

CHAPTER-VI

JUDICIAL INTERRELATIONS ON RIGHT TO HEALTHY AND WHOLESOME ENVIRONMENT: A CONSTITUTIONAL PERSPECTIVE

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CHAPTER SIX
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6.1 Introduction

Sir Alladi Krishnaswamy Aiyar, an erudite **member of the Constituent Assembly**, in his address delivered at the Diamond Jubilee Celebrations of the Madras High Court Advocates Association on 17th April, 1949 said:

“The future evolutions of the Constitution will, to a large extent depend upon the work of the Supreme Court and the direction given to it by the Court. From time to time, in the interpretation of the Constitution, the Supreme Court will be confronted with apparently contradictory forces at work in the society for the time being. While its main function may be one of the interpreting the Constitution as contained in the instrument of the Government, it cannot in the discharge of its duties afford to ignore the social, economic and political tendencies of the times, which must furnish the necessary background. It has to keep the poise between the seemingly contradictory forces”.

A judge, unlike the legislator or the Executive, cannot act by himself. Being an impartial arbiter by definition, he has to act only on a cause presented to him by an aggrieved party. The Courts strictly followed the doctrine of '*locus standi*'. This doctrine means that the doors of the judicial forum would open only to a knock by the aggrieved party and none else. This is a principle inherited from Anglo-Saxon jurisprudence, which had become rooted in our judicial thinking.

The picture of a judge sitting in an ivory tower, weighing nothing but the points of law and fact presented before him, is of course misplaced. Judges are affected by time and place, perhaps they are

affected a bit less than the rest of us but they are not immune is evident from the judgments themselves. When Socialism was the rage, judgements too had had that hue. Today that penumbra is shriveled and socialist rhetoric is less noisy. The broadening of the contents of Fundamental Rights had to wait the period following the Emergency of 1975-7. Initially the Court took a narrow view of the wording of Article 21 to mean that as long as there was some statute made by legislature taking away a person's liberty; it could not be challenged as being violative of fundamental rights.¹³⁰ However, in the early 1980's the role of the higher judiciary in India underwent a transformation. A new and radically different kind of case altered the litigation landscape. Instead of being asked to resolve private disputes, Supreme Court and High Court judges were asked to deal with grievances over flagrant human rights violations by the State or to vindicate the public policies embodied in the statutes or constitutional provisions. In **Maneka Gandhi v Union of India**¹³¹, a case decided immediately after the Emergency, we saw a significant reversal in the attitude of the judiciary. These cases saw the judiciary in an activist role. The Supreme Court found jurisprudential support for this innovation by a liberal reading of Article 32 of the Constitution, which provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III. In the thinking of the Supreme Court, there is nothing in Article 32, which restricts the proceedings to originate only at the instance of the aggrieved party. The emphasis is on the word "appropriate proceedings". Clause (2) of Article 32 of the Constitution empowers the Supreme Court to issue directions or orders or writs including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo*

¹³⁰ In A.K .Gopalan , Justice Das illustrated the point of procedural due process by citing the type of statute which could be passed by the English Parliament, namely that the Bishop of Rochester's cook be boiled to death (supra n. 3 at 320)

¹³¹Maneka Gandhi v. UOI (1978) 2 SCC248

warranto and *certiorari*, for the enforcement of any of the rights conferred by Part III. The Court decided that as long as a case of violation of any fundamental right guaranteed by part III was made out, irrespective of how it came before the Court, the Court was obligated to exercise its power and render justice. This new type of judicial business is collectively called "**Public Interest Litigation**". Most of the environmental actions fall within this class.

6.2 Judicial Initiative: The Role of Public Interest Litigation

Seervai refers to the development of expanded concept of locus standi in the context of one of the earliest PIL cases. He notes:¹³²

The most striking illustration is furnished by the unreported judgement of Gandhi J., of the Bombay High Court, in a writ petition filed by a public spirited citizen-**Mr. Piloo Mody v Maharashtra**, Gandhi J, adopted view of locus standi which was later laid down by Bhagwati J in the Judges case. Piloo Mody complained that the government –through three Ministers–had leased out valuable plots of land at a gross undervalue. Gandhi J. rejected the respondent's contention that the petitioner had no locus standi. He upheld the petitioner's contention that the leases were granted mala fide at a gross undervalue. Having regard to the equities of the case, Gandhi J directed that if the lessees wanted to obtain the grant of a lease they should pay 33 1/3 % increased rent or return land to government.

Interestingly, today we find the two originally separate rationales for a representative standing and citizen standing have now

¹³²Seervai H.M. Constitutional Law of India. 4th edn ,Vol. 1,1381-2, N.M. Tripathi Bombay,1991. One of the co-authors appeared for the petitioner recalls that even though was an architect, a politician and an M.P, yet he had to make a bid for purchase of the land being offered for sale to be assured of his standing.

merged. In a Public Interest case, the subject matter of litigation is typically a grievance against the violation of human rights of the poor and helpless or about the content or conduct of government policy. The petitioner seeks to champion a public cause for the benefit of the all. Again, the focus dictates the principal features of the litigation. **First**, since the litigation is not strictly adversarial, the scope of the controversy is flexible. Parties and official agencies may be joined (and even substituted) as the litigation unfolds; and new and unexpected issues may emerge to dominate the lawsuit. **Second**, the orientation of the case is prospective. The petitioner seeks to prevent an egregious state of affairs or an illegitimate policy from continuing in the future. **Third**, because the relief sought is corrective rather than compensatory, it does not derive logically from the right asserted. Instead, it is fashioned for the special purpose of the case, sometimes by a quasi-negotiating process between the court and the responsible agencies. **Fourth**, it is difficult to delimit the duration and effect of this new kind of litigation. Prospective judicial relief implies continuing judicial involvement. The parties often return to the court for fresh directions and orders. **Finally** because the relief is sometimes directed against the government policies, it may have an impact that extends beyond the parties in the case. In view of this features judge's role becomes very vital in organizing and shaping the litigation and in supervising the implementation of relief. The activist role of the Public Interest Litigation Judge contrasts with the umpire ship traditionally associated with judicial functions.¹³³

Many of the early Public Interest Litigations, including **Sunil Batra(II) v Delhi Administration**¹³⁴ ,**Dr. Upendra Baxi v State**

¹³³ .Rosencranz, , 1992.pp118-119

¹³⁴ Sunil Batra (II) v. Delhi Administration(1980) 3 SCC 488. This was a PIL concerning the rights of prisoners to humane treatment within four walls.

of UP¹³⁵, Veena Sethi v State of Bihar¹³⁶, and People's Union for Democratic Rights v Union of India¹³⁷ commenced with the petitioners sending letters to the Supreme Court.

Public Interest Litigation is non- adversial in nature. In a Public Interest Litigation, the Court, the parties and their lawyers are expected to participate in resolution of a given public problem. The Hon'ble Supreme Court in Dr. **Upendra Baxi v State of UP** held as under¹³⁸

It must be remembered that this is not a litigation of an adversary character undertaken for the purpose of holding the State Government or its officers responsible for making reparation but it is a public interest litigation which involves a collaborative and cooperative effort on the part of the State Government and its officials, the lawyers appearing in the case and the Bench for the purpose of making human rights for the weaker sections of the community.

The role of the Bar was also eulogized by the then Chief Justice, J.S.Verma, in a public function. Hon'ble Justice Verma appreciated the efforts of the lawyers in the following words.¹³⁹

¹³⁵ Dr.Upendra Baxi v.State of U.P (1983) 2 SCC 308. This was a PIL concerning the functioning of the Agra Protective Home. constituted under the Immoral Traffic (Prevention) Act,1956,to shelter and rehabilitate women rescued from prostitution

¹³⁶ Veena Sethi v.State of Bihar (1982) 2 SCC 583. This concerned the plight of the mentally ill locked away in the jails of Bihar.

¹³⁷ People's Union for Democratic Rights v.UOI,(1982)SCC 253 . This concerned the payment of minimum wages to construction labour engaged in building stadia and flyovers for the Asian Games in Delhi in 1982.

¹³⁸ Dr.Upendra Baxi v. State of U.P.(1983) 2 SCC 308

¹³⁹ Justice J.S.Verma. ' The Constitutional Obligation of the Judiciary'. R.C.Ghiya Memorial Lecture (1997) 7 SCC (Jr) 1 at 7

It must be said to the credit of the Bar, and this I say from personal experience over the years, the most busy lawyers who charge large fees which I often openly criticize, if called upon to appear as *amicus curiae* in such matter, leave every other work and without charging a single rupee put in their best effort in a PIL matter. That credit goes to the Bar..."

Public interest litigation was initiated and fostered by a few judges of the Supreme Court. Justice Krishna Iyer and Justice Bhagwati made the most notable contributions. The method they used to redress public grievances was to relax the traditional rules regarding locus standi. Traditionally, only a person, whose right has been infringed, had a right to approach the Court for seeking the remedy. However, in the early 1980's the Supreme Court has lowered the standing barriers by widening the concept of "the person aggrieved" The traditional view of standing prevented the grievances of the poor from being heard by the Court. Public interest litigation in its present form constitutes a new chapter in our judicial system.

6.2.1 From 'Life' to 'life with dignity'

A great transformation has come in the attitude of the judiciary in the interpretation of the Fundamental rights¹⁴⁰, in the post-emergency period: specifically after Maneka Gandhi's¹⁴¹ case. Specifically the Court fortified and expanded the fundamental rights enshrined in Part III of the Constitution In this process, the boundaries of the fundamental right to life and personal liberty guaranteed in Article 21 were expanded to include environmental protection. According to Bhagwati J., Art.21 "embodies a

¹⁴⁰ Kesvanand Bharati v State of Kerala AIR 1976

¹⁴¹ Maneka Gandhi v/s UOI AIR 1978 SC 597,623-624

constitutional value of supreme importance in a democratic society.¹⁴²

The Supreme Court strengthened Article 21 in two ways. First, it required laws affecting personal liberty to pass the tests of Article 14 and Article 19 of the Constitution, thereby ensuring that the procedure depriving a person of his or her personal liberty is reasonable, fair and just. Second the Court recognized several unarticulated liberties that were implied by Article 21. It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to a wholesome environment.

6.2.2. The Relaxation of the Rule of Locus Standi

It is interesting to note here that when our Constitution was being framed, Justice Frankfurter of the U.S. Supreme Court advised B.N.Rau, who was India's Constitution Advisor, not to put in a "due process" requirement in the Life and Liberty clause on the ground that it was liable to be interpreted too liberally as done in the United States. Justice Frankfurter advised Mr.Rao that he should adopt the more neutral expression used in the Japanese Constitution: **"No person shall be deprived of his life and liberty except by procedure established by law"**.

Locus Standi means standing before the Court. According to the traditional concept of Locus Standi, only the aggrieved party has the right to approach the Court to redress the wrong done. But today the concept of locus Standi has widened. The Supreme Court entered into one of its most creative periods after Emergency. The

¹⁴² Francis Coralie v Union Territory of Delhi. AIR 1981 SC 746,752

Court realized that if a narrow view of *Locus Standi* is taken, and the category of persons who can challenge the governmental action is confined within narrow limits, and then the danger is that many governmental actions might go unchallenged.



Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad based and people oriented and envisions access to justice through 'class actions', 'public interest litigation', and representative proceedings. Indeed little Indians in large numbers seeking remedies in Court through collective proceedings, instead of driven to an expensive plurality of litigations, are an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions.¹⁴³

In 1981, a seven judge bench of the Supreme Court delivered a definitive judgement on standing in the Judges Transfer Case.¹⁴⁴ Although every judge delivered a separate opinion, there was general agreement with Justice Bhagwati's view on the issue of locus standi. Justice Bhagwati upheld the standing of practicing lawyers to challenge a government policy to transfer High Court Judges, thereby undermining judicial independence. His judgement comprehensively describes the enlarged scope of representative standing and citizen standing.

It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to determinate class of persons by a reason of violation of any constitutional or legal right or any burden is imposed in contravention of any

¹⁴³ A.B.S.K.Sangh(Rly) v/s India AIR 1981 SC 317

¹⁴⁴ S.P.Gupta v. UOI AIR 1982 SC 149,194

constitutional or legal provision or without authority of law or any such legal wrong or legal injury or legal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position , unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of any fundamental right of such person or determinate class of persons , in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.... But we must hasten to make it clear that the individual who moves the court for judicial redress in cases of this kind must be acting bona fide with view to vindicating the cause of justice and if he is acting for personal gains or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in the Court.¹⁴⁵

If public duties are to be enforced and social collective 'diffused ' rights and interests are to be protected, we have to utilize the initiative and zeal of public-minded persons and organizations by allowing them to move the court and act for a general or group interest, even though they may not be directly injured in their own rights. It is litigation –litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, 'diffused' rights and interests or vindicating public interests and any citizen who is acting bona fide and who has sufficient interest has to be accorded standing. What is sufficient

¹⁴⁵ AIR 1982 SC149

interest to give standing to a member of the public would have to be determined by the court in each individual case. It is not possible for the court to lay down hard and fast rule or any straitjacket formula for the purpose of defining or delimiting 'sufficient interest'. It has necessarily to be left to the discretion of the court.¹⁴⁶

The philosophy of the Constitution for attaining social and economic justice, described as its signature tune has been identified and played over and over again by the Supreme Court in its decisions. Even Chandrachud C.J. emphasized that in appropriate cases, it might become necessary to take a broader view of the question of *Locus Standi* to initiate a proceeding. Krishna Iyer, J, had also advocated liberalization of locus standi to meet the challenges of changing times.

“ We should have thought that if any citizen brings before the court a complaint that a large number of peasants or workers are bonded serfs or being subjected to exploitation by a few mine lessees or contractors or employers or being denied of the social; welfare laws, the State government, which is, under our Constitutional scheme, charged with the mission of bringing about a new socio-economic order where there will be social and economic justice for every one and equality of status and opportunity for all, would welcome an enquiry by the court , so that if it is found that there are in fact bonded laborers such a situation can be set right by the State Government.”¹⁴⁷

The Court went on to emphasize that **“Public Interest Litigation is not in the nature of adversary litigation but is a challenge**

¹⁴⁶ *Ibid.*

¹⁴⁷ *Bandhua Mukti Morcha v/s India* AIR 1984 SC 802

and opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution”¹⁴⁸The court explained the philosophy underlying public interest litigation as follows:

“... where a person or class of persons to whom legal injury is caused by reason of violation of a fundamental right is unable to approach the court for judicial redress on account of poverty or disability or socially or economically disadvantaged position, any member of public acting bona fide can move the court for relief under Article 32 and a fortiori also under Article 226, so that the fundamental rights may become meaningful not only to the rich and the well to do who have the means to approach the court but also for the large masses of people who are living a life of want and destitution and who are by reason of lack of awareness , assertiveness and resources unable to seek judicial redress ”.

Bhagwati J. has pointed out that in the words of Art.32 (1), there is no limitation that the fundamental right sought to be enforced must belong to the person moving the court. Nor does Art 32 (1) say that the Supreme Court should be moved only by a particular kind of proceeding.

In *Bandhua Mukti Morcha*, the Supreme Court held that the right to live with human dignity, enshrined in Article 21, derives its life-breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42. The

¹⁴⁸ *ibid*

observation made by Justice Pathak in **Bandhua Mukti Morcha v. Union of India**¹⁴⁹ in respect of scope and purpose of Public Interest Litigation is worth noting.

"Public interest litigation in its present form constitutes a new chapter in our judiciary system. It has accrued a significant degree of importance in the jurisprudence practiced by our Court and have evolved a lively if somewhat controversial, response in legal circles, in the media and among the general public. In the United States it is the name "given to effort to provide legal representation to groups and interests that have been unrepresentative or underrepresented in the legal process. This include not only the poor and disadvantaged but ordinary citizens who because they cannot afford lawyers to represent them, have lacked access to Courts, administrative agencies and other legal forums in which basic policy decision affecting their interests are made." In our own country this new class of litigation is by its protagonists on the basis generally of vast areas in our population of illiteracy and poverty of social and economic backwardness, and of an insufficient awareness and appreciation of individual and collective rights. These handicaps have denied millions of our countrymen access to justice. Public interest litigation is said to process the potential of providing such access in the milieu of a new ethos, in which participating sectors in administration of justice cooperate in the creation of a system, which promises legal relief without cumbersome formalities and heavy expenditure. In the result the legal organization has taken on a radically new dimension and correspondingly new perspectives are opening up before

¹⁴⁹ **Bandhua Mukti Morcha v. UOI** AIR 1984 SC 802

judges and lawyers. And state law agencies in the task before them. A crusading zeal is abroad, viewing the present as an opportunity to awaken the political and legal order to the objectives of social justice projected in our constitutional system. New slogans fill the air, and new phrases have entered the legal dictionary, and we hear of the "justicing system" being galvanized into supplying justice to the socio-economic disadvantages. These urges are responsible for the birth of new judicial concepts and the expanding horizon of the judicial power. They claim to represent and increasing emphasis on social welfare and progressive humanitarianism.

Further by the relaxation of the rule of *Locus Standi*, it was possible that there could be several petitioners for the same set of facts dealing with an environmental hazard or disaster, the court was able to look at the matter from the point of view of an environmental problem to be solved, rather than a dispute between two parties. Also another major change brought by the rule was now it took care of many interests that were unrepresentative- for example, that of the common people who normally had no access to the higher judiciary. The lack of effective enforcement of environmental laws and non-compliance with statutory norms by polluters resulted in an accelerated degradation and adverse effects on public health prompted environmentalists and residents of polluted areas, as well as non-governmental organizations to approach, the courts, particularly, the higher judiciary, for suitable remedies.

6.3 Environmental Dimension of Article 21

A great transformation has come in the attitude of the judiciary in the interpretation of the Fundamental rights¹⁵⁰, in the post-emergency period: specifically after Maneka Gandhi's¹⁵¹ case. In post Maneka period, the Supreme Court strengthened Article 21 in two ways. First, it required laws affecting personal liberty to pass the tests of Article 14 and Article 19 of the Constitution, thereby ensuring that the procedure depriving a person of his or her personal liberty be reasonable, fair and just. Second the Court recognized several unarticulated liberties that were implied by Article 21. It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to a wholesome environment. Specifically the Court fortified and expanded the fundamental rights enshrined in Part III of the Constitution. In the process, the boundaries of the fundamental right to life and personal liberty guaranteed in Article 21 were expanded to include environmental protection.

Bhagwati J states about ,Art.21 as:

“We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.” Also

¹⁵⁰ Kesvanand Bharati vs State of Kerala AIR 1976

¹⁵¹ Maneka Gandhi v/s UOI AIR 1978 SC 597,623-624

Article 21 embodies a constitutional value of supreme importance in a democratic society.¹⁵²

Article 21 protects the right to life as a fundamental right. The expression 'life' assured in Art.21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has much wider meaning, which includes right to livelihood, better standard of life, hygienic conditions in work place and leisure. The Supreme Court has held that the quality of life covered by Article 21 is something more than the dynamic meaning attached to life and liberty. The same view was reiterated in various cases.¹⁵³ Right to life also includes right to live with human dignity. The right to live with human dignity encompasses within its fold some of the finer facets of human civilization, which makes life worth living. The expanded connotation of life includes the quality of life as understood in its fullness by the ambit of the Constitution.

In **Virendra V State of Haryana**¹⁵⁴ the Hon'ble Supreme Court observed that enjoyment of life including the right to live with human dignity encompasses within its, ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation, without which life cannot be enjoyed. Any contra act or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc. should be regarded as amounting to violation of Article 21 of the Constitution. Therefore hygienic environment is an integral facet of right to healthy life and would be impossible to live with human dignity without a human and healthy environment. There is a constitutional

¹⁵² Francis Coralie v/s Union Territory of Delhi, AIR 1981 SC 746,752

¹⁵³ Board of Trustees of the port of Bombay v D.R.Nadkarni (1983) 1 SCC 124, R.Autynuprasi v UOI AIR1989SC549

¹⁵⁴ Virendra v.State of Haryana 1995(2)SCC577

imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both man-made and the natural environment.

In this case land earmarked for open space under Town Planning Scheme. Government allotted the land for building contrary to scheme. It was held that action of Government wholly without authority of law and jurisdiction and jurisdiction and sanction of land for different use totally defeats the purpose and is in violation of the law and Constitution. Environment is a polycentric and multifaceted problem affecting the human existence. The Stockholm Declaration of United Nation on Human Environment, 1972 affirms both aspects of Environment, the natural and the man - made and the protectionism necessary for his well being and to the enjoyment of basic human rights. Articles. 48-A, 51-A(g) and 47. The word Environment is of a broad spectrum which brings within its ambit **"hygienic atmosphere and ecological balance"**. It is therefore, not only the duty of the state but also the duty of every citizen to maintain hygienic environment. Art. 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra act or actions would cause environmental pollution. Environment, Ecology, Air, Water, Pollution, etc should be regarded as amounting to violation of Art. 21. Hygienic environment in an integral facet of right to healthy life and it would be impossible to live with Human dignity without a humane and healthy environment. There is thus a constitutional imperative on the State Governments and municipalities, not only to ensure and safeguard proper environment but also an imperative

duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.

In yet another landmark cases, namely **Subhash Kumar v State of Bihar**¹⁵⁵ the Hon'ble Supreme Court again observed:

"The right to live is a fundamental right under Article 21 of the Constitution, and it includes the right of enjoyment of pollution –free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution...

However a word of caution was given in this case against the abuse of the Public Interest Litigation.

In one of the leading cases ¹⁵⁶way back in 1987 the Supreme Court has held:

"Whenever ecology is brought before the Court, the Court is bound to bear in mind Art 48 A of the Constitution and Article 51 A (g). When the Court is called upon to give effect to the Directive Principles of State Policy and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter for policy-making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further will depend on the circumstances of the case. The Court may always give necessary directions. However the

¹⁵⁵ Subhash Kumar v State of Bihar. AIR 1991SC 420

¹⁵⁶ Sacchidanand Pandey v/s State of West Bengal, AIR1988 SC 2187and Kinkeri Devi v/s St of Himachal Pradesh, AIR HP 4

Court will not attempt to nicely balance relevant considerations. When the Court feels justified in resigning itself to acceptance of the decisions of the concerned authority.

In *Municipal Council, Ratlam v Vardhichand*¹⁵⁷ the Supreme Court for the first time treated an environmental problem differently from an ordinary tort or public nuisance. The judgement explicitly recognizes 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 of state policy in the Constitution. The Court commends an activist judiciary to compel municipalities to provide proper sanitation and drainage, thereby enabling the poor to live with human dignity.

In this case the residents of Ratlam, moved the magistrate under section 133 of Criminal procedure Code asking him to compel the municipality to save them from stench and stink caused by open drains and public excretion by nearby slums dwellers. The municipal corporation pleaded that it had no money to construct drainage. The magistrate rejected that plea and ordered the municipality to construct drainage within six months. On appeal, the Sessions court rejected the order of the magistrate. The High Court reversing the order of the Sessions Court confirmed the decision of the Magistrate.

The Supreme Court on appeal from the decision of the High Court rejected the objection to the standing of all the residents of Ratlam. Justice Krishna Iyer, speaking for himself and Justice O. Chinappa Reddy, asked whether by affirmative action a court could compel a

¹⁵⁷*Municipal Council Ratlam v. Vardhichand* AIR 1980 SC 1622

statutory body to carry out its duty to community by constructing sanitation facilities at great costs and on time bound basis. In Ratlam, prosperity and poverty lived as bedfellows. The rich had bungalows and toilets the poor lived on pavements and littered the streets with human excreta because they used roadsides as latrines in the absence of public facilities. In the words of Justice Iyer this collective petition is a pathfinder in the field of judicial process. The Hon,ble Justice Krishna Iyer strongly viewed as under on the jurisdictional aspect.

Social Justice is due to the people, and therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a magistrate under s. 133 Cr.P.C. In the exercise of such a power, the judiciary must be informed by broader principles of access to justice necessitated by the conditions of developing countries and obligated by Article 38 of the Constitution.

It is very important to note here that this is a first case in which people could approach the Courts against violation of their collective rights. and the judicial process could be invoked for the enforcement of the positive obligations that such public bodies have under the law.

Consciousness regarding environmental upkeep is of recent origin. Cognizance of ecological importance has entered into governmental activity only in this decade. Every day that consciousness and also the sense of social obligation in this regard are on the increase. In Rural Litigation and entitlement **Kendra Vs. State of U.P. & Ors**¹⁵⁸ the Supreme Court adopted the view that stone quarrying in the

¹⁵⁸ 1987 Supp. SCC 487

Doon Valley area should gradually be stopped. At the same time it would be difficult to overlook the economic and defense interests of the country. The Central Government directed to file an affidavit stating as to keeping the principles of ecology, environment protection and safeguards and anti pollution measures. It is in the interest of the society that the requirements of lime should be met by import or by tapping other alternate indigenous sources or mining activity in this area should be permitted to the limited extent. The Court stated that it expects the Union of India to balance the two aspects not as a party to the litigation but as a protector of the environment in discharge of its statutory and social obligation.

6.3.1. Right to Healthy and Wholesome Environment: A Fundamental Right under Article 21

The first indication of the right to a wholesome environment can be traced to the Dehradun Quarrying case.¹⁵⁹

A good illustration of the Supreme Court's creeping jurisdiction is the Dehradun Quarrying case where the Supreme Court considered, balanced and resolved competing policies – including the need for development, environmental conservation, preserving jobs, and protecting substantial business investments – in deciding to close a number of limestone quarries in the Mussoorie Hills and to allow others to continue operating under detailed conditions. In rendering this judgement the Court reviewed the highly technical reports of various geological experts and gave varying weight to the expert opinions.¹⁶⁰

¹⁵⁹ Rural Litigation and Entitlement Kendra, Dehradun v/s State of U.P. AIR 1988 SC 2187

¹⁶⁰ Cunningham, at 511-12

This was a first case of its kind involving issues relating to environment and ecological balance and the question arising for consideration are of grave moment and of significance not only to the people residing in the Mussoorie Hill range forming part of the Himalayas but also to their implication to the generality of people living in the country. It brings into sharp focus the conflict between development and conservation and serves to emphasize the need for reconciling the two in the larger interest of the Country. But there is no gainsaying that limestone quarrying and excavation of the lime stone deposits do seem to have affected on the perennial water springs. This environmental disturbance has however to be weighed in the balance against the need of lime stone quarrying for industrial purposes in the country. Some people would be thrown out of business in which they have invested large sums of money and expended considerable time and effort, this would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance to ecological balance without avoidable hazard to them, their cattle, home and agricultural land and undue affection of Air, Water and Environment. Lime stone quarries will have to be reclaimed and afforested and soil conservation programme will have to be taken up in respect of such limestone quarry.

This environmental dimension to Article 21 has been explicitly recognized by several High Courts. In one of the cases¹⁶¹ the Andhra Pradesh High Court held:

¹⁶¹ T..Damodar Raov The Special Officer.Municipal Corporation AIR1987 AP171,!*!

It would be reasonable to hold that the enjoyment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. There can be no reason why practice of violent extinguishments of life alone should be regarded as violative of Article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should be also regarded as amounting to violation of Article 21 of the Constitution.

Similar types of judgements have been delivered by the High Courts of Rajasthan¹⁶², Kerala, Himachal Pradesh, Karnataka and Madhya Pradesh. All have served burying once and for all the ghost of Ryland v Fletcher. The Supreme Court held that the statement of the law in Oleum Gas Leak ¹⁶³case was more appropriate in the Indian context, and was also binding. The principle affirmed therefore was that hazardous activity 'can be tolerated only on the condition that the enterprise, which uses such hazardous, odd or inherently dangerous activity regardless of whether it is carried or not. That environmental degradation violates the fundamental right to life.

In the case of **M.C Mehta Versus Union of India (Oleum Gas Leak Case)**¹⁶⁴ the Constitution Bench was concerned with a writ petition under Article 32 of the Constitution of India on its reference by a 3-judge bench. Oleum gas escaped from the unit of Shriram and as a consequence Delhi Legal Aid and Advice Board and Delhi Bar Association filed applications for award of compensation to the

¹⁶² L.K.Koolwalv State of Rajasthan AIR1988RAJ 2

¹⁶³ M.C.Mehta v UOI (1987) 4 SCC 54

¹⁶⁴ M.C.Mehta v. UOI 1987(1)SCC 395

persons who have suffered harm on account of escape of Oleum gas. The Supreme Court was required to decide on the question as to the scope and ambit of its jurisdiction under Article 32 of the Constitution. Article 32 lays a constitutional obligation upon the court to protect the fundamental rights of the people and for that purpose the Supreme Court has all the incidental and ancillary powers including the powers to forge new remedies and fashion new strategies designed to enforce the fundamental rights. Under Article 32 the court can devise any procedure appropriate for the particular purpose of the proceeding. It has also remedial powers and can provide remedy for breach of fundamental rights. The remedial measures may include the power to award compensation in appropriate cases. Whether Article 21 applies to Shriram a private company is left open for future. The following passage is worth noting in this context.

Prima facie we are not inclined to accept the apprehensions of the learned counsel for Shriram as well-founded when he says that our including within the ambit of Article 12 and thus subjecting to the discipline of Article 12, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial activity. Whenever a new advance is made in the field of human rights, apprehension is always expressed by the *status quoists* that it will create enormous difficulties in the way of smooth functioning of the system and affect its stability. Similar apprehension was voiced when this Court in Ramana Shetty's case brought public sector corporations within the scope and ambit of Article 12 and subjected them to the discipline of Fundamental Rights. Such apprehension expressed by those whom would be affected by any new and

innovative expansion need not deter the Court from widening the scope of human rights and expanding their reach and ambit, if otherwise it is possible to do so without doing violence to the language of the Constitutional provision. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quosits.¹⁶⁵

What is the measure of liability of an enterprise, which is engaged in a hazardous or inherently dangerous industry if by an accident many people are injured or died? The court has held that an industry which is engaged in a hazardous activity or in an activity which is inherently dangerous in nature which poses a potential threat to the health and safety of the persons working in the factory or residing in the surrounding area owes an absolute and non delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise is under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. The measure of compensation in the cases must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterring effect.

¹⁶⁵ 1987(1) SCR 819 at 841

In **Indian Council For Enviro-Legal Action v. Union of India**, popularly known as **H-Acid case** the Court modified the order dated 12.12.1994 and directed that all the restrictions, prohibitions regarding construction and setting up of industries or for any other purpose contained in the notification dated 19-2-1991 issued by Ministry of Environment and Forest, Government of India under clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 shall be meticulously followed by all the States concerned. The activities, which have been declared as prohibited within the Coastal Regulation Zone, shall not be undertaken by any of the respondent -States. The regulations of permissible activities shall also be meticulously followed. The restrictions imposed by the Coastal Areas Classification and Development Regulations contained in Annexure 1 to the above said notification shall also be strictly followed by the respondent -States.

Mr. Mehta had also placed on record the interim site visit report dated 18-10-1994 of the committee constituted by the Ministry of Environment and Forest, Government of India for inspection of violation of norms and guidelines prescribed for developmental activities for beaches/resorts/hotels etc. in the Coastal Regulation Zone of the State of Goa. The Court examined the report and found that the committee had done useful work. The Court issued notice to the Ministry of Environment and Forest, Government of India through its Secretary and also to the State of Goa to file affidavits indicating the action taken in respect of the report to the State of Goa if it had not already been done. It also directed the Government of India and the State of Goa to file affidavits within two weeks from the receipt of the order.

In Dr. Ajay Singh Rawat v. Union of India And Others, the Supreme Court Was once again called upon to protect the right to a

clean and wholesome environment. It was pleaded on behalf of the petitioner that, Nainital, a beautiful butterfly, is said to be turning into an ugly caterpillar. According to the petitioner, this is due to: (1) water pollution; (2) air pollution; (3) noise pollution; and (4) "VIP pollution". This has naturally caused concern to all nature lovers and environmentalists, apart from the enlightened residents of Nainital. The concern has been felt to such an extent that a "Save Nainital Workshop" was organised by none else than the Department of Tourism and Environment of the U.P. Government in September 1989. In this workshop many papers were presented on different aspects highlighting sudden rise in vehicular traffic, illegal construction, encroachment and squatting, clustering, noise pollution, vanishing greenery resulting in landslides on Cheena Peak, maintenance of drains and pollution in the lake which has virtually become a dumping ground for rubble and public sewage. Despite organising of such a workshop, nothing much seems to have been done to preserve the pristine beauty of Nainital. Hence, by this petition Dr. Rawat, who is a member of social action group called "Nainital Bachao Samiti", has approached this Court seeking its assistance to pass such orders and give such directions as would prevent further pollution of already suffocating Nainital.

The environmental degradation has taken place, inter alia, because of increase in pollution, overgrazing, lopping and hacking of oak forests, forest fires, landslides, quarrying etc. The pollution in the lake is because of both inorganic and organic causes. The nearby minerals, namely, manganese, lead salts, copper, cobalt and zinc make the lake toxic for life-forms. The discharge of waste water into the lake is another polluting factor. But the most potent source of pollution is, as mentioned in the booklet "One Hundred and Fifty Years of Nainital", whose co-author is none else than the petitioner

(the other author being one Deepak Singhal, who at the relevant time was District Magistrate, Nainital) "human faces from leaking sewers" .The throwing of plastic bags and dumping of other materials have added to the throes of the lake. The throwing traffic, with the growth of the town and big turnout of tourists, has contributed much to the environmental pollution. The increased traffic has in its wake brought noise pollution. The petitioner has said something about "VIP pollution" also.

The District Judge, Nainital was directed to appoint an advocate of that court as a Commissioner. A perusal of the report submitted by the Commissioner shows that on local inspection it was found that the lake has turned dark green with an oily surface and is now full of dirt, human faces, horse dung, paper polythene bags and all sorts of other waste. Most of the sewer lines which leak intimately discharge the faecal matter into the lake through the drains which open into it. The Commissioner also found that wherever the drains open at the shores of the lake, big heaps of rubble used in construction of the buildings is collected and these materials ultimately settle down on the shores of the lake thereby reducing the length, depth and width of the lake, besides polluting the water to a great extent. It has been mentioned in the report that ecologists feel that if nothing was done to prevent this situation then the lake will dry up.

The findings of the Commission were as below:-

- (i) Construction of buildings is going on unauthorized and in a big way. The Commissioner has mentioned above illegal construction of office even by Kumaon Mandal Vikas Nigam of the State Government and Lake Development Authority,

which constructed several triple-storied flats which have been declared as dangerous.

- (ii) The Ballia Ravine was found to be in a very dilapidated condition. The importance of the Ravine from ecological point of view is that the overflow of the water from the lake passes through it. But the revetment walls of the Nala have either given way or cracked at several places because of which the water seeps in the rocky wall endangering its existence. The point where Ballia Nalla enters Ballia Ravine was found to be in shambles, as large cracks had developed owing to landslides and continuous soil erosion. In the year 1989 there was a big landslide which has been attributed to the blasting and felling of trees which was done to construct a motorable road. Plying of heavy vehicles is said to be endangering the fragile hill slopes.
- (iii) Hill-cutting and destruction of forests have been confirmed. The collusion of Forest Department officers has been mentioned as one of the causes of the illegal felling of trees. It has been stated that the forest offence is compoundable and the maximum compounding penalty is Rs. 5000, whereas the approximate value of the illegally cut trees varies between Rs. 10,000 and Rs. 25,000, depending upon the quality of the tree. As a person becomes owner of the tree after payment of the penalty, this has increased tree felling.
- (iv) The lake water was found full of human waste and horse dung and other wastes, as already noted. The horse-stand having been allowed to be erected near the lake and trotting around the lake being permissible, the report states horse dung in

abundance enters and reaches the lake. The tourists who enjoy boating in the lake throw left over edibles and polythene-bags in the lake.

- (v) The report states about plying of heavy vehicles like buses on the Mall Road and the bridle paths. They also enter Malli Tal and Talli Tal Bazaars.

After duly considering the findings of the Commissioner and his recommendations, the Hon'ble Court held that , there cannot be two opinions about some preventive and remedial measures to be taken on war as any delay would cause further degradation and complicate the matters. Hence it directed the following steps to be taken urgently:

- (i) Sewage water has to be prevented at any cost from entering the lake.
- (ii) So far as the drains which ultimately fall in the lake are concerned, it has to be seen that building materials are not allowed to be heaped on the drains to prevent situation of the lake.
- (iii) Care has been taken to see that horse dung does not reach the lake. If for this purpose the horse-stand has to be shifted somewhere, the same could be done. The authorities would examine whether trotting of horses around the lake is also required to be prevented.
- (iv) Multi-storeyed group housing and commercial complexes have to be banned in the town area of Nainital. Building of small residential houses on flat areas could, however, be permitted.

- (v) The offence of illegal felling of trees is required to be made cognizable.
- (vi) Vehicular traffic on the Mall has to be reduced. Heavy vehicles may not be permitted to ply on the Mall.
- (vii) The fragile nature of Ballia Ravine has to be taken care of. The cracks in the revetment of Ballia Nala have to be repaired urgently.

The Court also directed for this purpose a formation of a monitoring committee, with one highly placed official of each of the authorities/ department concerned,. Two or three leading men of the public having interest in the matter, like the petitioner, may be co-opted in the Committee. The Committee may hold its meeting, to start with every month, and then every two months.

Here, the Court has tried to restore the right to a healthy and wholesome environment and also has struck a balance between environment and development. The Court with the mechanism developed in this judgement hopes that the butterfly would regain its beauty and would attract tourists not only in present but in future as well, which would happen if the beauty would remain unsoiled. Given the will, it is not a difficult task to be achieved; the way would lay itself out. Let all concerned try and try hard. Today is the time to act; tomorrow may be late.

6.3.2 Cases pertaining to Quarries and Stone Crushers

This portion of this Chapter deals with the cases relating to quarry and stone crushing. Wherein the importance has been given to the protection of the environment. Here we find basically the violation of the provisions of the Conservation of Forests Act. It is found that the Courts have shown inclination towards the preservation of the forests .

In Ambica Quarry Works v. State of Gujarat,¹⁶⁶ quarry leases were issued in favour of appellant. Applications for renewal refused on the ground that Forest Conservation Act, 1980 brought into force and therefore Central Government clearance necessary. The appellants contended that the land was already a quarry and no forest existed thereon. Deforestation and ecological imbalances as a result of de forestation have become social menaces and further de forestation and ecological imbalances should be prevented. Therefore the concept that power coupled with the duty enjoined upon the respondents to renew the license stands eroded by the mandate of the legislation in 1970 Act. The obligation to the society must predominate over the obligation to the individuals. Renewal will lead to further de-forestation and at least it will not help reclaiming the areas where de-forestation has taken place. All interpretations must sub-serve and help implementation of the intention of the Act.

Yet another case in this order is the Rural Litigation and Entitlement **Kendra Vs. Sate of U.P**¹⁶⁷. Here after referring to the previous orders passed in the matter and after referring to Ambica Quarry Works the Court held that Conservation of Forest Act, 1980 applies

¹⁶⁶ 1987 (1) SCC 213

¹⁶⁷ 1989 Supp 1 SCC 504

to renewals as well even if there was a provision for renewal in the lease agreement on exercise of lessees option, the requirements of 1980 Act has to be satisfied before such renewal could be granted. Even if there has been an order of the court and no challenge is raised against such order the court could invoke its jurisdiction to nullify the direction or order and if any order direction or decree has been passed ignoring the Conservation Act of 1980 the same would not be binding. The compliance of section 2 of the Conservation Act is necessary as a condition precedent to first grants as well as renewals. There are certain situations where in the interest of general benefit to the community, interests of individual citizens may be overlooked.

Stone Crushers

In **M.C Mehta v. Union of India**¹⁶⁸ where a Writ Petition was filed against pollution caused by stone crushers, pulverizes, and mine operators in the Faridabad-Balabgarh areas, directions were given that there will be no mining activity within 2kms of the tourist spots of Badkal and Surajkhund lakes. The Court also directed that the Haryana forest department shall develop a green belt around the spots. Further all new constructions banned within 5kms of the tourist spots. This decision is a step towards improvement of quality of life.

In **M.C. Mehta V Union of India**¹⁶⁹ Here the Hon'ble Supreme Court held :

We are conscious that environmental changes are the inevitable consequence of industrial development in our

¹⁶⁸ M.C.Mehta v. UOI(1996) 8 SCC 462:

¹⁶⁹M.C.Mehta v.UOI 1992 (3) SCC 256

country, but at the same time the quality of the environment cannot be permitted to be damaged by polluting the Air, Water and land to such an extent that it becomes a health hazard for the residents of the area. The Authorities have been wholly remiss in the performance of their statutory duties and have failed to protect the environment and control air pollution in the Union Territory of Delhi. Utter disregard of the environment has placed Delhi in an unenviable position as the worlds third grubbiest, most polluted and unhealthy city as per WHO. Needless to say that every citizen has a right to fresh air, and to live in a pollution free environment. The Court issued directions for closing and shifting of stone crushers in Delhi to improve the quality of the environment.

6.3.3 Trade Effluents and Water Pollution

Water pollution is a major area wherein protection is needed. It is an open secret that many of the rivers are polluted by industrial wastes or effluents. All these industrial wastes are toxic to life forms that consume this water. And this has definitely caused harmful impact on the environment in general and the health of the people in particular. It has been observed that the industries are discharging the effluents in the river and thereby polluting it. Polluting a river is dangerous because a river is the primary source of drinking water for towns and cities. For there are certain landmark cases in this regard like the Ganga Water Pollution case, **Kanpur Tanneries case , Bhavani River's case etc.**

In Narmada **Bachao Andolan v. Union of India**¹⁷⁰ , the Court held that right to water is a fundamental right under Article 21 of

¹⁷⁰Narmada Bachao Andolan v. UOI (2000) 10 SCC 664

the Constitution. Water is the basic need for the survival of human beings and is part of right to life and human rights.

In **M.C.Mehta v. Union of India (The Ganga River Case)**¹⁷¹a Public Interest Litigation was filed by an active social worker and environmentalist seeking a writ in the nature mandamus to restrain respondents from letting out the trade effluents into the river Ganga till such time they put up necessary treatment plants for treating the effluents in order to arrest the pollution of water in the said river. Water is the most important elements of nature. River valleys have been the cradles of civilization from the beginning of the world. Aryan civilization grew around the town and villages on the banks of the river Ganga. Varanasi, which is one of the cities on the banks of the river Ganga, is considered to be one of the oldest settlements in the world. It is the popular belief that the river Ganga is the purifier of all but we are now lead to the situation that action has to be taken to prevent the pollution of the water of the river Ganga since we have reached a stage that any further pollution of the river water is likely to lead to a catastrophe. There are today large towns inhabited by millions of people on the bank of the river Ganga. There are also large industries on its banks. Sewage of the towns and cities on the banks of the river and the trade effluents of the factories and other industries are continuously being discharged into the river. It is the complaint of the petitioner that neither the government nor the people are giving adequate attention to stop the pollution of the river Ganga. Steps have, therefore, to be taken for protecting of the cleanliness of the stream in the river Ganga, which is in fact the life sustainer of a large part of the northern India.

¹⁷¹ M.C.Mehta v. UOI 1997(4) SCC 463

This case can be seen as an excellent example of the activist attitude of the Indian Supreme Court. Here we really find the Supreme Court in an activist mode and that is worth appreciating. Here one can say Short of putting on their gumboots and wading into murky waters of the Ganga to clean up the mess, a bench of the Supreme Court has been doing a lot and more to restore the health of the river.

The traditional view was thrown over and a new wisdom guided its approach. Dismayed at the persistent flouting of Parliament's mandate to clean the rivers, by polluters and pollution control Boards alike, the court has taken to task all those at fault. The rigor of Court procedures and statutory requirements were diluted in favour of a summary, result -oriented process. The main thrust here was to substitute the ineffective administrative directives issued by the pollution control boards under the Water Act and the Environment (Protection) Act, with judicial orders.

The Court first identified the erring polluters. Then it issued orders to each firm to meet effluent standards within a period of three months or it made clear that otherwise they have to close down. The Court had kept a close eye on the entire process. Wherever the discharge levels were achieved, the Board asked to inspect the working of the ETP and report to the court. Given the dismal record of the PCBs, it is no surprise that even this elementary task was at times entrusted by the Court to the National Environmental Engineering Institute (NEERI), Nagpur.

The sprawling dimensions of the Ganga case have pressed the court to evolve new procedures. Unlike usual litigations, affected polluters were dissuaded from filing documents in the court's registry. The Supreme Court had succeeded in building up a sustained pressure on industry and municipalities, where the PCBs have failed.

The Ganga Court can be said to be an exemplary one. However we find certain drawbacks in it. The massive administrative tasks assumed by the Courts, will sooner or later expose the judges to criticism previously directed at the administrators. The fear expressed is the Supreme Court's activism is to have a lasting effect; a new political will in the form of budgetary allocations at the municipal level and greater community pressure on board officials is necessary.

It is necessary to state a few words about the importance of and need for protecting our environment. Article 48-A of the Constitution provides that the state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51-A of the constitution imposes as one of the Fundamental duties on every citizen the duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

The proclamation adopted by the United Nation Conference on the Human Environment, which took place at Stockholm from June 5 to 16, 1972 and in which the Indian delegation led by the Prime Minister of India, took a leading role thus:

1. Man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man made, are essential to his well being

and to the enjoyment of basic human rights - even the right to life itself

2. The protection and improvement of the human environment is a major issue which affects the well being of the peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all governments.

In an Appeal filed in **Bhavani River- Sakthi Sugar Ltd.**¹⁷²(popularly known as **Bhavani River Case**) was arising out of order of High Court of Madras dismissing writ petition on the basis of concessions by the State Pollution Control Board. Petition alleged that the respondent distillery is causing unabated pollution, which has become a health hazard and environmental enemy because of discharge of objectionable effluent into the river Bhavani. Supreme Court expressed its unhappiness and remanded the matter to the High Court. The court held that the High Court fell in error in disposing the petition on a mere consent. Matters, which invoke great public interest, should not be decided on consent. NEERI appointed to go into the matter. The High Court directed to consider the reports submitted by NEERI and to consider if the industry should be allowed to run. It also directed it to monitor the industry to ensure that it does not pollute. To examine the question of restitution of areas damaged and make the industry liable for the same. It was also directed that the cost of proceedings to be paid by industry.

Some important principles were laid down in **Post- Rio period**. The cardinal principles laid down have now come to be the accepted principles of the environment law in India.

¹⁷² 1998 (4) SCALE 322

The first of these is the decision in the case of **Indian Council for Enviro-Legal Action v. Union of India**¹⁷³. The decision is discussed below. This is popularly known as (Coastal Regulation Zone.)**CRZ Notification Case**

In **Indian Council for Enviro - Legal Action v. Union of India**¹⁷⁴ which was heard before Kuldip Singh, S. Saghir Ahmed and V.N. Kirpal, JJ.the petitioner filed this writ petition under Art. 32 of the Constitution alleging blatant violation of the notification dated 19.2.91 and industries were being illegally set up, thereby causing serious environmental damage to the environment and ecology of the area. That the Central Government was not implementing the notification and therefore the Court was requested to enforce the same. The Central Government issued Notification dated 19.2.91 under Section 3(1) & 3(2) (v) of the EP Act and Rule 5(3) (d) of the EP Rules, 1986 where by the coastal stretch of sea, bays, estuaries, creeks, rivers and back waters which are influenced by tidal action (in the landward side) up to 500mts firm the High Tide line and the land between the Low Tide Line and High Tide Line as Regulation Zones. Various restrictions have been imposed on the setting up and expansion of industries, operation of processes etc. in the said zone. That for the said notification the HTL was defined as the line up to which the highest high tide reaches at springtime. Subsequently, a Notification dated 18.8.1994 was issued making six amendments in the main notification. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environmental destruction, at the same time the necessity of preserving the environment should not hamper development. Both development and environment should go hand

¹⁷³ (1996) 5 SCC 281

¹⁷⁴ (1996) 5 SCC 281:

in hand. With rapid industrialization taking place, there is an increasing threat to maintenance of ecological balance. The implementation of the environment laws has been tardy. The primary effort of the courts while dealing with the environment related issues the Court has to see that the enforcing agencies take effective steps for the enforcement of the laws. The Court acts as a guardian of the people's fundamental rights, but in regard to many technical matters the Courts may not be fully equipped and has to rely upon outside agencies for reports and recommendations whereupon orders have been passed. High Courts are better equipped to deal with matters regarding pollution. Even where matters relate to all India issues, and the Supreme Court passes orders, the implementation of the same can best be ensured by the High Court. Since the general principles have been laid down and are well established, it will be more appropriate that the matter is first raised before the High Court. The High Court should pass appropriate orders and directions. The Central Government should consider setting up of State Coastal Management Authorities in each State and National Coastal Management Authority under Section 3 of the Environment (.Protection).Act.

The Central Government has issued notification constituting National Coastal Zone Management Committee instead of Authority. The Central Government is directed to constitute an Authority as mentioned in the Judgment. Some of the States have sort up the State Coastal Zone management Authority. The Central Government was directed to do the needful under Section 3(3) of the EP Act.

In this decision the court enunciated three independent legal bases for the award of monetary damages in a petition on Article 32 of the Constitution. First, it relied upon Article 48A and Article 51-A of the

Constitution, the provisions of the Air Act, Water Act and the Environment Protection Act. It held that section 3 of the EPA empowers the Central Government to take all such measures as it deems fit or expedient for the purpose of protecting and improving the quality of the environment and thus the Supreme Court could always direct the Central Government to determine and recover the cost of remedial measures from the offending authority.

Burying once and for all the ghost of **Ryland v Fletcher** the Supreme Court held that the statement of the law in OLEUM GAS LEAK ¹⁷⁵case was more appropriate in the Indian context, and was also binding. The principle affirmed therefore was that hazardous activity 'can be tolerated only on the condition that the enterprise, which uses such hazardous, odd or inherently dangerous activity regardless of whether it is carried or not.

The third legal basis was the '*Polluter Pays*' principle. The Court held that Ss 3 and 5 of the Environment Protection Act empower the Central Government to give directions for giving effect to this principle.

The shift from **Ryland v Fletcher** to the absolute liability principle is a clear policy choice made by the Court and is entirely consistent with its reappraised role of being a Court closely concerned with the issues of social justice while Ryland v Fletcher was a relic of an era when industrial activity was given primacy. Equally, transplanting the doctrine of '*Polluter Pays*' from an international treaty into existing domestic law by the mechanism of purposive interpretation of an existing statute¹⁷⁶ reflects the approach of the Court to fill gaps in the law without waiting for legislative intervention.

¹⁷⁵ M.C.Mehta v UOI (1987) 4 SCC 54

¹⁷⁶ M.C.Mehta v Kamal Nath (1997) 1 SCC 388

Evolution of Precautionary and Polluter Pays principle: Tanneries –Kanpur, Tamil Nadu

In yet another **M.C. Mehta case (M.C.Mehta v/s UOI,)**¹⁷⁷ directions were issued to Kanpur Municipal Body for disposal of waste. Licenses for establishing new industry to contain condition for treatment of trade effluent. Existing industries must set up ETP and action to be taken for polluting water. Also innovative directions were given to Central Government to teach children about protection and improvement of natural environment including forest, lakes, rivers and Wild Life. Children are the asset of the nation. A healthy child of today can become an able citizen of tomorrow. Hence this direction of the Supreme Court is of great value.

A PIL under Article 32 of the Constitution was filed against tanneries in Kanpur by M.C.Mehta.¹⁷⁸ The petition included within its scope to include all industries along the banks of river Ganga. Directions were given to relocate the polluting industries. The Court reaffirmed the Polluter Pays Principle holding that one who pollutes the environment must pay to reverse the damage by his act.

This decision is followed with two more important decisions. Center for Environmental law **WWF –I v. UOI**¹⁷⁹ is a case in context of tanneries. It is popularly known as the '**Tamil Nadu Case**'. The significance is that the tanneries of that area are a major foreign exchange earner for the country as leaders in export of leather goods. So in this case the argument about balancing environmental

¹⁷⁷ M.C.Mehta v.UOI1988 (1) SCC 471

¹⁷⁸ M.C.Mehta v. UOI (1997)1 SCC 388

¹⁷⁹ WWF v. UOI (1999)1 SCC 263

protection with other needs such as that for foreign exchange arose. The terse answer of the Court to this was that notwithstanding all this it is not right to destroy the ecology, degrade the environment, or cause health hazard. Referring to the principle of sustainable development, the Court stated 'during the two decades from Stockholm to Rio, " sustainable development" has come to be accepted as a viable principle/ concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of supporting ecosystems. The Court then held that the precautionary principle and the polluter pays principle are essential features of sustainable development. Delineating the contours of the precautionary principle in the context of municipal law, it held that environmental measures must anticipate and prevent by attacking the causes of environmental degradation, and the onus of proof is on the actor or the developer/ industrialist to show that his action is environmentally benign.' The legal authority for these principles was found in the Constitution and other anti-pollution laws. The Court however went on to further hold that once these principles were accepted as part of customary international law there would be no difficulty in accepting them as part of the domestic law.

The importance of this decision is that it squarely places the cardinal environmental law principles in the secure lap of Article 21. Secondly it paves the way for the courts to bring in either through the window of ' aid to statutory interpretation' or as an inherent principle flowing from the constitutional guarantee of a clean environment, other environmental treaties without waiting for legislative action.

6.3.4. Article 21 and Taj Cases

Environmental Jurisprudence and cultural heritage have a close nexus. Taj Monument is one of the Seven Wonders of the World and it is a matter of great pride for all Indians. However when we are facing the problem of environment pollution, the great monument is also seen to be affected by it. To preserve the composite culture and heritage is a fundamental duty of all the citizens. Hence, one such public spirited lawyer who can be termed as the '*messiah*' in the protection of the environment filed a writ petition under Article 32 of the Constitution (**M.C Mehta V Union of India**)¹⁸⁰. The case was before Kuldip Singh and Faizuddin, JJ. Writ Petition under Article 32 for protection of Taj Mahal monument as it was claimed that the monument is threatened with deterioration and damage not only by the traditional causes of decay but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage and destruction. The court has monitored the petition with the sole object of preserving and protecting Taj from destruction and damage due to atmospheric and environmental pollution. The object behind the present litigation was to stop the pollution and encourage industry. The development of industry is essential for the economy of the country, but at the same time the environment and the eco- system have to be protected. The pollution created as a consequence of development must be commensurate with the carrying capacity of our eco system. In this case once again the 'Precautionary Principle' and 'Polluter pays principle' were reaffirmed by the Court.. The said two principles have been accepted as part of law of the land. Articles 21, 47, 48A, and 51A(g) relied upon. Post -Independence legislations like Air, Water and Environmental Protection Act relied

¹⁸⁰ 1997 (2) SCC. 353

upon. So directions were issued for stopping pollution around the Taj and the Industries were directed to be shifted or to use gas instead of coal.

It is now the duty of the nation to decide that whether the deposits should be exploited at the cost of ecology and environmental concerns. It may be perhaps possible to exercise grater control and vigil over the operations and strike a balance between preservation and utilisation. The Court answered ,Industrial growth yes; but not at the cost of environment

Another landmark decision delivered by the Hon'ble Supreme Court in a PIL in the protection of the Environment is reflected in the Taj Trapezium¹⁸¹ case, as it is popularly known. This was a case in the context of pollution in the Taj Trapezium by coal-based industries. The petition was filed for the prevention of the pollution. The directions were issued in the year 1997 to stop supply of coal/coke to industries as soon natural gas becomes available. However it was found non-cupola based iron foundries who had entered into agreement for supply of natural gas but have not switched on to gas though it was available. In the present judgement the Hon'ble Supreme Court issued direction to stop supply of coal/coke issued if they do not accept gas by 15 September 1999.

6.3.5 Article 21 and Air Pollution

Law casts an obligation on State to improve public health and protect and improve the environment. The directions issued by the Supreme Court are aimed at making the State to effectively

¹⁸¹ M.C.Mehta v UOI AIR 1999 SC 3192

discharge their obligations. When the Supreme Court issues the directions, it is treated as a legal issue and proceeds to examine the impact of the right flowing from Article 21 of the Constitution vis-à-vis decline in environmental quality. The pollution in Delhi was growing. Nearly 70% of the Air Pollution was caused by the motor vehicles plying in Delhi. Public-spirited lawyer M.C. Mehta filed a writ petition. **(M.C.Mehta v. Union of India & Ors.** ¹⁸²) In this case directions were given to reduce Air Pollution in Delhi. The Hon'ble Supreme Court held that Commercial Vehicles beyond 15 years to be phased out, and plying of goods vehicles were permitted only by night. It also directed that premixed oil dispensers be provided and stop supply of loose engine oils. It was ordered that the buses to run on CNG etc. The directions to convert entire city bus fleet to single fuel CNG by 31-3-2001 were issued. Also another direction was that no 8 year old bus shall ply except on CNG or other clean fuel after 1 April 2000. In this case an application for extension of the dead line fixed for compliance was filed. However blanket extension of the dead line was refused. However to mitigate sufferings of commuters public relaxation was given to schools, Delhi Transport Corporation, Contract Carriage operators, other bus operators and owners of commercial vehicles including autos by allowing them to operate vehicles equal to number of vehicles for which steps for conversion has been taken by them by till 31-3-01. Here, the correctness of the order issued on 28 July 1998 was challenged. The Supreme Court held that it is not possible to accept that all these years (i.e. till 2001) these private operators were unaware of the directions issued by the Hon'ble Court on 28 July 1998. The Supreme Court declared that the order by the Hon'ble Court was in *rem* and not an order in *personam*. All the private operators, who operate their buses in

¹⁸² M.C.Mehta v.UOI 1998 (4) SCALE 326

Delhi were bound by these orders, which were made to safeguard the health of the citizens, being a facet of Article 21 and had been publicized from time to time in the electronic as well as the print media. That apart, the Bhurelal Committee had been set up under the Environment Protection Act and it was directed by the Hon'ble Supreme Court that the Committee could give directions towards effective implementation of the safeguards of EPA, more particularly in matters aimed at preventing Air Pollution. Directions issued by the Bhurelal Committee have, thus legal sanctions and when accepted and incorporated by the Hon'ble SC become a part of its order, binding on all parties. Besides, directions given for safeguarding health of the people, a right provided and protected by Article 21 of the Constitution would override provisions of every statute including Motor Vehicle Act, if they militate against the Constitutional mandate of Article 21. It is also important to note that the provisions /norms fixed under Motor Vehicle Act are in addition to and not in derogation of the requirements of the Environment Protection Act. Hence the Hon'ble SC cautioned that if the owners of the State Carriage buses chose to ignore the directions issued by the SC, they have done at their own risk.

6.3.6 Right to Livelihood and Environmental Protection

Right to livelihood is an integral part of right to live. Now the right to livelihood comes in the ambit of Article 21. This was held in the case of **State of A.P. v. Umed Ram**¹⁸³ This broad interpretation of the right to life is useful in checking the governmental action which has an environmental impact that threatens the poor people of their livelihood by dislocating them from their place of living or otherwise

¹⁸³State of A.P. v. Umed Ram AIR 1986 SC 847

depriving them of their livelihood. According to the estimates of the World Bank almost 16 million ¹⁸⁴people in India are displaced.

In Buffalo Traders Welfare Assn. V. Maneka Gandhi¹⁸⁵ the Court was concerned with the issue legal and unhygienic slaughter of animals at the slaughtering house at Idgah. Court appointing a high powered committee to look into the method and improvement and the plight of unemployed workers.

In a different case filed again by M.C.Mehta¹⁸⁶, the Hon'ble Supreme Court reprimanded the Delhi Administration and again directed to take effective timely steps.¹⁸⁷

6.3.7 Industrial Pollution and Relocation of Industries

In yet another **M.C.Mehta v. Union of India**¹⁸⁸ directions were issued in shifting of Industries on the basis of Delhi Master Plan. Direction given to maintain the land made available by the shifting industries for lung space as green belt for the general good. The right to healthy and wholesome environment is a fundamental right and this decision of the Court is a step in this direction wherein it has again upheld this right. Shifting the industries to some other place ensures two things. First it reiterates the right to healthy and pollution free environment. At the same time it does so at the cost of development.

¹⁸⁴ World Bank , Resettlement and Development

¹⁸⁵ Buffalo Traders v. Maneka Gandhi (1994) Supp 3 SCC 448

¹⁸⁶ M.C.Mehta v. UOI AIR 2001 SC 1848

¹⁸⁷ M.C.Mehta v UOI AIR 2001 SC 1848

¹⁸⁸ M.C.Mehta v.UOI(1996) 4 SCC 351

The facts of Indian Council for **Enviro-Legal Action and Ors. V.U.O.I and Ors**¹⁸⁹ are:.

Bichhri a small village in Udaipur, Rajasthan exposed to the worst kind of industrial pollution by Hindustan Agro Chemicals limited engaged in the manufacture of chemical H-acid, a highly toxic compound and its waste in the form of highly toxic iron and gypsum sludge which when left untreated percolated into the underground water channels polluting all the wells and fields in the area. The supreme Court after calling for reports from expert committees appointed by it has held that Art 48-A, 51-A(g), Water (Prevention and Control of Pollution) Act, 1974-section 24(1), 25(1) a & b and 33, Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act , U.N. conference on Human Environment at Stockholm in July 1972- section 3(2), 5 & 7. Under section 6 of EP Act Central Government has made the Hazardous wastes (management and Handling) Rules 1989. If the authorities have failed to take the action required of them by law and that their inaction has jeopardized the right to life of the people of this country or a section thereof, it is the duty of the Supreme Court to intervene. Even though the power of the court to order payment of compensation is in doubt, it can always direct the Central Government to calculate the amount of damage and recover the same under the EP Act. 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. As per the Constitution Bench the enterprise engaged in hazardous or inherently dangerous activity has to indemnify all those who suffer on account of such activity

¹⁸⁹ 1996 (3)SCC. 212

irrespective of whether it is carried on carefully or otherwise. The polluting industry is liable to defray the costs of remedial measures on the principle of the polluter pays- the financial cost of preventing or remedying damage caused by pollution should lie with the undertaking which caused the pollution. Section 3 and 5 of the EP Act, 1986 empowers the Central Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the environment which is given a very wide and expansive term. Court directed Central Government to compute damage and the guilty to pay. It directed the factories to be sealed by Pollution Control Board. Suit to be instituted by affected parties for damages in forma pauperism.

This is a landmark case in the environmental jurisprudence of our country.

In **F.B.Taraporawala & Ors V.Bayer India Limited & Ors**¹⁹⁰, the Court was concerned with the shifting of chemical units in Bombay. Here the Court issued directions to Central Government to constitute a committee under Section 3(3) of the Environment Protection Act, 1986 as Court did not have all the facts before it for deciding the matter.

The court was concerned with the shifting of chemical industries out of thickly populated areas of habitation. The Court directed the constitution of an authority under section 3(3) of the Environment Protection Act, 1986 as it felt that it did not possess the necessary expertise or information to deal with the matter. The problem touches the very core of Art. 21 of the Constitution as the very lives of the inhabitants of the people living around the chemical industries are at risk.

¹⁹⁰ F.B.T V.Bayer Ltd (1996) 6 SCC 58

In **A.P. Pollution Control Board ii v Prof. M.V. Nayudu & Ors.**¹⁹¹ the question involved is as to whether the one of Respondents should be permitted to establish in the Industry within 10 km of the lakes not with standing the Governments policy to the contrary and the refusal of the Pollution Board to grant NOC. The Supreme Court after referring the matter to the National Environment appellate Authority, New Delhi, Department of Chemical Technology, Bombay University and the National Geophysical Research Institute Hyderabad came to the conclusion that it was not a fit case for directing the grant of NOC. The Court held that drinking water reservoirs which cater to the needs of about 70 or 80 lakh population, and therefore the Court cannot rely upon a bare assurance that care will be taken in the storage of serious hazardous materials. Nor can it be relied on as assurance that these hazardous substances would be effectively removed without spillage. The Court held that, in their view, it was not humanly possible for any department to keep track whether the pollutants are not spilled over. This is exactly where the "precautionary principle" comes into play. The chance of an accident, within such close proximity of the reservoirs cannot be ruled out, as pointed out in the reports. Thus, the Court held that there is a very great risk that these highly hazardous materials could seep into the earth and reach the tanks, after passing through the dolerite dykes, as pointed by the National Geophysical Research Institute. While passing the orders the Court mainly relied on the judgement in **A.P. Pollution Board V. Prof. M.V. Nayudu.**¹⁹²

The petition **M.C. Mehta V Union of India**¹⁹³ concerns the shifting of hazardous/ noxious/ heavy/ large industries operating in Delhi to

¹⁹¹ A.P.Pollution Control Board ii v. Prof. M.V.Nayudu 2001 (2) SCC 62.

¹⁹² A.P.Pollution Control Board v. Prof. M.V.Nayudu (1999) 2 SCC 718

¹⁹³ M.C.Mehta (1996) (4) SCC 750

other towns in the National Capital Region under the Master Plan for Delhi- perspective 2001as approved under the National Capital Region Planning Board Act, 1985. Directions given to shift the industries within a timeframe and in the meanwhile the industries directed to stop functioning. Also Directions were made for protection of workers of the closed factories.

The two cases discussed below show the attitude of the judiciary in the practical interpretation of sustainable development. In these cases the courts have issued orders of transferring the industrial units away from the residential areas, thus giving priority to the health of the environment and the people. To achieve the quality of life of quality of environment, pollution –free environment is necessary.

In the landmark case of **Vellore Citizens Welfare Forum v. Union of India** ¹⁹⁴ a Petition under Art. 32 of the Constitution filed by Vellore Citizens Welfare Forum against the pollution being caused by enormous discharge of untreated effluent into agricultural fields, roadsides, waterways and open land by the tanneries and other industries in the State of Tamil Nadu, which ultimately goes into the river Palar which is the main source of water supply to the residents of the area. The entire surface and subsoil water of the river is polluted. The leather industries even though of vital importance to the nation as a foreign exchange earner, it has no right to destroy the ecology, degrade the environment and pose as an health hazard. It cannot be permitted to expand or even exist if it cannot tackle its pollution. Sustainable Development is the answer which means Development that meets the need of the present without compromising the ability of the

¹⁹⁴ Vellore Citizen Forumv. UOI 1996 (5) SCC.647

future generation to meet their own needs. Some of the salient features of "Sustainable Development" are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the Developing Countries. We are of the view that The Precautionary Principle and The Polluter Pays Principle are essential features of Sustainable Development. The Precautionary Principle means:

- (i) Environmental Measures by the State Government and the statutory authorities- must anticipate, prevent and attack the causes of environmental degradation.**
- (ii) Where there are threats of irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.**
- (iii) The "Onus of Proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.**

The Polluter Pays has been held to be a sound principle. The polluting industries are absolutely liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and underground water and hence, they are bound to take all necessary measures to remove the pollutant. The principle not only extends to compensate the victim of pollution but also the cost of restoring the environmental degradation and restoring the damaged ecology. The Precautionary principle and the Polluter Pays principle have been accepted as part of the law of the land -

Refer- Articles 21, 47, 48A and 51A(g). Since they are part of rules of customary International law, which is not contrary to Municipal Law, shall be deemed to have been incorporated in the Municipal Law of the land. Clean Environment is an in-alienable common law right and is basic jurisprudence of the land. The Environment Protection Act, its object and reason noted, the Court directed the Central Government to constitute an Authority under Section 3(3) of the Environment Protection Act to monitor and issue directions for the enforcement of precautionary principle and polluter pays principle. It shall calculate the damages and fix the liability on the polluting industry. On failure to abide by the directions of the Authority the industry shall be closed.

In **M.C. Mehta Versus Union of India**¹⁹⁵ directions were issued to all industries in the Ganga River basin to stop discharging untreated waste into the river Ganga. The Courts orders as well as the Government directions are necessary to be complied with to prevent pollution. Defaulting industries are liable to be closed down.

M.C.Mehta Vs. Union of India¹⁹⁶ a petition was filed under Article 32 of the Constitution of India seeking directions to the Municipal Authorities on the banks of the river Ganga not to dump the untreated industrial effluent and Municipal sewage into the river and for a direction that effluent treatment plants be installed by the Industries and Municipal Boards for the purpose of treating their effluent and sewage. The Supreme Court after noting the provisions of the Kanpur Nagarpalike Adhiniyam, 1959, the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), The Environment (Protection) Act, 1986 and the provisions of the Constitution Article 51(g) held that the petition was maintainable as a public Interest

¹⁹⁵ 1993 Supp (1) SCC 434

¹⁹⁶ 1988(1)SCC471

Litigation as it is moved in public interest to protect the lives of the people who make use of the water flowing in the river. The nuisance caused by pollution of the river Ganga is a public nuisance which is widespread in range and indiscriminate in its effect. The petitioner is entitled to move the Court in order to enforce the statutory provisions, which impose a duty on the Municipal Authorities, and the Board constituted under the Water act. The Court issued certain directions to the Municipalities to complete the construction of the setting up of effluent treatment plants within a stipulated time; The High Courts have been directed not to issue stay orders merely for the asking and stay against prosecution be granted only in extraordinary cases and such cases should be disposed of preferably within 2 months; The Central Government to direct all educational institutions all over India to impart lessons on improvement of the environment; State Governments and Union Territories to hold Keep The City Clean Week with the participation of all citizens.

In **Comdr.Sureshwar D. Sinha Vs. Union of India**¹⁹⁷ Notice was issued to the President of Welfare Associations to show cause why the Court should not direct payment of an amount of Rs. 1000/- by flat owners per Flat towards 15% of the expenses to be incurred in water harvesting in their blocks. The committee appointed by the court should go ahead with the water harvesting project in the residential block and if need be incur the entire expenditure, which, subject to further orders will be partly reimbursed.

In **M.C. Mehta V Kamalnath**¹⁹⁸ a Petition was filed on the basis of news paper report in Indian Express "**Kamalnath dares the mighty Beas to keep his dreams afloat**" The allegation being

¹⁹⁷ Comdr. Sureshwar Sinha v. UOI 2000 (8) SCC 368

¹⁹⁸ M.C.Mehta v. Kamalnath 1997 (1) SCC.388

that Span Motels in which Mr. Kamalnath as an interest has taken on lease land and encroached on forest land and built embankments thereby diverting the river. Public Trust Doctrine rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them subject of private ownership. The said resource being a gift of nature, they should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private or commercial purpose. The public trust doctrine is part of our jurisprudence in which the state is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running water, air, forest and fragile eco-system. The state as a trustees under a legal duty to protect the natural recourses. The resources meant for public use cannot be converted into private ownership.

In. **Chameli Singh V State of UP**¹⁹⁹ the Hon'ble Supreme Court reiterated the view that Right to life as a human being does not mean meeting of animal needs of man. Right to life implies right to **food, water, decent environment**, education, medical care and shelter. In every acquisition for public purpose, the owner may be deprived of his land, the means of his livelihood. The state acquires the land in exercise of its powers of eminent domain for public purpose, the individual right of the owner must yield place to the larger public purpose. Acquisition in accordance with the procedure is a valid acquisition and does not affect right to livelihood.

¹⁹⁹Chameli Singh v. UOI 1996 (2) SCC. 549

Dr. B.L. Wadehra V UOI²⁰⁰ is a landmark case in regard to waste management. Here a Petition was filed under Article 32 of the Constitution seeking a direction to the M.C.D and N.D.M.C. to perform their statutory duties in cleaning Delhi. Delhi is one of the most polluted cities in the World. The air is unfit for breathing the river Yamuna is a dumping ground for domestic and industrial waste. After referring to Article 21, 48-A and 51-A the Court directed that apart from the rights guaranteed under the Constitution the residents of Delhi have a statutory right to live in a clean city. The Courts are justified to direct the authorities to perform their duties under the law. Non availability of funds, inadequacy or inefficiency of staff, insufficiency of machinery etc. cannot be pleaded as a ground for non performance of their statutory obligations. The Court issued directions to the Municipality for cleaning as had been laid down in **Ratlam Municipality**²⁰¹.

In **Delhi Water Supply V State of Haryana**²⁰² it was held that drinking water should be made available to all and drinking water is the first charge over the waters of a river. And hence the State of Haryana was directed to ensure that sufficient water is made available to Delhi.

The protection and improvement of the human environment is a major issue which affects the well being of the peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all governments. The common conviction contained in the proclamations are the conviction that the discharge of toxic substances or of other substances and the release of heat in such

²⁰⁰ Dr. B.L.Wadhera v. UOI 1996 (2) SCC. 594

²⁰¹ (1980) 4 SCC 162: Municipal Council of Ratlam Vs. Vardichand

²⁰² Delhi Water Supply v. St. of Haryana 1996 (2) SCC.572

quantities or concentrations as to exceed the capacity of the environment to render them harmless must be halted in order to ensure that serious or irreparable damage is not inflicted upon ecosystem, that states shall take all possible steps to prevent pollution of the sea so that hazards to human health, harm to living resources and marine life, damage to the amenities and interference with other legitimate uses of the sea is avoided. Parliament has passed Water (Prevention and control of Pollution) Act, 1974. Act on resolutions by States of Assam. Bihar, Gujarat, Haryana, Himachal Pradesh etc. under Article 252(1) of the Constitution. Parliament has passed Environment Protection Act, 1986 w.e.f. 19 November 1986. Under the laws of the land the responsibility for treatment of Industrial effluents is that of the industry. While the concept of strict liability should be adhered to in some cases, circumstances may require the plans for sewage and treatment systems should consider industrial effluents as well. The financial capacity of the tanneries should be considered as irrelevant while requiring them to setup primary treatment plants. A tannery which cannot set up primary effluent treatment plant 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 would be immense and it will outweigh any inconvenience that may be caused to the management and labour on account of its closure. In cases of this nature this court may issue appropriate directions it finds that public nuisance or other wrongful act affecting or likely to affect the public is being committed and the statutory authorities who are charged with the duty to prevent it are not taking adequate steps to rectify the grievance. Every breach of right there should be a remedy.

6.4. Environmental Dimension of Article 19

6.4.1 Freedom of Speech and expression and Environmental Protection

Article 19(1) (a) guarantees every citizen a fundamental freedom of speech and expression. However it is very important to note that this freedom is not absolute. Like other freedoms this too is subject to certain reasonable restrictions as specified in Article 19(2) of the Constitution. In India most of the environmental jurisprudence has developed by judicial activism. Most of the cases before the Court as a result of PIL in which the people exercised their freedom of speech and expression sometimes by writing letters to the Court or otherwise by filing petitions before it. Freedom of press is an important aspect of the freedom of speech and expression. The press is popularly known as the Fourth Estate. And the traditional role assigned to it is that of a public educator.

Today in the Information Age we are having a very vibrant and active media which enables bringing to light many stories which otherwise would have lost in time. In recent times we have seen the judiciary taking note of the press items and even at times acting upon it. A burning example of this is the **'Rape of the Rock'** case, a news item published in Indian Express. Here, exemplary fine was imposed on the erring Coca Cola and Pepsi, industries for polluting the environment.

The Silent Valley Project is yet another example of the active press. In this case, i.e. the Tehri Dam project, the public opinion and the media compelled the government to make proper environment impact assessment of the proposed dam and consider all the aspects of safety of the project in various details once again

In **Moulana Mufti Syed Md. Noorur Rehman Barkativ. State of West Bengal**²⁰³ the Hogg Court of Calcutta observed that excessive noise certainly pollution in the society. Under Article 19(1)(a) read with Article 21 of the Constitution, the citizens have a right to decent sleep, right to live peacefully and to have leisure which all are necessary ingredients of the right to life guaranteed under Article 21 of the Constitution.

In **P.A.Jacob v. The Superintendent of Police, Kottayam**²⁰⁴ the Kerala High Court held that freedom of speech under article 19 (1)(a) does not include freedom to use loud speakers or sound amplifiers. Thus noise pollution caused by the loud speakers can be controlled under article 19(1)(a) of the Constitution.

The similar rights were upheld even by the Supreme Court in the case cited below. This was a question where in the interpretation was needed in regard to freedom of speech and expression, freedom of religion and a right to a healthy and wholesome environment.

The questions involved in the appeal in **Church of God (full gospel) in India v. K.K.R. Majestic Colony Welfare Association and Ors.**²⁰⁵ are that in a country having multiple religions and numerous communities or sects, whether a particular community or sect of that community can claim right to add to noise pollution on the ground of religion. Whether beating of drums, or reciting of prayers by use of microphones and loudspeakers so as to disturb the peace or tranquility of the neighborhood should be

²⁰³ Moulana Mufti Syed Md. Noorur Rehman Barkativ. State of West Bengal AIR 1999 Cal 15 at 25-26

²⁰⁴ P.A.Jacob v. The Superintendent of Police, Kottayam, AIR 1993 Ker 1

²⁰⁵ Church of God v. KKR Majestic Colony (2000) 7 SCC 282

permitted. Undisputedly, no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be 1through voice amplifiers or beating of drums. In our view, in a civilized society in the name of religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during daytime or other persons carrying on other activities cannot be permitted. It should not be forgotten that young babies in the neighborhood are also entitled to enjoy their natural right of sleeping in a peaceful atmosphere. A student preparing for his examination is entitled to concentrate on his studies without their being any unnecessary disturbance by the neighbors. Similarly, the old and the infirm are entitled to enjoy reasonable quietness during their leisure hours without there being any nuisance of noise pollution. Aged, sick, people afflicted with psychic disturbances as well as children up to 6 years of age are considered to be very sensible (sic sensitive) to noise. It is necessary to honour their rights.

Under the Environment (Protection) Act, 1986, rules for noise-pollution level are framed which prescribe permissible limits of noise in residential, commercial, industrial areas or silence zone. The question is- whether the appellant can be permitted to violate the said provisions and add to the noise pollution. The Court held to claim such a right itself would be unjustifiable. In these days, the problem of noise pollution has become more serious with the increasing trend towards industrialization, urbanization and modernization and is having many evil effects including danger to health. It may cause interruption of sleep, after communication, loss of efficiency, hearing loss or deafness, high blood pressure, depression, irritability, fatigue, gastrointestinal problems, allergy, distraction, mental stress and annoyance etc. This also affects animals as like. The extent of damage depends upon the duration

and the intensity of noise. Sometimes it leads to serious law and order problem. Further, in an organized society, rights are related with duties towards others including neighbors.

In the view of the Hon'ble Supreme Court, the contentions raised by the learned counsel for the appellant deserve to be rejected because the direction given by the learned Judge to the authorities is only to follow the guidelines laid down in **Appa Rao case**¹ decided by the Division Bench of the same High Court on the basis of the Madras City Police Act, 1888 and the Madras Town Nuisances Act, 1889. It is also in conformity with the Noise Pollution (Regulation and Control) Rules, 2000 framed by the Central Government under the provisions of the Environment (Protection) Act, 1986 read with Rule 5 of the Environment (Protection) Rules, 1986. Rule 3 of the Noise Pollution (Regulation and Control) Rules, 2000 provides for ambient air quality standards in respect of noise for different areas/zones as specified in the scheduled annexed to the Rule.

In the present case, the contention with regard to the rights under Article 25 or Article 26 of the Constitution which are subject to "public order, morally and health" are not required to be dealt with the detail mainly because as stated earlier no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums. In any case, if there is such practice, it should not adversely affect the rights of others including that of being not disturbed in their activities. We would only refer to some observations made by the Constitution Bench of this Court qua rights under Articles 25 and 26 of the Constitution in **Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat**. After considering the various contentions, the Court observed that: (SCC p. 20, para 30).

Further, it is to be stated that because of urbanization or industrialisation the noise pollution may in some area of a city/town might be exceeding permissible limits prescribed under the Rules, but that would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers, loudspeakers or by such other musical instruments and therefore, rules prescribing reasonable restrictions including the Rules for the use of loudspeakers and voice amplifiers framed under the Madras Town Nuisances Act, 1889 and also the Noise Pollution (Regulation and Control) Rules, 2000 are required to be enforced. We would mention that even though the Rules are unambiguous, there is lack of awareness among the citizens as well as the implementation authorities in the Rules or its duty to implement the same. Noise-polluting activities are rampant and yet for one reason or the other, the aforesaid Rules or the Rules framed under the various State Police Acts are not enforced. Hence, the High Court has rightly directed implementation of the same. And so the appeal was dismissed.

6.4.2 Freedom to carry trade or business

Article 19(1)(g) guarantees all citizens the right to practice any profession or carry on any occupation ,trade or business.’ Like all other freedoms, even this one is subject to reasonable restrictions. ‘In the interest of general public’ reasonable restrictions can be imposed. Environmental interests from the hazards of any trade or business can be protected.

In **Abhilash Textile v. Rajkot Municipal Corporation**²⁰⁶ the petitioners were discharging dirty water from the factory on public

²⁰⁶ Abhiraj Textile v. Rajkot Municipal Corpn AIR1988Guj57

road and in public drainage without purifying the same thereby causing damage to public health. The Court held that one cannot carry on the business in the manner by which the business activity becomes a health hazard to the entire society. By discharging of effluent water on the road and/or in the public drainage system the entire environment of the locality gets polluted. No citizen can assert his right to carry on business without any regard to the fundamental duty under Article 51A (g) to protect and improve the natural environment. The Court further directed to the petitioners that if they wish to carry on the business then they must provide for purification plant before discharging the effluents on public roads and in the public drainage systems. They cannot be allowed to reap the profit of business at the cost of public health.

In **S.Jaganathan v. UOI**²⁰⁷, popularly known as the 'Shrimp Culture' case the Supreme Court held that sea beaches and sea coasts are the gifts of nature and any activity polluting the same cannot be permitted. This is case of marine pollution. It was decided by the green judge Justice Kuldip Singh and Justice Saghir Ahmed.

Writ petition under Art.32 filed by petitioner under CRZ notification dated 19.2.91 issued by the Central Government for stopping intensive and semi intensive type of prawn farming in the ecologically fragile costal area, prohibition from using wasteland and wet lands for prawn farming and for constitution of a National Costal Management Authority. Costal Pollution is an emerging problem. So far as India is concerned it has already become a serious environmental problem Besides direct dumping of waste material in the sea, discharge through marine outfalls, large volumes of untreated or semi treated wastes generated in various

²⁰⁷ S.Jaganathan v.UOI 1997 (2) SCC.87

land based sources/activities ultimately find way into the sea. The costal waters directly receive the inland waters, by way of surface run off and land drainage, laden with myriad of refuse material- the rejects or waste of civilization. Apart from inputs from rivers and effluents outfall, the costal areas are subject to intensive fishing, navigational activities recreations ports industrial discharge and harbours which are causative factors of water quality degrading to various degrees. Contrary to the open seas the changes in the quality of costal waters are much greater due to river discharges under tidal conditions.

With noticeable increase in marine pollution and the consequential decline in marine resources serious concern was expressed in the United Nations Conference on Human Environment in Stockholm (1972) attracting global attention towards the urgent need of identifying the critically polluted areas of the marine environments specially in costal waters for urgent remedial actions. The Conference unanimously resolved that the littoral states should take early action at their national level for systematic monitoring to ascertain the efficiency of pollution regulatory actions taken by them. In the back ground of the Stockholm Conference and in view of 1982 Convention on the Law of the Sea defining territorial waters a modal comprehensive action plan has been evolved under the United Nations Environment Programme. Keeping with the international commitments and in greater national interest, the Government of India and the Government of the coastal states are under a legal obligation to control marine pollution and protect the costal environment.

According to the information placed on record by the Central pollution control board the coast line of India is about 6000 kms long. Out of the total land mass of about 3.25 million sq kms. nearly

0.15 million sq. kms of coastal land belt and 0.13 million sq. kms seabed up to the territorial limits. There are 14 major, 44 medium and 55 minor rivers which delivered about 1566 TMC of water through land drainage into the sea transporting with it about a wide range of pollutants. Nine rivers meet the Bay of Bengal and remaining five in the west coast.

Besides land drainage there is large number of marine coastal outfalls discharging directly or indirectly industrial and municipal affluent into the sea. Uncontrolled disposal of land based waste into the sea is a major cause of pollution of coastal waters.

Taking note of the Constitutional provisions Article 48A, 51A, Environment Protection Act, 1986, Hazard Waste (Management and Handling) Rules, 1989, The Water (Prevention and Control of Pollution) Act, 1974, Fisheries Act, 1897, Wild Life Protection Act, 1972, Forest Conservation Act, 1980, C.R.Z. Notification, Vellore Welfare Forum- concept of sustainable development - The Precautionary Principle and Polluter Pays reiterated. Before shrimp industry is permitted to be installed in the ecology fragile coastal area it must pass through a strict environmental test. There must be an Authority constituted under the Environment Protection Act to scrutinize each case from the environmental point of view. There must be an environment impact assessment before permission is granted to install commercial shrimp farms. The assessment must also include the social impact on different population strata in the areas. The quality of the assessment must be analytically based on superior technology. It must take into consideration the inter- generational equity and the compensation for those who are affected and prejudiced.

The Court has directed the Central Government to constitute an authority under section 8(3) of Environment Protection Act, 1986 and shall confer on the said Authority all the powers necessary to protect the ecologically fragile coastal areas, seashore, waterfront and other coastal areas and specially to deal with the situation created by the shrimp culture industry in the coastal States/ Union Territories. The Authority shall be headed by a retired Judge of a High Court. Other members preferably with expertise in the field of aquaculture, pollution control and Environment Protection shall be appointed by the C.G. The C.G. shall confer on the said authority the powers to issue directions under section 5 of the Act and for taking measures with respect to the matters referred to in clauses (v), (vi), (vii), (viii), (ix), (x) and (xii) of sub section (2) of section 3. The Central Government, shall constitute the authority before 15.1.97. Shrimp industry not to be set up in the prohibited CRZ Zone. All farms setup in the prohibited zone shall be demolished. The agricultural lands, salt pan lands, mangroves, wetlands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of shrimp ponds. No aqua culture industry shall be set up within 1000 mts of Chilka Lake and Pulicat Lake (including bird sanctuaries namely Yadurappattu and Nilapattu).The authority is directed to compute the compensation on the basis of "Polluter pays" principle to the affected people and also recover the cost for reversing the damage to the environment. A separate fund to be called the "Environment Protection Fund" shall be created for depositing the compensation recovered from the polluters. The workers employed in shrimp farms which are directed to be closed shall be deemed to have been retrenched with effect from 30-4-97 and paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act, 1947. These workers shall also be paid in addition six years wages as additional compensation on or before 30-5-97. The

gratuity amount payable shall also be paid in addition to the above amount.

6.5 Impact of Right To Know on Environment Protection

Today the Right to Information Act has been passed. However, much before the explicit making of this Act, the right to know has been held to a fundamental right as an aspect of Article 21 and Article 19 of the Indian Constitution. Every citizen has a right to know about the various policies of the Government. The right to know or access to information is a basic right for which any democratic country shall dream for and India is no exception to it. Secrecy erodes the legitimacy of elected governments. On the other hand, the right to know strengthens participatory democracy.

This right has been fundamental in the development of environmental jurisprudence in India. Only with the information about the plans and projects of the government, could the environmentalists could raise voice against environment pollution and in favor of environment protection. In this regard the excerpts from the Brundtland Report are worth noting:

Some large projects require participation of a different basis. Public inquiries and hearings on the development and environment impacts can help greatly in drawing attention to different point of view. Free access to information and the availability of alternative source of technical expertise can provide an informal basis for public discussion when the environmental impact of a proposed project is particularly high, public scrutiny of the case should be mandatory

and whenever feasible the decision should be subject to prior public approval, perhaps by referendum.²⁰⁸

The State of Andhra Pradesh was therefore directed to identify those industries located within 10 km radius of these two lakes and to take action in consultation with the A.P. Pollution Control Board to prevent pollution to the drinking water in the two reservoirs. The State and the Board shall not permit any polluting industries within 10km radius. Further, the State of Andhra Pradesh was asked to submit a report within four months from the date of order, in regard to the pollution or pollution potential of industries, if any, existing within 10 km of the lakes.

In this case the Supreme Court once again reiterated that right to healthy environment and right to sustainable development are fundamental rights explicit in Article 21 of the Constitution. It is very important to remember that while it is true that nature will not tolerate after a certain degree of its destruction and it will have its toll definitely, though, may not be felt in praesenti and the present day society has a responsibility towards the posterity so as to allow normal breathing and living in cleaner environment but that does not by itself mean and imply stoppage of all projects. That harmonisation of the two namely, the issue of ecology and development project cannot but be termed to be the order of the day and the need of the hour.

6.6 Right to Equality and Environmental Protection

In **Consumer Action Group v State of T.N. and Another**²⁰⁹.

²⁰⁸ Our Common Future – World Commission on Environment and Development, 63-64 (1987)

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the petitioner through a petition under Article 32 of the Constitution of India brought to the notice of the Court, the impunity with which the executive power of the State of Tamil Nadu is being exercised indiscriminately in granting exemptions to the violators violating every conceivable control, check including approved plan, in violation of the public policy as laid down under the Act and the Development Control Rules (hereinafter referred to as "the Rules"). It was argued that granting of such exemptions is against the public interest, safety, health and the environment. The petitioners brought to the notice of the Court the indiscriminate exercise of power, by citing reference is made to about sixty-two such order passed by the Government between the period 1-7-1987 to 29-1-1988 the indiscriminate exercise of power, resulted in the shortage of water, electricity, choked roads and ecological and environmental imbalances. It was submitted on behalf of the petitioners that such exercise of power is (sic arbitrary) because there are no guidelines or control under the Act. The basic contention of the petitioners was Section 113 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) Act be declared as ultra vires as it can do or undo anything under the Act to wipe out any development without any check which amounts to the delegation by the legislature of its essential legislative power.

On scrutinizing the Government orders, the Courts found them to be identically worded except minor changes.

The Court held that each of those orders revealed non-application of mind by giving a total go-by to the Rules relating to the restrictions and control in construction of a building, to the floor space index, the front setback, side setback, parking requirements including provision of standby generator, transformer room, meter

room and floor space requirements, construction abutting road width, corridor width, permissible floor area, limits of nursing homes, height of the rear construction even from the provisions of prohibition on the construction of multistoried buildings etc. Not only this, while granting exemptions the Government has not recorded any reasons as to why such power is being exercised and further such power was exercised not only to regularize some irregularities but were passed to overreach even the order of refusal passed by the Member-Secretary, Madras Metropolitan Development Authority. In other words, power of exemptions was granted which set aside the orders earlier passed by the statutory authorities in terms of the Act and the Rules. The submission on behalf of the State for salvaging the validity of Section 113 being ultra vires was, the Government does not possess uncanalised or unbridled power as it is controlled by the policy of the Act. The question is, whether the impugned orders could be said to have been passed for the furtherance of such policy or for achieving the purpose for which it was enacted. So even as per submission it can only be exercised in the aid of such policy and not contrary to it. We find, in the present case, the Government while exercising its powers of exemption has given a go-by to all the norms as laid down under the Act and the Rules and has truly exercised its powers arbitrarily without following any principle which could be said to be in furtherance of the objective of the Act, nor could learned counsel for the State point out any. Thus after scrutiny, the Court held the orders passed as arbitrary and unauthorized.

In **Goa Foundation, Goa v. Diksha Holdings Pvt.ltd. & Ors.**²¹⁰ a writ petition was filed by the Goa Foundation before the Bombay High Court objecting to the construction of a Hotel on a plot of land situated in the area of Nagorecen, Palolam, Taluka Cancona, Goa on

²¹⁰Goa Foundation, Goa v.Diksha Holding 2001 (2) SCC 97

the ground that the land and question comes within CRZ-1, and as such it is not permissible to have any construction on the said plot of land. It was also contended that the plan and sanction obtained for such construction from the competent authority, are in contravention of the provisions of the environment (protection) act and such permission has been granted by the authority concerned without application of mind and without considering the relevant materials and therefore, the court should have issued mandamus, directing the Hotelier, Diksha Holdings Pvt. Ltd., from constructing the proposed hotels on the disputed land. It was also contended that there exist large number of sand dunes and by permitting the respondent to have the hotel complex on the plot of land will ultimately lead to irreversible ecological damage of the coastal area, and therefore, the court should prevent any construction.

The High Court came to the conclusion that the appropriate authorities have accorded permission for construction of the hotel on the disputed site, after considering all relevant and germane materials and the writ petitioner has failed to establish any illegality in the matter of grant of such permission. The High Court also recorded that the state authorities as well as the Central Government were aware of the existence of the sand dunes upto 200 meters strip from the shore line where no construction is permitted and beyond the said 200 meters strip within which the hotel complex is proposed to be built up is under category CRZ – III and as such there is no prohibition for construction of the hotel within the area. The High Court accordingly dismissed the petition filed by Goa Foundation.

The Supreme Court in its judgment held that in matter concerning environment and development the court should maintain a proper balance between the protection of environment and the

development process. The society shall have to proper, but not at the cost of environment and in the similar vein the environment shall have to be protected but not at the cost of the development of the society. There shall have to be both development and proper environment and as such a balance has to be found out and administrative action ought to proceed in accordance therewith and not de hors the same.-People United for better living in Calcutta.²¹¹-

That the CRZ notifications have been issued by the central government with the view to protect the ecological balance in the coastal areas and there ought not to be any violation and prohibited activities within such area. No activity, which would ultimately lead to unscientific and unsustainable development and ecological destruction, should be allowed and the court's must scrupulously try to protect the ecology and environment and should shoulder grater responsibility of which the court can have closer awareness and easy monitoring.

On the facts the court came to the conclusion that the disputed plot situate in category CRZ-III and was available for development by way of construction of hotel /beach resort in development plan of Goa, which was duly approved by the central government and the activities in question cannot be held to be prohibited activity.

The Court also observed that not even an iota of evidence as regards the resultant damage on the vegetation topsoil or topographic features was produced nor was any evidence pertaining to the elimination of existing flora and fauna of the area in question was available. The court also expressed its unhappiness over not

²¹¹ Public v. St. Of W.B. AIR 1993 Cal 215

having any local environment order report and therefore refused to interfere with the judgment of the High Court.

The Court concluded by observing that the issue of affection of environment, be it permanent or even temporary does not and cannot arise in the contextual facts. Environment is beauty environment is our sustenance as such in the event, the same perishes, humanity also would perish may not be today or tomorrow but certainly a day or two later. The issue, therefore, in the appeal is whether there is degradation of environment in the event of construction, the records speak volumes in the negative: environmentalist opines in the negative- would the court be justify in thwarting the project in the facts- the answer cannot be in the affirmative. The appeal was dismissed.

The framers of the Indian Constitution did not incorporate a strict doctrine of separation of powers but envisaged a system of checks and balances. Policy-making and implementation of the policy are conventionally the domain of the Executive and the legislature, with judiciary enforcing the law. It may be noted that the power of judicial review cannot be used by the Court to usurp or abdicate the powers of other organs. The Court has reiterated that matters of policy would be a bar to the Court's interference. PIL in practice tends to narrow the divide between the role of various of government, and has at times invited controversy on this point. The Court has sometimes even obliterated the distinction between law and policy. But it is to be remembered that judicial activism has been the result of executive inaction. And as stated earlier, the judiciary cannot be a mute spectator and is not expected to sit with folded hands. After all the Supreme Court is the guardian of the Fundamental Rights. Hence the approach of the judiciary in policy matters has been to ask whether the implementation or non-

implementation of the policy results in a violation of fundamental rights. Where it does, the Court may interdict the violation and issue orders accordingly. In **M.C.Mehta V Union of India**²¹² the Court explained how despite of the enactment of the Environment (Protection) Act, 1986, there had been considerable decline in the quality of environment. The Court noted that despite several PILs 'the required attention does not appear to have been paid by the authorities concerned to take necessary steps for discharge of duty imposed by the State.

The Supreme Court, in its interpretation of Article 21, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence. There are numerous decisions wherein the right to a clean environment, drinking water, a pollution-free atmosphere, etc, have been given the status of inalienable human rights and, therefore, fundamental rights of Indian citizens. The Supreme Court has created a strong precedent by taking initiative measures of social justice in the realm of environmental law as a part of its constitutional jurisdiction. Sustainable Development is the balance between social justice and poverty eradication by way of creation of wealth. Thus the Court has read into the Constitutional law, the canon of social justice.

²¹² M.C.Mehta v. UOI (1998) 9 SCC 589