The limitations attendant on nuisance cases in contradistinction to the wider amplitude of pollution instances handcuffed the judiciary due to several reasons. For instance common man is not concerned with social righteousness, but with individual rights where as environmental protection is a social obligation. The fact that in conventional disputes the role of judge is that of a neutral umpire and the whole procedure revolves round the questions of fact and law limited the scope of judicial activism considerably. Courts were only a fact finding bodies balancing the issues in hand and resolving the dispute between the private parties. They were then to decide only the questions of fact and law pertaining to past events.

There were other simultaneous processes taking place during the time. The growth of nations into welfare states inevitably brought governments in direct contact with the day-to-day activities of the people. Post-independence developments in our country made a fresh look at the things from a different angle inevitable. More and more involvement of the governing authorities in the welfare of the governed brought in its wake the need for a change. Forty Second Amendment

of the Constitution can thus be said to be both the culmination of this long felt need and at the same time the commencement of a new era of social justice.²

Social justice brought under its perspective a wide variety of activities which essentially needed governmental interference. In the field of environmental protection the general awareness inspired by the U.N. Conference on Human Environment held at Stockholm in 1972 also had its impact. All these factors led to many radical changes during the 1970-80s in the overall administration and judicial review.

The Acre of Judicial Activism

The 42nd Amendment Act introduced the word 'socialist' within the Preamble of the Constitution.³ The ultimate result is interesting. The task of ensuring justice to the poor and weaker sections was placed on the shoulders of the judiciary. But for achieving the goal, a shift or transition from the otherwise normal traditional route became essential. The existing social evils and distress of the weaker sections necessitated evolving an innovative procedure. The joint venture of social workers got recognition of the highest court when the Supreme Court felt it necessary to pay heed to and

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² Social Justice is described by the Supreme Court as species of "justice" in generic sense. Consumer Education & Research Centre v. Union of India, A.I.R. 1995 S.C.922 at p.938.

³ 42nd Amendment Act, 1976 included the word socialist in the Constitution of India 1950.
consider the helplessness of these weaker sections.\textsuperscript{4} The growth of a new judicial process was the result giving fillip to formulation of a new environmental jurisprudence. A fresh look at the principle of locus standi with a view to liberalise the same resulted in the growth of public interest litigation (PIL). Under this head, attention of the highest courts were attracted to the arena of public grievances of diverse types. The liberal attitude of the Supreme Court resulted in the relaxation of procedural requirements of litigation. Even letters written to individual judges or the court were treated as writ petitions.\textsuperscript{5}

The growth of environmental awareness was a prelude to this new trend of judicial redress. Further growth went parallel. This was welcome development as it belittled the hurdles of locus standi in environmental cases. When industrial growth unavoidably brought in its wake the ill effects of pollution, the liberalising attitude of the courts inspired environmentalists for invoking the jurisdiction of highest courts for redress. Because, industrial activities mostly resulted in public nuisance at a wider amplitude and environmental issues related more often to the diffuse

\textsuperscript{4} Bandhua MuktI Morcha v. Union of India, A.I.R. 1984 S.C. 802 at p. 811. Supreme Court described 'social justice' as a dynamic device to mitigate the sufferings of the poor, weak and deprived sections of the society.

interests of a group of people than to ascertainable rights of individuals. The joint venture of environmentalists and judiciary opened new vistas for environmental litigation. Thus public interest litigation emerged as a growing mechanism in the field of environmental protection.  

Early activism through public nuisance case

It is interesting that the boost that thrust the flow of environmental litigation floods came first from not a constitutional law case but from a public nuisance case described early. The traditional procedure in a tort of nuisance is to weigh the circumstances against the grievances. For this one takes into consideration those factors which give rise to the actionable nuisance and issue a final order in the form of injunction or damages. In Ratlam's, distinct from this usual procedure, the court tried to peruse the existing legislation from a new social justice perspective. Although the case related to the negligence of local bodies, the court did not miss criticising the nuisance caused by big factories as a challenge to the social justice component of the Rule of Law.

8. For details see supra, Ch.6.
9. Supra, n. 7 at p.1629.
Thus the judgement illustrates how an activist court can transform seemingly dull legislation into a powerful mandate to protect the environment. The decision in the case related to neither an order of injunction nor damages but a direction to the public authority to perform its obligations which inevitably is in the form of a prerogative court. The procedure followed by the Supreme Court highlights the scope of judicial interference in administrative matters. The judgement explicitly recognises the impact of a deteriorating urban environment on the poor and links the provision of basic public health facilities to both human rights and the directive principles in the Constitution.

The need for compelling public authorities was felt by the court and directions issued under section 133 happened to be in the form of a writ of mandamus in disguise. It is made clear that the court cannot extricate itself from its responsibility.

Similarly, judicial interpretation of public nuisance and reading between the lines to widen the right to life so as to include right to clean environment can be seen in some other cases decided by High Courts.

11. Id., p.96.
But these cases also highlight the strain involved in evolving such new principles through public nuisance cases. Because the nature of environmental issues demand the balancing of issues far beyond the scope of the section in order to provide protection from environmental hazards. Thus in P.C.Cheriyan v. State of Kerala the court weighed the danger to the general public against the loss of jobs for the workers. The lengthy procedure involved in adducing evidence and resultant delay in reaching the final decision and need for strict adherence to the procedural formalities are some of the drawbacks of nuisance litigation. The relative speed and simplicity and cheapness of writ remedy encouraged the change which enabled direct access to the higher courts. The prospective nature of the judgement aimed at preventing continuing of the offence into the future.

Writ Jurisdiction and Industrial Pollution

There was no provision either in the Water Act or Air Act originally for class action or citizen suit except for approaching the Pollution Control Board to initiate action or to give

14. In Ratlam's case, for example, the delay caused for a final action was 10 long years.
15. Environmental offences do have consequences extending to the future also and traditional nuisance suits usually fail to prevent this because the affected parties will have to complain again and again for redressal.
permission for any action. This situation resulted in the overwhelming use of the jurisdiction of the Supreme Court under Article 32 and of the High Courts under Article 226\(^\text{17}\) against the polluters. Article 32 and 226 can be invoked for compelling public authorities to perform public duties and to restrict the discretionary power of local authority to issue licence. Thus one finds in H.V.Subha Rao v. Government of A.P.\(^\text{18}\) that residents of a locality whose health is alleged to be affected by the existence of foul smell emanating from a bone factory have a standing.

Though the writs of certiorari, prohibition and mandamus are of use in environmental protection especially industrial pollution, it is the writ of mandamus that has been used again and again for arresting environmental deterioration and health hazards caused by industrial activities.

**Public Interest Litigation (PIL)**

The nature of industrial pollution is such that it affected the diffuse interest of the public at large. Who will represent these interests? The Public spirited persons started taking their cause against environmental hazards caused by

\(^{16}\) Section 28 of the Water Act, 1974 and Section 31 of the Air Act 1981 provide for appeals. But it can be availed only by persons aggrieved by an order of the Board.

\(^{17}\) Articles 32 and 226 of the Constitution empower the Supreme Court and High Courts respectively to issue directions, orders or writs of different types.

\(^{18}\) A.I.R. 1969 A.P. 98.
industrial activities. Thus in the early eighties did grow PIL initiated by their more public interest. PIL, which is a comparatively modern development constitutes a significant segment of the expanding horizon of judicial power and has acquired legitimacy. The court described PIL as a strategic arm of the legal aid movement.\textsuperscript{19} Through the new jurisdiction, the Indian Judges have undertaken expanding responsibilities as critics and monitors of government and its agencies.\textsuperscript{20}

The scope and nature of PIL has been decisively laid down by the Supreme Court in the Asiad case\textsuperscript{21} when Justice Bhagwati described PIL as a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community. He also made certain revealing statements that mere initiative of social economic rescue programme by the executive and the legislature would not be enough and it is only through multidimensional strategies including PIL that these social and economic rescue programme can be effective.\textsuperscript{22} Although not in PIL case, Justice Krishna Iyer observation in Ratlam's

\begin{itemize}
  \item \textsuperscript{19} People's Union for Democratic Rights v. Union of India, A.I.R. 1986 S.C. 1473.
  \item \textsuperscript{20} Paramanand Singh, "Public Interest Litigation", XXI A.S.I.L. 1985, p.160.
  \item \textsuperscript{21} Supra, n.19.
  \item \textsuperscript{22} M.Krishna Prasad, "Public Interest Litigation: A New Juristic Horizon", A.I.R. 1984(JA) 1 at p.3.
\end{itemize}
Moreover, shifting the centre of gravity of justice from the traditional individualism of locus standi to the community orientation of public interest litigation is a constitutional mandate enshrined in the preamble.23

The Supreme Court has thus taken the task of implementing the constitutional mandate for legal aid24 introduced by forty second amendment. It is an attempt to protect and promote social justice through the instrumentality of law. PIL is a correct reaction from the court itself in the shape of judicial effort to solve the much agitated problem of access to justice in the legal conscience of our country.25 It can be said to be a right step taken in line with the international effort to attain sustainable development. It is a most reliable way of imparting justice to the otherwise ill-fated poor and weaker sections.26

Courts entertain PIL not in a cavalier fashion. Nor do they adopt confrontation with the Executive and jump into the latter's shoes in ensuring social and economic rescue programmes.

23. Supra. n.7 at p.1623.
24. Article 39A reads:

"Equal justice and free legal aid: The State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

25. Supra. n.21 p.2.
26. Supra. n.19.
They merely assist in the realisation of the Constitutional objectives. But at the same time one can notice that the Supreme Court preferred to bind itself in self-discipline and expressed resentment at the liberalising policy from inside towards PIL. Side by side with the liberalization of locus standi and the acceptance of PIL, the court has also laid down a few constraints in the judicial handling of PIL cases. Courts thus evaluated environmental problem from different angles to evolve environmental jurisprudence.

The courts had to make use of different strategies for achieving the task. Liberalization of standing was the first criteria adopted for access to justice. In the area of industrial pollution its credit is incredible because hazards resulting from industrial activities usually may go beyond the comprehension of the immediate victims.

Much more expertise and deeper knowledge is essential to challenge pollution caused by the big industries. For example, in Rural Litigation Kendra v. Union of India and M.C.Mehta v. Union of India, the effort and endeavour spent by the petitioners is far ahead of the capacity of an ordinary person though he may be an immediate victim of pollution.

27. Supra, n.4.
30. Supra.n.5.
Locus standi

Relaxation of the strict rules of locus standi became essential to provide adequate justice to those public whose interests were affected. It is a departure from the traditional practice that only a person aggrieved can have a standing in the court. One should prove 'special damage' suffered by him to acquire locus standi. 32

A few instances where public can approach the court are those provisions under section 91 of the Civil Procedure Code and Section 133 of Criminal Procedure Code. 33 But when the special legislation for environmental protection also incorporated the old practice of seeking jurisdiction through the Attorney General for resisting hazardous industrial processes, the environmentalists felt it to be a real hurdle in environmental protection. The result was that they were attracted by the move, that has already been started by the Judges of Supreme Court, of liberalising the locus standi and started using it to redress hazardous processes by bringing PIL under Article 32 or Article 226 of the Constitution. Thus the traditional rule insisted for some personal stake in the litigation while determining the standing of the petitioner,

32. "De Smith and Brazier, Constitutional and Administrative Law (6th ed, 1989) p.590. Broadly speaking, an applicant for judicial review must at least have an individual specific interest to pursue, which interest is detrimentally affected by an alleged administrative breach of duty or illegality". 33. See for gist of the provisions ch.5 pp.157-160
which will distinguish him from the other members of the public.\textsuperscript{34} The general proposition of the law is that the interest of an individual in the vindication of a public right would be sufficient to give him locus standi provided that he is prejudiced by the injury to the public interest more than the other members of the public are prejudiced thereby.\textsuperscript{35} These Indian jurists\textsuperscript{36} have classified petitioners into three categories for the purpose of deciding the standing of the petitioner. (1) Persons whose legal rights are directly or substantially affected, (2) Persons who do not claim to have suffered any loss or damage but claim injury as a member of public, (3) Persons who are total strangers i.e. middle some interlopers.

The problem of liberalising the requirement of standing is confined to persons coming under the second category and it affects only those persons coming under this group.

Liberalizing the rule of standing is a forward step in judicial activism and favour expansion of judicial review.\textsuperscript{37} In a welfare state such exercise of judicial supervision is quite welcome to maintain the rule of law and to check

\textsuperscript{35} \textit{Ibid.}
\textsuperscript{36} \textit{Id.}, p.400.
the misuse of power. It is also essential to secure fundamental rights of the poor people of the country. Justice Bhagwati rightly argued that if no one will have standing to challenge cases of public wrong or public injury, then there will be no rule of law.\(^{38}\) In his concurring opinion in *Fertilizer Corporation Kamargar Union v. Union of India*,\(^{39}\) Justice Krishna Iyer observed,

"In simple terms locus standi must be enlarged to meet the challenges of the time. *Ubi jus ibi remedium* must be enlarged to embrace all interests of public minded citizens or organisations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets."\(^{40}\)

**Locus standi in Industrial Pollution Cases**

Judicial diction for liberalizing locus standi laid down through those cases that came up for judicial interpretation in the early 80s.\(^{41}\) This helped those who wanted to challenge hazardous industrial practice to a great extent since the need for establishing their standing in the court was no more felt. This will be more clear if we consider

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40. Id., p.355.
the attitude of the High Court of Andhra Pradesh in the case of Dr. N. V. Subha Rao v. Govt. of A.P. In this case the Andhra Pradesh High Court recognised the locus standi of the petitioners because they were residents of the locality whose health was alleged to be affected by the existence of foul smell emanating from the factory. But the court differentiated between an aggrieved party and a member of the public. The difference in these two cases is that if the writ of certiorari is filed by an aggrieved party, the High Court cannot dismiss the application on the ground of standing. But in the other case the issue of writ is a discretionary matter for the High Court.

But, by the time the Dehradun Quarrying case was brought to the notice of Supreme Court, the attitude had totally changed and a letter from Rural Litigation and Entitlement Kendra alleging illegal limestone quarrying was treated as a writ petition. Recognising the citizen's locus standi the court observed that preservation of the environment and keeping the ecological balance unaffected is a task which not only governments but also every citizen must undertake. It is a social obligation and citizen’s

42. Supra. n. 17.
44. Supra. n. 5.
fundamental duty as enshrined in the Constitution. This liberal judicial attitude encouraged the social action groups and inculcated in them the enthusiasm and spirit to evaluate industrial and developmental projects from environmental angle. In Ganga Pollution case the court upheld the standing of a Delhi resident to sue the government agencies. According to the court his interest in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed.

Parens Patriae

Liberalization of locus standi took a new turn when in the wake of Bhopal gas disaster the Government of India passed Bhopal Gas Disaster (Processing of Claims) Act 1985. The standing of Union of India to bring the suit was justified by the authorisation of this Act. For the purpose, the Union of India has invoked the doctrine of Parens Patriae.

47. Id., p.1126.
49. Dr.S.K.Mukherjee in his "Hindu Law of Religious and Charitable Trusts", Tagore Law Lectures, 5th ed. p.404, referring to the concept of parens patriae has noted: "The concept of Parens Patriae has English origin where the crown as Parens Patriae is the Constitutional protector of the subjects essentially in matters of public concern".
According to this the Government is duty bound to protect and control persons under disability. The Supreme Court in Charan Lal Sahu v. Union of India hailed that the Bhopal Act of introducing this maxim is conceptually and jurisprudentially an advancement, an appropriate evaluation of the expression of sovereignty. From the 'standing' point of view it can be said to be a creative or innovative step where the interest of the victims is protected and represented by the state itself. It sought to create locus standi for the Central Government to file suits on behalf of the victims since they were under disability in pursuing claims. Union of India has thus extended this doctrine for protecting the citizens of the country who are victims of a tragedy that occurred within the country because of the negligence of a multinational corporation. The Supreme Court appreciated

50. In India the constitutional validity for this doctrine has been derived from the Preamble, Part IV and Part IV-A of the Constitution under Articles 38, 39 and 39A. They enjoin the State to take up these responsibilities.


52. Id., p.1534.

53. According to Black's Law Dictionary, (5th ed.) 1979 p.1003 the word 'Parens Patriae' means literally 'Parent of the country' and refers traditionally to the role of the state as a sovereign and guardian of persons under legal disability. It had its roots in the common law concept of royal prerogative and includes the right or responsibility to take care persons who were legally unable, on account of mental incapacity.

54. Usually the doctrine is invoked to represent the victims outside the territories of the country.
the stand of the Union c. India saying that it is a particular situation which calls for suitable effective machinery to articulate and effectuate the grievances and demands of the victims for which the conventional adversary system would be totally inadequate. There is no bar on the State to assume responsibilities analogous to parens patriae to discharge this state's obligation under the Constitution.55

Thus the common law concept of royal prerogative56 has been given a new colour and dimension in the welfare state doctrine making it the obligation of the state to assume such responsibility and protect its citizens. But this innovation lost all its flavour novelty in 1989 when Bhopal claims settlement was approved by the Court thus torpedoing its own creative contribution to a new social justice delivery system.

Once the standing is established and the litigation has been initiated the next task is adducing adequate evidence to establish the facts. As has already been mentioned, the nature of the process invites the key role and attention of the judges for evaluating the case from the environmental perspective. As far back in 1976 the role of a judge in

55. Supra.n.48

56. Supra.n.1 and A.I.R. 1990 S.C1440.
public law litigation has been summed up in Harvard Law Review as follows: 57

"In PIL, the judge is the dominant figure in organising and guiding the case. It is fact evaluation rather than fact finding. It seeks to enjoin future or threatened action and is prospective."

Attention is drawn to the mischief existing or threatened and the court is directed to the development of on-going measures designed to cure that mischief. Moreover the liability determination is not simply a pronouncement of the legal consequences of past events, but to some extent a protection of what is likely to be in future. And in the decree the interests of the absentees is also to be considered. In order to attain the goal the judges often resort to outside help like masters, amici, experts, panels, advisory committees etc for information and evaluation of proposals for relief. 58

One can see that this device has been time and again made use of by the Supreme Court of India. The courts have the power under section 75 of Civil Procedure Code to appoint commissions for evaluating environmental issues. 59 High Courts often use this power in environmental cases.

58. Id., pp.1300, 1301.
Commissions and Committees

The tactics generally followed by the Supreme Court in order to arrive at strong conclusions in PIL is the appointment of commissions and committees for evaluating environmental hazards. This power to appoint commission is an inherent power of the Supreme Court under Article 32 and High Courts under Article 226 of the Constitution. There are various reasons that stimulate such a practice. Firstly, the nature of industrial activity may be such that for proper evaluation of the offence and its after effect, an expert opinion is essential since scientific and technological matters are involved. Secondly, any measure to control or prevent an industrial activity may detrimentally affect the right of many for whom it is a means of livelihood. Thirdly, a hinderance to industrial activity means a blockage in the development phenomena. Therefore, any decision taken should be done balancing the issues and correctly evaluating the immediate as well as future consequences from a sustainable approach.

The device of appointing a committee was exercised for the first time in order to reconcile the industrial activity and ecological imbalance in the Dehradun case. The court

60. Supra.n.4 at pp.816,817,845 and 849.
appointed an expert committee to evaluate the environmental impact of lime stone quarrying in the Doon Valley. The court did not show reluctance to appoint even a third committee to avoid any confusion wherever necessary. In M.C.Mehta v. Union of India the court considered the opinion of experts to evaluate the new principle of liability.

In this case the highest court justified the appointment of committees by saying:

"We have noticed that in the past years there is an increasing trend to 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 this court by way of PIL. In most of these cases there is need for neutral scientific expertise as an essential input to inform judicial decision making. These cases require expertise at a higher level of scientific and technical sophistication. We felt the need for such expertise in this case and we had to appoint several committees to inform the court as to what measures were required to be adopted to safeguard against the hazard."  

63. In "ural Litigation case the court appointed a high powered committee, the Bhandipadhyaya committee, when the Report submitted by the earlier two committees(Bhargava Committees Report and Working Group Committee Report) disagreed between them about the closure of mines coming under category B. Similarly in M.C.Mehta v. Union of India, A.I.R.1987 S.C.965 the court in order to reach a final decision considered the suggestion put forward by various committees.


65. Id., p.981.
Functions of the Committees

The purpose of constituting a committee is for giving assistance to the courts. The committees thus constituted were entrusted different functions. An assessment of the committees appointed on different occasions shows that it is primarily to study the problems and submit a report on which the court rely for deciding the case in front of it. For that purpose the committee can inspect the location as well as consider the scientific aspect and ecological implication.66

Thus the question whether the grant of mining leases in respect of lime-stones is in accordance with the relevant statutory provisions was probed into.67 It will be at liberty to the take assistance of experts in order to gather the necessary scientific and technological information and data so as to formulate its findings.68

The committees are constituted sometimes for monitoring the activities. In the case of limestone quarrying a Rehabilitation Committee was constituted. In M.C.Mehta v. Union of India70 the court directed for the setting up of a high

68. Ibid.
powered committee to look into the problem of vehicular pollution in Delhi. A committee is sometimes to look after the pollution control measures adopted by the industry.\(^{71}\)

The committee thus appointed suggest recommendations such as closure of an industrial establishment,\(^{72}\) relocation of the plant\(^{73}\) or imposition of heavy fine for non-implementation of preventive measures.\(^{74}\)

**Environmental Impact Assessment**

In many of these cases the committees are to make an environmental impact assessment and the need for appointment of such committees is mainly due to the lack of statutory provision for impact assessment before starting developmental projects.\(^{75}\) The committee is supposed to reach its conclusion on the basis of reasons backed by scientific data.\(^{76}\)

\(^{71}\) Id., p.228.
\(^{72}\) M.C.Mehta v. Union of India, (1990) (2) SCALE 609.
\(^{73}\) *M.C.Mehta v. Union of India*, A.I.R. 1990(2) SCALE 965.
\(^{74}\) Supra, n.64.

\(^{75}\) Supra, n.67.

Thus the courts felt the need for considering the expert opinion of committees when the PIL raised a question pertaining to development versus Ecology and Environment or where it was to consider hazardous industrial activities. Finally, the court felt it absolutely essential that there should be an independent centre with professionally competent and public spirited experts to provide the necessary scientific and technological assistance.

Directions under PIL

In most of the cases under PIL the court showed its enthusiasm to preserve the quality of environment by giving directions of diverging nature. It is a trend that had already been started in public nuisance cases brought before the court for protecting the environment. Directions were given mostly to executive authorities to make use of devices for preventing pollution. The court felt that neither law nor funds alone can help in balancing the ionospheric disturbance until there is clear perception and imaginative planning. It also requires sustained effort and result oriented strategic action. For that purpose the Supreme

77. Supra.n. 62.
78. Supra.n. 64.
79. For eg. in Ratlam's case the final order of the Supreme Court was in the form of directions to authorities concerned.
81. Ibid.
Court accommodated different devices such as laying down conditions and constituting bodies to look into the implementation processes.

The court felt the need for setting up of a high powered authority for overseeing the functioning of hazardous industries and evolving a national policy for location of chemical and other hazardous industries. The need for green belt of one to five kilometers around such industries was proposed for the first time which the Government has implemented later on. It directed the company to get their pollution tested and measured and publish the result.

Ganga pollution cases constitute an instance where the court issued directions after directions to prevent pollution of the sacred river Ganga caused by the tanneries. In order to prevent industries from polluting the river Ganga indiscriminately, the court even directed that whenever appli-

82. M.C. Mehta v. Union of India, A.I.R. 1987 S.C.982. The court formulated the following conditions:
1. An expert committee to monitor the operations and maintenance of the plant and equipment and ensure the continued implementation of the recommendations of the two committees.
2. Appointment of one operator for each safety device.
3. The Chief Inspector of Factories or any senior Inspector duly nominated by him to inspect the plant at least once in a week by paying surprise visit,
4. The Central Board also to depute a Senior Inspector to visit once in a week.
5. Personal responsibility to pay compensation,
6. A committee of workers to look after the arrangements in the caustic soda plant.
85. Ibid.
87. Supra. n.46
cations for licences to establish new industries are made in future. Such application shall be refused unless adequate provision has been made for the treatment of trade effluents flowing out of the factories. In M.C. Mehta v. Union of India and others the court directed Delhi Administration to furnish a complete list of prosecutions launched against heavy vehicles. Closure of industrial operations with immediate effect was ordered on several occasions.

It was even alleged that the attempts of the Pollution Control Boards to enforce the provisions of the Water Act are defeated and frustrated because whenever the Board initiates any proceedings to prosecute the industrialists or other persons who pollute the water in the river Ganga, the persons accused of the offences immediately institute petitions under section 482 of Criminal Procedure Code, 1973 in the High Court and obtain stay orders. The Supreme Court did not hesitate to order that High Courts should not ordinarily grant orders of stay in such cases.

In yet another case the court issued directions to exhibit slides on environment free of cost by cinema exhibitors, to spread information relating to environment through media and to make environment a compulsory subject

88. Id., p.1127
91. Supra. n.88.
Thus directions were issued on different occasions to administrative authorities like Municipalities, Pollution Control Boards, Delhi Administration and even the Ministry of Environment. In most of these cases court preferred to have a continuous watch over the future actions and the role of judiciary seems to have exceeded its limits from adjudicatory to administrative.

Professor Upendra Baxi described this gradual judicial take over of the directions of administration in a particular arena from executive as "creeping jurisdiction." At the same time it is noteworthy that Supreme Court's directions enabled the Executive and Legislature to have a critical analysis of the pollution problems and gradually incorporate these provisions in the environmental legislation.

The need for balancing environment and development, the court felt essential and insisted that spirit of confrontation must be replaced by the spirit of cooperation in the larger interests of the community.

93. Supra.n.5.
94. Supra.n.87.
95. Supra.n. 91.
96. V.Baxi, Taking suffering seriously: Social Action Litigation in the Supreme Court of India, 29 The Review International Commission of Jurists, 37,42(December 1982) as given in Rosencranz et.al., op.cit.p.130.
Thus using the weapon of PIL by liberalising locus standi and seeking assistance from commissions and committees, the Supreme Court and High Courts invoked the jurisdiction under Article 32 and 226 of the Constitution and issued directions to the administrative agencies. This judicial activism has eventually laid down new principles in environmental jurisprudence such as 'right to clean environment' 'freedom of information' 'absolute liability' and 'right to compensation'.

Right to clean environment

In the eighties judicial activism went a long way. This resulted in finding that the right to a clean environment is a fundamental right. The spark lit by Justice Krishna Iyer in Ratlam's case\textsuperscript{97} was time and again fanned by the apex courts that the concept of right to environment grown to be a beacon light today. The Universal Declaration of Human Rights\textsuperscript{98} generalising the idea that all have the right to live in a healthy and clean environment was accepted in this evolutionary process through case law. The corresponding duty is cast on the state authorities and fellow beings not to deny this right to a citizen. A mutual right duty relationship is to be maintained among and between everyone, which ultimately results

97. Supra. n.7. He raised objection that industries cannot make profit at the expense of public health. This section read with the punitive temper of section 188 I.P.C.

98. In 1984, the UN adopted a Resolution, "All human beings have the fundamental right to an environment adequate for their health and well being".
in the preservation of environment from the hazards of pollution. Practically, it requires positive as well as negative steps. That is, preserving the quality environment requires prevention of pollution and promotion of conservation of natural resources. The significance of industries in protecting the right to environment is great from both these angles. This is so because industries are basically dependent on natural resources thereby affecting conservation. They also are engaged in activities causing pollution.

The crux of case law proves that judicial task was to harmoniously construct the idea of the right to environment in the face of growing industrial development for the benefit of the well being of the people. The court was at the problem and interpret the law from the angle of sustainable development.99 Obviously, the concept of right to environment has its roots in the social justice principle.

At the global level, the right to live is now recognised as including in it the right to an environment conducive to health and well being.100 The constitutional recognition of this right became easy since the courts had already interpreted

99. See for details on sustainable development, supra, chapter 2 pp. 38-42.
the right of the people to live in comfort and peace under
the nuisance cases as sacred. 101

In line with these decided cases it became not a
difficult task for the Supreme Court to read into 'the right
to life' the right to clean environment. The result is farreaching.
The judicial recognition found out in an important basic right
not articulated that was implied by at the time of making the
constitution for environmental problems were less in number
so as to attract the attention of the founding father. Just
as was done in democracies where rule of law is being respected,
the Indian Supreme Court by its ingeneous juridical technique
interpreted the right to life in Article 21 in such a manner
so as to the right to a clean and healthy environment. The
era of judicial activism of widening substantive due process
in Article 21 started from the Maneka Gandhi case. 102

The first indication of the right to a wholesome
environment may be traced to the Dehradun Quarrying case in
which the Supreme Court viewed the restriction on the licensed
mining operation as the price to be paid for protection of the
right of the people to life in healthy environment. 103 In fact

101. Under the Common Law the courts have already established
the right of anyone to live, work and sleep in a
environmentally sound atmosphere as a basic or funda­
mental right. See supra, chapter 6.

102. A.I.R. 1979 S.C.597. "The right to life or personal
freedom can be restricted only in a fair, just and
reasonable manner".

103. Supra.n.5.
mere admission of a PIL petition claiming environmental protection under Article 32 of the Constitution is the court's recognition of the right to environments as a fundamental right. However, the highest court was reluctant to explicitly articulate the same in the beginning.\textsuperscript{104} Neither in Doon Valley case nor in Mehta case the court has held directly that the right to environment is contained in the constitutional right to life. The anxiety with which the courts were issuing directions with a view to protecting the lives of the people, their health and ecology denotes nothing but the obvious judicial recognition of such right.\textsuperscript{105} Moreover, in both these cases the Supreme Court had to weigh the fundamental right to environment against the fundamental right to work.

The Supreme Court's enthusiasm to preserve the quality of environment encouraged the High Courts to go ahead with the task by clearly recognising the right to a clean environment.\textsuperscript{106} They were more articulate in openly recognising the right to clean and healthy environment.\textsuperscript{107} Thus Andhra Pradesh High Court observed that it would be reasonable to hold the enjoyment of life and its attainment of fulfilment as guaranteed by Article 21. It embraces the protection and preservation of

\begin{itemize}
\item \textsuperscript{104} Ibid., See also supra n.62
\item \textsuperscript{105} P.Leelakrishnan, "Courts and Environment Protection" in Environmental Hazards in Kerala, (1997) p.79.
\item \textsuperscript{106} In the case of Damodar Rao v. The Special Officer, Municipal Corporation of Hyderabad, A.I.R,1987 A.P.171 at p.181. The court pointed out that the Supreme Court had entertained environmental issues under Article 32 in Rural Litigation cases since it was violative of Art.21.
\item \textsuperscript{107} Shyam A.Diwan, Constitution and Environment, (1990) C.U.L.R. 87 at p. 92-93.
\end{itemize}
nature's gift without which life cannot be enjoyed. 108

The Karnataka High Court 109 has gone far ahead when it categorically said that where, on account of human agencies, the quality of air and quality of environment are threatened or affected the court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life to promote public interest. The court also acknowledged the foundation of juristic activism laid by the Supreme Court. 110

The High Court of Kerala has gone still far ahead showing its eagerness to articulate the right to life concept in a case brought under section 133 Code of Criminal Procedure. 111

The sanctity of right to life is more than immunity from extinction of life. 112 It guarantees life in its many splendoured facets, emotional spiritual and aesthetic. The court listed talent, thought process, human personality and expression of these as complements of life. 113 The court recognised Article 21 as the needle of the balance wherein the competing claims for preservation of ecology and exploitation of natural resources have to be balanced. 114

108. Supra. n. 106.
110. Id., p.70.
112. Mathew Lukose and Others v. Kerala State Pollution Control Board and Others, 1990 (2) K.L.J. p.717
113. Ibid.
The court explicitly recognised the right to a healthy environment as part of the multifaceted Article 21. The right to sweet water and free air are the attributes of the right to life for these are the basic elements which sustain life itself.\textsuperscript{115}

Thus the idea articulated is that the right to life comprehends, inter alia, right to environment and right to health care.\textsuperscript{116}

The Supreme Court's opinion on this matter was not clear till the court in \textit{Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.},\textsuperscript{117} observed that every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution. The court explicitly endorsed that Article 32 can be invoked for a redressal when the quality of life and living is endangered or impaired.

\textsuperscript{115} \textit{Attakova Thangal v. Union of India}, 1990 K.L.T. 580 at p.583.


\textsuperscript{117} (1990) 4 S.C.C. 449. Facts:

In this case a letter written to the court by \textit{Chhetriya Pardushan Mukti Sangharsh Samiti} was treated as a writ petition under Article 32. It was alleged that the smoke and dust emitted from the Chimneys of the Mills and the effluents discharged from the plants were causing pollution in the thickly populated and were proving a great health hazard.
Again in Subhash Kumar v. State of Bihar\textsuperscript{118} the court observed that right to live is fundamental right under Article 21 and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.\textsuperscript{119} Coming to the issue of workers right to life for healthy working conditions, Supreme Court held that right to health, medical care to protect the health and vigour of a worker while in service or post retirement is a fundamental right under Article 21 read with Articles 39(e), 41, 43, 48A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.\textsuperscript{120}

It is noteworthy that in many of these cases the courts have relied much on the U.N. Declaration of Human Rights 1948 to emphasize the right to wholesome air.\textsuperscript{121} By the time M.S. Mehta approached the Supreme Court in 1992 to raise his voice against pollution of air, water and land creating health hazard for residents of the area concerned due to industrial development an urban contiguous territory of Delhi\textsuperscript{122}

\textsuperscript{118} (1991) 1 Comp.L.J.209 (SC).
\textsuperscript{119} Id., p.103.
\textsuperscript{120} Supra.n.2 at p.940.
\textsuperscript{121} For e.g. Environmental and Ecological Protection Samithy v. Executive Engineer, 1991 (2) K.L.T. p.493; Mathew Lukose and Others v. Kerala State Pollution Control Board and Others, 1990 (2) K.L.J. 717.
\textsuperscript{122} M.C.Mehta v. Union of India, 1992 (1) SCALE p.220.
the right to environment has already been a part of the right to life under Article 21 of the Constitution.

The court held that environment cannot be permitted to be damaged by polluting the air, water and land for industrial development. The court's direction to close those industries that fail to take necessary steps for preventing pollution in the riparian area of river Ganges after giving general notice in the newspapers substantiates the court dictum beyond any doubt.

**Right to work v. Right to clean environment**

Industrial activities need the immediate and inevitable involvement of workers. Therefore, a judicial direction for the closure of a polluting industry detrimentally affect the right to work of many others thereby affecting their right to livelihood. Judiciary having already laid down the precedent of treating 'the right to livelihood' as part of the constitutional 'right to life', eradication of industrial pollution brought the two interests into conflict. In most of

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123. Ibid.

124. M.C. Mehta v. Union of India and Others, 1993 Supp (1) S.C.C. p.434. In this case M.C. Mehta brought to the notice of court the continuing pollution of river Ganges caused by discharge of trade effluents by riparian industries (other than tanneries, distilleries and Municipal Board). The court had directed those industries in the riparian areas of river Ganges as early as in 1985 to stop discharge of untreated effluents. General notices were published for the same and on January 16, 1991 Ministry of Environment and Forest issued a notification requiring the industries to comply with the standards.

these cases the dilemma, i.e. right to work v. right to environment, was a seminal question that the highest court had to answer. The court categorically evolved the principle that right to have wholesome environment free from pollution is of paramount priority to the right to livelihood of workers.126

In the Ganga Pollution case127 the court compared a polluting industry to that of one which cannot pay minimum wages to its workers and held that pollution caused by such industries discharging the trade effluents outweigh any inconvenience that may be caused to the management and the labourers on account of its closure.128 At the same time the court took into serious consideration the plight of those workers and entrusted the Government to provide them employment in the afforestation and social conservation programme to be taken up in the area.129 The present position is that the court orders closure of industry without even primarily considering the workers right to work.130 Thus in Ganga Pollution(Tanneries case131 the court justified the closure of polluting tanneries

126. Supra.n.84. The court took into consideration the interest of about 4000 workmen.
128. Id., p.1045.
129. Supra.n.62.
131. Supra.n.127 at p.1048.
and says:

"We are conscious that closure of tanneries may bring unemployment and loss of revenue but life, health and ecology have greater importance to the people."

Apart from this, the right to carry on business or trade is restricted. The question is whether such a regulation is violative of fundamental rights to trade imposing unreasonable restriction. In Aggrawal Textile Industries v. State of Rajasthan¹³² the argument raised was that the prohibition contained in the pollution control law would result in complete closure of the business of the petitioners and that would be an unreasonable restriction to carry on their trade and business. The court observed that an individual while exercising his right to carry on his trade or business is not free to pollute the source of supply of water to other citizens and thereby cause harm to the interest of the general public. The right to trade is not absolute.¹³³ A rule which prohibits carrying of a dangerous and offensive trade only beyond a prohibited distance has the support of constitutional reasonableness.¹³⁴

The Supreme Court reiterated the same view when it ordered the polluting tanneries to stop functioning.\textsuperscript{135} The court also condemned that notwithstanding the comprehensive provisions contained in the Act, no effective steps appear to have been taken by the State Boards to prevent the discharge of effluents into river Gange.\textsuperscript{136}

In Abhilash Textile and Others v. The Raykot Municipal Corporation\textsuperscript{137} the question raised was the same but under Bombay

\textsuperscript{135} \textit{ supra.} n. 126

\textsuperscript{136} \textit{ Id.}, p. 1049

\textsuperscript{137} \textit{ A.I.R.} 1988 Guj. 57.
Provincial Municipal Corporation Act. The petitioners challenged the notice served by the Municipal Commissioner as business and trade. Placing reliance on the celebrated Maneka Gandhi's case the court said that there is a duty to give reasonable opportunity to be heard before taking an action which effects the rights of individual.

The Supreme Court observed that the right to be heard will be available to them only if they can show that they have a right to carry on the business even in the manner causing nuisance. No one has a right to trade in the manner in which it becomes a health hazard to the entire society. The fundamental right to trade or business is subject to reasonable restrictions and regulations that may be placed in the interest of the general public.

In Bhagwan Dass v. Municipal Corporation of Delhi the Delhi High Court extended the restriction to such an extent that no person can claim licence or a permit to do an act as of right. Imposition of a restriction on the exercise of a fundamental right may be in the form of a control or prohibition.

139. Supra.n.102
Absolute Liability

Recognising the need to evolve new principles and lay down new norms which would adequately deal with the new problems likely to arise in a highly industrialised economy, the Supreme Court evolved the cardinal principle of absolute liability of an enterprise engaged in a hazardous or inherently dangerous activity.141

The point was already adverted to in a previous chapter.142 The enthusiasm shown by the court to throw away the crutches of a foreign legal order is justified by saying:

"It is not necessary for us to consider those decisions laying down the parameters of this rule because in a modern industrial society with a highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry a part of the development programme".143

The nature of industrial pollution is such that for the victim of pollution it would not be an easy task to isolate the cause of action and prove the same.144

141. Supra.n.31.
142. See supra. ch.2 pp.37-46
143. Supra.n.131 at p.1098.
144. Id., p.1099.
This is an undisputed dictum today and is extended to all activities irrespective of hazardous nature. The law today is that no one can be permitted to pollute the atmosphere of an area by letting out offensive material from his premises. In Charan Lal Sahu v. Union of India Supreme Court projected the need for a law on the subject acknowledging the hazardous nature of industrial activities.

Right to compensation

It is corollary to the principle of absolute liability that Supreme Court thoroughly evaluated the scope of Article 32 and concluded that under that Article the Supreme Court may award compensation in appropriate cases. The power of the Supreme Court under this Article is vast. It gives not only preventing remedies i.e. preventing infringement of a fundamental right, but also protective remedies such as providing relief against a breach of the fundamental right already committed. The power of the court to grant such remedial relief may include the power to award compensation provided the infringement of the fundamental right is gross and patent affecting large number of persons. It should appear

145. Ajay Constructions v. Kakateeya Nagar Co-operative Housing Society Ltd., A.I.R.1991 A.P.305. It is a case in which the construction workers failed to comply the conditions laid down by HUDA under section 13 and 15 of the A.P.Urban Areas(Development) Act, 1975 which resulted in pollution in the Residential area.

146. Ibid.


148. Supra.n.13§.

149. Id., p.1091.
unjust or unduly harsh or oppressive on account of their poverty, disability or socially and economically disadvantaged position to require them to initiate and pursue action in the civil courts. The court stressed that it is only in exceptional cases that compensation may be awarded in a petition under Article 32 and the measure of compensation must be correlated to the magnitude and capacity of the enterprise for making it more deterrent in nature. While dealing with employer's vicarious liability to pay damages in case of occupational disease Supreme Court said that in public law claim for compensation is a remedy available under Article 32 or 226 for the enforcement and protection of fundamental and human rights. It is described as a constitutional remedy.

Supreme Court followed the same when the court took initiative for awarding interim compensation to the victims of Bhopal Gas tragedy in the February settlement, 1989.

Judicial activism on the subject paved the way for legislating on the subject and enacted Public Liability Insurance

150. Ibid.
151. Id., p.1099.
152. Supra, n.4 p.941.
153. Union Carbide v. Union of India, (1991) 4 S.C.C.584, Misra, C.J. stated "...there is no reason why we should hesitate to evolve such principles of liability".
Act, 1991. 154 In the course of judicial pronouncements the higher courts formulated judicial opinion on several other rights as well, such as freedom of information, role of social action groups etc.

In a democratic polity the right to know is essential because public access to governmental information enables citizens to exercise their political choice meaningfully. This right envisages government accountability and a citizen's ability to secure authentic information. 155 The Supreme Court has derived this right to know from the fundamental right to freedom of speech and expression and fundamental right to life and personal liberty. 156 Judicial recognition of this right as emanating from the right to life strengthened a citizen's access to official environmental information significantly. 157 The court considered this right to be essential for the proper functioning of real democracy which has to be worked from below by the people of every

154. Act No.5 of 1991, for the text see 1991 C.C.L. Part II p.45. Also see supra, ch.4, pp.49-54.
156. Id., p.143. Right to freedom of speech and expression - Article 19 (1) (a).
Right to life and personal liberty - Article 21
village and town.\textsuperscript{158} The court thus transformed a judicial rhetoric into a substantive, enforceable right.\textsuperscript{159} It also felt that in a democratic polity dissemination of information is the foundation of the system.\textsuperscript{160}

In \textit{L.K. Koolwal v. State}\textsuperscript{161} it was held that the right to know derives from the constitutional duty enshrined in Article 51 A. The court, therefore directed the Central Government to provide appropriate slide material on various aspects of environment and pollution for exhibition to spread information reflecting environment through media.\textsuperscript{162} The court did not restrict this right to individual citizens alone but the extended the same to social action groups.\textsuperscript{163}

Speaking about the role of Social Action Groups the court observed that they help in checking sabotage of development plans by unscrupulous persons and corruption at all levels.\textsuperscript{164} The role of social action groups being an already established fact\textsuperscript{165} extension of the same to environmental

\begin{itemize}
\item \textsuperscript{158} \textit{Bombay Environmental Action Group v. Pune Cantonment Board, Bombay H.C.A.S.Writ Petition No.2733 of 1986, as given in \textit{supra}, n.145 at p.144.}
\item \textsuperscript{159} \textit{Ibid.}
\item \textsuperscript{160} \textit{Ibid.}
\item \textsuperscript{161} \textit{A.I.R. 1988 Raj.1.}
\item \textsuperscript{162} \textit{M.C. Mehta v. Union of India, 1991 (2) SCALE p.1181.}
\item \textsuperscript{163} \textit{Bombay Environmental Action Group v. Pune Cantonment, Board, S.C.SLP (CIVIL) No.11291 of 1986 as given in \textit{supra}, n.145 at p.149.}
\item \textsuperscript{164} \textit{Supra.\textit{\textit{iii}}}
\item \textsuperscript{165} \textit{Neeraja Chaudhary v. State of M.P., A.I.R. 1984 S.C.1099.}
\end{itemize}
issues was not much disputed. It is a part of public participation and assumes importance in environmental matters. In D.D.Vyas v. Ghaziabad Development Authority the High Court stressed the right of environmental activist and extended the right to Article 226 as well saying that no town is known for slay-scrapers, for myriad industries, for big commercial centres, for big monumental building, but for the attractive layout of the town, for good landscapes, for beautiful parks and lawns, for expansive vertant cover and for perfect social ecology.

The battle for a clean and healthy environment is made more productive by judicial activism which provides circumstances in which ordinary citizens felt access to the decision making process. The fact that environmental issues contain social, economic, legal and scientific question and can be resolved neither by purely technical mechanism nor by purely legal analysis attract the interference of a forum that can harmoniously reconcile the issues. Judiciary could to a great extent help in answering those environmental issues approaching

166. By Shayan Chaimani, "Bombay Environment Action Group" in J. Bandhyopadhyay (Ed), India's Crises, and Responses (1982) p.234 at 235. Because technical advice of government departments or expert agencies get overruled at a political level for political motives, environmental action groups can take the matter up in the press and other forums including the legisative forum for decision-making in tune with the people's interest. For eg. Thal Vaishet Fertilizer Plant, Silent Valley Project etc.
168. Id., p.90.
it from divergent dimensions. Thus it can be seen that judicial painstaking to juxtapose environmental protection with different basic concepts and evaluate the same resulted in the emergence of a new jurisprudence of environmental law.

But a critical appraisal of the judicial activism shows that there are instances that can be listed in opportunities lost to the highest court. They are of two types.

1) Where the court failed to formulate clearly the dimension of the right to environment or to follow the established principles.

2) Where the court was faced with environment - development dilemma.

In Dehradun Quarrying Case\textsuperscript{171} the court examined thoroughly the issue 'Ecology v. Development' and left the case without deciding whether there is a fundamental right to environment. In the Shriram Fertilizers' case,\textsuperscript{172} the court, without deciding the preliminary question as to the maintainability of a petition under Article 32 against a non-state agency, has examined the scope of Article 32 to evolve the basic concepts of absolute liability and compensation.

\textsuperscript{171} Supra. n.5.

\textsuperscript{172} Supra. n.131
On the one hand the court formulated the dictum of absolute liability acknowledging the potential threat to health and safety of the workers and residents nearby thus admitting the extension of Article 21 and on the other hand tried to evade the question whether Shriram Fertilizers came within the ambit of Article 12 to be amenable to the discipline of Article 21.

At last the court directed the Delhi Legal Aid and Advice Board to take up the cover of all those who claimed to have suffered on account of Oleum Gas Leakage.\textsuperscript{173} It asked Delhi Administration to provide funds to the Boards for the purpose of filing and prosecuting such action.\textsuperscript{174} It also directed the High Court of Delhi to nominate one or more judges for trying such cases expeditiously.

Environment v. Development

The Supreme Court on several occasions had to weigh and reconcile these conflicting interests. In the case of Rural Litigation the ecological imbalance likely to result from indiscriminate mining operations was raised.\textsuperscript{175} Though the case is a clear evidence of judicial activism one may doubt, the court's blank cheque to the Government to arrive at whether or not exploits would cost ecology imbalance blunted the weapon of judicial review. The delay in deciding the case is not

\textsuperscript{173} Supra, n.133 at p.1100.
\textsuperscript{174} Ibid.
\textsuperscript{175} Supra, n.5.
justified on this ground. Though the argument that 'courts appoint commissions to find the true nature of the problems and direct government agencies to take into account the criteria highlighted by the commission and make environmentally sound decisions' is admissible, it is a clear admission of the incapacity of the traditional courts to examine supertechnical environmental issues.

The judicial attempt to harmoniously construct the two concepts 'environment' and 'development' is to be noticed in the case of *M.C. Mehta v. Union of India* with the court said:

"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. It is not possible to adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard.

or risk to the community. 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.

There, the court justified the need for evolving new principles to adequately deal with the new problems arising in a highly industrialised economy.

Court's attitude towards environmental matters seems to be inconsistent if we examine the case law. An inclination towards development even at the cost of environment to some extent can be noticed in those environmental issues dealing with big projects. In the Goa Foundation case Bombay High Court explicitly expressed this attitude when it held that 'the destruction caused to the environment was not material vis-a-vis the benefits derived from the project.' The case proves beyond doubt that the court missed a chance to champion the cause of environment.


Bombay High Court's hands off policy is again clear in another case. It observed,

"The indepth analysis, the conditions imposed and the precautions taken inspire court's confidence and if at the end of all, the court finds that a very conscious decision has been taken in the light of all possible pros and cons, it would then not interfere."

The Supreme Court preferred to follow the same principle in Tehri Bandh Virodhi Sangarsh Samiti and Others v. State of U.P. The courts reluctance to interfere as in the case of Silent Valley Project case is still an example of lost chance or of incompetence in scrutinizing environmental problems.

Again, Supreme Court came out with directions to close down or shift a number of polluting in Delhi, 184 and Tamil Nadu. 185 In Tamil Nadu 299 industries were given time till 31st December 1995 to complete effluent treatment plant while 166 Tanneries under list II were directed to close with immediate effect.

In the case of India Council for Enviro-Legal Action v. Union of India, 186 Supreme Court stressed the need for environmental courts and also directed to consider the idea of an environmental audit by special bodies having power to inspect, check and take necessary actions not only against erring industries but also against erring officers. It is a case where the court decided for the first time the hazard of indiscriminate dumping of waste in our country.

184. M.C.Mehta v. Union of India, 1994 (4) SCALE in Delhi. Thus in Delhi factories including Hindustan Laws is directed to shift their location to places on outskirts of the city.
