. The court disposed of this application with some modifications in the conditions formulated by it earlier.\(^{209}\)

Since the other questions regarding the ambit and scope of articles 21 and 32 and the extent of liability of large enterprises were of high constitutional importance, so the bench of three judges referred the case to the full bench of five judges which decided these issues.\(^{210}\)

When the petition for the closure of certain units of Shriram from which there was leakage of gas, was pending before the court, applications were filed by the Delhi Legal Aid and Advice Board and the Delhi Bar Association for award of compensation to persons who had suffered harm on account of escape of oleum gas. The learned council appearing on behalf of Shriram raised a preliminary objection that the court should not proceed to decide these constitutional issues since there was no claim for compensation originally made in the writ petition and these issue cannot be said to arise on

\(^{207}\) See supra note 118 to 128.

\(^{208}\) Supra note 188 at 982.

\(^{209}\) See M.C.Mehta v. Union of India, A.I.R.1987 S.C.982. The court modified the conditions 25, and 6 of its earlier order. In condition 5 it was made clear that if the Chairman or Managing director could show that the leakage of gas was due to Act of God on vis major or Sabotage, then there shall be no liability of the chairman and the Managing Director. Id. at 986.

the writ petition. Rejecting the preliminary objection of the learned council, the court observed:

These applications for compensation are for the enforcement of the fundamental right to life enshrined in Article 21 of the Constitution and while dealing with such applications, we cannot adopt a hyper-technical approach which would defeat the ends of justice....If this court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the Court for justice, there is no reason why these applications for compensation which have been made for enforcement of the fundamental right of persons affected by the oleum gas leak under Article 21 should not be entertained.

It is submitted that from the plain reading of the above observation it is evident that the court treated the "right to live in pollution free environment" as "fundamental right" or in other words right to "life" under article 21 includes "right to live with dignity in a proper environment, free from danger of disease and infection". To support this conclusion, let us find out as to why the claim of compensation was there on behalf of certain persons. If we lift the veil then it is clear that when oleum gas leaked out from the plant of Shriram, due to its poisonous nature, it polluted the atmosphere or the natural environment to such an extent that certain persons suffered and one person even died. It is on behalf of these persons that the claim of compensation was filed. Hence the applications were for the enforcement of the fundamental right to live in a healthy environment under article 21 of the Constitution. However, the court did not mention this expressly.

The Court also explained the ambit and scope of article 32 of the Constitution. It was held that under article 32(1) the Court has implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right but is also remedial in scope and provides relief against a breach of the fundamental right already committed. The power of the court to grant remedial relief may include the power to award compensation in "appropriate cases". The violation of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should

211. Id. at 1089.
212. Ibid. (emphasis supplied)
213. Id. at 1091. The court relied on the case of Bandhua Mukti Morch v.
be on a large scale affecting the fundamental rights of a large number of persons or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the persons affected by such infringement to initiate and pursue action in the civil court.\footnote{214}

It is submitted that this broad interpretation of the ambit and scope of article 32 will help in claiming compensation in "appropriate cases" against the State directly under the writ jurisdiction and the fundamental rights will become more significant and meaningful.

The next important question was whether article 21 could be available against the private corporations like Shriram, which is an industry vital to public interest and with potential to effect the life and health of the people.\footnote{215} The Court embarked on the path of evolving criteria by which a corporation could be termed as 'other authority' under article 12 and traced that part of development from Rajasthan Electricity Board v. Mohan Lal\footnote{216} to Ajay Hasia v. Khalid Mujib\footnote{217} and finally did not make any definite pronouncement by giving the reason that they did not have "sufficient time to consider and reflect on this question in depth".\footnote{218} Therefore, the Court directed the Delhi Legal Aid and Advice Board to take up the cases of all those who claim to have suffered on account of oleum gas and to file action on their behalf in the appropriate Court for claiming compensation.\footnote{219}

\footnotesize{\textbf{214.} Supra note 210 at 1091. The Court relied on Rudul Sah v. State of Bihar, A.I.R.1983 S.C.1086 and Bhim Singh v. State of J&K, A.I.R.1986 S.C.494. It was pointed out that in these cases the infringement was patent and incontrovertible, the violation was gross and its magnitude was such as to shock the conscience of the Court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation. If the Court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, article 32 would be robbed of all its efficacy, because then the situation would be that if fundamental right is threatened to be violated, the court can injunct such violation but if the violation is quick enough to take action infringing the fundamental right, he would escape from the net of article 32. See Ibid.}

\footnotesize{\textbf{215.} Ibid.}

\footnotesize{\textbf{216.} A.I.R.1967 S.C.1857.}


\footnotesize{\textbf{218.} Supra note 210 at 1098. The Court pointed out that the hearing of this case concluded on 15th December 1986 and the court was required to (conted.)}
It is submitted that the Court should have included such private corporations whose activities have the potential to affect the health and life of people, within the ambit of "other authorities" under article 12 of the Constitution. One could also see the inclination of the Court in this regard when it observed that "this Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in our corporate structure". The Court also did not accept the apprehension of the learned counsel for Shriram that "our including within the ambit of Article 12 and, thus, subjecting to the discipline of Article 12, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial activity".

Regarding the liability of an enterprise which is engaged in a hazardous or inherently dangerous industry, 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 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.

deliver the judgment within four days because thereafter Chief Justice Bhagwati was to retire. However, it may be pointed out that more than half of the judgment was written only on this aspect, that is, whether the corporation is within the meaning of "other authorities" or not. Out of the total thirteen pages printed judgment in the A.I.R seven printed pages were devoted to this aspect and still the court left the question undecided by saying that they did not have the "sufficient time to consider and reflect on this question in depth".

219. Id. at 1100.
220. In such industries the control of the government was linked to regulating that aspect of the functioning of the industry which could vitally affect public interest. It was subject to the regulatory measures of the Industries(Development and Regulation)Act, 1951; The Water(Prevention and Control of Pollution)Act, 1974; The Air (Prevention and Control of Pollution)Act, 1981 and the Environment (Protection)Act, 1986.
221. Supra note 210 at 1097.
222. Id. at 1098. The Court pointed out that such apprehension expressed by those who may be affected by any new and innovative expansion of human rights need not deter the Court from widening the scope of human rights and expanding their reach ambit. Ibid.
223. Id. at 1099(emphasis added).
It was further observed:
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 it
should be no answer to the enterprise to say that it
had taken all reasonable care and that the harm occurred
without any negligence on its part.224

It is submitted that the Court rightly enunciated a new principle of
"absolute liability" and emphasised on highest safety standards. The Supreme
Court justified its enunciation of the "absolute liability" principle on the
following three grounds. First, 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 operations of substance or any other related element that caused
the harm". Thirdly, the enterprise alone "has the resource to discover and
guard against such hazards or dangers and to provide warning against poten­
tial hazards".225

On the question of the measure of compensation the Court pointed out
that it

[M]ust be correlated to the magnitude and capacity
of the enterprise because such compensation must
have a deterrent effect.226

It was also observed that larger and more prosperous the enterprise,
greater must be the amount of compensation payable by it for the harm caused
on account of an accident in carrying on the hazardous or inherently danger­
ous activity by the enterprise.227

It is submitted that the court has taken a very healthy view by corr­
elating the compensation with the capacity of the enterprise. The "deterrent

224. Ibid.(emphasis added). The court pointed out that we no longer need the
crutches of a foreign legal order and rejected the rule in Raylands v.
Fletcher (1869)(19)LT 220 and pointed out that such rule of "absolute
liability" is not subject to any of the exceptions which operate vis-a-
vis the tortious principle of strict liability.
225. Supra note 210 at 1099.
226. Ibid. (Emphasis added).
227. Id. at 1100.
effect" envisaged by the Court in this case gives teeth and strength to the new Environment(Protection) Act, 1986.

**Shri Sachidanand Pandey v. State of W.B.** is another pointer in the right direction. In this case the court observed:

> When the Court is called upon to give effect to the Directive Principle and the fundamental duty, (articles 48-A and 51-A(g) in this case), the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least the court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions.

It is submitted that the Court has rightly shown its concern for articles 48-A and 51A(g) which provides for the protection of environment. Although by these provisions, the duty to protect the environment has been put on the State and the citizens respectively, yet the court has to play its role when the policy decision is based on some irrelevant considerations. Whenever a problem of ecology is brought before the Court, the Court is duty bound to bear in mind article 48-A of the Constitution. Because it is also the duty of the Court to apply directive principles in making of laws.

A clarion call was given by the Andhra Pradesh High Court in **T. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad**, where Justice P.A. Chaudhry pointed out that protection of the environment is not only the duty of the citizen under article 51-A(g) but it is also the obligation of the State and all other State organs including courts, under article 48-A. In that extent, environmental law has succeeded in unshackling man's right to life and personal liberty from the clutches of common law theory of individual ownership. Justice Chaudhry observed:

> [I]t would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Art.21 of the Constitution embraces the protection and preservation of nature's gifts without which the life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Art.21 of the Constitution. The slow

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229. Id. at 1115.
230. See supra note 165.
It is submitted that Justice Chaudhry has rightly made it explicitly clear that polluted atmosphere caused by environmental pollution and spoliation should be regarded as amounting to violation of right to life under article 21 of the Constitution. In fact the Supreme Court in its various judgments from R.L.&E.Kendra, Dehradun to M.C.Mehta, has impliedly treated the environmental pollution as violation of right to life under article 21 of the Constitution. 

In Kinkri Devi v. State, the High Court of Himachal Pradesh, followed R.L.& E.Kendra and held that if arbitrary exercise of the power of granting leases and indiscriminate operation of mines prove hazardous to natural wealth and environment and if it done without due regard to life, liberty and property of the people living in those areas, the court will have no option but to intervene by issuing suitable writs, orders, directions, including direction as to closure of mine in furtherance of constitutional goal enshrined in articles 48-A and 51A(g). To neglect or failure to abide by these constitutional mandates, is nothing short of betrayal of the fundamental law which the state and, indeed, every citizen, high or low, is bound to uphold and maintain. Any neglect and failure on the part of the state will amount to violation of the fundamental rights conferred by articles 14 and 21 of the Constitution.

In L.K.Koolwal v. State, Mehta, J. speaking for Rajasthan High Court observed:

Maintenance of health, preservation of the sanitation and environment falls within the purview of Art.21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked.

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232. Id.at 181(Emphasis supplied). While making this observation, Justice Chaudhry relied upon R.L.& E.Kendra, Dehradun v. State of U.P.supra note 161 and pointed out that though article 21 was not referred to in that judgment of the Supreme Court, but the judgment can only be understood on the basis that the Supreme Court entertained environmental complaints under article 32 of the Constitution as involving violation of article 21's right to life. Ibid.

233. Ibid.


235. Id. at 8-9.


237. Id. at 4.
These observations are in-line with the observations of Justice Chaudhry of the Andhra Pradesh High Court in T. Damodhar Rao. But the another important aspect of Koolwal is that it was pointed out that article 51-A can ordinarily be called as the duty of the citizen, but in fact it is the right of the citizens as it creates the right in favour of the citizen to move to the court to see that state perform its duty faithfully and the obligatory and primary duties are performed in accordance with the law of the land. It was further pointed out that article 51-A gives a right to the citizens to move to the Court for the enforcement of the duty cast on the State instrumentalities and statutory authorities created under the particular law of the state.\textsuperscript{238}

It is submitted that this new interpretation will make the right to life under article 21 more effective, meaningful and useful to the common man. Then it can be enforced directly in the courts by affirmative action and for any violation of this, the exemplary costs can also be awarded to the injured party. It is suggested that whenever the next occasion comes before the Supreme Court, it should make it explicitly clear that environmental pollution is violation of article 21 of the Constitution. This is desired because the law declared by the Supreme Court is binding on all courts in the country and it will bring uniformity throughout the country which is essential for any developing law if it is to survive for a longer period.

In M.C. Mehta v. Union of India,\textsuperscript{239} the Supreme Court, while showing its deep concern for the protection of Ganga water from pollution, took a serious note of owners of some of tanneries discharging effluents from their factories in Ganga and not setting up a primary treatment plant in spite of being asked to do so for several times. The Court directed to stop the working of these tanneries and observed:

\begin{quote}
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 be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from tannery to the river Ganga would be immense and it will
\end{quote}

\textsuperscript{238} Ibid. See also Abhilash Textile v. Rajkot Municipal Corpn., A.I.R. 1988 Guj. 57.
\textsuperscript{239} A.I.R. 1988 S.C. 1037 (Popularly known as Ganga Water Pollution case)
outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure.\textsuperscript{240}

It is submitted that the Supreme Court rightly stopped the above mentioned tanneries from working. The above mentioned directions of the Supreme Court are important particularly when nothing much has been done by the Central Government under the Environment (Protection) Act, 1986, to stop the grave public nuisance caused by the tanneries at Jajmau, Kanpur.\textsuperscript{241}

Many of the provisions imposing duties on Central and State Boards and the municipalities for prevention and control of pollution of water, have just remained on paper without any adequate action being taken pursuant thereto.\textsuperscript{242}

In order to prevent and control the pollution of water in the river Ganga of Kanpur, the Supreme Court issued certain directions for compliance by the Kanpur Municipal Corporation and concerned authorities.\textsuperscript{243} It is suggested that all these directions should be implemented without any delay.

The objective of the environmental law is to preserve and protect the nature's gifts to human beings such as air, earth and atmosphere from pollution. Environmental law is based on the realisation of mankind of the dire necessity to preserve these invaluable and none too easily replenishable gifts of mother nature to man and his progeny from the reckless wastage and repacious appropriation.

(D) An Appraisal

With the transformation from the \textit{laissez faire} state to the socialist pattern of society and with the modern concept of welfare state, now the state is not merely concerned with the maintenance of law and order in society but has assumed all the duties which touch public life, public welfare and hence it has become essential duty of the state to provide citizens good health and a healthy environment. Preamble to the Constitution, which is the prime voice of the Constitution, clearly spelt out the concept of socialism. The objectives of the preamble have been elaborated in Part IV of the Constitution dealing with directive principles of state policy.

\begin{itemize}
\item \textsuperscript{240} Id. at 1045.
\item \textsuperscript{241} Id. at 1041.
\item \textsuperscript{242} M.C. Mehta v. Union of India, A.I.R. 1988 S.C. 1115.
\item \textsuperscript{243} Id. at 1126–28.
\end{itemize}
Alcoholism is one of the social problems and in a socialistic pattern of society, the state has to pay more attention to the social problems than on any individual problems. Framers of the Constitution realised this aspect and put an obligation on the State under article 47 to raise the standard of living of its people and the improvement of public health was considered as among its primary duties. Special emphasis was made to bring about prohibition of consumption of intoxicating drinks and drugs except for medicinal purposes. There could be no justification for not carrying on this obligation on moral, economic or administrative basis. If we prepare a balance sheet of the revenue which the state earns from the sale of liquor and the expenditure which it has to incur to face the consequences of intoxication, the result would be that there is less revenue and more expenditure. Infact, the demand of bringing about prohibition was not the new idea of our constitution, it was the demand of Indian National Congress from the very beginning.

Judiciary has shown its equal concern, if not more, in the implementation of the directive contained in article 47. In F.N. Balsara, the Supreme Court treated this directive as a reasonable restriction on the fundamental rights of the individual under article 19. The Court went a step further in Cooverji and Nashirwar, when it observed that there is no inherent right or fundamental right of the individual to carry on the trade in liquor or intoxicating drugs. The rulings of the Court in Kaushal and Jawahar Lal, declaring some days as dry days and restricting the number of liquor shops in particular area are definitely steps in the right direction. Gidhey Club certainly made a very important contribution for the implementation of the directive principles when it directed that it can be enforced even by the administrative action. However, the Court rightly observed in Nandlal that the liquor laws cannot violate article 14. Thus, the court struck a balance between the importance of directive principles and the fundamental rights. Rather, in Vincent, the Supreme Court made it clear that the non enforceability of the directive principles does not make them less important than fundamental rights. The maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged.
In order to make the prohibition of intoxicating drinks effective the following suggestions are made:

1. The mass media should be fully used to create awareness against alcoholism and drug abuse among vulnerable groups. All advertisements relating to drinks should be stopped.

2. Immediate attempts should be made for the identification, treatment and rehabilitation of the addicts with priority attention to vulnerable areas and groups. The treatment facilities for drug addicts should be expanded.

3. Alcoholism and drug abuse should be assessed on a continuous basis in close collaboration with academic and research organisations to evolve a coherent policy in the future perspective.

4. There should be uniform law for the prevention of drug trafficking so that the problem could be tackled more firmly.

5. In the areas where the intake of alcoholism and drugs are treated as the part of their social and cultural tradition, greater stress should be laid on the preventive education, moderation and temperance with prohibition as the ultimate goal.

6. Part of the revenue earned from the sale of liquor, should be used to set up the centres to curb alcohol and drug abuse. This suggestion will also meet the difficulty of finances in the implementation of policies.

7. There should be stoppage of supply of liquor in Hotels, restaurants and cinemas.

8. There should be less liquor shops in rural as well as urban areas.

9. Liquor shops should be closed for more number of days. This is essential because we cannot prevent the alcoholism in a singular attempt. Firstly there should be reduction followed by total elimination.

10. There should be reduction of supply of liquor to liquor shops.

11. There should be no liquor shops near the industrial areas, living quarters, educational institutions and places of worship. The attempt of the High Court of H.P. in this direction is worth appreciating.  

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For good health, a healthy environment is a must. The Constitution (Forty-second Amendment)Act, 1976 specifically introduced two more articles in the Constitution concerning environmental protection. Article 48-A which is also a directive, provided that the state should make an endeavour to protect and improve the environment. On the other hand, fundamental duty was imposed by article 51A(g) on every citizen to protect and improve the natural environment. Before this, there were number of international conferences on environmental protection or on some related topics. The Stockholm Conference of 1972 on Human Environment is rightly called the Magna Carta of our environment. Because it was this conference which generated the awareness for environmental protection among all the nations. In various international conferences the stress was on environmental education because unless we are aware of the pros and cons of environmental pollution, no specific steps will be taken to prevent the environmental pollution.

India was a signatory to almost all the international conferences and hence it was one of the obligations of India to take effective steps to implement the objectives of these conferences, that is, to protect the environment from pollution. In India, there were number of provisions in the Indian Penal Code, Criminal Procedure Code and Civil Procedure Code, under which the action could be taken to prevent the environmental pollution and to ensure public health. There were also number of statutes which directly or indirectly related to the environmental protection. But all these provisions and Acts, barring a few exceptions, did not prove much effective because of one or the other reason. Therefore, specific laws were passed to deal with the environmental pollution. For example, The Water(Prevention and Control of Pollution)Act, 1974; The Air (Prevention and Control of Pollution)Act, 1981. But there was no general law to deal with the problems of environment. And the Tiwari Committee, which was appointed to look into the measures for the further protection of environment, also suggested that there should be some law which deals with the general problem of the environment. Keeping in view this and also the Stockholm Declaration of 1972 the Parliament enacted the Environment(Protection)Act, 1986. It is submitted that the importance of this new Act lies in fact that in the present days due to more scientific and technical advancement in various spheres, there is a great danger and threat to the environment. This Act rightly recognised the inter-relationship which exists among and between water, air and land, and human beings,
other living creatures, plants, micro-organisms and property. The ecological ignorance produces a whole range of counter-productive effects in the arena of industrial growth. Therefore, the environmental legislation can be used for the removal of such ignorance. Section 3 of the Environment(Protection) Act, 1986 gives wide power to the Central Government to appoint certain authorities or to take such measures as are necessary for the implementation of the Act. It is submitted that the suggestion of appointing National Environmental Protection Authority, Environmental Impact Assessment Group and Standards and Enforcement Division should be implemented without any further delay. But in doing so their relationship with the existing Boards under the Water and Air Pollution Acts should be clarified. An attempt has to be made that we involve more and more representatives of social groups and non-governmental organisations so that these authorities do not become dummy authorities. It is suggested that more stress should be given on the public participation in the environmental protection. One of the most important feature of this Act is that it visualises a harsh punishment for the violators which would have "deterrent effect". However the effectiveness of this envisaged punishment is weakened by another provision of the Act, that is, section 24(2) which provides that if the violator is punishable under the other pollution law also, then he shall be punished under such other law. It is submitted that under such other laws the punishment is not so harsh and hence the deterrent effect of the Act will not remain there. Therefore, it is suggested that section 24(2) should be deleted. It is also suggested that the environmental courts should be established without any delay. This will not only help in reducing the burden of cases on the courts but also help in the proper implementation of the environmental law.

Judicial contribution in the protection of environment and protecting and improving the public health is worth appreciating. In Govinda and Ratlam, the court provided flesh and blood to the skeletal provision of section 133 of the Criminal Procedure Code and Krishna Gopal gave a new life and vigour to this provision in protecting public health and environment. R.L.& E.Kendra the court struck a balance between the national development and individual interests and also protected the ecological imbalance. In this case the role of public participation is also worth appreciating. But the trend of the court in giving first order and judgment later should be avoided.
M.C.Mehta, is an excellent example of the prosilient development of the court in protecting the environment and public rights. The efforts of the Court in formulating the conditions for safety and control of the enterprises which have the potential to threat the health and life of the people require special mention. The suggestion of the Court to establish a national authority of Ecological Sciences Research Group and Environmental Courts further strengthens the new Environment Protection Act. The role of the Court in accepting the applications for claims for compensation on behalf of the victims of the oleum gas leakage as for the enforcement of fundamental rights can help the future development of the law in treating right to health as a fundamental right under article 21 of the Constitution. Accordingly, the court has rightly interpreted the scope and ambit of article 32. But leaving the question undecided that whether private enterprises like Shriram are state or not, is not a welcoming step. Particularly so, when the Court analysed this aspect to great extent and left it undecided on the pretext that it didn't have sufficient time to go into the depth of this question.

Most important contribution of M.C.Mehta is the laying down a new principle of "absolute liability" of the enterprises engaged in hazardous industries and in some cases the personal liability of the managing directors and the officers incharge of the production. The stress of the maintenance of highest standard of safety is also a welcoming step. For the measure of compensation it has rightly evolved a principle that it should be correlative with the magnitude and the capacity of the enterprise. These new principles will have definitely deterrent effects on the enterprises which are carrying on hazardous activities which are otherwise essential for the development of the nation.

The observation of Justice P.A.Chaudhary in T.Damodhar Rao, that the slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be treated as amounting to violation of article 21 of the Constitution is yet another significant development which would help in making the right of life meaningful, that is right to live with dignity, in a proper environment and free from the danger of infection and disease.

It is submitted that such development should receive the stamp of the highest court of the land so that it becomes a binding law of the Land.
Because, as it was mentioned in the beginning of this Chapter, "living precedes living well" or "being preceds well being". After all, the Courts are Courts of justice and not merely the Courts of Law. Since the only object of Law is to do justice, the Courts not only shape the statutes but also develop principles and policies to render justice where the letter of law falls short of justice.

In order to make the environmental law more meaningful and effective, the following suggestions are made:

1. More stress should be laid on the public participation and participation of non-governmental organisations in the protection of the environment. All the statutory laws should recognise their role in the protection of the environment. Investigative journalism can also play an important role in this direction. Whenever any petition is made by such people the government should be under a duty to take action against the defaulter.

2. Legal aid should be made available to all those who bring the matter of environmental protection before the court. Because sometimes in the absence of financial aid it becomes difficult for the ordinary citizens to fight the case against the giant enterprises. Special incentives should be given to those who help in protecting and preserving the public health and healthy environment.

3. Whenever any giant enterprise is fined for violation of environmental law then a part of the fine should go to the legal aid fund and rest of the fine should be distributed among those who have suffered injury or harm due to environmental pollution.

4. To make the people aware of the importance of the environmental protection it is suggested that an immediate attempt should be made through mass media, television and by organising some special seminars at the village panchayat level to educate the people. At the regional level a special incentive should be given to panchayats which take positive steps in this regard.

5. Special incentive in the form of tax deduction may be given to the big industries or enterprises which adopt the modern environmental safety measures. But before giving the tax deduction, a certificate from the environmental authorities must be obtained that there is no pollution from the concerned industry or enterprise. This will put a necessary check on the misuse of the concession of tax deduction.

245. See supra note 104 at 67-68. See also P.V.S. Namboudiripad, "Economic (conted.)
6. Government should give liberal loans at nominal rate of interest to the new industries to acquire the new machinery and modern machinery which help in the protection of the environment. Liberal loans should also be given to replace the old machinery by the modern techniques for prevention of environmental pollution. But before giving these concessions, a certificate must be obtained from the environmental authorities that such a new and modern machinery has already been purchased by the concerned industry.

7. In all those cases where the pollution Boards or other concerned authorities have given a clearance certificate to set up an industry of hazardous nature in the populated area without taking into consideration the effect and the environment, then such officers who are responsible in ignoring their duties, should be held personally liable. Greatest care has to be taken in allocating the new sites to the industries.

8. There should be regular publication of the material concerning environmental protection by the government. The government should publish the latest techniques which can be used for the protection of public health and pollution of the environment.

9. An attempt should be made that environmental protection and public health should be made a part of curricular activities. This can be introduced as an independent subject in colleges and universities. Environmental Laws can be taught in LL.B. and LL.M. level. Special incentives should be given in doing research in the environmental field. This will generate awareness among the young generation of the country who will take charge of the country in the coming future. N.C.C. and N.S.S. can also play an important role in the environmental protection.

10. Although the judiciary has played an important role under the public interest litigation to protect the environment by compelling the local authorities to perform their duties, but the paucity of funds has always come in their way. Therefore, it is suggested that liberal grants should be given to the local authorities to make long term plans for the protection of public health and environment.


246. See supra note 182.

11. There is no direct law to prevent the noise pollution. Therefore, a central law should be enacted in this regard.

12. The new principle of "absolute liability" and the measure of damages as comparable to the "magnitude and capacity" of the enterprise should be strictly enforced so that they really have the "deterrent effect".

13. Private enterprises which are carrying the activities of hazardous nature having the potential to threat the public health or environmental protection and carrying the function of public importance should be considered "other authorities" under article 12 and right to public health and pollution free environment as implicit in article 21 should be directly enforced against them.

14. Licences should not be issued to establish new industries unless adequate provisions are made for the treatment of trade effluents flowing out of the factories.