CHAPTER - 6
JUDICIAL ACTIVISM AND PROTECTION: AN ANALYSIS WITH REFERENCE TO INDUSTRIAL POLLUTION IN INDIA
The environmental pollution and hazardous industrial activities have become major concerns with extensive industrialization, urbanization, population explosion and over-exploitation of natural resources. Deterioration or damage to the environment has threatened the very existence of natural and healthy life. Though there is general rise in the standard of living of the individuals, yet at the same time there is utter degradation of natural environment essential for the very existence of life. Deep concern is being felt at national and international levels to halt the irreversible devastation of the environment. The United Nations Conference on Human Environment at Stockholm in 1972 was the first major global effort for expressing concern for environmental protection at international level. India was also a participatory and signatory to the Stockholm Conference 1972. The Earth Summit of 178 Nations at Rio de Janeiro held in June 1992 was another step to treat and protect the planet's ailing ecosystems. The Indian Constitution is among the few in the world that contains specific provisions on environmental protection. There is a provision in the form of Article 48A of the Constitution of India, which requires that State shall make endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. In addition to this, there is fundamental duty in Article 51A(g) of the Constitution requiring the citizens to protect environment.

In spite of such concern there are no signs of improvement rather the situation is further deteriorating and there is large-scale depletion of our natural resources. The pollution in every form is continuously increasing and disturbing the ecological balance. There remained an apparent lapse or lack of will on the part of executive to strictly enforce the law and adopt suitable measure to regulate, protect and improve the environment and to provide relief to the affected individuals. Lately, the judiciary has realized the constitutional obligation and public-spirited persons and organizations have come forward and brought to the notice of the Supreme Court and the High Courts the dismal state of affairs. The higher judiciary realized the urgency to address the environmental issues and issued detailed directions to erring industries and
State instrumentalities for protecting and improving the environment through its writ jurisdiction. Hence public interest litigation and judicial activism have played significant role in creating environment consciousness and concern. Supreme Court declared right to pollution free environment as the fundamental right implicit in Article 21 of the Constitution.

Pollution free environment is essential for leading normal and healthy life. In *Damodar Rao v. Municipal Corporation Hyderabad* the Andhra Pradesh High Court observed that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. The court observed that protection of the environment is not only the duty of citizen (51A(g)) but also obligation of the State (48A). The slow poisoning of atmosphere caused by environmental pollution and spoliation should be regarded as amounting to violation of Article 21 of the Constitution.

In *L.K. Koolwal v. State*, a public interest litigation was filed to clean the city of Jaipur and save it from unhygienic conditions. The Rajasthan High Court held that Article 51A can ordinarily be called a duty of the citizens but in fact it is the right of the citizens as it creates the right in favour of the citizens to move the court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of the land. Omission or commission is to be brought to the notice of the court by the citizen and thus Article 51A gives a right to the citizen to move the court for the enforcement of the duty cast on the State instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State. Therefore, maintenance of public health, preservation of sanitation and environment falls within the purview of Article 21 as it adversely

1. AIR 1987 A.P. 171
3. AIR Raj. 2.
affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazard created, if not checked.

In *Subhash Kumar v. State of Bihar* the Supreme Court held that public interest litigation was maintainable for ensuring enjoyment of pollution free water and air which is included in the right to life under Article 21 of the Constitution. However, it said that recourse to proceeding under Article 32 through public interest litigation for enforcement of this fundamental right should be by persons genuinely interested in protecting the interests of the society. This remedy cannot be invoked by persons or group of persons to satisfy his or its personal grudge and enmity.

In *M.C. Mehta v. Kamalnath* the Supreme Court once again affirmed that any disturbances of basic environment elements, namely air, water and soil which are necessary for life would be hazardous to life within the meaning of Article 21 of the Constitution. A person, therefore, who is guilty of causing pollution has to pay damages for restoration of the environment and ecology.

### 6.1 Judicial Directions to Maintain Ecological Balance

Urbanization, modernization and race for industrial development have caused ecological imbalance. It is now universally recognized that all developments must always take full account of its ecological implications. As such a balance is to be maintained between the necessity to preserve environment and the need of the society for socio-economic development. The judiciary in India has been trying its best to maintain balance between development and preservation of environment.

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6.1.1 Ecological Balance and Fundamental Right to Carry on Business

In *Deepak Unit Udyog v. State of Haryana*\(^8\) the Punjab and Haryana High Court observed that the enjoyment of fundamental rights is subject to reasonable limitations. In a developing society like ours, a balance has to be maintained with ecology and environment on the one hand, and industrial growth on the other, paramount being the service of the society and protection of the lives of the citizens. Only for the purpose of profit making, the private respondents cannot be permitted to adopt means and resort to methods that are irritable, irrational and uncontrolled resulting in health hazard to the citizen.

6.1.2 Regulation of Chemical Industries

The chemical industries are the main sources in the matter of polluting the environment.

In *Indian Council for Environment Legal Action v. Union of India*,\(^9\) the sludge discharged from manufacture of 'H' acid remained as lethal waste for a long time after the respondents, the unit of chemical industry, stopped production. It destroyed the whole village, spreading disease, death and disaster. The Supreme Court held that when the industry is run in blatant disregard of law to the detriment of life and liberty of the citizens living in the vicinity, it is self evident that the court shall intervene and protect the fundamental rights and liberty of the citizens.

The origin of national policy on hazards of industrial disasters relates to two major incidents of gas leakage, the Bhopal tragedy in 1984 and Oleum Gas Leakage case in 1985 at Delhi.

On 2/3 Dec, 1984 about 40 tonnes of highly toxic methyl isocyanate (MIC) escaped from Union Carbide's chemical plant in Bhopal into the atmosphere. About 3500 persons were killed and more than 2 lakhs injured. The Bhopal Gas Leak Disaster (Registration and Processing of Claims) Act, 1985 was

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\(^8\) *AIR 1996 P & H 176*

\(^9\) *AIR 1996 SC 1446.*
enacted which conferred exclusive rights on Indian Environment as parens patriae on behalf of the victims.\textsuperscript{10}

The nature of the Bhopal disaster and its aftermath threw a challenge to the Indian legal system.

While upholding the validity of Bhopal Gas Leak Disaster (Registration and Processing of Claims) Act, 1985, the Supreme Court in \textit{Charan Lal Sahu v. Union of India}\textsuperscript{11} emphasized the need for laying down certain norms and standards for the government to follow before granting permission or licences for the running of Industries dealing with materials which are of dangerous potentialities.\textsuperscript{12}

By evolving the principle of absolute liability in \textit{M.C. Mehta v. Union of India}\textsuperscript{13}, the Supreme Court of India, developed an indigenous jurisprudence free from influence of English Law. The court observed:

"An enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part."\textsuperscript{14}

\textsuperscript{10. Union Carbide Corporation v. Union of India, AIR 1990 SC 273.}
\textsuperscript{11. AIR 1990 SC 1480.}
\textsuperscript{12. Ibid., P. 1547.}
\textsuperscript{13. AIR 1987 SC 1086.}
\textsuperscript{14. Ibid., P. 1099.}
It indicates that the Supreme Court was clear that science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazards or risk altogether but simultaneously it was concerned about their liabilities also.

The Parliament has passed the National Environment Tribunal Act, 1995, to provide for strict liability for damages arising out of any accident occurring while handling hazardous substance and for establishing a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damage to persons, property and environment and for matters connected therewith and incidental thereto.¹⁵ This Act implemented the recommendations at the United Nations Conference on Environment and development held at Rio de Jenerio in June 1992 regarding enactment of national laws providing compensation for the victims of pollution and other environmental damages. Therefore, the Act provided for the protection of environment and payment of compensation for damage to persons, property and the environment while handling hazardous substances.

6.1.3 ‘Precautionary Principle’ and ‘Polluter Pays Principle’

The Supreme Court in Vellore Citizens Welfare Forum v. Union of India¹⁶ entertained a public interest litigation against the pollution being caused by enormous discharge of untreated effluents by the tanneries and other industries in the State of Tamil Nadu. Water pollution affected the agriculture and drinking water of the area. In view of the Constitutional and statutory provisions the Supreme Court said it has no hesitation in holding that ‘precautionary principle’ and ‘polluter pays principle’ are part of the environmental law of the country.

¹⁵ The National Environment Tribunal Act, 1995, Preamble.
¹⁶ AIR 1986 SC 2715.
The Supreme Court observed in this case that it is a pity that till date no authority has been constituted by the Central Government. The work which is required to be done by an authority in terms of section 3(3)\textsuperscript{17} read with other provisions of the Act is being done by the Supreme Court and other courts in the country. The Supreme Court emphasized that it is high time that the Central Government realized its responsibility and statutory duty to protect the degrading environment in the country.

The Supreme Court also imposed fine on the industries and directed that recovered amount shall be credited to ’Environment Protection Fund’ which would be utilized for paying compensation to the affected persons and also for restoring the damaged environment. The court said that pollution fine is liable to be recovered as arrears of land revenue.\textsuperscript{18}

The court directed that reopening of tanneries should only be upon strict compliance of installing pollution control devices within the specified period. In addition to the other directions, the Supreme Court for the purpose of monitoring the compliance of its directions, thought that Madras High Court would be in a better position to monitor the matter, therefore, Chief Justice of Madras High Court was requested to constitute a Special Bench, “Green Bench” to deal with the case and other environmental matters.\textsuperscript{19}

The apex court while applying the ‘polluter pays principle’ in \textit{India Council for Enviro-Legal Action v Union of India}\textsuperscript{20}, held that the rule demands that financial cost of prevention or remedying damage caused by pollution should lie with the undertaking that causes pollution.\textsuperscript{21}

\begin{itemize}
\item \textsuperscript{17} The Environment Protection Act 1986.
\item \textsuperscript{18} Vellore Citizens Welfare Forum v. Union of India, Air 1986 SC 2715, p. 2726.
\item \textsuperscript{19} Vellore Citizens Welfare Forum v. Union of India, Air 1986 SC 2715, p. 2727. Similar Green Benches are functioning in Calcutta and some other High Courts.
\item \textsuperscript{20} AIR 1996 SC 1446.
\item \textsuperscript{21} Ibid., p. 1466.
\end{itemize}
The principle of ‘polluter pays’ has become the rule of the land and is being applied by the courts not only to hazardous industries but anyone who pollutes the environment comes within its ambit.

The precautionary principle has been again affirmed and well explained by the Supreme Court in A.P. Pollution Control Board v. M. V. Nayudu\textsuperscript{22}. The apex court held that the ‘principle of precaution’ involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on the scientific uncertainty. Environment protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. The precautionary duties must not only be triggered by the suspicion of concrete danger but also by way of (justified) concern or risk potential. The principle suggests that where there is identifiable risk or serious irreversible harm, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment.\textsuperscript{23}

In Deepak Nitrite Ltd. v. State of Gujarat\textsuperscript{24}, the Supreme Court though upheld the "polluter to pay principle’ but said compensation to be awarded must have some broad correlation not only with the magnitude and capacity of enterprise but also with the harm caused by it.\textsuperscript{25}

6.1.4 Mass Education

In M.C. Mehta v. Union of India\textsuperscript{26}, the Supreme Court directed for issuing appropriate detections to cinema exhibition halls to exhibit slides

\textsuperscript{22} AIR 1999 SC 812
\textsuperscript{23} Ibid., p.821, Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751, where the Supreme Court once again applied the principle of precautionary principle and sustainable development.
\textsuperscript{24} (2004) 6 SCC 402.
\textsuperscript{25} Ibid., p. 407.
\textsuperscript{26} AIR 1997 SC 734.
containing information and messages on environment free of costs; directions for
spread of information relating to environment in national and regional
languages and for broadcast thereof on the All India Radio and exposure thereof
on the television in regular and short term programme with a view to educating
the people of India about their social obligation in the matter of upkeep of the
environment in proper shape and making them alive to their obligation not to
act as polluting agencies or facts; and to make environment as a compulsory
subject in schools and colleges in a graded system so that there would be a
general growth of awareness and issued certain directions to the government to
that effect27.

6.2 Judicial Activism and Public Interest Litigation

The term 'judicial activism' means a philosophy of judicial deci-
sion-making where by judges allow their personal views about public
policies, among other factors, to guide their decisions, usually with the
suggestion that adherents of this philosophy tend to find
constitutional violations and are willing to ignore precedent28. The
term 'Public Interest Litigation' (PIL) is specie of judicial activism.

In the early 1980s, Indian Judiciary underwent a radical trans-
formation. A new and radically different kind of cases altered the
litigation landscape: instead of being asked to resolve private disputes
Supreme Court judges under Article 32 and High Court judges under
Article 226 of the Constitution had been asked to deal with public
grievances over flagrant human right violations by the 'State' or to
vindicate the public policies embodied in the statutes or Constitutional
provisions. This new type of judicial discourse is collectively called
'Public Interest Litigation' (PIL). This type of litigation was initiated

27. Ibid.

and fostered by a few judges of Supreme Court. It is a new orientation of judicial discourse demonstrating a collaborative effort on the part of the petitioner, State or public authorities and the court to secure observance of constitutional or legal rights conferred upon the vulnerable or weaker sections of the society, workers or handicapped persons who could not approach Supreme Court due to poverty and ignorance and to reach social justice to them. The procedure is that of epistolary jurisdiction, where letters written by ordinary citizens to courts get converted into writ petitions. The method they employed to redress public grievance was to relax the traditional rule governing locus standi. In S.P. Gupta v. Union of India, justice Bhagwati (as he then was) observed:

"Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and, devise new strategies for the purpose of providing access to justice large masses of people who are denied their basic human rights and whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged Position are unable to approach the Court for relief."

29. The most notable contributions were made by Justice V.R. Krishna lyer and Justice P.N. Bhagwati.
30. AIR 1982 SC 149.
Bhagwati, J. further held:

“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 a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability 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 breach of any fundamental right of a person or determinate class of persons, in this Court under Art. 32; seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. This Court readily responds even to a letter addressed by such individual acting pro bonopublico...”

After having elaborately explained the concept of PIL the learned Judge held:

“Any member of the public having sufficient interest can maintain an action for judicial redress for public duty for violation of some provision of the constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realization of the constitutional objectives”

However the learned Judge sounded a note of caution to the Courts to be observed while entertaining public interest litigation in
the following terms:

"But we must be careful to see that the member of public, who approaches the Court in case of this kind, is acting bonafide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by the politicians and others to delay legitimate administrative action or to gain apolitical objective."

The other learned judges namely: Gupta, Tulzapurkar, Fazal Ali, Desai and Pathak also agreed to the above views expressed by Bhagwati, J. in the case. Only Venkataramiah, J. dissented from the above view.

In Fertilizer Corporation v. Union of India\textsuperscript{31}, Chandrachud, CJ speaking for himself and on behalf of Fazal Ali and Kaushal, JJ observed that the violation of a fundamental right is the sine qua non of the exercise of the right conferred by Article 32. Krishna Iyer, J speaking for himself and Bhagwati, J. (as he then was) in a separate judgment observed:

"Public interest litigation is part of the process of participate justice and 'standing' in civil litigation of that pattern must have liberal reception at the judicial doorsteps."

He further added:

"We have no doubt that in a competition between courts and streets as dispenser of justice, the rule of law must win the aggrieved person for the law court and wean him from the lawless street. In simple terms, locus standi must be liberalised to meet the challenges of the times. Ubi just ibi remedy must be enlarged to embrace all interests of public minded citizens or organizations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its true facets."

6.2.1 Environmental Protection, Fundamental Rights and Directive Principles of State Policy

The Stockholm declaration of United Nations on Human Environment, 1972 reads its principle No. 3 inter alia, thus:

"Man has the fundamental right to freedom, equality and adequate conditions of life. In an environment of equality that permits a life of dignity and well being and bears a solemn responsibility to protect and improve the environment for the present and future generations.”

The declaration therefore said that 'in the developing countries most of the environmental problems are caused by under developments. The declaration suggests safe actions with prudent care for ecological balance.”

Keeping in view the above Declaration, India brought in Article 48-A in Part IV of the Constitution by the Constitution (42nd Amendment) Act, 1976 which enjoins that “State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.” Article 47 imposes the duty on the state to improve public health as its prime duty. Article 51A(g) as introduced by 42nd Amendment Act of 1976, imposes “a fundamental duty” on every citizen of India “to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures”. The word 'environment' is of a broad spectrum which brings within its ambit, hygienic atmosphere and ecological balance. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including right to life 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. Keeping in view the spirit of these constitutional provisions, Indian parliament has enacted...

The Supreme Court expanded the contents of fundamental rights enshrined in Part III of the Constitution of India. In that process the boundaries of fundamental rights were extended to include environmental protection. The first indication of the right to a wholesome environment may be traced to the *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P*[^32] popularly known as Dehradun Quarrying Case. In July 1983, representatives of this Kendra wrote letter to the Supreme Court alleging that illegal limestone mining in Mussoorie-Dehradun region was devastating the fragile eco system and environment in this area. On July 14, 1983 the Supreme Court directed its registry to treat this letter as a writ petition under Article 32 with notice to the Government of UP and Collector of Dehradun.

The questions which arose in this case were of grave significance not only to the people residing in Mussoorie Hill range forming part of the Himalayas but also having implications on the welfare of the people as consumers in general living in the country. It brought into focus the conflict between development and conservation and emphasized the need for reconciling the two in the larger interest of the people, their health and habitable environment. The country needs pollutionless environment so as to enable its people to protect themselves from health hazards in one form or the other. By order of 11.8.1983 the Supreme Court appointed a Committee to enquire and report regarding the suitability or unsuitability of the mining operations in that area. The Committee reported that there is

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justification for the closure of the mining operation. The Supreme Court accepted the report of the Committee and observed:

"This would undoubtedly cause hardship to them but it is a price that has to be paid for protecting and safeguarding the right of people to live in a healthy environment with the minimal disturbances of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment"33

The Supreme Court, therefore, justified the closure of these operations in the Doon Valley and by its interim order, the mining operation carried out through blasting were stopped in those stone quarries which had adverse impact on safety and health of the people residing in that area. However, the Court ordered and directed the Government of India and State of UP to compensate the lessees by giving them priority in the grant of leases in other areas. Likewise, the workers thrown out of employment due to closure were also to be given employment in the afforestation and soil conservation programmes to be taken up in their areas.34 Thus, the Supreme Court tried to tilt a balance between the interest of mine owners and the workers and the people residing in Mussoorie Hill ranges. It also gave due importance to the issues relating to environment and ecological balance.

6.2.2 Preservation of natural life as a part of Article 21

In T. Damodar Rao v. S.O. Municipal Corporation, Hyderabad35 the High Court of Andhra Pradesh following the aforesaid rulings held

33. Ibid p. 656 (para 12)
34. Ibid (para 13)
35. AIR 1987 A.P. 171.
that the slow poisoning by the polluted atmosphere caused environmental pollution and spoliation should regarded as violation of the Article 21 of the Constitution. P.A.Choudhary,J., developed the view that enjoyment of life and its attainment and fulfilment guaranteed under Article 21 embraced the protection and preservation of natural life without which life could not be enjoyed and there was no reason why the practice of violent extinguishments of life alone should be regarded as violation of Article 21.

The High Court of Andhra Pradesh also noted that the Supreme Court has been issuing directions in environmental cases without referring to Article 21. It further observed that in Rural Litigation and Entitlement Kendra, Dehradun v. State of UP though the Supreme Court did not mention Article 21 while exercising its power under Article 32, the judgment in that case could not be understood without reference to Article 21. The judgment ordering the closure of some of the limestone quarries for upsetting ecological balance could be issued only on the ground of Article 21.

6.2.3 Pollution and Municipalities responsibility

In M.C. Mehta v. Union of India\textsuperscript{36}, is another major PIL case on environmental pollution. The Ganga Water Pollution case, as it is popularly known, has become a mammoth litigation involving more than 400 major and medium industries and about 100 municipalities in Uttar Pradesh, Bihar and West Bengal, which have been impleaded as respondents. From the point of view of constitutional law, this case is peculiar one. Here the petitioner M.C. Mehta, sought to enforce the fundamental right to a clean and hygienic environment as a part of article 21. The jurisdiction of the court under article 32 has been invoked to issue directions to all those who are responsible for the

pollution of the river Ganga affecting the lives of large number of people.

Reacting immediately to the contentions of the petitioners, E.S. Venkataramiah and K.N. Singh, JJ. issued notices to all industrialists, municipal corporations and town municipal councils having jurisdiction over the areas through which Ganga flows. They have been asked to appear before the court and explain why directions should not be issued asking them not to allow the trade effluents and sewage into the river without appropriately treating them before such discharge. The court first took up the case against 75 tanneries at Jajmau near Kanpur.

There was almost no dispute that the discharge of the trade effluents from these tanneries into the river had been causing considerable damage to the lives of the people who used the water and also to the aquatic life in the river. Although the petition was entertained under article 32 for enforcing the right to life of the people under article 21, there is not a single sentence in the judgment referring to article 21. Nor did the court discuss the crucial question whether the tanneries, all private industries, could be subjected to the discipline of fundamental rights. This question was particularly significant in the background of the Oleum Gas Leakage case where the five judge Bench had left the question open whether a private corporation or industry could come within the ambit of article 12.

The judges were shocked to know from the progress report of the Ganga Action Plan that the river water was not fit for drinking, fishing and bathing purposes. Since the statutory agencies were unable to prevent the pollution of Ganga, the court could under article 32 exercise its power to issue directions to the polluters causing public nuisance. The court, therefore, issued directions directly to the tanneries at Jajmau to stop the running of their tanneries and also not to let out effluents either directly or indirectly into the river without
subjecting the trade effluents to a pretreatment process by setting up primary treatment plants, to the plea advanced by the tanneries as to their financial inability to set up such plants, the court observed that just like an industry which could not pay minimum wages to its workers, would not be allowed to exist, a tannery which could not set up primary treatment plant would not be permitted to exist because of the immense adverse effect on the public at large by the discharge of trade effluents. The central government, the U.P. Pollution Control Board and the District Magistrate, Kanpur, were directed to enforce the order of the court. One can infer from the directions issued in this case that in environmental litigation it is not necessary for the court to identify the particular fundamental right likely to have been violated by the polluter. Nor is it necessary to see whether the polluter is a private person or an instrumentality or agency of the state. Article 32 now enables the court to issue directions to prevent public nuisance wherever and by whomsoever it is caused, if the statutory authorities who are charged with the duty to prevent such nuisance are not taking steps to rectify the grievance.

Ganga Water Pollution case also shows that the great expectations aroused by multicrore Ganga Action Plan launched few years ago have been belied. This case may, therefore, be viewed as constituting a major milestone in educating and reminding the executive about the urgent need to prevent environmental pollution. The value if any, of this case is, to activate and inject an awareness to free Ganga from pollution.  

6.2.4 Oleum Leakage Case

In December 1985, M.C. Mehta, filed a writ petition in the Supreme Court by way of public interest litigation raising some

seminal questions concerning the true scope of Articles 21 and 32 of the Constitution, the principles and norms for determining the liability of large enterprises engaged in manufacture and sale of hazardous products, the basis on which damages in case of such liability should be quantified and whether such large enterprises should be allowed to continue to function in thickly populated areas and if they are permitted so to function, what measures must be taken for the purpose of reducing to a minimum hazards to the workmen and to the community living in the neighbourhood. The Supreme Court admitted this writ petition under Article 32 as the questions involved therein were considered as "questions of greatest importance, particularly since, following upon the leakage of MIC gas from Union Carbide Plant in Bhopal, lawyers, judges, jurists have considerably exercised as to what controls, whether by way of relocation or by way of installation of adequate safety devices, need to be imposed on corporations employing hazardous technology and producing toxic or dangerous substances and if any liquid or gas escapes which is injurious to the workmen and the people living in the surrounding areas, on account of negligence or otherwise. What is the extent of liability of such corporations and what remedies can be devised for enforcing such liability with a view to securing payment of damages to the persons affected by such leakage of liquid or gas?"

In this context, the Supreme Court heard the detailed arguments on these questions. But there was one pressing question before the Bench which was to be decided immediately as to whether the Court should allow the caustic chlorine plant of Shriram Food and Fertilizers Industries to be restarted. The Court first of all proceeded to examine that question.

The Supreme Court considered the report of Expert Committee consisting of Shri Man Mohan Singh, Chief Manager, IPCL, Baroda, as Chairman and 3 other persons as members on the existence of safety
devices and pollution control mechanism appointed by the Delhi Administration and the Committee of Experts appointed by the Supreme Court on December 18, 1985 consisting of Dr. Nilay Choudhary as Chairman, Dr. Aghora Murthy and Mr. R.K. Garg as members to inspect the Caustic chlorine plant. These two major reports set out the recommendations to be complied with by the management of Shriram in order to minimise the hazard or risk which the caustic Chlorine plant poses to the workmen and the public. The court also considered one other report of the Expert Committee appointed by the Governor of Delhi on the leakage of Oleum gas on December 4, 1985. Weighing and balancing various considerations such as welfare of the people, possibility of managements' negligence and indifference, unemployment in the event of closure of the plants, and some hazards or risks inherent in the use of Science and Technology, the Supreme Court permitted the management of Shriram Food and Fertilizer Industries to restart the Caustic Chlorine Plant and imposed 11 conditions which must strictly be observed by the management of Shriram while operating the Caustic Chlorine Plant. In short, these conditions disclose that the management must deposit a sum of Rs. 30,000/- in the Supreme Court to meet the expenses of the Expert Committee, relating to travelling, boarding and lodging etc. One operator should be designated as personally responsible for each safety device or measure and the head of the Caustic Chlorine division should be made individually responsible for the efficient operation of such safety device or measure. If at any time during examination by the Expert Committee or inspection by the Inspectorate it is found that any safety device or measure is inoperative or is not properly functioning, the head of the caustic chlorine plant as well as the operator incharge of such safety device or measure shall be held personally responsible. Their duty shall not be merely to report non-functioning or mal-functioning of any safety device or measure to the
higher authority but to see that the operation of the entire plant is immediately shut down, the safety device is urgently replenished and the plant does not restart functioning until such replenishment is completed; the Chief Inspector of Factories or any Senior Inspector will inspect the plant once in a week by paying surprise visit and examine whether the recommendations of Man Mohan Committee and Nilay Choudhary Committee are being observed by the management; that the Central Government will also depute a Senior Inspector to visit the Caustic Chlorine Plant and Vanaspati plant at least once in a week without prior notice to the Management of the purpose of ascertaining whether the effluents discharged from the Vanaspati plant as also terminal outlets complies with the limiting standards laid down in consent order issued under the Water Act and the paniculate matters emitted by the Stacks of the boilers in the power plant complies with the standards laid down in the consent order issued under the Air Act and if there is any default in complying with the relevant standards in either case, such defect shall be brought to the notice of this Court and the Central Board will be entitled to take such action as it thinks fit, including revocation of the consent order. The management of Shriram shall obtain an undertaking from the Chairman and Managing Director of Delhi Cloth Mills Ltd., as also from the officer or officers who are in the actual management of the Caustic Chlorine plant that in case there is an escape of chlorine gas resulting in death or injury to the workmen or to the people living in the vicinity, they will be responsible for payment of compensation for such death or injury and such undertakings shall be filed in the court within one week from the date of order; and that there shall be a Committee of three representatives of Lokahit Congress Union and three representatives of Karmachari Ekta Union to look after safety arrangements in the Caustic Chlorine plant; that the effects of Chlorine gas on human body shall be displayed through a chart in each depart-
ment or section of the Caustic Chlorine plant as also at the gates of the premises for the information of workmen and the people and for the remedial measure to be taken in case they are affected by the leakage; that the workers should also be properly trained and instructed in regard to functioning of the specific plant and equipment in which he is working; Loud-speakers shall be installed all around the factory premises for giving timely warning and adequate instructions to the people residing in the vicinity in case of leakage of Chlorine Gas and the management should maintain proper vigilance in these matters with a view to ensure continuous compliance of recommendations of Expert Committee and welfare of the workmen and the people.\textsuperscript{39}

Thus, the Supreme Court’s pronouncement in this case is of Constitutional significance and throws much light on the functioning of the large enterprises manufacturing and processing hazardous and lethal chemicals and gases and other by-products which pose danger to the health and life of the workmen and people living in the neighbourhood of such industries. In \textit{M.C. Mehta III v. Union of India}\textsuperscript{40} the Supreme Court examined the rule in \textit{Ryland v. Fletcher}\textsuperscript{41}, which laid down a principle of liability if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. This rule was examined in the light of the facts of the Sriram’s case\textsuperscript{42} and the question as to what is the measure of liability of an enterprise which is engaged in a hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, person die or are injured.

\begin{flushleft}
\textsuperscript{39} \textit{Ibid.}, paras 22, 24.
\textsuperscript{40} (1987) 1 SCC 395 : AIR 1987 SC 1086.
\textsuperscript{41} (1868) LR 3 HL 330 : 19 LT 220.
\textsuperscript{42} \textit{M.C. Mehta v. Union of India}, AIR 1987 SC 965.
\end{flushleft}
Keeping in view the evolution of this rule, the Court held that this rule applies only to non-natural user of the land and it does not apply to things naturally on land or where the escape is due to an act of God and an act of stranger or the default of the person injured or where the thing escapes is present by the consent of the person injured or where there is a statutory authority. This rule was evolved in the Nineteenth Century at a time when all the development of Science and Technology had not taken place, cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and needs of the present day economy and social structure. In a modern society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to be carried on as a part of the development programme, the Court should not feel inhibited by this rule merely because the new law does not recognise the rule of strict and absolute liability in case of an enterprise engaged in hazardous and dangerous activity.

Bhagwati C.J., (as he then was), speaking for the Court observed:

"Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build up our own jurisprudence and we cannot countenance an '
argument that merely because the new law does not recognise the rule of strict and absolute liability in cases of hazardous or dangerous liability or the rule as laid down in Rylands v. Fletcher as is developed in England recognises certain limitations and responsibilities. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English Courts have not done. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England.”

Therefore, the Court evolved a new principle of liability and Bhagwati C.J. (as he then was) stated:

“We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the
enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher."

Thus, the above rule does not now make any distinction, so as to victimise whether they are the employees or not and whether they were within the premises or outside. Now all victims were eligible to claim under this rule. Further, the Court held that the measure of compensation in all cases must be co-related to the magnitude and the capacity of the enterprise because such compensation must have a deterrent effect. The Court further laid down that "the large and more prosperous the enterprise, the greater must be the amount of compensation payable for the harm caused on account of an accident in the carrying on of hazardous or inherently dangerous activity by
the enterprise." In short, this judgment is a radical departure from the Common Law 'no fault' principle where the liability depends upon the entitlements of the plaintiff at the law rather than their needs.

Thus, the Supreme Court evolved 'polluter pays principle' in this case for future such cases. In Vellore Citizens Welfare Forum v. Union of India43, the Supreme Court explained the 'precautionary principle' and 'polluter pays principle' as under:

"Some of the salient principles of 'Sustainable Development', as called-out from Brundtland Report and other international documents, are Inter Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, obligation to assist and co-operate, Eradication of Poverty and, Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle' and 'The Polluter Pays' principle are essential features of' Sustainable Development'. The 'Precautionary Principle' in the context of the municipal law 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 serious and 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 principle has been held to be a sound principle by this Court in Indian Council for Enviro Legal Action v. Union of India44. The Court observed, 'We are of the opinion that any principle

43. 1996 (7) SCC 375.
evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country'. The Court ruled that 'Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on'. Consequently the polluting industries are 'absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas'. The 'Polluter Pays' principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

*The precautionary principle and the polluter pays principle have been accepted as part of the law of the land."

It is thus settled by the Supreme Court that one who pollutes the environment must pay for the damage caused by his acts.

6.2.5 Bhopal Tragedy Case

In *Union Carbide Corporation v. Union of India*45, the Supreme Court considered the compensation claims on behalf of the victims of Bhopal Tragedy. Just after the judgment in M.C. Mehta’s case, the

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compensation claims of the victims of Bhopal Tragedy came before the Court. On behalf of the victims a suit was filed by the Central Government. The Bhopal District Court applied the principle laid in M.C. Mehta’s case and passed an order against Union Carbide Corporation for depositing Rs. 350 crore as an interim compensation. On appeal the High Court of Madhya Pradesh followed the principle laid down in M.C. Mehta’s case, but reduced the interim compensation to Rs. 250 crore. When the matter came before the Supreme Court, a final order of settlement comprising all claims, civil and criminal, arising out of the Bhopal disaster was stamped and qualified the amount at 470 million U.S. dollars.

The settlement was severely criticised by the jurists, lawyers, and public including the media persons and even the credibility of the judicial process was questioned. The Supreme Court has accepted the review petitions filed against the settlement as stamped by R.S. Pathak C.J. (as he then was) so that the sufferings and sorrows of the victims of Bhopal disaster be removed through compensation justice. The morality and sanctity of the settlement stamped on February 17, 1989 was in question. The National Front Government during their tenure took steps to support the claims of the victims of the Bhopal tragedy. The Supreme Court was seized with the problems created by the settlement and issued several directions including establishment of hospital for the victims. Recently the Supreme Court has issued directions that the 470 million dollars (now 1567 crores) should be distributed to the sufferers approximately 5.72 lakhs including 1500 dead.

46. The Central Government was authorized to file suits and claim on behalf of the victims of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.

47. (1989) 1 SCJ 610-613. The Court also quashed all proceedings, civil and criminal within or outside India of Indian citizens and private entities.

48. Times of India, dated 1st November, 2004
6.2.6 Town Planning and Ecological Balance

In *M. C. Mehta v. Union of India*\(^49\) and others the Supreme Court gave direction that the regularization of industrial activities cannot be done if it results in violation of the right to life enshrined in Article 21 of the Constitution. The question will have to be considered not only from the angle of those who have set up industrial units in violation of the master plan but also others who are lawful residents since regularization has effect on the entire area, particularly with respect to the infrastructure available. The question cannot be examined only from the angle of the industry or even those who are employed in the said industries. It is imperative for the State Government, the Delhi Development Authority as also the Government to address itself to the larger question of not only legalizing blatant illegalities but as to what Delhi is intended to be left for the children and future generations by permitting industrialization in residential areas. The facts demonstrate that the State Government and the Delhi Development Authority have been wholly remiss in all their functions, duties and obligations. In any case since as at present there is no regularization, the industrial activities in residential/non-conforming zones are wholly illegal and have to be stopped. The land cannot be permitted to be used contrary to the stipulated user except by amendment of the master plan after due observance of the provisions of the Act and the Rules. Inaction by the Government amounts to indirectly permitting unauthorized use which amounts to the amendment of the master plan without following due procedure. The proposal of in situ regularization has also been opposed by the National Region Boards which has pointed out that the very purpose of the Act would be defeated by such regularization. It would lead to further congestion of Delhi instead.

of decongestion. Detailed instructions were given in respect of closure and relocation of industrial units in the residential area.

The Supreme Court also made it clear that right to live includes right to have a living atmosphere congenial to human existence. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge its policy to maintain ecological balance and a hygienic environment. The hazard to health and environment of not only the persons residing in the illegal colonization area but of the entire town as well as the provisions and scheme of the Act concerned have to be taken into consideration.

6.2.7 Noise Pollution

In Noise Pollution (V), In Re v. Union of India, two matters arose before the Supreme Court relating to noise pollution vis-à-vis right to life enshrined in Article 21 of the Constitution. Allowing the writ petition and appeal, the Supreme Court held:

"The right to life enshrined in Article 21 is not a mere survival or existence. It guarantees a right of persons to life with human dignity and noise pollution beyond permissible limits is an inroad into that right. Any one who wishes to live in peace, comfort and quiet within his house has a right to prevent noise as a pollutant reaching him. None can claim a right to create noise even in his own premises which would travel beyond precincts and cause nuisance to neighbours or others. Noise is more than just a nuisance. It constitutes a real and present, danger to people's health. Day and night, at home, at work, at play noise can produce serious physical and psychological stress. No one is immune to this stress Noise is a type of atmospheric pollution. It is a shadowy public enemy who is growing menace has increased in the modern age of industrialization and technological advancement."

50. (2005) 5 SCC 733 per R.C. Lahoti C.J. (as he then was)
6.3 Discharge of Effluents

6.3.1 Discharge of effluents shall be at the prescribed standards

In *Sir Shadi Lal Enterprises vs. Chief Judicial Magistrate, Saharanpur*\(^5^1\), the High Court of Utter Pradesh held that a complete stoppage of the discharge of the effluents from the factory of the petitioner even into the lagoons shall take place forthwith till all the lagoons are provided with polythene layering. Even after this if and when the effluents are discharged, such effluents shall be got tested by the petitioner through the agency of the Board in order to determine the quality of the trade effluents. If the Board after such test finds them to be above the prescribed standard, the petitioner shall take necessary steps to bring them within the prescribed limits within a time not more than six months from the date of the report of the Board. The Court further directed that even after that time also if the effluents discharged are still above the prescribed standards, such discharge shall be stayed till the treatment plant is completed and the prescribed standard is obtained by the petitioner.

6.4 Consent Order cannot allow discharge of trade effluents

In *M/s. Narula Dyeing and Printing Works vs. Union of India*\(^5^2\), the Gujarat High Court held, inter alia, that a mere consent order issued by the State Pollution Board cannot allow the owner of the industry to discharge trade effluents into the stream. The owner was held incumbent to put up effluent treatment plant within the time prescribed in the consent order, failing which the consent order lapses.

6.5 State and the Board shall not permit any polluting industry within 10 km radius of reservoirs

In *A.P. Pollution Control Board II v. Prof. M.V. Nayudu (Retd.) and Others*\(^5^3\), the Supreme Court emphasised the need for scientific inputs before

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\(^{51}\) *1990 Cr. L. J. 522*

\(^{52}\) *AIR 1995 Guj. 185*

\(^{53}\) *2001) 2 SCC 62(70,72, 73, 78, 79, 85), (1999) 2 SCC 718.*
adjudicating complicated issues of pollution of environment. Such efforts were said to have yielded satisfactory results and having found that the concept of healthy environment is a part of fundamental right to life, achieved greater acceptance in various countries side by side with the right to development, the Hon’ble Supreme Court speaking through His lordship M. Jagannatha Rao, J., held, inter alia, as follows:

(1) “The State of Andhra Pradesh is therefore directed hereby to identify these 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 these two reservoirs. The State and the Board shall not permit any polluting industries within 10 km radius. A report shall be submitted to this Court by the State of Andhra Pradesh in this behalf within four months from today, in regard to the pollution or pollution potential of industries, if any, existing within 10 km of the lakes. After the report is received, the matter may be listed. Point 6 is decided accordingly.”

6.6 Scheme of Action containing steps for prevention of industrial pollution

In Indian Council for Envirolegal Action and others v. Union of India and others, the learned counsel for the State of Andhra Pradesh submitted that out of 15 villages where drinking water sources were affected by industrial pollution, only two villages have been provided with drinking water supply, by laying pipelines in March, 1998. Other eight villages would receive drinking water through pipelines to be laid and functioned by 20th May, 1998. In respect of the remaining five villages it was informed that tenders were invited. In the facts and circumstances of the case and while disposing of the interim application, the Hon’ble Supreme Court held, inter alia, as follows:

“The Central Pollution Control Board and the Andhra Pradesh State Pollution Control Board shall jointly prepare a Scheme of Action for controlling the industrial pollution and for disposal of industrial waste as also for

54. AIR 1999 SC 1502(1503)
reclaiming the polluted lands and the polluted water supply. The Scheme will contain immediate steps to be taken either by the State of Andhra Pradesh or by the industries concerned giving particulars thereof setting out the goal to be achieved every four months as also the steps to be taken on a long term basis for prevention of industrial pollution and the stages by which these long term measures have to be completed so that every four months both the Pollution Control Boards can give a report as to whether the measures prescribed have been carried out or not. Since both the State Pollution Control Board as well as the Central Pollution Control Board have now become fully familiar with the problems of the area, such proposals be furnished on or before 9th May, 1998 for further directions on 12th May, 1998."

6.7 Compensation to the victims of pollution

In *Rajiv Ranjan Singh alias Lallan Singh vs. State of Bihar and Others* the writ petition was filed in public interest bringing to the notice of the Patna High Court that M/s Shiv Shankar Chemical Industries Private Limited, situated at a distance of about 15 kms. from Bhagalpur Town and engaged in the manufacture and production of Ethyl Alcohol (rectified spirit) has been discharging beyond its premises untreated effluents, chemical wastes and sewage. This, in addition to the obnoxious fumes, and odours emanating from the distillery, was contaminating the water resources and polluting the environment thereby seriously affecting not only the crops and the cattle but also the health and well being of the people residing in the villages in its vicinity, in complete contravention of the statutory provisions of Water Act, Air Act and Environment Act and that this amounts to an infringement of the inhabitants' rights guaranteed under Articles 14, 21 read with Articles 47 and 48A of the Constitution of India. In the facts and circumstances of the case a Division Bench of the Patna High Court held, inter-alia, as follows:

(1) The provision of two tube wells for the villages and setting up of the lagoons with adequate retaining capacity is of social importance and the lagoon's with

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55. *AIR 1992 Pat. 86 (91,93)(DB)*
their designs lined of and retention capacity must be approved in writing by the Board before the manufacturing process is restarted. The company must, further instal and make operational a modern effluent treatment plant within 9 months from the date of the start of the manufacturing process in its distillery.

(2) This decision is found to be in line with the Supreme Court decision in the case of M. C. Mehta vs. Union of India reported in AIR 1988 SC 1037.

(3) In case it comes to light that any person has contacted any ailment the cause of which can be directly related to the effluent discharge of the distillery, the company shall have to bear all expenses of his treatment and the question of awarding suitable compensation to the victim may also be considered.”

In Dalmia Industries Limited vs. Rajasthan Board for Prevention and Control of Pollution, 1995 (1) WLN (Raj.) 377 the Rajasthan High Court held that the Board is empowered to take strict action where an industry fails to fulfil the requirements of prescribed standard.

### 6.8 Discharge of ash by boiler amounts to pollution

In Dr. Satish Chandra Sukhla vs. State of Uttar Pradesh and Others56, a letter from the Principal of Acharya Narendra Dev University, Babnan District, Gonda, (U.P.) was treated as application under Article 32 of the Constitution. The allegation was about the causing of pollution in the locality by respondent No.3, the sugar factory, by discharging polluted effluents as also the ash component from the boiler. The respondent No.3 agreed that effluent treatment instrument shall be fixed so as to meet the requirement before the factory is commissioned again some time in October, 1991. Considering this submission, a 3-Member Bench of the Supreme Court hoped and expected that the mischief caused by the discharge of the effluent would abate by October, 1991. With regard to the allegation of ash component the contention of the respondent No.3 was that there were hardly any people living around the factory when it was set up in 1932 and that the device available then never took into account problem of atmospheric pollution. However, the respondent assured the Court that steps have already been taken to replace the boiler system

having control of the ash component going out from the factory area to the atmosphere and it is expected to be fitted by June, 1992 at a cost of about Rs. 4 crores. Therefore, the Supreme Court directed the Pollution Control Board of Uttar Pradesh to ensure that before the manufacturing process was commissioned, effluent treatment was made to the fullest extent and before the same process was restarted, discharge of the ash component was appropriately arrested so that atmospheric pollution is not continued. The Board was also further directed to file affidavits before the Supreme Court first in September, 1991 and again in September, 1992 indicating compliance of its directions.

6.9 Construction of oven and chimney causes nuisance

In Gobind Singh v. Shanti Sarup57, the respondent herein filed an application under Section 133 of the Cr.P.C. before the Sub-Divisional Magistrate complaining that the appellant herein constructed an oven and a chimney which constitutes a nuisance. In the facts and circumstances of the case and while dismissing the appeal, a learned 3-Member Bench of the Supreme Court held, inter alia, as follows:

"The learned Magistrate has however gone beyond the scope of the conditional order which he had passed on Dec. 16, 1969, by which he required the appellant “to demolish the said oven and the chimney” within a period of 10 days from the issue of the order. The final order passed by the learned Magistrate is to the effect that the appellant shall cease to carry on the trade of a baker at the particular site and shall not lit the oven again. Preventing the appellant from using the oven is certainly within the terms of the conditional order but not so the order requiring him to desist from carrying on the trade of a baker at the site. While, therefore, upholding the order of the learned Magistrate and the view of the High Court, we consider it necessary to clarify that the proper order to pass would be to require the appellant to demolish the oven and the chimney constructed by him within a period of one month from today. It is needless to add that the appellant shall not in the meanwhile use the oven and the chimney for any purpose whatsoever."

57. AIR 1979 SC 143(145)
6.10 Environmental Courts and Judiciary

Many a time in the past the apex court emphasized the need for such courts.\textsuperscript{58} The attempt to realize this ambition by bringing a bill was frustrated by the lack of political will. \textit{Andhra Pradesh Pollution Control Board-II Vs M.V. Naydu} made another impassioned plea. The court referred to the other systems obtaining in Australia and New Zealand and opinion of environmental jurists. It suggested that the law commission of India should consider this particular aspect of environmental law in addition to judicial members. Will the law commission pay heed to this well thought out proposal?

6.10.1 Environmental Courts in other Countries

Australia and New Zealand have taken the lead in establishing Environmental Courts that are manned by Judges and Commissioners. The Commissioners are generally persons having expert knowledge in environmental matters.

\textbf{Australia: (New South Wales)}

In Australia in the State of New South Wales, the land and Environment Court was established by legislation in 1980 under the land and Environment Court Act, 1979. At the same time, the Environment Planning and Assessment Act, 1979 was also enacted. It is a Superior Court of record and is composed of Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review, and enforcement functions in relation to environmental and planning law.

The New South Wales lands and Environment Court Act, 1979 of New South Wales states that the Court shall consist of the Chief Judge and such other judges as may be appointed by the Governor,\textsuperscript{59} and of commissioners who shall


\textsuperscript{59} Section 7 of the New South Wales Land and Environment Court Act, 1979.
be appointed by the Governor\textsuperscript{60} and the qualifications prescribed for them are as follows:-

a) Special knowledge of and experiences in the administration of local government or town planning;

b) Suitable qualification and experience in town or country planning or environmental planning;

c) Special knowledge of and experience in environmental science or matters relating to protection of the environment and environmental assessment;

d) Special knowledge of and experience in the law and practice of land valuation;

e) Suitable qualifications and experience in architecture, engineering, surveying or building construction;

f) Special knowledge of and experience in the management of natural resources or the administration and management of crown lands, lands acquired under the closer settlement Acts and other lands of the crown; or

g) Suitable knowledge of matters concerning land rights for Aborigines and qualifications and experience suitable for the determination of disputes involving Aborigines; or

h) Special knowledge of and experience in urban design or heritage.

Section 12 of the said Act further states as follows

"In appointing commissioners, the Minister should ensure, as far as practicable, that the court is comprised of persons who hold qualifications across the range of areas specified in this subsection".

Certain provisions of the Act\textsuperscript{61} deal with orders of conditional validity for certain development consents. It permits invalidation of consents to development for not taking steps or complying with conditions of the consent granted by the Minister under the Environmental planning and Assessment Act, 1979.

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\textsuperscript{60} Section 12, Ibid.

\textsuperscript{61} Section 25 B to 25 D of Division 3 of part 3, Ibid.
The Act states that the proceeding under the Act shall be conducted with as little formality and technicality as possible and as much expedition. The court is not bound to follow rules of evidence.

New Zealand

The New Zealand Environment Court was established under the Resource Management (Amendment) Act, 1996 by amending the 1991 Act and it replaced the former Planning Tribunal. Prior to the introduction of the Resource Management Act, 1991 (RMA) the statute that applied was the New Zealand’s Town and Country Planning Act, 1977 which was based on the British Model.

The Environment Court in New Zealand under the Amendment Act of 1996 is an independent specialist court consisting of Environment Judges (who are at the level of the District Judge) and the Environment Commissioners (technical experts). In appointing the Judges and the Commissioners of the Court the Governor-General is to have regard to the need to ensure a mix of knowledge and experience-including commercial and economic affairs; local government, community affairs, planning and resource management; heritage protection; environmental science; architecture, engineering; minerals; and alternative dispute resolution processes.

The Environment Court encourages mediation and arbitration and a high proportion of cases are resolved by such agreement, usually presided by an Environment Commissioner alone. The New Zealand Environment Court usually consists of one Environmental Judge and two commissioners.

The New Zealand Environment Court is not bound by rules of evidence and it is free to establish its own rules of procedure. Consequently the proceedings are often less formal than those in other courts, lawyers do normally represent the parties but anyone may appear in person and the court encourages individuals and groups to represent themselves.

The New Zealand Environment Court also hears references on regional and district statements and plans (development plan equivalents) and it can make declaration i.e. interpret the law, and it can enforce the RMA through civil
or criminal proceedings. Local authorities are obliged to make necessary amendments in the plans to give effect to the Count’s decisions. The Court’s duties include avoiding, remedying or mitigating adverse effect on the environment and a general duty to promote sustainable management, in accordance with the RMA. Another advantage is that the court hears cases relating to enforcement and views breaches of environmental legislation seriously. It can impose and does impose significant fines. It can also hear enforcement cases referred to it by third parties - enforcement is not at the discretion of the local authorities, as it is in the UK.

The Bill of the New Zealand Amended Act of 1996 was aimed to address several components of the law one of which relates to heritage and archeology which recognize the protection of historic heritage as a matter of national importance. The Bill introduces a new definition of environment that focuses more closely on the ‘biophysical environment’

Environment Commissioners and Deputy Environment Commissioners are contemplated by the Act. Section 253 of the Act refers to their eligibility. It states that the Environment Commissioners must have knowledge and experience in -

a) Economics, commercial and business affairs, local government, and community affairs;

b) Planning resources management and heritage protection;

c) Environmental Sciences, including the Physical and Social Sciences;

d) Architecture engineering, surveying, minerals technology, and building construction;

e) Alternate dispute resolution processes;

The Act has defined the powers of the court and proceedings. It states that in proceedings before the court under the Act, the Minister, any local authority, any person having any interest in the proceedings greater than the public generally any person representing some relevant aspect of public interest and any party to the proceedings, may appear and may call evidence or any matter that should be taken into account in determining the proceedings. Other
must give 10 days' notice to the court, if they wish to appear; Section 275 refers to appearance in person or representative, and section 276 with evidence. It states that the court may receive any evidence which it considers appropriate or it may call for any evidence which it considers will assist in the making of a decision or a recommendation and call any person before it for that purpose.

**United Kingdom**

U.K. has not yet established Environmental Tribunals for environmental issues. But the country is in the process of establishing such courts soon.

The Royal Commission observed that establishing an Environmental Tribunal would be a significant contribution to a more coherent and effective system of environmental regulations.

The Magistrate Courts, the Crown Courts (Appellate Courts), the courts of Criminal Appeals; the country courts and the High Court were and are dealing with the planning and environmental cases.

The Royal Commission referred to the 1990 E.G. Directive on the freedom of access to information on environment as implemented in U.K. by the Environment Information Regulations 1992 and the 1998 convention on Access to Information, Public Participation in Decision Making and Access to Justice on Environment Matters and to several aspects as to locus standi of individual and environmental organizations in respect of planning and development as well as environmental matters.

**6.10.2 Environmental Courts or Appellate Environmental Bodies in India as at Present**

Apart from the Superior Courts, (The Supreme Court and the High Courts) who are exercising the wide range of powers on a variety of environmental issues under Article 32 and Article 226 respectively, the Subordinate courts exercise powers in regard to public and private nuisance\textsuperscript{62}.

\textsuperscript{62} Section 9 and Section 91 of the Code of Civil Procedure, 1908.
Criminal courts exercise powers under various sections of the Indian penal code dealing with offences relating to environment\(^{63}\). But the sorry state of affairs is that the subordinate courts are already over burdened with huge pending cases and therefore, environmental cases are not normally given any priority in the matter of disposal. Of course, if the issue comes before the High Court or the Supreme Court under writ jurisdiction whether the matter is one brought by the affected party or parties or in a public interest litigation, these courts take up these matters faster but the cases are not taken up day by day as may be done by an Environmental court dealing exclusively with such cases.

It is to be noted that none of the above-mentioned courts are courts having exclusive jurisdiction as regards environmental issues and the result is that there is delay in their disposal as compared to the time within which any Special Environmental court dealing only with issues relating to environment could have taken. Further, the existing courts today lack independent expert advice on environmental matters by a statutory panel attached to the court and depend mostly on the expert evidence that may, be adduced by the parties. The various Rules made under Section 3 of the Environment (protection) Act 1986 have provided for establishing of authorities and there are authorities or in some cases appellate authorities constituted but there is no appeal to a judicial body. Nor do the appellate authorities, wherever they are constituted, have any expert assistant. They are all bureaucrats. Only in Andhra Pradesh the appeal under section 28 of the Water Act, 1974 read with AP (Water P and P) Rules 1977 lies to a High Court Judge\(^{64}\). These except in Andhra Pradesh, there is no appeal to a body that consist of a Judicial Member. There are also no experts to assist the appellate authority.

Therefore, it is noticeable that several of the Special Statutes e.g. Environment (Protection) Act, 1986; Water (P & C.P.) Act, 1974, Air (P & C.P.)

\(^{63}\) Pulling down or repairing buildings (Section 291 I.P.C.): endangering life or personal safety of others (Sections 336 to 338 of I.P.C.); Section 133, Cr. P.C.

\(^{64}\) A.P. Pollution Control Board Vs Prof. M.V. Nayudu, 1999 (2) SCC 718 (735)
Act, 1981, delegate power to the State Governments/Union Governments to designate appellate authorities. Hence, the appeal lies generally to various officers of government or Departments of Government. Except in one or two cases, the appeals do not lie to a judicial body comprising a Judicial Officer. In no case does the appellate authority have the assistance of experts in the field of environment.

Considering the existing position in India and referring to the establishment of environmental courts abroad, the law commission of India is of the opinion that the present system is not satisfactory so far as disposal of these appeals are concerned. In the view of the commission, such appeals must lie to an appellate court having special jurisdiction and must comprise of persons who have or had judicial qualifications or have considerable experience as lawyers. They must be assisted by experts in environmental science. It is now well recognized in several countries that the appeal must lie to court manned by persons with judicial knowledge and experience assisted by experts in various aspects of environmental science.

6.10.3 Two other statutory environmental tribunals and defects therein

(1) National Environmental Tribunal Act, 1995 was enacted by the parliament with one of the views to establish Tribunal for effective and expeditious disposal for cases arising from accident occurring from hazardous occupation and for giving relief and compensation for damages to person, property and environment and for matters concerned therewith or incidental thereto. The Act provides for the composition of the Tribunal and clearly states the requirement of the qualification, knowledge of or experience in legal, administrative, scientific or technical aspects of the problems relating to environment. But since the Act itself has not been, notified, the Tribunal has not been constituted so far. Such an important environmental Tribunal envisaged by parliament has unfortunately not come into being.

65. Section 9(1) of the Act, 1995.
(2) The National Environmental Appellate Authority Act, 1997 was also intended to provide for the establishment of a National Environmental Appellate Authority. The Appellate Authority did not have much work in view of narrow scope of its jurisdiction. It dealt with very few cases. After the term of the first chairman was over, no appointment has been made. Thus these two National Environmental Tribunals are today unfortunately non functional. One had only jurisdiction to award compensation and never actually came into existence. The other came into existence but after the term of the first chairman ended, none has been appointed.

It is in the background of this experience with the laws made by parliament with regard to Environmental Tribunals that the law Commission of India proposes to make appropriate proposals for constitution of environmental courts that can simultaneously exercise appellate power as a civil court, and original jurisdiction as exercised by civil courts.

6.10.4 Competence of the Parliament in India to make a Law on the subject of Environmental Courts;

Article 252 of the constitution empowers the parliament to legislate for two or more States by consent and such legislation made by the Parliament may be adopted by any other State. Article 253 empowers the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Entry-13 of List-I of Schedule-VII enables parliament to make laws under this entry even though the subjects may fall within the domain of the State legislatures. Article 253 gives overriding power to parliament in this behalf. In S. Jagannath Vs Union of India66 the Supreme Court observed that Article 253 is in conformity with the object declared by Article 51(C) (fostering respect for international law and treaty obligations). Thus an enactment made under entry 13, List-I,

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66. 1997 (2) SCC 87.
Schedule-VII read with Article 253 to implement an international agreement would override and prevail over any inconsistent State enactment.

The National Environmental Tribunal Act, 1995 was passed by the Indian Parliament to give effect to commitments to the United Nations Conference on Environment and Development held at Rio de Janeiro in June 1992. The National Environment Appellate Authority Act, 1997 was aimed at establishing a National Environment Appellate Authority. Thus there is no difficulty to constitute the Environment Courts with appellate powers by an enactment passed by the parliament, by amending or repealing provisions in those Acts namely the Air (P. & C.P.) Act, 1981; the E.P. Act, 1986; the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997. This power of the Parliament is an independent power and is not controlled by Article 252.

The Tiwari committee appointed by Government for recommending legislative measures and administrative machinery for ensuring Environment Protection recommended that a new entry as 'environment protection' be introduced in List-III to enable the centre as well as State Governments to legislate on environmental subjects. This has not been done so far.

Therefore, the constitution of Separate Environment courts by a Statute of Parliament under Article 253 could be justified because this would be an act of implementation of any decision taken at an International Conference. The fact that the National Environmental Tribunal Act, 1995 and the National Environmental Appellate Authority Act, 1997 were passed by the Parliament for the purpose of implementing the decisions at the Rio Conference of 1992 and Stockholm Conference of 1972. And it shows that the proposed Environmental Courts Act can also be similarly passed by Parliament because all these Acts are intended to provide speedy adjudicatory bodies in respect of disputes arising in environmental matters.
Principle-10 of the Rio declaration on Environment and Development, 1992 refers to effective access to judicial and administrative proceedings including redress and remedy.

The proposed Environmental Courts will also be referable to Article 247 read with Entry-13 of List-I.

Article 247 reads as follows

Power of parliament to provide for the establishment of certain additional courts-Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by parliament or of any existing laws with respect to a matter enumerated in the Union List. Text of Article 247 is taken from the Canadian Constitution. The Calcutta High Court dealt with this Article elaborately in Indu Bhusan De Vs State, but the word 'Additional Courts' have not come for interpretation. The law Commission of Indian in its 186 Report, expressed its view that the wards 'Additional Courts' must be construed widely and apply also to special courts like the proposed Environmental Courts.

6.10.5 Certain Fundamental Principles to be Followed by Environmental Courts

The Law Commission of India in its 186th Report has suggested that the proposed Environmental Court must follow the following fundamental Principles evolved through Judicial Decisions from time to time :-

1) The Polluter Pays Principle;
2) Absolute Liability Principles;
3) Precautionary Principle;
4) The Principle of Prevention;
5) The Principle of New Burden of Proof;
6) Sustainable Development Principle;
7) The Principle of Inter Generational Equity; and
8) The Public Trust Doctrine.
These doctrines are explained in brief as follows:

The Polluter Pays Principle:

The polluter pays principle was first adopted at international level in 1972 OECD Council Recommendation on Guiding Principles concerning the international Aspects of Environmental Policies. In international law, the principle is incorporated in 1980 in Athen Protocol, the Helsinki Convention and a host of other treaties and conventions. The principle was first stated in the ' Brundtland Report in 1987. This principle was adverted to in Indian Council for Enviro-legal Action Vs Union of India.\(^{67}\)

"In the context of Indian Condition the principle means to state that when 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.

\[\text{In Vellore Citizen's Welfare Forum Vs Union of India}^{68}. \text{ Kuldip Singh, J, Stated:}\]

The polluter pays principle as interpreted by the court means that the absolute liability for harm to the environment extends not only to compensate the victims of the pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is the part of the process of Sustainable Development and as such the polluter is liable to pay the cost to the individual suffers as well as the cost of reversing the damaged ecology.

The principle is laid down in section 3 of the National Environment Tribunal Act, 1995.

\[\text{67. 1996 (3) SCC 212.}\]
\[\text{68. 1996 (5) SCC 647 (659)}\]
Absolute Liability Principle

The principle is called no fault principle that means fault need not be established. The European Commission in its white paper on Environmental Liability stressed the liability independent of fault must be favoured for two reasons:

First, it is very difficult for plaintiff to establish fault in environmental liability cases; and

Secondly, it is the person who undertakes an inherently hazardous activity, rather than the victim or society in general who should bear the risk of any damage that might ensue.

Our court or statutes have confined such absolute liability only to cases where injury to person or property is occasioned by use of 'hazardous substances'.

In Oleum Gas Leak Case, M.C. Mehta Vs Union of India69 the Supreme Court laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and to those residing in the surrounding areas, owes an absolute and ion-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 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 negligence on its part. The principle laid down in Ryland Vs Fletcher was modified and the absolute liability principle was evolved by the Indian Judiciary. As per the principle of Absolute liability it is no longer permissible in the case of injury by use of hazardous substance, to prove merely that the injury was not foreseeable or that there was no unnatural use of the land or premises by the factory, as was the position under the law laid down in Ryland Vs Fletcher. The principle of absolute

69. AIR 1987 SC 1086
liability was reiterated in Indian Council for Enviro-legal Action Vs Union of India, and other cases by the Supreme Court of India.

**Precautionary Principle**

The precautionary principle had its origin in the mid-1980s from the German Vorsorgeprinzip. The decisions adopted by the states within the North Sea Ministerial Conference mark the first use of this principle in international law. It soon came to be included as a general principle of environmental policy in the U.N. Economic Commission of Europe in 1990 (UNECE) in Bergen. It then came to be accorded universal recognition in principle 15 at Rio in the 1992 UN Conference on Environment and Development which resulted in the Declaration on Environment and Development.

**Principle 15 of Rio Conference of 1992 reads as follows:**

"In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing cost effective measures to prevent environmental degradation."

National legislations in EC Member States (Germany, France, Belgium, and Sweden) have adopted it. It is applied in U.K. because of Article 174 (2) of EC Treaty. It is applied also by US Courts and in Australia.

The Supreme Court of India in the case of Vellore Citizen's Welfare Forum Vs Union of India, referred to the precautionary principle and declared it to be part of the customary law in other country. In this case Kuldip Singh,J, Stated:

"In view of the above mentioned constitutional and statutory provisions, we have no hesitation in holding that the precautionary principle and the
polluter pays principle are part of the environmental law of the country.” To ensure that great caution is taken in environmental management; implementation of the principle through judicial and legislative means is necessary.

The Principle of Prevention

The Principle of prevention takes care of reckless polluters who would continue polluting the environment in as much as paying for pollution is a small fraction of the benefits they earn from their harmful acts or omissions. The concept of Sustainable Development draws support from the Prevention Principle. Environment Impact Assessment is the crucial procedure that seeks to ward off prevention.

The Principle of New Burden of Proof

The UN General Assembly Resolution of 1982 on World Charter of Nature established this principle. It Stated:

“Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature.”

In the Vellore Case, Kuldip Singh, J, observed as follows:

“The onus of proof is on the actor or the developers/industrialist to show that his action is environmentally benign.”

In A.P. Pollution Control Board Case, it was explained that the precautionary principle has led to the new ‘burden of proof principle. In environmental cases where proof of absence of injurious effect of the action is in question, the burden lies on those who want to change the status quo. This is often termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the change could be compelled to shoulder the evidentiary burden, a procedure that is not fair. Therefore, it is necessary that
the party attempting to preserve the status quo by maintaining a less Polluted State should not carry the burden and the party who wants to alter it must bear this burden.

**The Principle of Inter Generational Equality**

The principles 1 and 2 of the 1972 Stockholm Declaration and the principle 3 of the Rio Declaration 1992 refer to this concept. The UN General Assembly Resolution 377 of 1980 also refers to the need for maintaining the balance between development and conservation of nature in the interest of present and future generations. The Philippines Supreme Court entertained a case by a group of citizen representing the future generations for preservation of the ecology. The Constitution of Philippines of 1987 confers in Article 11, Section 16 a fundamental right to a balanced and healthful ecology and mandates the state to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. The President of Philippines issued an executive order in 1987 in that behalf which specifically referred to the right so conferred not only for the present generation but for future generation as well.

In the above stated case, a group of Philippines minors named OP ASA, joined by their respective parents representing their own generation as well as generation yet unborn urged the Supreme Court to enforce their and their unborn successor's constitutional right to a balanced and healthful ecology, guaranteed under Article 11, Section 16.

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70. *Minors Opasa Vs Secretary of the Department of Environment and Natural Resources (DENR), (1994) 33 ILM173.*
The Court said

"The minor's assertion of their right to sound environment constitutes at the same time, the performance of their obligation to ensure the protection of the right for generations to come. The present generation, the court opined is a trustee and guardian of the environment for succeeding generations or else, the future generations would inherit nothing but parched earth."

The Public Trust Doctrine and Sustainable Development principle had already been discussed. Hence these and other principles must be required to be applied by the Environment Courts and provision must be made there for in the Statute.

6.10.6 Proposal to Constitute Environmental Courts

Pursuant to the observation of the Supreme Court of India in four judgments\textsuperscript{71} the Law Commission of India has designed an idea of a multifaceted Environmental Court with judicial and technical/scientific inputs as formulated by Lord Woolf in England recently and of an Environmental Court legislation as they exist in Australia, New Zealand and other countries. Having regard to the complex issues of fact of science and technology which arise in environmental litigation, it is now recognized in several countries that the courts must not only consist of Judicial Members but must also have a Statutory Panel of members comprising Technical or Scientific experts. The Commission in its 186\textsuperscript{th} Report on 'Proposal to constitute Environmental Courts' has recommended that these courts must be established to reduce the pressure and burden on the High Courts and the Supreme Courts. These Courts will be Courts of fact and law, exercising all powers of a civil court in its original jurisdiction. They will also have appellate judicial powers against orders passed

\textsuperscript{71} M.C. Mehta Vs U.O.I, 1986 (2) SCC176; Indian Council for Environmental Legal Action Vs U.O.I, 1996 (3) SCC 212; A.P. Pollution Control Board Vs M.V. Nayudu, 1999(2) SCC 718 and A.P. Pollution Control Board Vs M.V. Nayudu II, 2001 (2) SCC 62.
by concerned authorities under different environment related Acts. Such a proposal of Environmental Court legislation can be made under Article 253 of the constitution of India, read with Entry 13A of list I of schedule VII to give effect to decisions taken in Stockholm Conference of 1972 and Rio Conference of 1992 and the proposed Environment Courts at the State Level will, in the Commission's View, be accessible to citizens in each State.

In *Indian Council for Enviro-Legnl Action Vs Union of India* the Supreme Court observed that Environmental Courts having Civil and Criminal Jurisdiction must be established to deal with the environmental issues in a speedy manner. In *M.C. Mehta Vs U.O.I.* the Supreme Court said that wherein environment cases involve assessment of scientific data, it was desirable to set up environment courts on a regional basis with a professional judge and two experts keeping in view the expertise required for such adjudication. As regard to the constitution of appellate authorities the commission pointed out that except in one state, in other states they were manned only by bureaucrats. These appellate authorities were not having either judicial or environmental backup on the Bench. The Supreme Court opined that the law commission could examine the disparities in the constitution of these quasi-judicial bodies and suggested a new scheme so that there could be uniformity in the structure of the quasi-judicial bodies which supervise the orders passed by administrative on public authorities, including the orders of the Government. The Supreme Court, in *M.C. Mehta v U.O.I. 1986 (2) SCC 176 (202)*, said that it was desirable to set up environment courts on regional basis with a professional judge and two experts keeping in view the expertise required for such adjudication.

The National Environmental Appellate Authority constituted under the National Environmental Appellate Authority Act, 1997; for the limited purpose of providing a forum to review the administrative decisions on Environmental Impact Assessment, had very little work. Since the year 2000, no Judicial

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72. 1996(3) SCC 212
73. 1986(2) SCC 176 (202)
members had been appointed. So far as the National Environmental Tribunal Act 1995 is concerned the legislation has yet to be notified despite the expiry of eight years. Since it was enacted by the parliament the Tribunals under the Act is yet to be constituted. Thus, these two Tribunal are non functional and remain only on paper. So an Environmental Court at the level of each State is proposed so as to be accessible to litigants in each State. Access to justice, particularly in matters ating to environment is an essential facet of Article 21 of the Constitution.

In a very significant manner, the Supreme Court of India observed in J Turan Vs Union of India,74 in regard to the importance of environmental issues by quoting the opinion of a Great American Judge as follows:

“A Great American Judge emphasizing the imperative issue of environment said that he placed Government above big business, individual liberty above government and environment above all”.

The higher judiciary has contributed a lot in the cause of environment protection by bringing before the court the matters of great global concern and at the same time the judiciary has responded fairly well to the constitutional obligation and took upon itself a great responsibility by not merely adjudicating on the matter before it but also by giving detailed and time bound directions to give result to its orders. The approach of the courts is to prevent the ruthless exploitation of the environment and provide for relief to the aggrieved persons in the event of their suffering and also a stress on the remedial measures for improvement of the environment. The judiciary in India has lived up to the needs and time and have made significant contribution in evolving new principles and remedies yet there is a stress for administrative enforcement of law. Under the ordinary law the remedy in the event of damage is delayed to a

74. AIR 1992 SC 514
quite extent, therefore, there has been judicial suggestions for providing a different forum for expeditious relief in the event of industrial disaster and setting up of environmental courts as the issues relating to the environment are essentially to be based on manufactures such as scientific material, highly technical data, socio-economic facts, health hazards aspects and ecological mores of the region.

Following are the main conclusions:

(i) We can safely conclude that the role of the Indian Supreme Court in the aforesaid environment cases has been conducive to the cause of a clean and safe environment in India. It has played an important role.

(ii) The greatest achievement of the Supreme Court is that the right to life under Article 21 has been given extended meaning and content and the right to life has been construed to include the right to a clean and safe environment. Thus the right to a clean and safe environment is now implicit in Article 21.

(iii) In M.C. Mehta's case, the Supreme Court found that Sri-ram Food and Fertilizers was carrying on an industry which was ultimately intended to be carried out by Government itself and was carrying its activity under the state aid, control and regulation of the Government and was also subject to various laws controlling environmental protection. Shriram was engaged in an activity which had the potential to invade the fundamental rights to life of a large sections of the people. In this context, Bhagwati C.J. (as he then was) pointed out that "This Court has throughout the last few years', expanded the horizon of Article 12 primarily "to inject respect for human rights and social conscience in our corporate structure." The purpose of expansion has not been to destroy the raison d'etre of creating corporations but to advance human right jurisprudence prima facie we are not inclined to accept the apprehensions of learned Counsel for Sriram as well founded. It is through creative interpretation and bold innovations that human right jurisprudence has been developed in our
country to a remarkable extent and this forward march of human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by Status quoists. ..” In short, the private company — Sriram Company has been afforded the status of ‘state’ within the ambit of Article 12 by the Supreme Court. Thus, we can perhaps characterise this part of opinion as an exercise of juristic activism. Bhagwati, C.J., (as he then was) who developed a sociological notion of state action and introduced and elaborated new concepts for future creative uses.75

(iv) The Supreme Court expanded the meaning of Article 32 to cover the cases of environmental degradation and ecological imbalances in the country. In M. C. Mehta’s case, the Court also repelled all the apprehension expressed by Pathak J (as he then was) and Sen, J., in Badhua Mukti Morcha v. Union of India76, that in all cases of PIL, all communications and letters must be addressed to the entire Court, that is to say, the Chief Justice and his companion judges and should not be addressed to a particular judge. Bhagwati, C.J., converted his minority opinion in Bandhu Mukti Morcha into majority view of five-Judge bench. He held that since such letters would ordinarily be addressed by poor persons or social action groups, who may not know the proper form of address and may only know only a particular judge, such letters should not be rejected. There was no likelihood of PIL being abused.

(v) The Supreme Court also broadened the rule of locus standi in such cases (PIL) and allowed the writ petitions under Article 32 by the public spirited individual or social action groups in cases of public importance. It also expanded the remedial potential of Article 32 by empowering the Supreme Court to award compensation or damages in cases involving wrongful arrest or detention but in

76. AIR 1984 SC 802.
all 'appropriate cases, involving violation of any fundamental right. In such cases, the infringement of the fundamental right must be cross and potent. In short, Article 32 lays down a Constitutional obligation on the Supreme Court to protect the fundamental rights of the people and for that purpose Supreme Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce fundamental rights.

In the ultimate we can say that the role of the Supreme Court of India under Article 32 has been to provide remedial reliefs in appropriate cases involving infringement of Fundamental rights including violation of environmental laws. It is now the consistent policy of the Supreme Court that the procedure being merely a handmaiden of justice should not stand in the way of access to justice to the Indian people who are disadvantaged or victims of an exploited society and the Court should not insist on regular writs and even a letter addressed by a public spirited individual or a social action group, acting pro bono publico would suffice to ignite the jurisdiction of the Court. Further the Supreme Court made it clear that it has to evolve law in order to meet the challenges of new situations and the case of M.C. Mehta v. Union of India is an instance of such judicial creativity. The beauty of all these cases is that the Supreme Court has allowed the cases pertaining to environmental degradation and ecological imbalances in the country and has enriched the literature on the subject.

It is well understood that sometimes the court's interference in environmental issues is severely criticised saying that court lacks expertise to decide such highly scientific and technical issues. This view is not completely acceptable. It must be kept in mind that court always refers to expert evidence,

committees, and different reports before coming to a conclusion, and moreover
the situation under which this third pillar is asked to render justice must be
understood closely before jumping to conclusions.

In our country, it is because of the active or rather creative stand taken by
the judiciary that helped to some extent in solving many human generated
problems, particularly regarding environment. In fact, the judiciary in India has
still to play a more active and constructive role in controlling the pollution and
ensuring the wholesome environment. Lack of awareness, lack of planning and
lack of will power to enforce the existing statutory environment laws by the
concerned authorities make it more demanding from the judiciary to play active
role for the environmental protection.