CHAPTER – 5

ROLE OF THE JUDICIARY

Position in India.

Position in America

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CHAPTER – 5

ROLE OF THE JUDICIARY

"In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care, and shelter. These are basic human rights known to any civilised society."

The Supreme Court of India, AIR 1996 SC 1051 at 1053.

Environmental consciousness the world over, supported by judicial activism supplemented the drawbacks, deficiency and lacunae of the legislative process and executive red-tapism. Article 142 of the Constitution empowers the Supreme Court to pass appropriate orders to meet the ends of justice even to go beyond law and find out the habitation of justice. Indian judiciary, more precisely the Supreme Court and High Courts has played an important role in the evolution and development of the right to environment. Various laws were enacted to deal with the problem of environment and the superior courts played a pivotal role by interpreting those enactments. Public Interest Litigation is proved to be a successful instrument in majority of the environment related cases. The study of the role of judiciary laying down principles and broad parameters for enforcement of various environmental laws are very important in the study of the right to environment. The interest shown by the judiciary in the protection of the environment is also equally necessary to dig out the importance of the right to environment. The deficiencies and difficulties of judiciary in the administration of

environmental justice have also been discussed so that some changes may be suggested in the administration of environmental justice.

During 1990s Indian legal system underwent a radical change in sorting out new horizons of social justice. In modern time, justice has to meet social realities and demand of the time. The development of right environment through judicial intervention by national Courts in various parts of the world, shows two things: *first*, the courts are recognising it as a fundamental right; *second*, the courts are defining the content and nature of the right through landmark decisions. The emergence of right to environment in India started from *Maneka Gandhi*[1] and completely emerged in the *Subhash Kumar.*[2] Though the inactively the right to life which includes the right to environment was explained by the court in 1951 in the famous case *A. K. Gopalan vs. State of Madras*[3] but a complete expression of the right to life took place in *Maneka Gandhi's* case.

Position in India

Indian legislature and Administration failed to tackle India's myriad environmental problems. Laws granting vague and sweeping authority and powers to the Government agencies contributed to this failure. Apathy and a slower tendency to adapt to rapid environmental changes have also given rise to the need for the active plenary role of the Court. Judicial rulings have completely changed the nature and understanding of the law in the Indian environmental jurisprudence. The judiciary looked to the provisions of the Indian constitution to solve the various problems of environment within the framework of Public Interest

1. *Maneka Gandhi vs. Union of India* AIR 1978 SC 597.

2. *Subhash Kumar vs. State of Bihar, AIR 1991 SC 420.*

3. *AIR 1950 SC 27.*

Litigation. Article 142 afforded the Supreme Court considerable power to mould its decisions in order to deliver complete environmental justice. In the matters of constitutional interpretation, the Supreme Court is the final authority, which assumes a primary position in the Indian legal system.[4]

Environmental law making in India has not followed any consistent and logical path of serious deliberations both at the stage of drafting and consideration on the floor of legislatures, before becoming the law of the land. Even chance remarks or an expression of displeasure over an undesirable environmental situation by charismatic political leaders have often led to the making of laws. The circulars and guidelines as to joint forest management and notification as to Coastal Regulation Zone apparently are illustrations of this. Lack of vision in foreseeing environmental problems, not evolving appropriate policies plans and programmes, non-dynamic and non-reactive laws appear to be the judicial activism.[5]

Maneka Gandhi vs. Union of India[6] is the turning point in the history of development of life and personal liberty where the Supreme Court interpreted Article 21 ensuring that the procedure under the law should be reasonable, fair and just. The scope of fundamental right got a liberal expansion to cover all those areas connected with the persons and personality. Justice Bhagwati observed:

> "The attempt of the court should be to expand the reach and ambit of the Fundamental Right rather than attenuate their meaning and content by a process of judicial construction"

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4 *See, Y.K. Sabarwal," The Supreme Court's Contribution to Environmental Law" in Nyay Deep*

5 *id. note 1.*

6 *Id. note-1*

In Noise pollution first case came before the Bombay High Court[7] in which the Bombay High Court asked authorities to regulate the use of loudspeaker during Navaratri Festival. The Court ordered strict implementation of Environmental Acts and Rulings so that celebration of festivals must not disturb the peace and tranquillity of the neighbourhood.

In *Godham Construction Company Vs. Amulya Krishna Ghosh*[8] Calcutta High Court held that no money could afford appropriate relief to the plaintiff who was discomforted by the noise pollution.

Another case was decided by the Calcutta High Court, *Rabin Mukharjee Vs. west Bengal*[9] in which the court held that the authorities should strictly implement the Motor Vehicle Act and ban the use of multi toned electric horns and impose fine whenever necessary.

In Om Birangana Religious Society vs. State of Orissa[10] the court upheld the power of the Sub-Divisional Magistrate to direct religious organisations that use of microphones may hinder the right of citizens to live a peaceful life.

In *P.A Jacob Vs Superintendent of police, Kottayyam,*[11] the Kerala High Court asked the Christians not to use loudspeaker which would disrupt the law and order and create inconvenience to for the other groups of citizens.

In *Free Legal Aid Cell Vs Government of NCT Delhi*[12] a separate court for dealing the problem of noise was directed to be established and all the District Magistrates be empowered to issue prohibitory orders to limit

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7 *State of Bombay Narasu Appa Mali,* AIR 1952 Bom. 82
8. *AIR 1968 Cal 61.*
9. *AIR 1985 Cal 222.*
10. *1996 100 CWN 617.*
11. *AIR 1993 KER 1.*
12. *AIR 2001 Del 455.*

the use of loud speaker, restrict the use of fire crackers in religious festivals, marriages etc.

In *Sayeed Moqsood Ali vs. the State of M.P.*[13] a dharmasala was being operated near the residence of a cardiac patient. It was held that even a single individual is entitled to maintain a writ petition and the dharmasala was ordered to limit the level of noise.

Burra bazaar fire works dealers Association vs. the Commissioner of Police, Calcutta,[14] the Calcutta High Court took a highly activist stand and put restrictions on manufacture store and selling of fire crackers and held that right to a decent environment, the right to live peacefully, the right to sleep at night and the right to leisure which are the necessary ingredients of the right to life under Article 21 of the Constitution.

In *Maulana Mufti Syed Barkati vs. State of West Bengal*[15] the Calcutta High Court held that use of loud speaker for calling for Azan is not an integral part of Islam and it would not violate the right to religion under Article 25 of the Constitution. Use of loudspeaker is a technological development and not a part of Islam.

In *Church of God vs. KKRMC Welfare Society*[16] it was reported that loud speaker was used in the church during prayer, which added to the existing noise. The Madras High Court ordered that the noise caused by prayer meetings be controlled. The Church challenged the order on the ground of interference with the right to profess, practice and propagate religion and thus violative of Article 25 and 26 of the Constitution. The Supreme Court rejected the contention holding that:-

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13. AIR 2001 MP 220.
14. *1997 (2) CLJ 468*

15. AIR 1999 Cal 15.

16. AIR 2000 SC 2773.

"no religion prescribes that prayer be performed through voice amplifier or by beating of drums and that and that Article 25 and 26 are subject to public order, morality and health."

It relied on the observation in *Acharya Maharajsri Narendra Prasadji vs. State of Gujarat*[17] that Fundamental Right of one person must co-exist in harmony with that of another person and also with the power of the state in the light of the directive principles in the interest of social welfare as a whole.

About soil pollution due to dumping of waste and effluents of factories, use of pesticides and insecticides, gases, acid rains, etc. has resulted in the destruction of vegetation and change in the composition of soil that makes it unfit for cultivation. Vegetable, egg, meet, fish, grapes, oil and cereals contain DDT and BHC above permissible limit. The Chemical industries in Bichri village were discharging chemical wastes which rendered the soil unfit for cultivation. Iron-based and gypsum-based sludge if not properly treated, pose grave threat to Mother Earth. The court held that the industries are absolutely liable to compensate the harm caused by them to the villagers in the affected area, to the soil and to the underground water and hence they are bound to take all necessary measures to remove the sludge and other pollutant lying in the affected area and also to defray the cost of remedial measures required to restore the soil and underground water sources. Section 3 and 4 of the Environment Act 1986 confers the Central Government the power to give directions to the above effect. Levy of cost for remedial measures implicit in the two sections.

In the field of tobacco smoking, *K. Ramakrishna vs. State of Kerala*[18] the court held that the tobacco smokers violate the fundamental right to life guaranteed under Article 21 of the constitution as the exposure to tobacco smoke was slow prior, causing death and passive smoking

17. *AIR 1974 SC 2098.*
18. *AIR 1999 Ker 38.*

where the judges deemed it a punishable offence under section 278 of the Indian Penal Code.[19] The earliest specific law on smoke is the Bengal Smoke Nuisance Act 1905, the Bombay Smoke Nuisance Act 1912,

In the area of Cultural heritage, *Taj Trapezium case*[20] is a typical case where the Supreme Court recognized and that since the Taj is a World Heritage Site, the Supreme Court would itself monitor some issues such as air pollution, proper management of the Mathura refinery, construction of a hospital, a bypass to divert all traffic away from Agra etc. Subsequently, a governmental Agra Mission Management Board was constituted in 1997 followed by the Taj Trapezium Zone Pollution (Prevention & Control) Authority set up in 1999, to monitor progress of the implementation of various schemes for protection of the Taj. *In Rajiv Mankotia vs. Secretary to the President of India*[21] prevented the government of India from converting a part of Viceregal Lodge in Shimla constructed in 1888 in to a tourist hotel being a historical monument of national importance.

Protection of monuments and religious shrines from environmental pollution came up for consideration before the Supreme Court in *Wasim Ahmed Sayeed vs. Union of India and Others*[22] To prevent damage to monuments, particularly the Dargah of Moinuddin Chisti in Ajmer and the heritage city of Fatehpur Sikri, the Supreme Court directed the removal of shops within a certain distance from the monuments so that no damage is caused to them. The Kerala High Court examined the importance of pre-historical monuments in *Niyamvedi vs. Government of India*[23] and held that pre-historical monuments needed to be preserved.

Monetary compensation:- Right to compensation due to environmental

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19 . *Padma, "women empowerment towards safer environment and justice" IBR 28 2&3, 2001.*
20 . *AIR 1997 SC 734.*
21 . *(1997) 10 SCC 441.*
22 . (2002) 9 SCC 472.

23 . *Kerala High Court WA No. 1427/1994-B 6th Nov. 1995.*

catastrophe i.e. for violation of any right under Article 21 of the constitution, right to claim compensation has been recognized in many cases. Right to a healthy environment is included under Article 21 of the constitution and hence for violation of this right monetary compensation can be claimed as matter of right.[24]

In the field of hazardous substances, in *M. C. Mehta vs. Union of India*[25] popularly known as *Shri Ram Gas Leak Case* the Supreme Court Observed: "an enterprise which is engaged in a hazardous or inherently dangerous industry which posses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to community to ensure that harm results to any one on account of hazardous or inherently dangerous nature of activity which it has undertaken.

In the field of ecological balance *Sachidananda Pandey vs. the State of West Bengal*[26] the Supreme Court reminded the citizen and the Government of their social obligation to preserve and maintain ecological balance. *Rural Litigation and Entitlement Kendra* v. *State of U.P.*[27] was one of the earliest cases where the Supreme Court dealt with issues relating to environment and ecological balance. The expanded concept of the right to life under the Indian Constitution was further elaborated on in *Francis Coralie Mullin* v. *Union Territory of Delhi*[28] where the Supreme Court set out a list of positive obligations on the State, as part of its duty correlative to the right to life.

In the area of water and air *Subhash Kumar vs. State of Bihar*[29] is a

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24. *M. C. Mehta vs. Union of India* (1997) 1 SCC 395.
25. *AIR 1987 SC 96. (Shri Ram Gas Leak Case)*
26. *AIR 1987 SC 1109.*
27. *Rural Litigation and Entitlement Kendra, Dehradoon vs. State of UP,* AIR 1985 SC 652.
28. *AIR 1981 SC 746.*
29. *Subhash Kumar vs. State of Bihar,* AIR 1991 SC 420.

landmark judgment in which justice K. N.Singh observed:

"Right to live is a fundamental right under Article 21 of the constitution and it includes pollution free water."

In AP Pollution Control Board vs. M.V Naydu,[30] *the* Supreme Court Observed:

"The right to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water"

In Surendra D Sinha vs. Union of India[31] The Apex Court emphasized that there can be no denying of the fact that right to life guaranteed under Article 21 of the Constitution surely include a right to clean water In *Narmada bachao Andolan vs Union of India*[32] *justice* Kripal observed: "Water is the basic need of the human being and part of right to life and human right as enshrined in Article 21 of the Constitution of India"

In *D.K Joshi vs. State of U.P.*[33] and *Dr. Ajay Singh Rawat vs. Union of India*[34] (it was alleged that the water supplied for drinking was extremely polluted and unhealthy for human consumption. The writ petition was filed under Article 32 of the constitution which only for enforcement of Fundamental Right. It is implied that right to water, which is a component of environment, is considered as Fundamental Right. Various High Courts also passed judgments on clean water.[35]

Development vs. Environment

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30 . *AIR 1996 SC 781.*
31. *2001 (3) Scale 533.*
32 . *AIR 2000 SC 3751.*
33. (1997) SCALE 181.
34. *Ajay Sing Rawat vs. Union of India (1995) 3 SCC 266.*

35 . *Hamid Khan vs. State of U.P AIR 1997 M.P. 191, F.K. Hussain vs. Union of India AIR 1990 KER 321, S.K Garg vs. State of U.P, AIR 1999 All 87, Attakoya thangal vs. Union of India, 1990 KLT 580.*

The Vienna Declaration and Programme of Action held the right to development as "a universal and inalienable right and an integral part of fundamental human rights."[36] The right to development has also been given prominence in the mandate of the High Commissioner for Human Rights, (General Assembly Ressolution 48/141, 1993) and the General Assembly required the High Commissioner to establish "a new branch whose primary responsibilities would be the promotion and protection of the right to development."[37] The right is regularly mentioned in declarations of international conferences and summits and in the annual resolutions of the General Assembly and the Commission on Human Rights.

In *Goa Foundation vs. Diksha Holdings Pvt. Ltd.*[38] the Supreme Court considered the controversy between environment and development. The Court held that there can be no development at the cost of environment and environment at the cost of development. A balance between the two should be maintained. Justice Pattanaik observed:

> "the society shall have to prosper but not at the cost of the environment and in similar vein, the environment shall have to be protected but not at the cost of the development of the society - there shall be both development and proper environment and as such a balance has to be found out and administrative actions ought to proceed in accordance with and d'hors the same"

In *Calcutta wetland case*[39] the Calcutta High Court recognised that the environmental concern had to be addressed at the same time as

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36 . *Vienna Declaration and Programme of Action* 1993.
37 . *General Assembly Resolution 50/214, 1995.*
38 . *AIR 2001 SC 184.*
39 . *Peoples United for Better Living at Calcutta vs. State of West Bengal AIR 1993 Cal. 125.*

developmental concern and that development must progress at a rate that took into account the interest of posterity as well.

In *the State of Himachal Pradesh vs. Ganesh wood products*[40] the Supreme Court held that the Government could not allow the approval of new industry where use of forest products had a deleterious effect on forest, wealth, ecology, and the environment.

The Supreme Court gave an understanding of Sustainable Development, which designed subsequent law making that the development, and the ecology is not opposed to each other. It is internationally accepted concept that the quality of human life should be improved within the capacity of the ecosystem. The trend of the Supreme Court was to apply the principle of sustainable development to ecologically harmful industry but recently it seems that the trend shifted also to support incursion on the forest cover in the interest of the development. In *Consumer Research Education vs. Union of India,*[41] the State Government altered the boundary of Chinkara Sanctuary for allowing mining within the Sanctuary, which was challenged. The Court observed:-

> "Where an attempt is made by the State Legislature to balance the need for environmental protection and the need for economic development of an impoverished backward area, it would be improper to apply the principle of prohibition ..... instead the court would apply the principle of sustainable development and intergenerational equality"

In *Live Oak Resort vs. Panchgani Hill Station Municipal Corporation*[42] the Supreme Court maintained a balance between environment, ecology and environment. The petitioner sought to prevent construction of a five star

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40. *(1995) 6 SCC 363.*
41. *(2000) 2 SCC 599.*
42. *(2001) 8 SCC 329.*

luxurious hotel in Panchgani Hill Station. The Court allowed construction and observed that obviously the state Government had in its mind that ecology cannot be given a go-bye, in the same vein the development process can not be ignored as a matter of fact the law court evoked the factum of sticking a balance between development and ecology as in the developing country, there can not be only development or only ecology but both must exist and thus a balance has to be struck else otherwise society will perish in the absence of the elements.

Soil pollution

The Supreme Court of India in *Ratlam Municipality* case[43] first of all recognised the right to environment without any specific reference to Article 21, 48(A) and 51(A) (g) of the constitution. The Supreme Court observed that:

"Public nuisance, because of pollutants being discharged by big Factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law."

A little later in the decision, it was said that,

"Decency and dignity are non-negotiable facets of human rights and are a first charge on local self- governing bodies".

In this case the court recognized the importance of pollution free environment and rendered it the status of human right. The Court clarified that pollution is a challenge to the social justice component of rule of law. Municipal Council constituted for the purpose of preserving public health can not runaway from its principal duty by pleading financial inability. This judgment opened the door for further developments in the environmental jurisprudence.

In *Chetriya Pradushan Mukti Morcha Sangharsha Samity -Vs- State of Uttar Pradesh,*[44] and *Subhash Kumar vs. State of Bihar,*[45] the

43 . *Municipal Council of Ratlam vs. Vardichand AIR 1980 SC 1622.*
44 . *AIR 1990 SCC 2060.*
45 . *id. n 28.*

Supreme Court treated the right to pollution free environment as integral part of right to life under Article 21 of the Constitution. Therefore, if anything endangers or impairs the quality of right in derogation of laws a citizen has right to recourse to Article 32 of the constitution for removing pollution of water or air which may be detrimental to the quality of life.

In *the State of Rajasthan vs. G. Chawla*[46] the Supreme Court held that the State Legislature has the right to prevent/control/penalize loud noise, it would not violate the freedom of speech and expression, as it would be reasonable restriction in the interest of public. In addition, such laws fall under public health and sanitation under entry 8 of List II of the 7th schedule of the Constitution.

Looking at the decision of the Supreme Court in applying the principle of sustainable development, initially the court was on a theoretical footing but some of the latter decisions created conflict that the concept of sustainable development is a reconciliation of environment and economy rather than a choosing game between the two. Moreover, the tools and methods of sustainable development must be clearly specified. The court did not accept a rigid interpretation of the principle of sustainable development in India. The importance of the theory lies in its potential for use by courts as a means of ensuring environmental compliance.[47]

Application of International principles

It is worthwhile to mention here that principle 10 of Rio declaration, 1992 states that:

> "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including

46 . *AIR 1995 SC 544.*

47 . *See. Pritviraj Dutta, "The Politics of Sustainable Development" 2 IJEL 2001.*

information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

The first case on which the Supreme Court of India applied the doctrine of **Sustainable Development** was the *Vellore Citizen Welfare Forum vs. Union of India.*[48] In this case, dispute arose over some tanneries in the state of Tamil Nadu that they were discharging effluents in the river Palar, The Hon'ble Supreme Court held that:

"We have no hesitation in holding that the precautionary principle and polluter pays principle are part of the environmental law of India"

The court also held that:

"Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

But before this case, the Apex Court has tried to keep the balance between ecology and development in many cases. *In Rural Litigation and Entitlement Kendra Dehradun vs. State of Uttar Pradesh,*[49] which was also known as Doon valley case, dispute arose over mining in the hilly areas. The Supreme Court after much investigation ordered the stopping of mining work and held that:

"This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of

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48. *Vellore Citizen Welfare Forum Vs Union Of India, AIR 1996 SC 2715.*

49. *Id. n 28.*

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

However, in this case, the Supreme Court allowed a mine to operate until the expiry of lease as an exceptional case on condition that land taken on lease would be subjected to afforestration by the developer. But as soon as the notice was brought before the court that they have breached the condition and mining was done in most unscientific way, the Supreme Court directed the lessee to pay a compensation of three lacks to the fund of the monitoring committee. This has been directed on the principle of 'polluter pays'. Justice Ranganath Misra held that preservation of the Environment and keeping the ecological balance unaffected is task which not only Governments but also every citizens must undertake. It is a social obligation and let us reminds every Indian citizens that it is his Fundamental Duty as enshrined in Article 51 A (g) of the constitution.

The absolute Liability principle was laid down by the Supreme Court in *M. C. Mehta vs. Union of India*[50] rather than environmental law principle for compensation. But in *Indian Council for Enviro-Legal Action vs. Union of India,*[51] the Supreme Court applied Polluter pays Principle and held that Manufacturers would be liable for the payment of compensation as per the absolute liability principle as laid down in Oleum Gas Leak Case as well as the pre-cautionary principle and sustainable development principle.

In *Vellore Citizens Welfare Forum vs. Union of India,*[52] the Supreme Court applied the principle of sustainable development on a theoretical standpoint. The Court observed:

"while industries are vital for the country's development but having

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50 .*AIR 1987 SC 1086.*
51. *(1996)3 SCC 212.*
52 .*(1996) 5 SCC 647.*

regards to pollution caused by them the principle of sustainable development is to be adopted as a balancing concept.....though leather industry is of vital importance to the country as it generates foreign exchange and provide employment avenues, it has no right to destroy ecology, degrade and pose a health hazard."

In a landmark decision in *Tarun Bhagat Singh, Alwar vs. Union of India,*[53] the petitioner filed a Public Interest Litigation and brought to the notice of the Supreme Court that the State government of Rajasthan was failed to make rules and in contrary allowed mining work to continue within the forest area. Consequently, the Supreme Court issued directions that no mining work or operation could be continued within the protected area.

In *M. C. Mehta vs. Union of India*[54] the Supreme Court issued directions towards the closing of mechanical stone crushing activities in and around Delhi. However, it realized the importance of stone crushing and issued directions for allotment of sites in the new 'crushing zone' set up at village Pali in the state of Haryana. Thus it is quite obvious that the courts give equal importance to both ecology and development while dealing with the cases of environmental degradation.

Under Article 21 of the Indian constitution, the right to life is residuary in nature. Way back in 1967, the Apex Court in *Satwan Singh vs. A.P.O New Delhi*[55] Justice Despandey opined that life and personal liberty included variety of rights though not included in part III of the constitution provided they were necessary for the full development of the personality of the individual. Again in 1981 the Supreme Court in *Francis Coralie vs. Union Territory*[56] of Delhi, Justice Bhagwati explained

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53 .*Tarun Bharat Sangha, Alwar vs. Union of India* (1993) 1 SCC 4.
54 . *M. C. Mehta vs. Union of India* (1997) 2 SCC 253.
55 . AIR 1967 SC 1867.

56 *AIR 1981 SC 746.*

that right to life includes all faculties of thinking and feelings.

Indian handicraft Emporium vs. Union of India[57] the Apex Court held that a trade dangerous to ecology to be either regulated or totally prohibited. The fundamental Right to trade are to be balanced with the demand of social interest. This balance is reflected in Article 48A and 51 A (g) of the constitution. According to the Court prohibition of import of African ivory had a laudable object. Under the pretext of dealing in ivory, killing Indian elephant is to be stopped. The Court observed:

> "Animals play a vital role in maintaining ecological balance. The amendment (1991 Wild Life Protection Act 1972) have been brought for the purpose of saving the species from extinction as also for arresting depletion in their numbers caused by callous exploitation thereof."

Another expansion of the right to life is the right to livelihood (article 41), which is a directive principle of state policy. This extension can check government actions in relation to an environmental impact that has threatened to dislocate the poor and disrupt their lifestyles. A strong connection between the right to livelihood and the right to life in the context of environmental rights has thus been established over the years. Especially in the context of the rights of indigenous people being evicted by development projects, the Court has been guided by the positive obligations contained in article 48A and 51A(g), and has ordered adequate compensation and rehabilitation of the evictees.

In *Surendra D Sinha vs. Union of India*[58] the apex court emphasized that there can be no denying that right to life guaranteed under Article 21 of the constitution would surely include a right to clean environment. Matters involving the degradation of the environment have often come to

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57 AIR 2003 SC 3255.
58 *(2001) 3 Scale 533.*

the Court in the form of petitions filed in the public interest. This mode of litigation has gained momentum due to the lenient view adopted by the Court towards concepts such as *locus standi* and the 'proof of injury' approach of common law. This has facilitated espousal of the claims of those who would have otherwise gone unrepresented. It is interesting to note that, unlike Indian courts, the Bangladeshi and Pakistani courts apply an 'aggrieved person' test, which means a right or recognised interest that is direct and personal to the complainant.

Right to environment

The Constitution Forty Second Amendment Act 1976 explicitly incorporated environmental protection and improvement as part of State policy through the insertion of Article 48A. Article 51A (g) imposed a similar responsibility on every citizen "to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for all living creatures."

One of the main objections to an independent right or rights to the environment lies in the difficulty of definition. It is in this regard that the Indian Supreme Court has made a significant contribution. When a claim is brought under a particular article of the Constitution, this allows an adjudicating body such as the Supreme Court to find a breach of this article, without the need for a definition of an environmental right as such. All that the Court needs to do is what it must in any event do; namely, define the Constitutional right before it. Accordingly, a Court prepared to find a risk to life, or damage to health, on the facts before it, would set a standard of environmental quality in defining the right litigated. This is well illustrated by the cases that have come before the Supreme Court, in particular in relation to the broad meaning given to the Right to Life under Article 21 of the Constitution. The right to life has been used in a diversified manner in India. It includes, *inter alia,* the right to survive as a species, quality of life, the right to live with dignity

and the right to livelihood. However, it is a negative right, and not a positive, self-executory right, such as is available, for example, under the Constitution of the Phillipines. Section 16, Article II of the 1987 Phillipine Constitution states: 'The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature'. This right along with Right to Health (section 15) ascertains a balanced and healthful ecology.[59] In contrast, Article 21 of the Indian Constitution states: 'No person shall be deprived of his life or personal liberty except according to procedures established by law.' The Supreme Court expanded this negative right in two ways. *Firstly*, any law affecting personal liberty should be reasonable, fair and just. *Secondly*, the Court recognised several unarticulated liberties that were implied by Article 21. It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to the environment.

In *V. Lakshmipati Vs. State of Karnataka*[60] the Karnataka high Court clearly and specifically declares that Article 21 guarantees right to environment. The Court pointed out:

> "Entitlement to clean environment is one of the recognized basic human rights.....the right to life inherent to Article 21of the constitution of India does not fall short of the requirement of quality of life which is possible only in an environment of quality where on account of human agencies the quality of air and quality of environment are threatened or affected, the court would not hesitate to use its innovative power ..... to enforce or safeguard the right to life to promote public interest."

Rural Litigation and Entitlement Kendra v. *State of U.P.*[61] is one the

59 . *Peoples United for Democratic Rights vs. Union of India AIR 1983 SC 1473.*
60. *AIR 1992SC 652.*
61 . *AIR 1985 SC 746.*

earliest case where the Supreme Court dealt with environment and ecological balance. The concept of the right to life under Article 21 of the Indian Constitution was further expanded and elaborated in *Francis Coralie Mullin* v. *Union Territory of Delhi*[62]where the Supreme Court has given a list of positive obligations of the State, as a part of its duty correlative to the right to life. The willingness of the Court to assert in adopting and expanding the understanding of human rights in this case is very important. It is only through such an understanding that claims of right to environment can be accommodated within the broad scope and ambit of human rights. The relation between environment and right to life was further addressed the Supreme Court in the *Charan Lal Sahu v. Union of India*[63] Similarly, in *Subhash Kumar v. State of Bihar,*[64] the Court observed that 'right to life' under Article 21 of the constitution includes the right of enjoyment of pollution-free water and air for full enjoyment of life. The Court recognised that the right to environment is part of the fundamental right to life. These case also indicated governmental agencies may be compelled to take positive measures to improve the environmental quality and control environmental pollution.

The Supreme Court used the right to life as a tool for emphasizing drastic steps to combat air and water pollution in *V. Mathur* vs. *Union of India,*[65] It has directed closure or relocation of industries and evacuated land to be used for the needs of the community in *M.C. Mehta* v. *Union of India,*[66] The courts took notice of unscientific and uncontrolled quarrying and mining in *Rural Litigation and Entitlement Kendra* v. *State of U.P,*[67] and issued orders for the maintenance of ecology around coastal areas in *Indian Council for Enviro-Legal Action* v. *Union of India,*[68]

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62 . *AIR 1981 SC 746.*
63. *AIR 1991 SC 420.*
64. *AIR 1991 SC 420.*
65 . *1997) 1 SCC 388.*
66 . *1996) 4 SCC 35*
67 . *1996) 5 SCC 281.*
68 . *(1996) 5 SCC 281.*

shifting of hazardous and heavy industries in *M.C. Mehta* v. *Union of India,*[69] and in restraining tanneries from discharging effluents in M.C. *Mehta* v. *Union of India*[70]

Another expansion of the right to life is the right to livelihood under Article 21 of the constitution, which is though a directive principle of state policy, but this extension can check governmental actions in relation to an environmental impact, which threatens to dislocate the poor and disrupt their lifestyles. This Article directed the state to ensure to the people within the limits of its economic capacity and development – employment, education, and public assistance in case of unemployment, old age, sickness, and disbalance. Thus, a strong connection between the two rights i.e. the right to livelihood and the right to life in the context of environmental rights has been established. Especially in relation to the rights of tribal people being evicted by development projects, the Court has been guided by the obligations of article 48A and 51 A (g), and has ordered adequate rehabilitation and compensation of the evicted persons.

Cases relating to environmental degradation often come to the Court in the Public Interest Litigation has gained importance due to the liberal view adopted by the Court towards the concept of *locus standi* and the 'proof of injury' approach of common law. It is to be noted that, the Bangladesh and Pakistan courts apply the test of 'aggrieved person', which means a right or recognised direct interest to the complainant.

The emerging challenges of development and the environment have made a consensus on the concept of "sustainable and environmentally sound development". The Earth Summit 1992 endeavoured to focus by defining the programme of action; Agenda 21 clarified 27 principles, adopted on that occasion. We can also refer to the content of the

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69 . *(1996) 4 SCC 351.*
70 . *AIR 1998 SC 1037.*

Declaration on International Economic Cooperation adopted by the General Assembly in May 1990, which clearly recognizes that "Economic development must be environmentally sound and sustainable."

The concept of sustainable development has three basic components. *First* is the precautionary principle, whereby the state must *anticipate, prevent* and *attack* the cause of environmental degradation.[71] The Rio Declaration affirmed the principle under Principle 15, by stating that where ever there are threats of serious or irreversible damage; lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. Rio Declaration on Environment and Development (1992). In 1996, the Supreme Court in *Vellore Citizen's Welfare Forum*[72] stated that environmental measures, adopted by the State Government and the statutory authorities, must anticipate, prevent and attack the causes of environmental degradation. Under the light of the definition given in the Rio Declaration, the Court stated that where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The Supreme Court has and applied the principle on several other occasions. In the *Taj Trapezium Case,*[73] Supreme Court applied the precautionary principle and ordered a number of industries surrounding the Taj Mahal to relocate or introduce pollution abatement measures to protect the Taj from deterioration and damage.

The High Courts in India also decided many cases explaining the right guaranteed under Article 21. In *T. Damodhar Rao*[74] AP High Court drew an inference that Article 21 can be extended to protect the citizen's

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71. *(1996) 5 SCC 647.*
72. *Vellore Citizen Welfare Forum vs. U O I. AIR 1996 SC 2715.*
73. *M. C. Mehta vs. Union of India 1982 2 Scale 7 (SP).*
74. *Damodara Rao V's The Special Officer. Municipal Corporation, Hydrabad,* AIR 1987 AP 171.

life against the polluted environment. In *Kinkri Devi*[75] the Himachal Pradesh High Court held that if a balance between the needs of development and protection of ecology is not maintained, it would result in the violation of citizen's fundamental right under the constitution. The Kerala High Court has not given preference to right to livelihood at the risk of environmental pollution in *Madhavi vs. Thilakan.*[76] In *Damodara Rao* case,[77] the AP High Court took into consideration an open plot of land which was kept for recreational purpose. The court held that it is 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 nature's gift without which life cannot be enjoyed. Depending on this decision, the Karnataka High Court in *V Lakshmipati* case,[78] held that once a development plan had earmarked the area for residential purpose the land is bound to be put to such use only. The Court pointed out that entitlement to clean environment is one of the recognized basic human right and human right jurisprudence can not be permitted to be thwarted by status quoism on the basis of unfounded apprehensions. In *Attakoya Thangal's*[79] case also, the Kerala High Court established the right to clean water as included under Article 21 of the constitution. Justce Sankaran Nair observed that the right to life is much more than the right to animal existence and its attributes are manifold, as life itself. A priorisation of human needs and a new value system has been recognized in this area. The right to sweet water and the right to free air are attributes of the right to life, for these are the basic elements, which sustain life itself. In relation to use of ground water, the right to quality

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75 . *Kinkri Devi -Vs- State of Himachal Pradesh,* AIR 1988 HP 4.
76. *Madhavi -Vs- Tihlakan* 1988 (2) KLT 730.

77 . Id. *74.*
78. *V. Lakshmipathy Vs State of Karnataka* AIR 1992 Kant 57.

79 . *Attakoya Thangal vs. Union of India* 1990 KLT 580.

of life and environment was also emphasized by the Rajasthan High Court in *L.K. Koolwal's* case.[80] Looking at the impact if Article 51 (A) (g) of the constitution the Court expressed the view that the maintenance of health, sanitation and environment falls within Article 21 of rendering the citizens the fundamental right to ask for affirmative action.

Thus, the High Courts were more active and direct in declaring the right to clean and human environment as a fundamental right included under Article 21 of the constitution.[81] Though the decisions of the High Courts were under the inspiration of the Supreme Court but The Supreme Court was more hesitant, in the beginning, to declare a clear right to environment. Only in 1990, first time the Supreme Court almost declared the right to environment as included under Article 21 in *Chetriya Pradushan Mukti Sangarsh Samiti vs. State of UP*[82] and *Subhash Kumar vs. State of Bihar.*[83] In the first case, Chief justice Sabhyasachi Mukherji, in clear terms observed that every citizen has a fundamental right to have the enjoyment of life and living as contemplated in Article 21 of the constitution of India. In the second case, Justice K. N. Singh observed that the right to live includes the right to enjoyment of pollution free water and air for full enjoyment of life.

Another component of sustainable development is the 'polluter pays principle'. The principle states that the polluter has an obligation to make good the loss and bear the cost of rehabilitation of the

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80 . *L. K. Koolwal vs. State of Rajasthan,* AIR 1988 Raj. 3.

81 . Article 21 reads, " No person can be deprived of his life and personal liberty except according to procedure established by law."

82 .*Chetriya Pradushan Mukti Morcha Sangharsha Samity Vs State of Uttar Pradesh,* AIR, 1990, SCC 2060.

83. *Subhash Kumar vs. State of Bihar,* AIR 1991 SC 420.

environment to its original state.[84] practically, this principle is applicable along with the precautionary principle.

The last important component of sustainable development is the principle of intergenerational equity. The Brundtland Commission defined sustainable development as the development to meet the needs of the present generation without compromising the ability of the future generations to meet their own needs. The principle lays down that each generation is required to conserve the diversity of the natural and cultural resource so that it does not restrict the options available to future generations in solving their problems. They should also satisfy their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations. *Secondly*, each generation is required to maintain the quality of the planet in the same condition in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. *Thirdly*, each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations.[85]

Another aspect of the right to life is the public trust doctrine to protect and preserve public land which serves two purposes: firstly, affirmative state action for effective management of resources and empower the citizens to question ineffective management of natural resources. Public trust is being related to sustainable development, the

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84. *Indian Council for Enviro-Legal Action v. Union of India (1996) 3 SCC 212.*

85 . *Edith B. Weiss, In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity (United Nations University, 1989.*

precautionary principle and bio-diversity protection. Moreover, not only can it be used to protect the public from poor application of planning law or environmental impact assessment, it also has an intergenerational dimension. When the Supreme Court has applied the public trust doctrine, it has considered it not only as an international law concept, but also as one which is well established in our domestic legal system. Its successful application in India shows that this doctrine can be used to remove difficulties in resolving tribal land disputes and cases concerning development projects planned by the government. In *M.C. Mehta v. Kamal Nath and Others,*[86] the court added that 'it would be equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of ways for utilities, and strip mining of wetland filling on private lands in a state where governmental permits are required.' In both *M.I. Builders Pvt. Ltd v. Radhey Shyam Sahu*[87] and *Th. Majra Singh, vs. Indian Oil Corporation*[88] the court reconfirmed that the public trust doctrine 'has grown from article 21 of the constitution and has become part of the Indian legal thought process for quite a long time.

Thus, the Supreme Court played the role of environmental ombudsman to enforce the environmental legislations in India. A humble beginning of environmental awareness was made with the Bhopal Tragedy. It also acted just like a policy maker, lawgiver, monitoring authority and educator to ensure environmental justice to the citizens. It adopted and applied various international environmental law principles to Indian environmental jurisprudence. The Supreme

86. *M. C. Mehta vs. Kamal Nath* (1997) 1 SCC 388.

87 . *M.I. Builder Pvt.Ltd. Vs Radhey Shyam AIR 1999 SC 2468.*

88 . *AIR 1999 J&K 81.*

Court also innovated and shaped new judicial tools to strengthen the Principle of 'Sustainable Development' for effective protection of the environment to ensure environmental to India.

The Judicial activism supported by active participation of Non-Government Organisations and public spirited citizens worked as a substitute for legislative and administrative inefficiency. From 1980's writ Petitions and Public Interest Litigations proved as a weapon for the environmental crusaders. The higher judiciary, owing to its unique position and power played a stalwart role. The principles of Indian environmental law are deep rooted in judicial interpretation of the constitution and laws containing internationally recognised principles, which maintained domestic and global environmental standard. The higher judiciary, particularly the Supreme Court made a good success in achieving the ignored environmental goals.

The Supreme Court and High Courts judicial pronouncements the balancing approaches of the value of trade and industrial development vis-à-vis the value of environmental protection. The judiciary always upheld the importance and preciousness of environment not by choice but as a need of the situation. Thus the present environmental jurisprudence as envisaged by various decisions of the higher judiciary includes a range of principles and fundamental norms as follows:-

1. Under the right to life guaranteed under Article 21 of the constitution, every person enjoys the right to a wholesome environment.[89]

2. Enforcement Agencies are under an obligation to strictly enforce and implement environmental laws.[90]

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89 . *Indian Council for Enviro-legal Action vs. Union of India AIR 1996 SC 2969.*

90. *Tarun Bharat Sangha, Alwar Vs U O I,* (1993) 1 SCC 4

3. Agencies of the Government may not plead non-availability of fund, inadequacy of staff to justify non-performance of their statutory duties under environmental laws.[91]

4. The Polluter Pays Principle is applicable in India under which the polluter bear the remedial and clean up cost as well as compensation to the victim.[92]

5. Under pre-cautionary principle, the Government authorities are required to prevent the causes of pollution. The principle also imposes the onus of proof on the developer or industrialist to show that his or her action is environmentally benign.[93]

6. Decision making agencies are required to give due regard to ecological factors, the environmental policies, sustainable development and utilization of natural resources and the obligation of the present generation to preserve natural resources and pass on future generation an intact environment as we inherited from the previous generation.[94]

7. Stringent action ought to be taken against defaulters and persons who carry on industrial or development activities for profit without regard to environmental laws.[95]

8. The powers conferred by environmental statutes may be exercised only to advance environmental protection and not for a purpose that would defeat the object of the law.[96]

9. The State is the trustee of all natural resources, which are by nature

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91 . *Dr. B. L. Wadhera vs. Union of India (AIR 1996 SC 2969).*

92 . *Indian Council of Enviro-Legal Action Vs UOI,* 996 3 SCC 212
93. *Vellore Citizen Welfare Forum Vs U O I. AIR 1996 SC 2715.*
94. *State of Himachal Pradesh Vs* Umed Ram AIR 1986 SC 847.
95. *State of Himachal Pradesh Vs* Umed Ram AIR 1986 SC 847.
96. *Bangalore Medical Trust Vs B.S Mudappa, AIR 1991 SC 1902.*

meant for public use and enjoyment. The public at large is the beneficiary of the seashore, running water, air, forest, and ecologically fragile lands. These resources can not be converted into private ownership.[97]

The credit for the creation of a host of environmental rights and enforce them as fundamental rights goes to the higher judiciary in India. This is a very significant as one learns from experiences elsewhere. The legal system may guarantee a constitutional right to environment and statutes may accord the right to participate in environmental protection. However, when no tools for their protection are made available, then they are as good as non-existent. This is the experience in Spain, Portugal, Brazil, and Ecuador. Indian experience contrast significantly. There is no direct articulation of the right to environment anywhere in the constitution or for that matter in any of the laws concerning environmental management in India. But activist lawyers motivating the courts to find and construct environmental right from the available legal material. The salutary effect of such an articulation is of insulating the right, like any other fundamental right, from any legislative perception or administrative action leading to its violation. Constitutional remedies in the form of writs are available for any violation of the right. One may approach the higher judiciary directly challenging the state action for its violation.

What the courts achieved in a little over a decade and half are to view the fundamental right to life to include different standard of environmental rights that are at once individual and collective in character. Thus in the *Doon Valley Litigation,* the Supreme Court found the indiscriminate granting of license to limestone quarries that resulted in soil erosion, deforestation and silting of river bed, as affecting the right of the people to live in a healthy environmental degradation amounted to the violation of fundamental right to life.

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97. *M. C. Mehta -Vs- Kamal Nath* (1997) 1 SCC 388

The content of the right, from its vague and general formulation, began getting viewed in far clearer term as the court started addressing specific environmental problems. In a cluster of cases it was considered as a right to protection of human health. Pollution free air and water in as an aspect of the right got articulated in a few others. From characterizing the right in a negative sounding obligation the courts have come up with the imposition of a positive obligation upon the state as to ensure enjoyment of the right to fresh, clean and potable water. In *Mathew Lucose vs. Kerala State Pollution Control Board*[98] the Kerala High Court went a step ahead by holding that the discharge of effluents by a chemical industry even when it was on one's own premise as violating the right to clean air, water and wholesome environment. An effort of Municipal Corporation to convert the land earmarked for a residential park into building a housing complex was thwarted by the Andhra Pradesh High Court. Such a measure, the court felt, was tantamount to violating the fundamental right to live in a well-planned hygienic environment.[99]

Public interest Litigation:

Public Interest Litigation popularly known as PIL can be broadly defined as litigation in the interest of the public in general. Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not knock the doors of justice as a proxy for the victim or the aggrieved party. In other words, only the affected parties had the locus standi to file a case and continue the litigation and the non-affected persons had no locus standi to do so. And as a result, there was hardly

98. *Mathew Lucose vs. Kerala State Pollution Control Board (1990) 2 KER LR 686*

99. *M. K. Ramesh, "Environmental Justice: Courts and beyond" IJEL 3 (1) 2002.*

any link between the rights guaranteed by the Constitution of Indian Union and the laws made by the legislature on the one hand and the vast majority of illiterate citizens on the other.

However, this entire scenario gradually changed when the post emergency Supreme Court tackled the problem of access to justice by people through radical changes and alterations made in the requirements of locus standi and of party aggrieved. The splendid efforts of Justice P N Bhagwati and Justice V R Krishna Iyer were instrumental of this juristic revolution of eighties to convert the apex court of India into a Supreme Court for all Indians. As a result any citizen of India or any consumer groups or social action groups can approach the apex court of the country seeking legal remedies in all cases where the interests of general public or a section of public are at stake. Further, public interest cases could be filed without investment of heavy court fees as required in private civil litigation.

The Public Interest Litigations (PIL) in India initiated by the Hon'ble Supreme Court emerged through human rights jurisprudence and environmental jurisprudence. The Hon'ble judges have introduced PIL in Indian Law. The traditional concept of *Locus Standii* is no longer a bar for the community oriented Public Interest Litigations. Though not an aggrieved party, environmentally conscious individuals, groups or NGOs may have access to the Supreme Court/High Courts by way of PIL. The Hon'ble Supreme Court while taking cognizance on the petitions has further relaxed the requirement of a formal writ to seek redressal before the Court. Any citizen can invoke the jurisdiction of the Court, especially in human rights and environmental matters even by writing a simple postcard.

According to Hon'ble Mr. Justice Kuldip Singh, Former Judge, Supreme Court of India - the Constitution of India is a living tree and is

not a static document. The Courts have to interpret the Constitution keeping in view the needs of the present generation. Some of the leading public interest litigations are Taj Mahal case, Hazardous industries matter in Delhi, Vellore Citizen's Welfare Forum case and Rural litigation and Entitlement Kendra case relating to lime stone queries in Dehradun.

Various Authorities have been constituted under the Environment (Protection) Act, 1986 in compliance with the directions of the Hon'ble Supreme Court during the pendency of the public interest litigations. These Authorities have been constituted for specific assignments, which are:

1. *The Dahanu Taluka Environment Protection Authority* – In the District of Thane, Maharashtra, to protect the ecologically fragile areas in Dahanu Taluka and to control pollution in the area[100]
2. *The Central Ground Water Authority* - For the purpose of regulation and control of Ground Water Management and Development[101]
3. *Aqua Culture Authority* – To deal with the situation created by the shrimp culture industry in the Coastal States and Union Territories[102]
4. *The Water Quality Assessment Authority*-To direct the agencies (Govt./local bodies/non-Governmental) for taking action in accordance with the powers and functions of the Authority[103]
5. *The Environment Pollution (Prevention and Control) Authority* for NCR of Delhi - for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution[104]

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100. *Constituted on 19.12.1996.*

101. *Constituted on 14.1.1997*

102. *Constituted on 19.12.1996.*

103. *Constituted on 6-2-1997.*

6. *The loss of Ecology (Prevention and Payments of Compensation) Authority* for the State of Tamil Nadu; To assess the loss to the ecology and environment in the effected areas and also identify the individuals and families who have suffered because of the pollution and assess the compensation to be paid to the said individuals and families[105] and

7. *The Taj Trapezium Zone Pollution (Prevention and Control) Authority-The* Authority should within the geographical limits of Agra Division in the Taj Trapezium Zone in the State of Uttar Pradesh, to monitor progress of the implementation of various schemes for protection of the Taj Mahal and programmes for protection and improvement of the environment in the said area [106]

IMPORTANT DECISIONS OF THE HON'BLE SUPREME COURT IN THE PIL AND SUBSEQUENT STEPS TAKEN:-

1. TAJ POLLUTION MATTER:[107]This writ Petition was filed by Shri M. C. Mehta, Advocate, as a public interest litigation regarding pollution caused to the Taj Mahal in Agra. The sources of air pollution in Agra region were particularly iron foundries, Ferro-alloys industries, rubber processing, lime processing, engineering, chemical industries, brick kilns, refractory units and automobiles. The Petitioner also alleged that distant sources of pollution were the Mathura Refinery and Ferozabad bangles and glass industries. It was also stated that the sulphur dioxide emitted by the Mathura Refinery and the industries located in Agra and Ferozabad when combined with moisture in the atmosphere forms sulphuric acid and causes "acid rain" which has a corroding effect on the

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104 . *Constituted on 30-9-1996.*
105. *Constituted on 29-1-1998.*
106 . *Constituted on 17-5-1999.*

107. *M.C.Mehta Vs UOI & Ors. W.P.(C) No.13381 /1984.*

gleaming white marble. The industrial and refinery emissions from brick kilns, vehicular traffic and generator sets were alleged primarily responsible for polluting the ambient air in and around Taj Trapezium Zone (TTZ) as identified by the Central Pollution Control Board. The Petitioner also referred the "Report on Environmental Impact of Mathura Refinery" (Varadharajan Committee) published by the Government of India in the year 1978. Subsequently, the reports of the Central Pollution Control Board under the title "Inventory and Assessment of Pollution Emission: In and Around Agra-Mathura Region (Abridged)" and the report of the National Environmental Engineering Research Institute (NEERI) entitled "Over-View Report" regarding status of air pollution around the Taj published in the year 1990 were also referred. On the directions of the Hon'ble Supreme Court, the NEERI and the Ministry of Environment & Forests had undertaken an extensive study for re-defining the TTZ (Taj Trapezium Zone) and re-alienating the area management environmental plan. The NEERI in its report had observed that the industries in the TTZ (Districts of Agra Mathura, Ferozabad and Bharatpur) were the main sources of air pollution in the area and suggested that the air polluting industries in the area be shifted outside the TTZ. The Hon'ble Supreme Court after examining all the reports viz, four reports from NEERI, two reports from Varadarajan and several reports by the Central Pollution Control Board and U.P.Board, on 31.12.1996 directed that the industries in the TTZ were the active contributors to the air pollution in the said area. All the 292 industries were to approach/apply to the GAIL before 15.2.1997 for grant of industrial gas-connection. The industries, which were not in, a position to obtain gas-connections, to approach UPSIDC/U.P. Government before 28.2.1997, for allotment of alternative plots in the industrial estates outside TTZ. Those industries, which neither applied for gas-connection nor for alternate industrial plots should stop functioning using coke/coal as fuel in the TTZ w.e.f. 30.4.1997. The supply of coke/coal to these

industries shall be stopped forthwith. The GAIL should commence supply of gas to the industries by 30.6.1997, with these directions the issue relating to 292 industries was disposed off. Now, none of the 292 industries is using coal/coke as fuel. As per the information given by the Government of Uttar Pradesh to the Hon'ble Supreme Court, the present operational status of those industries is as follows:

Units closed	: 187
Units based on electricity	: 53
Units based on CNG/LPG/Electricity	: 42
Units not using any fuel	: 03
Units not found	: 07

Total: 292

Constitution of Mahajan Committee: The Mahajan Committee was constituted by the orders of the Hon'ble Supreme Court dated 5.2.1996. The Mahajan Committee was consisted of Shri Krishan Mahajan, Advocate and two senior scientists of the Central Pollution Control Board. The Hon'ble Supreme Court on 30.8.1996 directed the Mahajan Committee to inspect the progress of the green belt developed around the Taj Mahal every three months and submit progress report in the Court for the period of next three years. Earlier, on the basis of the report submitted by the NEERI regarding development of green belt around Taj Mahal, the Hon'ble Supreme Court on 30.8.1996 and 3.12.1996 directed the Ministry of Environment & Forests, Government of India for monitoring and maintenance of the trees planted in the green belt. The officials of the Central Pollution Control Board were also directed for inspection of the Green Belt area in every three months. The Central Pollution Control Board had submitted so far 35 reports in compliance of

the Hon'ble Supreme Court orders. On the directions of the Hon'ble Supreme Court, dated 13.9.2000 the Central Pollution Control Board inspected the Foundry Nagar Industrial area, Agra and the premises of the Taj and submitted its report with its recommendations. The Hon'ble Court on 7.11.2000 while accepting the recommendations of the Central Board directed that the four Ambient Air Quality Monitoring Stations be installed in Agra region and these stations be run continuously for one year all the seven days in a week. These air quality monitoring stations are to be run by the Central Pollution Control Board and monitoring report of these stations be submitted in the Court every month. The Central Pollution Control Board submitted a detailed proposal for establishing four air quality-monitoring stations in Agra region before the Court. The Hon'ble court considered the proposal of the Central Board and accepted the recommendations of the Mahajan Committee in the matter on 4.5.2001 and directed that the full cost towards the hardware for monitoring stations and hardware for Central Laboratory would be provided by the Mission Management Board (MMB) (functioning under the Ministry of Environment, Government of Uttar Pradesh and is located in Lucknow) and with regard to the remaining amount of operational cost would be made available by the Central Government to the Central Pollution Control Board within four weeks from the date of the order. The Central Board has established four ambient air quality-monitoring stations in Agra and these stations have been commissioned in the month of January 2002. Monitoring reports are being submitted to the Hon'ble Court on regular basis since February, 2002.Apart from the establishment and operation of four monitoring stations in Agra, the Hon'ble Supreme Court, is monitoring several other important issues which were directly related to the pollution problems of Agra and TTZ area. The following issues are under active consideration of the Hon'ble Supreme Court:

industries located in Agra including foundry units;

1. compliance of direction of the Hon'ble Supreme Court by the Mission Management Board;
2. traffic management & encroachment within the 500 metre zone of the Taj Mahal;
3. slaughter house;
4. Agra Heritage Fund;
5. opening of Taj Mahal in the night;
6. unauthorized construction within 100 metre from the southern gate of the Taj Mahal;
7. booking window at Taj Mahal for collection of Toll Tax;
8. supply of gas to the industries located in Firozabad;
9. brick kilns located 20 km away from Taj Mahal or any other significant monument in the TTZ area including Bharatpur Bird Sanctuary ;
10. promotion of Non-Conventional Energy Source; and
11. security of Taj Mahal.

2. GANGA POLLUTION MATTER:[108]The Central Pollution Control Board filed an Interlocutory Application in 1999 before the Hon'ble Supreme Court seeking directions in respect of the municipalities/ Nagarpalikas/ local bodies located in the State of Uttar Pradesh, Bihar and West Bengal to maintain sewage treatment plants/ sewerage systems, pumping stations, crematoria, low cost community toilets or any other assets or infrastructure created under the Ganga Action Plan. The Hon'ble Court on 28.3.2001 after consideration of the replies of the States of Uttar Pradesh, Bihar and West Bengal directed that it was appropriate that the Central Pollution Control Board jointly with the respective State Pollution Control Boards, examine and inspect the functions of the aforesaid assets/infrastructure created under the Ganga Action Plan in the State

108 . *M.C.Mehta Vs UOI & Ors. Writ Petition (Civil) No. 3727/1985.*

of Bihar, West Bengal, Uttar Pradesh and Uttaranchal and submit a comprehensive report indicating to what extent the orders of this court have been complied with by the respective authorities. The Central Board after carrying out in-depth inspection in each of the States, jointly with the concerned Pollution Control Board, submitted the report before the Hon'ble Supreme Court. The Central Pollution Control Board along with the State Pollution Control Boards of Uttar Pradesh, Bihar and West Bengal carried out inspection of 35 sewage treatment plants in Uttranchal, Uttar Pradesh, Bihar and West Bengal from May 28th, 2001 to June 19th, 2001. The State Board of Uttranchal had not started functioning during the period of inspection; the U. P. Pollution Control Board joined the inspection of 3 sewage treatment plants in Uttranchal. The inspection report of the Central Pollution Control Board provided an overview of the operation and maintenance, performance evaluation of sewage treatment plants, conclusions and recommendations for four States. Out of 35 sewage treatments plants (STP) planned under Ganga Action Plan Phase – I. 32 are commissioned and 29 were found functioning. Based on the inspections of the STPs and examination of various issues, the Central Pollution Control Board recommended that the staff responsible for operation and maintenance of STPs should be professionally qualified and trained. There should be detailed operational manual for each STP. There should be one laboratory in each town where sewage treatment plant with activated sludge unit is incorporated and the laboratory should be have basic facilities for analyzing pH, conductivity, BOD, COD, SS, Volatile SS and Dissolved Oxygen. The treatment plant should be monitored for its performance on daily basis for BOD, COD and SS. There should be a separate cell in the State Pollution Control Board for monitoring and management of sewage treatment plants. The decentralized approach in management of sewage needs to be encouraged. The Co-operative group housing societies, multistoried housing complexes, big hotels etc. need to set up

appropriate on site wastewater treatment facilities for recycling of wastewater for gardening and other non-domestic uses to the extent possible. The STPs should be brought under regulatory mechanism for effective monitoring and pollution control. The municipalities must apply and obtain consent from the concerned State Pollution Control Boards under the Water (Prevention and Control of Pollution) Act, 1974. The Hon'ble Court accepted the report of the Central Board and directed the concerned State Governments to submit their comments on the said report. The matter is under consideration of the Hon'ble Supreme Court.

3. VEHICULAR POLLUTION IN DELHI:[109]This writ petition was filed in the year of 1985 under Article 21 of the Constitution of India regarding air pollution in Delhi. The Petitioner challenged the inaction on the part of the Union of India, Delhi Administration (now known as Government of National Capital Territory of Delhi) and other Authorities whereby smoke, highly toxic and other corrosive gases were allowed to pass into the air due to which the lives of the people of Delhi were put to high risk especially in thickly populated areas where most of the hazardous industries were functioning. The residents of the area were suffering from chronic ailments of nose, throat and eyes due to air pollution. The Petitioner prayed before the Hon'ble court that pollution is due to industries and vehicles and appropriate directions might be issued to the owners of vehicles emitting noxious carbon monoxides, oxides of nitrogen, lead and smoke from their vehicles. During the pendency of this Writ Petition, the Hon'ble Supreme Court passed several orders/directions to deal with the situations arising from time-to-time and impressed upon the concerned authorities to take urgent steps to tackle the acute problem of vehicular pollution in Delhi.

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109 . *M.C.Mehta Vs UOI & Ors Writ Petition (Civil) No.13029/1985 (.)*

The important directions issued by the Hon'ble Court on 26.7.1998:

i. augmentation of public transport to 10,000 buses by 1.4.2001
ii. elimination of leaded petrol from NCT Delhi by 1.9.1998;
iii. supply of only pre-mix petrol by 31.12.1998 for two stroke engines of two wheelers and autos;
iv. replacement of all pre-1990 autos and taxies with new vehicles on clean fuels by 31.3.2000;
v. no 8 year old buses to ply except on CNG or other clean fuels by 1.4.2000;
vi. entire city bus fleet (DTC & private) to be converted to single fuel mode on CNG by 31.3.2001;
vii. new ISBTs to be built at entry points in North and South-West to avoid pollution due to entry of inter state buses by 31.3.2000;
viii. GAIL to expedite and expand from 9 to 80 CNG supply outlets by 31.3.2000;
ix. two independent fuel testing laboratories to be established by 1.6.1999;
x. proper inspection and maintenance facilities to be set up for commercial vehicles with immediate effect;
xi. comprehensive inspection and maintenance programme to be started by transport department and private sector by 31.3.2000; and
xii. CPCB/DPCC to setup a few more stations and strengthen the air quality monitoring stations for monitoring critical pollutants by 1.4.2000. The Hon'ble Court also directed that the time frame as fixed by the Environment Pollution (Prevention and Control) Authority should be strictly adhered to by all the authorities.

The Hon'ble Supreme Court on 26.3.2001 further directed that in public interest and with a view to mitigate the sufferings of the commuter public

in general and the school children in particular some relaxation and exemptions were given.

While dealing with the issues relating to conversion to CNG mode of public transport in NCT Delhi, the Hon'ble Supreme Court on 5.4.2002 further directed that under Articles 39(e), 47 and 48-A it is the duty of the of the State to secure the health of the people, improve public health and protect and improve the environment. The Hon'ble Court observed that the Environment (Prevention and Control) Authority was a statutory Authority constituted u/s 3 of the Environment (Protection) Act, 1986 and its directions were final and binding on all persons and organizations concerned. The directions of the said authority should be complied with.

The Hon'ble Supreme Court earlier extended the limit for the conversion of commercial vehicles to avoid the unnecessary hardship, the first time it was extended to 31.5.2001 and then to 31.1.2002. On 5.4.2002, the Hon'ble Supreme Court has relied on the judgment of *Vellore Citizen Welfare Forum Vs Union of India & Others*[110] in which precautionary principle and 'polluter pays principle' was discussed. The Hon'ble Court also referred various studies which co-related the increase of air pollution with increase in cardiovascular and respiratory diseases and also the carcinogenic nature of respirable suspended particulate matter (RSPM) – PM-10 (i.e. matter less than 10 microns in size). The Hon'ble Supreme Court also referred the CPCB Newsletter "Parivesh", published in September, 2001 relating to air pollution and human health, and observed that there was need to control air pollution, and one of the measures was to reduce the use of diesel.

110. *(1996) 5 SCC 64.*

The Hon'ble Supreme Court issued the following directions for compliance:

1. The Union of India would give priority to Transport Sector including private vehicles all over India with regard to the allocation of CNG, i.e first the transport sector in Delhi, and in other polluted cities of India.
2. Those persons who have placed orders with the bus manufacturers and not taken the delivery of the bus should do so within 2 weeks failing which their permits should stand automatically cancelled.
3. Those owners of the diesel buses continued to ply diesel buses beyond 31.1.2002, in contravention of this Court's orders, the Director of Transport, Delhi would collect from them costs @ Rs.500/- per bus per day increasing to Rs.1000/- per day after 30 days of operation of the diesel buses w.e.f. 6.4.2002.
4. The NCT of Delhi should phase out 800 diesel buses per month from 1.5.2002 till all the diesel buses are replaced.
5. The Union of India and all Government Authorities including Indraprashta Gas Limited (IGL) should:

a. Allocate and make available 16.1 lacs kg per day (2 mmscmd) of CNG in the NCT of Delhi by 30.6.2002 for use by the transport sector.
b. Increase the supply of CNG whenever the need arises.
c. Prepare a scheme containing a time schedule for supply of CNG to the other polluted cities of India which includes Agra, Lucknow, Jharia, Kanpur, Varanasi, Faridabad, Patna, Jodhpur and Pune.
d. The Union of India might supply LPG in addition to CNG as an alternate fuel or to supply any other clean non-adulterable fuel as the Bhure Lal Committee might recommend.

4. POLLUTION BY INDUSTRIES IN DELHI:[111]This Writ Petition was filed by Shri M. C. Mehta in 1985 regarding the pollution in Delhi by the Industries located in residential areas of Delhi. The Hon'ble Supreme Court after considering the reports submitted by the Central Pollution Control Board and the Delhi Pollution Control Committee, finally ordered vide its various orders, dated 8.7.1996, 6.9.1996, 10.10.1996, 26.11.1996 and 19.12.1996. These orders in brief are:

(i) Hazardous/Noxious heavy and large industries:- The Hon'ble Court vide its order, dated 8.7.1996 directed that 168 industries falling in 'Ha' and 'Hb' categories under the Master Plan of Delhi – 2001 (MPD-2001) and which were hazardous/noxious/heavy and large industries, to stop functioning and operating in city of Delhi w.e.f.30.11.1996. However, those industries could relocate/shift themselves to any other industrial estate in the National Capital Region (NCR) or outside.

(ii) The Hon'ble Court vide its order, dated 6.9.1996 ordered that 513 industries falling under 'H' category under the MPD-2001, should stop functioning and operating in the city of Delhi w.e.f.31.1.1997. However, those industries could relocate/shift themselves to any other industrial estate in NCR.

(iii) Hot Mix Plants:- The Hon'ble Court vide its order, dated 10.10.1996 directed that 43 Hot Mix Plants operating in Delhi be relocated/shifted to any other industrial estate in the NCR region. It was also directed that those 43 Hot Mix Plants close down and stop functioning and operating in the city of Delhi w.e.f. 28.2.1997.

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111. *M.C.Mehta Vs Union of India & Ors. Writ Petition (Civil) No.4677/1985.*

(iv) Brick Kilns:- The Hon'ble Court vide its order, dated 26.11.1996 directed that 246 brick kilns operating in the Union Territory of Delhi falling under category 'H' under the MPD–2001, should close their functioning w.e.f.30.6.1997. However, these brick kilns could relocate/shift themselves in NCR.

The Hon'ble Supreme Court further directed that it was liberty to the brick kiln owners to indicate before 31.1.1997 in writing to the NCT of Delhi and Delhi Pollution Control Committee that the concerned brick kilns intended to shift to the new technology of manufacturing bricks by flyash – sand – lime technology. The Delhi Pollution Control Committee should monitor the setting up of the new project of the concerned brick kiln. After obtaining the consent and no objection certificate from the Delhi Pollution Control Committee and also from the Central Pollution Control Board, the concerned brick kiln permitted to operate at the same site, if it is permitted under Delhi Master Plan – MPD-2001. The Hon'ble Court further directed the NCT of Delhi to render all possible assistance to the concerned brick kiln owners to changeover the new technology and in the setting up of the modern plants with flyash- sand-lime technology.

(v) Arc/Induction Furnaces:- The Hon'ble Court vide its order, dated 26.11.1996 directed that the 21 arc/induction furnaces falling under 'H' category industries under the MPD-2001 to close down and stop functioning and operating in the Union Territory of Delhi w.e.f.31.3.1997. However, these arc/induction furnaces could relocate/shift themselves to any other industrial estate in the NCR.

(vi) The Hon'ble Court vide its order, dated 19.12.1996 directed that 337 industries falling under 'H' category industries under the MPD–2001 were directed to close down and stop functioning and operating w.e.f. 30.6.1997 in Union Territory of Delhi. However, those industries could relocate/shift themselves to any other industrial estate in the NCR.

(vii) 'F' category industries located in residential area:- The Hon'ble court vide its order, dated 12.9.2000 directed and appointed the Ministry of Urban Development to act as the Nodal Agency for the matter of relocating/shifting of 'F' category industries as per MPD-2001 functioning and operating in residential areas of Delhi. The said Nodal Agency was directed to supervise the implementation of various orders/directions passed by the Hon'ble Court as well as implementation of the Master Plan of Delhi. The powers under Sections 3(3) and 5 of the Environment (Protection) Act, 1986 were given to the said Nodal Agency for implementation. The Hon'ble court on 7.12.2000 directed that under the supervision of the Nodal Agency, the Government of National Capital Territory of Delhi, the Municipal Corporation of Delhi and the Delhi Development Authority would close all the polluting units functioning in non-conforming/residential areas or zones within a period of four weeks from the date of the order. The Hon'ble Court further directed that the Nodal Agency was at liberty to direct closure of the polluting units under its supervision.

5. POLLUTION IN RIVER YAMUNA:[112]A news item titled '...and Quite Flow Maily Yamuna...' was published in a daily News Paper 'The Hindustan Times', New Delhi on 18.7.1994. The said news item was based on findings of Central Pollution Control Board. The Hon'ble Supreme Court took suo-moto cognizance of this news item and issued notices on 2.12.1996 to the Central Board with the directions to conduct investigations in the cities of Ghaziabad, NOIDA and Modi Nagar with a view to having an assessment of environment impact and to the status of pollution due to generation of industrial wastes, municipal sewage, household wastes and other types of wastes. It was also directed that the Central Board should give positive suggestions/schemes to be made

112. Writ Petition (Civil) No.725/1994, News Item 'HT', dated 18.7.1994, A.Q.F.M. Yamuna Vs Central Pollution Control Board & Ors.

operative, so far as controlling pollution. The Central Pollution Control Board conducted inspections in the cities of Ghaziabad, NOIDA and Modi Nagar and submitted a detailed report on 18.12.1996 for the consideration of the Hon'ble Court. After examining the report of the Central Board, the Hon'ble Court issued notices to the National River Conservation Directorate (NRCD) and also to the Ghaziabad Municipal Corporation for their response.

The Central Board further submitted that the plan for cleaning of Kali Nadi was required to be evaluated in detail through a Committee of experts. On the suggestions of the Central Board, the Hon'ble Supreme Court ordered on 20.3.1998 that the committee which was constituted in the Writ Petition (Civil) No. 914/1996 might also be associated for the evaluation of the project proposal for the Kali Nadi and Ghaziabad, NOIDA action plans and evaluate the appropriate technology to be adopted for these projects. On the directions of the Hon'ble Court, the Committee under the Chairmanship of Shri P.K.Kaul, Ex- Cabinet Secretary submitted its reports before the Hon'ble Court for consideration. The matter is still under consideration of the Supreme Court.

The Central Board is regularly monitoring water quality of river Yamuna and drains joining it in Delhi, in compliance of the Hon'ble Court's order. Till date, several reports have been submitted for the consideration for the Hon'ble court. In its reports, the Central Board recommended that there should be proper collection of wastewater generated in Delhi by augmenting sewerage facilities, laying down by sewer lines. Untreated sewage should not be allowed to flow into the storm-water drains. Sewage treatment plants are required to be operated to their full capacity. The existing sewerage network should be appropriately maintained using three-tier maintenance schedule.

Adequate sanitary arrangements for slums and J. J. Colonies, and use of wastewater after treatment for irrigation, gardening and other uses were suggested. Delhi might exchange treated wastewater to fresh water with the State of Haryana.

The Hon'ble Court directed the Ministry of Environment & Forests and Ministry of Urban Development, Government of India to study the problem with regard to the treatment of sewage in Delhi and give their positive and concrete suggestions, so that after 31st March 2003, no untreated sewage should go to the river Yamuna. The matter is still under consideration of the Hon'ble Court.

Yamuna Pollution Matter

The Hon'ble Court on 10.4.2001 after considering various reports submitted by the Central Pollution Control Board on the status of Yamuna River, observed that it was not the denied fact that right to life guaranteed under Article 21 of the Constitution include a right to clean water. This right to clean water being deprived to 31.8 million citizens of Delhi because of the large scale pollution of the river Yamuna. The entire pollution takes place only in the stretch of the river Yamuna that passes through Delhi, which is about 22 km. The quality of water of river Yamuna, when it enters in Delhi, is far superior than when it leaves Delhi and by the time Yamuna enters into Agra canal. The Hon'ble Court further directed that when an Integrated Action Plan was furnished, steps might be taken so as to ensure that at least by 31.3.2003 the minimum desired water quality (i.e. of class-C) in the river Yamuna is achieved in Delhi Stretch. The Hon'ble Supreme Court further directed the Ministry of Urban Development to submit how its Integrated Action Plan could be implemented within the prescribed time frame. The Chief Secretary of Delhi would also inform this Court as what steps could be taken to ensure to attain the required quality of water in the river

Yamuna so that it could no longer be called "Mailee Yamuna" after 31.3.2003.

The Hon'ble Court on 6.11.2001 while considering the status of pollution in the river Yamuna observed that the deterioration of water quality became a serious health hazard for the inhabitants of Delhi. The Government with all the resources at their command should ensure that unpolluted water or tolerable standard of water was maintained. The Hon'ble Court directed the Delhi Administration to submit a time schedule as to what it would propose to do and also indicate the phases in which the pollution level will come down to ensure that after 31st March, 2003 no untreated sewage enters river Yamuna.

The Hon'ble Court on 4.12.2001 directed that the Government should not allow construction of additional floor or increase FAR without increasing the corresponding civic amenities because any such addition in the construction would increase population and the extinction of the river Yamuna. The Hon'ble Court further directed the Central Government to consider and inform the Court whether any amendment is required of the Environment (Protection) Act, 1986 so that the requirement of Environment Impact Assessment for the purposes of the town planning is incorporated.

Distilleries Matters

The Hon'ble Court considered the petitions filed by the Distilleries located in Haryana on 23.1.2001 and directed that a committee comprising Additional Secretary, Ministry of Environment & Forests or such other senior officer as may be deputed by the Ministry and the Chairmen of Central Pollution Control Board and Haryana State Pollution Control Board be constituted and the said Committee, should take decision with regard to allowing all or any of the distilleries to

operate or not to operate. The said Committee might seek such technical assistance, as it may deem fit and proper. Accordingly, the Committee consulted experts who were well acquainted with the distilleries and its effluent treatment, to evolve criteria for treatment and disposal of distillery wastewater. Some of the distilleries in Haryana were allowed to operate after compliance of this criteria developed by the Committee.

6. POLLUTION IN NOIDA, GHAZIABAD AREA:[113] This Writ Petition was filed by the association of the residents of Sector 14, NOIDA regarding the discharge of effluents from the Delhi territory through Shahadra/Gazipur drain, which flow via Chilla Regulator, and passing through various sectors of the NOIDA area. The petitioner has alleged that various colonies, which are part of the Delhi territory, also discharge their untreated sewage besides industrial effluent through the above drains as a result of which the residents of NOIDA area are being adversely effected and get exposed to the environmental problems like the foul smell, mosquito breeding, stagnant water accumulation, discharge of untreated sewage, groundwater pollution, etc. The Hon'ble Supreme Court after hearing the matter on 6.1.1998 directed that a committee under the Chairmanship of Shri P. K. Kaul, Former Cabinet Secretary be constituted to deal with the problem and submit their report. The said committee after deliberation with different officials of local bodies of the Delhi and NOIDA submitted their reports suggesting short term measures and long term measures. The Hon'ble Court after consideration of the reports of the committee directed the Environment Pollution (Prevention and Control) Authority for NCR for monitoring and implementation of the recommendations of the Committee.

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113. *Sector 14 Resident's Welfare Association vs. State of Delhi & others.*

7. NOISE POLLUTION BY FIRECRACKERS:[114] The Hon'ble Court after hearing the matter on 27.9.2001 issued following directions to all the States and the Union Territories to control noise pollution arising out of bursting of firecrackers, on the eve of the Dushehra and Diwali festivals and other festivals : -

i. The Union Government, the Union Territories as well as all the State Governments should take steps to strictly comply with the rules framed under the Environment (Protection) Act, 1986. These Rules are related to the noise standards for firecrackers mentioned at S. No. 89 of Notification No. GSR 682(E), dated 5.10.1999.
ii. The use of fireworks or firecrackers should not be permitted except between 6:00 p.m. and 10.00 p.m. No fireworks or firecrackers should be used between 10.00 p.m. and 6.00 a.m.
iii. Firecrackers should not be used at any time in silence zones.
iv. The State Education Resource Centres in all the States and the Union Territories as well as the management/principals of schools in all the States and Union Territories should take appropriate steps to educate students about the ill effects of air and noise pollution.

The Hon'ble Court also directed that these directions should be given wide publicity both by electronic and print media.

8. IMPORT OF HAZARDOUS WASTE:[115] This Writ Petition was filed as Public Interest Litigation seeking Hon'ble Court's intervention to impose

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114. *Writ Petition (Civil) No.72/1998. /Noise Pollution – Implementation of the laws for restricting use of loudspeakers and high volume producing sound systems Vs UOI & Ors.*

115. *Research Foundation for Science, Technology & Natural Resource Policy vs. Union of India*

ban on the import of toxic wastes from the industrialized countries into India. The High Power Committee was appointed by the Hon'ble Court vide its order, dated 13.10.1997 to look into various aspects of hazardous wastes and suggest measures. The Hon'ble Court after hearing on 12.2.2001 passed an order to acknowledge the receipt of the report of the High Power Committee headed by Prof. M.G.K.Menon. The Hon'ble Court also considered the report relating to the hazardous wastes off loaded at Alang in Gujarat. The reports were filed by the Central Pollution Control Board vide its affidavits dated 29.2.2000 and 10.8.2000 in compliance of Hon'ble Court's order. The Hon'ble Court further directed that since, there was no specific finding by the National Institute of Oceanography, Goa, the Union of India should file an affidavit indicating whether the material imported was hazardous or not. If necessary, opinion of the High Power Committee be obtained. The matter is pending with the Hon'ble Court.

9. POLLUTION IN PORBANDAR, GUJARAT:[116] Dr. Kiarn Bedi, an IPS Officer filed this Petition in public interest for the protection of the Monument at Porbander, the birthplace of the Father of the Nation. The Hon'ble Supreme Court after consideration of the submissions of the petitioner on 16.10.1998 directed the Central Pollution Control Board to submit a report about the conditions prevailing in and around the memorial built in memory of the Father of the Nation at Porbander. In its report, the Central Board was directed to furnish the report on the fish-drying activity carried on in the area surrounding the memorial as also the overall sanitary conditions prevailing in this area. The conditions of the roads leading to the memorial should also be reported. The report should indicate the specific distance from the memorial to the land or plots on which fish drying activities were carried on. The hygienic conditions around the memorial and the landing sites for the fishing

116. *Dr. Kiran Bedi vs. Union of India & others.*

vessels including the distance of the landing sites from the memorial should be reported. The Central Board was directed to suggest, in consultation with the Gujarat Maritime Board whether the landing sites for the fishing vessels could be shifted to a distance of 3 kilometres at least from the memorial and also suggest proposals for shifting of fish drying activities.

A team from the Central Board after visiting Porbander city submitted its inspection report on the status of condition of sanitation in the city, fishing activities and suggested short-term and long-term recommendations. The Hon'ble Supreme Court after examining the matter on 9.4.1999 directed that the area between Manik Chowk and Sardar Vallabh Bhai Patel Road should be treated as "Walking Plaza" and no vehicular traffic would be allowed on this road subject to the special permission of the S.P.(Traffic) or the Collector of the District for urgent Government works. No hawkers would also be allowed in this area. No fish drying activity would be carried out in and around an area of three kilometres from Kirti Mandir. The State of Gujarat and Municipality of Porbander should submit the progress made concerning the sewerage system. The Hon'ble Supreme Court on 19.9.2000 observed that sufficient steps were taken to protect the birthplace of Mahatama Gandhi and fishing area has been shifted to a distance of 4½ kilometres. The appropriate authority has taken steps for having the sewerage system in the city in place. In view of that, no further orders were necessary. The Writ Petition was disposed off on 9.4.1999.

10. MANAGEMENT OF MUNICIPAL SOLID WASTE:[117] This Writ Petition was filed under Article 32 of the Constitution of India. The Petitioner prayed before the Hon'ble court to issue directions to the Municipal Corporation of Delhi (MCD) and New Delhi Municipal Council

117 . *Dr. B. L. Wadhera vs. Union of India (AIR 1996 SC 2969).*

(NDMC) to take action in accordance with the Municipal Laws specifically for collection, removal and disposal of garbage and other wastes. On the directions of the Hon'ble Supreme Court, the concerned authorities filed their replies. In its reply the MCD submitted that the total number of garbage collection centres were 1604 (337 dalao, 1284 dustbins, 176 open sites and 7 steel bins). The garbage collection trucks collected the garbage from the collection centres and took it to the nearest Sanitary Land Fill (SLF). In its reply, NDMC stated that average of 300-350 tonnes of garbage generated in the NDMC area and there were 944 garbage collecting places (650 trolleys and 394 dustbins). The Court on 1.3.1996 passed the order that the ambient air was so much polluted that it was difficult to breath. The people of Delhi were suffering from respiratory diseases and throat infections. River Yamuna, - the main source of drinking water supply – was the free dumping place for untreated sewage and industrial waste. The rapid industrial development, urbanization and regular flow of persons from rural to urban areas had made major contribution towards environmental degradation. Article 21, 48A and 51A (g) of the Constitution of India, which guarantees "Right to Live" In light of the facts and circumstances stated above, the following directions were issued for compliance

1. The experimental schemes of MCD and NDMC for distribution of polythene bags, door-to-door collection of garbage and its disposal were approved. The garbage/waste should be lifted from the collection centers everyday and transported to the designated place for disposal. All receptacles/collection centers should be kept clean and tidy everyday.
2. The Government of India through its Secretary, the Ministry of Health, Government of NCT of Delhi, MCD through its Commissioner and NDMC through its Administrator were to construct and install incinerators in all the Hospitals/Nursing

Homes with 50 beds and above under their Administrative control. This was to be done within 9 months.

3. The All India Institute of Medical Sciences through its Director was to install sufficient number of incinerators to dispose of the hospital waste.
4. The MCD and NDMC were to issue notices to all the private hospitals/nursing homes in Delhi to meet their own arrangements for the disposal of their garbage and hospital waste and construct their own incinerators.
5. The Central Pollution Control Board and the Delhi Pollution Control Committee should send their inspection team regularly in different areas of Delhi and New Delhi to ascertain that the collection/transportation and disposal of garbage/waste was carried out satisfactorily. The Central Pollution Control Board and the Delhi Pollution Control Committee should file their reports after every two months for a period of two years.
6. The Government of NCT of Delhi was to appoint Municipal Magistrates (Metropolitan Magistrates) for the trial of offences under the MCD Acts and NDMC Acts. Residents of Delhi were to be educated through Doordarshan that they should be liable for penalty in case they violate any provision of these Acts in the matter of collecting and disposal of garbage and other wastes.
7. The Doordarshan through its Director General was to undertake a programme of educating the residents of Delhi regarding their civic duties under the Delhi Act and New Delhi Act.
8. The Secretary, Ministry of Defence Production, Government of India should make arrangements to have the 200 tippers supplied to MCD as expeditiously as possible.
9. The Development Commissioner, Government of NCT of Delhi was to handover the two sites near Badarpur or Jaitpur/Tejpur quarry pits

and Mandi Village near Jaunpur quarry pits. These sites were to be handed over to MCD within three months.

10. The compost plant at Okhla should be revived and put into operation w.e.f.1.6.1996 and four additional compost plants as recommended by Jagmohan Committee should also be examined for construction.
11. The MCD should not use the filled up Sanitary Land Fills (SLF) for any other purposes except for forest and gardens. The MCD was to develop forests and gardens on these sites. The work of aforestation should be undertaken by the MCD w.e.f. 1.4.1996.
12. The MCD and NDMC should construct/install additional garbage collection centers in the form of dhalaos/trolley/steel bins within four months.
13. The Union of India and NCT/Delhi Administration were to consider the request from MCD and NDMC for financial assistance.
14. The NCT/Delhi Administration and MCD and NDMC were to engage an expert body like NEERI to find out alternate method or methods of garbage and solid waste disposal in case non-availability of SLF methods.

Earlier, in compliance of the Hon'ble Supreme Court's order dated 1.3.1996 and 23.1.1998 the Central Pollution Control Board conducted inspection and surveyed different areas of Delhi/New Delhi to ascertain the collection transportation and disposal of garbage/waste and submitted bi-monthly reports to the Supreme Court. In its reports the Central Board made recommendations in respect of collection transportation and disposal of garbage/waste. In all 11 reports have been submitted in the Supreme Court by the CPCB. As per estimate of the CPCB the municipal solid waste (MSW) generated in Delhi was around 4000-5000 tonnes per day in 1997 and is likely to go as high as 10,000 tonnes per day in 2005. In view of these estimates, the CPCB

observed that there will be tremendous strain on municipal infrastructure services in terms of water supply, waste water collection, conveyance and treatment, and disposal of municipal solid waste. This Writ Petition was transferred on 23.1.1998 to the Hon'ble High Court of Delhi.

11. MANAGEMENT OF SOLID WASTE IN CLASS-I CITIES[118] This writ petition was filed by Ms. Almitra H.Patel regarding management of solid waste in Class-I cities. In its petition the petitioner alleged that the practices adopted by the municipalities for disposal of garbage in urban areas were faulty and deficient. The management of solid waste by the municipalities had direct impact on the health of the people in the country. The petitioner had appreciated the guidelines and recommendations made by the Central Pollution Control Board for the management of municipal waste. In its reply, the Central Pollution Control Board submitted that the responsibilities of management of solid waste were vested with the municipal corporations of the municipalities which are under the administrative control of respective states/union territories. At the central level, the Ministry of Urban Affairs is the nodal Ministry to deal with the matters relating to municipal solid wastes. The Central Pollution Control Board itself has taken several initiatives for improvement, collection, transportation disposal and utilization of municipal solid wastes. On the basis of the replies of the various departments, Central/State Pollution Control Boards and concerned State Government, the Hon'ble Supreme Court on 16.1.1998 directed to constitute a committee to look into all aspect of solid wastes management in Class-I cities of India. The Chairman of the Committee was nominated Shri Asim Barman. The said committee has submitted its report in the month of March 1999 before the Supreme Court for consideration. The committee made several recommendations including

118 . *Almitra H Patel vs. Union of India & others.*

technical aspects also for the management of solid waste in class I cities. The recommendations have further categorized under three heads (i) mandatory recommendations for citizens/associations; (ii) mandatory recommendations for local bodies/state Governments; and (iii) Discretionary recommendations for urban local bodies. On the basis of the report of the committee, draft rules known as the Management of Municipal Solid Wastes (Management and Handling) Rules, 1999 were framed and circulated to all the State Governments for their suggestions and w.e.f. 25.9.2000 the Municipal Solid Wastes (Management and Handling) Rules, 2000 came in to effect. In pursuance of the Hon'ble Supreme Court's order, dated 24.11.1999 the Central Pollution Control Board carried out inspections and submitted a comprehensive report with regard to five cities (Bangalore, Calcutta, Chennai, Delhi and Mumbai) in the Supreme Court. In its report, the Central Pollution Control Board gave their observations in the implantation of the recommendations, mentioned in the Barman Committee (Constituted by the Hon'ble Supreme Court). The matter is pending in the Supreme Court for consideration.

12. POLLUTION IN MEDAK DISTRICT, ANDHRA PRADESH:[119] This Writ Petition was filed in 1990 in the Supreme Court by the Indian Council for Enviro Legal Action & Others against the industries and the CETP managements of PETL at Pathancheru and Bolaram for the pollution of the ground water and surface water caused by the discharge of the effluents from these CETPs. Among others, the A.P. Pollution Control Board and the Central Pollution Control Board were made respondents in this case.

The Patancheru Industrial Estate was established in the year 1975 at Pathancheru in Medak district of Andhra Pradesh and is about 15

119 . *Indian Council of Enviro-Legal Action Vs UOI,* 996 3 SCC 212.

kms from Hyderabad. Bulk drugs, chemicals, textile, leather finishing industries etc. are located in this industrial estate and to take care of the effluents a common effluent treatment plant is set up and operated by M/s. Pathancheru Envirotech Limited and has 72 member industries. The total effluent handled by the PETL is about 2860 cu m per day. To provide treatment of the industrial effluents PETL obtains domestic sewage from BHEL which is located nearby and also raw water from Isakawagu drain and discharges the treated effluent in the Isakawagu drain which falls into Nakkawagu drain which finally discharges into Manjira river after traversing a distance of about 40 kms. Manjira River is the major source of water supply for the city of Hyderabad.

The Bolaram Industrial Estate is located in the Bolaram village in the district of Rangareddy in Andhra Pradesh and is about 35 km from Hyderabad city. The main water polluting industries in this industrial estate are the bulk drug industries. The CETP was established in this industrial estate and presently there are 25 member industries contributing to this CETP. The CETP at present is handling around 340 cu m per day of effluent. In order to homogenize and enhance the treatability of effluents domestic sewage is added. The treated effluents presently are discharged on land for plantations.

The Hon'ble Supreme Court vide its order, dated July 29, 1997 in I.A. No. 2 & 9-11 in WP (C)No. 1056/90 inter-alia directed the Central Pollution Control Board to take up the following activities :

A. CPCB was to assess the following :
   i. capacity of Common Effluent Treatment Plants (CETPs) installed at Patancheru and Bollaram;
   ii. functioning of these CETPs;
   iii. extent of treatment carried out in the CETPs;

iv. whether the discharge from these CETPs meet the pollution control standards of CPCB;
v. extent of the areas damaged around the industries as a result of discharge of effluent from industries;
vi. extent of such damage;
vii. whether individual units have complete effluent treatment plants or only primary treatment is provided to the effluents; and
viii. The quality of effluent discharged from the individual effluent treatment plants belonging to each of these industries and whether they meet the prescribed standards.

B. The Hon'ble Court further directed CPCB to suggest:
i. Steps which should be taken to restore the affected areas to their non-polluted conditions;
ii. Steps which were required to be taken for proper functioning of the two CETPs, known as `Progressive Effluent Treatment Limited' (PETL), Bollaram and `Patancheru Envirotech Limited (PETL)', Patancheru;
iii. The time frame within which these steps can be taken;
iv. CPCB to deal comprehensively the entire problem and suggest some measures as they think appropriate for rectifying the situation; and
v. CPCB, in their report, to mention about the industries which have their own effluent treatment plants, indicating whether it was a complete plant or whether it was only for primary treatment of effluents

The CPCB conducted detailed investigations in the Bollaram and Patancheru areas and submitted a comprehensive report of effluent management in Nakkawagu drainage basin to the Hon'ble Supreme Court in March 1998. Vide its report the Central Board suggested mechanism of self-regulations of member industries to Patancheru and Bollaram Common Effluent Treatment Plants. The CPCB has suggested

the following inlet standards for CETP so that the effluent received in the CETP are amenable for biological treatment.

Parameters	Desirable limit (not to exceed)	Maximum Allowable Limit
COD	15000 mg/l	20000 mg/l
TDS	15000 mg/l	20000 mg/l
SS	1000 mg/l	1000 mg/l
pH	6.5 – 8.5	6.5 – 8.5

CPCB also suggested norms for the discharge of treated effluent for individual industries (large) and also the following norms for treated effluents from the CETP.

Parameters	Disposal to Nakkavaagu with cunnette system	Disposal to land for afforestation	Disposal to sewer
pH	6.5-8.5	5.5-9.0	5.5-9.0
O & G	10 mg/l	10 mg/l	20 mg/l
BOD	100 mg/l	150 mg/l	350 mg/l
TDS	3000 mg/l	3000 mg/l	-

Source: *http//www.envfor.ac.in*

The CPCB further dealt with the problem of disposal of the treated effluents from these CETPs and suggested the following four options and also given an Intercomparison of Various Options.

Option I : In this option, large industries should treat their effluent to bring down BOD to 1000 mg/l and following norms of TDS,

COD, SS as discussed earlier discharge their effluent to CETP. CETP would will also receive the effluent from SSI units meeting the norms of COD & TDS and should collect sewage from local areas/sewer network. CETP must achieve the sewer standard and discharge treated effluent to main sewer which leads to sewage treatment plant.

Option II : In option II, the same rule for option I was applicable to industries both large and small, alongwith collection of sewage. However, instead of disposal to sewer, CETP effluent would be discharged to land for afforestation, under this option.

Option III : The same proposition with respect to the provision of industrial effluent at individual level as sewage collection from local area holds good, but here CETP effluent disposal to Isakavaagu/Nakkavaagu with cunnette system was suggested.

Option IV : In this option, large industries were allowed to discharge into Isakavaagu/Nakkavaagu with a stringent limit of BOD 300 mg/l, COD 250 mg/l and TDS 2100 mg/l. Of course, the drains have to be provide with cunnette. Incase of SSI, effluent would be treated at CETP and discharged to Isakavaagu/Nakkavaagu drain.

The Hon'ble Supreme Court inter-alia further directed the Central Pollution Control Board and A.P.Pollution Control Board to jointly recommend measures short-term, mid-term and long-term to contain water contamination of Isakavaagu and Nakkavaagu, and ensure satisfactory functioning of the CETPs at Patancheru and Bollaram and restore the affected areas to normal conditions. In compliance of these directions, a joint action plan was submitted to the Hon'ble Supreme

Court. The Option I as mentioned above was finally agreed to be implemented and the PETL management had already deposited Rs.2 crores with Hyderabad Water Supply & Sewage Disposal Board and a time schedule has already been drafted for laying of the pipeline connecting PETL with K & S main. In the meantime NGOs from Musi river basin had raised objections to the proposed laying of the pipeline as they claim that Musi is already heavily polluted and transfer of the effluents from the CETP at Bollaram and Patancheru will further aggravate the problem. At present the Amberpet Sewage Treatment Plant has only primary treatment and secondary treatment is non-existant. Unless, the Amberpet Sewage Treatment Plant is upgraded and provided with secondary treatment which consists of biological treatment system, the treated effluent from CETP should meet the standards stipulated for disposal into inland surface waters. If the sewer standards are to be followed for discharge of the treated effluents from CETP, the Amberpet Sewage Treatment Plant needs to be upgraded to provide the secondary biological treatment system.

It was submitted for consideration of the Hon'ble Supreme Court that the upgradation of Amberpet Sewage Treatment Plant be taken up simultaneously alongwith the laying of the pipelines from CETPs for discharge of the effluents from CETP into K&S main so that both the systems are ready more or less at the same time. That the treated effluents from CETP with a TDS levels of a maximum of 10,000 mg/l, when discharged into public sewer, to K&S main, are expected to achieve a dilution of about 1:75 (considering the volume of treated effluents from the CETP as 3 MLD and the sewage received at Amberpet-STP as 225 MLD). By such dilution, the TDS levels in the combined effluent will be brought within the acceptable level of 2,100 mg/l for disposal into inland surface water or on land for irrigation.

At present, TDS limit of 15,000 mg/l for inlet of CETP was required to be met by the industries. However, in order to reduce the TDS load on CETP and consequently on STP and at the receiving water body/land, the industries were required to reduce the TDS in a phased manner. By the time, the discharge of treated effluent from CETP into the public sewer was materialized through laying of 18km pipe line and as well as the STP was augmented, the industries contributing to CETP should reduce the TDS levels upto 10,000 mg/l. This should be followed by further reduction of TDS levels upto 5000 mg/l in another 3 years from then.

The Hon'ble Court after hearing the matter on 10.10.2001 finally directed that further proceedings in the matter would be monitored by the Andhra Pradesh High Court. The High Court would ensure the implementation of the orders passed by the Hon'ble Supreme Court and would deal the Writ Petition as well as Application filed therein in accordance with the law.

13. POLLUTION BY CHEMICAL INDUSTRIES IN GAJRAULA AREA:[120]

The Petition was filed in 1998 regarding pollution caused by several industries, a distillery, two single super phosphate industries, a silica washing industry, a tyre & tube manufacturing unit etc. located in the Gajraula (Jyotiba Phule Nagar) District, U.P. It was alleged that those industries were discharging untreated effluent and letting out emission beyond the prescribed limit as a result of which the health of the people and agricultural crops in the region severally got affected. The discharge from the industries carrying industrial and chemical waste entered in the Bagad nullah which ultimately pollutes the river Ganga. The Hon'ble court issued various directions to control the pollution in the area and the Central Pollution Control Board submitted inspection reports in compliance of the Hon'ble Court orders. The Central Board submitted its inspection report on 20.3.2001 after conducting inspection of M/s

120. *Imtiaj Ahmed vs. Union of India & others.*

Insilco. In compliance of Hon'ble Court's order dated 31.10.2001, the Central Board submitted comments on the report of the NEERI in respect of the Sodium Absorption Ratio (SAR) issue concerning silica washing industry.

The Hon'ble Supreme Court on 28.2.2002 after considering the report of the NEERI and subsequent comments of the Central Board, observed that the concerned industry M/s Insilco had complied with required norms and measures in accordance with the recommendations of the Central Board. Therefore, M/s Insilco was permitted to continue with the industry operating at present premises. The Hon'ble Court referred the recommendations of the Central Board and further directed that the recommendations of the Central Board should be considered as a part of the order of this Court and all industries including M/s Insilco should abide by the said recommendations.

Further, the U.P. State Pollution Control Board was directed to take effective measures for necessary inspections in terms of the recommendations of the Central Board. The U.P. State Industrial Development Corporation (UPSIDC) should draw an environmental management plan in accordance with this order and it was further directed that no new large or medium polluting unit should be allowed to establish or the existing units should not be allowed any expansion without the consent of the appropriate Authority of the State of U.P., with these directions the writ petition ordered for 'disposed off' accordingly.

14. POLLUTION IN RIVER GOMTI:[121] This writ petition was filed in 1990 regarding pollution caused by the industries located in the cities of Luchnow, Sitapur and Lakhimpur Khiri. The Central Pollution Control Board submitted various inspection reports in respect of the status of

121. *Vineet Kumar Mehta vs. Union of India & others.*

pollution in the river Gomti. In the same matter, the Hon'ble court ordered that it appeared that Nagarpalikas and Municipalities were directly discharging the polluted water into the river Gomti without any treatment. It was suggested that modern low cost technologies are now available where with least expenses the water could be treated before discharge into the river. The Hon'ble Court on 29.3.2001 directed the Central Board to submit a detailed scheme indicating for adoption of these modern low cost technologies. The Central Board submitted on 9.5.2001 the details of the low cost technologies for treatment of sewage. The Hon'ble Court on 7.11.2001 after considering of the submission of the Central Board directed the State of U.P. to acquire necessary land for having the oxidation ponds in different cities through which the river Gomti passes. The State of U.P. submitted that in view of the policy decision of the high level meeting of National River Conservation Authority (NRCA) held on 13.1.2001, it might not be necessary for the State to identify the land in towns referred in the Court order unless and until the NRCA include the towns for providing appropriate sewage treatment by way of oxidation ponds. The Hon'ble Court on 16.1.2002 observed that since, these towns have been identified as the main source of pollution of river Gomti, it was the obligation of the State to provide necessary land required to have oxidation ponds and directed the State of U.P. to acquire the necessary land required for the said towns for having oxidation ponds and complete the process of acquisition within three months from the date of this order. The State of U.P. should submit an affidavit that identification of land and the acquisition process also completed in the aforesaid towns so that further directions could be given for providing funds for having the oxidation ponds. The matter is under consideration of the Hon'ble Court.

1. OLEUM GAS LEAK CASE ON STRICT LIABILITY:[122] The petitioner, Shri M.C.Mehta filed this Writ Petition in the year 1985 under Article 32 of the Constitution of India, and sought directions from the Hon'ble Court that various units of Shriram Industries were hazardous to the community therefore directed to be closed. After hearing the arguments, the three judges Bench passed the judgment on 17.2.1986, permitted the Shriram Food and Fertilisers Industries (hereinafter referred to as SFFI) to restart its power plant and also plants for manufacture of caustic chlorine including its by-products and recovery plants like soap, glycerin and technical hard oil subject to certain conditions given in the three judges Bench judgment. The only point in dispute related whether the units of SFFI should be directed to be removed from the place where they were presently situated and relocated in another place where there would not be much human habitation so that these would not be any real danger to the health and safety of the people is to be decided. But while the writ petition was pending, there was a leak of oleum gas from one of the units of SFFI on 4th and 6th December, 1985. A Number of applications were filed by the Delhi Legal Aid & Advice Board and the Delhi Bar Association for award of compensation to the persons who suffered on account of leakage of oleum gas. When the matter for compensation heard by three judges Bench it was felt that since the issues raised involved substantial question of law relating to the interpretation of Article 21 and 32 of the Constitution, and the case was referred to a larger Bench of five judges. On behalf of SFFI Industries, a preliminary objection was raised that the Court can't proceed to decide compensation since there was no claim for compensation originally made in the writ petition and those issues could not be said to arise on the writ petition. The Petitioner even not applied for

122. *M. C. Mehta vs. Union of India* (AIR 1987 SC 96.)

amendment of the Petition so as to include a claim for compensation for the victims of the oleum gas. After hearing the counsels of the both sides, the Hon'ble Court held as follows:

"These applications for compensation are for enforcement of the fundamental right to life enshrined in Article 21 of the Constitution and while dealing with such applications, we cannot adopt a hypertechnical approach which would defeat the ends of justice. This Court has on numerous occasions pointed out that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a Court of Law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the court".

The Hon'ble Court further observed that if the court was prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who could not approach the court for justice, there was no reason why these applications for compensation of the persons affected by the oleum gas leak should not be entertained under Article 21 of the Constitution.

"As regards to the first question as to what is the scope and ambit of the jurisdiction of this Court under Article 32, the Hon'ble court observed that Article 32 does not merely confer power on this Court to issue direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people particularly in the case of poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning".

The Hon'ble Court observed that the industry was located in an 'air pollution control area' and also subjected to regulation of the Air (Prevention and Control of Pollution) Act, 1981. Moreover, the SFFI industries were engaged in the manufacturing of caustic soda, chlorine, etc. Its various units were set up in a single complex surrounded by thickly populated colonies. The Chlorine gas is admittedly dangerous to life and health. If the gas escaped either from the storage tank or from the filled cylinders or from any other point in the course of production, the health and well being of the people living in the vicinity could be seriously affected. Thus, the SFFI was engaged in an activity which has the potential to invade the right of life of large section of people. The Court while determining the liability of the industry, the question as to what was the measure of liability of an enterprise which was engaged in an hazardous or inherently dangerous including if by an accident persons died or were injured. Did the rule in Rylands Vs Flecher apply? The rule in Rylands Vs Flecher was evolved in the year 1866 and it provided, "a person who for his own purposes bring on to his land and collect and keeps there anything likely to do mischief if it escaped must keep it at his peril, if he failed to do so, was prima facie liable for the damages". The liability under this rule was strict and it was no defence that thing escaped without that person's willful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that a person who on his land collected and kept anything likely to harm and if such things escaped and did damage to another, he was liable to compensate for the damage caused. This rule applies only to non-natural user of the land or where the escape was due to an act of God and an act of a stranger or by the default of the person injured. The Hon'ble Court observed that an enterprise which was engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-

delegable duty to the community to ensure that no harm caused to anyone on account of hazardous or inherently dangerous nature of the activity which it had undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since, the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous matter of inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its over-heads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. The Hon'ble Court therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous

activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortuous principle of strict liability under the rule in Rylands vs. Fletcher. The Hon'ble Court observed that the measure of compensation be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise. The Hon'ble Court further ordered that it would not be justified in setting up a special machinery for investigation of the claims for compensation made by the victims of oleum gas leak. But the Delhi Legal Aid and Advice Board directed to take up the cases of all those who claim to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram. Such actions claiming compensation may be filed by the Delhi Legal Aid and Advice Board within two months from the date of this order and the Delhi Administration was directed to provide necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court would nominate one or more Judges as may be necessary for the purpose of trying such actions so that they might be expeditiously disposed of. With these directions the petition was disposed of on 20.12.1986.

2. BICHHRI CASE ON STRICT LIABILITY AND POLLUTER PAY PRINCIPLE:[123] This Writ Petition was filed by an NGO on behalf of the people living in the vicinity of chemical industrial plants located in a Village Bichhri in District Udaipur, Rajasthan. The problem began in the

123. *Indian Council of Enviro-Legal Action Vs UOI,* 996 3 SCC 212.

year 1987 when the Hindustan Agro Ltd. started producing chemicals like oleum (concentrated form of Sulphuric acid) and Single Super Phosphate. The real calamity occurred when a sister concern, the Silver Chemical commenced production of H-acid in the same complex. Due to production of H-acid, large quantity of highly toxic effluents and iron and gypsum sludge caused damage to the land. Another industry named M/s Jyoti Chemical was also established to produce H-acid besides other chemicals. All those chemical industries were located in the same complex in Village Bichhri. It was estimated that about 2400-2500 tonnes of highly toxic sludge was produced while producing 375 tonnes of H-acid. Because of high quantity of sludge from those industries thrown in the open, in and around in the complex, the leachate from toxic sludge percolated deep into the ground polluting the aquifers and subterranean supply of water. The water in the wells and the stream turned dark and dirty and became unfit for human consumption. The Water became unfit even for cattle and for irrigation. The soil was spoiled and turned unfit for cultivation. Due to that, death and disaster in the village and surrounding areas were reported. The District Magistrate himself directed to close down both the units, M/s Silver Chemical and M/s Jyoti Chemicals. The manufacturing of H-acid was stopped from the month of January, 1989. The toxic sludge damaged the soil, groundwater, human beings, cattle and economy of the village. The Indian Council for Enviro-Legal Action filed this Writ Petition in August, 1989 with the prayer to the Court that appropriate remedial action may be initiated. The Rajasthan Pollution Control Board in its affidavit stated that (i) the Hindustan Agro Chemicals Ltd. obtained NOC from the Board for manufacturing sulphuric acid and alumina sulphate. But, this unit changed its products without clearance from the Board and started manufacturing oleum and single super phosphate (SSP). The consent was refused and directions were issued under the Air (Prevention and Control of Pollution) Act, 1981 to close down the unit; and (ii) the Silver

Chemical stated to be manufacturing of H-acid without obtaining NOC from the Board. The Waste generated from the manufacture of H-acid was highly acidic and contained very high concentration of dissolved solids alongwith several other pollutants. The unit was closed in 1989; (iii) the Jyoti Chemical had applied for NOC for producing ferric alum and oleum in 1988. The unit again applied for consent for manufacturing of H-acid but the consent was refused and the industry was closed in 1989. The Rajasthan Board also submitted that the sludge lying in the open in the premises of these industries ought to be disposed of in accordance with the provisions of the Hazardous Waste (Management and Handling) Rules, 1989 notified under the Environment (Protection) Act, 1986. The State Government of Rajasthan stated that the State Government was aware of the pollution being caused by these industries. Therefore, the State Government had initiated action through Rajasthan Pollution Control Board. The Ministry of Environment & Forests, Government of India stated that M/s Silver Chemical was merely granted letter of Intent but it never applied for conversion of the letter of Intent into Industrial Licence and was an offence under the Industries (Development and Regulation) Act, 1951. M/s Jyoti Chemicals did not approach the Government at any time even for a letter of Intent.

The Ministry of Environment & Forests also submitted a report of the Centre for Science and Environment (CSE), NGO. In its report, the Centre for Science and Environment after conducting the inspection of the village Bichhri stated that the effluents were very difficult to treat as many of the pollutants were non-compliant in nature. Setting up such highly polluting industry in a critical groundwater area was ill-conceived. About 60 wells appeared to have been significantly polluted. The aquifer was showing sign of pollution. After considering the replies of the Rajasthan State Pollution Control Board, the State of Rajasthan, the Ministry of Environment & Forests and the industries, the Court on

11.12.1989 requested the National Environmental Engineering Research Institute (NEERI) to study the situation in and around village Bichhri and submit their report. After in depth study, NEERI submitted its report and suggested both short term and long term measures required to be taken in the area. The Court noted the statement of the Petitioner that though the manufacture of H-acid might have been stopped but large quantity of highly dangerous effluent/sludge had accumulated in the area and unless properly treated, stored and removed; it would be a serious danger to the environment. Accordingly, directions were issued to the Rajasthan Pollution Control Board to arrange for its transportation, treatment and safe storage in accordance with the procedure provided in the Hazardous Waste (Management and Handling) Rules, 1989 and also reasonable expenses for the said operation were directed to be borne by those industries.

Earlier, on 5.3.1990 the The Hon'ble Court directed that the sludge lying on the land be removed immediately to avoid the risk of seepage of toxic substances into the soil during the rainy season. On 4.4.1990, the Court further directed the Ministry of Environment & Forests, Govt. of India to depute its experts immediately to inspect the area to ascertain the existence and extent of gypsum-based and iron based sludge and to suggest the handling and disposal procedures and to prescribe a package for its transportation and safe storage. The cost of such storage and transportation was directed to be recovered from the industries located in the Complex. The Rajasthan Pollution Control Board submitted a report that about 720 tones out of the total contaminated sludge scraped from the sludge dump side was disposed of in six lined entombed pits covered by lime/fly ash mix, brick soling. The remaining scraped sludge and contaminated soil was laying near entombed pits for want of additional disposal facility. After final hearing, the Court passed the final order on 13.2.1996:

"they are in the view that if an enterprise which is engaged in a hazardous or inherent industry which posses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas, it is an absolute and non delegable duty to the community to ensure that no harm to any one on account of hazardous or inherently dangerous nature of activity which it has undertaken. It is therefore held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm to any one on account of an accident, the enterprise is strictly and absolutely liable to compensate all those who are effected by the accident and such liability is not subject to any of the exceptions as laid down in tortious principles of strict liability under the rule laid down in Rylands Versus Flecher. The law laid down in the case of Oleum Gas leak case[124] is also applicable in the present case and the industries (Respondent No.4 to 8) are absolutely liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and to the groundwater and hence they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area which is about 350 hectares. The polluter pays principle demands that the financial cost of preventing or remedying damage caused by pollution should lie with the industries which caused the pollution".[117]

The Central Government should determine the amount required for carrying out the remedial measures including the removal of sludge lying in and around the complex of the industries within six weeks and the said amount were liable to be paid by the industries. If the said amount was not paid by the industries, the factories, plant, machinery and all other immovable assets of these industries be attached. So far as the claim for damages for the loss suffered by the villagers in the affected

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124. *M. C. Mehta -Vs- Union of India.* (1987) 4 SCC 464.

area was concerned, it was opened to them or any organization on their behalf to file suits in appropriate Civil Court. The Central Government should consider whether it would not be appropriate that chemical industries were treated as a category apart. All chemical industries whether big or small should be allowed to be established only after taking into consideration all the environmental aspects and their functioning should be monitored closely to ensure that they do not pollute the environment even the existing chemical industries if found on such scrutiny that it was necessary to take any steps in the interest of the environment, appropriate directions may be issued under Sections 3 & 5 of the Environment (Protection) Act, 1986. The Central Government and the Rajasthan Pollution Control Board should file quarterly report with respect to the progress in the implementation of these directions. The need for creating environment courts to deal with all matters, Civil and criminal relating to the environment is considered. The industries (Respondent No.4 to 8) should pay a sum of Rs.50, 000/-by way of costs to the petitioner who fought this litigation over a period of more than six years with its own means. The Writ Petitions were disposed of with the aforesaid directions.

4. POLLUTION BY TANNERIES IN TAMIL NADU[125] The Vellore Citizen Welfare Forum filed this Writ Petition as public interest litigation. It was alleged that the tanneries and other industries were discharging untreated effluent into the agriculture fields, roadsides, waterways and open lands in the State of Tamil Nadu. The untreated effluent of these tanneries and industries were finally discharged in the river Palar which was the main source of water supply to the residents of the area. The Welfare Forum further alleged that the entire surface and sub-soil water of river Palar was polluted resulting in non-availability of potable water to

125. *Vellore Citizen Welfare Forum Vs U O I.* AIR 1996 SC 2715.

the residents of the area. Due to the operation of these tanneries in the state of Tamil Nadu environmental degradation was caused. According to the survey conducted by the Tamil Nadu Agricultural University Research Centre, Vellore, nearly 35,000 hectares of agricultural land in the tanneries belt had turned out partially or totally unfit for cultivation. These tanneries used about 170 types of chemicals in the Chrome tanning processes. These chemicals include common salt, lime, sodium sulphuric, chromium sulphate, fat liquor, ammonia and sulphuric acid besides dyes which are used in large quantities. Approximately 35 cubic metre of water is used for processing 1 kg finished leather resulting in dangerously enormous quantity of toxic effluents which were let out in the open by the tanning industries. The effluents have spoiled physico chemical properties of the soil and have contaminated groundwater by percolation.

An independent survey was conducted by Peace Members, Non-Governmental Organization and Peddiar Chatram Anchayat Unions found that 350 wells out of total 467 used for drinking and irrigation purposes were polluted. Women, children were forced to walk miles to get drinking water. On the request of the Legal and Aid Advise Board of Tamil Nadu, two lawyers visited the area and submitted their report indicating the pollution caused by the tanneries. It was reported that the entire Ambur town and the villages situated nearby did not have good drinking water. During rainy days and floods, the chemicals deposited into the river bed were spreading out quickly. The State Government also informed the Court about the 59 villages that were affected by the tanneries. In those villages, there was acute shortage of drinking water. The Tamil Nadu Pollution Control Board also submitted that their Board perusuated for the last 10 years to control the pollution generated by these tanneries. These tanneries were given option by the Board that either to construct common effluent treatment plants (CETPs) for a

cluster of industries or to setup individual pollution control devices. The Central Government were earlier agreed to give substantial subsidies for the construction of CEPTs. The Hon'ble Court observed that it was pity that till date most of the tanneries operating in the State of Tamil Nadu did not take any step to control the pollution caused by the discharge of effluent. On the direction of the Hon'ble Court, the National Environmental Engineering Research Institute also submitted the feasibility report for setting up of CETPs for clusters of tanneries situated at different places in the State. The NEERI, the Tamil Nadu Board and Central Board visited the tanning units and other industries in the Tamil Nadu and submitted their reports. The Hon'ble Court observed that the leather industry was of vital importance to the country as it generated foreign exchange and provided employment avenues. But, it had no right to destroy the ecology, degrade the environment and cause a health hazard. It could not be permitted to expend or even to continue with the present production unless appropriate action taken by the industry itself. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" would be the answer. The "Sustainable Development" has been accepted as a viable concept to eradicate poverty and improve the quality of human life. While living within the carrying capacity of the supporting eco-systems. "Sustainable development" means development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. The "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-system. The *"Precautionary Principle"* and the *"The Polluter Pays Principle"* were the essential features of "*Sustainable Development*".

The Hon'ble Court directed the Central Government to constitute an Authority under section 3(3) of the Environment (Protection) Act, 1986

and to confer on the Authority all the powers necessary to deal with the tanneries and other polluting industries in the State of Tamil Nadu. The authority so constituted would invoke the *precautionary principle* and the *polluter pays principle.* The Authority should determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The Authority should direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him. A fine of Rs.10,000/- each on all the tanneries in the districts of North Arcot, Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. was imposed. The said fine was directed to be paid before 31.10.1996. The Chief Justice of the Madras High Court was requested to constitute a special bench "Green Bench" to further monitor this case. The Ministry of Environment & Forests, Government of India constituted the Loss of Ecology (Prevention and Payments of Compensation) Authority in the year 1996 and appointed Mr. Justice P. Bhaskaran, as it's Chairman. The Authority after detailed studies and deliberations delivered its award on March 12, 2002. Accordingly, 546 tanneries in the District of Vellorewere directed to pay a compensation amounting to Rs. 26.82 crores to 29,193 families as pollution damages. The Central Board has also analysed the soil, sludge and water samples concerning this matter. The in depth investigations were taken up and reports were submitted to the Hon'ble Supreme Court for consideration.

In the history, evolution, and development of the right to environment and environmental jurisprudence in India, through judicial interpretation, *Maneka Gan*dhi's[126] case is a turning point in which it got a liberal expansion to cover all those areas which were not otherwise provided in the constitution but some how connected with the person,

126. *Maneka Gandhi -Vs- Union of India,* AIR 1978 SC 597

within the scope of fundamental right. Then *Francic Coralie case*[127] elaborated the concept of right to life to include the faculties of thinking and feeling. The *Ratlam Municipality case*[128] started deliberations on the human right in the polluted environment where the health of the people was put to risk because of the failure to perform the duty of the Municipal authorities on account of financial deficit. In the *Dehradoon quarrying*[129]case, which was just a letter seeking appropriate relief for violation of ecological balance, The Supreme Court entertained the letter as a writ petition and exercised jurisdiction under Article 32 of the constitution which pre-supposes the violation of a fundamental right. Though, no direct observation has been given by the court but the trend of the court leaves no doubt that the right to ecological balance is a Fundamental Right.

It may be said that the *Kanpur Tennaries case*[130] is the first case where the Supreme Court categorically stated that the life, health and ecology has greater importance to the people. Further in *Chhetriya Pradushan Mukti Sangarsh Samiti* case,[131] the citizen's right to file a petition on account of deterioration of quality of life due to environmental degradation. Then in the *Subhash Kumar*[132] case the Supreme Court explicitly observed that right to live is a fundamental right under Article 21 of and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. In *Virendra Gaur Vs State of Haryana,*[133] the Supreme Court emphasized and enunciated the links between pollution free air, water and right to life under Article 21

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127. Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi, AIR 1981 SC 746.
128. *Municipal Council of Ratlam Vs Wardhichand* AIR 1980 SC 1622
129. Rural Litigation & Entitlement Kendra, Dehradoon -Vs- State of U.P. AIR, 1991 SC 2216.
130. M. C. Mehta vs. Union of India AIR 1988 SC 1037.
131. *Chetriya Pradushan Mukti Morcha Sangharsha Samity vs. State of U P*, AIR, 1990, SCC 2060.
132. *Subhash Kumar -Vs- State of Bihar,* AIR 1991 SC 420.
133. Virendra Gaur -Vs- State of Haryana 1995 2 SCC 577.

of the constitution. The *Indian Council for Enviro-legal Action vs. Union of India*[134] the court observed that failure of the Central Govt., State Govt. and Pollution Control Board to carry out their statutory duty was seriously undermining the right to life of the people under Article 21 of the constitution.

Position in America

The 1993 Vienna Declaration and Programme of Action called the Right To Development (RTD) "a universal and inalienable right and an integral part of fundamental human rights." The RTD has also been given prominence in the mandate of the High Commissioner for Human Rights, and the General Assembly required the High Commissioner to establish "a new branch whose primary responsibilities would include the promotion and protection of the right to development." The right is regularly mentioned in declarations of international conferences and summits and in the annual resolutions of the General Assembly and the Commission on Human Rights.

An American case namely *Munn vs. Illionis*[57] Justice Field explained the literal meaning of the word "life" in the following words:
"by the term life as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which the life is enjoyed. The deprivation not only of life but of whatever God has given to everyone with life, for its growth is prohibited by the provision in question."

Position in Columbia

In Columbia, the right to the environment was incorporated in 1991. In the case of *Antonio Mauricio Monroy Cespedes*, in 1993, the Court

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134. *PLD 1994 SC 693.*

observed that:

"Side by side with fundamental rights such as liberty, equality and necessary conditions for people's life, there is the right to the environment. The right to a healthy environment cannot be separated from the right to life and health of human beings. In fact, factors that are deleterious to the environment cause irreparable harm to human beings. If this is so we can state that the right to the environment is a right fundamental to the existence of humanity."

Position in Argentina

In Argentina, the National Constitution recognizes since 1994 the right to a healthy and suitable environment. However, even before the law provided for such explicit recognition, courts had acknowledged the existence of the right to live in a healthy environment.

Position in Costa Rica

In the same year, the Supreme Court of Costa Rica affirmed the right to a healthy environment in a case concerning the use of a cliff as a waste dump. In the case of *Carlos Roberto García Chacón,* the Supreme Court stated that life

"is only possible when it exists in solidarity with nature, which nourishes and sustains us – not only with regard to food, but also with physical well-being. It constitutes a right that all citizens possess to live in an environment free from contamination."

Position in Guatemala

Guatemala too has seen the environmental ombudsman note in a 1999 case [58] that

"Lack of interest and irresponsibility on the part of authorities in charge of National Environmental Policy amounts to a violation of human rights, considering that it impairs the enjoyment of a healthy environment, the dignity of the person, the preservation of the cultural and natural heritage and socio-economic development."

Position in Pakistan

Article 9 of the Pakistan Constitution states that no person shall be deprived of life or liberty except in accordance with the law. The Supreme Court in *Shehla Zia v. WAPDA*[135] held that Article 9 includes 'all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally'. The Court noted that "under the Pakistan Constitution, Article 14 provides that the dignity of man, privacy of home shall be inviolable, subject to law. The fundamental right to preserve and protect the dignity of man and right to 'life' are guaranteed under Article 9. Article 19 and 9 read together, question arises whether a person can be said to have dignity of man if his right to life is below bare necessity line without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment. The Supreme Court of Pakistan made a very important comment in the instant case. The Court observed:

"The precautionary policy is to first consider the welfare and the safety of the human beings and the environment and then to pick up a policy and execute the plan which is more suited to obviate the possible dangers or make such alternate precautionary measures which may ensure safety. To stick to a particular plan on the basis of old studies or inconclusive research cannot be said to be a policy of prudence or precaution."

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135. *AIR 1996 SC 1446.*