CHAPTER – IV

LIABILITIES

Indian industrialists, as citizens of this nation have the fundamental right to carry on any occupation, trade or business. This right is subjected to reasonable restrictions. The state is vested with the power to impose such reasonable restrictions in the interests of the general public. The Industrial Disputes Act has imposed a set of restrictions which are more elaborately discussed in the ‘Rights’ chapter wherein their liability to the workers are dealt with. It is also discussed that the employer is liable to the workers and if any dispute arises they are to be cognized by the appropriate Government which in turn refer it to adjudicative authorities.

The Indian Penal Code and the Criminal Procedure Code, inter alia, deal with public nuisance and for which they are held liable to the affected person. They are also made liable under the law of torts for their acts of negligence. If any dangerous object escapes and causes injury to any person, they are liable either under strict or absolute liability and the industrialists are liable to pay damages to the affected person. In penal laws affected person can give a complaint and the District Magistrate is vested with the power to cognize, prosecute and punish the offenders. In law of torts the affected party can claim damages by filing a suit.

There are a plethora of legislations in environmental jurisprudence. Among them the Environment Act, the Air Act, the Water Act and the Forest Act are very important. There are several Rules and notifications made under these Acts which impose several liabilities on the industrialists and they are liable to perform them. Those who fail to perform them are liable to be punished and in such cases the industries may also be closed. Violations to the provisions of the environmental laws are considered to be offences. But the environment legislations, as more fully explained in the Background Chapter, provide that the Pollution Control Boards are vested with the power to make a complaint to the District Magistrate, who is given power to cognize the offence. Complaint can also be made by “any person who has given notice
of not less than 60 days in the manner prescribed of the alleged offence and of his intention to make a complaint to the board or officer authorised.”

The environmental laws prescribe punishment to such offences. Accordingly, offenders shall be punished with imprisonment for a term which may extend to three months or with fine or with both. Higher punishment shall be imposed on those who continue the offences in contravention of directions. The liabilities of such ‘eco-ciders’ are dealt under various legislations. The intention of the legislations is to prevent the eco-ciders from polluting the environment and if they violate they are to be caught by the Pollution Control Boards, prosecuted by the state and punished by the District Magistrate Court. Of course, appeals are provided.

The Water Act was enacted in 1974. After quarter of a century, the effectiveness of the Water Act and its functions are assessed empirically to find out whether the eco-ciders were caught in the net knitted by the legislatures and if caught whether the machineries and the subordinate judiciary was able to punish them and thereby prevent the eco-ciders from perpetrating their polluting activities.

Anupa V.Thapliyal in his “Environment and the Law: Effectiveness of Legal Sanction” made an empirical analysis of water pollution cases over a period of 27 years in Maharashtra, one of the most industrialised states of India. He finds that during the period of about 27 years, 259 criminal complaints were filed. Out of these only 53 cases have resulted in conviction, 95 cases were either dismissed or resulted in acquittal, and 111 are still pending. He also finds that 21 cases were taken to the High Courts and the Supreme Court during the period of about 27 years. All were at the preliminary stage. Out of these 21 cases, 18 were remanded back by the High Court and the Supreme Court to the magistrate for trial after their decisions on preliminary questions. The time taken for disposal of the cases ranged from 2 to 20 years. 13 cases of the 21 cases were taken by the High Courts in appeal. “The purpose was to get the orders of trial quashed and the first appellate courts rejecting their preliminary objections of the units....In majority of the cases the Supreme Court and the High Courts did not decide the matter finally while rejecting the preliminary objections of

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1 Anupa V.Thapliyal, op.cit.pp.254-255
the unit. This is evident from the fact that 18 out of 21 cases remained at the preliminary stage even after the decisions by the High Courts and the Supreme Court as these were remanded back. Out of the remaining three cases, the company was punished by the High Court only in one case and released in the other two cases. Based on this empirical analysis, Anupa V. Thapliyal inferred that “the attitude of the polluting unit has been to flout the law and, if prosecuted, to scuttle the legal process at the preliminary stage itself by raising technical / hypertechnical arguments.” It is also concluded that “the delay and lack of enforcement is mainly due to the recalcitrant and defiant attitude of polluting units. In most of the reported cases, they were alleged to be defiantly operating without obtaining consent or despite refusal of consent. These units have been throwing poisonous, noxious and harmful effluents for years together into the rivers directly or through drains without setting up any treatment plants. Yet they were able to scuttle the enforcement of criminal liability on technical grounds all this period. Some of these cases took 14, 17 and 19 years for disposal at the preliminary stage of trial. This position of enforcement has created doubts about the effectiveness of the criminal sanctions for environmental protection.”

Anupa V. Thapliyal also found the reasons for this state of affairs based on this empirical analysis. He concludes: “The above unsatisfactory state of enforcement of criminal liability against polluting units exists because environmental crimes which are a class by themselves and need quick enforcement are tried under the ordinary law, that is, the CrPC. Consequently the polluting units, which are powerful and economically stronger than ordinary citizens, are able to use various provisions of the law to prolong the matter. Meanwhile they go on polluting the environment blatantly.”

B.M. Shukla’s “A Study of Cases Decided Under the Water Act” is another empirical study of various cases decided under the Water and Air Acts from 1987 to 1991 in the criminal courts of Ahmedabad. He came to the conclusion that 71% of the cases were disposed from 2½ to 5 years, 13% from 5 to 6 years and 1% of the case took 6 years and another 1% took 8 years. Only 14% of the cases took from

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2 Ibid. p.256
3 Ibid.
4 ibid.pp.263-264
5 Ibid.p.266
1 to 2 ½ years, and no single case was disposed off within 1 year. Based on the study he made the following conclusions: a) The criminal sanctions are not that effective in controlling water pollution as they were presumed to be; b) Criminal courts were not that anti-pollution minded, as one would want them to be; c) The criminal justice system treated pollution cases as routine, normal and ordinary criminal cases; d) Time was not regarded as an essence in their disposal; e) Pollution cases were equally susceptible to the various vagaries and forensic strategies normally exhibited in other criminal cases; f) There was a noteworthy percentage of more than half the number of cases, which were withdrawn or dismissed. “In other words the polluters remained unpunished. May be, they continued their polluting activity.”

Chhatrapati Singh critically analysed ‘the jurisprudence of environmental legislation’ and highlighted the deterrent theory of criminal justice. He is of the view that Indian environmental laws operate on a deterrent theory of criminal justice administration. Its retributive value of imposing penalties fails to deter violations because there is a total disparity between retribution and the economic benefits of non-compliance. Further, the laws fail to provide any incentive for compliance since the deterrent theory on which they operate does not take the cost-benefit analysis to account.

Shyam Divan and Armin Rosencranz are of the view that “India employs a range of regulatory instruments to preserve and protect its natural resources. As a system for doing so, the law works badly, when it works at all. The legislature is quick to enact laws regulating most aspects of industrial and development activity, but chary to sanction enforcement budgets or require effective implementation. Across the country, government agencies wield vast power to discipline violators. The judiciary, a spectator to environmental despoilation for more than two decades, has recently assumed a pro-active role of public educators, policy maker, super administrator, and more generally amicus environment.”

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7 Ibid., p.408
8 Chhtrapati Singh, op.cit.p.77
9 Shyam Divan and Armin Rosencranz, op.cit.p.1
It is evident from the empirical analysis that the legislative intention to prevent pollution is still a dream found only in the statute books and far from reality. Eco-ciders are hardly caught in the net and even if caught they easily escape from the net and perpetrate their offences with impunity.

The victims of such offences are the general public. It is to be remembered that there are several industries which involve in non-hazardous industrial activities and do not cause environmental pollution. There are certain industries which involve in hazardous industrial activities and cause serious environmental pollution. Such polluting industries and industrialists are held liable under the statutory liability. The statutory liability under the Environment Act, the Water Act, and the Air Act are aiming at preventing environmental pollution. But the Forest Act deals with the conservation of the natural resources of the forests. In all these Acts the liability of the industrialists are two fold. Firstly, the industrialists are liable to fulfill the norms, laid down by these Acts and thereby they are liable to the state or the authorities appointed by the state. Secondly, the liabilities of the industrialists who seriously cause pollution to the environment and thereby infringing the right to life of the people will be discussed in the fifth chapter, ‘Sustainable Development’.

Every person pollutes the other person. During respiration man exhales carbon-di-oxide and thereby pollutes the surroundings. Breathing is natural to living beings and hence inevitable. But in the natural cycle, other eco-systems like plants maintain the equilibrium by consuming carbon-di-oxide and giving up oxygen. This type of natural phenomenon is not the concern of environmental jurisprudence. Artificial pollution is the concern of the study. Environmental laws in their endeavour to protect the environment prescribe standards of pollution and impose liabilities on the person who is polluting beyond the prescribed standards and held responsible for such pollution. Persons who discharge effluents, emit fumes and dispose wastes into water, air and land beyond the standards prescribed are called as ‘eco-ciders’.

The term ‘pollution’ is defined in the Environment Act, 1986 as “any solid, liquid or gaseous substance in such concentration as may be, or tend to be injurious to
The term ‘such concentration’ connotes any pollution that exceeds the prescribed standard, which is said to pollute the environment as per the definition. Therefore, occupiers, owners or persons in charge of industries or factories are said to pollute the environment when they dispose off any solid waste, discharge any liquid or emit any gaseous substance beyond the prescribed standards from their industries or factories or premises. If such quantum of disposals, discharges and emissions are beyond the prescribed standards, they would be liable under the environmental laws. Such liabilities are dealt under various laws. In the present Chapter, Liabilities, the Supreme Courts’ approach to penal liability, tortious liability and statutory liabilities of the industrialists are analysed in the light of cases decided by the Supreme Court related to environment.

**PENAL LIABILITY**

‘Mens rea’ is the basic principle of penal liability. The Indian Penal Code of 1860 deals with penal liability. There are provisions in chapter XIV from Sections 268 to 294 dealing with persons who defile water and air. Corresponding provisions are found in the Criminal Procedure Code. Environmental legislations, like the Water Act, the Air Act, the Environment Act, to mention a few also take cognizance of commissions and omissions as offences against environment and correspondingly offenders are liable to be penalised. Earlier environmental laws prescribed milder punishment, but as the environmental jurisprudence gained currency, punishment has also become severe. The liabilities prescribed by the environmental laws are dealt under the heading statutory liability. In this part, the criminal liability of the polluter has been analysed and the Supreme Court’s approach in constructing such criminal liability is also explored and formulated.

The Indian Penal Code of 1860 prescribes penal liability for environmental polluters even before environmental awareness got momentum. Indian Penal Code prescribes norms and thereby attempts to prevent environmental pollution by preventing the discharge of pollutants either in the form of water or hazardous substance in the land or emission of smoke or fumes in the air. The Indian Penal Code in Section 268 deals with public nuisance. Accordingly, a person is guilty of public

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10 Section 2(b) of the Environment (Protection) Act, 1986
nuisance, when he does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy any property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. However, “a common nuisance is not excused on the ground that it causes some inconvenience or advantage.”

Public nuisance is quite broad in dimension and it includes all types of pollution, like air, water or land pollutions. However, Indian Penal Code prescribes penal liability in case of water pollution. Section 277 stipulates: “Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to 3 months, or with fine which may extend to five hundred rupees, or with both.”

Correspondingly provisions are prescribed making air pollution a penal liability. As per Section 278, “Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees”.

From the above analysis, it can be inferred that pollution under the Water, Air and Environment Acts are public nuisance, but all public nuisance are not pollution as defined in these legislations. Punishment and penalty under public nuisance are less than the punishment and penalty under environmental laws. However, in both cases the District Magistrate is vested with the power to cognize offences. In criminal law any person can let the law in motion by initiating action. But, under environmental laws only ‘a board or any officer authorized in their behalf can initiate’. However, a person can also initiate criminal action only after giving 60 days notice in the prescribed manner of the alleged offences and of his intention to make a complaint to the board or officer authorized.

11 Section 268 of Indian Penal Code
12 Section 277 of Indian Penal Code
13 Section 278 of Indian Penal Code
The Indian Penal Code provides penal liability for any form of environmental pollution like land pollution, water pollution and air pollution under public nuisance. But the punishment stipulated under this penal law is minimal and not considered as serious. Along with these substantive legal provisions, provisions for procedural aspects are also dealt under the Criminal Procedure Code, 1973. Chapter X of the Code deals with maintenance of public order and tranquility. Public nuisances from Sections 133 to 143 stipulate law relating to public nuisances. Accordingly, the District Magistrate is vested with the power to punish such offenders. The Criminal Procedure Code in Section 133 deals with the powers of the Magistrate to remove nuisance. This Section provides:

“(1) wherever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in the behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers –

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or…

(c) that the construction of any building or, the disposal of any substance as is likely to occasion conflagration or explosion should be prevented or stopped; or …

(f) that any dangerous animal should be destroyed, confined or otherwise disposed off, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance,…or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order, --

(i) to remove such obstruction or nuisance, or …

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or …

(vi) to destroy, confine or dispose off such dangerous animal in the manner provided in the said order; or if he objects to do so, to appear before him or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this Section shall be called in question in any Civil Court.”

14 Section 133 of the Criminal Procedure Code, 1973
For the purpose of this section “a ‘Public Place’ includes also property belonging to the State, camping grounds and grounds left unoccupied by sanitary or re-creative purposes.”

This Section elaborately empowers the Magistrate to deal with the environmental polluters. In section 137 of the Criminal Procedure Code, in continuation of Section 133, the procedure for the protection of public right is dealt with. Accordingly,

“(1) where an order is made under Section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place and, if he does so, the Magistrate shall before proceeding under Section 138, inquire into the matter.

(2) If in such inquiry, the Magistrate finds that there is any reliable evidence in support of such denial he shall stay the proceedings, until the matter of the existence of such right has been decided by a competent court; and if he finds that there is no such evidence, he shall proceed as laid down in Section 138.

(3) A person, on being questioned by the Magistrate under Sub-section (1) fail to deny the existence of a public right of the nature therein referred to or who, having made such denial has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial.”

In addition to these penal provisions of the criminal laws, Chapter VII of the Water Act, Chapter VI of the Air Act, and Chapter III of the Environment Act, besides other Acts, effectively bring environmental pollution under criminal liability. The normative approach of the Supreme Court regarding environmental polluters ought to be dealt and are to be construed only under these provisions. It is relevant to analyse critically the approach adopted by the Supreme Court in imposing liabilities on the polluters.

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15 Section 133 of the Criminal Procedure Code, 1973
16 Section 137 of the Criminal Procedure Code
The *Ratlam Municipal Council* case [1980DB]\(^{17}\) is a pioneer landmark case that imposed penal liability on a municipal council. To appreciate the judicial process it is relevant to understand the backdrop and facts of the case. This case was filed in the Magistrate Court in 1972, the year of Stockholm declaration. It reached the Supreme Court in 1979 for its final disposal. During this period, in consequence of the Stockholm declaration the Water Act, 1974 was enacted and the Constitution was also amended to incorporate the environmental provisions in Parts IV and IVA. However, the case was decided by the Supreme Court before the Water Act, 1981 and the Environment Act, 1986 were enacted. The facts of the case are as follows: The residents of Ratlam Municipality were tormented by stench and stink caused by open drains and public excretions by nearby slum dwellers. Affected by such nasty and unhygienic conditions, people of that locality moved the Sub-Divisional Magistrate under Section 133 of Criminal Procedure Court, seeking directions to the municipality to construct drain pipes with sufficient water flow to wash the filth and stop the stench. The Magistrate directed the municipality to draft a plan within six months for removing the nuisance. The municipality filed an appeal to the High Court against the order of the Magistrate, the plea was not accepted by the High Court. When the High Court approved the Magistrate’s order, the municipality took this matter to the Supreme Court. The question raised by the municipality was whether a court can compel a statutory body to carry out its duties to the community by constructing sanitation facilities at great cost and within a stipulated time period. In defense, the municipality pleaded paucity of funds as the chief cause for hampering its duties.

In the above said factual circumstances, Justice V.R.Krishna Iyer, delivered a landmark judgement and laid down very important decisions in which municipality’s liability under criminal law is elaborately discussed. It also signifies the coming of age of that branch of public law bearing on community actions and the court’s power to force public bodies to implement specific plans in response to public grievance. The key question to be answered here is whether by affirmative action a court can compel a statutory body to carry out its duty to the community by constructing sanitation facilities at a great cost and within a stipulated time.

\(^{17}\) Municipal Council, Ratlam v. Vardhi Chand, AIR 1980 SC 1622
The Sub-Divisional Magistrate cognized the matter under section 133 CrPC, and to abate nuisance, ordered the municipality to construct drain pipes to wash the filth. Instead of doing that, the municipality rushed from court to court and it was generally observed that had the municipal council and its executive officers spent half this litigative zeal on cleaning up the street and constructing the drains by raising the people’s Shramdan resources, it could have succeeded in cleaning up the mess to a large extent.

The Supreme Court appreciated the Magistrate’s activistic application of Section 133 CrPC for people’s welfare. In this case, the Magistrate ordered as follows: “For the health and convenience of the people residing in that particular area, all the nuisance must be removed” and for that a detailed order is passed. The following are the important directions.

1. The Town Improvement Trust with the help of municipal council must prepare a permanent plan to make a proper flow of the drainage water.

2. The municipal council and the Town Improvement Trust must construct the proper drainage system and all these work should be completed within 6 months.

3. The Municipal Council should construct drains so that the water flowing from the septic tanks and the water flowing outside the residential houses may be channelized and it may stop stinking and it should have a proper flow so that the water may go easily towards the main nallah.18

The municipality appealed to the Sessions Court which dismissed it as unjustified. A further appeal to the High Court was made. But the High Court upheld the Magistrate’s order. Aggrieved by this, the municipality took it to the Supreme Court, which upheld the order of the Magistrate and laid down the landmark decision. In this decision the Apex Court held the Magistrate’s order to be correct and criticized the municipality of callousness to public health and sanitation. As far as section 133 of CrPC is concerned, it observed that, “the guns of section 133 go into action whenever there is public nuisance. The public power of the Magistrate under the code is a public duty to the members of the public who are victims of the nuisance, and so he shall

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18 Ibid
exercise it when the jurisdictional facts are present as here….Discretion becomes a duty when the beneficiary brings home to circumstances for its benign exercise.”

In this case, Section 188 of Indian Penal Code which deals with disobedience to order duly promulgated by public servant has also been invoked. Accordingly, if the public servant’s order is defied or ignored, it involves punishment on the part of the offender for a term which may extend to six months, or with fine which may extend to Rs.1000 or with both. In this case, there is no difficulty in locating who has the obligation to abate the public nuisance caused by the absence of primary sanitary facilities. Evidently, the municipality cannot extricate itself from its responsibility. The plea of the municipality was not that the facts are wrong, but that the law is not right because the municipal funds being insufficient, it cannot carry out the duties prescribed under the Madhya Pradesh Municipalities Act of 1961. According to it, financial inability validly exonerates it from statutory liability and therefore it has no juridical basis. But the fact is that Criminal Procedure Code operates against statutory bodies irrespective of its resources, even as human rights under part III of the Constitution have to be respected by the state regardless of budgetary provisions. Therefore, the Supreme Court held the Ratlam Municipal Council responsible, irrespective of the ‘self-created bankruptcy’ or ‘perverted expenditure budget’ it had projected.

The Supreme Court further observed that Section 133, CrPC is categoric, though discretionary. When facts are present, judicial discretion has a mandatory import. It commended the Magistrate for having done his duty sincerely as it is the Magistrate’s responsibility under Section 133 Cr PC to order the removal of public nuisance, within a stipulated time. This is a public duty implicit in the public power to be exercised on behalf of the public. If the municipality disobeys that direction, it will be visited with a punishment contemplated by section 188 IPC. It also stipulated the Municipal Commissioner or other executive authority bound by the order under Section 133 CrPC and shall obey the direction. Persons who disobey such orders shall be punished with simple imprisonment or fine as prescribed in the section. The offence is aggravated if the disobedience leads to cause danger to human health or safety. The

\[19\] Ibid
imperative tones of Section 133, CrPC read with the punitive temper of Section 188 IPC makes the prohibitory act a mandatory duty.20

Another point of grievance for the municipality was that the time limit given by the Magistrate was unworkable. When this plea was taken to the High Court, it affirmed the Magistrate’s order and the Municipal Council went upto the Apex Court regarding this. Much to their chagrin, the Supreme Court also affirmed the High Court’s order which runs as follows: “It is unfortunate that such contentions are raised in 1979 when the proceedings have been pending since 1972. If in 7 years time the Municipal Council intended to remedy such a small matter, there would have been no difficulty at all. Apart from it, so far as the directions are concerned, the learned Magistrate, it appears was reasonable.” So far as the directions of the Magistrate are concerned, he only expected the Municipal Council and the Town Improvement Trust to evolve a plan and to start planning about it within 6 months. The Magistrate has rightly not fixed the time limit within which that plan will be completed. Nothing more reasonable could be said about direction."21

The **Municipal Council of Ratlam** put forth a strange plea before the High Court and was justly repelled. The plea was that the owners of houses had gone to that locality on their own choice with eyes open and therefore could not complain of the area being dirty. The Court criticised the municipality stating that a public body like the municipality whose principal statutory duty was ensuing sanitation and health cannot outreach the Court by such an ugly plea. Turning down the request for further time for implementing the Magistrate’s order, the High Court said that already 7 years have elapsed and no more time could be given.

The Supreme Court commended the High Court for rejecting the additional Sessions Judge recommendation to quash the Magistrate’s order and held that whenever there is a public nuisance, the presence of section 133 CrPC must be felt and any contrary opinion is contrary to the law. Therefore the Supreme Court upheld the High Court’s view of the law and affirmation of the Magistrate’s order.

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20 Ibid
21 Quoted in Ibid
The Supreme Court approved a scheme of the municipality, which cost only around Rs.6 lakhs and gave a year’s time limit for completing the work. It also directed that within 2 months from that date, the Magistrate shall inspect the progress of the work, every 3 months to see that the order is satisfactorily implemented. Breaches will be visited with penalty under Section 188 IPC. The Court further gave the following directions to be performed by the municipal authority and the State Government:

“(1) We direct the Ratlam Municipal Council... to take immediate action...to stop the effluents from the Alcohol Plant flowing into the street. The State Government also shall take action to stop the pollution.

(2) The Municipal Council shall, within 6 months from today, construct a sufficient number of public latrines for use by men and women separately, provide water supply and scavenging service, morning and evening so as to ensure sanitation. The Health Officer of the Municipality will furnish a report, at the end of the six-month term, that the work has been completed....

(4) The Municipality will not merely construct the drains, but also fill up cess pools and other pits of filth and use its sanitary staff to keep the place free from accumulation of filth. After all, what it lays on prophylactic sanitation is a gain on budget.

(5) We have no hesitation in holding that if, these directions are not completed the Sub-Divisional Magistrate will prosecute the officers responsible. Indeed this Court will also consider action to punish for contempt in case of report by the Sub-Divisional Magistrate of wilful breach by any officer.”

The Supreme Court further made it obligatory on the part of the state Government to provide loans or grants or financial aid to the Ratlam Municipality to enable it to fulfill its obligations under this order and cited Article 47, which makes it a paramount principle of governance to introduce steps to be taken for the improvement of public health. Justice Krishna Iyer in this landmark judgement declared that it has become the law of the land to protect the environment and the polluters would be prosecuted under Criminal Law.

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22 Ibid
It is also obvious from the judgement that the financial inability of the municipality cannot exonerate it from statutory liability. Implicitly, part III has been invoked, besides Article 47 of part IV of the Constitution and pointed out that they are to be respected by the state regardless of budgetary provisions. Municipality is a ‘state’ as per Article 12. In this case the ‘state’ is held liable under penal provisions. Thus the seed of environmental jurisprudence was sown in the Ratlam case by Justice V.R.Krishna Iyer.

Some High Courts doubted the relevance of Section 133 CrPC and corresponding provisions of IPC related to pollution when subsequent enactments of Water and Air Acts laid down codes of their own for pollution control. The Apex Court settled this matter in State of Madhya Pradesh v. Kedia Leather and Liquor Ltd.23 [2003 DB] In this case it stressed the utility of the law of nuisance despite having laws on Water and Air Acts. The facts of the case show that the Sub-Divisional Magistrate directed the respondents to close their industries and stop the discharge of effluents causing public nuisance. The High Court held that the Magistrate had no jurisdiction under Section 133 of CrPC as there was implied repeal of the code. The Supreme Court in appeal went into the entire gamut of law relating to public nuisance. The term nuisance means an inconvenience, which materially interferes with the ordinary physical comfort of human existence. The object and purpose behind this section is to avert imminent danger to property and nuisance to the public. There is a sense of urgency and if the Magistrate fails to take it up immediately damage would be done to the public. This irreparable provision applies only when the nuisance is in existence.24 The proceedings are rather civil than criminal in nature. In the view of the Court, Section 133 of the Code can be resorted to in spite of the provisions of the Water and the Air Act in order to remove public nuisance caused by water and air pollution for the welfare of the public.

On the question of implied repeal, the Supreme Court held that it can be found only when the provisions of the later Acts are not inconsistent with, or impugnant to, the provisions of the earlier Act and when the two laws cannot stand together. If they

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24 Ibid, p.393
can be read together to have a harmonious construction, the doctrine of implied repeal is ruled out. Regarding Section 133 CrPC and the provisions of the Water and Air Acts, the Supreme Court observed: “The area of operation in the code and the pollution laws in question are different with wholly different aims and objectives and though they alleviate nuisance that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side. While…the provisions of Section 133 of the code are in the nature of preventive measures, the provisions contained in the two Acts are not only curative, but also preventive and penal. The provisions appear to be mutually exclusive and the question of one replacing the other does not arise.”

The Supreme Court put an end to the controversy over implied repeal of Section 133 of CrPC. In this regard, Leelakrishnan says that “by doing so, it has strengthened the environmental content in the existing provision enlivened by prior decisions of the Supreme Court and the High Courts. However, doubts occur as to whether the action against nuisance is limited to the actual nuisance and not extended to potential nuisance. One may not rule out occasions when a potential nuisance turns out to be actual nuisance of intensive nature which could have been conveniently avoided if timely preventive action was taken.” Leelakrishnan was of the view that the law of public nuisance was yet to be fully exploited and that the executive Magistrates were the torch bearers of action against public nuisance. So, they have to be sensitised as also the members of the general public who become victims of environmental maladies.

In U.P. Pollution Control Board v. M/s. Mohan Meaking Ltd [2000 DB] the Supreme Court speaks about corporate criminal liability. In penal laws, normally as it is based on ‘mens rea’, living persons are held liable and punishment can be given only to such living persons. But in an industrialized world where corporate bodies run the industries, it is the corporate bodies that pollute the environment widely. The Water Act, the Air Act, The Environment Act and other environmental legislations prescribe

25 Ibid, p.394
27 Ibid
penalties even to corporate bodies. In this case the appellate board had launched prosecution of the respondent company and its directors for continuous pollution on the river. Disappointed by the order of the lower court, the respondent went for appeal. The court of sessions approved their stand that in issuing summons, the magistrate did not give a speaking order. The Sessions Court quashed the order. There was inordinate delay of 15 years in the High Court in dismissing a revision against the Session’s court order.

Expressing displeasure against this inordinate delay, the Supreme Court found fault with the Sessions Judge in quashing the process merely on this ground. The Supreme Court observed that it was not necessary to write detailed orders in matters such as issuing process, remanding the accused to custody, framing charges, etc. Every person who is in charge of the company for the conduct of the business of the company is liable to be prosecuted under Section 47 of the Water Act. The court did not accept the plea of the respondents on grounds of lapse of several years for getting out from prosecution and held that the lapse of long period was a good reason for expediting the trial. It also observed that “those who discharge noxious polluting effluents to streams may be unconcerned about the enormity of the injury, which it inflicts on the public health at large, the irreparable impairment it passes on the aquatic organisms, the deleteriousness it imposes on the life and health of animals. So the courts should not deal with the prosecution for offences under the Act in a casual or inordinate manner. Parliamentary concern in the matter is adequately reflected in strengthening the measures prescribed by the statute. The Court has no justification for issuing the seriousness on the subject.”

Later amendments and enactments impose severe penalties. In an adversarial system, normally the onus of proof lies on the prosecution. The presumption in some of the heinous crimes, at times of innocence until conviction is imposed, is shifted to the accused. This was done by the parliament by amending the legislations. Similarly, the onus of proof is also shifted from prosecution to the offender. In U.P. Pollution Control Board v. Modi Distillery, the Supreme Court reversed an order quashing a

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29 Ibid, p.1457
prosecution under Section 44 of the Water Act.\textsuperscript{30} In this case, the State Board initiated the prosecution under Section 47 against a company and its corporate officials. The Board’s complaint erroneously designated corporate officials as officials of Modi Distillery instead of Modi Industries Ltd. The corporate officials sought to quash the prosecution on the ground that under Section 47, corporate officials could not be prosecuted if the company was not prosecuted. The Supreme Court disapproved the claims of the corporate officials because the officials had failed to respond to the Board’s request for information about the corporation. The Court also found that the technical flaw in the complaint could be easily removed by remitting the matter to the Chief Judicial Magistrate with a direction to call upon the State Board to make formal amendments in the averments of the complaint by simply substituting the name of the company. The Apex Court expressed its opinion as follows: “It would be a travesty of justice if the big business house of Messrs Modi Industries Limited is allowed to defeat the prosecution launched and avoid facing the trial on a technical flaw which is not incurable for their alleged, deliberate and wilful breach of the provisions contained in sections 25 (1) and 26.”\textsuperscript{31}

Noting this changing trend, Shyam Divan and Armin Rosencranz observed that, “not surprisingly given the threat of imprisonment and fines, the liability of individual corporate officials has been the subject of extensive litigation. Challenges to actions against corporate officials generally are in the form of motions to quash the action, brought under Section 482 of the Code of Criminal Procedure, which recognizes the inherent powers of the High Court to prevent abuse of the judicial process or to secure the ends of justice.”\textsuperscript{32}

It is found from the analysis of the above cases that the Supreme Court pulled up the subordinate judiciary which were indifferent and lethargic to environmental issues. It plugged the loopholes of penal laws and rejected the contentions of implied repeal of criminal laws due to the enactment of environmental laws. It is also found that the Apex Court by innovatively interpreting the existing penal laws strengthened the

\textsuperscript{30} U.P. Pollution Control Board v. Modi Distillery, in AIR 1988, SC p.1128
\textsuperscript{31} Ibid
\textsuperscript{32} Shyam Divan and Armin Rosencranz, op.cit., p.190
strings of the liability net and sharpened its hooks so that the mighty eco-ciders could be effectively caught and punished.

TORTIOUS LIABILITY

‘Ubi jus ibi remedium,’ is one of the basic principles of tortious liability. There are some legal remedies available to abate pollution even before the emergence of environmental jurisprudence. Generally, pollution cases fell under the categories of ‘nuisance’, ‘negligence’ and ‘strict liability’. As India follows the common law tradition, it has been adopting these common law principles. The Indian judiciary has improvised the ‘strict liability’ into ‘absolute liability’ and excludes all the exemptions of strict liability and thereby rigidified the liability of persons who involve in any hazardous or dangerous industrial process.

Strict liability is a tortious law principle which was laid down in 1866 in the leading case of Rylands v. Fletcher. According to this principle of strict liability, if a person who for his own purpose brings on to his land and preserves or keeps there anything likely to cause mischief if it escapes, he must keep it at his peril and if he fails to do so, is prima facie liable for the damage, which is the natural consequence of its escape. This strict liability has certain exceptions. They are, (1) Act of god, (2) Act of the third party, (3) the plaintiff’s own fault, (4) the plaintiff’s consent, (5) the natural use of land by the defendant (i.e., the strict liability applies to a non-natural user of land), and (6) statutory authority.

This principle of strict liability with all its exceptions has been followed in India also. This principle was equally applicable to pollution even before the emergence of separate environmental laws. In India, a situation arose in 1985, when an environmentalist lawyer M.C. Mehta [1987CB] filed a Public Interest Litigation under Article 32 of the Indian Constitution. He sought to close and relocate ShriRam’s caustic chlorine and sulphuric acid plants located in a thickly populated area of Delhi. After a month’s time of filing this petition, oleum gas leaked from the plant, which affected several people of that area. This leak occurred on 4th December 1985, exactly a day after the first anniversary of the Bhopal gas leak. This accident created widespread
panic among the local people. The authorities under the Factories Act issued closure of both plants. Aggrieved by this order, Shriram Company filed a writ petition, challenging the orders issued under the Factories Act 1948 and sought an interim petition to reopen the plant. Meanwhile, the affected victims of the oleum gas leak, filed applications for compensation in the original petition filed by M.C.Mehta. It is pertinent to note that neither the claimants nor the Delhi Legal Aid & Advisory Board, who filed the compensation petition were parties in the original petition.33

In the judicial process of rendering environmental justice by imposing liabilities on the employer, the Supreme Court carefully considered some seminal questions concerning the true scope and ambit of Articles 21 and 32 of the Constitution. The issues raised was principles and norms of determining the liability of large enterprise engaged in the manufacture and sale of hazardous products, the basis on which damages in case of such liability should be quantified and whether such large enterprises should be allowed to continue in thickly populated areas and if they are permitted to so 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. These questions assumed great importance especially after the leakage of MIC (Methyle Iso Cyanide) gas from the Union Carbide plant in Bhopal which caused one of the greatest catastrophes in the industrial systems. This unfortunate accident led lawyers, judges, jurists and social activists to ponder seriously as to what control should be taken to protect people staying in and around the vicinity of factories, opening a pandora’s box. The issues like relocation of hazardous industries or taking of adequate safety devices in such industries to prevent harm to workers and people in the vicinity in case of leakage were looked into. Not only that, the extent of liability of such corporations and the remedies to be denied for enforcing such liability with a view to secure payment of damages to the gas was also discussed.

Conflicting opinions were put forward before the Court in the Shriram case, when the question arose regarding the restarting of the chlorine plant of the factory without causing any real hazard or risk to the workmen as well as to the public at large. The Court ordered for the appointment of a committee of experts to inspect the plant

33 M.C.Mehta v. Union of India, AIR 1987 SC
and to report to the court on the following three points: “(1) whether the plant can be
allowed to recommence the operations in its present state and condition? (2) 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? (3) How many safety devices
against the above hazards are available at present? (4) How many exits are available in
the plant at present? And (5) which of them though necessary, are not installed in the
plant?”

The expert committee made recommendations and suggested that it must be
complied with by the management of Shriram in order to minimise the risk posed to the
workmen and the public. The committee, however, said that the Apex Court alone had
to decide whether to allow Shriram to start the plant or not. But before deciding, the
committee suggested that the Court had to look at the worn out state of machinery and
equipment and the safety devices and instruments available in the factory, as these
considerations were very relevant in deciding whether the plant should be allowed to be
restarted. From the reports, it was evident that there would be hazards to life and health
of the community if there is escape of gas. At the same time, the committee was
satisfied when the company substantially complied with its suggestions and therefore
recommended that the company may be allowed to restart the plant. The committee did
not want to affect the future of the workmen there and said, “We cannot also ignore the
interests of the workmen while deciding this delicate and complex question. It could
not be disputed either by the Government of India or by the Delhi Administration or
even by the petitioner that the effect of permanently closing down the caustic chlorine
plant would be to throw out 4,000 workmen out of employment and that such closure
would lead to their utter impoverishment. The Delhi Water Supply undertaking which
gets its supply of chlorine from Shriram would also have to find alternative source of
supply and it was common ground between the parties that such sources may be quite
distant from Delhi.”

In the background of the complicated factual matrix of the case, the Supreme
Court decided “to permit Shriram to restart its power plant as also plants for
manufacture of caustic chlorine including by-products.... But we are laying down

34 Ibid
certain conditions which shall be strictly and scrupulously followed by Shriram and if at any time it is found that any one or more of these conditions are violated, the permission granted by us will be liable to be withdrawn. Accordingly, the Supreme Court formulated the following conditions which are to be followed:

1. The Court constituted an expert committee to monitor Shriram’s compliance with the recommendations of the Manmohan Singh and the Nilay Choudhary Committees. The company to deposit Rs.30,000 to meet the travelling, boarding and lodging expenses of the expert committee.

2. The court stipulated that one operator be designated as personally responsible for each safety device in the caustic chlorine plant.

3. The Chief Factory Inspector was directed to inspect the caustic chlorine plant at least once a week.

4. The Central Board was asked to depute an inspector to visit the Shriram plants at least once in a week to ascertain Shriram’s compliance with the effluent discharge and emission standards prescribed in the consent orders under the Water Act and the Air Act.

5. The management of Shriram would obtain an undertaking from the Chairman and the managing director of the Delhi Clothes Mill Ltd, which is the owner of the various units of Shriram as also from the officer or officers who are in actual management of the caustic chlorine gas resulting in death or injury to the workmen or to the people living in the vicinity, they would be personally responsible for the payment of compensation for such death or injury and such undertakings shall be filed in court within one week from today.

6. The Court constituted a worker’s safety committee.

7. Shriram was asked to publicise the effects of chlorine and the appropriate post-exposure treatment through charts placed at the gate of the premises and within the plant.

8. Shriram was directed to instruct and train its workers in plant safety through special audio visual programmes.

36 Ibid
Shriram was directed to install loud speakers to alert neighbours in the event of a chlorine leak.

Shriram was asked to ensure that the workers use safety devices like gas masks, safety belts, etc. and was directed to provide regular medical check ups to the workers.

The management of Shriram would deposit in this court a sum of Rs.20 lakhs as and by way of security for payment of compensation claims made by or on behalf of the victims of oleum gas. It would also furnish a bank guarantee to the satisfaction of the Registrar of this court for a sum of Rs.15 lakhs, which bank guarantee shall be encashed by the Registrar, wholly or in part, or in case there is any escape of chlorine gas within a period of three years from today resulting in death, injury to the workman or to any person or persons living in the vicinity.”37

Commenting on this case, Shyam Diwan and Armin Rosencranz said, “The Shriram Gas Leak case pitted the Supreme Court against one of India’s largest corporations. But it was an unusual confrontation, because Shriram invariably bowed to the court’s directions and willingly complied with its often unprecedented orders. Several of these orders required Shriram to deposit significant sums of money to finance the court’s exercise of seemingly executive and legislative functions in the process of adducing evidence in the case.”38

In this case, the Supreme Court has elaborately considered several intricate questions relating to science and technology, hazardous industries and its location, necessity to have the products of hazardous industries, environmental pollution and worker’s conditions. It is pertinent to quote the observation of the Supreme Court in this regard. “When science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. Evidently a policy of not having any chemical or other hazardous industries merely because they pose hazard or risk to the

37  Ibid
38  Shyam Divan and Armin Rosencranz, op.cit., p.521
community cannot be adopted. If such a policy were adopted it would mean the end of all progress and development. Such industries, even if hazardous, have to be set up since they are essential for economic development and advancement of well being of the people. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk of danger to the community and maximising safety requirements in such industries. We would therefore like to impress upon the Government of India to evolve a national policy for location of chemical and other hazardous industries in areas where population is scarce and there is little hazard or risk to the community, and when hazardous industries are located in such areas, every care must be taken to see that large human habitation does not grow around them. There should preferably be a green belt of one to five kilometre width around such hazardous industries.\textsuperscript{39}

This observation of the Supreme Court is a seminal point wherein several concepts and principles of environmental jurisprudence including sustainable development are embedded. Expressing its inability and handicap to understand complications that crop up in environmental issues, the Supreme Court said, “we have noticed that in the past few years, there is an increasing trend in the number of cases based on environmental pollution and ecological destruction coming up before the courts. Many such cases concerning the material basis of livelihood of millions of poor people are reaching the court by way of public interest litigation. In most of these cases there is need for neutral scientific exercise as an essential input to inform judicial decision making. These cases require expertise and a high level of scientific and technical sophistication. We felt the need for such expertise in this very case and we had to appoint several expert committees to inform the court as to what measures were required to be adopted by the Shriram to safeguard against the hazard or possibility of leaks, explosion, pollution of air and water etc. and how many of the safety devices against this hazard or possibility existed in the plant and which of them though necessary were not installed. We had great difficulty in finding out independent experts who would be able to advice the court on these issues.”\textsuperscript{40}

\textsuperscript{39} Ibid
\textsuperscript{40} Ibid
The Court had to undertake a very difficult task of trying to identify experts on its own. Independent experts were needed to provide reliable scientific and technical input necessary for helping the Court to decide the case. There was at that point no independent and competent machinery to generate, gather and make available the necessary scientific and technical information. Highlighting the need for such machinery, the court said, “It is therefore absolutely essential that there should be an independent centre with professionally competent and public spirited experts and to provide the needed scientific and technological input. We would in these circumstances urge the government of India to set up an Ecological Sciences Research group consisting of independent professionally competent experts in different branches of science and technology, who would act as an information bank for the Government and the Government departments and generate new information according to the particular requirements of the court or the concerned Government departments. We would also suggest 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 as these cases involve assessment and evolution 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. There would of course be a right of appeal to this court from the decision of the environment court.”

The Supreme Court improvised the tortious liability of strict liability and laid it down as an absolute liability of the occupier in case of any hazardous material escaping and causing injury to persons. In this regard, the Apex Court made the following observation: That the contention of Shriram is that it is not clear as to who can be described as officer in actual management of the caustic chlorine plant and that this particular direction requires clarification so that the management can obtain the necessary undertaking from such office. So far as this difficulty pointed out on behalf of Shriram is concerned, the Apex Court wanted to clarify that the officer whose undertaking is required to be taken under the directions given in one order is the officer who is the ‘occupier’ under the Factories Act, 1948 because he is the person who has

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41 Ibid
actual control over the affairs of the factory and in charge of the actual operation of the
cau
tic chlorine plant. Such Officer is responsible to the management for the operation
of the plant.\textsuperscript{42} From the observation of the Apex Court, it is evident that the occupier is liable for the injury caused to any such person.

The absolute liability concept was introduced by the Supreme Court when it excluded the exemptions that were part of the \textbf{Ryland v. Fletcher} rule of strict liability. It laid down that, “we are not unmindful of the fact that if absolute unlimited liability were to be imposed on any officer or officers in the employment of Shriram for death or injury arising on account of possible escape of chlorine gas many competent persons would shy away from accepting employment in Shriram and that would make it difficult for Shriram to have really competent and professionally qualified persons to manage and operate the chlorine plant. We would therefore modify the conditions prescribed by us by providing that undertaking shall be obtained from the officer who is ‘occupier’ of the caustic chlorine plant under the Factories Act, 1948, and or the officer who is responsible to the management for the actual operation of the caustic chlorine plant as its head and such undertaking shall stipulate that in case there is any escape of chlorine gas resulting in death or injury to the workmen or to the people living in the vicinity, the officer concerned will be personally responsible, to the extent of his annual salary with allowances, for payment of compensation for such death or injury but if he shows that such escape of gas took place as result of Act of God or \textit{vis major} or sabotage or that he had exercised all due diligence to prevent such escape of gas, he shall be entitled to be indemnified by Shriram.”\textsuperscript{43}

This case witnessed the evolution of the rule of absolute liability from strict liability. Commenting on this P.Leelakrishnan said that law has to grow if it has to keep abreast with the economic developments taking place in the country. Summing up the Court’s observation regarding this development he said that India has to evolve new principles and lay down new norms which would adequately deal with new problems which arise, in a highly industrialized economy. Our judicial thinking cannot be allowed to be constricted by reference to the law as it prevails in England or for the

\textsuperscript{42} Ibid
\textsuperscript{43} Ibid
matter of that in any other foreign country. India no longer need the crutches of a foreign legal order.44

The Supreme Court wished to break free from the shackles of English law in its endeavour to develop a law suitable and adaptable to a typical Indian set up. In this regard it said: “We in India cannot hold our hand back and I venture to evolve a new principle of liability, which English courts have not done. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries, which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principles of liability. 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 any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activities 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 not be an answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.”45

The Apex Court laid great stress on the principle of absolute liability and held that, “where an enterprise is engaged in a hazardous or an inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or dangerous activity, resulting for example in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule Ryland v. Fletcher.”46

44 P.Leelakrishnan, Environmental Law Case Book, op.cit., p.291
46 Ibid
On the question of quantum of compensation, the Apex Court opined that it must be correlated to the magnitude and capacity of the enterprise as such compensation will have a deterrent effect. The larger and more prosperous the enterprise, the amount payable by it on account of an accident, should be more.

This path breaking judgement received wide attention and appreciation. While reviewing this case and its judgement, Jariwala, 47 who made an evaluation of the functioning of 50 years of Supreme Court, with reference to environmental justice commends as follows: “The Bhagavati Court deserves appreciation for giving a call to build up an Indian enviro-jurisprudence; and secondly for evolving an indianized principle of absolute liability against the well-established principle in Ryland v. Fletcher. Though the absolute liability principle attracted currents and cross-currents, views and news, the Supreme Court has repeatedly ruled it as the settled law of the land. It may be noted that this settled law unsettles the codified provisions in the Water, Air the Environment Acts, which exempt an international act and act committed ‘without knowledge’ or with ‘due diligence’ from the purview of any liability.” 48

The Supreme Court imposed these liabilities on the Shriram company. Most of these liabilities are neither explicitly found in the environmental laws, nor in industrial laws. Notwithstanding the fact that the Constitution bench of the Supreme Court imposed ‘absolute liability’, which was not known to the law of torts earlier, and several other liabilities by way of conditions to be discharged by the Company, the Supreme Court allowed the Company to pursue the hazardous industrial process within the capital city of India at a time when the Bhopal gas leak disaster was still fresh in the minds of people. In so deciding, the Court held the view that the Company which manufactures chlorine gas is very essential to purify the drinking water needs of the people of Delhi. Further, thousands of workers would be thrown out of employment, if the company is closed. Paradoxically, in this case interests of the employer, workers and the community are not in conflict but are harmonious. In this regard, the approach of the Supreme Court is anthropocentric.

47 C.M. Jariwala, “The Directions of Environmental Justice: An overview”, op.cit., p.475
48 Ibid
STATUTORY LIABILITY

The constitutional validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 was challenged in Charan Lal Sahu v. Union of India.49 [1990 CB] A Constitution bench while upholding the constitutionality of the Act questioned the constitutional validity of the principle of ‘absolute liability’ which was laid down in Oleum Gas Leak case [1987CB]. The Constitutional validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 was upheld by invoking the concept parens patriae which has been in use in the United States of America. Before analysing the views of the Apex Court on parens patriae and absolute liability, it is necessary to understand the nature of the disaster and the pathetic conditions of the victims which led to the enactment of the Act.

The Bhopal gas leakage which occurred in 1984 is perhaps the worst industrial accident that happened in the history of mankind. Chronologically, this leakage occurred even before the oleum gas leakage of Delhi. But the magnitude and complexity of this disaster delayed settlement. Describing the chilling effect of the killer gas, A.K. Desai says, “at midnight on December 2-3, 1984, destiny planted an industrial disaster. In the cold wave of winter at Bhopal, a capital of one of the states in Central India, around 40,000 kgs. of methyl iso cyanide gas leaked out of the factory of Union Carbide. The killer gas took 2500 lives and affected about 25,000 persons. It infected women, resulting in either abortions or delivery of infirm and handicapped babies.”50

The Union Carbide Company, a multinational company was transacting its business in India and had its unit in Bhopal. Till the disaster occurred, nobody seriously bothered about its industrial activity. Environmentalists viewed the mishap not as an accident in the chemical industry but as an environmental disaster. As Ashok A. Desai rightly says, it generated a tremendous tempo among the public. The Bhopal disaster

49 Charan Lal Sahu v. Union of India, AIR 1990 SC p.1480
50 Ashok A. Desai, Environmental Jurisprudence, op.cit.p.133
had a great impact on the legislative, social and technological aspects, which the Government of India wanted to maintain to protect the environment and mankind.\textsuperscript{51}

Immediately after the disaster, in that-chaotic situation accusations started flying. The Union Carbide Company was accused for not maintaining a device to prevent the gas leakage and the authorities were accused of permitting the industry to run without sophisticated devices available in the advanced countries. Amidst that cacophony, the sane voice of the public for environmental legislations to prevent such disasters in the future was loud and clear. Consequently in 1986, the Environment (Protection) Act was introduced.\textsuperscript{52} This concerted effort led to positive changes. Summing up the changes following the post – Bhopal disaster, P. Leelakrishnan, observed as follows: “Along with launching rehabilitation measures, they start thinking about new ways and means of preventing similar tragedies in the future. This process leads to legislative and administrative activism. Industrial accidents involving environmental hazards also give rise to judicial concern.”\textsuperscript{53}

Expressing anguish over this incident and voicing judicial concern, Chief Justice R.N. Mishra said that “Judges are men and their hearts also bleed when calamities like the Bhopal gas disaster occur.”\textsuperscript{54} Compensation to the victims of Bhopal disaster is a complicated issue that took very long period to settle. Analysing the reasons for this agonising delay, P. Leelakrishnan opines that “it may be pointed out that there was a paucity of litigation in the field of tort. The proverbial delay, exorbitant court fee, complicated procedure and recording of evidence, lack of public awareness, the technical approach of the bench and the bar and absence of specialization among lawyers are stated to be reasons for such conditions.”\textsuperscript{55} However, parties came to a settlement and the role of the Apex Court is to decide the constitutionality of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.

\textsuperscript{51} Ibid
\textsuperscript{52} Ibid
\textsuperscript{53} P.Leelakrishnan, \textit{Environmental Law Case Book}, op.cit p.303
\textsuperscript{54} Quoted in Ibid, p.303
\textsuperscript{55} P.Leelakrishnan Ibid, p.304
PARENS PATRIAE

The Constitutional bench headed by the then Chief Justice of India, found the constitutional validity of the Act by invoking the doctrine parens patriae. The Supreme Court made the following observation. “The Act in question was passed in recognition of the right of the sovereign to act as parens patriae. The Government of India in order to effectively safeguard the rights of the victims in the matter of the conduct of the case was entitled to act as parens patriae, which position was reinforced by the statutory provisions, namely, the Act. It has to be borne in mind that conceptually and jurisprudentially, the doctrine of parens patriae is not limited to representation of some of the victims outside the territories of the country….The Indian State because of its constitutional commitment is obliged to take upon itself the claims of the victims and to protect them in their hour of need. Parens patriae doctrine can be invoked by sovereign state within India, even if it be contended that it has not so far been invoked inside India in respect of claims for damages of victims suffered at the hands of the multinational. Therefore conceptually and jurisprudentially, there is no bar on the State to assume responsibilities analogous to parens patriae to discharge the State’s obligation under the Constitution. What the Central Government has done in the instant case is an expression of its sovereign power. This power is plenary and inherent in every sovereign state to do all things which promote the health, peace, morals, education and good order of the people and tend to increase for the wealth and prosperity of the State….This power is to the public what the law of necessity is to the individual. It is comprehended in the maxim salus populi suprema lex— regard for public welfare is the highest law. It is not a rule, it is an evolution. This power has always been as broad as public welfare and as strong as the arm of the State, this can only be measured by the legislative will of the people, subject to the fundamental rights and constitutional limitations…."

“It is true that victims of their representatives are sui generis, and cannot as such due to age, mental capacity or other reason not, legally incapable for suing or pursuing the remedies for the rights yet they are at a tremendous disadvantage in the broader and comprehensive sense of the term. These victims cannot be considered to be any match to the multinational companies or the Government with whom in the
conditions that the victims or their representatives were after the disaster physically, mentally, financially, economically and also because of the position of litigation would have to contend. In such a situation of predicament the victims can legitimately be considered to be disabled. They were in no position by themselves to look after their own interests effectively or purposefully. In that background, they are people who needed the State’s protection and should come within the umbrella of State’s sovereignty to assert, establish and maintain their rights against the wrongdoers in this mass disaster. In that perspective it is jurisprudentially possible to apply the principle of *parens patriae* doctrine to the victims. But quite apart from that, it has to be borne in mind that in this case the State is acting on the basis of the Statute itself. For the authority of the Central Government to sue for and on behalf of or instead in place of the victims, no other theory, concept or any jurisprudential principle is required than the Act itself. The Act displaces the victims by operation of Section 3 of the Act and substitutes the Central Government in its place. The victims have been divested of their rights to sue and such claims and such rights have been vested in the Central Government. The victims have been divested because the victims vis-a-vis their adversaries in this matter are a self-evident factor. If that is the position then, even if the strict application of the ‘*parens patriae*’ doctrine is not in order, as a concept it is a guide. The jurisdiction if the State’s power cannot be circumscribed by the limitations of the traditional concept of *parens patriae*. Jurisprudentially, it could be utilised to suit or alter or adapt itself in the changed circumstances. In the situation in which the victims were, the State had to assume the role of parent protecting the rights of the victims who must come within the protective umbrella of the State and the common sovereignty of the Indian people.” It is evident from the Supreme Court’s views on the concept that the state has the responsibility to defend the interests of its poor and weak citizens and their rights against the mighty multinational companies. The multinational company, Union Carbide Company, is held responsible to pay damages to the loss caused to the victims of Bhopal gas leak disaster.

The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 conferred on the Government of India, the responsibility of suing *parens patriae* on behalf of the victims. A suit was filed by the Government of India before the U.S. District Court, Southern district of New York, claiming compensation for the victims. The U.S.
District Court wriggled out of this situation by stating that only an Indian Court was the
most convenient forum where the demands for compensation could be claimed. Appeal
against this order failed. Condemning this double standard of the U.S. judiciary, C.M.
Jariwala said that “on the one hand it was pleaded that the Indian Court was ‘not
competent’ to handle matters of ‘great technological complexity’, on the other hand, it
was argued that the Indian judiciary was ‘highly innovative’, ‘super innovative’ and
‘most powerful court in the world’. Left with no choice, the Indian Government had
to necessarily file a compensation suit before the District Court of Bhopal on behalf of
the disaster. The interim order was passed, which was appealed in the Madhya Pradesh
High Court and was ultimately appealed to the Supreme Court. It is at this point of time
that the Apex Court and the lawyers representing the parties were seized of the need for
a compromise. Ultimately, the compromise judgement of the Supreme Court came out.
However, the inadequacies of handling such complicated issues were exposed in the
Bhopal gas tragedy case. Commenting on the drawbacks of Indian judiciary, Marc S.
Galanter observed that “the Indian Legal System imposed on India during colonial rule
still reflects the colonial vestiges such as lack of broad-based legislative activity,
inaccessibility of legal information and legal services, burdensome court fees and
limited innovativeness with reference to legal practice and education.”

To the credit of the Indian judiciary, it has to be admitted that in spite of all
these inadequacies, the Indian judiciary has been striving to come out from the clutches
of common law system. This is clearly evident from the Oleum Gas Leak case which
lays down a new liability, namely absolute liability in tortious law. The absolute
liability theory laid down by the Apex Court was first applied by the Madhya Pradesh
High Court to support the award of interim compensation to the Bhopal victims. In the
light of Oleum Gas Leak case, Justice Seth of the High Court described the liability of
the enterprise to be unquestionable. But, the then Chief Justice raised a question about
the applicability of absolute liability of Oleum Gas Leakage to the review petition of
the Bhopal Gas settlement. The Chief Justice in his concurring judgement observed that
"the issue before the Supreme Court was whether the delinquent company came within
the ambit of ‘state’ under Article 12 of the Constitution, so as to be subject to the

56  C.M. Jariwala, “the Directions of Environmental Justice: An overview”, op.cit, p.496
57  Marc S. Galanter quoted in P.Leelakrishnan op.cit, p.305
discipline of Article 21 and to proceedings under Article 32 of the Constitution.”

Thus, according to the Chief Justice, what was said about the departure from the Ryland v. Fletcher rule was essentially obiter.

Similarly, a doubt was raised on the absolute liability stand in the main judgement of the Bhopal review case. The Court implicitly rejecting the no-exception rule of Shriram case, questioned the validity of Carbide’s absolute liability in the Bhopal gas disaster. In this regard, it was observed that “it is necessary to remind ourselves that in bestowing a second thought whether the settlement is just, fair and adequate, we should not proceed on the premises that the liability of the Union Carbide Company has been firmly established. It is yet to be decided if the matter goes to trial. Indeed, UCC has seriously contested the basis of its alleged liability….Every effort should be made to protect the victims from the prospects of a protracted, exhausting and uncertain litigations. While we do not intend to comment on the merits of the clients and the defences, factual and legal arising in the suit, it is fair to recognize that the suit involves complex questions as to the basis of UCC’s liability and assessment of the quantum of compensation in a mass tort action.” Evidently, it was argued that ‘no exception’ was not a ratio but only obiter dicta of Oleum Gas Leak case. Hence, it is not binding in nature.

PREVENTION OF POLLUTION

The development of international environmental legal system has a corresponding impact on the Indian legal system. Indian Legislatures have been enacting laws from time to time in consonance with the changes made in the international environmental laws. These environmental laws stipulate various statutory liabilities that are to be discharged by the industrialists, developers and occupiers of factories. For instance, the Forest Act, 1980, makes it mandatory on the part of the owners of the saw mill to get a ‘no objection certificate’ from the competent authority. Likewise, any person desirous of pursuing any developmental activities adjoining the coast within 500 meters must obtain clearance from the competent authority, as per the

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58 Shyam Divan & Armin Rosencranz, op.cit, p.107
59 Union Carbide Corporation v. Union of India (Bhopal Review) in AIR, 1992 SC.p.306
Coastal Regulation Zone (CRZ) Rules. The Public Insurance Liability Act, 1991 makes it mandatory on the part of the owners or occupiers of the industries to subscribe premium and thereby insure persons other than the workers in case of any injury or accident that happen to such persons due to their industrial activities. Similarly, the Environmental Impact Assessment Notification, 1994 made under the Environment Act, makes it liable on the part of any person interested in undertaking any new projects to get clearance from the Central Government. Besides these, there are other legislations which also impose liabilities upon the industrialists, owners, and promoters of new projects to get the clearance certificate. In this part, Supreme Court’s approach in interpreting such statutory obligations on the part of the interested persons of such industries and projects are explored and formulated.

It is obvious that environmental legislations in its endeavour to protect the environment adopt two broader objectives. The first aims at preservation, and in case of degradation, restoration of the environment. The second aims at the conservation of the environment. Geographically, there are certain resources which are renewable and which are non-renewable resources. Industrial pollutions which degrade the environment are categorised as hazardous and non-hazardous, based on the nature of the pollution. Legislations that aim at the conservation of resources are also drafted based on the nature and type of resources. To tackle such pollution and to bring the offenders to book, legislations are also structured differently.

Industries and factories pollute the environment in different ways. They discharge solid wastes into the land, effluents into the water and noxious fumes into the air. Such discharge of solid wastes, effluents and fumes may also vary in quantity and quality. Environmental legislations, more particularly the Environment Act, prescribe different standards of permissible pollutants that may be discharged. These permissible standards vary from place to place and industry to industry. Correspondingly, the polluters, developers and industrialists are liable to fulfill certain obligations as prescribed in such legislations. As there are more than 200 pollution related legislations, it is very difficult to deal legislation-wise their statutory liabilities. Therefore, in this part of the analysis, the statutory liability of such industrialists, developers and polluters in relation to protection of the environment on the one side,
and conservation of the environment on the other side, are analysed. Further, the liabilities of the eco-ciders, who pollute the environment by discharging solid wastes into the lithosphere, industrial effluents into the hydrosphere and fumes into the atmosphere, are analyzed under the headings, prevention of soil pollution, prevention of water pollution and prevention of air pollution.

**PREVENTION OF SOIL POLLUTION**

The Earth is the only known planet capable of sustaining living beings. Conducive environment is very essential for the sustenance of living beings including human beings. In this world, there is only one environment, unique and well integrated, irrespective of the spheres within like lithosphere, hydrosphere and atmosphere, or hemispheres like western, eastern, northern and southern. However, this one and only environment is cyclical in nature. Pollution of one sphere affects the other spheres also. Pollution of the lithosphere would affect both the hydrosphere and atmosphere. Likewise, pollution of western hemisphere would affect other hemispheres.

The Supreme Court cleared all the clouds of binding nature of the rule of absolute liability as laid down in *Shriram Fertiliser Corporation* in subsequent landmark cases like Indian Council for Enviro-Legal Action *v.* Union of India and Vellore Citizens Welfare Forum *v.* Union of India. In these cases, the Supreme Court left no doubt regarding the veracity of the rule of absolute liability in environmental pollution as was laid down in the Oleum Gas Leak case. The judicial process of the Supreme Court in affirming the principle of absolute liability resulted in the following factual matrix of Indian Council for Enviro-Legal Action Case. Bichhri is a small village in Udaipur district of Rajasthan. To its north is a major industrial establishment, Hindustan Zinc Ltd., a public sector concern. This concern did not affect Bichhri and its people. The sufferings of the people of Bichhri began in 1987 when one of the respondents of the case, Hindustan Agro Chemicals Ltd. started producing certain chemicals like Oleum (said to be the concentrated form of Sulphuric Acid) and single super phosphate. The real calamity occurred when a sister concern, Silver Chemicals, another respondent, commenced production of ‘H’ acid in a plant located within the

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60 Indian Council for Enviro-Legal Case *v.* Union of India in AIR 1996 SC 1446
same complex, which was meant for export exclusively. Its manufacture gives rise to enormous quantities of highly toxic effluents, particularly iron-based and gypsum based sludge. This sludge if not properly treated, poses a grave threat by poisoning the earth, water and everything that comes in contact with it. Jyothi Chemicals, another respondent, has a unit which was established to produce ‘H’ acid, apart from some other chemicals. Other respondent units were also established to produce fertilizers and other products. Of these, five respondent units and factories are situated in the same complex and are controlled by the same group of individuals. These factories may collectively be called as chemical industries and the complex is located within the limits of Bichhri village.

The production of ‘H’ acid has been banned in the Western Countries because of the highly toxic wastes that emerges in the process. The respondent industries like Silver Chemicals and Jyoti Chemicals cater to the needs of the west by supplying the ‘H’ acid. These industries did not treat the wastes and the untreated toxic sludge was thrown in and around the complex. Over years, the toxic substances percolated deep into the bowels of the earth polluting the aquifers and the sub-terrances supply of water. The water in the wells and the streams turned dark and dirty rendering it unfit for human consumption, for cattle and for irrigation. The soil became polluted rendering it unfit for cultivation, the mainstay of villagers. It spread diseases, death and disaster in the village and the surrounding areas. This sudden degradation of earth and water was hotly discussed in Parliament and despite assurances given by ministers, no meaningful action was taken. The villagers rose in virtual revolt leading to the imposition of Section 144 CrPC by the Magistrate in the area and the closure of Silver Chemicals in the year 1989. The respondents said that ‘H’ acid manufacture was stopped from 1989 in the units Silver Chemicals and Jyoti Chemicals. Yet, the consequences of their action was a grim remainder of the damage – i.e., the sludge, the long standing damage to earth, to underground water, to human beings, to cattle and the village economy.

The Supreme Court admitted this writ petition in 1989 based on social action litigation under Article 32 of the Constitution complaining precisely of the above situation and requesting appropriate remedial action. The petitioner in his petition enclosed a number of photographs illustrating the enormous damage done to water,
cattle, plants and to the area in general. A good amount of technical data and other material was also produced supporting the averments in the writ petition.

The respondents in their counter affidavit, *inter alia*, claimed that they obtained a ‘no objection’ certificate from the Pollution Control Board for manufacturing Sulphuric Acid and Ammonium Sulphate. The Government of Rajasthan filed its counter affidavit stating that it had already initiated action through the Pollution Control Board to check further spread of pollution as it was fully aware of the pollution caused to underground water due to release of liquid effluents from the firms. The Government of India in its counter stated that Silver Chemicals was merely granted a Letter of Intent and it did not apply for conversion of the Letter of Intent into industrial licence. Commencing production before obtaining industrial licence is an offence. So far as Jyoti Chemicals is concerned, it did not approach the Government at any time even for a Letter of Intent. The centre for Science and Environment conducted a study of the situation in Bichhri village and a few other surrounding villages. Based on this study, it submitted a report which spoke about the extent of harm done due to pollution. In its report it stated that those effluents are very difficult to treat as many of the pollutants were refractory in nature. Setting up such highly polluting industries was considered as ill conceived as the effluents polluted the nearby drain and overflowed into Udaisagar main canal and corroded its cement – concrete lined bed and banks. Not only that, this polluted water degraded some agricultural lands and damaged standing crops. When the factory was ordered to contain the effluents, the industry installed an unlined holding pond within its premises and resorted to spraying the effluents on the nearby hill-stops. It led to extensive seepage and percolation of the effluents into ground water, down to the aquifer.

Nearly 60 wells were polluted and it was reported that every week more wells showed signs of pollution. This created serious problems for supply of potable water for domestic purposes, cattles, crop – irrigation, etc. This polluted water resulted in human illness and death, degradation of land, damage to fruit tress and other vegetation. With the onset of monsoon, it was feared that this polluted water will percolate down to the slopes and the ponds and pollute those areas also.
The Supreme Court after perusing all the counter affidavits and after hearing the arguments of the respondents passed orders stating that any principle evolved in this behalf should be simple, practical, suited to the conditions of that part of the country. “We are convinced that the law stated by this court in Oleum Gas Leak case\textsuperscript{61} is by far the more appropriate one – apart from the fact that it is binding upon us.” (We have disagreed with the view that the law stated in the said decision is obiter). According to this, once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. In the words of the Constitution Bench, such an activity “can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of carrying on of such hazardous or inherently dangerous activity, regardless of whether it is carried on carefully or not”\textsuperscript{62}

The Court in its findings of the Indian Council for Enviro-Legal Action held the respondents absolutely liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and to the underground water. It directed them to take all necessary measures to remove the sludge and other pollutants lying in the affected area, to defray the cost of the remedial measures required to restore the soil and the underground water sources. The Environment (Protection) Act empowers the Court to give appropriate directions to the Central Government to invoke and exercise its power under the Act, with such modulation required for different cases. Sections 3 and 4 of the Environment (Protection) Act is couched in very wide and expansive language. These sections confer upon the Central Government wide powers like levy of cost required for carrying out remedial measures etc. From the wide, all encompassing judgement of the Supreme Court, it is obvious that the Court in its judicial process referred elaborately, various approaches adopted by different courts of different countries in its interpretation of the rule in \textit{Rylands v. Fletcher} case.

\textsuperscript{61} M.C. Mehta \textit{v.} Union of India, AIR, 1986 SC, 1086
\textsuperscript{62} Ibid
In *Shriram Fertiliser Corporation* case [1987 CB] the question of law that was placed before the Constitution bench was whether a private company is a ‘state’ under Article 12 and liable to pay damages under Article 32 of the Constitution. But the Supreme Court after a careful observation held that “we do not propose to decide finally at the present stage would a private corporation like Shriram would fall within the scope and ambit of Article 12”. Another Constitution bench in *Charan Lal Sahur’s* case [1990 CB] holds that the ‘absolute liability’ as elaborately discussed in *Shriram Fertiliser* [1987 CB] is only obiter and not ratio. What was left undecided by two Constitution benches has been decided by a division bench in the *Enviro-Legal Action* case [1996 DB] in order to punish the ‘rogue industries’ that polluted the environment of the mother land to satisfy the needs of foreign countries and to quench their insatiable thirst for American Dollars. Shockingly, the developed countries already banned these hazardous industrial activities in their countries to protect their environment. The rogue eco-ciders are to be caught, prosecuted and punished. But, the legal arms then available to the Supreme Court were out dated. To combat the rogue industries and their eco-cidal activities the Supreme Court applied this extra-ordinary method to stop their polluting activities.

It is interesting to note that the Supreme Court in a bid to render effective justice in environmental matters acted as an activistic court and admitted writ petition under Article 32, that too by way of public interest litigation. But for this approach, all environmental cases would have followed the cumbersome procedure of claiming damages under tortious liability by invoking the jurisdiction of the subordinate court. These matters can also be tried under penal law provisions, wherein Magistrates are vested with the power to try and punish the violators. Indian judiciary is known for protracted trial proceedings and in this atmosphere if the adoption of normal procedure is emphasised, environment would be irretrievably damaged before the environmental cases reach the Apex Court. It is to be noted that till 1999, environmental cases hardly reached the Supreme Court from Tamil Nadu and many other states, leaving the offenders scot-free and the environment as be polluted as possible.
PREVENTION OF WATER POLLUTION

Man is living in the lithosphere surrounded by the hydrosphere. Water is an important element of nature. Of course, two thirds of this blessed planet is engulfed by water which is not potable. But pure and potable water in the lithosphere is becoming a scarce commodity. No doubt rivers were the cradles of civilizations, but of late, polluted rivers are breeding grounds of so many diseases. Having felt the importance of water, India enacted the first environment specific Act, the Water Act, 1974, immediately after the Stockholm Summit of 1972. This Water Act and the comprehensive Environment Act, 1986 and the rules, prescribe certain liabilities on the part of the occupiers of premises, developers and industrialists.

Section 25 of the Water Act stipulates the following restrictions to those industrialists, developers or polluters who discharge effluents through outlets into water bodies, streams or rivers.

“(1) Subject to the provisions of this Section, no person shall, without the previous consent of the State Board, --
(a) establish or take any steps to establish any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land...; or
(b) bring into use any new or altered outlet for the discharge of sewage; or
(c) begin to make any discharge of sewage.”

The Environment Act, 1986 is a comprehensive piece of legislation dealing with environmental protection including water pollution. As discussed earlier, Section 3 of this Act widely empowers the Central Government to take measures and improve environment. Section 5 enables the Central Government to give directions including “the power to direct – the closure, prohibition or regulation of any industry, operation or process; or

(b) Stoppage or regulation of the supply of electricity or water or any other service.”

Corresponding to this provision of the Act, analogous powers have been given under the Water Act to the Central Government. In this context, the Supreme Court’s

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63 For further details see Section 25 of the Water (Prevention and Control of Pollution) Act, 1974
64 Section 5 of the Environment (Protection) Act, 1984
approach to the Statutory liabilities of occupiers, developers and industrialists are analysed with reference to the pollution of water. Based on these liabilities several cases reached the Supreme Court for its disposal. In this part, *M.C. Mehta v. Union of India* (Kanpur Tanneries),65 *M.C. Mehta v. Union of India* (Municipalities),66 and *M.C. Mehta v. Union of India* (Calcutta Tanneries),67 the Vellore Citizens Welfare Forum,68 *S.Jaganath v. Union of India* (Shrimp Culture)69 cases are analysed.

M.C. Mehta filed a writ petition in 1985 under Article 32 of the Constitution in which it was alleged that the Kanpur municipalities failed to prevent waste water from polluting the Ganga. The petitioner asked the Court to order Governmental authorities and tanneries to stop polluting the Ganga with sewage and trade effluents. In this litigation, hundreds of polluters were involved and the Supreme Court noticed the action as a representative action under Order (1) Rule 8 of the Code of Civil Procedure. In these cases, the following issues were raised: (1) the polluted condition of the River Ganga for more than two decades after the enactment of the Water Act; (2) the basis for the Court’s jurisdiction under Article 32; and (3) the specific actions ordered by the Court in each case. It is pertinent to peruse the extracts of the judgements of the Supreme Court in these cases so as to explore and formulate Supreme Court’s views on the liabilities of the municipalities and industrialists with reference to water pollution, more particularly river water pollution.

Before proceeding to the facts of the case, it is relevant to describe the Ganga Action Plan of the Government of India. In 1985, the Ganga Authority was created. It consisted of seven members, including the Minister for Environment and Chief Ministers of the States, through which the Ganga flows. The Ganga Authority was headed by the Prime Minister. This Authority was vested with the responsibility of restoration of the river. The Central Pollution Control Board has produced an ‘Action Plan for the prevention of pollution of the Ganga’ as a guide to help in the clean up. The Ganga Action Plan Committee surveyed the Ganga Basin and observed that about 80 percent of sewage is discharged directly into the river. To check it, several phases of

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65 M.C. Mehta v. Union of India in AIR 1988, S.C.p.1037
67 M.C. Mehta v. Union of India in SCC 1997, 2.p.411
69 S.Jaganath v. Union of India, op.cit.
restoration activities of Ganga were introduced. In spite of these measures, the pollution of Ganga water remained quite alarming and this case cropped up in this background.

River Ganga is a perennial river. To the Hindus it is a holy river. To the people of gangetic belt irrespective of their religion, it is a sustainer of their livelihood. Great empires and emperors emerged only due to the perennial nature of the river and the fertility of the alluvial soil. But such a river is polluted by religious minded Hindus by throwing the half burnt corpses and secular minded industrialists of all religions by throwing the untreated industrial effluents into the arteries of the river Ganga.

The Supreme Court in the Kanpur Municipality case in its endeavour to prevent water pollution issued the following directions to the Kanpur municipality and other municipalities that are located on the gangetic riverine areas which are discharging the municipal wastes and pollution:

“It is seen that there [are] a large number of dairies in Kanpur in which there are about 80,000 cattle. The Kanpur Nagar Mahapalika should take action under the provisions of the Adhiniyam or the relevant bye-laws made thereunder to prevent the pollution of the water in the Ganga on account of the waste accumulated at the dairies. The Kanpur Nagar Mahapalika may either direct the dairies to be shifted to a place outside the city so that the waste accumulated does not ultimately reach the river Ganga or in the alternative it may arrange for the removal of such waste by employing motor vehicles to transport such waste from the existing dairies in which event the owners of the dairy cannot claim any compensation. The Kanpur Nagar Mahapalika should immediately take action to prevent the collection of manure at private manure pits inside the city.

The Kanpur Nagar Mahapalika should take immediate steps to increase the size of the sewers in the layout colonies so that the sewage may be carried smoothly through the sewerage system. Wherever sewerage line is not yet constructed steps should be taken to lay it.
Immediate action should also be taken by the Kanpur Nagar Mahapalika to construct sufficient number of public latrines and urinals for the use of the poor people in order to prevent defecation by them on open land. The proposal to levy any charge for making use of such latrines and urinals shall be dropped as that would be a reason for the poor people not using the public latrines and urinals. The cost of maintenance of cleanliness of those latrines and urinals has to be borne by the Kanpur Nagar Mahapalika....What we have stated above applies mutatis mutandis to all other Mahapalikas and Municipalities which have jurisdiction over the area through which the Ganga flows. Copies of this judgement shall be sent to all such Nagar Mahapalikas and Municipalities.”

In the Kanpur Tanneries case, the Supreme Court imposed the following liabilities on the employers:

“Under the laws of the land the responsibility for treatment of the industrial effluents is that of the industry. While the concept of “Strict Liability” should be adhered to in some cases, circumstances may require that plans for sewerage and treatment systems should consider industrial effluents as well. Clusters of small industries located in a contiguous area near the river bank and causing direct pollution to the river such as the tanneries in Jajmau in Kanpur is a case in point. In some cases, waste waters from some industrial units may have already been connected to the city sewer and, therefore, merit treatment alongwith the sewage in the sewage treatment plant. It may also be necessary in some crowded areas to accept waste waters of industries in a city sewer to be fed to the treatment plant, provided the industrial waste is free from heavy metals, toxic chemicals and is not abnormally acidic or alkaline....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 permitted to continue 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 the tannery to the river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure.”

70 M.C.Mehta v. Union of India, op.cit.
In the **Calcutta Tanneries** case the Supreme Court issued the following orders:

“we have no hesitation in holding that the Calcutta tanneries shall have to be relocated from their present locations.

[The court considered and rejected the tanneries’ contention that the designated new site would damage an ecologically fragile wetland. The court summarised the steps taken under judicial supervision to facilitate relocation; set out the provisions of the Water Act that were being breached by the tanneries and after referring to the ‘precautionary principle’ and ’polluter pays principle’ concluded:] It is thus settled by this Court that one who pollutes the environment may pay to reverse the damage caused by his acts.

We, therefore, order and direct as under:

1. The Calcutta tanneries ... shall relocate themselves from their present location and shift to the new leather complex set up by the West Bengal Government. The tanneries which decline to relocate shall not be permitted to function at the present sites.

2. The Calcutta tanneries shall deposit 25 per cent of the price of the land ... with the authority concerned. The subsequent installments shall be paid in accordance with the terms of the allotment letters issued by the State Government.

3. The tanneries who fail to deposit 25 per cent of the price of the land as directed by us above shall be closed ...”

The Court further ordered that “the tanneries which are not closed on 15-4-1997 must relocate and shift to the new leather complex on or before 30-09-1997. All the Calcutta tanneries shall stop functioning at the present sites on 30-09-1997. The closure order with effect from 30-09-1997 shall be unconditional. Even if the relocation of tanneries is not complete they shall stop functioning at the present sites with effect from 30-09-1997.”

A full bench in the **Vellore Citizens Welfare Forum v. Union of India**, [1996 FB] referred to the absolute liability principle in the context of pollution caused by the discharge of untreated effluents by industries. This case neither dealt with an industrial

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71 M.C.Mehta v. Union of India, op.cit.
accident, nor did it concern the escape or discharge of a toxic substance which constitute the class of cases to which ‘absolute liability’ is applied. The following are the facts of the case. A Public Interest Litigation was filed under Article 32 of the Constitution by Vellore Citizens Welfare Forum seeking remedy against the pollution caused by enormous discharge of untreated effluents by the tanneries and other industries in the State of Tamil Nadu. In the petition, it was stated that the tanneries are discharging untreated effluents into agricultural fields, roadsides, water ways and open lands, finally discharging in the river Palar, the main source of water supply to the residents of that area. According to the petition the entire surface and sub-soil water of river Palar has been polluted resulting in non-availability of potable water to the residents of the area. It is stated that the tanneries in the State of Tamil Nadu have caused environmental degradation in the area. According to the preliminary survey made by the Tamil Nadu Agriculture University Research Centre, Vellore, nearly 35,000 hectares of agricultural land in the Tanneries Belt, has become either partly or totally unfit for cultivation. In the petition, it was also stated that the tanneries used about 170 types of chemicals in the chrome tanning process, which included sodium chloride, lime, sodium sulphate, chlorium sulphate, fat liquor, ammonia and sulphuric acid, besides large quantities of dyes. Another disturbing factor was that for processing one kilogram of finished leather, 35 litres of water is used, resulting in dangerously enormous quantities of toxic effluents being let out in the open by the tanning industry. These effluents have spoiled the physico-chemical properties of the soil, and through percolation have contaminated ground water very badly. The petitioner cited an independent survey conducted by Peace Members, a non-governmental organisation, covering 13 villages in Tamil Nadu. It reveals that 350 wells out of total 467 used for drinking and irrigation purpose have been highly polluted forcing women and children to walk miles to get drinking water.

This fact was also confirmed in the technical report of the hydrological investigation. The report says that the lands, the rivulets and the river received effluents containing toxic chemicals and acids. The sub-soil water is polluted ultimately affecting not only arable lands, wells used for agriculture but also drinking water wells.... During rainy days and floods, the chemicals deposited into the rivers and lands spread out
quickly to other lands. The effluents thus let out, affect cultivation. However, the tanners have come to stay. The industry is a foreign exchange earner”.73

The question raised by the report was whether the tanneries should be encouraged on monetary ground at the cost of the lives of lakhs of people. It also alleged that the tanneries paid scant regard to protect the environment and the discharged effluents have been stored openly in most of the places.

The Government of Tamil Nadu, in its affidavit gave a list of 59 villages which were acutely affected and were short of even drinking water. The Tamil Nadu Pollution Control Board in its affidavit submitted that of the 584 tanneries, only 444 tanneries had applied for the consent of the Board. As the Government was concerned with the treatment and disposal of effluents from tanneries, the Government gave time to the tanneries to put up Effluent Treatment Plant (E.T.P.). Only 33 tanneries complied with that order and the Board has stipulated standards for the effluents to be disposed by the tanneries. The Board in its affidavit further stated that for over a decade, it had been trying to persuade the tanneries and other polluting industries to control the pollution generated by them, either by constructing common effluent treatment plants for a cluster of industries or to set up individual control devices. Excepting few, other industries did not comply with its order.

In this factual situation, the Supreme Court made the observation “that the leather industry in India has become a major foreign exchange earner. Tamil Nadu is the leading exporter of finished leather accounting for approximately 80% of the country’s export”. Though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues, it has no right to destroy the ecology, degrade the environment and pose a health hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry”.74

73 Quoted in Ibid
74 Ibid
It is evident from this case that in the evolution of Indian Environmental jurisprudence the concept sustainable development evolved from ‘strict liability’ which blossomed into absolute liability and fructified in the forms of twin doctrines ‘precautionary principle’ and ‘polluter pays principle’.

The Ganga Water Pollution cases deal with the prevention of water pollution of the perennial river of North India and Vellore Citizens Welfare Forum deals with the prevention of pollution of a monsoon fed seasonal river of South India. The Shrimp Culture case deals with the prevention of water pollution of coastal area of the peninsular India.

In 1996, the Supreme Court in another case, S. Jagannath v. Union of India delivered a landmark judgement based on the Environment (Protection) Act and the Rules and Notification related to Coastal Regulation Zones (CRZ). The following are the facts of the case. Shrimp (Prawn) Culture industry is taking roots in India. Indian fishermen have been following the traditional rice/shrimp rotating aquaculture system. Rice is grown during a part of the year and shrimp and other fish species are cultured during the rest of the year. However, after 1980’s, the traditional systems which produced an average of 140 Kgs. of shrimp per hectare of land began to give way to more intensive methods of shrimp culture which could produce thousands of kilograms per hectare. Several multinational companies and private companies have started investing in shrimp farms. More than 80,000 hectares of land has been converted to intensive shrimp culture. India’s marine export in 1993 was 70,000 tonnes and it crossed more than 200,000 tonnes by the year 2000.

Shrimp farming advocates regard aquaculture as potential saviour of developing countries because it is a short-duration crop that provides a high investment return and enjoys an expanding market. More and more areas are being brought under semi-intensive and intensive modes of shrimp farming. The environmental impact of shrimp culture essentially depends on the mode of culture adopted in the shrimp farming. The new trend of more intensified shrimp farming in certain parts of the country without

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75 S. Jagannath v. Union of India in AIR 1997, SC p.811
much control of feeds, seeds and other inputs and water management practices – has brought to the fore a serious threat to environment and ecology.

S. Jagannath, Chairman of the Gram Swaraj Movement, a volunteer organisation working for the upliftment of the weaker sections of the society, filed a public interest litigation under Article 32 of the Indian Constitution. The petitioner has sought the enforcement of Coastal Zone Regulation Notification issued by the Government of India and further sought to stop the intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas and prohibit from using the waste lands/wet lands for prawn farming and the constitution of a National Coastal Management Authority to safeguard the marine life and Coastal Areas.

Section 6 of the Environment Act provides that the Central Government may make rules in respect of all or any of the matter referred to in Section 3. Accordingly, the Environmental Rules 1986 were made. Further the Coastal Regulation Zone Notification was also made in 1991. In this Notification, the following activities are prohibited within the Coastal Regulation Zone: “(i) setting up of new industries and expansion of existing industries, except those directly related to water front or directly needing foreshore facilities; (ii) manufacture or handling or storage or disposal of hazardous substances…except transfer of hazardous substances from shops to ports, terminals and refineries and vice-versa, in the port areas; (iii) setting up and expansion of fish processing units including warehousing (excluding hatchery and natural fish drying in permitted areas);...(iv) setting up and expansion of units/mechanism for disposal of waste and effluents except facilities required for discharging treated effluents into the water course with approval under the Water (Prevention and Control of Pollution) Act, 1974; and except for storm water drains; (v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements...(viii) land reclamation, bunding or disturbing the natural course of sea water except those required for construction of ports, harbours, bridges and sea-links and for other facilities that are essential for activities permissible under the notification; or for control of coastal erosion and maintenance or clearing of water ways, channels and ports or for prevention of sand bars or for tidal regulators, storm water drains or for structures for prevention of salinity ingress and for sweet water recharge...(x) harvesting or drawal of ground water and construction of mechanism therefor within
200m of HTL; in the 200 m to 500 m zone it shall be permitted only when done manually through ordinary well for drinking, horticulture, agriculture and fisheries…(xi) construction activities in ecologically sensitive areas as specified in Annexure I of this Notification; (xii) any construction activity between the LTL and HTL except facilities for carrying treated effluents and waste water discharges into sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities, essential for activities permitted under this notification.76

In the Coastal Regulation Zone Regulation, the Central Government declares the Coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 10 to 500 metres from the High Tide Line (HTL) and the land between Low Tide Line (LTL) and HTL as Coastal Regulation Zones. Further, the High Tide Line means the line on the land upto which the highest water line reaches during the spring tide. The High Tide Line shall be demarcated uniformly in all parts of the country by the demarcating authority.

**PREVENTION OF AIR POLLUTION**

Man can survive for few days without potable water but cannot live beyond few minutes without air in breathable form. It is evident from Bhopal disaster, “that by applying scientific technology even salt water and polluted water can be converted into pure and potable form. But it is very difficult to convert polluted air into breathable air. Therefore it is better to prevent air pollution”. The Air Act, 1981, The Environment Act, 1986 and its corresponding Environment Rules stipulate certain liabilities on the part of the occupiers, promoters and industrialists to discharge their statutory obligations. In this part, Supreme Court’s approach to such statutory liabilities are explored and formulated. The Taj Trapezium case and Vehicular Pollution cases are taken up for a broad analysis.

**M.C. Mehta v. Union of India (Taj Trapezium Case)**77 deals with pollution of Taj Mahal. It is one of the wonders of the world that represents the final achievement

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76 See for further details the Coastal Regulation Zone Regulation Notification No.S.O.114(E), dt.19.2.1991
77 M.C. Mehta v. Union of India, in AIR 1997 SC p.734
and crown of glory of the Mughal Architecture. With a fantasy – like grandeur, it embodies the most refined aesthetic values of the medieval period. It is a perfect blend of the architect’s artistic expression and jeweller’s intricate and captivating skill worked on white marble. The marble in-lay walls of workmanship, the elegant symmetry of its exterior, the aerial grace of its domes and minarets transports the beholders into a trance, on whose mind the great canvas of a bygone era comes alive majestically. Today it stands out as one of the most priceless national monuments of ethereal beauty on a grandoise scale, a glorious tribute to man’s achievement in architecture and engineering. Such a world wonder in marble is threatened with deterioration and damage not only by the natural causes of decay, but also by man’s changing social and economic conditions. Man’s hand in damaging and destroying nature is more dangerous and poses a threat to nature. Taj Mahal figures in the list of the most endangered sites of the world, published by the World Monuments Fund (WMF), a private section preservation organisation. Writing about the glory of the Taj, WMF describes it thus: “The Taj Mahal, marble tomb for Mumtaz Mahal, wife of Emperor Shah Jehan, is considered the epitome of Mughal monumental domed tombs set in a garden”.

M.C.Mehta in his petition submitted that the foundaries, chemical/hazardous industries and the refinery at Mathura are the major sources of damage to the Taj. The sulphur dioxide emitted by the Mathura Refinery and the industries when combined with oxygen—with the aide of moisture—in the atmosphere forms sulphuric acid called ‘Acid rain’ which has a corroding effect on the gleaming white marble. Refinery emissions, brick kilns, vehicular traffic and generator-sets are primarily responsible for polluting the ambient air around Taj Trapezium Zone (TTZ). The petition states that the white marble has yellowed and blackened in places. It is inside the Taj that the decay is more apparent. Yellow pallor pervades the entire monument. In places the yellow hue is magnified by ugly brown and black spots. Fungal deterioration is worst in the inner chamber where the original graves of Shah Jahan and Mumtaz Mahal lie. According to the petitioner the Taj - a monument of international repute - is on its way to degradation due to atmosphere - pollution and it is imperative that preventive steps are taken very soon.”

78 Ibid
The yellow hue magnified by ugly brown and black spots on the mesmerizing beauty of the Taj are not mere scars but they reflect the diseased lungs and hearts of millions of people who inhale the same polluted air for years together. Therefore, the Supreme Court in its endeavour to prevent air pollution directed as follows:

“Based on the reports of various technical authorities mentioned in this judgement, we have already reached the finding that the emissions generated by the coke/coal consuming industries are air pollutants and have damaging effect on the Taj and the people living in the TTZ. The atmospheric pollution in TTZ has to be eliminated at any cost. Not even one per cent chance can be taken when—human life apart—the preservation of a prestigious monument like the Taj is involved. In any case, in view of the precautionary principle as defined by this Court, the environmental measure must anticipate, prevent and attack the cause of environmental degradation. The ‘onus of proof’ is on an industry to show that its operation with the aid of coke/coal is environmentally benign. It is, rather, proved beyond doubt that the emissions generated by the use of coke/coal by the industries in TTZ are the main polluters of the ambient air.”

Another important case which deals with air pollution is the Delhi Vehicular Pollution case. The WHO reports point out that Delhi, India’s capital city is the fourth grubbiest city in the world. S. Muralidharan, in his article “Public Interest Litigation”79 made an observation that the Delhi Vehicular Pollution Case, brought to light the chaotic traffic and pollution that prevailed in Delhi.

In a suo moto proceedings,80 the court disclosed its views that in the process of considering various measures to control pollution in the city of Delhi, there is likelihood of some restrictions being imposed on the plying of taxis, three wheelers and other vehicles. After a year, things precipitated when a school bus laden with children broke the parapet wall of the bridge and fell into the Yamuna river resulting in a number of deaths. Two days later, the Supreme Court in M.C. Mehta’s petition, issued far-reaching directions using its power under Article 32 read with Article 142, since the entire scope of the matter falls within the ambit of Article 21.

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79  S.Muralidharan, “Public Interest Litigation”, Annual Survey of Indian Law, 1997-98 Vol.33 & 34, p.555
80  Suo Moto Proceedings in Re Transport Department in SCC, 9, 1998, p.251
The Supreme Court after a threadbare discussion of the Motor Vehicles Act, Police Act and CrPC concluded that these Acts confer ample powers on the authorities to take necessary steps to control and regulate road traffic and to suspend or cancel the registration or permit of the vehicle if it poses a threat or hazard to public safety.\(^{81}\) To control the vehicular pollution, Supreme Court gave stringent directions. It stipulated that no heavy or medium transport vehicles being four wheelers, would be allowed to ply on Delhi roads unless they are fitted with suitable speed control devices in order to see that they do not exceed a speed of 40 kmph. The two-seater rickshaws using two-stroke engine was one of the major air pollutants and the Court directed that the Government should take measures to freeze the number of such vehicles. Frustrated over the non-implementation of the Bhure Lal Committees’ recommendations, the Court directed that the time frame suggested by the Committee for undertaking steps should be implemented. The major recommendations included – elimination of leaded petrol from Delhi; replacement of all pre-1990 autos and taxis with vehicles on clean fuels; ban on plying of all 8 years old buses excepting those running on CNG or other clean fuels and to convert the entire bus fleet steadily to single – fuel mode of CNG. The Court warned that if these suggestions were not implemented within the time frame or if any violations take place, it would invite action for contempt of court.\(^{82}\)

Making an observation of the **Delhi Air Pollution** case, P. Leelakrishnan has summerised as follows: “Where Coal-Coke based industries in Taj Trapezium Zone (TTZ) were ordered to either changeover to natural gas or to be relocated outside TTZ. A few industries remained without complying with these directions; a few others deliberately slowed down the changeover. The Supreme Court in the present case dealt with these three categories of industries as under:

\[\begin{align*}
  & \text{\textit{i)}} \quad \text{the 53 iron foundries which were still to enter into an agreement with GAIL for changeover to natural gas were ordered to be closed immediately.} \\
  & \text{\textit{ii)}} \quad \text{the non-cupola industries which tried their level best for conversion but could not succeed so far were also to be closed.}^{83}\end{align*}\]

\(^{81}\) Ibid  \\
^{82}\) Ibid  \\
On the question of threat to environment, the Supreme Court remarked as follows: “The question is whether the danger to the environment does not require urgent action. The data already collected shows high level of pollution in Agra in this area affecting the environment in TTZ area.”

The Supreme Court in its endeavour to protect the ecologically fragile areas within the Taj Trapezium (TTZ) in 1991 ordered in *M.C. Mehta v. Union of India* that the restoration or changeover to natural gas was ordered in the past with regard to these industries within TTZ. However the Supreme Court in 2001 had the benefit of being enlightened by the reports of NEERI on the pollution of the Taj Trapezium including the problems caused due to pollution of brick kilns. The report looked into emission characterisation and ambient air monitoring in and around brick kilns, brick making process and meteorology and prediction of ground level concentration of air pollutants. Such scientific reports help the Supreme Court to consider all issues holistically before adjudging a case.

**CONSERVATION OF FOREST**

The lithosphere constitutes one third of the earth. For the healthy living of human beings it is prescribed that one third of this lithosphere must be allowed to be under the cover of forests. If the forest coverage is depleted, it would affect the environment and hence the minimum prescribed percentage of the forest area should be maintained intact for a serene environment. Before the advent of the British, India had a substantial portion of land under the forests. The British deforested the country in a methodical manner for feeding their industries in England. Later, they made attempts to preserve the existing forest cover in India. At present, it is estimated that 18% of the land is under forest cover in India.

Independent India in its endeavour to conserve its forest enacted the Forest (Conservation) Act, 1980. The preamble of this Act stipulates that this is, “an Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.” Section 2 of the Forest Act stipulates that “Notwithstanding

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84 Ibid
anything contained in any other law for the time being in force in a state, no State Government or other authority shall make except with the prior approval of the Central Government any order directing:

(i) that any reserved forest... or any portion thereof shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization, not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees grown naturally in that land or portion for the purpose of using it for re-afforestation.\(^\text{86}\)

The term ‘non-forest purpose’ used in this section has been explained in this Act as, “the breaking up or clearing of any forest land or portion thereof for:

(a) the cultivation of tea, coffee, spice, rubber, oil-bearing plants or medicinal plants;

(b) any purpose other than afforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely the establishment of check post, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.”\(^\text{87}\)

The Rural Litigation and the Entitlement Kendra v. State of U.P.\(^\text{88}\) [1987DB] is one of the earliest cases related to conservation of forest and its environment. This case came to the Supreme Court in 1983, after the enactment of the Forest Act, 1980 but before the introduction of the Environment Act, 1986. It came by way of public interest litigation. It was alleged that there was a serious threat to environment in the Mussorie hill range of the Himalayas due to indiscriminate quarrying of limestone. Mines blasted out the hills with dynamite to extract limestone

\(^{86}\) Section 2 of the Forest (Conservation) Act, 1980
\(^{87}\) Ibid
\(^{88}\) Rural Litigation and Entitlement Kendra Dehradun v. State of U.P., AIR, 1985 SC 652
from thousands of acres in a haphazard manner. The miners ‘dug deep into the hillsides, an illegal practice, which resulted in cave inns and slumping of hills’. Due to this mining activity, hillsides were stripped of vegetations and landslides killed villagers, destroyed their homes, cattle and agricultural lands. The hydrological system of the Dehradun valley was also upset due to the mining operations. Due to this, natural springs dried up and severe water shortage gripped the valley, an area originally blessed with abundant water supplies. To add to the existing woes, mining debris clogged river channels and during the monsoon unusual flooding occurred.

The Government of Uttar Pradesh was unable to regulate the activities of the miners as per the Miner’s Act. However in 1961, the Government curtailed some of the activities of the miners. But the quarry operators lobbied successfully and once again resorted to the old practice of mining operations. Illegal and destructive practices continued and existing safety rules of the mines were flouted. The enforcement machinery was corrupt and ineffective. In such conditions, 18 leases came up for renewal in 1982. The Government rejected all the renewal applications since the dimensions of ecological devastation were widely recognized. The miners approached the Allahabad High Court and got an injunction allowing the applicants to continue mining. At this point, in 1983 the Supreme Court admitted a letter received from the Rural Litigation and Entitlement Kendra and considered it as a Writ Petition under Article 32. In this case, more than hundred lessees of miners were involved, which were categorized by experts into three groups of mines namely A, B and C.

In this background, the Supreme Court after perusing the reports of various expert committees like Bhargav Committee and K.S. Valdia Committee, observed that the lessees of limestone quarries, who have been directed to close down permanently under this order would be thrown out of business in which they would have invested large sums of money and expanded considerable effort and time. The Supreme Court knew clearly that this closure would definitely cause hardship to them, but said that “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 land and undue affectation of air, water and environment."89

The Supreme Court further noted that the Government should decide and balance environmental consideration and industrial needs and said, “it is for the Government and the Nation and not for the Court to decide whether the deposits should be exploited at the cost of ecology and environmental considerations or the industrial requirements should be otherwise satisfied. It may be perhaps possible to exercise greater control and vigil over the operation and strike a balance between preservation and utilization that would indeed be a matter for an expert body to examine and on the basis of appropriate advice, Government should take a policy decision and firmly implement the same."90 The Court was aware that environmental awareness in the Government came up very late and noted in one of its order in 1987 that “cognizance of ecological importance has entered into Government activity only in this decade. Every day that consciousness as also the sense of social obligation in this regard are on the increase.”91

The Supreme Court with reference to the Forest Act of 1980, observed as follows: “If the provisions of the Conservation Act had been noticed and impact there of the continuance of the mining activity had been considered, perhaps the court would have made no exemptions and no mining may have been permitted. Besides if the court really intended to release the ‘A’ category mines outside the city limits, it could very well pronounce that in clear term.”92

The writ petitions were in the form of public interest litigation and the controversy before the Court was whether mining should be permitted or stopped in order to create a hazardless environment for people to live in social security or miner’s interest? The Court cautioned that, “we may not be taken to have said that for Public Interest Litigations, procedural laws do not apply. At the same time, it has to be

89 Ibid
90 Ibid
91 Ibid
92 Ibid
remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court."

With reference to the Environment Act, 1986 which came into practice after the admission of this writ petition, the Supreme Court observed as follows: “These writ petitions were filed as early as 1983, more than three years before the Act [Environment (Protection) Act] came into force. This court appointed several expert committees, received their reports and on the basis of material placed before it, made directions, partly final and partly interlocutory, in regard to certain mines in the area. The Act does not purport to and perhaps could not take away the jurisdiction of this court to deal with a case of this type. In consideration of these facts, we do not think that there is any justification to decline the exercise of jurisdiction at this stage.”94 The Court also stated that normally it would not entertain a dispute for the adjudication of which, there is a special provision made by law. But in this case, that rule was not followed by the court as it held that it evolved more due to practice and precedence and not of jurisdiction.

When the questions as to whether mining activity is important or ecology is important, the Court was of the firm view that there has to be a balance between environmental preservation and economic development. In the interest of the society, mining activity can be permitted to a limited extent in that area by keeping the principles of ecology, environmental protection and anti-pollution measures. The court wanted “the Union of India to balance these two aspects and place on record its stand not as a party to the litigation but as a protector of the environment in discharge of its statutory and social obligation for the purpose of consideration of the court.”95 In the Rural Litigation and Entitlement Kendra case [1987 DB] the decision of the Supreme Court was based on the following set of interests: The miners have an interest to exploit the mines. While exploitation, the mines which is a non-renewable natural resource also caused damage to other renewable resources like forests and water. These mining activities affect the depletion of non-renewable resources of mines and renewable resources of water and forests. Due to environmental reasons if mines are

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93 Ibid
94 Ibid
95 Ibid
closed thousands of workers would be out of employment and the right to work of workers would be affected. But environmental degradation due to mining activities puts the larger interest of the community at stake. People of Dehradun’s Valley would undergo lot of hardships without any benefit to them except employment opportunity. Therefore, the larger interest of the community prevails over the interests of workers and of owners. Therefore, the Supreme Court prescribed liabilities on the mine owners and ordered them to close down.

In T.N.Godavarman Thirumulpad v. Union of India[96] the Supreme Court went to an extreme and assumed leadership as protector of environment. For that purpose, besides adjudication, it assumed all other powers of governance like power to implement and to legislate laws not only to matters which are placed before the court but to entire issues related to conservation of forests.97

In the T.N.Godavarman’s case, as there are a number of orders issued by the court, selected principal orders related to the judicial process are taken for analysis and discussed. In this case, the Forest Act, 1980 and more particularly Section 2 of the Act was widely interpreted. As this Act was enacted to prevent deforestation and maintain ecological balance, the word ‘forest’ must be understood according to its dictionary meaning. It means and covers all statutorily recognized forests, whether reserved forest or protected forest or other types of forest for the purpose of Section 2 (i) of the Forest Act. The term forest land will not only include forest as understood in the dictionary sense, but also includes any area recorded as forest in the Government record irrespective of its ownership.

Shyam Divan and Armin Rosencranz critically analyzed the handling of this case by the Supreme Court. The Supreme Court’s interpretation of the expressions ‘forest’ and ‘forest land’ was appreciable. It gave detailed directions covering a wide range of forest issues like felling trees, transport of timber, timber pricing, licensing of wood based industries, forest protection, scientific management of forest, action against errant officials, etc. The Court ordered the closure of saw mills, plywood mills and veneer mills operating within any forest without prior central Government approval.

96 T.N. Godavarman Thirumulpad v. Union of India in AIR 1997 SC, p.1228
97 Ibid
Likewise, mining within any forest was ordered to cease forthwith. All licences given to wood based industries were suspected by the Court based on the reports submitted by High Power Committed (HPC). Neither the Court nor the HPC disclosed the contents of the HPC reports, leaving affected mills and industries in the lurch. But, the Court issued many important directions relating to the licensing of mills, resumption of operations and the conversion of timber stock, on the basis of the HPC reports. The HPC was asked to prepare an inventory of timber lying in the North East region and to perform certain ancillary functions specified in the order. After preparing an inventory it fixed ‘norms’ for plywood and veneer production from timber. If the mill exceeded the norms, the HPC surmised that they used illegally felled timber and directed the State Government to recover penalties running into several lakhs of rupees from individual units. Shyam Divan and Armin Rosencranz felt that the procedure adopted by the Supreme Court and the HPC appears to fall far short of recognized rules of fair play. Though forest conservation is a laudable end, their question is “has the court strayed from its primary function…to do justice in accordance with law.”

Commenting on the sweeping directions to oversee the enforcement of forest laws, Shyam Divan and Armin Rosencranz further said, “The court froze all wood-based industrial activity, reinforced the scope of the embargo on forest exploitation, issued detailed directions for the sustainable use of forest and created its own monitoring and implementation machinery through regional and state level committees. The case has no parallel, even by the expansive standards of India’s pro-active judiciary….The Court assumes the role of a super-administrator regulating the felling, use and movement of timber across the country in the hope of preserving the nations forests.”

The Court over the next two years after the Godavaran case monitored the proceedings through the device of ‘continuous mandamus’. A special bench heard the case once a month or more often. The amicus curiae were appointed to assist the Court. The amicus curiae and the council for the state and central Governments were permitted to address the Court. Persons with grievances had to first approach the amicus curiae, who would screen the application and place it before the Court at his

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98 Shyam Divan and Armin Rosencranz, op.cit., pp.304-308
99 Ibid, p.294
discretion. All other courts in the country were injunctioned from entertaining applications pertaining to the matter before the Supreme Court.100

In **Chairman-cum-M.D, Tea Plantation Ltd. v. M/s. Srinivas Timbers**101 [1999 DB] the question was whether a contract to fell trees could be continued by the appellant against the state policy of banning further expansion of tea plantation. In this case, there was no concluded contract. The state took a policy decision to stop felling in order to maintain ecological balance and protect and preserve the invaluable heritage of forest. The Supreme Court made it clear that the state plantation corporation had to fall in line and cancel the contract.

In another **Godavarman** case, the Supreme Court prohibited till further orders, the cutting of particular trees that are considered by the M.P. Government to be diseased.102 Based on reports the Supreme Court observed that around 17,777 square kilometers of dense forest was lost to the country between 1995 and 1997. This large scale deforestation presents a dismal and alarming picture. The Court found that all the states, Andhra Pradesh, Madhya Pradesh, Assam, Manipur, Nagaland, Orissa and Meghalaya were the major defaulters.103

In yet another Godavarman case,104 the Apex Court relied on the direct personal knowledge of an advocate and the secretary in the MOEF, on large scale mining and reckless denudation of forest in violation of the orders of the Court. The Godavarman cases had a great influence on subsequent cases relating to forest conservation.105

The main intention of the Apex Court in Godavarman cases was to prevent passing of different orders at variance with one another by different courts and tribunals. The direction to send certified copies of the judgement to High Court for strict compliance with the orders clearly indicates this intention.106 In another Godavarman case, the Supreme Court ratified the action of officers of the MOEF in detaining railway wagons containing illegal timber. P. Leelakrishnan, summing up the

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102 T.N. Godavarman v. Union of India, in AIR 1999, SC p.43
103 Ibid
104 T.N.Godavarman v. Union of India in AIR, 1999, SC p.97
106 Ibid
views of the Court says that “the court went on to lay down the law. No court will have jurisdiction to entertain any complaint with regard to the timber already seized. MOEF has power to suspend licences, disconnect electricity to delinquent units, sell the illegal timber and keep the sale proceeds in a separate bank. Inter-State movement of timber can be allowed, only if the collectors in the districts of entry certify that the movement is inter-state.”

**B.L. Wadhera v. Union of India**, is one more landmark case related to forest conservation. This case came to the Supreme Court by way of public interest litigation. In this case it was alleged that a public trust chaired by a former Prime Minister occupied forest lands without authorisation. The existing regulatory legislation and rules on common lands, in the state of Punjab provide for gifting of certain lands vested in the Panchayats to Scheduled Castes and Backward classes with the previous approval of the Government. Based on these facts, the Supreme Court found fault with the Panchayat for abusing its powers and the State Government for taking a very casual approach in this matter and held that the gifting in favour of the trust was contrary to these specific provisions of law. Condemning the attitude of the political ‘heavy weights’ anti-forest conservation policies, the Supreme Court said, “The land which was intended to be used for Scheduled Castes and Backward Classes, admittedly, the oppressed sections of the society apparently appears to have been usurped by respondent... under the shadow of the politically influential personality and stature of its Chairman”

Another important point stressed by the Court was that the Government’s approval for such gifts was subject to one condition, namely that the land must be released from forest department through proper channel. This condition was not fulfilled. Gifting the land was also not for a forest purpose and it was being utilised for personal leisure and pleasure of some individuals. In this factual situation, the Court did not accept the claim of the party that the land was used only for the upliftment of the

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108 B.L. Wadhera v. Union of India in AIR 2002, SC 1913
109 B.L. Wadharam v. Union of India, op.cit., see also P.Leelkrishnan op.cit.
poor and the oppressed. Thus the Court held that the mandate of the law and conditions of approval were violated.\textsuperscript{110}

Continuing its tirade against the political big wigs, the Apex Court said, that the shocking facts of the case disclosed that the three room dispensary as promised was not built on the land in controversy. A reasonable person would have returned the land to the Gram Panchayat once a controversy was raked up. The Court further said that it “cannot remain a silent spectator where people’s property is being usurped for the personal leisure and pleasure of some individuals under the self-created legal, protective umbrella and in the name of a trust...The purpose of the respondent Trust may be laudable but under the cloak of those purposes, the property of the people cannot be permitted to be utilised for the aforesaid objectives, particularly when the law mandates the utilization of the transferred property in a specified manner and for the benefit of the inhabitants of the area, the poor and oppressed and Scheduled Castes and Backward Classes.”\textsuperscript{111}

The Court was not impressed with the pleas of the respondent that the land was acquired only for the upliftment of the people of the country in general and the area in particular. The Court said it could not be convinced that the country can be uplifted by personal adventures of constituting trusts and acquiring hundreds of acres of land and it was nothing except seeking personal glorification of the persons concerned.

As observed by Leelakrishnan, it is evident that the evil of non-application of the mind was writ large in the case. “The Gram Panchayat and the State Government succumbed to ‘the towering political personality’ ‘his giant stature’ and ‘the heavy weight of the Chairman of the Trust’. The office bearers of the Gram Panchayat and officials of the State Government were thoroughly immobilised in the discharge of their duties.”\textsuperscript{112}

The Supreme Court did not say that the licence for running a saw mill is not to be granted in an area which is not covered within the forest area or within the specified

\textsuperscript{110} P.Leelkrishnan, op.cit.
\textsuperscript{111} B.L.Wadhera \textit{v.} Union of India, op.cit., p.1933
\textsuperscript{112} Ibid and also quoted in P.Leelakrishnan, “Environmental Laws”, \textit{Annual Survey of Indian Law, 2002}, Vol.38 p. 316
area outside the limits of the forest. It also did not say that licence to operate saw mills should not be granted under any condition. Allowing the original petition filed by an applicant for licence, the Court directed the forest officer to decide the case afresh considering the limits of the forest and location of saw mill and the nature of the industry.113

Consequent to the prohibition of felling of trees in the forest, the question of custody of vehicles illegally transporting forest produce came to the Supreme Court in **State of Karnataka v. K.A.Kunchindammed.**114 [2002 DB] In this case, a vehicle illegally transporting sandalwood oil was seized. The authorised officer placed the vehicle under the interim custody of a forest range officer. Interfering with this decision, the Karnataka High Court directed the Magistrate to consider returning the vehicle to its owner.

Section 2(7) of the Karnataka Act gives an inclusive definition of forest produce. However, ‘sandalwood’ and ‘sandalwood oil’ are specifically mentioned in the definition. It is true that the definition of forest being inclusive, will enable the Court to tailor identical goods in the definition. Another provision in the Act authorises the officer to take decisions over the custody of confiscated forest produce. It speaks about sandalwood but not sandalwood oil. Hence the High Court held that the officer had no power to make a decision on the custody of the confiscated ‘sandalwood oil’. Due to the same reason, he could not also decide under whose custody the vehicle confiscating ‘sandalwood oil’ should be kept. According to the High Court, the residuary power in such cases is with the magistrate who can decide to whose custody the sandalwood oil and the vehicle should go.

The Supreme Court disagreed with this view and held that the High Court should have taken note of the definition ‘sandalwood’ in the Act which includes ‘sandalwood oil’. Such a view will make the interim custody of the confiscated property to the authorised officers within the hierarchy valid. The aim of the legislation

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113 T.N.Godavarman v. Union of India, in AIR 1997 also quoted in P.Leelakrishnan, op.cit., p.317
is to empower the forest department and to take effective steps for preservation of the
forest and forest produce.115

Commenting on this, the Supreme Court made the following observation: “For
this purpose, certain powers including seizure, confiscation and forfeiture of the forest
produce, illegally moved from the forest have been vested exclusively in them. The
position is made clear by the non-obstante clause in the relevant provisions giving over-
riding effect to the provisions in the Act over other statutes and laws. The necessary
corollary of such provisions is that in case where the authorised officer is empowered to
confiscate the seized forest produce on being satisfied that an offence under the Act has
been committed thereof the general power vested in the magistrate for dealing with
interim custody/release of the seized materials under the CrPC has to give way.”116
Therefore, it held that the power of seizure, confiscation and forfeiture of the forest
produce illegally removed from the forests has been vested exclusively in the
authorised officers. The magistrate when he deals with any case of seizure of forest
produce should examine the position. If the power is vested with the forest officials, the
Magistrate has no power to deal with interim custody. According to the Supreme Court,
a contrary position would defeat the very scheme of the law.117

In State of U.P. v. Sitapur Packing Wood Supplies 118 the Supreme Court
held that fee for transit of timber is regulatory in nature and movement of timber into or
from or within the state of U.P. was not invalid. It was not necessary to establish the
factum of rendering of service as the fee was clearly regulatory in nature. Hence, the
state need not prove quid pro quo to the fee imposed for transit of timber.

The question whether mining activity can be permitted to continue in an area
subsequently declared as a national park came up for discussion in K.M.Chinnappa v.
Union of India.119 Mining being a non-forest activity, such mining in the forest area
can be allowed only with the prior approval of the Central Government. A licencee is
entitled to get renewal if the area was already broken up before the Forest Act came

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115 Ibid; also quoted in P.Leelakrishnan, op.cit.
116 Ibid, p.1880
117 Ibid, p.1881
119 K.M.Chinnappa v. Union of India in AIR 2003, SC p.724
into force. However, the renewal is not automatic and it can be done only with prior approval. In this case, the mining company contended that the licence had already been issued under Rule 24 (B) of the Mineral Concession Rules framed under the Mines and Minerals Act 1957 and therefore the company was entitled to get renewal for another 20 years. Further, it was contended that the notification declaring the national park had excluded specifically the area under licence. Based on these provisions, the company had entered into contract with foreign buyers. It was contended that the discontinuance of the mining rights would stop the flow of valuable foreign exchange earnings. When this plea was put forth a valid question arose as to whether “the approach to mining activities be ‘dollar friendly’ or ‘eco-friendly’”? The Court intended to be eco-friendly. But when the Court is placed between eco-centric or anthropocentric, the scale of the Court leans towards the side of anthropocentric. At times it is vacillating between the two sides but finally it stops in anthropocentric.

The Forest Act, makes it mandatory to obtain prior approval despite the right to get renewal under the mining rules. The Act explicitly provides that “notwithstanding anything contained in any other law for time being in force in a state, no State Government or other authority shall make any order except with the prior approval of the Central Government.” In this case, it is clear that the Central Government had not accorded prior approval. Hence, exclusion of the company’s land from the need to get prior approval was impermissible. It is evident from this case that the rules and provisions of Forest Act will prevail over all other Acts or Rules.

In Tej Bahadur Dubey v. Forest Range Officer, the appellant had obtained necessary permit for converting sandalwood purchased by him into various types of handles, which are ultimately used in other sandal wood handicraft. The question to be decided was whether it is ‘sandalwood’ or ‘sandalwood products’ for the purpose of requiring transit permits because the Andhra Forest Act, 1967 makes it necessary to have permit for transportation of sandalwood, but not for transportation of its product. In this case the appellant, a licensed dealer and a stockiest in sandalwood was charged for not having a permit for transportation of sandalwood goods converted from original

120 Ibid
121 Section 2 of the Forest (Conservation) Act, 1980
122 K.M.Chinnappa v. Union of India, op.cit, p.738
123 Tej Bahadur Dubey (Dead by heirs) v. Forest Range Officer, in SCC Vol.3, 2003, p.122
sandalwood. The Apex Court held that once sandalwood is subject to a certain process from which sandalwood product is lawfully obtained, such product ceases to be sandalwood. P. Leelakrishnan dubs this approach of the Supreme Court as too legalistic and felt that “it did not take into account the likelihood of the clandestine movement of sandalwood of the dealers of sandalwood products were left out with no control.”

The Kerala Forest Act, 1971 vested the ownership of private forests with the state. The Act exempted from the purview of State monopoly lands used for cultivation of rubber. Crops and buds used for a purpose ancillary to the cultivation or for the preparation of it for market were also accepted. In Kujanam Antony v. State of Kerala, the Supreme Court held that in order to invoke such exemption, the land should be shown to be principally used for rubber plantation. The appellant could not prove this and on the contrary there was evidence that the appellant was cultivating tapiaco. Cultivation of tapiaco was not a purpose ancillary to the cultivation of rubber, which was exempted as per the Act.

In M.C. Mehta v. Union of India, the Supreme Court categorically stated that the commencement of mining operation is not permissible merely on approval of mining plan and scheme by the Central Government. Moreover, the mere approval of mining plan and scheme by the Government of India, Ministry of Mines would not absolve the leaseholders from complying with other statutory provisions such as The Environment Act, The Water Act, Air Act, Forest Act, etc.

In one of the T.N. Godavarman Thirumulpad v. Union of India cases, the Supreme Court discussed threadbare the issues of conservation, preservation and protection of forests and the ecology. In this case, the following issues were elaborately discussed: (1)When can forest land be used for non-forest purposes? (2)How to compensate the effect on ecology? (3)Whether it should be before the diversion of forest land for non-forest purposes and the consequential loss of benefits accruing from

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124 Ibid
127 M.C. Mehta v. Union of India in AIR 2004, SC. p.4051
the forest? (4) Should the user agency of such land be required to compensate for that diversion? (5) These issues are correspondingly related to other issues like, (a) Should not the user agency be required to pay the Net Present Value (NPV) of such diverted land so as to utilise the amounts so received for getting back, in the long run the benefits which are lost by such diversion? (b) What guidelines should be issued for determining NPV? (c) Should guidelines apply uniformly to all or are any projects exempted for payment of NPV?  

In this case, the Supreme Court examined concepts like, (1) conservation of biological diversity, (2) maintenance of productive capacity of forest eco-systems, (3) maintenance of forest eco-systems, health and vitality, (4) conservation and maintenance of soil and water resources, (5) maintenance of forest contribution to global carbon cycles, (6) maintenance and enhancement of long-term multiple, socio-economic benefits to meet the needs of societies, (7) legal, institutional and economic framework for forest conservation and sustainable management. The Supreme Court held, that “ecological and environmental goals are important to forest managers, land owners and their stakeholders.... These goals can be broadly productivity; conservation of biological diversity; and protecting and enhancing environmental conditions.”

About the suitability of projects, Supreme Court left the matter to the experts for a decision. However, the Court added that prima facie, the revenue earning projects do not deserve public welfare projects. Regarding re-generation and compulsory afforestation, the Court stated that it requires special, specific and expert attention and there was no illegality in establishment of Special Purpose Vehicle (SPV). It was directed that before establishing SPV, its format shall be filed in Court and it should be established only with the permission of the Court. The Court also issued the following directions: “(1) An expert Committee consisting of three experts shall be appointed within a period of one month by the institution of economic growth.(2) The Committee would examine the following matters in respect of (a) identifying and defining parameters (Scientific, bio-metric and social) based on which each of the categories of values of forest land should be estimated, (b) to formulate a practical methodology

130 Godavarman, Ibid; S.Sivakumar, Ibid, p.288
131 Ibid
applicable to different bio-geographical zones of India for estimation of values in monetary terms each of the above categories of forest values, (c) applying this geographical zone in the country, (d) determining, on the basis of established principles of methodology to obtain actual numerical values for different forest types for each bio-

public finance, who should pay the cost of restoration and/or compensation with respect to each category of values of forests, (e) which projects deserve to be exempted from payment of NPV. (3) The user agencies should give undertakings for the further payment, if any as may be determined on receipt of report from the expert body. (4) The Special Purpose Vehicle (SPV) shall be established with the permission of the court. (5) The institute shall send report of committee of experts within a period of four months. (6) The Compensatory Afforestation Fund Management and Planning Authority (CAMPA) should be modified based on this judgement within a period of one year".¹³²

From this judgement, it is evident that the Supreme Court is very keen in conserving the forest even by administering the Conservation of Forest Act at the micro level, which in a traditional classification of separation of powers has not been contemplated. Hence the Supreme Court is proactive with reference to conservation of forests.

M.C. Mehta v. Kamal Nath is another important case related to forest lands. In this case, the forest lands were given on lease to Span Motels by the State Government. The land is situated on the banks of River Beas, a young and dynamic river. It runs through Kullu Valley between the mountain ranges of the Dhauladhar in the right bank and the Chandrakheni in the left. The river is fast flowing, carrying large boulders, at times of floods. When water velocity is slow, the boulders are deposited in the channel and often block the flow of water. Under such circumstances, the river stream changes its course. Of course, the change is within the valley, but swinging from one bank to the other, the right bank and the Chandrakheni in the left. The right bank of the River Beas where the motel is located mostly comes under forest and the left bank consists of plateaus, where fruit orchards and cereal cultivation predominates. The area is ecologically fragile, but full of scenic beauty. It is evident from the facts of the case that large area on the bank of River Beas which is part of protected forest, was given on lease for commercial purposes to the motels. During monsoon season, due to blockage of the stream, the river overflows. M.C. Mehta filed a writ petition, under Article 32, as

¹³² Ibid
public interest litigation. Invoking the Public Trust Doctrine, the Supreme Court held that the State as a trustee is under a legal duty to protect the natural resources. The resources meant for public use cannot be converted into private ownership.”

The Supreme Court is “fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who could preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressure of the changing needs of an increasingly complex society find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the Courts. If there is a law made by Parliament or the State Legislatures, the courts can serve as instruments of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use, the aesthetic use and the pristine glory of the natural resources, the private, commercial or any other use unless the courts find it necessary, in good faith, for public good and in public interest, to encroach upon the said resources.”

On these factual matrix, the Supreme Court came to the conclusion that, “we have no hesitation in holding that the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the motel management. Both the lease transactions are in patent breach of the trust held by the State Government.” The Supreme Court therefore directed and ordered as under: “(i) the Public Trust Doctrine.... is a part of the law of the land; (ii) the prior approval granted by the Government of India...and the lease deed...in favour of the motel are quashed. The lease granted to the motel by the said lease deed...is cancelled and is set aside. The Himachal Pradesh Government shall take over the area and restore it to its original – natural conditions; (iii) the motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the motel in the river bed and the bank of River Beas has to be

133 M.C. Mehta v. Kamalnath in SCCI 1999, p.388; See below for further details on Public Trust Doctrine
134 Ibid
135 Ibid

223
removed and reversed. We direct NEERI through its director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the motel to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect. (iv) the motel through its management shall show cause why pollution fine in addition be not imposed on the motel.”136

From the foregoing case analysis it can be inferred that the Supreme Court has been very keen in interpreting the statutes strictly. The Court took an activist approach in conserving the forest. It assumed the role of administrator as well as legislator, besides being an activist adjudicator. At times the Court marginalised the relevance of the well settled principle of separation of powers in order to conserve the forest and thereby the environment.

The Supreme Court found that the Indian Parliament has been enacting legislations in consonance with the global expectations from time to time. The Government of India structured machineries substantially to prevent pollutions. But contrary to the prudent expectations of reasonable persons, pollution could not be stopped and went on unabatedly. The healthy survival of human beings is now in question. Supreme Court diagnosed the apt causes for this paradox situation and realised that the environmental enactments beautify the statute books, but miserably failed to preserve the natural beauty of the environment and the country. The Court also gauged the inability of the Pollution Control Boards against the wealthy and mighty eco-ciders, who perpetrated offences against environment with impunity. The indolent and apathetic sub-ordinate judiciary added to the existing environmental woes. This state of affairs appears to prove the proposition that in the legal web only small insects could be caught and wasps and other big winged beings would pierce the web and go scot free.

The Supreme Court, the custodian of the fundamental rights of the people, having been highly sensitised by the international environmental movements felt the imminent necessity to prevent pollution and conserve nature and thereby protect the

136 Ibid
right to life of persons. The wisdom of the Supreme Court helped it to diagnose that the eco-ciders are the cause of pollution. But it was aware that in a democratic political set up, the eco-ciders are very powerful and can effectively influence and coerce the politicians and the political process, bureaucrats and the administrative process and even the judicial process of the subordinate judiciary through muscle power and money power. However, in a democratic system elections are held periodically. In the electioneering process, political parties require funds and for the same they in turn depend upon industrialists. Hence, politicians and eco-ciders sail together. At times they happen to be the same person. Bureaucrats are subject to the control of the politicians in a democratic set up. Therefore, there is always a triangular understanding and link between the eco-ciders, politicians and bureaucrats.

The Constitution of India insulates the Supreme Court and makes it independent and free from the influences of eco-ciders, politicians and bureaucrats. Though it is not responsible to the public, it is of course, responsive to the public and it is structured in such a manner that it is not carried away by the temporary moods of the people. Therefore, the independent and immunised Supreme Court armed by the provisions of the Constitution, environmental legislations, international environmental principles and the judicial precedents of the developed countries ventures to catch the mighty eco-ciders to prevent pollution and thereby protect the environment.

In imposing liabilities on the eco-ciders, the Supreme Court does not leave anything to chance. To hook them within law’s firm grip, the strands of liability net are further strengthened through interpreting the existing penal laws and law of torts. This liability net is widely expanded. In its approach, the Supreme Court created a 'eco-web'. There are several strands in it, like 'absolute liability', 'penal liability of corporate bodies', 'public trust doctrine', 'precautionary principle', 'polluter pays principle', 'pollution fine', 'net present value', 'intra-generational equity', 'inter-generational equity', 'environmental impact assessment' and so on. There are other strands in the 'eco-web' like public interest litigation, 'continuous mandamus', 'Briesdon brief', etc. This well knitted powerful liability 'eco-web' caught in the past even mighty shark like animals in the water and high flying vulture like birds in the air.
Acting with a vision and a missionary zeal to tackle environmental problems, the powerful Apex Court knit a strong ‘eco-web’, broke the British common law tradition and improvised absolute liability concept from the strict liability. The hitherto ineffective penal laws were vitalised and imposed on the ‘instrumentality of the state’ also. It even made the Government of India liable to protect its poor Indians against the claws of mighty multinational ‘eco-ciders’ through involving Parens patriae. ‘Rogue industries’ were encountered. Indolent and apathetic municipalities were goaded. Polluters of water and air were forced to relocate or wound up their industries. ‘Foreign exchange card’ was invalidated. ‘Dollar friendly’ approach was discarded. The phrase ‘non-forest purpose’ finds newer meanings and the operation of the Forest Act has been extended even to private forest. Conservation of water gained currency. Pressure groups’ pressures and mass movements’ mobilisation, could not drift away the Supreme Court from its ‘anthropocentric’ approach. This golden thread of ‘anthropocentric’ approach, which is invisible, runs throughout the ‘eco-web’. It can be gleaned by an indepth analysis. The hyper-activistic approach of the Supreme Court popularised the phrases ‘environmental protection’, ‘forest conservation’, ‘water conservation’, etc. They have become popular slogans which are sensitising the people on the risks of abetting eco-ciders and on the urgent need to protect the environment in their own interest.