CHAPTER - 10

CONCLUSION AND SUGGESTIONS

The Constitution of India is one of the most comprehensive and well drafted Constitutions in the world today. The preamble of the Constitution sets out the main objects and priorities and declares precisely what is embodied in the Constitution. Environmental justice dose not find a place in the body of the preamble along with 'Justice; social, economic and political'. The preamble, however, assures dignity of individual, which along with other attributes also includes living in a quality environment.

The founding fathers of the Indian Constitution did not consider the protection of environment a priority. As there was not a single reference to the term 'environment' in the entire Constitutional scheme before the 42nd Constitutional Amendment in the year 1976. The Amendment inserted two Articles related to environment protection, Article 48-A and 51-A(g) in the form of Directive Principles of State Policy and Fundamental Duties respectively. The incorporation of these provisions indicates the Constitutional concern for the natural and pollution free environment.

The Directive Principles of State Policy are the active obligations of the State, they provide policy prescriptions for the guidance of the government. Article 37 of the Constitution restricts application of these principles by declaring that their implementation cannot be secured through judicial proceedings. The importance of Directive Principles, however, cannot be undermined as these principles are fundamental in governance of the country and the State is duty bound to consider them during the process of law making. Article 48-A of the Constitution persuades the State to endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. It is manifestation of the awareness about the need to preserve the environment for better living. Although non-justifiable, these principles are increasingly being cited by judiciary as complementary to the fundamental rights.

There are provisions in the Directive Principles Chapter wherein some environmental issues may be covered. Article 39(e) of the Constitution directs State

to secure the health and strength of workers. Article 47 of the Constitution insists the State to regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties. Public health cannot be assured without a wholesome environment free from pollution and, therefore, the Article does direct the State to protect and improve the environment.

Environmental pollution might cause damage to the monuments of national importance, it is duty of the State under Article 49 of the Constitution to protect such monuments. The directions issued by the Supreme Court in *Taj* case for the protection of Taj Mahal, one of the wonders of the world, from the ill effects of the pollution caused by nearby industries is an example, how Directive Principles can be utilized by the Court to check the pollution menace. Article 51(c) of the Constitution read in conjunction with an international treaty on environment may also serve cause of environment as this directive is about State's obligation to foster respect for international law and treaty obligations.

The task of conservation and protection of natural environment cannot be completed by the efforts of the State alone. Fundamental Duties, inserted in the Constitution through the Forty Second Amendment in 1976, therefore, put every citizen of India under obligation in this regard. Article 51-A(g) of the Constitution makes every citizen of India duty bound to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Since the duties are imposed upon the citizen and not upon the state, legislation is necessary for their implementation, but Courts have used this provision as an effective tool to combat the problems of environment. The Rajasthan High Court is of the opinion that Article 51-A gives a right to the citizen to move the Court for the enforcement of the duty cast on State.

The Constitution of India has, therefore, imposed a joint responsibility upon the State and every citizen of India to protect and improve natural environment. The neglect or failure to perform the duty is nothing short of a betrayal of the fundamental law, which the State as well as every citizen is bound to uphold and maintain. The High Court of Andhra Pradesh has rightly held that the duty to protect the environment is on Courts also, as judiciary is one of the organs of the State. The Courts have remineded

time and again to both, the State and citizens, about their duties towards environment.

Part-III of the Constitution of India contains Fundamental Rights. These rights represent the basic values cherished by the people of India since long and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. Article 21 of the Constitution of India guarantees 'right to life and personal liberty'. The Supreme Court of India has held that the right to life includes right to live with human dignity and all that goes along with it. The Supreme Court made it aptly clear in *Maneka Gandhi* Case that the right to life and personal liberty can be infringed only by a 'just fair and reasonable' procedure. The post *Maneka* developments truly reflects the ideals of democratic freedom as the Courts started recognizing several unarticulated liberties that were implied by Article 21 and during this process the Supreme Court has declared that the right to life and personal liberty includes the right to wholesome environment.

The Supreme Court regulated the lime stone mining in Doon valley area in *Dehradun Quarries* Case in order to save the fragile ecosystem of the Mussorie Hills and the Doon valley area. The orders of the Court were passed under Article 32 of the Constitution, though Article 21 of the Constitution was not referred to in the orders, one can understand easily that the Supreme Court entertained environment complaints under Article 32 as involving violation of right to life enshrined under Article 21 of the Constitution. The indirect mode of approval to the right to humane and clean environment by the Supreme Court continued further in the *Oleum Gas Leak* Case. The Court was dealing with the issue, whether caustic chlorine plant of Shriram Foods and Fertilizer industries, after an accidental leakage of oleum gas from its plant, be allowed to restart or not. The Court allowed the restart subject to certain stringent conditions and observed that the case raised some seminal questions concerning the true scope and ambit of Articles 21 and 32 of the Constitution. Clearly the Court was referring to the right to life under Article 21 and its enforcement under Article 32 of the Constitution.

In *Kanpur Tanneries* Case the Court rejected contentions of some polluting tanneries who wanted to avoid the installation of primary treatment plants and directed them to stop running their units if they fail to set up primary treatment plants within specified time. Knowing fully well that closure of tanneries might result in loss of

jobs and revenues, the Court held that life, health and ecology have greater importance to the people. The Court's intervention and issuance of directions under Article 32 of the Constitution, despite the fact that remedy was available under the Water Act, clearly suggested that orders were passed on the basis of violation of fundamental rights.

Various High Courts in the country took a leaf out of above mentioned judgment of the Supreme Court and in more specific and clear terms declared that right to life envisages the right to clean environment. The Supreme Court also in *Subhas Kumar* Case explicitly declared that Article 21 includes the right to enjoy pollution free water and air as they are necessary for full enjoyment of life. It was in *Virendra Gaur* Case that the Supreme Court revealed the identity of the fundamental right being protected by it in clear and unambiguous terms. It was held that right to life under Article 21 of the Constitution encompasses within it's ambit, the protection and preservation of environment; ecological balance free from pollution of air and water; and sanitation without which life cannot be enjoyed.

There is a real chance of conflict between the right to wholesome environment and the right to livelihood, another right enshrined under Article 21 of the Constitution. The Court has struck a balance in such a situation by directing State agencies and concern person to resettle and rehabilitate the workers or other persons who were displaced in order to save environment from the polluting industries. Article 14 of the Constitution guarantees to every person the right to equality. The Article strikes at arbitrariness, because an action that is arbitrary must necessarily involve a negation of equality. The Article has a potential to be used by environmental activists for challenging governmental sanctions for mining, infrastructure projects, big Dams and other activities which may have adverse impact on the environment and where such sanctions involves arbitrary and extraneous considerations. An aggrieved industrialist may resort to Article 19(1)(g) in case his trade and business interests are affected by the action of the government in the name of environmental protection. In such situation onus is on the Courts to create the right balance between environmental interests and the fundamental right to carry on any occupation, trade or business guaranteed under Article 19(1)(g) of the Constitution.

The right to environment is one of the attributes of 'right to life' under Article 21

of the Constitution and therefore, it can be enforced against the State. A law that is inconsistent or in derogation of a fundamental right is void by virtue of Article 13 of the Constitution. To prevent the State effectively from making infringement of fundamental rights, Article 32 of the Constitution guarantees the right to move the Supreme Court. The 'right to life' is available to the individuals to protect themselves against the State action. Article 12 of the Constitution defines the term 'State' which includes the Government and Parliament of India; the Government and legislature of each of the States; all local authorities; and other authorities within the territory of India or under the control of the Government of India. The question relating to the meaning of the phrase other 'authorities' has created lot of debate before the High Courts and the Supreme Court of India. In *Rajasthan Electricity Board* Case the Supreme Court held that 'other authorities' will include all Constitutional or statutory authorities on whom powers are conferred by law. In *Sukhdev Singh* Case the Court declared public corporations as 'other authorities' and therefore, the State under Article 12 of the Constitution as they were created by statutes and had the statutory power to make binding rules and regulations. In *R.D. Shetty v. International Airport Authority* the Court adopted the doctrine of 'agency' and the 'State instrumentality' and inferred, if a statutory corporation, body or other authority is an instrumentality or agency of Government it would be 'State' under Article 12 of the Constitution.

After the decision of the Constitution bench of the Supreme Court in *Ajay Hasia* Case now it is clear that for a corporation to be considered as 'State' under Article 12 of the Constitution it is not important whether it was created by or under a statute; or was a Government company; or a company incorporated under the companies Act; or was a society formed under the societies Registration Act or any similar statute. If it is an instrumentality or agency of Government, it is 'State' under Article 12 of the Constitution. In *Oleum Gas Leak* Case the Court appeared to have been convinced that Shriram Food and Fertilizer Industry, a private enterprise under the functional control of the State and having social responsibilities at par with the State in the matter of protection of human rights, be treated as a 'State' under Article 12 of the Constitution. The final decision on the issue, however, was not given by the Court as the Court left it for a detailed consideration at a later stage. Although the settlement of the controversy

was obviously desired, appropriate and opportune.

The fundament right to move the Supreme Court for the enforcement of any of the fundamental right guaranteed under Constitution is enshrined under Article 32 of the Constitution. The Court is free to devise any procedure appropriate for this purpose and it has implicit power to issue whatever direction, order or writ is necessary in a given case. The power of the Court is not only injunctive in ambit but it is also remedial in scope and provides relief, including compensation, in appropriate cases against the breach of fundamental right.

The Constitutional scheme of distribution of legislative powers gives exclusive law making power to Parliament with respect to any of the matters enumerated in list-I of the seventh schedule of the Constitution. Similarly, the State has power to make laws with respect to any of the matters enumerated in list-II. Both, Parliament and State legislature have power to make laws with respect to any of the matters enumerated in list-III. The residuary legislative powers have been assigned to the Parliament. None of the aforesaid lists contain the entry 'environment', nevertheless subjects having direct bearing on the natural environment can be traced to some of the items in all the three lists. The Constitution, therefore, imposes joint liability on Centre and State to protect and improve environment through legislation.

The Constitutional scheme of distribution of legislative powers exhibits a strong Central bias as it provides for certain circumstances under which the Union Parliament may legislate with respect to a matter in the list-II (State List) as well. Article 252 of the Constitution enables Parliament to make a uniform law for two or more than two States who had consented by a resolution to this effect. Article 252 has been instrumental in passing some landmark environment legislation like the Wild Life (Protection) Act, 1972 and the Water (Prevention and Control of Pollution) Act, 1974. Article 253 of the Constitution authorises Parliament to make any law for the whole or any part of the territory of India in order to implement any international treaty, agreement or convention. Thus, a law passed by Parliament to give effect to an international treaty, agreement or convention cannot be invalidated on the ground that it contained provisions related to State subjects. This provision has been used by the Parliament for enacting environmental legislation like the Air (Prevention and Control of Pollution) Act, 1981;

the Environment (Protection) Act, 1986 etc.

The seventy third and seventy fourth amendments to the Constitution in 1992 have conferred a Constitutional status to the Panchayats and Municipalities respectively. Article 243-G authorises the legislature of a State to endow the Panchayats by appropriate law, with such powers and authority as may be necessary to enable them to function as institution of self-government. The powers and functions which may be conferred in this connection also includes matter enumerated in eleventh schedule some of which are related to environmental protection as well. Similarly, as per Article 243-W, The State legislature may endow the Municipalities with necessary powers and authority to enable them to function as institution of self government. Such powers and authority may also be in relation to the matters enumerated in the twelfth schedule of the Constitution, some of which has direct relation with the betterment and protection of the environment.

Management of environment in some of the north eastern states having rich natural resources has been entrusted upon the District Council, Regional Council and Autonomous Council. The sixth schedule of the Constitution empowers these Councils with law making powers with respect to their areas, such law making powers also include along with other subject, subjects which are relevant for protection and improvement of natural environment.

Thus, the Constitution of India imposes duty to protect and preserve the environment on every citizen; government, i.e. Central, State and local; Parliament and State legislature. Every person living in India has the right to live in a wholesome environment which is enforceable by the Courts in the form of a fundamental right. The effects of seventy third and seventy fourth amendments have ,however, yet to see the light of the day.

The Parliament of India has passed certain legislation exclusively for prevention control and abatement of environmental pollution. The Water Act is first in such category of laws, its main objectives are prevention and control of water pollution and creation of specialised bodies like the pollution control boards. The Water Act defines water pollution in very comprehensive way covering all changes in physical, chemical

or biological properties of water. The Act has created a Central Pollution Control Board, State Pollution Control Boards and Joint Pollution Control Boards. These boards have been empowered to carry out a variety of functions to promote cleanliness of streams and well and for prevention, control and abatement of water pollution. The Act makes the contravention of its provisions an offence and prescribes punishment for such offence.

The Central Board is dominated by the members representing the Central Government interest and there is no representation of private enterprises, legal experts or environmentalists who may play an important role in the functioning of the board. The functions of the Central Board include advise to the Central Government; co-ordination of the activities of State Boards, laying down water quality standards and execution of nation wide plan for the prevention, control or abatement of water pollution. The State Pollution Control Boards are constituted by respective State Governments. The State Boards are constituted on the line of Central Board and therefore, lack representation of private enterprises, legal experts and environmentalists. The State Boards carry out programmes very similar to those of the Central Board within the territory of the State. The functions of the State Board includes advice to the State Government; collection and dissemination of relevant information; inspection of sewage and trade effluents treatment plants; laying down standards of water quality; requiring any person to contract or modify sewage or trade effluents disposal system; planning a comprehensive programme at State level.

Central Board as well as the State Boards have powers to lay down the Standards for the water quality. This is likely to cause difference and inconsistency between the standards, therefore, this power should be exercised only by the Central Board so that uniform standards of water quality can be maintained through out the country. It is important that the boards be equipped with sufficient and appropriate infrastructure enabling them to function independently and efficiently. After its amendment in 1988 the Water Act now prohibits a person to establish any industry etc. which is likely to discharge sewage or trade effluent without the previous consent of the State Board. Moreover, without the previous consent of the State Board a person cannot bring into use any new or altered outlet for the discharge of sewage. The Supreme Court has

clarified that without taking such permission, neither can the industry be established nor can any steps be taken to establish it. The Act has provision of appeal, for any person aggrieved by an order of the State Board, to an appellate authority. It does not specify qualification of the members of the authority but looking at powers and functions of the authority it is rather desired that members must be a sitting or retired High Court judge and persons having understanding and experience of environmental science. The Boards are empowered under the Water Act to issue binding directions to any person, officer or authority including the closure, prohibition or regulation of any industry, operation or process. It is suggested that such sweeping powers should be exercised only after compliance of the requirement of rules of natural justice otherwise, there always be an apprehension of misuse of the powers by Board officials.

The punishment for contravention of the provisions of Act has been prescribed in the form of fine as well as imprisonment. For habitual offender the Act prescribes higher punishment. In case of a company or a government department the liability is joint as well as vicarious. The court will take cognizance of the offence only when the complaint is made by a Pollution Control Board or its officer. The citizen suit provision has been inserted in the Act through amendments in 1988, now it is possible for any person to file a complaint before the court provided he has given notice of not less than sixty days to the Board in this connection. This is a significant provision and will help local environmental activist to function in more purposeful way.

The Water Act empowers the Central and State Government to supersede the Central and State Boards respectively, if Boards are not performing their function properly or it is necessary in public interest. Such provisions are good in the sense that they assign the role of a guardian to the Governments but at the same time they undermine the powers of the Boards and are bound to create hesitation in the minds of Board officials taking action against a government department. The Water Act gives rule making powers to both, the Central Government as well as the State Government but they are required to consult the Central Board and State Board respectively before framing the rules.

The Air Act has been enacted for prevention, control and abatement of air pollution. The Central and State Pollution Control Boards created under the Water Act, carry out

the functions of the Boards envisaged under the Air Act. The two laws have identical provisions with regard to enforcement of administrative powers of the government vis-a-vis the Board, The Air Act also provides for the rule-making powers of the Central Government and State Government. The definition of 'air pollution' is wide enough to cover the noise pollution but the pollution caused by heat or nuclear radiation is not covered under it.

In those states, where the State Pollution Control Boards have not been constituted under the Water Act, it is responsibility of the State Governments to appoint and constitute a State Board under the Air Act. The main function of the pollution control boards are to improve the quality of air and to prevent, control or abate air pollution. In this regard the Central Board may advice the Central Government; plan and execute nation wide programmes; co-ordinate the activities of the State Boards; lay down standards for the quality of air; and perform such other functions as may be prescribed by the Central Government. Similarly, the function of State Board includes-advice to the State Government, planning and execution of State level programme; inspection of industrial plants and pollution control areas; laying down standard for emission with consultation with Central Board; and such other things, which are necessary for the purpose of carrying into effect the purposes of the Act. The Central Board and State Board are bound by directions of the Central and State Governments respectively. The Central Government may ask the Central Board to perform the functions of a State Board if the State board has defaulted in complying with directions of the Central Board; or it is necessary in public interest.

The Air Act prescribes various measures to be adopted by the Government and Boards to improve the quality of air; one such measure is the power of the State Government to declare air pollution control areas. Prior consent of the State Board is essential for establishment of any industrial plant etc. in an air pollution control area. The Air Act, like the Water Act, also provides for an Appellate Authority. A Board has the power to give directions including the closure, prohibition or regulation of any industry, operation or process such person, officer or authority to whom such direction is issued, shall be bound to comply with it. The Act prescribes punishment for the contravention of its provision. The punishment is more for continuing contravention.

The punishment includes fine or/and imprisonment. It is clear under the Air Act that when the Water Act comes into force in any State, after the constitution of the State Pollution Control Board under it, the State Board constituted under the Air Act shall stand dissolved.

The Environment Act is a general legislation providing for environmental protection. It covers the lacunae, if any, left by the Water Act and the Air Act. The definition of 'environment' under the Act is very wide, clear and covers the entire field of environment. The definition is an inclusive one and, therefore, does not necessarily exhaust the entire field that is not mentioned in the definition. The definitions of 'environmental pollutant' and 'environmental pollution' are not satisfactory as matters like heat, radiation, plasma and organisms such as bacteria and virus can not be covered by them. Moreover, it is not only the presence of certain substance that forms pollution but also the absence or lack in concentration, or non-availability of a non-pollutant may also from pollution. The definition of environmental pollution requires some changes to overcome the shortcomings.

The Environment Act gives extensive powers to the Central Government for prevention, control and abatement of environmental pollution. The Central Government has power to take all such measures that are necessary or expedient for the purpose of protecting and improving the quality of the environment. The Central Government is empowered to constitute authorities for the purpose of exercising and performing powers and functions of the Central Government under the Act. These powers are coupled with the duty and it is because of this the Supreme Court has directed the Central Government in some cases to exercise the power to constitute authority. The Central Government can issue binding directions to any person-officer or any authority. Such directions may include direction for the closure, prohibition or regulation of any industry, operation or process. The Act does not provide any safeguards for preventing misuse of such sweeping powers by an officer of the Central Government. It is suggested that before passing directions like closure of industries, the concerned industries must get the opportunity to present their case.

Every person carrying on any industry, operation etc. or handling hazardous substances is bound to take adequate precautions and preventive measures. In case

environmental pollution occurs or apprehended to occur due to any accident or other unforeseen event, person in-charge of the place must prevent or mitigate the pollution. Further, he must inform and assist the concerned authorities. The Authorities are required to take necessary remedial measures, the expenses incurred on such measures may be recovered from the person responsible for causing pollution. Thus the Act did recognise the 'polluter pays principle' in the year 1986 itself..

The Environment Act authorises any person, empowered by the Central Government, for entry and inspection at any place. It is duty of every person carrying on any industry or handling hazardous substance to render all assistance to the person empowered by the Central Government. The Central Government or any officer empowered by the Central Government can take samples from any factory, premises or other places for the purpose of analysis; if the procedure prescribed under the Act, for taking sample, is followed the result of such analysis is admissible in evidence.

The Environment Act prescribes punishment in case of failure to comply with or contravention of any provision of the Act or the rules made or orders issued there under. The Act provides for very heavy penalties for it's violation like, imprisonment up to five years and fine up to 1 lakh rupees. But at the same time it does not prescribe any minimum punishment. It is important to incorporate the provision of minimum punishment in order to enhance the deterrence effect of the Act. The Act prescribes additional fine up to five thousand rupees per day for continued contravention or failure. If such contravention or failure extends beyond one year, after the date of conviction, the prescribed punishment is imprisonment up to seven years. Thus the Act envisages different degree of punishment for the same offence depending upon the period of continued violation of its provisions. For big enterprises, fine of five thousand rupees per day is a punishment without any real deterrence and therefore, the Act should be suitably amended to incorporate the provision of fine which is proportionate to the gravity of the offence and paying capacity of the enterprise, for this purpose it is suggested that a minimum fine of five thousand rupees per day should be prescribed in the Act. It should be the power of the court to impose higher fine in cases on their merit.

On the line of Water Act and the Air Act the Environment Act also provides for vicarious liability as well as joint liability where the offence is committed by a company or government department. However, if the person in charge of the company or head of the government department is able to prove that the offence has been committed without his knowledge or he was careful enough to prevent the commission of offence he cannot be held liable for the offence. This dilutes the effect of the penal provision and therefore, it should be suitably amended, so that liability may be fixed strictly. Where an offence under the Environment Act is also an offence under any other Act, the offender can be punished only under the other Act. This is strange provision and makes the enactment even softer. If an offence is reported and offender is prosecuted under the Act why the court should look for any other law for punishment? The gravity of offence and punishment thereof looses significance if the punishment under the other law is less or more. The Act requires amendment in this connection as such a provision has the effect of obliterating the Act itself for all intentions and purposes.

The protection and conservation of forests is indispensable if one wants to retain the natural character of the environment. The Indian Forest Act, 1927 is a comprehensive legislation providing for forest management in the country. It consolidates the pre-existing laws relating to forest, transit of forest-produce and duty leviable on timber and other forest produce. The Act authorises a State to constitute reserved forest, village forests and protected forests. In order to keep the forests safe, the Act prohibits certain activities in a reserved forest including clearing of forests; setting fire; trespassing or pasturing cattle; felling of trees; stone quarrying; hunting etc. In a village forest the State Government may prescribe the conditions under which the village community shall be duty bound to protect and improve such forest and in lieu it may be provided with timber or with other forest produce. In a protected forest the State Government may declare any tree to be reserved; close any portion of such forest up to thirty years; prohibit quarrying of stone and the breaking up or clearing of any land in such forests. The State Government has power to exercise its control over those forests and lands as well which are not the property of the government. In such forests the breaking up or clearing of land; pasturing of cattle or the firing may be prohibited under certain conditions. Such forests may be placed under the control of a

Forest Officer and it may be declared that provisions relating to reserved forests shall apply to such forest land; if necessary such forests may be acquired by the state for public purposes. The owners of private forests may also request the State Government to manage such forest on their behalf.

The powers to control transit of timber and forest produce are vested in the State Government and it may make rules in this regard. Any forest officer or police officer may seize forest produce together with all tools, boats, carts or cattle used in committing any forest offence. The power to arrest without orders from a magistrate and without a warrant is with forest officer or police officer in case the alleged offence is punishable with imprisonment for one month or more. The Act, though designed to get maximum revenue out of forest resources, may be utilized for protection and conservation of forests to a limited extend as well. Specially the division of forests into four categories and varying degree of accessibility to these forests is useful in protection and conservation of forest wealth.

The sole object of the Forest (Conservation) Act, 1980 is to conserve forests. The Act makes the prior approval of the Central Government mandatory for State Governments or other authority if they want to de-reserve a forest or to use any forest land for any non-forest purpose. This provision has transformed the Central Government into a guardian of forest protection. The Supreme Court has made clear in *Ambica Quarry works* Case that renewal of a mining licence in a forest is possible only with prior permission from the Central Government. In *Godavarman* Case it was held that the Act is applicable to all forests irrespective of their classification or ownership. In *Samatha* Case the court rightly held that 'forest land' does not mean only reserved forest but should be given extended meaning to cover a tract of land covered with trees, shrubs, vegetation and undergrowth intermingled with trees and with pastures, be it of natural growth or man made forestation. The aforesaid pronouncements have certainly enhanced the strength of the Act and will help to preserve forest land from deforestation and thus maintain ecological balance.

The Wild Life (Protection) Act, 1972 is a comprehensive legislation providing the statutory framework for protection of wild animals, birds, plants and their habitat.

The Act provides for the appointment of various authorities and officers including a Director of wild life preservation at National level and Chief wild life warden at state level, for implementation of the provisions of the Act. The National Board has been established under the Act to promote the conservation and development of wild life and forests. But the mammoth size of the National Board is likely to create difficulties in reaching to a definite conclusion therefore, it is suggested that the Board should consists of only 10 to 15 members only. The Act constitutes a State Board for wild life also on the line of National Board. The Central Government has power to constitute the Central Zoo Authority which looks after and controls the functioning of zoos situated all over the country. It is necessary to obtain the prior approval of the Authority for establishment of a zoo. The sale or transfer of any wild animal or captive animal specified in Schedules-I and II of the Act, except prior permission of the Authority, is prohibited.

The Wild Life Act prohibits hunting of wild animals, however, hunting of an animal which has become dangerous to human life or to property or disabled or diseased can be allowed by the chief wild life warden. A permit to hunt any wild animal may be obtained on payment of fee from the chief wild life warden for the purpose of education; scientific research; scientific management; collection of specimen; derivation of snake-venom for the manufacture of life-saving drugs. It is suggested that the present permit system of hunting should be abolished to make the wild life more secure in the country. The Act extends its protection to the specified plants as well. The Chief Wild life warden, however, may grant a permit to any person to pick, uproot, acquire or collect or transport any specified plant for the purpose of education; scientific research; collection; or propagation.

The Wild Life Act envisaged establishment of three kinds of protected habitat for wild life by the State Government, viz, sanctuaries, national parks and closed areas. The Act regulates the trade or commerce in wild animals. There is a provision for declaration by holder of captive animal, trophy, animal article etc. Further, no person is allowed to acquire, receive, keep, transfer or transport such animal, skins of animal or the musk or the horn of rhinoceros, except with the prior permission of the Chief Wild Life Wardens or the authorised officers. Dealings in trophy and animal articles without licence have been prohibited by the Act. The Act prohibits the trade or commerce in captive animals,

trophies, animal articles etc. The contravention of provisions of the Act or any rule or order made there under is an punishable offence. The attempt or abetment to commit the offence has been treated at par with actual commission of such offence under the Act. The Act does not bar the operation of other laws, therefore, the higher punishment provided under any other law can be awarded to the offender for an offence under this Act and simultaneously under any other law, if he is prosecuted under the other law.

The Biological Diversity Act, 2002 aims for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and connected matters. The Act prohibits foreigners to obtain without previous approval of the National Biodiversity Authority, any biological resources occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization. An Indian may obtain any biological resource for commercial utilization, or bio-survey and bio-utilization only after giving prior intimation to the State Biodiversity Board, however, the local people and communities of the area are exempt from this requirement. The Act provides for the establishment of the National Biodiversity Authority by the Central Government. The National Biodiversity Authority is empowered to grant approval to foreigners interested in obtaining any biological resource occurring in India. Any person who intends to apply for a patent or any other form of intellectual property protection in India or outside India, may apply to the National Biodiversity Authority. The approval may be granted by the National Biodiversity Authority along with conditions, including the imposition of charges by way of royalty. During grant of approvals the National Biodiversity Authority is required to secure equitable sharing of benefits arising out of the accessed biological resources. The State Biodiversity Board can be established by the State Governments of the respective states. The State Biodiversity Board may advise the State Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits. It regulates commercial utilization or bio-survey and bio-utilization of any biological resource by Indians.

The Biological Diversity Act establishes the National, State and local biodiversity funds. These funds are used for conservation and promotion of biological resources

along with other purposes. The Act imposes certain duties relating to protection and preservation of biological diversity on both, the Central Government and the State Government. At local level the Act provides for the Constitution of a Biodiversity Management Committee for the purpose of promoting conservation, sustainable use and documentation of biological diversity. The contravention of the Biological Diversity Act attracts punishment, which may be imprisonment and/or fine according to the nature of offence. The offences under the Act are cognisable and non-bailable. The Act though based on permit system of control prescribes deterrent penalties for the offence.

The Public Liability Insurance Act, 1991 envisages mandatory insurance for the purpose of providing immediate relief to the victim of an accident arising out of hazardous process and operation. The liability of insurance companies are limited under the Act only to the amount of the insurance policy whereas, the owner's liability remains unlimited. The PLI Act lays down no fault liability for the owners. The insurance policy required under the Act is to be equivalent to amount of paid-up capital of undertaking or an amount not exceeding fifty crore rupees. The amount premium received under the insurance policy is credited to environment relief fund, which is to be utilised for paying relief under the Act. The payment of award in recorded time following the summary procedure by the collector, within three months is a welcome provision. The Act allows the victim to seek redress for a larger quantum of benefits available under any other law.

For ascertaining compliance of the PLI Act, any person authorised by the Central Government may require any owner to submit necessary information; he may enter any place, premises or vehicle, where hazardous substance is handled. If it is found that such handling is in contravention of the Act, the authorised person may seize such hazardous substance other relevant things. The Central Government may issue directions to any owner, officer, authority or agency; such directions may include the prohibition or regulation of the handling of any hazardous substance and stoppage or regulation of the supply of electricity, water or any other service. The Central Government or any person authorised by it may make application to courts for restraining owner from handling hazardous substances. All expenses incurred in such proceeding is recoverable from the owner. The Act prescribes punishment for the contravention of its provisions

in a graded manner; the habitual offenders are liable for harsher punishment. Nevertheless, the chance of non-compliance exists in all probability especially where the compensation amount exceeds Rs. 1 lakh; an amount which exceeds the maximum limit of fine that can be imposed under the Act. The Act does not prescribe any punishment in case of non-compliance of liability to pay immediate relief under the Act and therefore, keeps the no-fault liability principle in abeyance. It is suggested that non compliance of the award within stipulated time should be made punishable.

The National Environment Tribunal Act, 1995 is yet another piece of legislation providing for strict liability for damages arising out of any accident occurring while handling any hazardous substance. The Act proposes an idea for creation of a National Environment Tribunal to effectively and expeditiously dispose of the cases arising from such accidents by giving relief and compensation for damages to persons, property and environment. The petitioner is not required to establish that the death, injury and damage were due to wrongful act, neglect or default of any person. The claim for compensation may be made by a person who has sustained the injury, his agent, representative, organisation, the Central Government, State Government or a local authority. The Tribunal may, after inquiry, reject the application summarily or it may make an award determining the just compensation. In doing so the Tribunal shall be guided by the principle of natural justice.

The National Environment Tribunal under the NETA is to be established by the Central Government. It will consist of a chairperson and such number of vice-chair persons, judicial members and technical members as the central government may deem fit. Benches of the tribunal consisting of at least one judicial member and one technical member may also be established in different part of the country for exercising the jurisdiction of the Tribunal. The principal bench of the Tribunal may ordinarily sit at New Delhi and the situation of their benches may be specified by the Central Government. It is suggested that in order to ensure justice at the door steps of the victim, the environmental tribunal must be divided into two : the National and the State tribunal. The NETA bars the jurisdiction of 'any court' or 'other authority'; does 'any court' include the Supreme Court and the High Court as well? It is clear after the decision of Supreme Court in *L. Chandra Kumar* Case that the power vested in the High Courts

to exercise judicial superintendence over the decisions of all courts and tribunal within their respective jurisdiction is also part of the basic structure of the Constitution. The jurisdiction of the Supreme Court and High Courts can not be ousted and therefore, it is suggested that the Act be amended suitably so that the tribunal may work under superintendence of the Supreme Court and the High Courts. An appeal against any award or other order, not being an interlocutory order, may be preferred to the Supreme Court. No appeal can lie, however, against an award made with the consent of the parties.

The failure to comply with the orders of the tribunal invites punishment, which could be imprisonment up to three years, fine up to Rs. 10 lakh or with both. No additional punishment has been prescribed under the Act for successive non-compliance or continuance of offence. Therefore, in a situation where the amount of compensation awarded exceeds Rs. 10 lakhs, the erring industrial unit might prefer non-compliance. The corporate executive has also not been held absolutely liable, if he proves his ignorance about the commission of the offence he can be exonerated from the liability. It is suggested therefore, that the Act must incorporate a provision for enhanced punishment in case of non-compliance and must provide for absolute liability of the corporate executives. It is unfortunate to note that the NETA, which was intended to achieve important objective of establishment of Environmental Tribunal, is yet not operative and requires effective implementation; not a single bench of the tribunal has been established till date.

The establishment of a National Environment Appellate Authority, to hear appeals with respect to restriction of areas in which any industry / operation can not be carried out or can be carried out, is the main objective of the National Environment Appellate Authority Act 1997. The Central Government has the power to establish the NEA Authority consisting of a chairperson, a vice-chairperson and not more than three other members. Only a former Judge of the Supreme Court or the former Chief Justice of a High Court can be appointed as the Chairperson of the Authority. The jurisdiction of the Authority is restricted to cases where clearance is refused. Only the person or association of persons likely to be affected by the grant of environmental clearance have been accorded standing. It is doubtful whether voluntary organisations working in the field of environmental protection is allowed to prefer an appeal before the Authority

or not? The Act requires the authority to dispose of the appeal within ninety days; authority may take thirty more days if it has sufficient reason to do so. The NEAA Act is silent about the fate of the appeal, in case the Authority fails to give, decision within the maximum allowable time of 120 days.

The non-compliance of any order made by the Authority is punishable with imprisonment for a term which may extend to seven years or with fine which may extend to one lakh rupees, or with both. The *A.P. Pollution Control Board* Case has added a new dimension to the role played by the NEA Authority; the supreme court has opined that it can refer scientific and technical aspects for investigation and opinion to the NEA Authority. The Court has recommended the adoption of such procedure in matters arising in the Supreme Court under Article 32 or under Article 136 of the Constitution or arising before the High Courts under Article 226 of the Constitution.

It may be noted that the Public Liability Insurance Act and the National Environment Tribunal Act are confined only to the accident during handling of any hazardous substance whereas the NEA Authority Act limits itself to the disputes relating to environmental clearance. Hence, there is need for a legislation providing establishment of environmental tribunal at district and State level having expertise to deal with all kinds of environmental issues.

The Public Interest Litigation is a legal action initiated in a Court of law for the enforcement of public interest. The purpose of PIL is to protect Constitutional and legal rights of large number of people who are poor, ignorant or living in a socially or economically disadvantaged position. The traditional view that a petition could only be maintained from a person who has himself suffered some legal harm and is a 'person aggrieved', has been considerably relaxed by the Supreme Court of India. In *S.P. Gupta* Case the Supreme Court clarified that in a PIL undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, defused rights and interests; any citizen who is acting bona fide and who has 'sufficient interest' has to be accorded standing. What is 'sufficient interest' is a tricky question and it is up to the Court to decide, looking at the circumstances of the case. It is highly desirable that clear guidelines and parameters for entertaining a PIL and on the issue of *locus standi* be made.

PIL is different from private litigation and therefore, the technical rules of procedure applicable to the private litigation cannot be applied with the same rigidity. Hence the court has developed procedural norms and ethos to suit the philosophy of PIL. In PIL the Court does not insist on a regular writ petition, in a number of cases courts have entertained 'letters' in lieu of regular petition. In certain cases the news item published in news paper has initiated the judicial process. The cause of justice, therefore, has not been allowed to be thwarted by procedural technicalities. In PIL justice is done mostly through Court's directives and the court is free to supplement the prescribed procedure by evolving its own rule in this connection. Nevertheless, the supplement procedure must conform at all stages to the accepted procedural norms characteristic of a judicial proceedings. The court has devised various innovations such as appointing commissions to enquire into the facts, allowing interventions and wider participation of the affected parties by inviting objections and suggestion from them, taking expert opinion on technical issues and giving directions in respect of matters involving public interest. It is not that in PIL the procedural laws do not apply but every technicality in the procedural law is not available as a defence when a matter of grave public importance is considered by the Court.

The expectation of a common man is very high from the judiciary and this has resulted into the risk of judiciary being subjected to criticism that it is assuming the role of the legislature and the executive in order to meet the expectations of the people. The apprehension that the PIL would open the floodgates of litigation and may overburden the judiciary is not well founded as single PIL may provide relief to hundreds and thousands of people and thereby it may cause decline in numerous ordinary litigation. There are no doubts about the virtues of PIL, however, one cannot completely rule out the chances of its misuse and abuse by a person for his private selfish interest. The Court is very much conscious about this problem and has maintained that PIL does not allow a busybody or meddlesome interloper to misuse the judicial process in the name of public interest; and a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold. It is suggested that in order to stop misuse and abuse of PIL only a person having sufficient interest and *bona fide* intention should be accorded standing. The court must reject a

vexatious petition filed for vindicating any personal grievance; it should not allow, except in very special circumstances, a PIL without any supporting document and verification.

The PIL may be seen as an important tool for protection and improvement of environment. In *Dehradun Quarries* Case the court initiated legal proceeding on the basis of a letter from a NGO under PIL and controlled the mining activities being carried out in the eco-fragile area of the Mussoorie-Dehradun hills. *Oleum Gas Leak* Case is significant illustration of PIL where the court declared that power of court under Article 32 of the Constitution includes the power to award compensation in appropriate cases. Here the court also developed the principle of 'Absolute liability' over old rule of 'strict liability' in cases of hazardous enterprises . In *Kanpur Tanneries* Case, based on a PIL, the court issued directions to Kanpur tanneries and the Kanpur Nagar Mahapalika to ensure discharge of treated water only into the river Ganga and made the direction applicable *mutatis mutandis* to all other Mahapalikas and Municipalities having jurisdiction over the areas through which the river flows. The court insisted that all the educational institutions throughout the country should teach at least for one hour in a week lesson relating to the protection and improvement of the environment in the first ten classes. *Taj* Case has shown the determination of the apex court to save a historical monument from the adverse effects of environmental pollution. In *Kamal Nath* Case the PIL lead to the declaration by the court that the 'Public Trust Doctrine is a part of the law of the land. There is no doubt, what so ever, that the judiciary has used PIL as an effective tool for protection of environment.

The concept of sustainable development is an answer to the issue of development versus environment. Though the concept of sustainable use of natural resources is an ancient one, the concept received impetus in modern era in the Stockholm UN Conference on Human Environment in 1972. The concept has been very well explained and defined in the Brundtland Report prepared by the World Commission on Environment and Development in 1987. In Earth Summit held in June 1992 the concept got recognition in it's full bloom. Now it 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 ecosystem. The Supreme Court of India has recognised and accepted the concept of sustainable development as an important principle in maintaining

the balance between the environment and development. In *Vellore Citizens Welfare Forum* Case the court opined that the 'precautionary principle' and the 'polluter pays principle' were essential features of sustainable development and held that they were part of the environmental law of the country.

The 'precautionary' principle indicates that lack of scientific certainty is no reason to postpone action to avoid potentially serious or irreversible harm to the environment. The old concept of 'assimilative capacity' has given way to the modern precautionary principle. Now the world is clear that pollution cannot wait for effective measures to be postponed for investigation of its quality, concentration and boundaries. The precautionary principle concentrates on prevention rather than cure. It embodies the idea of careful planning to avoid risks in the first place, rather than trying to determine how much risk is acceptable. The Wingspread Statement on the precautionary principle rightly insist, when an activity raises threats of harm to the environment or human health, precautionary measures should be taken even if some cause and effect relationship are not fully established scientifically. The Supreme Court has explained the precautionary principle in a lucid manner in *A.P. Pollution Control Board* Case. The principle involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. The precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential. The precautionary principle has led to the special principle of burden of proof in environmental cases. The burden, as to the absence of injurious effects of the proposed actions, has been placed on those who want to change the *status quo*. Therefore, if insufficient evidence is presented to alleviate concern about the level of uncertainty, the presumption should operate in favour of environmental protection. One may notice, except *Narmada Bachao Andolan* Case, the strict adherence to the precautionary principle by the Supreme Court in environmental cases.

The polluter pays principle ensures that the costs of environmental damage caused by polluting activities are born in full by the person responsible for such polluting activities . Under the principle it is not the role of Government to meet the costs involved in either prevention of damage caused by pollution or in carrying out remedial measures, rather these are responsibilities of the polluter. The principle, though recognised

internationally, has no global treaty on its application. Various regional organizations and the national authorities are applying the principle for their own purposes and therefore, interpreting the principle in different manner.

In *Vellore Citizens Welfare Forum* Case the Court interpreted the polluter pays principle to mean that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. In *Kamal Nath* Case the court emphatically held that 'one who pollutes the environment must pay to reverse the damage causing by his acts. The court has applied the polluter pays principle in many cases and has invariably followed the principle as explained in *Vellore* Case. In view of no direct statutory provision regarding application of polluter pays principle in India it is desirable that the Court will come out with a more lucid explanation regarding nature, scope and definition of the principle.

The principle of intergenerational equity is an important part of the concept of sustainable development. It emphasises the need to preserve the environment for benefit of present as well as future generations. The principle has got recognition and acceptance at various international fora including the Stockholm Conference and Rio Summit. The Indian Supreme Court has utilized the principle of intergenerational equity in course of delivering environmental justice. In *A.P. Pollution Control Board* Case court made a reference to the principle and noted that several imaginative proposals such as the *locus standi* of individuals or groups to take out actions as representatives of future generations, appointment of ombudsman to take care of the rights of the progeny against the present is coming up. The court, however, did not explain the nature, scope and meaning of the principle and therefore, ambiguity and uncertainty about the application of the principle is notable. In absence of any express statutory provision recognising intergenerational equity in India; a clear pronouncement by the Supreme Court would be highly appreciable.

The doctrine of public trust is founded on the idea that certain common properties such as rivers, seashore, forests and air are held by government in trusteeship for the free and unimpeded use of the general public. Prof. J.L. Sax is of the opinion that the source of modern public trust law is found in the nature of property right in rivers, the

sea, and the seashore. The Public Trust Doctrine is confined under the English Common law only to certain traditional uses such as navigation, commerce and fishing. In United States of America, however, it's application is wider and covers all ecologically important lands i.e. fresh water, wet lands, reparian forests etc. In *Kamal Nath* Case the Indian Supreme Court has declared that the doctrine of public trust is included in our legal system. Explaining the principle the Court held that State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The State as trustee is under a legal duty to protect the natural resources. The lucid explanation of the doctrine and its application in various cases will go in long way to ensure that the State remains more vigilant in performing its obligation towards the nature.

Under certain circumstances a person may be held responsible irrespective of the existence of either wrongful intent or negligence. Such cases are known as the wrongs of strict liability. The strict liability rule does not enquire whether the guilty person has committed the wrong intentionally, negligently or innocently. The House of Lords in *Rylands v. Fletcher* case laid down the details of strict liability principle. The rule of strict liability was as much applicable in India as in England before the historical judgment of the Supreme Court in *Oleum Gas Leak* Case. The Court rejected the rule of strict liability in such cases and held that law has to grow in order to satisfy the needs of the fast changing society and keep abrest with the economic development taking place in the country. The court formulated the rule of 'Absolute liability'. According to absolute liability principle an enterprise engaged in a hazardous or inherently dangerous industry owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of the activity which it has undertaken. If any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm. Such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability. Moreover, the liability to compensate is correlated to the magnitude and capacity of the enterprise; the larger and more prosperous the enterprise, higher must be the amount of compensation payable by it.

There can not be any doubt whatsoever, regarding the justness and relevancy of 'absolute liability' in developing country like India. But, some doubts have been raised

about the validity of absolute liability principle on technical grounds. In *Union Carbide* Case Ranganath Misra, C.J. observed that what was said by the Supreme Court in *Oleum Gas Leak* Case was "essentially obiter". It is noteworthy that except Misra, C.J. none of the remaining fourteen justices put a question mark on the ratio of the *Oleum Gas Leak* Case. The doubts relating to viability of absolute liability principle has been removed, to a great extent, in *India Council for Enviro Legal Action* Case *(Biccheri Village* Case*)*. The Court reiterated the decision of *Oleum Gas Leak* Case after considering different lines of thought. The two judges bench of the Supreme Court was fully convinced that the law stated in *Oleum Gas Leak* Case was by far the most appropriate one. After this judgment, though there is no doubt about the worthiness of the Absolute liability principle; there is, however, a state of confusion regarding the actual status of the principle. A clear pronouncement by a larger bench would eliminate the doubts and bring certainty. Nevertheless, the principle of 'no fault liability' has got statutory recognition in laws enacted by the Parliament i.e. The Public Liability Insurance Act, 1991 and the National Environment Tribunal Act, 1995.

Deforestation has been taking place on a large scale in India and has caused widespread concern. The Supreme Court of India has risen to the occasion and has given some very important decisions asking for protection and conservation of the forests. In *Dehradun quarries* Case the court maintained that power to dereserve a forest which was vested in the State Government under the law could be exercised only with the prior approval of the Central Government after the commencement of the Forest (Conservation) Act 1980. The requirement of prior approval is essential in cases of renewals of existing leases as well. In *Ambica Quarry* Case the court reminded that primary purpose of the Forest (Conservation) Act was to prevent further deforestation. It is clear therefore, where Central Government has not granted approval, no renewal can be granted. This trend set by the apex court has been reiterated in subsequent cases except in *Monitoring Committee v. Mussorie Dehradun Development Authority;* here the Supreme Court allowed the respondent to seek *ex post facto* approval by the Central Government and did not stop non-forest activity.

The issues of protection and conservation of forests, need for development and right of forest dwellers have been debated before the court time and again. In *Banwasi*

Seva Ashram Case the Adivasi people alleged violation of their 'right to life', as they were asked to evict and restrain from enjoying forest products because of reservations of forest by the State. The Court restrained the State from evicting the forest dwellers pending investigation of their claims over the forest. Later on the court allowed acquisition of said land for a power project. The case is an example showing that current law and policy governing forests and even judicial decisions allow large scale destruction of forests for mega projects but does not permit potentially less harmful uses of forest produce by the local people.

When it comes to the protection and conservation of forests the court do not distinguish between government forests and private forests. In *Samatha* Case the court assigned extended meaning to the term forest under the Forest (Conservation) Act and clarified that 'forest land' does not mean only reserved forest. *Godavarman* Case has removed all misconceptions by declaring that the provisions enacted in the Forest (Conservation) Act for the conservation of forests must apply uniformly to all forests irrespective of the ownership or classification thereof.

In *Godavarman* Case the court assumed the role of an active administrator in regulating the felling, use and movement of trees, licensing of wood based industries, forest protection, scientific management of forest and timber across the country. This raises a serious question about the role of enforcement machinery. Moreover, the court appointed several committees for advice and to oversee the implementation of it's orders. It shows the lack of confidence in the commitment of the executive in enforcing the orders and also signifies the failure of the advisory mechanism envisaged under the Forest (Conservation) Act.

There are two major challenges before the court in area of wild life protection. Firstly, protection of wild habitat from the ill effects of industrialization and developmental activities. Secondly, balancing the need for protection of wild life and rights of people living in and around protected areas. The court considers that the largest single factor in the depletion of the wealth of animal life in nature has been the 'civilized man'. In *Tarun Bharat Sangh* Case, regarding the State's proposal to delete forest by de-reservation of protected forest and offering compensatory reservation of an equal area; the court adopted a soft line by saying that the court need not be oppressed by

considerations of balancing the interests of economy and ecology. The court asked the Central Government to examine the merits of the proposal and thus shifted the ball in the Central Government's court instead of deciding the matter on the basis of facts and law available before it. In *Consumer Education and Research Society* Case reduction in the area of a sanctuary by the State Government was upheld by the Court even when it was found that the decision was taken by the State hastily and without considering all relevant aspects. The court recognising the difficulties in balancing the environment and development, refused to apply the principle of prohibition, rather it favoured the application of 'principle of protection' and the 'polluter pays principle' in such cases.

The legal provisions to keep the national parks and sanctuaries free from human intervention has affected badly the forest dwellers and tribals. The court has tried to harmonise the competing interests in this connection. In *Animal and Environmental legal Defence Fund* Case the court rightly held that every attempt must be made to preserve the fragile ecology of the forest area and at the same time the right of the tribals, formerly living in the area, to keep body and soul together must also receive proper consideration. There cannot be any doubts regarding court's concern for protection of wildlife but at times the court has adopted soft approach and has allowed governments proposals to reduce the protected areas by permitting human interventions in such areas.

The importance of rivers and lakes cannot be doubted as they are the source for drinking water, water for agriculture and provide habitat to a number of aquatic plants and animals. In *Kanpur Tanneries* Case the Court issued closure order for those tanneries that had failed to take minimum steps required for the setting up of the primary treatment facilities for the industrial effluent. In *Ganga Pollution (Municipalities)* Case, the Court suggested that High Courts that they should not ordinarily grant orders of stay of criminal proceedings in cases where an industry or a person has been accused by the Pollution Control Board of the offence of polluting the river. It is apprehended that such kind of advise might affect the independent function of the High Courts. High Courts decide cases on their merit and there cannot be a judgment without proper hearing, therefore, it should be left to the concerned High Court to decide what is just and fair in a given situation. The Court passed various directions to ensure clean water in the

river Ganga and made the directions applicable *mutatis mutandis* to all other Mahapalikas and Municipalities that have jurisdiction over the area through which the river Ganga flows. In *Calcutta Tanneries* Case the tanneries operating in extremely unhygienic conditions and discharging highly toxic effluents all over the areas were shifted by order of the Court from the bank of river Ganga. Similarly, the Court saved river Palar from the pollution caused by nearby tanneries of the area in *Vellore Citizens's Welfare Forum* Case by asking them to set up CETP or individual pollution control devices.

Many of the India's fresh water lakes are in pathetic condition because of civic and developmental pressure. The Court has always tried to improve the situation whenever issue relating to pollution of lake has been brought before it. Wherever the Court has found that the lakes are suffering from pollution due to discharge of sewage or because of construction activities in the adjoining areas, directions have been issued to remove the source of pollution. The concern of the Court for facilitating availability of pollution free water is praiseworthy.

Through town planning the goal of better living condition in urban areas can be achieved. The Court has always favoured existence of parks and lung space in thickly populated cities and urban centres. The open space and public parks in present day urbanisation is on decrease and population and industrial density are shooting up, this trend is sure to result into a health hazard. In *Bangalore Medical Trust* Case the Court held that a private nursing home cannot be a substitute for a public park. It was rightly pointed out that the town planning scheme is a legitimate attempt on the part of the government and the statutory authorities to ensure a quiet place free of dust and din. Any action which tends to defeat that object is invalid. In *Virendra Gaur* Case the Court showed it's disagreement on the decision of Government to transfer the Municipal land, earmarked as open space for public use, to a private party. The Court reminded that there is a Constitutional imperative on the State Government and the Municipalities, not only to ensure and safeguard proper environment but also to take adequate measure to promote, protect and improve the natural environment.

The Court fully backed the Master Plan for Delhi - 'Perspective 2001', which provided that the hazardous/noxious/heavy/large industries cannot be permitted to

operate in Delhi and be shifted outside Delhi. Regarding use of land made available due to shifting of such industries the Court held that totality of such land surrendered and dedicated to the community by the owners of the shifted industries should be used for development of green belts and open spaces. By devising a land use pattern that allowed the owner to develop a part of the land for his own benefit and to surrender the remaining land for open space and green belt, the Court successfully struck the balance between need of the community and the need of the owners who needed resources to bear the expenditure incurred in shifting their industries.

The Court decides the cases involving matters relating to the town planning normally after considering the expert opinion and development plan. In *D.L.F. Ltd.* Case, however, the Court has allowed development of sites for country villas on the banks of Arkavati river despite of the apprehensions of local residents that it will adversely affect the quantity and quality of the water in the region. The judgment might create confusion in the minds of environmentalists regarding the approach of the Apex Court in cases involving the government's approved development scheme likely to harm the environment. *M.I. Builders Pvt. Ltd.* Case, however removes any such doubts. The decision of the Lucknow Nagar Mahapalika permitting construction of an underground shopping complex in a park situated in a congested locality of the city has been declared illegal, arbitrary and unconstitutional, as residents of the city cannot be deprived of their amenity of an old historical park in the congested area. The Court has always insisted on better town planning and green space in the cities and whenever it has been asked to choose between open space, parks etc. and construction of building, shopping complex etc., it has given verdict in favour of open and greener town.

Industries are very important for the economic growth of the nation they provide job opportunities and means of livelihood to the people along with fulfilling the requirements of raw material and finished products to be used for various purposes. Certain industries may be harmful to the environment and may pose threat to the people living in its vicinity. It is, therefore, significant that the judiciary maintains a balance between the need to protect environment and industrial growth. In *Dehradun quarries* Case the court, while passing closure order, has rightly remarked that it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy

environment. The Court, however, has shown equal concern towards the problems of the owners of closed quarries and the workers employed therein by exploring the opportunities of rehabilitation of the displaced mining workers. In *Kanpur tanneries* Case the court has issued closure orders against the tanneries, which could not set up primary treatment plant as, life, health and ecology have greater importance to the people.

Environmental changes are inevitable consequences of industrial development but at the same time quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the people. The pollution created as a consequence of development must be commensurate with the carrying capacity of the ecosystem. In *Taj* Case certain industries have been closed / shifted as they could not change over to the more eco-friendly Natural Gas industrial fuel. The court has passed detailed order regarding the rights and benefits of the workmen employed in such industries. In *Calcutta Tanneries* Case the Court has asked about 550 tanneries, operating in extremely unhygienic conditions and causing pollution in the area, to relocate themselves into the leather complex set up by the State Government. The order of the Court has laid down the rights and benefits of the workmen employed in such tanneries along with the fine and compensation to be paid by the tanneries.

These judgments are good from the environmental point of view but one may wonder how the industry can survive after paying compensation, fine, shifting bonus to its workers and other expenditure incurred on relocation. It may, therefore, be argued that before clearance to the project / proposed industry there should always be investment earmarked for installation of treatment plants / pollution control devices.Where there is direct threat to the life and health of the people from any industrial operation, the balance has been tilted in favour of environmental protection rather than the polluting industry. It has been endeavour of the Court to make the operation of industries pollution free by installation of pollution control devices. Only in absence of any other viable option the Court has exercised the option of closure and relocation of industries. It is suggested that in appropriate cases the industrialist should get government subsidy and other assistance in the process of shifting and relocation.

Hazardous substances are present every where in the modern industrialized world. Various industries are generating, using and discarding as by products these dangerous substances. These substances are extensively regulated in India through rules made under the Environment (Protection) Act. The Court is of the view that there is certain element of hazard inherent in the very use of science and technology and it is not possible to totally eliminate such hazard altogether. In *Oleum gas leak* Case the Court has impressed upon the Government of India to evolve a national policy for location of chemical and other hazardous industries in area where population is scare and there is little hazard or risk to the community. In *Bichhri village* Case the Court has rightly held that all chemical industries 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 around them.

The Court has insisted that the hazardous substances be handled with utmost care and caution. The workers of the enterprises engaged in manufacturing or handling hazardous substance are entitled for all safeguards and medical checkup and treatment if necessary. In certain cases the court has gone into the detailed discussion as to the effect of various chemicals and pesticides on human being and environment. It has passed orders directing the government to take appropriate measures to improve the situation. It is the result of initiatives taken by the Court that the Parliament and the government of India have come out with various laws and rules to regulate the hazardous substances.

The urban India is facing the problem of poor sanitation and waste management. A healthy environment can not be imagined without proper sanitation and waste management facilities. It is the responsibility of civic bodies like Municipalities and Nagar Mahapalikas to keep the city clean and tidy. Most often civic authorities take the plea of financial crunch and shortage of staff to overcome the problem of proper sanitation and waste management. In *Ratlam Municipality* Case the Court has made it clear that the budgetary constraints did not absolve the municipality from performing its statutory obligation to provide sanitation facilities. It is true that many of the municipalities are not in a position to cope with the rising problem of sanitation especially because of rapid industrialization, urbanization and flow of population from

rural to urban areas. Nevertheless, the authorities-entrusted with the work of sanitation and municipal waste management-cannot afford to sit back with folded hands on the pretext of financial incapacity or otherwise to control pollution and protect the environment.

The problem of sanitation in metropolitan and big cities like the capital Delhi is worst. A large number of populations lives in these big urban centres in slums and unauthorised colonies having no sanitation or waste management facilities. In *Delhi Garbage* Case the Court has to intervene to ensure proper sanitation and waste management facilities. The Court is justified in directing the civic authorities to perform their duties under the law. The plea of non-availability of funds, inadequate staff or lack of infrastructure cannot be accepted as an excuse for non performance of their statutory duties. The gravity of the garbage disposal problem has been further intensified in absence of proper disposal and management of bio-medical wastes being generated by the hospitals and health care centres in the country. The order of the Court in *Delhi Garbage* Case is a path finder as the Court has asked hospitals and health care centres to install sufficient incinerators or an equally effective devise to facilitate proper disposal of hospital wastes. It is the responsibility of the hospitals and nursing homes to make their own arrangements for the disposal of bio-medical waste.

In *Almitra H. Patel* Case the Court has looked into all aspects of urban solid waste management especially, cleaning of four metropolitan cities, namely Mumbai, Chennai, Kolkata and Delhi as also the city of Bangalore. To solve the problem of sanitation and waste management the Court has constituted expert committees. It has also asked the Central and State Government to extend all help to local bodies in maintaining proper sanitation and waste management facilities. It is because of the Court's initiatives that the Central Government has come out with the Bio-Medical Waste (Management and Handling) Rules, 1998 and the Municipal Solid Waste (Management and Handling) Rules, 2000. Though the Court has done what it could and the Government has also responded positively, the situation of sanitation and waste management is showing no sign of improvement. It is suggested therefore, that emphasis should be given on the mass education and awareness programme so that people start taking part in 'keep city clean' drives and develop the habit of proper garbage collection

and disposal.

Urban India is suffering from the problem of air pollution caused by automobile vehicles. The badly maintained cars, buses, trucks, two-wheelers and three-wheelers along with adulterated fuel and chaotic situation of traffic management is creating the deadly cocktail of gases responsible for may health problems. In *M.C. Mehta (Vehicular pollution)* Case the Court has dealt with the issue of vehicular pollution in Delhi. Through various orders and directions passed in the case the court has ensured lowering of sulphur content in diesel; supply of only lead-free petrol; phasing out of grossly polluting old vehicles; lowering of the benzene content in petrol; Euro-II norms for new vehicles and above all the CNG based public road transport system in Delhi. These efforts of the Court have certainly lowered down the air pollution level of Delhi and they set an example how an active and vigilant judiciary can catalyse and activate the executive for enforcement of its directions. Though most of the directions by the Court are confined only to the NCT Delhi, they could be used as a model solution for the vehicular pollution problem elsewhere in the country by the government. The remark of the Court, that vehicular pollution problem of nine other highly polluted cities of the country need to be addressed effectively, should be considered in it's letter and spirit by the government and other concerned authorities to take appropriate steps to contain and curb the alarming vehicular pollution in other part of the Country where vehicular density is high.

India has very long coastline full of natural endowments and natural beauty. Many villages, towns and cities are wholly dependent on sea for their survival. Human interventions like maritime trade, over-exploitation of ocean resources, on-land coastal development and pollution brought by the rivers terminating into the ocean are threatening the ecosystem of the coastal region and the ocean. To check the growing problem of coastal pollution, CRZ regulations have been issued by the Central government. But the bad drafting and non-standard format of the regulations has created lot of uncertainty and confusion. In *Indian Council for Enviro-Legal Action* Case the Court has disallowed certain amendment in the main CRZ notification, which were aimed to relax and dilute the vigour of the regulations. The Court has emphasised on more effective control and monitoring of anti-pollution laws by the High Courts as

they are in a better position to ascertain facts and ensure the implementation of the laws in their respective jurisdiction. The Court's idea of having the State Coastal Management Authority along with the National Coastal Management Authority is appreciable as it is difficult for a single Authority to look after the lengthy coastal stretches of the Nation.

The sea coast and beaches are gift of the nature to the mankind and therefore, the aesthetic qualities and recreational utility of such area has to be maintained. The setting up of modern shrimp aquaculture farms right on the sea coast and construction of ponds and other infrastructure there on has been refused by the Court in *S. Jagannath* Case, as it is hazardous and is bound to degrade the marine ecology, coastal environment and the aesthetic uses of the sea coast. At the same time the Court has rightly held that the fishermen and farmers living in the coastal areas can not be denied their right to eke living by way of fishing and farming using the traditional types of shrimp farm technologies. The Central Government had constituted the central authority in pursuance of the judgment of the apex Court.

Harmonisation of the issue of ecology and development project is the order of the day and is the need of the hour. In *Goa Foundation* Case the Court has approved the clearance for the construction of an hotel in CRZ III category. The Court has rightly pointed out that the present day society has a responsibility towards the posterity so as to allow normal breathing and living in cleaner environment but that does not by itself mean and imply stoppage of all projects. The Court has favoured sustainable development but at the same time it has accorded prime importance to the coastal environment.

India is a fast developing country and therefore, requires sufficient power supply, irrigation facilities, transport facilities and other infrastructure facilities. Some of the developmental requirement cannot be fulfilled without compromising the interest of natural environment. Hence, it is important to strike the right balance between the need to develop and to protect the environment. The Environment Impact Assessment (EIA) is one means of finding the right balance. Where EIA shows that the benefits from the project sufficiently exceeds the environmental costs, the project can be viewed as environmentally justified. The EIA can reduce the environmental risk and at the same

time may reduce chances of any possible role back of the project in advance stage resulting into huge loss of capital, time and energy. The court is of the view that it is primarily for the government to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances. In *Dahanu Taluka* Case the Court has adopted a soft line by not insisting the strict compliance of the Environmental Guidelines for establishment of thermal power plant. It is clear that the court has given priority to the need of power supply in and around Mumbai over the environmental concerns.

In *Narmada Bachao Andolan* Case the majority judgment has refused the petitioner's demand to stop and review the entire Narmada valley project. The view of the Court is that it is against the national interest and contrary to the established principles of law that decisions to undertake developmental projects are permitted to be challenged after a number of years during which period public money has been spent in the execution of the project. The opinion of the Court - whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy making process and the Courts are ill equipped to adjudicate on a policy decision so undertaken - shows inclination to favour the public funded infrastructural projects. Thus the court's observation may be formulated as the court will not ordinarily interfere in such projects unless and until it can be proved that there is a blatant illegality in the undertaking of the project or in its execution. It is true that infrastructural projects are necessary for the nation building but at the same time protection of environment is essential for our survival.

It is, therefore, important that the agency carrying the EIA and the government take utmost care in giving clearance to such projects. The matter must be resolved to the satisfaction of all before the project is launched. The court should not decide the cases looking at the nature of project. If project is harmful to the environment and threatens right to life of the people it should be stopped. All projects, public or private, big or small should be treated a like when it comes to the protection of environment and the right to life of the present and generations to come.