Chapter 3

CONSTITUTIONAL PROVISIONS

The concern for preservation and betterment of environment has gained attention for the last forty years, when it became clear that natural wealth of a nation is not unlimited. The first serious attempt for the protection of environment at the global level was made through Stockholm Declaration in 1972. The Declaration carried the environmental issues from local to world sphere. It is a Magna Carta on human environment. After the Conference, nations throughout the world started giving priorities to laws by way of their legislative agenda. India being a signatory was energized to frame laws relating to control and prevention of pollution. Provisions were incorporated in Constitution in the 44th Constitutional Amendment Act to capture the wave of Stockholm Declaration. This brought into existence the newly added Articles, Article 48-A and Article 51-A. Article 48-A mandates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51-A (g) imposes fundamental duty on every citizen of India to protect the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

3.1. Legislative enactments under Article 253

The Air Act a Central legislation was passed by the Parliament under Article 253 of the Constitution of India in pursuance of the decision taken at the Stockholm Conference on Human Environment in June 1972. The Parliament through Articles 51, 253 and Entry 13 of List I of Indian Constitution has passed the law. Article 253 of the Constitution empowers Parliament to make laws implementing India's international obligation or agreements.

Article 253 provides that notwithstanding anything in the foregoing provisions of the Chapter, Parliament has power 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.

Article 51 provides for states endeavour to-

(a) promote international peace and security;

(b) maintain just and honourable relation between nations and;

(c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and

(d) encourage settlement of international dispute by arbitration.

Entry 13 of the Union List covers: 'Participation in International Conference, association and other bodies and implementing of decisions made threat.' The Air Act was therefore enacted by the Parliament by using its powers under Article 253 read with entry 13 of the Union List. Article 253 gives the legislative competence as Article 253 shows the width of the treaty-making power. In implementing a treaty, agreement or convention the limitations imposed by Articles 245 and 246(3) are lifted and the total field of legislation is open to the Union Parliament. Article 253 was enacted to avoid difficulty, which Union Parliament would have felt in enacting different types of laws for the implementation of obligations under treaties etc. with respect to the subjects exclusively assigned to the States. Therefore, the Parliament has used its power under Article 253 read with Entry 13 of the Union list to enact the Air (Prevention and Control of Pollution) Act of 1986.

The preambles of both the Act provide that these Acts were passed to implement the decisions reached at the United Nations Conference on the Human Environment held at Stockholm in 1972. The scope of Parliament to legislate on environmental issues has been derived from Article 253.

The Constitution of India came into force on 26th January 1950. The idea of environment had not been in the minds of the founding fathers when the provisions of the Indian Constitution were debated and approved. At its initial

stage the provisions for safeguarding healthy environment could not be seen. The seed of such provision could be traced in Article 47 of the Indian Constitution. Article 47 of the Constitution, reads as follows:

"The State shall regard the raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties."

It is notable that besides Article 47, there are many items in the legislative lists, which enable the Centre and the States to make law in the field of environment. Thus, public health and sanitation, agriculture, land water and fisheries within the State territory are subjects on which the States have power to make a law. Atomic energy, oil fields and resources, inter-state rivers and valleys and fishing in territorial waters are subjects bearing on environmental protection. They come in the Union List where Parliament has power to enact laws. The Constitution (Forty Second Amendment) Act, 1976, moved forest, wildlife and population control from the State list to the Concurrent list. This enables both the State and the Centre to make laws on these areas.

In United Nations Conference on Human Environment, at Stockholm the then Prime Minister of India Mrs. Indira Gandhi while displaying the Nations commitment to the protection of environment, said:

"The natural resources of the earth, including the air, water, land flora and fauna and especially representative sample of the nature ecosystem must be safeguard for the benefits of present and future generations through careful planning or management, as appropriate.... Nature conservation including wildlife must therefore receive importance in planning for economic development."

To comply with the principles of the Stockholm Declarations adopted by the International Conference on Human Environment, the Government of India, by the Constitution (42nd Amendment) Act, 1976 made the express provision for the protection and promotion of the environment, by the introduction of Article 48A and 51-A (g) which form the part of Directive

Principles of State Policy and the Fundamental Duties respectively. The amendment provided for the following:

(1) Article 48A:

By the Constitution (42nd Amendment) Act, Section 10 (w.e.f. 3.1.1977)

Protection and improvement of environment and safeguarding of forests and wild life:

"The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country."

(2) Fundamental Duty

Article 51-A (g): By Constitution (42nd Amendment) Act, 1976, Section 11 (w.e.f. 3.1.1977)

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

Thus the Indian Constitution makes two fold provision- (a) On the one hand, it gives directive to the State for the protection and improvement of environment (b) On the other hand the citizens owe a constitutional duty to improve and protect natural environment.

In protecting the natural environment Article 48-A is of immense importance today. Because with the activist approach of judiciary in India the legal value of Directive Principles jurisprudence has constantly grown up in the Indian Constitutional set up. Hence the above provisions are pivotal significance.

Purity of air we breath-in and the water we drink is absolutely essential for good health. Equally important is the environment in which we live and work.

3.2. Right to clean Air: An evaluation as a Fundamental Right

Air is the most important constituent of man's environment. It is calculated that a man breath about 22,000 times a day inhaling about 16 kgs of

air by weight. Clean and pure air is very essential for his health and survival. Life subsists as long a breath last. Unfortunately, with the spectacular scientific discoveries and developments, we tend to forget that we live in a world where pure air is at premium and this is just the tip of an iceberg. These dangerous dimensions of air pollution and other pollutions led the Supreme Court to derive that 'Right to live is a fundamental Right under Article 21 of the Constitution on and it includes the right to enjoyment of pollution free water and air for full enjoyment of life.'[1]

Article 21 guarantees to every person the protection of Right to life and personal liberty. The importance the 'due process' clause by the activist approach of the Supreme Court in Menaka Gandhi's case[2] has revolutionized the ambit and scope of the expression 'right to life embodied in Article 21 of the Constitution. The right to life in healthy environment is one more golden feather of Article 21.' The Supreme Court of India, in 1980, indirectly conceived this right in a monumental judgement in the case of *Rattam Municipality* vs. *Vardhichand.*[3] Where Justice V.R.Krishna Iyer and Justice O.Chinnappa Reddy observed:

"Even as human rights under Part III of the Constitution have respected by the State regardless provision. Decency and dignity race non-negotiable facts of human rights and are a first charge on local self governing bodies."

The Court's decision was founded on its earlier decision in *Govind* v. *Shanti Sarup*[4], where Section 133 of the code of Criminal procedure was used by the Court to preserve the environment in the interest of "healthy, safety and convenience of public a large."

In the judgement the Supreme Court has no-where referred to Article 21 of the Constitution. But it is simply clear that, the judgement is based on the right to live with decency and dignity as provided in the right to life.

---

[1] *Subhash Kumar* vs *State of Bihar,* AIR 1991 SC 420
[2] AIR 1978 SC 597
[3] AIR 1980 SC 1622
[4] AIR 1957 SC 1943

The Court continued, its hidden approach of not referring to Article 21 directly, in another landmark case, *Rural litigation and Entitlement Kendra* vs. *State of Uttar Pradesh*[5], where the Court considered the hardship caused to the lessee but thought 'it is a price to be paid for protecting and safeguarding the right of people to live in healthy environment with minimal disturbance to ecological balance.[6] In this case, the Apex Court converted a letter into written petition alleging that the operation of unauthorized and illegal mining in the Mussorie-Dehradun belt affected the ecology of the areas and led to environment disorder. The Bench consists of Chief Justice P.N.Bhagwati (as he then was), Justice A.N.Sen and Justice Ranganath Misra ordered closing down of mining operations on the ground that limestone quarries operation causing ecological imbalance and a hazard to healthy environment.

Article 21 guarantees to every person the protection of life and personal liberty. The Right to life though the most fundamental of all is one of the most difficult terms to define. The term cannot be confined to taking away of life. In an American case,[7] it was pointed out that by the term life something more is meant than a mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg or by pulling out an eye or the destruction of any other organ of the body through which the soul communicates with the outer world. This statement has been upheld by the Supreme Court,[8] where it was observed that- Article 21 means not merely the right to the continuance of a person's animal existence, but a right to the possession of his organ his arms, legs, etc.

Thus it would include all aspects of life that go to make a man's life meaningful, complete and worth living. Elements, which alone can make it possible to live, should be declared to be an integral component of the right to

---

[5] AIR 1985 SC 652
[6] Ibid. p 656
[7] *Munn* vs. *Illinois*, 94 US 113
[8] *Karak Singh* vs. *State of U.P.*, AIR 1963 SC 1295.

life, e.g. his tradition, culture, heritage and protection of that heritage in its full measure.[9]

The right to an environment free of smoke[10] and other pollutants follows from the quality of life, which is inherent in guarantee offered by Article 21.

Encouraged by an atmosphere of freedom and articulation in the aftermath of the emergency, the Supreme Court entered into one of the most creative period. Specifically the Court fortified and expanded the scope and object of the fundamental Rights enshrined in Part III of the Constitution. In the process environmental protection (though not mentioned explicitly in Part III of Constitution) was drawn within the expanding boundaries of the fundamental right to life and personal liberty guaranteed by Article 21 of the Constitution.

The Supreme Court strengthened Article 21 in two ways. First, it required laws affecting personal liberty to also pass the tests of Article 14 and Article 19 of the Constitution in the matter of reasonability. Thereby ensuring that the procedure depriving a person of his personal liberty be reasonable, fair and just. Second, the Court recognized unarticulated liberties that are implied by Article 21. It is by this second way that the Supreme Court interpreted the Right to life and Personal Liberty envisaged in Article 21 of the Constitution to include the Right to clean and healthy environment within its boundaries of jurisdiction.

At this particular juncture, it would be unavoidable and imperative to mention the ramifications of the Directive Principles of State Policy found in Part IV of the Constitution and the aid taken by the courts in interpreting the various fundamental rights enshrined in the Constitution, particularly Article 21 in this Chapter.

The Articles (Article 36 to Article 51) envisaged in Part IV of the Indian Constitution consists of certain directives and guidelines of policy and it shall be the duty of the State to adhere them both in the matter of administration as

---

[9] *Ram Sharan* v. *Union of India*, AIR 1989 SC 549.
[10] *Shantistar* v *Narayan*, AIR 1990 SC 630.

well as in the making of laws. These directives embody the aims and objects of the State under a Republican Constitution i.e., of a Welfare State.

The Directives however differ from the fundamental rights in matters of enforceability. A fundamental right is enforceable and justifiable in the court of law, especially the Supreme Court and the High Courts, and against the State[11]but Directive principles of State policy does not create any justifiable rights in favour of an individual and as such cannot be enforced in the courts having writ jurisdiction.[12]

Thus Article 13(2) prohibits the State from enacting any law, which takes away or abridges the fundamental rights conferred by Part III of the Constitution and the Directive principles cannot override this categorical limitation upon the legislative power of the State.[13]

The directives are required to be implemented by legislation as long as there is no law carrying out the policy laid down in the Directive Principles. Neither the State nor an individual can violate any existing law or legal right under the colour of a directive.[14]

The earlier decisions of the Court paid comparatively scant attention to the Directives enshrined in Part IV of the Constitution on the ground that the Courts had a little to do with them by virtue of their not being justifiable or enforceable in the Courts of law, unlike that of the fundamental rights. The duty of the Courts in regard to the enforceability and justifiability of the Directives came to be emphasized in the later decisions, the trend which reached its culmination point in a 13 member bench in *Keshavananda's Case* [15], which laid down (by a consensus opinion) certain broad propositions for far reaching effects in future cases before all courts. The propositions were as follows:

---

[11] A fundamental Right enforceable only as against the 'State' as defined in Article 12 of the Constitution.

[12] The Supreme Court, under Article 32 and the High Courts under Article 226 of the Constitution.

[13] *Henif Qureshi* vs. *State of Bihar,* AIR 1958 SC 731.

[14] Mangru v. Commissioner of Budge Budge, (1951) 87 Cr. LJ. 369.

[15] *Keshavananda Bharti* v. *Union of India,* (1973) 4 SCC 225.

(i) There is no disharmony between the Directive principles and the Fundamental rights because they supplement each other in aiming at the same goal of bringing a social restoration and establishment of a welfare state, which is envisaged in the Preamble[16]. Constitution aims at the synthesis of the two and the Directive principles constitute 'Conscience' of the Constitution and together with the fundamental rights they form the core of the Constitution. They are not exclusionary of each other but complementary to each other[17].

(ii) Even the conditions for the exercise by each individual of his fundamental right cannot be ensured unless and until the directives implemented.

(iii) The Parliament is competent to amend the Constitution to override or abrogate any of the fundamental rights in order to implement the directives so long as the basic feature of the Constitution is not affected.

Applying the doctrine of harmonious construction the courts have applied the directives to adjust the ambit of the fundamental right themselves to give a liberal interpretation of a legislative entry[18]

In *Akhila Bharatiya Soshit Karmachari Sangh* v. *Union of India*[19], the Supreme Court pointed out that fundamental rights are intended to foster the ideal of political democracy and to prevent the establishment of authoritarian rule, but they are of no value unless they can be enforced by resort to courts. The directives cannot in the very nature of things be enforced in a court of law, but it does not mean that directive principles are less important than fundamental rights.

In Francis Mullin's Case[20], the Court held that right to life includes right to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the directive principles of state policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42. It must include protection of the health and strength of workers, men and women; and children of tender age against abuse;

---

[16] See *Keshavananda's Case* and *Minerva Mills* v. *Union of India*, AIR 1980 SC 1789.
[17] *Markandaya* v. *State of A..P.* AIR 1987 SC 1308.
[18] Supra note. 13.
[19] (1981) 1 SCC 246.
[20] AIR 1980 SC 849.

opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity; educational facilities; just and humane conditions of work and maternity relief. These are the minimum requirements, which must exist in order to enable a person to live with human dignity. No State, neither the Central Government nor any State Government, has the right to take any action which will deprive a person of the enjoyment of these basic essentials.

In much recent cases, even though the courts per se cannot enforce directives nor can the courts compel the state to undertake legislation to implement a directive, the Supreme Court has been issuing various directions to Government and administrative authorities to take positive action to remove the grievances, which have been caused by non-implementation of the Directives[21].

In a recent case[22], the Supreme Court upheld that pollution caused by smoking has been considered as violation of the right to life enshrined in Article 21. The right includes the right to health and the right not to be afflicted by diseases. In *M.C.Mehta* v. *Union of India*[23], the Court, keeping in view the mandate of Article 47 and 48-A of Part IV of the Constitution[24], held that the law casts an obligation on the State to improve public health and protect and improve the environment and as such directions were issued to tackle the problem arising out of chaotic traffic conditions and Vehicular pollution. And such directions were given treating such problems as a legal issue and proceeded to examine the impact of the right flowing from Article 21 of the Constitution vis-à-vis declaim in the Environment quality.

Article 48-A of the Constitution enjoins that the State shall endeavour to protect and improve the environment. The right to breath, thus, inheres the Directive Principles of State Policy, but merely because the right to breath has found a place in the Directive Principles, it cannot be spelt that it would not fall

---

[21] *Comptroller* v. *Jaganathan*, AIR 1987 SC 537.
[22] *Murali S Deora* v. *Union of India*, AIR 2002 SC 40.
[23](1998) 6 SCC 60 para 1.
[24] Duty of State to improve public health and protect and improve the environment.

within the scope of the right to life guaranteed under Article 21 of the Constitution. Breath is life itself, yet the context of limitations with which the right to life has been set in Article 21, makes right to breath pure clean air a right distinct from mere right to life.

Thus, the most remarkable feature of this expansion of Article 21 of the Constitution has been the resurrection of the many non-justifiable and non-enforceable rights. This makes the Directive principles enshrined in Part IV of the Constitution as enforceable fundamental right as a result of the utilization of the magic wand of Judicial Activism. And the Right to a clean healthy environment including the right of clean air being one of such Directives as found in Article 48-A of the Constitution.

The genesis of the fundamental right to a wholesome environment may be traced to the *Dehradun Quarrying* case[25] in which the Rural Litigation and Entitlement Kendra, Dehradun challenged illegal lime stone mining in the Mussoorie-Dehradun region which, it alleged, was devastating the fragile ecosystems in the area. Over the years the litigation grew increasingly complex. By the time the court issued its final judgement in August 1988. It had heard lengthy arguments from the Central and State Governments, government agencies and mine lessees; appointed several expert committees; and issued at least five comprehensive, interim orders. None of these orders, however, specified that fundamental right infringed. Since the exercise of jurisdiction under Article 32 of the Constitution presupposes the violation of fundamental right, people had to deduce the fundamental right(s) that the Supreme Court had in view when it issued those orders.

Though one cannot say that the recognition was clear and explicit the right to human and healthy environment is seen indirectly approved in the *M.C.Mehta* group cases, decided subsequently by the Supreme Court. In the first *M.C.Mehta case*[26] , the court had to deal specifically with the impact of activities concerning manufacturing of hazardous products in a factory, as well

---

[25] AIR 1988 SC 652.
[26] *M.C.Mehta* v. *U.O.I.*, AIR 1987 Sc 985.

as members of the general public living outside. It was alleged that the leakage of oleum gas from the factory resulted in the death of a person and affected the health of several others. The question was, whether or not the plant should be closed down. Many conditions were laid down under which industries of hazardous products should be allowed to restart. In doing so the court found that the case raised 'some seminal questions concerning the scope and ambit of Articles 21 and 32 of the Constitution'. Enlarging the scope of right to live, the Supreme Court held that the State had power to restrict hazardous industrial activities for the purpose of protecting the right of the people to live in a healthy environment.

The clearest and most important enunciation of the right by the Supreme Court is possibly in the case of *Virendra Gaur and others* v. *State of Haryana*[27] in which the Court held:

Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including the right to live with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance, free from pollution of air and water sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc, should be regarded as amounting to violation of Article 21[28].

In addition, virtually all the State High Courts have explicitly recognized an environmental dimension to Article 21. For example, in *Damodar Rao* v. *Municipal Corporation of Hyderabad*[29] while considering a writ petition to enjoin the life Insurance Corporation and the Income Tax Department from building residential houses in a recreational zone, the Andhra Pradesh High Court held that- It would be reasonable to hold 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. There can be no reason why practice of violent

[27] 1995 (2) SCC 577
[28] Ibid
[29] AIR 1987 A.P. 171.

extinguishments of life alone should be regarded as violative of Article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and poisoning should also be regarded as amounting to violation of Article 21 of the Constitution.[30]

In the case of *D.D.Vyas* v. *Ghaziabad Development Authority*[31], the petitioners challenged the failure of the G.D.A. to develop an area reversed for public park in the Master Plan. The Allahabad High Court directed the G.D.A. to develop the area as a park, and also held: "Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life"[32].

The judgement of the Andhra Pradesh High Court[33] served as a leap to the future development of law. It was rendered at a time when the apex court had not openly declared right to life in Article 21 includes right to healthy environment. This was based on the slogan found in European Economic Community directive the need to make an impact study before the development project is accepted for implementation. The Supreme Court in *Bangalore Medical Trust* v. *B.S.Mudappa*[34] supported this slogan, where a balance between environment values of an open space and the attempt to construct hospital therein was done. It is interesting to note here that both an open space and a hospital are necessary to solve the problems of health. In this case, the scheme for the residential complex envisaged by the Bangalore Development Authority (BDA) had the green signal from the State Government. The scheme envisaged an open space reserved as a park. Subsequently, on pursuance of orders of the State Government, BDA allotted the open space in favour of the appellant medical trust for the purpose of constructing a hospital.

The issues raised in this case were can an open space reserved for a park or a play ground in a formally approved and published development scheme be allotted to a private person or body of persons for the purpose of constructing a

[30] Ibid.
[31] AIR 1993 All 57.
[32] Ibid.
[33] Supra note 29.
[34] AIR 1991 SC 1902.

hospital? Do the residents of the locality have a right to object to such a conversion? Are they in law aggrieved by such conversion and allotment?

The Supreme Court held that- Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens. Reservation of open spaces for parks and playgrounds is universally recognized as legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill effects of urbanization.

The Judge held that it was not open to the Government to give a direction to the BDA to defy the very object of the law. The orders evidence a colourable exercise of power and are contrary to the legislative intent to safeguard the health, safety and general welfare of the people of the locality. The action of the BDA in allotting to private persons areas reserved for public parks and playgrounds and permitting construction of buildings for a hospital thereon are declared to be null and void. Justice Sahai also wrote a separate judgement on similar lines. He observed that- Public Park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few.

But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentiality a commercial ventures, a profit oriented industry. Service may be its motto but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blue print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even private house-owners to leave open space in front and back for lawn and fresh air.

It was held, therefore the orders of the Government to convert the site reserved for public park to civic amenity and to allot it for private nursing home to Bangalore Medical Trust and the resolution of the Bangalore Development Authority in compliance of it were null, void and without jurisdiction.

Earlier in *M.C.Mehta* v. *Union of India*[35], where oleum gas leaked from Shriram Fertilizer's Plant which resulted in the death of an advocate and affected a large number of persons, the Supreme Court, observed that the case did raise some seminal question concerning the true scope and ambit of Article 21 and 32 of the Constitution, but it could not be held to have precisely cut and carved out the definitive scope of the right to breath clean air, nor was this aspect discussed and fully argued as right to life.

Subash Kumar v. *State of Bihar*[36], signifies an important milestone in the development of environmental law in India. It heralds the emergence the right to clean and unpolluted environment as an integral part of the fundamental right enshrined in Article 21 of the Constitution. The Supreme Court in this case was considering a petition under Article 32, seeking the issuance of writ or direction to the concerned authorities and the Tata Iron and

---

[35] (1986) 2 SCC 176: AIR 1987 SC 965.
[36] AIR 1991 SC 420.

Steel Ltd, to stop forthwith the discharge of slurry/ sludge from its washeries into Bokaro river. Justifying its exercise of jurisdiction under Article 32, the Court held that- Right to life is a fundamental right under Article 32 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution for removing the pollution of water or air, which may be detrimental to the quality of life[37].

However, on facts, the petition was dismissed for failing to establish a prima facie case in favour of the averments made therein. The decision clearly articulated the right to a wholesome environment, which though the Supreme Court earlier implicitly recognizing it, had failed to expressly articulate[38]. Thereby the Supreme Court approved the earlier decisions of the High Court of Rajasthan in *Koolwal's case*[39], Andhra Pradesh in *Damodar's* case[40] Kerala in *Madhavi's case*[41] and Himachal Pradesh in *Kinkri Devi's* case[42], to the same effect.

Aftermath *Subash Kumar's*[43] *Case*, the Right to a clean and healthy environment was said to be found explicitly in Article 21 of the Constitution, specifically from the right to life.

Thus, the enjoyment of life fully began to include the right into clean air without pollution and thus, came to be a fundamental right and this shows that the activism of the judiciary can go to any extent in aiding an individual to exercising his fundamental right in the desired perspective.

This affords a clue to the proposition that the right to breathe though in Article 21 of the Constitution cannot be narrowed down simply as right to

---

[37] Ibid., p.424.
[38] AIR 1988 SC 187: M.C.Mehta v. Union of India , AIR 1988 Sc 1037
[39] AIR 1988 Raj 24.
[40] AIR 1987 AP 171 (180)
[41] 1988 (2) Ker.L.T. 730-31.
[42] AIR 1988 H.P. 4(9).
[43] Supra note 36.

breathe but a right to breathe clean and pure air. The positive content of the right breath has its negative counterpart in the right not to breathe filthy air.

In 1985 a Writ petition[44] was riled by Shri M.C.Mehta (Chairman of Environment Protection Cell), lawyer cum environmental activist, who had applied for the Supreme Court's interference in solving a lot of Environmental issues, popular of them being the *Tanneries case*[45] or the *Ganga Pollution* case, against pollution in Delhi caused by increasing number of petrol and diesel driven vehicles in the city. The petition was filed as public interest litigation under Article 32 and the most probable fundamental right considered to be violated was Article 21 of the Constitution, the right to life.

In *M.C.Mehta* v. *Union of India*[46], the Court observed that the problem of environmental pollution was global concern. All countries irrespective of their size, level of development and ideology, and further quoted from the Declaration of the United Nations on Human Environment held in Stockholm on June, 1972, which stated that-Man is both creature and moulder of his environment, which gives him physical substance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortous evolution of the human race on this planet a stage has been reached when, through rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of mans ENVIRONMENT, THE NATURAL AND THE MANMADE, ARE ESSENTIAL TO HIS WELL BEING AND TO THE ENJOYMENT OF THE BASIC HUMAN RIGHTS, EVEN THE RIGHT TO LIFE ITSELF.[47]

This application was relied under Article 32 by Shri M.C.Mehta asking the court to issue directions for closing down of hazardous industries located in the densely populated areas of Delhi and for regulation of air

---

[44] M.C.Mehta v. Union of India (1991) 2 SCC 137.
[45] M.C.Mehta v. Union of India (1987) 4 SCC 463.
[46] (1991) 2 SCC 353.
[47] Ibid.

pollution caused by vehicles operating in the area as also the thermal units generating power for the Delhi Electric Supply Undertaking (DESU).

Another factor, which is important and is related to Vehicular pollution, is traffic jams and as such Management control of traffic has been regarded as a matter of public safety and is said to fall within the cubit of Article 21 of the Constitution. The Supreme Court held that the control and regulation of traffic is matter of paramount public safety and therefore, is evidently within the ambit of the Right to life, in *M.C.Mehta* v. *Union of India*[48].

In *M.C.Mehta* v. *Union of India*[49] the court taking into consideration both chaotic traffic conditions and vehicular pollution stated that it was not satisfied with the response evoked by the erstwhile order passed on November 20, 1997. The order stated that the Management and control of traffic is a matter of public safety and thus comes within the purview of Article 21 of the Constitution, had issued certain directions. Such directions had included the implementation of the provisions of the Motor Vehicles Act, 1988 in addition to existing laws, such as, the Police Act and the Code of Criminal Procedure which conferred ample powers to the authorities to take necessary steps to control and regulate traffic to the extent of suspending cancellation the registration and permit of a motor vehicle if it posed a threat or hazard to public safety. And as a result of such unresponsiveness of the concerned authorities to the said order the Court held that when those directions were issued by the court it had treated the matter as a legal issue and proceeded to examine the impact of the right flowing from Article 21 of the Constitution vis-à-vis decline in environmental quality[50]. The court in the earlier portion of the order, observed that such directions had been issued by the court from time to time with a view to tackle the problem arising out of chaotic traffic conditions and vehicular pollution, keeping in view the mandate of Articles 47[51] and 48-A[52] of the Constitution. Here the Directive Principles of State Policy was given life

[48] AIR 1998 SC 186.
[49] (1998) 6 SCC 60.
[50] Ibid., p. 69.
[51] Duty of the State to Improve Public Health.
[52] Duty of the State to protect improved environment.

and blood through Article 21 of the Constitution by the judicial activism of the Supreme Court.

The Supreme Court confirmed that vehicular pollution being detrimental to the environment and poisoned the surrounding atmosphere was a violation of Article 21 of the Constitution, after it perused the Bhure Lal Committee's Report submitted on April 1, 1999[53].

The Report revealed that private (non commercial) vehicles comprised 90 percent of the vehicles plying in Delhi. As per the report more than 90 percent of nitrogen oxide and respirable particulate matter from vehicular exhaust over Delhi was due to diesel emission since it was noticed that more and more and more private vehicles were turning to diesel as the fuel of choice. The reason primarily was due to price differentiation between diesel and petrol. Further Impairment of visibility and haze-like conditions were also attributed to the tiny suspended particulate matter, which was declared by the California Air Resource Board, based on tbe report of its scientific panel, that it had potential to cause cancer. The report also estimated that chronic exposure to such toxic air contaminant would lead to 300 additional cases of lung cancer per million people. Thus the court holding it to be a matter of serious concern said the very right to life of the citizens was at stake[54].

This latest decision of the Supreme Court in *M.C.Mehta* v. *Union of India*[55] has included vehicular pollution to be one of the problems which can be remedied by virtue of exercising an individual's right to life as has been laid down in Article 21, enshrined in Part III of the Constitution of India.

In *A.P.Pollution Control Board-II* v. *Prof. M.V.Nayadu*[56], the Supreme Court held that healthy environment and sustainable development are fundamental human rights implicit in the right to life. The Court observed that- In today's emerging jurisprudence, environment rights which encompass a group of collective rights are described as 'third generation rights'. The first

---

[53] *M.C.Mehta* v. *Union of India* (1999) 6 SCC 9.
[54] Ibid., p. 10.
[55] Supra note 53.
[56] AIR 1999 SC 812: 2000 SCW 4573.

generation rights are generally political rights such as those found in the International Convention on Civil & Political Rights while 'second generation rights' are social and economic rights as found in the International Covenant on Economic, Social and Cultural Rights.

Discussing several decisions and also Covenants on Human Rights, the Supreme Court ultimately held that the concept of a healthy environment as a part of the fundamental right to life developed by our Supreme Court is finding acceptance in various countries side by side with the right to development.

3.2.(i). INFRINGMENT OF RIGHT TO LIFE BY SMOKING

The Courts in the process of judicial interpretation have expanded the scope of Article 21 to bring within its fold the right to health care[57]. A right is a right only when it is not offensive to anyone, when it is not embarrassing and when it contributes to human flourishing. The fundamental rights provided to us by our sacred Constitution are not absolute. They can be restricted upon reasonable conditions so as to prevent their taking draconian shape. These restrictions are essential and even justified as 'the liberty of an individual can be taken for securing the equal liberty to others'. By restricting smoking in public places, the rights of non-smokers are secured. These rights of non-smokers are the fundamental right under Article 19(1)(g) of Right to movement, so that they can move freely without fear of compulsive passive smoking and also the Right to a pollution free and decent environment under Article 21.

Smoking, its implication[58]

There are two types of smoke: (i) Mainstream Smoke- It is inhaled and consists of large particles that are deposited in the larger airway of lungs. (ii) Side-stream Smoke- It is generated from the burning end of cigarettes, cigars and pipes during the smouldering between puffs.

---

[57] AIR 2000 Journal 140.
[58] Ibid.

A puff of tobacco gives us: Nicotine, Carbon-Monoxide among other fatal gaseous and particulate matter which may cause serious health problems like Cancer (of lungs, larynx, oesophagus, mouth bladder, pancreas, stomach and uterine cervix), Chronic Obstructive Pulmonary Diseases (COPD), Cardiac Arrest, Unstable Angina and Acute Respiratory Illnesses. Tobacco smoke is also dissolved in the salvia and it is swallowed, exposing the upper gastro-intestinal tract to carcinogens. Thus, smoking affects virtually every organ of the body.

Smokers have a 70% higher mortality rate than non-smokers. Smoking kills more than 4 million people every year and by the year 2020, it is expected to cause more pre-mature deaths and disabilities than any other single disease, globally.[59] In India alone one million people die every year from tobacco related diseases. This is more than the number of deaths caused due to Motor Accidents, AIDS, and Alcohol and Drug abuse put together.

When someone smokes actively, the non-smokers besides him also smoke passively. If the smokers would realize that when they smoke, they also pollute the air for others, passive smoking would not have been the 3rd leading preventable cause of death in this world, ranking behind active smoking and alcohol. Scientists have found a 30% increase in the risk of death from heart attack among non-smokers living with smokers due to passive smoking.[60] Estimates from the U.S. have suggested that 3,000 to 5,000 deaths per year from lung cancer can be attributed to passive smoking.

Environmental Tobacco Smoke (ETS) is created by anyone who smokes. ETS differs fro "Mainstream Smoke" in several ways as it contains more than 4000 chemicals and at least 40 known carcinogens. Thus, ETS is a very serious health hazard for the non-smokers.

The recent judgment of the Kerala High Court[61] regarding smoking at public places has now analyzed the controversy between smokers and non-smokers from a legal viewpoint. It has aptly restricted the rights of smokers and

---

[59] AIR 1999 Ker 385.
[60] Ibid.
[61] *Ramakrishnan* v. *State of Kerala,* AIR 1999 Ker 385.

established those of the non-smokers. The judgment has ascertained many ill effects of smoking and it has also enunciated the Executive's powers in this regard. The Court has also held that "smoke" is "Air polltion" under the Air (Prevention and Control) of Pollution Act, 1981.

In *Murli S Deora* v. *Union of India*, it was held that Fundamental right guaranteed under Article 21 of the Constitution of India, *inter alia*, provides that none shall be deprived of his life without due process of law. A non-smoker is afflicted by various diseases including lung cancer or of heart, only because he is required to go to public places. It is indirectly depriving of his life without any process of law. Undisputedly, smoking is injurious to heath and may affect the health of smokers but there is no reason that health of passive smokers should also be injuriously affected. In any case, there is no reason to compel non-smokers to be helpless victims of air pollution.

The Court considered and opined the adverse effect of smoking in public places. It would be in the interest of the citizens to prohibit the smoking in public places till the statutory provision is made and implemented by the legislative enactment. The persons not indulging in smoking cannot be compelled to or subjected to passive smoking on account of acts of the smokers.

It is alleged that three million people die every year as a result of illness related to the use of tobacco products of which one million people belong to developing countries like India. The World Health Organisation is stated to have estimated that tobacco related deaths could rise to a whopping seven million per year. According to this organization, in the last half century in the developing countries alone smoking has killed more than sixty million people. Tobacco smoking also adds to the air pollution. Besides cancer, tobacco smoking is responsible for various other fatal diseases to the mankind.

Statutory provisions are being made for prohibiting smoking in public places and the Bill introduced in the Parliament is pending consideration before a Select Committee. The State of Rajasthan has claimed to pass Act No. 14 of 2000 to provide for prohibition of smoking in place of public work or use and

in public service vehicles for that State. It is stated that in Delhi also there is prohibition of smoking in public places.

In this case Learned Attorney-General for India submits and all the counsel appearing for the other parties agree that considering the adverse effect of smoking in public places it would be in the interests of the citizens to prohibit the smoking in public places till the statutory provision is made and implemented by the legislative enactment. The persons not indulging in smoking cannot be compelled to or subjected to passive smoking on account of acts of the smokers.

Realising the gravity of the situation and considering the adverse effect of smoking on smokers and passive smokers, the Court directs and prohibit smoking in public places and issued directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in public places namely:

1. Auditoriums
2. Hospital Buildings
3. Health Institutions
4. Educational Institutions
5. Libraries
6. Court Buildings
7. Public Office
8. Public Conveyances, including Railways.

3.2.(ii). RIGHT TO LIFE *VIS-À-VIS* FREEDOM OF TRADE OR BUSINESS

As environmental regulation grows more stringent and its enforcement becomes more vigorous, industrial challenge to agency action is likely to increase. Courts will then need to balance environmental interests with the Fundamental Right to carry on any occupation, trade or business guaranteed in Article 19(1)(g). For example, effluent discharge standards prescribed by the Pollution Control Boards may be challenged under Article 19 for being

excessive (too stringent to comply with, dispute using the best available technology). Whether the Courts will adopt a pro-environment stance in resolving such future disputes remains to be seen. Almost invariably, industry's money power is able to secure the services of better lawyers than those who typically represent environmental agencies and government departments. In such cases, judicial compassion for environmental issues might help balance the scales. Indeed, public concern for environmental issues and the vigour with which the government promotes environmental protection in both word and deed might have a greater bearing on the outcome of future industry-enforcement agency disputes than the narrow questions of law involved.[62]

In *Obayya Pujari* v. *Member Secretary, K.S.P.C.B. Bangalore*[63], it was held that Right to freedom enshrined in Article 19 of the Constitution through fundamental, is not an absolute right and is always subject to reasonable restrictions which may be imposed in the larger interests of the society. Freedom of profession, trade and business as contemplated by cl (1)(g) of Article 19 of the Constitution is always subject to the limits as may be imposed by the State in Constitution is always subject to the limits as may be imposed by the State in the interests of public welfare.

The Supreme Court in *Cooverjee* v. *Excise Commissioner*[64], has held that though a citizen has a right to carry on any business of his choice, there is no right to carry on business inherently dangerous to the society. No citizen has a fundamental right to carry on business wherever he chooses and such a right can be subjected to reasonable restrictions in the interests of general public.

The Supreme Court in *State of Maharashtra* v. *H.N.Rao*[65] held that reasonable restriction imposed has to be adjudged in the light of the nature of the right, danger or injury which may be inherent in the unbridled exercise of the right and the necessity of protection against danger which may result to the public by exercise of the right. It was further held that- in adjudging the

[62] Shyam A. Divan, "Environmental Protection And Fundamental Rights", Indian Bar Review, Vol. 16 (1): 1989, p.25.
[63] AIR 1999 Kant 157.
[64] AIR 1954 SC 220 : 1954 SCR 873.
[65] AIR 1970 SC 1157.

reasonable restriction imposed upon the holding of disposal of a carcass, which is noxious, maintenance of public health, is the paramount consideration. Restriction imposed upon the right of an owner of a carcass to dispose it of in the manner indicated in the Act, being solely in the interest of the general public cannot be deemed to be arbitrary or excessive merely because they involve the owner in a small financial burden. Under the Constitution a proper balance is intended to be maintained between the exercise of the right conferred by Article 19(1)(f) and (g) and the interest of a citizen in exercise of his right to acquire, hold or dispose his property to carry on occupation, trade or business. In striking that balances the danger, which may be inherent in permitting unfettered exercise of right in a commodity, must of necessity influence the determination of the restrictions, which may be placed upon the right of the citizen or commodity.

Therefore, the Supreme Court in various judgments held that there were certain activities, which were inherently pernicious that nobody could be considered to have a fundamental right to carry them on as trade or business.

3.2.(iii). NOISE POLLUTION AND FUNDAMENTAL RIGHTS

The pollution of air includes noise pollution. Every citizen has right to freedom of speech till the right does not disturb another. The judiciary through judicial activism established a nexus between right to life and problem of noise. In this respect in *Rajni Kant* v. *State*[66], the petitioner, the leader of a political party was not allowed to use a loudspeaker in the public meeting he wanted to organize. In the petition he raised, the question of the validity of certain bylaws framed by the municipality, under which the license for the loudspeaker had to be given. The contention was that the restriction was violative of his right to freedom of speech under Article 19(1)(g). The court held that the impugned byelaws do not infringe Article 19(1)(a) of the Constitution.

---

[66] AIR 1958 ALL 36.

Kerala High Court decided another landmark case through its judgment in *P.A.Jacob* v. *Superintendent of Police, Kottayam*[67]. In this case the petitioner sought to restrain respondents from interfering with the use of a loud speaker by him. He claims that the right to use loudspeaker at public meeting to voice his views is a fundamental right. Rejecting the contention of the petitioner the court held that the use of a loud speaker might be a incidental to the exercise of the right to species to expression. But its use is not a matter of right, or part of the right. Broadening the scope of Article 21 Justice *Chettur Sankar Nair* Observed that- Apart from the right to be let alone,- freedom aural aggression- Article 21 guarantees freedom from tormenting sounds. What is negatively the right to be let alone, is positively the right to be free from noise. It is proved to cause biochemical changes in man, elevating levels of blood catecholamine, cholesterol, with cell counts and lymphocytes. Laboratory studies made by monitoring electro-encephalographic (EEC) responses and changes in neurovegetative reactions during sleep, show that disturbance of sleep becomes increasingly apparent as ambient noise levels exceeds 35 db (A) leg. Noise produces different reactions along the hypothalamo hypophyseal- adrenal aixs including on increase in a democrat-cottropic hormone (ACTH), affecting sympathetic division of the automatic nervous system. Eye dilation, brady cardiac and increased skin conductance are proportional to the intensity of noise above 70 db. Incidence of peptic ulcer is high among noise-exposed groups. Noise caused contradiction of the flexor muscles of the limbs and the spine and is reckoned as an environmental stress that could lead to non-specific health disorders Exposure to high noise everyday life may contribute to eventual loss of hearing (Socio-accusis), and this in turn can affect speech communication[68]

After analyzing these effects of noise, the learned judge categorically stated that- Compulsory exposure to unwilling persons to dangerous and disastrous levels of noise, would amount to a clear infringement of their

---

[67] AIR 1993 Ker.1.
[68] Id. at 8.

constitutional guarantee of right to life under Article 21. Right to life, comprehends right to safe environment, including safe air quality, safe from noise[69].

In our Constitution Article 19(1)(a) guarantees freedom of speech and expression but the use of mechanical appliances is not guaranteed by Article 19(1)(a). Use of mechanical instruments like loudspeakers and amplifiers is not covered by the guarantee of freedom of speech and expression.

The right to use loudspeakers came up for consideration before the United States Supreme Court in *Saia* v. *People of the State of New York*[70]. A municipal ordinance prohibited the use of amplifying devices casting sound upon streets and public places, except with the permission of the chief of police, without prescribing standards for the exercise of his discretion.

The court held by majority that, the ordinance violated the constitutional right of free speech. Four learned judges of the court gave dissenting opinions. Jackson J, was of the opinion that, society has the right to control as to place, time, and volume, the use of loud-speaking devices for any purpose, provided the regulations are not unduly arbitrary, capricious, or discriminatory.

The majority of the Supreme Court of America took a different view in a subsequent case *Kovacs* v. *Cooper*[71]. In that case, a city ordinance prohibited the operation upon the streets of sound amplifiers of other instruments emitting 'loud and raucous noises'. It was held by a majority of the court that sound amplification in streets and public places is subject to reasonable regulation.[72]

In *Madhavi* v. *Thilakan*[73] the Kerala High Court stated that- the right to live in peace, to sleep in peace and the right to repose and health are part of the right to live. We recognize every man's home to be his castle, which cannot be involved by toxic fumes, or tormenting sounds[74].

---

[69] Id. At 9.
[70] (1948) 92 Law Ed 1574 (B).
[71] (1949) 93 Law Ed 513 (C).
[72] P Leelakrishnan, Environmental Law Case Book, Butterworths, 2004, p.277.
[73] (1988) 2KLT 730.
[74] Id., at 731.

In *Burrabazar Fire Works Dealers Association* v. *Commissioner of Police, Calcutta*[75], Hon'ble Justice Bhagabati Prosad Banerjee maintained that A citizen of this country must be allowed to live in a society which is peaceful, free from mechanical and artificial sounds which creates a tremendous heath hazards and adverse effect on the citizen. Citizens have a right to live in a society, which is free from pollution. If pollutants are encouraged, in that event that would be beginning of the end of the civilisation[76].

Under the wave of judicial activism the learned Judge observed that- if a citizen has a right it is equally a duty on the part of this court to see that such rights are preserved and not allowed to be destroyed. Legislature may not rise to the occasion but that does not mean the court will keep its hand folded in the absence of any legislative mandate. The courts are the custodian of the rights of the citizens and if the court is of the view that citizens' rights guaranteed under the Constitution of India are violated, the court is not powerless to end the wrong. Principle of judicial activism confers powers upon the court to be active and not to remain in active for the purpose of protecting rights, duties and obligations of the people[77].

Hon'ble Justice Banerjee further stated that- excess noise is certainly pollution in the society. In India no effective and elaborate law has been made for controlling the noise creator. But under Article 19(1)(a) read with Article 21 of the Constitution of India, the citizen have a right of a decent environment and they have a right to live peacefully, right to sleep at night and to have a right to leisure which are all necessary ingredients of the right to life guaranteed under Article 21 of the Constitution. There are various other sources where the noise is created or generated but which offend citizens' right guaranteed under Articles 19(1)(a) and 21 of the Constitution[78].

While commenting on this case Prof. C.M.Jariwala opined that- the Calcutta High Court in its present judgement has evolved another method to

---

[75] AIR 1998 Cal 121.
[76] Id., at 134.
[77] Id. At 136
[78] Id. At 136.

legally regulate activities where no effective and elaborate law exists. The court has pinned down Article 19(1)(a) read with Article 21 of the Constitution of India as a source to regulate the law less noise pollution from use of fire works[79].

The survey of the above cases shows that absence of specific laws controlling problem of noise is no more hurdle to curb noise pollution. Disastrous effects of noise make it clear that emission of noise at high volume is really violation of right to life and this has been recognized by the judiciary. Now emission of noise not only cause pollution rather it cause violation of the fundamental rights guaranteed under Articles 21 and 19(1)(a) of the Constitution. In cases of noise pollution the judiciary will no more remain silent or mere spectator but declare it to be violative of fundamental rights in order to curb noise pollution and thereby ensure fundamental right to decent and noise free environment.

2.2.(iv). RIGHT TO RELIGION AND NOISE POLLUTION

The Right to Religion includes the right to profess, practice and propagate religion. Article 25 of the Constitution of India provides for freedom of religion. Right to propagate religion means the right to communicate a person's belief to another or to expose the tenets of his faith. In fact the freedom of religion under Article 25 and that of speech and expression under Article 19(1)(a) are inseparable as the former cannot be enjoyed without the exercise of latter. Thus if any one wishes to propagate his religious ideas as guaranteed under Article 25, it could only be possible through the exercise of the right of speech and expression under Article 19(1)(a). The conflict between these two rights arises when the exercising of right to religion leads to aural aggression. Thus for propagating religious ideas through the use of loudspeakers can create the problem of noise pollution, should it be allowed to

---

[79] C.M.Jariwala, "A Judicial Approach in the fire works' Noise pollution: A critical overview", AIR 1999 Journal 72.

continue within the enjoyment of the right to freedom of religion is a question which has been raised several times before the Courts in India.

The Supreme Court in *Bedi Gurcharan Singh* v. *State of Haryana*[80] took up this question. In this case applicants were refused the permission to use the loudspeaker under the Punjab Instrument (Control of Noise) Act 1956, which was challenged on the ground that it violated Articles 19 and 25 of the Constitution. The court while expressing the opinion about the freedom of religion, observed that- the fundamental rights guaranteed under Articles 19(1)(a) and 25 of the Constitution are not unfettered and absolute. The right to propagate religion freely is subject to the condition that it does not violate similar fundamental rights of the followers of other religions. It cannot be said that my person has the right to address a congregation of another religion in order to propagate his own, if it is likely to be resented by the congregation and which may lead to the breach of peace[81].

Even before the decision of the Supreme Court the controversial question relating to the use of loudspeakers for propagating religious ideas came up before the Calcutta High Court in *Masud Alam* v. *Commissioner of Police, Calcutta*[82]. In this case the petitioners used microphone for calling the *Azan* (Call for prayer) five times a day from a Mosque situated at No.38/A, Brabourne Road in Calcutta, commonly known as Murgihatta Mosque. Several residents of the locality complained against the practice and the Commissioner through the local *thana* officers countermanded the use of it. Applications were thereafter made to the Commissioner by some through the General Secretary of the West Bengal Pradesh Congress Committee and the *Mutwali* of the mosque for permission to use a loudspeaker in connection with the *Azans*. But the Commissioner refused to accord permission. Then the petitioner approached the High Court. It was argued for the *Mutawali* of mosque that India is a secular State and under Article 25 of the Constitution, all persons are at liberty to freely practice their religion. It was further argued that the liberty has been

---

[80] 1975 Cr.LJ 917.
[81] Id., at 917, 918.
[82] AIR 1956 Cal 9.

curtailed by the suppression of the use of loudspeakers to propagate the *Azan* in very crowded and noisy locality, where the *Azans* cannot be heard, unless magnified by some such device as a loudspeaker.

While rejecting this argument the Calcutta High Court relied on the findings of Bombay High Court given in *State of Bombay* v. *Narasu Appa Mali*[83] where Chagla C.J. said that- Now a sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health, then religious practices must give way before the good of the people of the State as a whole.

In this instant case* Justice Sinha while making comment on modern discovery of science said that it has helped to create not merely a heaven but also hell. He further observed that- the indiscriminate use of the electric loudspeaker in connection with religious festivals in the city is a standing grievance of every peace-loving citizen. The most offending instances are the uses to which it is put in connection with Hindu festivals, when the city is racked with the raucous cacophony of a thousand loudspeakers, doling out cheap jazz or cinema music, which is not only singularly inappropriate to such occasions, but to my mind, destructive of public health and morals[84].

In *Om Birangana Religious Society* v. *State of West Bengal*[85] the question was whether the right to propagate religion includes the right to use loudspeakers and microphones for the purpose of chanting religious tenets or religious texts and or the indiscriminate use microphones or loudspeakers during religious performance in the society. The Hon'ble Justice Bhagabati Prosad Banerjee delivering judgement said that- the religion that has been performed by the petitioner and others, is nothing new, but the same is there for several centuries. It cannot be said that the religious teachers or the spiritual leaders who laid down these tenets, had any way desired the use of microphones as a means of performance of religion. Undoubtedly, one can

---

[83] AIR 1952 Bom. 84.
[84] AIR 1999 Cal 10.
[85] (1996) 100 CWN 617.

practice, profess and propagate religion, as guaranteed under Article 25 of the Constitution, but that is not an absolute right. The provision of Article 25 is subject to the provisions of Article 19(1)(a) of the Constitution. On true and proper construction of the provisions of Article 25(1) read with Article 19(1)(a) of the Constitution, it cannot be said that a citizen should be coerced to hear anything which he does not like or which he does not require[86].

This case is the clear authority for the proposition that while exercising right under Article 25 no person can interfere with, take away or abridge the right of citizen guaranteed under Article 19(1)(a) of the Constitution, it cannot be said that a citizen should be coerced to hear anything which he does not like or which he does not require.

In addition to that the Court imposed certain restrictions and conditions on the use of microphones. One of the important conditions that was laid down that there would be no user of any microphones between 9 p.m. to 7 a.m. except by the public authorities for discharging their emergent public duties and / or obligations. The West Bengal Pollution Control Board was directed to maintain noise level register indicating the level of noise, which could be permitted by use of microphones on any occasion or in any area. It was also directed that (i) The District Magistrate and other officers would issue permission regarding use of microphone loudspeakers subject to conditions and restrictions imposed by the West Bengal Pollution Control Board and (ii) the person or persons or any business houses dealing with or letting or parting with or selling microphones / loudspeakers, shall be bound to seal the volume of Noise level according to the directions of the Pollution Control Board before letting or parting with or selling such apparatus for any purpose and in default thereof, they should not be permitted to deal with such items. So far as use of microphones and / or loudspeakers by any religious society or at any religious function is concerned, it could be used solely for the purpose of communicating the speeches and religious teachings and tenets to the persons who have

---

[86] Id., at 621, 622.

attended such functions and it should not be operated in such manner so as to give reasonable cause for annoyance to any person in the vicinity.

The principle laid down in *Om Birangana's* case was made applicable to all religions, all functions, private or public, public meetings and so on and not confined to one or two religions only.

Pursuant to the direction given in *Om Birangana Religious Society's* case restrictions and conditions were imposed by which the petitioners in *Moulana Mufti Syed Md. Noorur Rehman Barkati* v. *State of West Bengal*[87], the writ application has been filed for a declaration that Rule 3 of the Environment (Protection) Rules, 1986 vis-à-vis Schedule III of the said Rule do not apply in case of mosques more particularly at the time of call of *azan* from the mosques. It sought for a further declaration that Schedule III of the Environment (Protection) Rules, 1986, is ultra vires Articles 14 and 25 of the Constitution. The petitioners prayed for withdrawal of all conditions and restrictions notified by the police and other authorities pursuant to the order in the case of *Om Birangana Religious Society* v. *State of West Bengal*[88].

The petitioners' case is as follows. *Namaz*, the second pillar of Islam, occupies a permanent position among the practical duties of the Muslims. Muslims offer obligatory prayers in congregation in mosques five times a day. *Azan* is essential for all obligatory prayers and is called by muezzin in loud voice to summon all believers in Islam to prayers. When Prophet Mohammed introduced *azan*, a person called it from mosque in loud voice. By the enhancement of population, the expansion of industries and changes in the environment it was not possible to reach the voice of *azan* called by a person to the believers of Islam. It was felt that a system should be introduced to invite the believers in Islam to the congregational prayers by calling *azan* through any instrument. Use of microphones for the purpose of *azan* is part of the religious right guaranteed under Article 25 of the Constitution. The right to perform religious practice acquired by custom would have the protection of Article 25

[87] Supra note 75 at 15.
[88] Supra note 76.

in respect of all religious rites, practices, observances, ceremonies and functions which are customarily performed by the members of the petitioners' community and not according to the version of the person who opposes. It is the duty of the citizens also to have a degree of tolerance, patience for the purpose of respecting other religion and custom.[89]

The ratio of *Om Birangana*[90] was made applicable to all religions, all functions, private or public, public meetings and so on and not confined to one or two religions only, but to all religions.

Imams of some mosques filed an application for modification of the original order passed in *Om Birangana's* case. The court quoted the views from this order of its own to decide whether or not the right to use microphones for the purpose of *azan* is an integral part of Islam. The sum and substance of the view taken by the court is that according to Article 25(1) of the Constitution read with Article 19(1)(a) of the Constitution, it cannot be said that a citizen should be coerced to hear anything, which he does not like of which he does not require. Amplifier and microphone create tremendous noise and sounds, which may travel at least half to one kilometer away. Having regard to the provisions of Article 19(1)(a) of the Constitution, it cannot be said that the authorities can issue permission to use microphones without having any regard to the fundamental rights of the fellow citizens.

The court remarked that *Azan* is definitely an integral and essential part of the Muslim religion, but use of microphones is certainly not an integral part of *azan*. The court then examined the rights of the citizen in India guaranteed under Article 19(1)(a) of the Constitution and other aspects incidental thereto vis-à-vis the provisions of Article 25(1) of the Constitution as laid down in *Om Birangana's* case.[91]

The court further went on to direct that- if anybody is found violating the restrictions imposed on Microphone / loud speaker, the police authorities are hereby directed to immediately seize and confiscate microphones from

---

[89] Supra note 63 at 280.
[90] Supra note 76.
[91] Supra note 63 at 280-281.

are hereby directed to immediately seize and confiscate microphones from whatever place it would be found and report it to the court for taking drastic action against the violators who are violating willfully and deliberately.[92]

The order further directed the Officer in-charge of all police station in State of West Bengal to keep watch an all the Mosques in State of West Bengal to find out whether any of the Mosques are using Micro phone in the early hours before 7 a.m. and that they are maintaining the decibel limits available to them on the basis of situation of the Mosques and if any infraction is made they should take steps as directed in the order.

Therefore, public order, morality, health and other restrictions of Part III of the Constitution intend to control all the freedom including the use of loudspeaker for the good of the people. However, among them public order and public health have been the main grounds of the refusal to use loudspeaker as a means of expression. Public order as a ground of refusal to use loudspeaker has been discussed in *Bedi Gurcharan Singh*[93]. In this case Sikhs were refused the permission to use loudspeaker for holding *dewan* on particular day of the Hindu *melc* of *bawandwadsi*, as it was necessary for maintaining peace and harmony among different communities.

Similarly public health has been another ground to restrict the use of loudspeaker. The question that how far the right to use loudspeaker hit public health, came up for consideration before the Supreme Court in *State of Rajasthan* v. *Chawla*[94]. In this case respondents were prosecuted under section 3 of the Ajmer (Sound Amplifiers Control) Act, 1952[95] for committing the breach of conditions of the permit by way of using the sound amplifier as to be audible beyond 30 yards and by putting it at the height of more than 6 feet from the ground. The respondents challenged the legislative competency of Azmer Legislative Assembly before the Judicial Commissioner of Ajmer, who declared to be it in excess of the legislative power of the State Legislature. An

---

[92] Supra note 75 at 28.
[93] Supre note 71
[94] AIR 1959 SC 544.
[95] Act No. 3 of 1958.

appeal was preferred by the State of Rajasthan. The Supreme Court, while allowing the appeal, held the Act to be interviewers of the State legislature. The court also expressed its opinion about the legislative powers of the State Legislature to enact the rules for the control of amplifier under the subject of public health as- 'It cannot be said that public health does not demand control of the use such apparatus by day or by night or in vicinity of hospitals or schools or offices or habited localities. The power to legislate in relation to public health included the power to regulate the use amplifiers as producer of loud noises, when the right of such user by the disregard of comfort of and obligation to others emerges as a manifest nuisance to them'[96].

In *Bajayananda Patra* v. *District Magistrate, Cuttack*[97] the Orissa High Court maintained that since right to religion is subject to health, the noise caused by loudspeakers could be prohibited in the interest of health but than again, the nexus between noise and health will have to be established.

A perusal of the aforesaid decisions of various courts reveals that the use of loudspeaker and amplifier cannot be claimed as a matter of right under Articles 19(1)(a) or 25. However, its use is not restricted unless it creates any problem to public order, morality or health or violates any restriction mentioned under Articles 19(2) or 25(1).

It shows that the right to use loudspeaker is not an absolute right and the same can be restricted on several justifiable grounds as discussed above. However, any restriction, if imposed arbitrarily on the use of loudspeaker would be treated unconstitutional. Such issue has seen discussed by the Supreme Court in *Himat Lal* v. *Police Commissioner of Ahemdabad*[98] under the Bombay Police Act, 1951[99]. Under these rules the Police Commissioner refused the petitioner the permission of holding public meeting with a direction that holding meeting with or without loudspeaker would amount to an offence. The petitioner challenged it on the ground that such direction violated Articles

---

[96] AIR 1959 SC 544 at 546.
[97] AIR 2000 Ori 71.
[98] 1973 Cr. LJ 204.
[99] Act No. 22 of 1951.

19(1)(b) and (d). It was said that 33(1)(a) of the Act which enabled the Police Commissioner to make rules to regulate the assemblies and processions, was not violative of rights under this Article. But Rule 7 of Section 33(a) which conferred arbitrary powers on the Commissioner without giving any guidance as to circumstances in which permission could be refused, was struck down as it afforded no guidance and gave arbitrary power to him.

3.2.(v). RIGHT TO INFORMATION

The environmental awareness and transparence still remain a mirage in Indian environment. Lack of information and extremely uncooperative attitude of the concerned Government authorities is a stumbling block in environmental cases. In pollution cases, the problem is more of collusion of the government authorities with polluters. Under the prevailing special environment enactments the concerned citizens or activist has no right to information. A limited provision for dissemination of information is to be found in the Factories (Amendment) Act and Insecticides Act.

The British Raj saw much legislation protecting the components of environment but the environment education and information could hardly see the dawn of environmental knowledge. This was due to Britishers' one-way traffic of exploitation of Indian resources to their benefit. The capitalist approach did not allow even the Constituent Assembly to give any place to the environment and what to talk of the environmental education and information. It was unfortunate that the constituent power was activised number of times but could not do justice in this regard and the right to education and information did not find any place in the Constitution of India.

It was the judicial concern for the fundamental right and the *Maneka Gandhi* tonic which activised the expansion of the frontiers of Articles 19(1)(a) and 21 to include, for example, the right to education[100] right to know[101] and to reply[102] and right to information[103]. This way what was left out

---

[100] Mohini Jain v. State of Kar. AIR 1992 SC 1858.
[101] S.P.Gupta v. Union of India, AIR 1982 SC 148; Prabha Dutt v. Union of India, AIR 1982 SC 6.
[102] Manubhai Shah v. L.I.C., AIR 1993 SC 171.

of the Constituent Assembly was brought in the Constitution of India by the judiciary.

The right to Information has been read into the fundamental rights to free speech and expression. The first observation of any court regarding the right of information in environmental cases is found in *L.K.Koolwal* v. *State of Rajasthan.*[104]. In this case public interest litigation was initiated by the petitioner for acute sanitation problem of Jaipur city. In n this case the Court observed that a citizen has a right to know about the activities of the State, the instrumentalities, the departments and the agencies of the State. The privilege of secrecy, which existed in olden times that a state is not bound to disclose the facts to the citizens or the State cannot be compelled by the citizens to disclose the facts, does not survive now to a great extent. Under Article 19(1)(a) of the Constitution there exists the right of freedom of speech. Freedom of speech is based on the foundation of the freedom of right to know. The State can impose and should impose the reasonable restrictions in the matter like other fundamental rights where it affects the national security and any other allied matter affecting the nation's integrity. But this right is limited and particularly in the matter of sanitation and other allied matters every citizen has a right to know how the State is functioning and why the State is withholding such information in such matters.

In *Bombay Environment Action Group* v. *Poona Cantonment Board*[105] upheld a citizens group rights to inspect the documents of government agency. In appeal the Supreme Court was confronted with the freedom of information advocated by the environmental action group and on the other hand, the cantonment board, the secrecy jurisprudence, supported vehemently. In this case, the Board gave permission to construct 'sterling centre' building thus taking away the open green land. The petitioners, a watchdog on the environment of Pune, moved the High Court of Bombay to direct the Board to

---

[103] Ramesh v. Union of India ; Odyssay Commu. Pvt Ltd. v. Lakvidayan Sangathan, AIR 1988 SC 1642.
[104] AIR 1988 Raj 2.
[105] AIR 1992 SC 382.

make available to them necessary documents connected with the building permission for their inspection, a right available under Article 19(1)(a). But it was refuted that such plea would impose an "extra-constitutional or extra-legal authority" to supervise and control the working of the Cantonment Board. The High Court, though partly allowed the writ petition, warned that the right of inspection should be sparingly used and it should be made available to 'recognised social action groups' which wasnot 'against public interest'. But the Supreme Court did not adopt such constricted approach. It was of the opinion that 'any person residing within the area of a local authority, or any social action group or interest group or pressure group' was entitled to avail the right to information. And secondly, the 'public interest' was substituted by the expression 'in the interests of security' so as to limit the exception to the above right. The present ruling attracts some important questions: Can the environment, which does not recognize the territorial limit, be confined to citizens only? How can the court exempt the application of Article 19(2) when the enforcement of Article 19(1)(a) is claimed? Article 19 (2) specifically provides nine exceptions to the freedom in 19(1)(a). Can the Supreme Court's Order confine it to 'security'- without saying anything about whose security? It may include security of not only the nation or state but also the locality and even person or persons. It may be pointed out that in the present case what the petitioners were asking from the Cantonment Board was not against either the public interest or the security of state, rather it was to protect the environment of Pune.

It would be useful to advocate the argument that right to clean air, water, environment also includes the right to information that is absolutely necessary to exercise this right. High Court and Supreme Court have observed that right to clean air, water and wholesome environment also is a part of the right to life under Article 21.

In *M.C.Mehta* v. *Union of India*[106] , the Supreme Court held that the State owned medica should broadcast environment programmes and the State should consider including environment subjects in schools and curriculum. To be aware of environment issues and to be aware of how government decisions in management of hazardous substance projects are affect lives is a very important part of the right to information. Factors associated with issues of right to information are many. The most important right belongs of the residents of an area where hazardous substances are brought in or moved out. Hazardous substances and processes continuously pose a danger to the health of local populations. This is of course besides the rights of the workers in these establishments to be fully aware of the potentiality of these processes to cause fully undue harm to the health. Coupled with the issues of the recipient of information is also the issue of nature of information to be released to such recipient to exercise his democratic right. Should this information only be about the procedure to be adopted in case of an accident or should it in general about the hazardous processes and substance that are being used in them. The mode of dissemination of information is particularly important. Keeping in view that the vast majority of people who normally reside in the vicinity of these processes are poor illiterate and, therefore, the most of dissemination to be used should specially cater to the needs of the local people.

3.3. ARTICLES 32 AND 226

The jurisdiction of Supreme Court under Article 32 is more limited than the jurisdiction of the High Courts under Article 226. Article 32 guarantees the right to seek the Supreme Court's enforcement of fundamental rights. Moreover, Article 32 is itself a fundamental right and, therefore, cannot be abridged by legislation. An indispensable condition for invoking the Supreme Court's jurisdiction under Article 32 is the violation of a fundamental right conferred in Part III of the Constitution.

---

[106] AIR 1992 SC 382.

Although Articles 32 and 226 give the courts wide latitude to grant relief, the courts have imposed restraints on their own writ power. Neither Article 32 nor Article 226 describes who may seek redress from the courts. The rules of *locus standi* in relation to writs are judicial policies. Traditionally, locus standi was restrictive: Only an "aggrieved person" could petition the courts for a writ of certiorari, prohibition or mandamus. Prior to *S.P.Gupta* v. *Union of India* [107] only the person directly affected by the administrative action in question could challenge it.[108] According to this view, a person could assert a public right or interest only by showing that he or she had suffered an injury not suffered by others. Recently, the Supreme Court has recognized that where a public wrong or public injury is caused by the state, any member of the public acting in good faith can maintain an action for redress.

When a fundamental right, including the right to a wholesome environment, has been violated, relief through Articles 32 and 226 is fully appropriate. Where no fundamental right is involved, a High Court will decline to exercise its jurisdiction if an equally effective remedy is available and has not been used. The writ is an extraordinary remedy, and courts are reluctant to encourage petitioners who circumvent prescribed statutory procedure for correcting administrative action.[109]

3.3.(i). PUBLIC INTEREST LITIGATION

World is becoming more and more conscious about the protection of environment. The Indian Judiciary is also taking deep interest in protection of the environment keeping pace with the international trends in the field of Environmental law.

Public Interest Litigation or PIL in the Constitutional jurisprudence is a major example of Supreme Court's judicial activism. It is a process of epistolary jurisdiction of the Supreme Court. The Court has entertained the

---

[107] AIR 1982 SC 149.

[108] *Calcutta Gas Company (Prop.) Ltd.* v. *State of West Bengal*, AIR 1962 SC 1044, 1047.

[109] E.g., the High Courts are reluctant to entertain disputes arising under the Income Tax Act of 1961, as the statute creates a hierarchy of authorities from which a person may obtain redress.

complaints made through letters addressed to it by public spirited citizens of the violation of the rights of disadvantaged, disposed and deprived persons or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the court for relief. The traditional rule of *locus standi* has been dispensed with. It is designed to widen the judicial horizons in the achievement of the basic vision of the constitutionally desired social order.

The evolution of Public Interest Litigation has liberised the doctrine of *locus standi* in India. It allows a public conscious individual to file a suit under extraordinary writ jurisdiction of High Court and Supreme Court. It has been extended to embrace all interests of public-minded citizen and organizations or associations. Since 1985, Public Interest Litigation has played an important role in majority of environmental pollution cases and it has significantly contributed to the development of the law relating to environmental compensation.

The meaning of 'PIL' has been deeply surveyed, explored and explained not only by various judicial pronouncements in many countries. Even eminent judges, jurists activist lawyers, outstanding scholars, journalists and social scientists etc. with a vast erudition have explained PIL. Basically the meaning of the words 'Public Interest' is defined in the Oxford English Dictionary[110], as "the common well being... also public welfare.

A matter of public or general interest "does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected"[111].

In Black's Law Dictionary[112], 'Public interest' is defined as Some thing in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular

---

[110] Vol XII 2nd Edition.
[111] Per Cambell C.J., R. v. Bedfordshire, (1855) 24 LJQB 81 (84).
[112] Sixth Edition.

localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government....

The expression 'litigation' means a legal action including all proceedings therein initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in the court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights and liabilities are affected.

The term PIL was coined in America, but the expanded form of the term was public interest law and not public interest litigation. If we look to the historical background of PIL we find many movements, which contributed in the shaping of PIL in USA. This takes us as back as to 1876 when the first legal aid office was established in NewYork City. There the movement of PIL came into instance to provide help to those who were not able to bring the cases because of illiteracy and funding problems. In America, the use of the term PIL to cover the efforts to provide legal representation goes back no further than mid 1960s and the funding by private foundations led to the rapid development of PIL and activities associated with it during the last 1960s. During 1972-75, the foundation and private (individual) contributions provided 74 percent of PIL funding, while 22 percent came from government and one percent from free awards.[113]

The concept of PIL though had its origin in USA, over the march of years it has passed through various changes and modification in their common law based systems. The PIL movement in India is a later development. It is a development of seventies only. The PIL jurisdiction forged by Supreme Court of India is an extension of its jurisdiction under Article 32 of the Constitution.

In no time PIL became very popular and it started crowding the courts—sometimes in the form of letters and sometimes as skimpy petitions based on newspaper reports. All these led the judges to evolve new procedures and

---

[113] S.K.Agarwal, *Public Interest Litigation in India*, (1985) 3.

techniques to facilitate this new type of litigation. Broadly speaking, judicial innovation was required to adopt the following procedures:

(i) secure detailed facts, since the petitioner's information was usually sketchy;

(ii) receive expert testimony in cases involving complex social and scientific issues; and

(iii) ensure the continuous supervision of prospective judicial order.

To construct a complete framework of the facts, a judge often requires the concerned public officials to furnish detailed, comprehensive affidavits. Sometimes, where a swift, impartial assessment of the facts is needed and the official machinery is unreliable, slow or biased, an affidavit may be helpful. In such cases, the courts appoint special commissions together facts and data. The power to appoint commission is an inherent power of the Supreme Court under Article 32 of the Constitution and the High Courts under Article 226.

The Commissioner is a responsible person and hence his report is always treated as *prima facie* evidence of the facts and data gathered. After the report is received by the court, copies of the same are supplied to the parties, who may choose to dispute the contents of the report in an affidavit. The court then considers the report in light of the affidavits and proceeds to decide the issues involved.

In *L.K.Koolwal* v. *State of Rajasthan*[114], a public interest litigation was initiated by the petitioner for acute sanitation problem of Jaipur city. The Court opined Mr. Koolwal has approached the Court in exercise of rights vested in him under Article 51A, though it is said to be a duty that the court should issue directions against the respondent to implement the law, the Municipal law and to perform the obligatory duties cast on the State maintenance of health, preservation of sanitation and environment fall within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked. The Rajasthan High Court appointed a commissioner to

[114] AIR 1988 Raj 2.

report on insanitary conditions in various part of the city. Here the commissioner discharged the task assigned to hi to the satisfaction of the court. The cases give the reflection of new procedures and techniques in PIL.

In *M.C.Mehta* v. *Union of India*[115], Court felt that the case raised certain questions of seminal importance and high constitutional significance; it referred the matter to a larger Bench[116]. These questions related to the true scope and ambit of Articles 12, 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 the hazard to the workmen and the community living in the neighbourhood.

To be treated as a writ petition under Article 32, the case had to fulfil two preliminary requisites. First, the petitioner had to show there was an infringement of a fundamental right and second; the infringement was by the 'State' under Article 12. Possibly, the Court felt that the first requisite had been fulfilled as the leakage had infringed the right to life and personal liberty under Article 21 as many persons were affected by the leakage and one person died.[117] As to the issue whether a private corporation like Shriram could come within the purview of Article 12, the Court declined to answer. Although the Court advocated a reassessment of the entire doctrine of State action in the light of the growth of private power and also the growth of human rights jurisprudence after reviewing all previous cases on the ambit of Article 12; referred to the American Doctrine of State Action and indirectly favoured its

---

[115]The law laid down by the Court is covered by two judgements (1986) 2 SCC 176 and (1987) 1 SCC 395: AIR 1987 SC 1086.
[116] (1987) 1 SCC 395. (The Bench consists of P.N.Bhagwati, C.J and R.N.Mishra, G.L. Oza, M.M.Dutt and K.N.Singh, JJ).
[117] Id, at 405.

adoption so as to include even a private activity within the ambit of Article 12, it ultimately backed out from doing so.[118] The Court reasoned:

> "we have not had sufficient time to consider and reflect on this question in depth. We are of the view that this is not a question on which we must make any definite pronouncement at this stage. But we would leave it for a proper and detailed consideration at a later stage if it becomes necessary to do so"[119].

The Supreme Court observed that the Supreme Court under Article 32(I) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the Court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the Court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed. If the Court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the Court can injunct such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. It must therefore, be said that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the Court to grant such remedial relief may include the power to award compensation in appropriate cases. Of course the infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons,

---

[118] Id, at 409-418.
[119] Id, at 419.

or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged 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.

PIL is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice, which is the signature tune of our Constitution. The government and its officers must welcome public interest litigation, because it would provide them an occasion to examine whether the poor and downtrodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become meaningful reality for them or it has remained merely a teasing illusion and a promise of uncertainty, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements. When the court entertains public interest litigation, it does not do so in a caviling spirit or in a confrontational mood or with a view to titling an executive authority or seeking to usurp it but its attempts is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their

basic human rights, which is also the constitutional obligation of the executive. The court is thus merely assisting the realization of constitutional object.[120]

Some of the special features of PIL in India have been deduced as follows:

1. It is not a peoples' movement like American PIL. It has been initiated or originated from the Constitutional Amendment. Section 8 of the Forty-second Constitutional Amendment (1976) introduced Article 39A entitled equal justice and free legal aid. This idea of equal justice and free legal aid was the main force, which culminated into PIL.
2. In India, there is no public funding or collection of data by some voluntary groups as done in America. Some public-spirited individuals or voluntary organizations without proper and scientific assessment of the complained act of the government have initiated PIL cases in India.
3. Since its inception, it has been movement of the judges of the Supreme Court. Its basic concept, forms, underlying principles have been developed and shaped by judges themselves. In some instances, the judges of the Supreme Court and High Courts have initiated the PIL cases.[121]

The growing volume of public interest environmental litigation (PIEL) in India has been strongly natured by the understanding that judges do not merely find the law. This did give jolt to the traditional Anglo-Saxon myth that judges do not make law. In fact some of the judges pondered over the role of a judge in a traumatically changing society such as India. Former Chief Justice of India P.N.Bhagwati has, in fact, argued that judges do take part in the law-making process and regarded judicial activism as a necessary and inevitable part of the judicial process. The Supreme Court of India and the State High Courts have often deliberately jettisoned apologist postures in this regard.

Krishna Iyer, J., initially sowed the seeds of the concept of PIL in India in 1979 (without assigning the terminology) in *Mumbai Kamgar Sabha* v. *Abdulbhai*[122].

---

[120] *Bandhua Mukti Morcha* v. *Union of India*, AIR 1984 SC 803.
[121] Satish Shastri, *Pollution and the Environment Law*, (1990)
[122] AIR 1976 SC 1455.

He while disposing an industrial dispute in regard to the payment of bonus, has observed:

> "Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the rural poor, the urban lay and the weaker societal segments for whom law will be an added terror if technical misdescriptions and deficiencies in drafting, pleading and setting out the cause-title create a secret weapon to non suit a part. Where foulplay is absent, and fairness is not faulted, latitude is grace of processual justice. Test litigations, representative actions, *pro bono public* and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral procedural shortcomings. Even Article 226, viewed on wider perspective, may be amenable to ventilation of collective or common grievances, as distinguished from assertion of individual rights although the traditional view backed by precedents has opted for the narrower alternative. Public interest is promoted by a spacious construction of *locus standi* in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjectival law"[123]

After the germination of the seeds of the concept of PIL in the soil of our judicial system, this rule of PIL was nourished, natured and developed by the Apex Court of this land by a series of outstanding cases, but a clear and definite shape was given in *Fertilizer Corporation Kamgar Union* v. *Union of India*[124]. The declaration of the Chief Justice in this case was an approval of PIL in unequivocal terms. Thus this case is one of the pioneer cases relating to PIL. But Justice Krishna Iyer had already made a declaration of the rights of individual to file PIL in *Municipal Council, Ratlam* v. *Shri Vardhichand*[125]. This case relates to section 133 of the Code of Criminal Procedure to abate a public nuisance which was caused by discharge of big factory of the nearby

---

[123] Id., at para 7.
[124] AIR 1981 SC 344.
[125] AIR 1981 SC 1622.

area and unhygienic condition of the area. Shri Vardhi Chand, a resident of the ward, filed the case against Municipal Council. Justice Krishna Iyer while directing the municipality to remove the public nuisance observed that:

> "If the center of gravity of justice is to shift, as the preamble of the constitution mandate, from the traditional individualism of *locus standi* to the community orientation of public interest litigation, these issues must be considered. In that sense, the case before us between the Ratlam Municipality and the citizens of a ward, is path finder in the field of people's involvement in the justing process[126]

With the judgement of this case the field of environmental pollution was covered by Public Interest Litigation.

3.3.(ii). PIL & RULE OF STANDING

The Indian Supreme Court has played the role of judicial activism with great finesse. In deciding the environmental cases (e.g. Sriram Gas Leakage case) the apex court has gone beyond some of the common law precedents (e.g. Rylands v. Fletcher). The Court has liberalized the rule of *locus standi* to enable concerned persons to seek the Court's indulgence under its power of judicial review (Article 32) for violation of fundamental rights. In the process the Court has not confined itself to preventive remedies. It has issued directions for remedial justice too. Through the variety of techniques of judicial activism, the Supreme Court of India has converted much of the constitutional litigation into public interest litigation (PIL). The PIL in India has been primarily judge-led and even to some extent judge-induced.

As far as the issue of locus is concerned the courts have taken the brand view that:

(a) they should broaden and expand the categories of persons who may be considered 'interested' or 'affected' persons and who may therefore bring legal action against the State to compel it to perform its duties.

---

[126] Id., at 1624.

(b) The poor enforcement of law and policy by administration often forces individuals and groups to come to the courts with public interest litigation of one kind or another.

(c) Persons who under take such litigation are actually rendering a public service and should be encouraged to do so, rather than be repelled on narrow and technical rules of standing.

The liberal use of PIL does not mean that the courts, even if it is tainted with bias, ill will or intent to black mailing will entertain every allegation. Of course, implicit in this approach is the understanding that the litigant is acting bona fide in the pursuit of his cause. The courts have often rejected petitions, which are actuated by malice or motivated by some personal gain, regardless of the 'public interest' in question. The Supreme Court in a landmark decision in *S.P. Gupta and others* v. *President of India and others*[127], summed up the approach where the Supreme Court held:

> "Today a vast revolution is taking place in the judicial process. The theater of law is fast changing and the problems of the poor are coming to the forefront. The court has to innovate new methods and device new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining Writ Petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or 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. It is in this spirit that the court has been entertaining letter for judicial redress and treating them as writ petitions and we hope and trust that the High Court of the country will also adopt this preactive goal-oriented approach.
>
> But we must not hasten to make it clear that the individual who moves the court for judicial redress in cases of this kind much be acting bonafide with a view to vindicating the cause of justice and if the acting is for personal gain or out of political motivation or other oblique consideration, the court should not allow itself to be activised at the instance of such person and must reject his

[127] AIR 1992 SC 149.

> application at the threshold, whether it be in the form of a letter addressed to the court or even in the form of a regular writ petition filed in the Court".

Giving stress on the fact that great care and caution is needed on the part of court in entertaining PIL, the Supreme Court further stated:

> Public interest litigation has now come to stay. But one is led to think that it poses a threat to court and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If court does not restrict the free flow of such cases in the name of public interest litigation, the traditional litigation will suffer and the court of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. This does not mean that traditional litigation should stay put. They have to be tackled by other effective methods, like decentralizing, the judicial system and entrusting majority or traditional litigation to village courts and Lok Adalats without the usual populist stance and by a complete restructuring of the procedural law, which is the villain in delaying disposal of cases.

3.3.(iii). PROTECTION OF AIR POLLUTION THROUGH PIL

The first public interest litigation to be filed in the area of Environmental law came to be known as the *Lime Stone Quarries case*[128]. An innocuous letter dated July 14, 1983 by a voluntary organization complaining of unauthorized and illegal mining in the Musoorie-Dehradun belt which adversely effected the ecology of the area and led to environmental disorder, directed by the Court to be registered as a writ petition under Article 32, set the ball rolling for a prolonged litigation. The Court directed the immediate closure of certain lime quarries on a permanent basis as they were proved to be hazardous to the health of workers and persons staying in the surrounding areas. While recognizing the hardship likely to be caused by its order, the Court observed that "it is a price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment with minimal

---

[128] *Rural Litigation and Entitlement Kendra, Dehradun* v. *State of U.P.*, AIR 1985 SC 652.

disturbance to ecological balance and without avoidable hazard to them and their cattle; homes and agricultural land and undue affection of air, water and environment".[129]

In an effort to mitigate the effect the closure, the Court directed the State to give priority to the displaced lessees in the matter of granting lease for limestone or dolomite quarrying in other areas and also to give priority to the displaced workers for employment in the afforestation and soil conservation programmes.[130] Further, the Court appointed the Bandyopadhyay Committee, which would look into schemes submitted by the quarries, which were not ordered permanent closure.

In the Second *Lime Stone Quarries*[131] case, the Court brought into shape focus the conflict between development and conservation and emphasizing the need for reconciling the two in the larger interest of the country, the Court strangely enough left the Government free to choose between environment or development by observing: "It is for the Government and the nation and not for the Court to decide whether the deposits should be exploited at the cost of ecology and environmental considerations or the industrial requirements should be otherwise satisfied". However, its basis for 'reconciliation' was clear in the words that followed: "it may be perhaps possible to exercise greater control and vigil over the operation and strike a balance between preservation and utilization".[132]

In the case of *D.D.Vyas* v. *G.D.A.*,[133] an open space was preserved for public park. The authorities were found to be negligent in constructing public parks, which contribute towards improvement of social ecology. The Allahabad High Court observed that in crowded towns where a resident does not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and the factories, the efficacy of beautifully laid out parks is no less than that of lungs to human beings. A public park is a gift of modern

---

[129] Id at 656.
[130] Id at 657.
[131] *Rural Litigation and Entitlement Kendra, Dehradun* v. *State of U.P.*, AIR 1987 SC 359.
[132] Id at 363.
[133] AIR 1993 All 57.

civilization, and is a significant factor for the improvement of the quality of life. The Court, further, held that open space for a public park is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology.

In the case of *M.C.Mehta* v. *State of Orissa*[134], it was held that today, the State and the citizens are under a fundamental obligation to protect and improve the environment.

In *Ajay Singh Rawat* v. *Union of India*[135], PIL by Dr. Rawat, member of Social Action Group called 'Nainital Bachao Samiti' alleging water, air, noise and VIP pollution in Nainital and seeking directions from the court for preserving the pristine beauty of Nainital. Court-appointed Commissioner confirmed that in Nainital there was widespread construction of unauthorized buildings, hill-cutting and destruction of forests going and that the lake water was full of human waste, horse dung and other waste.

Directions issued by Supreme Court regarding preventive and remedial measures to be taken on war footing so that Nainital may regain its unsoiled beauty and attract tourists.

A PIL highlighting environment pollution in Doon valley was initiated in *A.R.C. Cement Ltd.* v. *State of Uttar Pradesh*[136]. The court passed an order injunting the carrying on of any mining activity in the Doon valley and same being declared as a non-industrial area. A cement factory was operating despite the court's directions.

In this case the petitioners directed to offer alternative sites within two weeks and the State Government directed to give a positive response in the matter within four weeks. In *Indian Council for Enviro legal Action* v. *Union of India*[137], PIL was filed before the court by an environmental organization highlighting the woes of people living in the vicinity of chemical industrial plants in India. A writ petition filed by an environmentalist organization, not

---

[134] AIR 1992 Orissa 225.
[135] (1995) 3 SCC 266.
[136] 1993 Supp (1) SCC 57.
[137] (1996) 3 SCC 212.

for issuance of writ, order or direction against private units but against Union of India, State Government and State Pollution Board concerned to compel them to perform their statutory duties on ground that their failure to carry on such duties violated rights guaranteed under Article 21 of the residents of the affected area is maintainable.

The court can, after ascertaining that the alleged industrial units were responsible for causing ecological damage in the area, direct the authorities concerned to perform their statutory duties under the Environment (Protection) Act, 1986 and the Water (Prevention and Control of Pollution) Act, 1974.

In this case the Court held that the contention that the respondents being private corporate bodies and not 'State' within the meaning of Article 12, a writ petition under Article 32 would not lie against them, cannot be accepted. If the Supreme Court finds that the Government/ authorities concerned have not taken the action required of them by law and that their in action is jeopardizing the right to life of the citizens of this country or of any section thereof, it is the duty of the Supreme Court to intervene. If it is found that the respondents are flouting the provisions of law and the directions and order issued by the lawful authorities, the court can certainly make appropriate directions to ensure compliance with law and lawful directions made thereunder.

If an industry is established without obtaining the requisite permission and clearances and if the industry is continued to be run in blatant disregard of law to the detriment of life and liberty of the citizens living in the vicinity, the Supreme Court has power to intervene and protect the fundamental right to life and liberty of the citizens of this country.

Once an 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 matter can also be looked from the angle of "Polluter Pays" principle viz., the responsibility of repairing the damage is on the offending industry.

In this case the Central Government was directed to consider and examine the advisability of treating chemical industries as a category apart for scrutinizing their establishments and functioning more rigorously and allowing these industries to be established in arid areas.

Other directions to be considered and examined by the Central Government are in respect of establishment of environment courts; strengthening the environment protection machinery both at the Centre and the States and providing them more teeth; personal accountability of the industrial units for their lapses and negligence and formation of environmental audit.

Central Government also directed to recover the costs of the remedial measures from the industries concerned. At the same time to encourage voluntary bodies to take up actions in furtherance of public interest, respondents directed to pay Rs. 50,000 by way of costs to the petitioner.

In *M.C.Mehta* v. *Kamal Nath*[138], the Supreme Court took *suo moto* notice of a news item in the Indian Express that a motel owned by Mr. Kamal Nath (former Minister for Environment) had encroached substantial forestland and altered the course of river Beas. The Court held that Public at large is the owner of natural resources and the same cannot be subjected to private ownership or commercial exploitation to the detriment of the public at large. The executive holds natural resources of the country in public trust. The executive cannot allow them to be converted to private ownership or commercial use. The Himachal Pradesh Government acted in patent breach of public trust by leasing ecologically fragile land to motel management. The motel management has interfered with the natural flow of the river and anyone who pollutes the environment must pay to reverse the damage caused by his acts.

The Court directed NEERI to inspect the area and give an assessment of cost likely to be incurred in reversing the damage. In addition the Court instructed Motel to pay such costs and to show cause why it should not also be liable for a pollution fine.

---

[138] (1997) 1 SCC 388.

The degradation of the Taj Mahal due to environmental pollution was initiated through PIL[139]by Mr. M.C.Mehta alleging yellowing and blackening of the Taj Mahal due to Industrial/ Refinery emissions, generator sets, etc., and seeking directions of the Court for appropriate preventive measures. The Court held that Taj Mahal is part of national and international culture heritage and must be preserved and protected from damage due to environmental pollution. Even though development of industry is essential, at the same time environment and ecosystem must be protected. Sustainable development must be the answer. The Court was also of the opinion that the environmental measures must anticipate, prevent and attack the causes of environmental degradation. This is the "precautionary principle". In every case, the onus of proof is on the industry to show that its project is environmentally benign.

At the end the Court directed the 292 polluting industries must change over to natural gas as an industrial fuel and the industries which are not in a position to obtain gas connections shall stop functioning and re-allocate themselves beyond the Taj Trapezium Zone.

PIL[140] was filed against the rapid detonation of air quality in Delhi, which was becoming health hazard besides being an environment enemy. However, on 28th July, 1998 (AIR 1998 SC 2463) directions were issued fixing a time schedule after taking a note of recommendations made by Bhurelal Committee. Thereafter, number of applications were filed requesting the extension of dealing to convert the entire city bus fleet to single mode of CNG beyond 31st March 2001. The Court held that mitigate the sufferings of commuter public relaxation given to schools, DTC, Contract Carriage operators, other buses operators and owners of commercial vehicles including autos by allowing them to operate vehicles equal to number of vehicles for which steps for conversion has been taken by them by 31st March, 2001. Further the Court directed that after 1-4-2001 no commercial vehicle will be registered in Delhi, which does not conform to the orders dated 28th July, 1998

---

[139] *M.C.Mehta* v. *Union of India*, (1997) 2 SCC 353.
[140] *M.C.Mehta* v. *Union of India*, AIR 2001 SC 1948.

and no other commercial vehicle shall ply in Delhi unless converted to single fuel mode of CNG w.e.f 1-4-2001, except for the relaxation given above. The Court also directed Bhurelal Committee to examine whether low sulpher diesel should be regarded as a clean fuel. Directions given for safeguarding the health of the people, a right provided and protected under Article 21 of the Constitution would override the provisions of every Statute including Motor Vehicles Act if they mitigate against the constitutional mandate of Article 21.

3.3.(iv).PIL and Control of Noise Pollution

In *M.C.Mehta* v. *Union of India*[141], Mr. M.C.Mehta, an Environmentalist lawyer, filed a public interest petition under Article 32 of the Constitution seeking direction to the Haryana Pollution Control Board to control the pollution caused by stone crushers, pulverisers and mine operations in the Faridabad Balabgarh area. The core question to deal is whether to preserve environment and control pollution, the mining operation should be stopped within the radius of 5 k.m. from the tourist resorts of Badkal lake and Surajkund in the State of Haryana. For the purpose of mining, explosives are being used for rock blasting. Because of unscientific mining operations, overburden materials (top soils and murmur remains) were observed to be lying haphazardly. Deep mining for extracting silica and lumps is causing ecological disaster and these mines lie unreclaimed and abandoned. As a matter of fact mining site reveals total lack of environmental planning. The mining operations within the radius of 5 k.m. from Badkal lake and Surajkund were stopped by the Haryana Government on the basis of the recommendations made by the Board. The operators through their learned counsel raised serious objections to the recommendations of the Board seeking closure of the mining operations within the radius of 5 k.m. The Supreme Court sought the Expert opinion from the National Environment Engineering Research Institute on the point whether the mining operations in the said area are to be stopped in the interest of the environmental protection, pollution control and tourist development. If so,

---

[141] AIR 1996 SC1977.

whether the limit should be 5 kms. The Court held: "the two expert opinions by the Board and by the NEERI have no doubt in our mind that the mining activity in the vicinity of the resorts are bound to cause severe impact on local ecology. We are of the view therefore, that in order to preserve environment and control pollution within the vicinity of the two tourists resort it is necessary to stop mining activity within two kms radius of the tourist resorts of Badkal lake and Surajkund. 200 meters green belts be developed at 1 km radius all around the boundaries of the two lakes. Further, it is directed that no further construction of any type shall be permitted now onwards within 5 kms radius of the Badkal lake and surajkund. All open areas shall be converted into green belts.

In *Smt Ved Kaur Chandel* v. *State of H.P. and others*[142], a social worker filed a public interest petition (writ) in Himachal Pradesh High Court against the establishment of a retreading unit adjacent to the State Highway, apprehending the likelihood of air and noise pollution. The State Pollution Control Board had given the Tyre retreading unit 'No objection certificate (NOC)' on certain conditions. No final consent for production was granted. An affidavit filed by Pollution Control Board and respondent unit showed that they have undertaken to follow cold retreading process with electricity instead of boiler and water at process stage which according to them will not cause any water and air pollution. Heavy responsibility was put on the State Board to ensure that the respondent unit commences production only after fulfilling all conditions mentioned in the consent letter.

The Himachal Pradesh High Court while disposing of the writ petition made following directions:

1. the respondent No. 5 may apply to the Himachal Pradesh State Pollution Control Board to obtain consent to operate after fulfilling all the conditions applicable to it as laid down in the letter of consent to establish its unit.
2. On receipt of the application of respondent No. 5 for consent to operate, complete in all respects, the Himachal Pradesh State Pollution Control

[142] AIR 1999 HP 59.

Board will make recommendations after inspection and issue Inspection Report within a period of four weeks from the date of receipt of the application.

3. Thereafter respondents No. 5 may apply to this Court for getting the stay order dated 24.12.1998 vacated for commencing production.
4. The collector Ghumarwin, District Bilaspur is directed to decide the complaint of Superintending Engineer, 10th Circle, H.P., P.W.D., Bilaspur, against respondent No. 5 for violation of Roadside land control Act 1968 expeditiously.

In *Bijayananda Patra and Others* v. *District Magistrate, Cuttack*[143], the Public Interest Litigation relates to noise pollution in different parts of State of Orissa caused due to use of high standing explosive, fire works and blaring sound producing devices. It was submitted on behalf of the State Pollution Control Board that the State of Orissa has the Fire works and Loud Speaker (Regulation) Act 1958 for the purpose of regulating display of explosive fire works and use of loud speaker. Section 4 of the Act prescribes the restricted zones and time period for the use of loudspeaker and display of explosive fire works within permissible time and also provides that permission for the same had to be obtained for its use within the restricted area. Contravention of any of the provision of the Act invites penalty by way of imprisonment and fine. The enforcing authority under the said Act is the District administration and the Pollution Control Board has no power to intervene in the matter.

The High Court after discussing the intension of the enactment of specific pollution control legislation observed that noise code regulating all aspects of noise pollution should be the immediate concerns of the Government. As the problem of noise pollution has already crossed the danger point and noise like a smog is threatening as a slow agent of death. The Court directed the State Government to take some measures in curbing the Noise Pollution:

---

[143] AIR 2000 Orissa 70.

(i) The prescribed standards regarding noise by Government of India may be enforced strictly in letter and spirit.

(ii) Separate Courts regarding Noise pollution may be established.

(iii) The cases should be decided within a prescribed limit.

(iv) All District Magistrates and Sub Divisional Magistrates should be empowered to issue prohibitory orders under section 144 of the Code of Criminal Procedure, 1973 limiting the hours of loudspeakers in religious places and for other social gatherings and functions.

(v) The subject of environment protection may be made compulsory at school, college and University levels.

(vi) The press and media should play a constructive role to highlight disastrous effects of noise pollution and its remedy.

(vii) The District Administration and State Pollution Control Board shall work out the modalities to prevent catastrophic effect of noise pollution by ensuring strict compliance with the statutory provisions, scanty though they are.

(viii) Both Central Government and State Government should consider the desirability of having adequate legislative measures to prevent this fast growing menace, which, though it appears to be 'silent' has in fact, potentialities of producing a future generation of deaf persons.

(ix) Permanent monitoring bodies should be appointed to make periodic review of the situation and suggest remedial measures. The composition of such a body has to be determined by the State and Central Government.[144]

3.3.(v). Advantages of Public Interest Litigation

In India, Supreme Court has evolved the strategy of Public Interest Litigation based on massification phenomenon. Due to massification

[144] Id., at 77.

phenomenon in our existing society, human actions and relationships assume a collective rather than merely individual character. Declaration of human rights, the collective social rights, and duties of groups, classes and communities are the basic concerns of modern society. But we should not ignore the individual's right in that context.

The most important thing in Public Interest Litigation is that it provides help to the individual who alone probably cannot move efficiently to the court for his protection. Moreover, expressive costs may obstruct his legal action in court; he may fear the powerful violator or he may be unaware of his rights. It is necessary for Indian judicial system to overcome the problem to access justice for the people beyond rules of 'standing'.

Public Interest Litigation checks the Government authorities to exercise their power within their periphery. If they try to exceed powers beyond their limits then any person on behalf of the public can file a writ petition under the umbrella of public interest litigation to keep them in check.

Any aggrieved person can write a postcard to any judge of the Supreme Court for public interest litigation. But this right ought not to be misused for any personal or political motivation.[145] Public interest litigation has also heightened the confidence in judicial process and the new approach of the court:

(a) The public interest litigation has widened the scope of *locus standi.*

(b) The public interest litigation has encouraged the poor to raise their voice before the courts for their protection of fundamental and legal rights.

(c) The public interest litigation has made the individuals confident to make collective actions for effective remedy.

(d) The public interest litigation has made aware the ignorant of their rights.

(e) The public interest litigation shows the courts of their role as guardian and protector of the Constitution.

(f) The public interest litigation has led to the abolition of several legislations, which provide to be big threat to public interest.

---

[145] Report of Legal Aid Implementation Committee: Government of India, 1980.

(g) The public interest litigation has proved to be democratic obligation.

Public interest litigation involves collaboration and co-operation between the Government and its officers, the Bar and the Bench, for the purpose of making human rights meaningful for the weaker sections of the community.[146]

3.3.(vi). Public Interest Litigation—A Critique

Public interest litigation has been criticized on number of grounds *viz.*that it can be misused for private motive or political ends that would result in tremendous increase in the litigation; that it would develop uncertainty as to the admission of the petition for hearing.

The practice of the affected person addressing directly in the name of Judges of the Supreme Court has been criticized on the ground that there would be danger of litigants choosing a judge and in turn judges choosing their litigants. The *suo motu* action by judges based upon news reports is criticized as thereby the judges assume the role of advocates as well and this acts against the judicial precept 'no body should be judge in his own case'.

To avoid these defects, the Supreme Court has framed certain guidelines for entertaining letters / petitions as public interest litigation[147]-- such as (a) neglected children, (b) bonded labours matters, (c) non-payment of minimum wages to workers and exploitation of casual workers and violation of labour laws, (d) petition from prisons, (e) speedy trial, (f) petition against atrocities on women, (g) petition against police excesses, (h) petition against atrocities on SC, ST's and OBC, (i) petition from riot victims, (j) petition relating to family pension, (k) petition pertaining to the environmental pollution, disturbance of eco-balance, maintenance of forests and wildlife, maintenance of heritage and culture, and (l) other matters of public importance.

The Hon'ble Chief Justice of the Supreme Court Mr. J.S.Verma viewed that it is necessary to avoid the misuse of Public Interest Litigation rather than criticizing the process. Any attempt to curb it would be to throw baby with the

---

[146] Dr.B.L.Wadehra, *Public Interest Litigation*, Universal, 2003, p.34-35.
[147] P.B. Menon, "PIL—A Study", AIR 1993 Journal 17.

bath water. It is primarily for the courts which devised this process to practice self-restraint and to also devise proper checks and balances to ensure that even persons who went to misuse it are not able to do so. Time has come to make revision of the Supreme Court Rules.[148]

During the 1990's the Supreme Court and High Courts were flooded with public interest litigations ranging from child labour to environmental issues, which forced the Government to do some rethinking, but the Government's approach was in curbing the Court's power[149]. This gives us an impression that Government has at times tussled with the judicial independence with regard to Public Interest Litigation.

The recent trends of the judiciary towards the violation of human rights are quite surprising because public interest litigations are diverted to the National Human Rights Commission. The commission does not have powers like Supreme Court and High Courts. It can play a fact-finding role. One cannot deny that the effort of the highest court in environmental pollution control through Public Interest Litigation is laudable, particularly when the legislature remains passive. Judiciary also through the machinery of PIL protects the weakest persons from the oppressive acts of either executive or legislatures. Even when the legislature is lagging behind in bringing the lacunae in the existing legal system and the administration is not well equipped to meet the challenges; it is only the judiciary, which can render its help to do justice.

---

[148] J.S.Verma, "Constitutional Obligation of the Judiciary", *AIR 1997 Journal 165.*
[149] 82 nd Constitution Amendment Bill—PIL (Regulation) Bill 1996.