CHAPTER - 9

FORMULATION OF ISSUES

India, apart from being a fast developing country in the world, also has the responsibility to feed its more than one billion human population. This factor certainly creates pressure on the government to use available natural resources judiciously. Sacrifice of forests for developmental projects and for mining activities had been getting nod from the government most often than not. Decreasing forest cover is a direct threat to the existence of wild life which forms essential component of biological diversity and maintains the required balance in the natural eco-system. We cannot expect wild life without a wild habitat which is possible only in the forests free from human interference.

Besides this, one of the major environmental problems faced by the common people in India is pollution of water in rivers and lakes. We all are aware, since time immemorial, human civilization prefers banks of river for settlement as water is indispensable for existence of life. Unfortunately, today the pollution load of all the rivers have increased so much that the self cleansing mechanism of flowing rivers is unable to keep the rivers free from pollution being created by the industries and human population situated on the banks. Common people's suffering has no end as they have no other source of water available for drinking, bathing and agricultural purposes.

Further, the mad race of industrial progress has brought us to a situation where we are forced to inhale toxic gases and live in the danger of exposure to hazardous chemicals. World's greatest disaster due to leakage of a toxic gas has occurred in Bhopal, suffering of the Bichhri village people is well know to the nation, still we are struggling to find a fool-proof system through which life of people may be saved from reckless handling of hazardous substances.

Under the pressure of environmentalists, the government has started closure and relocation of heavy and hazardous industries in certain cities including the capital, Delhi. The major challenge faced by the government on this front is rehabilitation of the workers employed in such industrial units. The conflict between right to clean environment and the right to livelihood cannot be more evident than this.

One can not deny the importance of green belt, parks and open space in the making of a good human habitat. If we want to live in wholesome environment, it is possible only through better town planning. A well planned town or city is of no use, whatsoever, if sanitation and waste management is not upto the mark. It is, therefore, highly desirable that the machinery entrusted with the job of cleanliness and waste management must perform its duties with utmost sincerity and caution. The problems relating to town planning, sanitation and waste management are basically the problems of urban areas and therefore, lack of space is major hurdle being faced by the agencies working in this field. Another problem centring around urban areas is that of traffic management and vehicular pollution. Vehicular pollution has risen alarmingly in recent years and unless alternative modes of public transport, which are eco-friendly, are not promoted it might create havoc.

There are various other issues which need to be addressed in order to keep the mother earth in healthy condition. One such issue is protection of coastal regions. It is important to save the natural habitat of marine life and to preserve the biological diversity found in the coastal region. Controversial issues of shrimp farming and construction of big structures near the coast should be tackled with utmost caution.

Thus, the need to protect and preserve the natural environment cannot be overemphasised. On the other hand one can not rule out developmental needs of a developing nation at the same time. Large infra-structural projects, some of which might be injurious to the nature and environment but at the same time valuable for the national development, are inevitable. The answer to the difficult question how to struck a balance between environment and development has been found in the concept of sustainable development.

With the beginning of the new millennium and the new century we have reached a situation where one can take an informed decision knowing fully well the benefits arising from the process of development and the losses which the human race is likely to suffer in present and future. Under such a situation the role played by the apex court of the country becomes very significant as the fate of environmental protection and development is ultimately being decided by the judgments of the Court. In order to know the direction of environmental justice top ten issues have been chosen

and decisions of the Supreme Court relating to them have been examined below.

9.1. Conservation of Forest :

Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation has been taking place on a large scale in India and it has caused widespread concern. The Parliament has responded to this problem by passing the Forest (Conservation) Act, 1980, the Government of India has also come out with a new forest policy in 1988. The judicial response has also favoured this great cause of forests conservation. This is evident from the judgments of the Supreme Court of India discussed here under -

In *Rural Litigation and Environment Kendra v. State of U.P.*[1], the Court treated a letter received from the Rural Litigation and Entitlement Kendra, Dehradun along with accompanying affidavits as a writ petition. The main allegation therein was related to unauthorised and illegal mining operations carried on in the Mussoorie hills and the area around, adversely affecting the ecology of the area and leading to environmental disturbances. The Court observed "the Himalayas has been the store house of herbs, shrubs and plants. Deep forests on the lower hills have helped to generate congenial condition for good rain ... Mining operations in these area have led to cutting down of the forest".[2]

The Court rightly assessed the gravity of the problem and suggested as follows-

> Over thousands of years men had been successfully exploiting the ecological system for his sustenance but with the growth of population the demand for land has increased and forest growth has been and is being cut down and man has started encroaching upon nature and its assets ... It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact.[3]

Thus, the Court realised the importance of protecting nature and forests and showed its concern in fascinating ways but when the question arose whether the deposits should be exploited at the cost of ecology and environmental considerations

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1. AIR 1987 SC 359.
2. *Id.* at 362, 363.
3. *Id.* at 363, 364.

or the industrial requirement should be otherwise satisfied, the Court shrug its shoulders and left the question to be decided by the Government and the Nation. It may be noted here that the Forest (Conservation) Act, 1980 was in force when the Court heard the arguments and passed its judgment but no where this important Act and its ramifications were discussed. This led to passing of another judgment by the Supreme Court in the same matter.[4]

This time again the judgment was delivered by Ranga Nath Misra, J. (as he then was) along with M.M. Dutt, J. Justice Misra explained the importance of forest in more emphatic manner -

> Forests have natural growth of herbs which provide cure for diseases. Our ancestor knew that trees were friends of mankind and forests were necessary for human existence and civilization to thrive. It is these forests that provided shelter for the "Rishies" and accommodated the ancient "Gurukulas". They also provided food and sport for our forefathers living in the state of nature. That is why there is copious reference to forests in Vedas and the ancient literature of ours. In ancient times trees were worshipped as gods and prayers for up-keep of forests were offered to the divine...
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> In due course civilization developed and men came to live away from forests. Yet the human community depended heavily upon the forests which caused rains and provided timber, fruits, herbs and sports".[5]

He expressed concern over the outburst of human population an related developments and blamed them for the present gloomy condition of forests, as men required more of space for living and cultivation as well as more of timber. In that pursuit the forests were cleared and exploitation was arbitrary and excessive. One can find a poetic description about importance of forests in this judgment when Misra, J. observed -

> It has been rightly said that there is a balance on earth between air, water, soil and plant. Forests hold up the mountains, cushion the rains and they discipline the rivers and control the floods. They sustain the springs; they break the winds; they foster the bulks; they keep the air cool and clean. Forests also prevent erosion by wind and water and preserve the carpet of the soil.[6]

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4. *Rural Litigation & Entitlement Kendra v. State of U.P.* AIR 1988 SC 2187.
5. *Id.* at 2197.
6. *Id.* at 2198.

After discussing the relevant provisions of the Indian Constitution, the Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980 the Apex Court concluded that the power to dereserve a forest which was vested in the State Government under section 27 of the Indian Forest Act of 1927 or any other law containing a similar provision is now exercisable subject to prior approval of the Central Government. The Court further held that "the Conservation Act of 1980 applies to renewals as well and even if there was a provision for renewal in the lease agreement on exercise of lessee's option, the requirements of 1980. Act had to be satisfied before such renewal could be granted".[7]

Here it may be noted that before the commencement of the Forest (Conservation) Act, for mining in a forest area prior approval of the Central Government was not required. One can find many cases decided by the Court involving the question of whether or not prior approval is essential when the government grants licences for mining in forest area, some of them are discussed below -

In *State of Bihar v. Banshi Ram Modi,*[8] a mining lease for mining mica was granted by the State Government in respect of an area of 80 acres of land which formed part of reserved forest before coming into force of the Forest (Conservation) Act. However, the forest land had been dug up and mining operations were being carried on only in area of 5 acres out of the total lease area of 80 acres. While carrying on mining operations, the respondent came across two associate minerals felspar and quartz in the area. The respondent, therefore, made an application to the State Government for execution of a deed of incorporation to include the said minerals also in the lease. Though the Forest (Conservation) Act had come into force, the State Government executed the deed of incorporation, incorporating these items without obtaining prior sanction of the Central Government under section 2 of the Forest (Conservation) Act. The respondent made a statement before the Court that he would carry on the mining operations only on 5 acres of land which had already been utilised for non-forest purposes even before the Act came into force.

The question for determination in this case was whether prior approval of the

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7. *Id.* at 2201.
8. AIR 1985 SC 814.

Central Government under section 2 of the Act is necessary for the State Government before granting permission to win associate minerals also within the same area of 5 acres of land? The Court observed -

> If the State Government permits the lessee by the amendment of the lease deed to win and remove felspar and quartz also in addition to mica it cannot be said that the State Government has violated section 2 of the Act because thereby no permission for fresh breaking up of forest land is being given. The result, taking the contrary view will be that while the digging for purposes of mining mica can go on, the lessee would be deprived of collecting felspar or quartz which he may come across while he is carrying on mining operations for mining mica. That would lead to an unreasonable result which would not in any way subserve the object of the Act.[9]

Based on the above mentioned reasons the Court held, while before granting permission to start mining operations on a virgin area section 2 of the Act has to be complied with, it is not necessary to seek the prior approval of the Central Government for purposes of carrying out mining operations in forest area which is broken up or cleared before the commencement of the Act.

The decision of the Court is appreciable in the sense that Court instructed that the mining should not lead to further felling of trees. "However, the assumptions without any scientific evidence, that mining more minerals than the one for which license is given in an area already broken up would not bring environmental damage, does not seem to be correct".[10]

The question, whether after coming into operation of the Forest (Conservation) Act, 1980 the lease holders are entitled to renewal of either first or second of their quarry leases, came before the Court once again in *Ambica Quarry Works v. State of Gujrat*[11] in the form of two appeals. Explaining the object of the Forest (Conservation) Act Sabyhasachi Mukherjee, J. pointed out -

> 1980 Act was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and further deforestation and ecological imbalances should be prevented. That was the primary purpose writ large in the Act of 1980.

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9. *Id.* at 816.
10. P. Leelakrishnan, *Environmental Law in India,* 21 (1999).
11. AIR 1987 SC 1073.

> Therefore, the concept that power coupled with the duty enjoined upon the respondents to review the lease stands eroded by the mandate of the legislation as manifest in 1980 Act in the facts and circumstances of these cases. The primary duty was to the community and that duty took precedence, in our opinion, in these cases. The obligation to the society must predominate over the obligation to the individuals.[12]

The Appellants argued that on the basis of the ratio of *State of Bihar v. Banshi Ram Modi*[13] their quarry leases should be renewed. The Court however, held that in the instant case the situation is entirely different. The renewal of the quarry leases will lead to further deforestation or at least it will not help reclaiming back the areas where deforestation has taken place. The Court further held that the primary purpose of the Forest (Conservation) Act, which must subserve the interpretation in order to implement the Act, is to prevent further deforestation. Therefore, where Central Government has not granted approval, no renewal should be granted.

The trend set by the Apex Court has been reiterated in subsequent cases. In *Divisional Forest Officer v. S. Nageswaramma,*[14] it held that section 2 of Forest (Conservation) Act prohibits mining operations if the mines are situated within the forest area. It is a total prohibition unless the State Government grants mining lease with the prior concurrence of the Central Government. In *Supreme Court Monitoring Committee v. Mussorie Dehradun Development Authority,*[15] the Supreme Court however made slight deviation in the observation from the path followed by it in earlier cases involving matters relating to prior approval by the Central Government. Here the Supreme Court directed the respondent to enlist proposals for *ex post facto* approval by the Central Government and did not order to stop non-forest activity. It may be noted that there is no provision for *ex post facto* approval in the Forest (Conservation) Act, instead it provides for 'prior approval' of the Central Government. The Court, however, directed the Central Government to ascertain, whether the grant was based on an extraneous consideration and if so, the person for it responsible and also directed to look into the possibilities for criminal action against the person

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12. *Id.* at 1076.
13. *Supra* note 8.
14. (1996) 6 SSC 442, 443.
15. (1997) 11 SSC 605.

responsible for the wrong, if any.

The issues of protection and conservation of forests need for development and rights of forest dwellers, tribal and local peoples have been other much debated matters before the Supreme Court. In *Banwasi Seva Ashram v. State of U.P.*[16], on the basis of a letter by Banwasi Seva Ashram the Court started the proceedings under Article 32 of the Constitution. Adivasi people were protesting against their eviction because of reservations of forest land by the State. These Advasi people lived in or near the forest for generations and enjoyed forest products such as fruits, vegetables, fodder, flowers, timber, animals and fuel wood. They alleged violation of their right to life under Article 21 of the Constitution, as the forest dwellers were asked to evict and restrain from enjoying forest products which they enjoyed for generations.

The Supreme Court passed an order restraining the State from eviction of the forest dwellers pending investigation of their claim over the forest. Meanwhile, the State Government informed the Court that it needed the disputed forest land for NTPC for building a project for the generation of electricity. The Court, despite its earlier order preventing dispossession of occupants, allowed acquisition of land as the scheme for generating electricity was of national importance. The Court held -

> Indisputably forests are a much wanted national asset on account of the depletion thereof ecology has been disturbed; climate has undergone a major change and rains have become scanty. These have long term adverse effects on national economy as also on the living process. At the same time, cannot lose sight of the fact that for industrial growth and also for provision of improved living facilities there is great demand in this country for energy such as electricity.[17]

While allowing the super thermal power project on forest land the Court issued various orders for the determination of the rights of oustees and for their rehabilitation. This case is a burning example that "current law and policy governing forests allows wholesale destruction of forests for mega projects but does not encourage or facilitate potentially less harmful uses of forest products by local peoples".[18] The Court has shown, however, its sensitivity toward balancing the need to preserve forest wealth

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16. AIR 1987 SC 374.
17. *Id.* at 376.
18. S.Divan and A.Rosencranz, *Environmental Law and Policy in India*,316 (2nded., 2001).

and sustainable development. In *State of H.P. v. Ganesh wood products*[19] the Court held -

> The obligation of sustainable development requires that a proper assessment should be made of the forest wealth and the establishment of industries based on forest produce should not only be restricted accordingly but their working should also be monitored closely to ensure that the required balance is not disturbed. In this view of the matter, we must say that insofar as forest-based industries are concerned, there is no absolute or unrestricted right to establish industries not with standing the policy of liberalisation announced by the Government of India. The policy of liberalisation has to be understood in the light of the National Forest Policy devised by the Government of India itself and in the light of the several enactments applicable in that behalf.

The Court further held that no distinction can be made between Government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

Once again the Court has asked to resolve the conflict between forest and mining operations in *Samatha v. State of A.P.*,[20] the Court held that "mining operations, though detrimental to forest growth, are part of layout of the industry; provision should be made for investment or infrastructural planning of reforest the area and to protect the environment and regenerate forest.[21] The Court took this opportunity to explain the meaning of term "Forest" used in the Forest (Conservation) Act, 1980 and held, "Forest" bears extended meaning of a tract of land covered with trees, shrubs, vegetation and under growth intermingled with trees and pastures, be it of natural growth or man-made forestation".[22]

Also making clear the meaning of the term "forest land" the Court laid down that the expression "forest land" does not mean only reserved forest but should be given extended meaning in the respective Acts so as to preserve forest land from deforestation to maintain ecology and to prevent environmental degradation and hazardous effects on the right to life. The Court emphasized as under -

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19. (1995) 6 SSC 636, 389.
20. AIR 1997 SC 3297.
21. *Id.* at 3347.
22. *Id.* at 3380.

> It is ... the duty of every citizen and industry to conserve, and if it becomes inevitable to disturb its existence, it is concomitant duty to reforest and restore forestation; duty of the State to coordinate with all concerned and to ensure adequate measures to promote, protect and improve both man-made, natural environment flora and fauna as well as biodiversity.[23]

In *T.N. Godavarman Thirumulkpad v. Union of India,*[24] the Court discussed the matters relating to the protection and conservation of the forests throughout the country. In view of the importance of issues involved, the Court gave notice to both the Central Government and State Government enabling than to present their views. Several points which emerged during the course of the hearing required further study and therefore, the Court deferred the hearing for some time and passed certain interim directions.

The Court removed the misconception about the word 'forest' by declaring that the provisions of the Act must apply to all forests irrespective of the nature of ownership or classification thereof. The Court explained the meaning of forest in the following words -

> The word "Forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of section 2(i), of the Forest (Conservation) Act. The term 'forest land', occurring in section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of section 2 of the Act. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected there with must apply clearly to all forests so understood irrespective of the ownership or classification thereof.[25]

The Court further directed as follows[26] -

(i) Prior approval of the Central Government is required for any non-forest activity within the area of any forest. In accordance with section 2 of the Act, all on-going activity within any forest in any state throughout the country, without the prior

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23. *Id.* at 3346.
24. AIR1997 SC 1228.
25. *Id.* at 1230.
26. *Id.* at 1230-1233.

approval of the Central Government, must cease forthwith.

(ii) The running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are therefore, not permissible without prior approval of the Central Government. Every State Government must promptly ensure total cessation of all such activities forthwith.

(iii) In the tropical wet evergreen forests of tirap and changlong in Arunachal Pradesh, there would be a complete ban on felling of any kind of trees because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills in these areas in Arunachal Pradesh and within a distance of 100 Kms. from its border, in Assam should also be closed immediately.

(iv) The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In absence of such plan, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

(v) There shall be a complete ban on the movement of cut trees and timber from any of the Seven North-Eastern States to any other State except certified timber required for defence or other Government purposes.

(vi) Each State Government should constitute within one month an Expert Committee to identify areas which are forests; areas which were earlier forests, but stand degraded, denuded or cleared; and areas covered by plantation trees belonging to the Government and those belonging to private persons.

(vii) Each State Government should constitute within one month, an Expert Committee to assess the sustainable capacity of the forests of the state *qua* saw mills and timber based industry etc.

(viii) A Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer would be constituted by each State to oversee the compliance of these order and file status report.

(ix) In the state of Jammu and Kashmir, there will be no felling of trees in any

forest, public or private. No private agencies should deal in felled trees or in timber. No permission should be given for saw mills within a distance of eight kilometres from the boundary of demarcated forest area.

(x) In the State of Himachal Pradesh and the hill regions of the States of Uttar Pradesh and West Bengal, there will be no felling of trees permitted in any forest, public or private. Only State Government may remove fallen trees or fell and remove diseased or dry standing timber. The disposal of felled trees shall be done exclusively by the State Forest Corporation.

(xi) In the State of Tamil Nadu, there will be a complete ban on felling trees in all forest areas. Tribals, who are part of the social forestry programme in respect of patta lands, other than forest, may continue to grow and cut trees in accordance with the law. There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of forests.

The case came back for review of the follow up action as directed by the Court and for further hearing. The Court, issued order, supplementing its earlier order, no substantial variation was done in the earlier order dated 12-12-1996 except some minor variations. In its order dated March 4, 1997[27] the Court proceeded to constitute a High Powered Committee (HPC) to oversee the strict and faithful implementation of the orders of the Court in the North-Eastern Region. The Court clarified that the directions contained in the order dated 12-12-1996 and the present order would not apply to minor forest produce, including bamboos, etc. Unlicensed saw mills and veneer and plywood industries in the states of Maharastra and Uttar Pradesh were directed to be closed. A total of 5322.97 cubic metres of timber held by the private parties in their stock purchased from the J & K State Forest Corporation was permitted to be moved. The stock of kail, chir and fir in the depots of the Forest Corporation were permitted to be disposed of by the Forest Corporation.

The Court once again issued interim direction in modification of its earlier orders on May 8, 1997.[28] The Court directed the transfer of a case pending in the Shillong

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27. *T.N. Gadavarman Thirumulkpad v. Union of India,* AIR 1997 SC 1233.
28. *T.N. Gadavarman Thirumulkpad v. Union of India,* (1997) 7 SSC 440.

Bench of the Guwahati High Court[29] to the Supreme Court in view of the fact that in the matters pending before the Supreme Court every fact of the problem throughout the country was under consideration and it was appropriate that no aspect of the matter be considered separately by any Court in any form. In its order the Court directed that in the State of Uttar Pradesh the Principal Chief Conservator of Forest may consider grant of permission to an existing licensed saw mill to relocate itself away form more than 10 kms of any existing forest. To alleviate the unintended hardship to ordinary populace in the hill areas who need forest produce for their survival, the Court clarified that U.P. Forest Corporation may directly collect the message produce including fallen wood, and distribute the same to the people living in the hill areas.

In the Seven North-Eastern States the ban on felling and transportation of trees and timber was directed to be continued. The Government was directed to take all measures necessary to bring the felled timber lying in the forest to the depots/storage points, and have it stacked. After the process of inventorisation HPC may permit saw mills and other wood-based industry to utilise their own legitimate stocks of timber for conversion into finished produce. The Court further directed that the HPC may permit sale of such rounded timber for utilisation within the State to the extent it is from a lawful source. The movement of rounded timber within the State as well as the movement of finished products within and outside the State shall be under transit passes - the issuance and disposal of which will be under the overall supervision of the HPC.

The Supreme Court after having regard to the perception of Ministry of Environment and Forests set out by Attorney General and report of the HPC as also having heard the amicus curiae, the Attorney General and the counsel for North-Eastern States, issued order on January 15, 1998[30] regarding disposal of the illicitly felled trees and ancillary matters. The order includes preparation of an action plan by the Principal Chief Conservator of Forest/ Chief Forest Officer for intensive patrolling and other necessary protective measures to be undertaken in identified vulnerable areas, and action upon such plan. Empowering forest officer with authority to

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29. *Paul Lyngdoh v. State of Meghalaya*, Civil Rule (PIL) SH NO. 1 of 1996.
30. AIR 1997 SC 796.

investigate, prosecute and confiscate on the lines of the powers conferred on the forest officers in many other states, to ensures protection of the forest wealth. The order emphasised upon the scientific management of forest, identification of ecologically sensitive areas and exclusion of such area from any kind of exploitation.

Various other orders have been passed by the Court in *Godavarman's* case clarifying and modifying earlier orders, some new directions have also been issued.[31] The pronouncements in the *Godavarman's* case are significant in many respects, on the line of the Wildlife (Protection) Act, 1972, under which trade and commerce of wild animals, animal articles and trophies could be done only through a State Corporation.[32] "The Godavarman cases seem to suggest that sale of timber and felled trees also be made through state corporations and not through private agencies".[33]

In order to preserve the forests of the country 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. The super active gesture shown by the Supreme Court has however, doubts and questions over the role of judiciary. Is this a legitimate extension of the judge's role? Can the directions issued by the Court be reasonably derived from the provision of the Forest (Conservation) Act or any other statutory or Constitutional provision?"[34] The Court has appointed several committees to give advice and to oversee the implementation of it's order. This illustrates a dilemma. "Besides the lack of confidence in the commitment of the executive in enforcing the orders, it indicates a disappointing size for the failure of the advisory mechanism envisaged under the Forest (Conservation) Act in matter of prior approval.[35]

In *K.M. chinnapa v. Union of India,*[36] the petitioner alleged that flora and fauna in the around Kudremukha National Park were being destroyed by the mining activities conducted by Kudremukh Iron Ore Co. Ltd. (KIOCL). It may be noted that the forests

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31. See. (1998) 6 SSC 190; (1999) 5 SSC 736 and AIR 2000 SC 1636.
32. Section 49.B (3).
33. *Supra* note 10 at 25, 26.
34. *Supra* note 18 at 305.
35. *Supra* note 10 at 26.
36. AIR 2003 SC 724.

in the area were among 18 immediately recognized 'Hosts posts' for bio-diversity conservation in the world. The Kudremukha National Park in which mining activities were being conducted was declared to be a National Park in terms of section 35(1) of the Wild Life (Protection) Act, 1972. The Central Committee constituted under section 3 of the Environment (Protection) act, 1986 was of the view - "the KIOCL be asked to mind up its operations within a period of five years or on the exhaustion of the oxidized weathered secondary ore, whichever is earlier, in the already broken up area".[37]

The Forest Advisory Committee, under the Forest (Conservation) Act, 1980, on 11-7-2001 examined the renewal proposal in respect of the company's mining lease. It recommended that mining may be allowed for a period of four years i.e. upto the year 2005 by which time the weathered secondary ore available in the already broken up area would be exhausted. The Ministry of Environment and Forests deferred, however, a formal decision on the said recommendation as the matter was sub-judice.

The KIOCL contended that there was no violation of any law relating to forests and environment and pointed out that the State and the Central Governments at earlier points of time had acceded to the request of the KIOCL for renewing the lease for twenty years. It was submitted by the KIOCL that the company had subsisting contracts with foreign buyers, and if the lease is not renewed or the mining activities are required to be abandoned, there shall be large financial implications on account of impossibility to perform the contracts. It was argued that for the purpose of renewal, no consent was necessary as an existing right was only to be extended further.

The seminal issue before the Court was whether the approach should be 'dollar friendly' or 'eco-friendly'? The Court after taking note of the factual background and legal position, accepted time period fixed by the Forest Advisory Committee i.e. mining was allowed till the end of 2005 by which time the weathered secondary ore available in the already broken are should be exhausted.

In his judgment Arijit Pasayat, J. made following observation regarding the National Forest Policy, 1988 framed by the Union Government -

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37. *Id.* at 726.

> The Union Government framed National Forest Policy in 1988. Though the basic objectives are very laudable, it is dad to note that it has virtually been confined in papers containing it, and not much had been done to translate them into reality. Nevertheless, it reflects anxiety of the Union Government to protect and preserve natural forests with vast variety of flora and fauna, representing biological diversity and genetic resources of the country.[38]

Criticising the inconsistent of the State and the Central Government regarding the period for which the mining activities can be permitted the Court expressed its dissatisfaction as under -

> Reasons have been highlighted to justify the somersault. Whatever be the justification, it was nut imperative that due application of mind should have been made before taking a particular stand and not to change colour like a chameleon, and that too not infrequently.[39]

It is clear from the aforesaid discussion that the power of the State Government to dereserve a forest could be exercised only with the prior approval of the Central Government. The requirement of prior approval is essential even in case of renewal of an existing agreement relating to non-forest activities like mining etc. in forest areas. The Court has shown enough flexibility in order to create a balance between the need to preserve the forest and sustainable development. It is significant to note that the Court did not make any distinction between the government forests and private forests as both are equally important for maintenance of a balanced ecosystem. By explaining the meaning of the terms 'forest' and 'forest land' the Court has widened the scope of forest laws. The role of the Court in *Godvarman's* case may be subject to criticism by some people, for assuming the role of super administrator by it, nonetheless, one can not doubt the concern of the Court to save the invaluable forest wealth of the nation.

9.2. Protection of Wild life :

Apart from the interpretation of wild life laws the Supreme Court is facing two major challenges in the area of wildlife protection. Firstly, resolving the conflict between nature lovers and industrialist exploiting natural resources in the protected

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38. *Id.* at 737.
39. *Id.* at 739.

regions, amidst consistent pressures on the Government for implementation of developmental plans. Secondly, balancing the need for protection of wild life and rights of forest dwellers and villagers living in and around sanctuaries and national park, and minimizing human intervention in such protected areas.

The Court has explained the object of the Wild life (Protection) Act, 1972 in *State of Bihar v. Murad Ali khan,*[40] as follows -

> The policy and object of the wild life laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalances introduced by the depredations inflicted on nature by man. The State to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect... a grave situation emerging from a long history of callous insensitiveness to the enormity of the risk to mankind that go with the deterioration of environment... Environmentalists' conception of the ecological balance in nature is based on the fundamental concept that nature is a series of complex biotic communities of which a man is an interdependent part and that it should not be given to part to trespass and diminish the whole. The largest single factor in the depletion of the wealth of animal life in nature has been the 'civilized man' operating directly through excessive commercial hunting or more disastrously, indirectly through invading or destroying natural habitats.

The question before the Court in this case was whether the first class magistrate before whom, a range officer makes a complaint, could take cognizance of the offence while an investigation by the police is pending with regard to the same offence. It was alleged that the respondents shot and skinned an elephant and removed the tusks in the Kundurugutu Range of forest. The Supreme Court allowed the State Government's appeals and held that the magistrate can proceed with the case even while the police investigation is pending, as the Wild Life (Protection) Act allows the magistrate to take cognizance of a case on complaint by forest officials.

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40. AIR 1989 SC 1, 3-4.

In *Tarun Bhart Sangh, Alwar v. Union of India,*[41] Tarun Bhart Sangh, a non-governmental organisation engaged in rural development in Rajasthan challenged the mining operation in an area declared as a sanctuary. The State Government pleaded that the licence was valid, as the area was no yet declared as reserved forests. The Court noted the contradictions in the Rajasthan Government's policy as under -

> The purpose of the notification declaring the area as a game reserve under the Rajasthan Wild Animals and Birds Protection. Act, 1951; or the declaration of the area as a sanctuary under the Wild life (Protection) Act, 1972 and the notification dated 1-1-1975 declaring the area as a protected forest under the Rajasthan Forest Act, 1953 is to protect the forest wealth and wild life of the area. It is, indeed, odd that the State Government while professing to protect the environment by means of these notifications and declarations should, at the same time, permit degradation of the environment by authorising mining operations in the protected are.[42]

As there was some doubt with regard to the limits of the area, the Court appointed a committee to identity the protected area and assess the damage to the environment in case mining was carried out in the area.

The committee in its report dated 28th September 1992, indicated that the area declared as protected forest. The report indicated that the area declared as protected forest under the said notification was not in one contiguous block but comprised of several blocks or areas, as it may be called. The matter came before the Court once again. This time the Court clarified the nature of the case in hand in the following words[43] -

> This is not a case where we are called upon to shut down an activity being carried on lawfully, in the name of higher considerations of ecology and environment. This is simple case where we are called upon to ensure observance of enacted laws made by the State to protect the environment and ecology of the area. In such a case, we need not be oppressed by considerations of balancing the interests of economy and ecology. That has already been done by the legislature and parliament.

An application filed by state of Rajasthan for permission to delete an extent of 5.02 sq. kms. from out of the protected forest was also considered by the Court and the

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41. AIR 1992 SC 514.
42. *Id.* at 516.
43. *Tarun Bharat Sangh, Alwar v. Union of India,* (1993) supp (3) SSC 115.

Ministry of Environment and Forests, Government of India was asked by the Court to examine the merits of the said proposal.

The Court also examined the effect of notification issued by the Central Government under section 3 of the Environment (Protection) Act, 1986 on 7th May 1992. This notification expressly prohibited the carrying on of the mining operations, except with the Central Government's prior permission, in the 'areas covered under project tiger'. The prohibition extended to existing mining leases in Sactuaries/National Park.

The directions issued by the Court may be summarised as follows -

1. The mines listed in Appendixes 'A' and 'B' of the report submitted by the committee, to stop forthwith.
2. The Central Government to submit a report within 3 months on the State Government's proposal to delete 5.02 sq. kms. from the protected area.
3. Mines situated outside the protected forests within the tiger reserve permitted to continue for four months, within which period they were permitted to approach the Central Government for permission to continue their operations. In case no permission was obtained, they were directed to cease mining activity.

Here it may be submitted that the Courts' sympathy for the State proposal to delete forest by de-reserving about 5.02 sq. kms. of protected forest and offering compensatory reservation of an equal area may set a dangerous precedent. As the courts shifted the ball in the Central Government's side instead of deciding the matter itself on the basis of fact and law available before it.

The Supreme Court has recognised the difficulties in balancing the need of the environment and the need of economic development and has refused to apply the principle of prohibition in such a case. In *Consumer Education and Research Society v. Union of India.*[44] The petitioner challenged the State's attempt to cut down the total area of the "Narayan Sarovar Chinkara Sanctuary" before the Gujrat High Court. The High Court quashed the notification intended to reduce the size of the sanctuary,

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44. AIR 2000 SC 975.

there after, the State moved the State legislature seeking the passing of a resolution under Section 26-A(13) of the Wild Life (Protection) Act, 1972. The resolution was passed, reducing the sanctuary limit to 444.23 sq. kms. from 765.79 sq. kms. and designating an area of 321.56 sq. kms. rich in lime stone, lignite, bauxite and bentonite available for development. The State Government's notification for giving effect to the resolution was again challenged by the petitioner society before the High Court. The High Court dismissed the writ petition, taking the view that 444.23 sq. kms. would be adequate for 1200 chinkaras; that economic development would benefit the people of kutch and would also be helpful in protecting the wildlife and vegetation of the area, and that proper conditions had been imposed as regards mining and the setting up of a cement plant near the denotified area, so that pollution would be prevented. This order of the High Court was challenged by the petitioner society before the Supreme Court by special leave petition.

The Supreme Court agreed that some aspects deserved better consideration and some other relevant aspects should also have been taken into account by the state legislature while passing the resolution, reducing the area of the sanctuary. But the court felt it not proper to invalidate the resolution on such a ground as the state legislature consists of representatives of the people and it can be presumed that those representatives know the local areas well and are also well aware of the requirements of that area".[45] The Court held further, "[e]ven when it is found by the Court that the decision was taken by the state legislature hastily and without considering all the relevant aspects it will not be prudent to invalidate its decision unless there is material to show that it will have irreversible adverse effect on the wild life and the environment".[46]

The Court noted that the reports of the three different committees accepted the ecological importance of the area and expressed an apprehension that any major mining operation within the notified area and large-scale industrialisation near about the sanctuary as originally notified, may adversely affect the ecological balance and biodiversity of that area. The Court observed -

... [T]his part of Kutch District is a backward area. There is no other

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45. *Id.* at 978.
46. *Id.*

> possibility of industrial development in that area, though it contains rich mineral deposits. Therefore, if an attempt is made by the State legislature and the State Government to balance the need of the environment and the need of economic development it would not be proper to apply the principle of prohibition in such a case ... it would, therefore, be proper and safer to apply the "principle of protection" and the "principle of polluter pays" keeping in mind the "principle of sustainable development" and the "principle of intergeneration equity".[47]

The Court directed as under -

(a) The interim order passed by the Court shall continue for a period of one year.

(b) The State Government shall constitute a committee headed by a retired judge of the Gujrat High Court and other experts in the field of hydrology, soil erosion and other related disciplines to make comprehensive study of the effects of the present limited mining operation permitted by the Court and effect of mining of the cement plant setup outside the old sanctuary area.

(c) The State Government is restrained from giving permission to others to carry on any mining operation or to put up a cement plant within the area of 10 km. from the periphery of the old sanctuary area without obtaining an order from the Court.

It appears that the provisions to keep the national parks and sanctuaries free from human intervention has affected badly the forest dwellers and tribals. "Severing forest dwellers from their traditional access to forest produce 'criminalizes' honest citizens who have little choice but to tap the forests for fodder, fuel, food and minor forest produce. Conservationists sympathize with this view, but justify the extension of the national park and sanctuary network because of the degraded condition of our forests. They argue that the best preserved wildnesses in India are within the national parks and sanctuaries".[48] The Supreme Court has taken the task of harmonising these competing interests as evident from the cases decided by it.

In *Pradeep Krishen v. Union of India,*[49] the petitioner, an environmentalist filed

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47. *Id.* at 979.
48. *Supra* note 18 at 335.
49. AIR 1996 SC 2040.

a public interest litigation challenging the legality and Constitutional validity of an order dated 28-3-1995 issued by the State of Madhya Pradesh, Department of Forest, permitting collection of tendu leaves from Sanctuaries and National parks by villagers living around the boundaries thereof with the avowed object of maintenance of their traditional rights. The petitioner alleged that the said order has ignored the need to protect the flora and the fauna as well as wild life which are, so to say, nature's laboratory where evolutionary process of life in all forms takes place and which ought not to be interfered with. The presence of human beings, albeit in earmarked parks, will not only adversely affect the flora and the fauna but will also scare away wild life.

The Court found that neither the traditional rights of those living in the vicinity of those parks and sanctuaries had been acquired nor provisions were made to either compensate or rehabilitate them, the final declaration under sections 26-A and 35 of the Wild Life (Protection) Act, 1972 had not been possible. That is the reason why the State Government had to permit collection of tendu leaves by the impugned order. The Court observed -

> In our country, the total forest cover is less than the ideal minimum of one-third of the total land. We cannot, therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the national parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wild life in those areas.[50]

Without quashing the impugned order of 28.3.1995 the Court directed the State Government to take immediate action under the Wild Life (Protection) Act and institute an inquiry, acquire the rights of those who claim any right in or over any land proposed to be included in the Sanctuary/National Park and thereafter proceed to issue a final notification under sections 26-A and 35 of the Act declaring such areas as Sanctuaries/ National Parks. The State Government was asked to expedite the process "showing that sense of urgency as is expected of a State Government in such matters as enjoined

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50. *Id.* at 2047.

by Article 48-A of the Constitution and at the same time keeping in view the duty enshrined in Article 51-A(g) of the Constitution".[51]

The question of native people's right again came before the Court in *Animal and Environmental Legal Defence Fund v. Union of India.*[52] The petitioner was an association of lawyers and other persons who were concerned with the protection of the environment. They filed the petition in public interest challenging the order of the Chief Wildlife Warden, granting 305 fishing permits to the tribals formerly residing within the Pench National Park area for fishing in the Totladoh reservoir situated in the heart of Pench National Park Tiger Reserve. These tribal did not initially make any claim pursuant to proclamation issued under section 19 and 21 of the Wild Life (Protection) Act, 1972. Later on they claimed that fishing was their only source of livelihood and a traditional right. The Court held that issuance of such permits did not fall under section 33 of the Act as they were issued before the final notifications under section 35(4) notifying the area as National Park. The Court held -

> ... [W]hile every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the areas to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in position to earn their livelihood. In the present case it would have been far more desirable, had the tribals been provided with other suitable fishing areas outside the National Park or had been given land for cultivation.[53]

The Court was of the opinion that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in the notified area. The State Government was therefore, directed to issue the final notification expeditiously, under section 35(4) of the Wild Life (Protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh.

It is evident, therefore, that the Court is conscious about the urgent need for protection of wildlife and their habitat. The Court's approach, generally, has been

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51. *Id.*
52. AIR 1997 SC 1071.
53. *Id.* at 1073.

that the mining operations could not be permitted in the protected area and areas covered under the project tiger. In *Tarun Bharat Sangh* Case the Court's consideration of the proposal by the State Government to delete forest by de-reserving protected forest and offering compensatory reservation, subject to approval of the Central Government, might set a dangerous precedent. The Court has tried to harmonise the competing interests of forest dwellers and wild life protection by ensuring on the one hand, the preservation of wild life in protected areas and on the other hand, the right to livelihood to the tribals formerly living in the areas.

9.3. Pollution of Rivers and Lakes :

No one can doubt the importance of rivers and lakes, as they provide drinking water, water for agriculture, habitat for a number of aquatic plants and animals and are a very important component of ecosystem. Many great civilizations have grown around rivers. This fact also suggests the importance of rivers as the lifeline for people. The river Ganga is one of the greatest rivers of the world. The Ganga rises in the Himalays from the Gangotri Glacier, some 4100 meters above the sea level under the name of 'Bhagirathi'. Two streams, the Madakani and the Alakhnanda join it at Devprayag and it is beyond this confluence that the river is known as the 'Ganga'. During the course of its journey of 2525 kms. from the hills to the Bay of Bengal, municipal sewage from cities, trade effluents from industries and polluting waste from several sources are discharged into the river resulting in its pollution.

In *M.C. Mehta v. Union of India,*[54] (*Kanpur Tanneries* Case) an active Social Worker and environmental activist Mr. M.C. Mehta filed a public interest litigation for the issue of a writ/order/direction in the nature of a *mandamus* to arrest the pollution of the river water, specially the pollution caused by the tanneries at Jajmau, Kanpur. The Court pointed out that water is the most important of the elements of nature and river valleys have been the cradles of civilisation from the beginning of the world. It is the popular belief that the river Ganga is the purifier of all but we are now led to the situation that action has to be taken to prevent the pollution of the water of the river Ganga since we have reached a stage that any further pollution of the river water is

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54. AIR 1988 SC 1037.

likely to lead to a catastrophe.

K.N. Singh, J. (as he then was) is his supplementing judgment described the importance of the river Ganga in the following words -

> It is great because to millions of people since centuries it is the most sacred river. It is called *"Sursari"*, river of the Gods, *"Patitpawani"* purifier of all sins and *"Ganga Ma"* Mother Ganges ... Its water has not only purified the body and soul of the millions but it has given fertile land to the country in Uttar Pradesh and Bihar. Ganga has been used as means of water transport for trade and commerce. The Indian civilization of the Northern India thrived in the plains of Ganga and most of the important forms and places of pilgrimage are situated on its banks. ... Millions of our people bathe in the Ganga, drink its water under abiding faith and belief to purify themselves and to achieve *moksha,* release from the cycle of birth and death.[55]

The learned Justice further said that it was tragic that the Ganga, which had since time immemorial, purified the people was being polluted by man in numerous ways, by dumping of garbage, throwing carcass of dead animals and discharge of effluents. Therefore, apart from the government, it was the sacred duty of all those who reside or carry on business around the river Ganga to ensure the purity of Ganga. The Court referred 'an Action Plan for prevention of pollution of Ganga' prepared by the Department of Environment, Government of India in the year 1985, which pointed out the main sources of pollution of the Ganga as follows -

(a) Urban liquid waste (sewage, storm drainage mixed with sewage, human, cattle and kitchen waste carried by drains etc.);

(b) industrial liquid waste;

(c) Surface run-off of cultivated land where cultivators use chemical fertilisers, pesticides, insecticides and such manures the mixing of which may make the river water unsafe for drinking and bathing;

(d) surface run-off from areas on which urban solid wastes are dumped;

(e) surface run-off from areas on which industrial solid wastes are dumped.

There was not much dispute on the question that the discharge of the trade effluents from tanneries into the river Ganga had been causing considerable damage

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55. *Id.* at 1046-1047.

to the life of the people who were using water of the river Ganga and also to the aquatic life in the river. The Court remarked, the effluent discharged from a tannery is ten times noxious when compared with the domestic sewage water which flows into the river from any urban area on it banks".[56] The Court issued notices to polluting tanneries but in spite of notice many industrialists did not bother either to respond to the notice or to take elementary steps for the treatment of industrial effluent before discharging the same into the river.

The Court therefore, issued order directing the closure of those tanneries which had failed to take minimum steps required for the primary treatment of industrial effluent. Tanneries having the primary treatment plants were allowed to carry on production subject to the condition that they should continue to keep the primary treatment plants established by them in sound working order. The Court adjourned for the next date of hearing with direction that the case in respect of the municipal bodies and the industries which were responsible for the pollution of the water in the river Ganga would be taken up for consideration. Accordingly, the case against the municipal bodies was considered by the Court in *M.C. Mehta v. Union of India.*[57] *(Ganga Pollution (Municipalities* Case*).*

The Court took up the case of the Kanpur Nagar Mahapalika, since it was found that Kanpur was one of the biggest cities on the banks of the river Ganga. The Court noted that there were a large number of dairies in Kanpur in which there were about 80,000 cattle. The Kanpur Nagar Mahapalika was asked by the Court to prevent pollution of water in the river Ganga on account of the waste accumulated at the dairies.

It was submitted before the Court that whenever the Board constituted under the Water Act initiates any proceedings to prosecute industrialists or other person who pollute water in the river, the persons accused of the offences immediately obtain stay orders from the High Court, thus frustrating the attempt of the Board to enforce the provision of the Water Act. The facts of any particular case, however, was not placed before the Court. The Court expressed its view on this issue as under -

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56. *Id.* at 1045
57. AIR 1988 SC 1115.

> ... since the problem of pollution of the water in the river Ganga has become very acute the High Courts should not ordinarily grant orders of stay of criminal proceedings in such cases and even if such order of stay is made in any extraordinary case the High Court should dispose off the case within a short period, say about two months, from the date of the institution of such case. We request the High Courts to take up for hearing all the cases where such orders have been issued under section 482 of the Code of Criminal Procedure, 1973 staying prosecutions under the Water Act within two months.[58]

This interesting order of the Court can be debated, as the Court has advised the High Courts regarding their judicial function, what should be done and how it should be done when the matter is relating to water pollution. It may be submitted that High Courts decide cases on their merit and there cannot be a judgment without proper hearing, therefore, it should be left to the High Court to decide what is just and fair.

The practice of throwing corpses and semi-burnt corpses into the river Ganga is another factor which contributes to its pollution. The Court held that this practice should be immediately brought to an end with the cooperation of the people and police. Nagar Mahapalika and police authorities were directed to take steps and ensure that dead body or half-burnt bodies are not thrown into the river Ganga. The Court further ruled that applications for licence to establish new industries should be refused unless adequate provision for the treatment of trade effluents flowing out of the factories were made.

The judgment of the Supreme Court is not confined only to the Nagar Mahapalika, Kanpur but it is applicable *mutatis mutandis* to all other Mahapalikas and Municipalities which have jurisdiction over the area through which the river Ganga flows. This shows the concern of the Apex Court to deal with the menace of river pollution.

The scope of the writ initially directed against the Kanpur tanneries was enlarged, while monitoring the directions issued under the earlier order[59] of the Court and the industries located in various cities on the banks of river Ganga were also called upon to

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58. *Id.* at 1127.
59. *Supra* note 54.

stop discharging untreated effluent into the river subsequently. In *M.C. Mehta v. Union of India,*[60] *(Calcutta Tanneries* Case*)* the Court was concerned with the tanneries located at Tangra, Tiljala, Topsia and Pagla Danga the four adjoining areas in the eastern fringe of the city of Calcutta (the Calcutta tanneries). These areas accommodate about 550 tanneries. It was found by the National Environmental Engineering Research Institute (NEERI), on examination that ninety percent of the Calcutta tanneries use chrome-based tanning process, while the remaining utilise vegetable tanning process. On the basis of NEERI Report, the Court inferred that the Calcutta tanneries have all along been operating in extremely unhygienic conditions and are discharging highly toxic effluents all over the areas. The Court pursued the State of West Bengal to initiate shifting of over 500 tanneries functioning on the bank of River Ganges and passed directions as follows -

(a) Relocation of Calcutta tanneries (About 550 in number) from their present location to the new leather complex set up by the West Bengal Government.

(b) The land which would become available on account of shifting/relocation closure of the tanneries shall be permitted for green purposes.

(c) All the Calcutta tanneries shall stop functioning at the present sites on 30.9.1997, even if the relocation of tanneries is not completed by this date.

In *Vellore Citizens' Welfare Forum v. Union of India*[61] the petition filed by Vellore Citizens' Welfare Forum was directed against the pollution which was being caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. Tanneries were discharging untreated effluent into agricultural fields, road sides, water ways and open lands. The untreated effluent finally discharged in river Palar which is the main source of water supply in the residents of the area. The petitioner alleged that the entire surface and subsoil water of river Palar has been polluted resulting in non-availability of potable water to the residents of the area. The court appreciated the problem in the following words -

> If the conditions in the five districts of Tamil Nadu, where tanneries are operating, are permitted to continue this in the near future all rivers/canals

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60. (1997)2 SCC 411.
61. AIR 1996 SC 2715.

shall be polluted, underground water contaminated, agricultural lands turned barren and the residents of the area exposed to serious diseases.

The Court directed all the tanneries in the five districts of North Arcot Ambedkar, Edore Periyar, Divaligul Anna, Trichi and Chengai M.G.R., to set up Common Effluent Treatment Plants (CETP) or Individual Pollution Control Devices on or before November 30, 1996.

Most of the India's fresh water lakes are in pathetic condition because of civic and developmental pressure. In *Dr. Ajay Singh Rawat v. Union of India,*[62] the petitioner a member of social action group approached the Supreme Court seeking the assistance of the Court to pass orders and directions to prevent further pollution of already suffocating National and to save the lake which had virtually became a dumping ground for rubble and public sewage. Hansaria, J. noted the contention of the petitioner that the pollution in the lake is because of both inorganic and organic causes. The nearby minerals, namely, manganese, lead salts, copper, cobalt and zinc make the lake toxic for life forms. the discharge of waste water into the lake is another polluting factor. But the most potent source of pollution is human faeces from leaking sewers". The throwing of plastic bags and dumping of other materials have added to the throes of the lake. The Court appointed a commissioner for local inspection and to give report on the matter. The reports submitted by the commissioner confirmed the allegations of the petitioner.

After considering the findings and recommendations of the commissioner the Court held that there can be no doubt about some preventive and remedial measures to be taken on war footing, as any delay would cause further degradation and complicate the matters. The Court further directed that certain steps deserve to be taken urgently including following -

(i) Sewage water has to be prevented at any cost from entering the lake.

(ii) So far as the drains which ultimately fall in the lake are concerned, it has to be seen that building materials are not allowed to be heaped on the drains to prevent siltation of the lake.

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62. (1995) 3 SCC 266.

(iii) Care has been taken to see that horse dung does not reach the lake. If for this purpose the horse-stand has to be shifted some where, the same would be done. The authorities would examine whether trotting of horses around the lake is also required to be prevented.

In *Badkhal and Surajkund Lake matters*[63] the Court had no hesitation in holding that in order to protect the Badkhal and Surajkund lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.

The Court arrived at the decision after considering the inspection report in respect of those lakes by the National Environmental Engineering Research Institute (NEERI). According to the report -

> Surajkund lake impounds water from rain and natural springs. Badkhal lake is an impoundment formed due to the construction of an earthen dams. ...The land use and soil types as explained in the report show that the Badkhal lake and Surajkund are monsoon-fed water bodies. The natural drainage pattern of the Surrounding hill areas feed these water bodies during rainy season. Large-scale construction in the vicinity of the tourist resorts may disturb the rain water drain which in turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the aquifer which are the source of ground water. The hydrology of the area may also be disturbed.[64]

The observation of Court that the functioning of ecosystem and the status of environment cannot be same every where in the country. The preventive measures therefore, is very relevant in the fast developing society have to be taken keeping in view the carrying capacity of the ecosystem operating in the environmental surroundings under consideration. It may be noticed that the Court has taken a firm stand against river pollution caused by the discharge of untreated trade effluents in river and has insisted that effluent treatment plants be installed or else the polluting industries be shifted or closed down. Similar degree of protection, it seems, has been extended to the fresh water lakes suffering from pollution. Wherever the Court found that the lakes were suffering from pollution due to

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63. *M.C.Mehta v. Union of India* (1997)3 SCC 715.
64. *Id.* at 718.

discharge of sewage etc., directions were issued to stop the source of pollution. Even construction activities in the close vicinity of the lakes were limited by the order of the Court. The concern of the Court, therefore, for facilitating availability of pollution free water is highly appreciable.

9.4. Town Planning :

One of the most important judgmentson town planning is the judgment of Supreme Court in *Bangalore Medical Trust v. B.S. Muddappa.*[65] A site in the city of Bangalore was reserved as public park/playground in the developmental plan of the city. The Bangalore Development Authority (BAD) allotted the said space in favour of a medical trust, for the purpose of constructing a hospital in pursuant to the orders of the State Government. This allotment was challenged by the residents of the locality on the ground that it is contrary to the provisions of the scheme prepared under the Bangalore Development Authority Act, 1976 and the legislative intent to protect and preserve the environment by reserving open space for ventilation, recreations, playgrounds and parks for the general public. The writ petition was dismissed by the learned single Judge of the High Court. On appeal the learned Judges of the Division Bench held that, the area having been reserved in the sanctioned scheme for a public park, its diversion from that object and allotment in favour of a private body could not be allowed. The Court, therefore, set aside the allotment of the site to the medical trust. The Bangalore Medical Trust brought the case before the Supreme Court. R.M. Shahai, J. explained the origin and importance of public parks in the following words -

> Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology... No town planner would prepare a blue print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development Acts of different States require

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65. AIR 1991 SC 1902.

> even private house owners to leave open space in front and back for lawn and fresh air... Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard.[66]

The Court held that a private nursing home cannot be a substitute for a public park. What is lost by removal of a park cannot be gained by establishment of a nursing home. Referring to Indian and foreign statutes as well as English and American case laws, in his concurring judgment, Thommen, J. in complete agreement with Sahai, J. added -

> Any reasonable legislative attempt bearing a rational relationship to a permissible State objective in economic and social planning will be respected by the Courts. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the Government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest, breathe fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid.[67]

The case has two important pro-citizen dimensions. "It lays down that power exercised under an environmental statute must further the legislative object of the Act. Further, it invalidates a favour by the Karnataka Chief Minister on the ground that it was in breach of public trust since it deprived Bangalore residents of a public park".[68]

In *M.L. Sud v. Union of India,*[69] the Court, in order to preserve the greenery of Delhi, secured an undertaking from the Delhi Development Authority (DDA) not to fell trees in a 453 acre forest belt 'Jahanpana Forest'. The petitioner apprehended that DDA was destroying the forest by cutting trees and constructing roads and buildings in the said area. The Court issued directions to the conservator of forest to visit the forest every quarter to ensure its preservation.

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66. *Id.* at 1916.
67. *Id.* at 1914.
68. *Supra* note 18 at 375.
69. (1992) Supp(2) SCC 123.

The Court extended its 'save Delhi drive' in *M.C. Mehta v. Union of India,*[70] while admitting that environmental changes are the inevitable consequences of industrial development in our country, the Court stressed at the same time that the 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 residents of the area. The Court expressed its displeasure about the matter in following words -

> Utter disregard to environment has placed Delhi in an unenviable position of being the world's third grubbiest, most polluted and unhealthy city as per a study conducted by the World Medical Organisation. Needless to say that every citizen has a right to fresh air and to live in pollution-free environment.[71]

Directions were issued by the Court for stopping mechanical stone crushing activities in and around Delhi, Faridabad, Ballabgarh complexes. Directions were also issued for allotment of sites in the new 'crushing zone' set up at village Pali in State of Haryana to the stone crushers who have been directed to stop their activities in Delhi, Faridabad and Ballabhgarh complexes.

In *Virender Gaur v. State of Haryana,*[72] the Municipal land earmarked for open space for public use i.e. to maintain ecology and hygienic environment was transferred by the Government by sanctioning grant of lease to a private party, Punjab Smaj Sabha. The Sabha after paying the price obtained sanction for construction of a Dharamshala and started construction. The Court referred to the *Bangalore Medical Trust* Case[73] and held -

> It is seen that the open lands, vested in the Municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affects the health and environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the Municipality would clearly defeat the purpose of the scheme.[74]

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70. (1992) 3 SCC 256.
71. *Id.* at 257.
72. (1995) 2 SCC 577.
73. *Supra* note 65.
74. *Supra* note 72 at 583.

The Court also opined 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 measures to promote, protect and improve both the man-made and the natural environment.

The environmental problem of Delhi was once again addressed by the Supreme Court in *M.C. Mehta v. Union of India.*[75] The Master Plan for Delhi - 'Perspective 2001' specifically provided that the hazardous/noxious/heavy/large industries can not be permitted to operate in the city of Delhi and the existing industrial units falling in the aforesaid categories be shifted/relocated. One of the important questions before the Court was, how and in what manner the land made available as a result of the shifting/ relocating of these industries should be used by the owners/occupiers of the said land? After taking view of various Departments, Governments officers and experts the Court made following observations -

> Delhi is one of the most polluted cities in the world. The quality of ambient air is so hazardous that lung and respiratory diseases are on the increase. the city has become a vast and unmanageable conglomeration of commercial, industrial, unauthorised colonies, resettlement colonies and unplanned housing. There is total lack of open spaces and green areas. Once a beautiful city Delhi now presents a chaotic picture. The most vital 'community need' as at present is the conservation of the environment and reversal of the environmental degradation. There are virtually no 'lung spaces' in the city. The Master Plan indicates the "approximately 34 percent of recreational areas have been lost to other uses". We are aware that housing, the sports activity and the recreational areas are also part of the "community need" but the most important community need which is wholly deficient and needed urgently is to provide for the 'lung spaces' in the city of Delhi in the shape of green belts and open spaces.[76]

The Court expressed its view that totality of the land which was surrendered and dedicated to the community by the owners/occupiers of the relocated/shifted industries should be used for the development of green belts and open spaces. The land left with the owner must to be developed in accordance with the uses permitted under the Master Plan. In either way the development must meet the community

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75. (1996) 4 SCC 351.
76. *Id.* at 560-561.

needs, in conformity with the provision of the Master Plan. The Court further clarified that implementation of its order was possible without making amendments in the said Master Plan.

This judgment of the Court is an illustration of the Court's skill to balance the need of the community against the need of the factory owners who needed resources to bear the expenditure of shifting of their industrial units. By devising a land use pattern which 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 required balance.

The Court passed another order in the same case on July 8, 1996.[77] According to the Master Plan for Delhi, the hazardous and noxious industrial units [H(a) industries] were not permitted to operate in Delhi and the existing H(a) industries were required to be shifted within a maximum prescribed period of three years. The Court noted -

> The Master Plan came into force in August 1990. H(a) industries should have been shifted by the end of 1993. It is unfortunate that no action in this respect was taken by the authorities concerned ... we have no hesitation in holding that the H(a) industries are operating in Delhi illegally and in utter violation of the mandatory provisions of the Master Plan ... The Master Plan provides that no new heavy and large industrial units shall be permitted in Delhi. Heavy and large industries have been categorized as H(b) under the Master Plan. It is further provided that the existing H(b) industries shall shift to DMA (Delhi Metropolitan Area) and the NCR (National Capital Region) keeping in view the Regional Plan and the National Industrial Policy of the Government of India. Although no period has been prescribed for the shifting of these industries but in the absence of any such provision the shifting has to be done within a reasonable time period of six years from August 1990 when the Master Plan came into force, is more than reasonable period for these industries to shift from Delhi.[78]

Some of the industries had, during the course of the arguments, offered for modernization and also for conversion from polluting to non-polluting industries. The Court rejected these offers holding them simple *ipse dixit* with no material and said, "they should have modernized or changed the process of manufacture during the

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77. *M.C.Mehta v. Union of India*, (1996) 4 SCC 750.

78. *Id.* at 753.

six years they have been operating in violation of the Master Plan".[79] The Court identified 168 industries as hazardous/noxious/heavy/large industries, operating in non-conforming areas and directed the unconditional closure of such industries with effect from 30-11-1996 in Delhi. "Apart from the designated units, the Court also directed the Delhi Pollution Control Committee (DPCC) to issue individual notices to other industries asking them to show cause why they be not categorized as 'H' industries. "In February, 1998, the DPCC confirmed the closure of 1,328 industries.[80]

In *D.L.F. ltd. v. Prof. A Lakshmi Sagar*,[81] a scheme for development of sites for 270 country villas on banks of Arkavati River in Karnataka was approved by the State Government, after the scheme was considered by concerned departments of the State and State Pollution Control Board, with the following conditions -

(a) Each country villa shall have a septic tank coupled with soil absorption system;

(b) Each septic tank will cater for 15 users and the septic tanks will be located at a minimum distance of 100 metres away from the river line;

(c) Design for the septic tank, soak pit and dispersion system shall be submitted to the Pollution Control Board and approval obtained before commencement of building activities;

(d) Sludge from the septic tank shall be removed compulsorily once in two years, dried in a separate yard following scientific method for which records must be maintained and produced for verification by the Pollution Control Board;

(e) Pesticides, fungicides and insecticides shall be applied on the vegetation in the area in a scientific method as approved by the Agricultural Department to avoid contamination of surface water;

(f) Peasemeters shall be positioned at regular intervals along with reservoir of river borders in the proposed site after getting the advice form the NEERI, Nagpur for appropriate monitoring of contamination of ground water likely to be leached to

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79. *Id.*

80. N. Dasgupta, "Tall Blunders", *Down to Earth*, 22 (3 Sept. 1998) Cited in S. Diwan and A. Rosencranz, *Environmental Law and Policy in India*, 413 (2001).

81. AIR 1998 SC 3369.

either the river or the reservoir.

Some residents of the city of Bangalore filed a public interest litigation before the High Court on the ground that the approval of the scheme would adversely affect quantity and quality of the water i.e., there would be depletion as well as pollution of the water in the river and water reservoir constructed at Thippa-gondanahally across the river which is one of the main sources of supply of water to the city of Bangalore. The High Court allowed the said writ petition and set aside the order of the State Government. Against the decision of the High Court appeal was preferred before the Supreme Court. The Supreme Court came to the conclusion that it could not be said that in passing the impugned order granting approval to the proposed scheme submitted by DLF, the State Government had failed to take into consideration the matters of public interest raised by the petitioner-respondents. The Court held that the State Government had taken into consideration all relevant factors and its approval was given after it was satisfied that the project did not imperil Bangalore's water supply, and set aside the judgment of the High Court while dismissing the writ petition filed by the petitioner-respondents.

The decision of the Supreme Court allowing scheme of DLF Ltd. without consulting an expert committee or body, as has been done by the Court in many cases in past, might create confusion in the mind of environmentalists about the approach of the Apex Court.

A strong judgment was delivered by the Supreme Court against the illegal development of an underground market below a public park in Lucknow, in the case of *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu.*[82] The matter came before the Supreme Court in the form of the appeal against the judgment of the High Court of Allahabad (Lucknow Bench). The High Court held that the decision of the Lucknow Nagar Mahapalika permitting M.I. Builders Pvt. Ltd. to construct an underground shopping complex in Jhandewala Park situated at Aminabad Market, Lucknow was illegal, arbitrary and unconstitutional. Writ of *mandamus* was issued to the Mahapalika to restore back the park to its original position.

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82. (1996) 6 SCC 464.

The Supreme Court after examining all facts and circumstances of the case came to conclusion that the purpose of constructing the underground shopping complex was a mere pretext and the dominant purpose was to favour M.I. Builders to earn huge profits. "In depriving the citizens of Lucknow of their amenity of an old historical park in the congested area on the specious plea of decongesting the area the Mahapalika and its officers forgot their duty towards the citizens and acted in a most brazen manner".[83] The Court directed that the underground shopping complex should be dismantled and demolished except one of the blocks meant for parking and on those places the park should be restored to its original shape. On the plea of the appellant and the prospective allottees of the shops, to exercise judicial discretion in moulding the relief, the court held as follows -

> Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction if it is illegal and cannot be compounded has to be demolished. There is no way out Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles.[84]

Thus, when ever the Court was asked to choose between open space, park etc. and construction of building, shopping complex etc., it gave its verdict in favour of parks and lung space. The Court has shown its determination of protect the right of the residents of Delhi to live in a pollution free environment in the matter of shifting/relocation of industries from thickly populated Delhi. The Court ensured development of green belts and open spaces on the land available due to shifting/relocation of industries. The Court did not hesitate in passing demolition order against a shopping complex constructed with approval of the State Government for restoration of an old park in the congested city of Lucknow. Barring one exception of *DLF* Case the Court favoured the environmentalists and reached to its decision after taking opinion from various committees and expert bodies. It is, therefore, apparent that the Court has always insisted

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83. *Id.* at 527.
84. *Id.* at 529.

on better town planning and green space in cities.

9.5. Closure / Relocation of Industries :

Industries play an important role in progress of a nation by providing job opportunities and means of livelihood to the people along with fulfilling the requirements of raw material and finished products to be used by the nation for various purposes. But at the same time certain industries may be harmful to the environment and many pose danger to the people living around it. The judiciary thus faces the challenge of balancing the need to protect environment and industrial growth.

In *Rural litigation and Entitlement Kendra, Dehradun v. State of U.P.,*[85] the Supreme Court faced the challenge of protecting the environment in and around Mussoorie Hills from the mining operations carried on by the limestone quarries in the area. This was the first case of its kind in the country involving issues relating to environment and ecological balance. The case brought into sharp focus the conflict between development and conservation and emphasised the need for reconciling the two in the larger interest of the country. The Court by its order dated 12/3/1985 closed down some of the limestone quarries permanently. The lessees of these quarries had invested a large sum of money and expended considerable time and effort. Therefore, the closure order undoubtedly caused hardship to them. But the Court held, "it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment..."[86] However, in order to mitigate this hardship the Court directed the Government of India and the state of Uttar Pradesh as under -

> ... [W]henever any area in the state of Uttar Pradesh is thrown open for grant of lime-stone or dolomite quarrying , the lessees who are displaced as a result of this order shall be afforded priority in grant of lease of such area and intimation that such area is available for grant of lease shall be given to the lessees who are displaced so that they can apply for grant of lease of such area and on the basis of such application, priority may be given to them subject, of course, to their otherwise being found fit and eligible.[87]

The Court was conscious that as a result of its order, the workmen employed in

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85. AIR 1985 SC 652.
86. *Id.* at 656.
87. *Id.* at 656-657.

the lime stone quarries which have been or which may be directed to be closed down permanently, will be thrown out of employment. But permanently closed lime stone quarries were to be reclaimed and afforestation and soil conservation programme were to be taken up in respect of such quarries, therefore, the Court directed -

> ... immediate steps shall be taken for reclamation of the areas forming part of such lime stone quarries with the help of the already available Eco-task Force of the Department of Environment, Government of India and the workmen who are thrown out of employment in consequence of this order shall, as far as practicable and in the shortest possible time, be provided employment in the afforestation and soil conservation programme to be taken up in this area.[88]

In the same matter the Court passed a judgment dated 30/9/1988[89] and noted that there is no material on record if any alternate provision has been made either by the State of Uttar Pradesh or the Union of India for the displaced lessees after the closure of quarries by the order of the Court without provision for compensations. The Court further observed -

> Indisputably displacement has been suffered by these lessees and the sudden displacement must have upset their activities and brought about substantial inconvenience to them. The Court has no other option but to close down the mining activity in the broad interests of the community. This, however, does not mean that the displaced mine owners should not be provided with alternative occupation. Pious observations or even a direction in that regard may not be adequate, what is necessary is a time frame functioning if rehabilitation is to be made effective. It is therefore, necessary that a Committee should be set up to oversee the rehabilitation of the displaced mine owners. The Uttar Pradesh Government, as apprehended by many of these mine owners, by itself may not be able to meet the requirements of the situation. It may be that all the displaced mine owners may not find suitable placement within the State of Uttar Pradesh. It is therefore, necessary to associate some of other States in the programme.[90]

The Court was of the view that a High-powered committee be set up wherein Union of India is also represented. Consequently, the Court directed to constitute a Rehabilitation Committee consisting of following members -

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88. *Id.* at 657.
89. *Rural Litigation & Entitlement Kendra v. State of U.P.*, AIR 1988 SC 2187.
90. *Id.* at 2203.

1. Secretary, Department of Mines, Government of India - Chairman.

2. Secretary, Department of Environment and Forest, Government of India- Member.

3. Secretaries, Department of Mining of the State of U.P., Rajasthan and Gujrats - Members.

4. Mr. Anil Agarwal, Centre for Science and Environment and Mr. Subrata Sinha, Senior Deputy Director General, Geological Survey of India - Expert Members.

The Committee was directed by the Court to make an initial report on the problem and the manner it proposes to tackle it within eight weeks from the date of the judgment, keeping in view the laws in force.

Thus, the Court while protecting the environment has shown equal concern to the problems faced by the industrialist as well as the workers employed in such industries and has tried to solve the problems as far as possible through rehabilitation of the displaced mining owner and workers.

In *M.C Mehta v. Union of India,*[91] the petitioner filed a public interest litigation for the issue of a writ/order/direction in the nature of mandamus to the tanneries located at Jajmau area in Kanpur (U.P.), restraining them from letting out the trade effluents into the river Ganga till the time they put up necessary treatment plants for treating the trade effluents in order to arrest the pollution of river water.

The Court held that having regard to the adverse effect the effluents are having on the river water, the tanneries at Jajmau, Kanpur should, at least set up of the primary treatment plants and that is the minimum which the tanneries should do in the circumstances of the case".[92] The Court reminded that the effluent discharged from a tannery was ten times noxious when compared with the domestic sewage water which flowed into the river from any urban area on its banks. Further the Court observed -

> The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist a tannery which cannot set up a primary treatment plant cannot be

91. AIR 1988 SC 1037

92. *Id.* at 1045

> permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from the tannery to the river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure.[93]

The Court issued notices to the polluting tanneries at Jajmau but many industrialists did not bother either to respond to the notice or to take elementary steps for the treatment of industrial effluent before discharging the same into the river. The Court, therefore, issued the directions for the closure of those tanneries, which failed to take minimum stapes required for the primary treatment of industrial effluent. K.N. Singh, J. said, "[W]e are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people".[94]

It is evident from this decision of the Court that in circumstances where there is direct threat to the life and health of the people from any industrial operation, the balance will be tilted in favour of environmental protection and ecological balance rather than the polluting industry or its workmen.

In *M.C. Mehta v. Union of India*,[95] stone crushing operations around Delhi caught the attention of the Supreme Court. The petitioner objected to the quarrying because the dust particles polluted the air and the quarries violated town planning regulations. The Court issued a detailed order by which the mechanical stone crushers in Delhi and in the surrounding areas of Haryana were asked to close down their operation within three months. The stone crushers operating without licences from the town planning authorities or which were issued closure orders by the Central Pollution Control Board under section 31-A of the Air (Protection and Control of Pollution) Act, 1981 or by the Central Government under section 5 of the Environment (Protection) Act, 1986, were directed to cease their operation immediately. The Authorities of state of Haryana were directed to demarcate and allot the sites to the stone crushers in a new 'crushing Zone' within six months. The order of the Supreme Court was prefaced with following observations -

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93. *Id.*
94 *Id.* at 1048.
95. (1992) 2 SCC 256.

> We are conscious that environmental changes are the inevitable consequence of industrial development in our country 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 residents of the area. We are constrained to record that Delhi Development Authority, Municipal Corporation of Delhi, Central Pollution Control Board and Delhi Pollution Control Committee have been wholly remiss in the performance of their statutory duties and have failed to protect the environments and control air pollution in the Union Territory of Delhi. Utter disregard to environment has placed Delhi in an unenviable position of being the world's third grubbiest, most polluted and unhealthy city as per a study conducted by the World Health Organisation. Needless to say that every citizen has a right to fresh air and to live in pollution free environments.[96]

The Haryana State Government allowed the stone crushers to re-locate their operation in the new 'crushing zones' around pall and Mohabatabad on the direction of the Court.

In *Vellore Citizens' Welfare Forum v. Union of India,*[97] the petitioner alleged that untreated effluent by the tanneries and other industries in the state of Tamil Nadu is causing pollution. The Supreme Court opined, "It is no doubt correct that the leather industry in India has become a major foreign exchange earner and at present Tamil Nadu is the leading exporter of finished leather accounting for approximately 80 percent of the country as it generates foreign exchange and provide employment avenues, it has no right to destroy the ecology, degrade the environment and pose as a health-hazard".[98]

Keeping in view the circumstance of the case, the Court ordered that the Central Government should constitute an authority under Section 3 (3) of the Environment (Protection) Act, 1986 and confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the state of Tamil Nadu. The Court ordered a pollution fine of Rs. 10,000 each an all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Tirchi

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96. *Id.* at 257.
97. AIR 1996 SC 2715.
98. *Id.* at 2720.

and Chengai M.G.R. The Court further directed all the tanneries in the above five districts to setup CETPs or individual pollution control devices on or before November 30, 1996. All the tanneries were directed to obtain the consent of the Board to function and operate with effect from December 15, 1996 or face closure. To achieve the desired result in the case, the Court requested the Chief Justice of the Madras High Court to constitute a special "Green Bench" to deal with this case and other environmental matters.

In *M.C. Mehta v Union of India*,[99] the petitioner alleged that the foundries, chemical/hazardous industries and the refinery at Mathura are the major source of damage to the "Taj Mahal". The Sulphur Dioxide emitted by the Mathura Refinery and the industries when combined with oxygen-with the aid of moisture in the atmosphere forms sulphuric acid called "acid rain" which has a corroding effect on the gleaming white marble. Industrial emissions, brick-kilns, vehicular traffic and generator-sets were allegedly responsible for polluting the ambient air around Taj Trapezium (TTZ). The petitioner sought appropriate directions against the authorities concerned to take immediate steps to stop air pollution in the TTZ and save the Taj.

After careful examination of the two Varadharajan Reports (1978 and 1995), four NEERI Reports and several reports of the Board the Court reached to the conclusion that industries should be relocated from the TTZ as the industries in the TTZ were active contributors to the air pollution in the said area. The Court issued order for 292 industries located and operating in Agra. Such industries included foundries, pit furnaces, rubber sole, chemical, refectory brick, engineering and lime processing etc. The Court made it clear that the relocation of industries from TTZ is to be resorted to only if the Natural Gas which has been brought at the door step of TTZ is not acceptable/ available by/to the industries as a substitute for coke/coal. The Court observed -

"The Taj, apart from being a cultural heritage, is an industry by itself. More than two million tourists visit the Taj every year. It is a source of revenue for the country. This Court has monitored this petition for over three years with the sole object of preserving and protecting the Taj from deterioration and damage due to atmospheric

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99. AIR 1997 SC 734

and environmental pollution. It cannot be disputed that the use of coke/coal by the industries emits pollution in the ambient air. The objective behind this litigation is to stop the pollution while encouraging development of industry. The old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and the ecosystems have to be protected. The pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystems".[100]

The Court further held that the said 292 industries should change over to the Natural Gas industrial fuel within the prescribed schedule. The industries which were not in a position to obtain gas connections-for any reason - were asked to stop functioning with the aid of coke/coal in the TTZ and relocate themselves. Special attention was given by the Court to the problems of workers employed in such industries. This is evident from the judgment of the court which clearly mentioned -

"The workmen employed in the above-mentioned 292 industries shall be entitled to the rights and benefits as indicated hereunder -

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment.

(b) The period between the closure of the industry in Agra and its restart at the place of relocation shall be treated as active with continuity of service.

(c) All those workmen who agree to shift with the industry shall be given one year's wages as "shifting bonus" to help them settle at the new location. The said bonus shall be paid before 31-1-1998.

(d) The workmen employed in the industries who do not intend to relocate/ obtain Natural Gas and opt for closure, shall be deemed to have been retrenched by 31-5-1997, provided they have been in continuous service for not less than one year in the industries concerned before the said date. They shall be paid compensation in

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100. *Id.* at 760.

terms of section 25-F (b) of Industrial Disputes Act. These workmen shall also be paid, in addition six years wages as additional compensation.

(e) The compensation payable to the workmen in terms of this judgment shall be paid by the management within two months of the retrenchment.

(f) The gratuity amount payable to any workman shall be paid in addition".[101]

In *Calcutta Tanneries' Matter*[102] the petition was initially directed against the tanneries located in the city of Kanpur but later on the scope of the petition was enlarged and the industries located in various cities on the banks of river Ganga were called upon to stop discharging untreated effluent into the river. In present case the court was concerned with the tanneries located at Tangra, Tiljala, Topsia and Pogla Davga the four adjoining areas in the eastern fringe of the city of Calcutta. These areas accommodated about 550 tanneries. These tanneries were operating in extremely unhygienic conditions and were discharging highly toxic effluents all over the area. During the proceedings of the case the State Government informed the Court that the Calcutta tanneries were being shifted from their present location and the new location would be fully equipped with pollution control devices. The tanneries were reluctant to shift and therefore, the State Government applied before the Court for extension of time for the shifting of tanneries. Therefore, the Court directed the Board to examine the possibility of setting up of common effluent treatment plants for the Calcutta tanneries. Pursuant to the direction of the Court the Board filed affidavit in Court stating that adequate space was not available in Tiljala, Tangra and Topsia area for construction of common effluent treatment plant. Moreover, environmental degradation in such areas and their surroundings was extremely alarming and therefore, the Board suggested, "virtually shifting of the tanneries from the present location to another place and construction of common effluent treatment plant is the only practicable solution to control the environmental degradation as a whole".[103]

The Court agreed with the above-quoted opinion of the Board and came to the conclusion that the only liable solution was to relocate the Calcutta Tanneries. The

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101. *Id.* at 762-763.

102. *M.C. Mehta v. Union of India,* (1997) 2 SCC 411.

103. *Id.* at 415.

Court in its order directed the Calcutta tanneries operating in Tangra, Tiljala, Topsia and Pagla Danga areas in the eastern fringe of the city of Calcutta (about 550 in number) to relocate themselves from their present location and shift to the new leather complex set up by the West Bengal Government. The Court made it clear that the tanneries which decline to relocate shall not be permitted to function at the present sites. The Court directed the State Government to render all assistance to the tanneries in the process of relocation and set up unified single agency consisting of all the departments concerned to act as a nodal agency to sort out all the problems. The Court also passed order relating to rights and benefits of the workmen employed in the Calcutta tanneries. A fine of Rs. 10,000 each was imposed by the Court on all the tanneries. They were also held liable to pay compensation as cost of restoring the damaged environment.

Though the judgment of the Hon'ble Supreme Court is a welcome step as far as protection of environment is concerned but one may wonder how the industry can survive after paying compensation, fine, one year's wages to its workers as 'shifting bonus' and other expenditure incurred on relocation.

The Court has shown equal concern for the protection of the natural environment from industrial pollution as well as proper rehabilitation of the closed and relocated industries and their workers. It has been endeavour of the Court to make the operation of Industries pollution free by pursuing them to install pollution control devices. The option of closure and relocation of industries has been resorted to only in those cases where there was no other viable option to stop pollution.

9.6. Regulation of Hazardous Substance :

Hazardous substances are present every where in the modern industrialized societies. Industries are generating, using and discarding as by-products, these dangerous substances. Agricultural sector is using highly toxic chemical in the form of pesticides and insecticides to protect crops from pathogens. The waste generated in hospitals and even that of household may contain hazardous substances. Hazardous substances include flammables; explosives; heavy metals such as lead, arsenic and mercury; nuclear and petroleum fuel by-products; dangerous micro-organisms; and scores of synthetic

chemical compounds like DDT and dioxins".[104]

Hazardous substances are extensively regulated in India. In exercise of the powers conferred by the Environment (Protection) Act, 1986, the Central Government has passed some important rules to deal with hazardous substances, they include -

1. Hazardous Wastes (Management and Handling) Rules, 1989.
2. Manufacture, Storage and Import of Hazardous Chemical Rules, 1989.
3. Manufacture, Use, Import, Export and storage of Hazardous Micro-Organisms, Genetically. Engineered Organisms or Cells Rules, 1989.
4. Bio-Medical Waste (Management and Handling) Rules, 1998.
5. Recycled Plastic Manufacture and Uses Rules, 1999.
6. Municipal Solid Waste (Management and Handling) Rules, 2000.
7. Batteries (Management and Handling) Rules, 2001.

In *Oleum Gas Leak* Case[105] the petitioner raised some seminal questions concerning the principles and norms for determining the liability of large enterprises engaged in manufacture and sale of hazardous products, the basis on which damages in case of such liability should be quantified and whether such large enterprises should be allowed to continue to function in thickly populated areas and if they are permitted to function, what measures must be taken for the purpose of reducing to a minimum the hazards to the workmen and the community living in the neighbourhood. The petition sought to close and relocate Shriram's Caustic Chlorine and Sulphuric acid plant located in Delhi.

These questions came before the Court because on 4th and 6th December, 1985 there was leakage of Oleum gas from one of the units of Shriram Fertiliser Industries and as a result of the leakage several persons were affected and one advocate died. The Court admitted that the questions raised by the petitioner were questions of great importance particularly since, following the leakage of MIC Gas from the Union Carbide Plant in Bhopal, lawyers, judges and jurists were considerably exercised as to what controls, whether by way of relocation or by way of installation of adequate

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104. *Supra* note 18 at 514.

105. *M.C. Mehta v. Union of India,* AIR 1987 SC 965.

safety devises, need to be imposed on corporations employing hazardous technology and producing toxic or dangerous substances. Chief Justice Bhagwati, who presided over the Supreme Court bench, was deeply concerned for the safety of citizens residing in Delhi and was anxious to improve plant safety at the caustic chlorine unit-a task which the statutory agencies seemed incapable of performing. Moreover, the Chief Justice, who was a year away from the mandatory retirement age at the time of the Oleum gas leak, saw in the Oleum leak case a chance of influencing the pending and far more important case relating to Bhopal gas tragedy.

Whilst the proceedings of the case were going on, the caustic chlorine plant was closed by the order of the Assistant Commissioner (Factories) as the factory lacked adequate safety measures required for such plants.

The Court considered the reopening of the caustic chlorine plant in the light of recommendations made by various expert committees relating to safety of the plant. There was no doubt that there would be hazard to the life and health of the community, if there is escape of chlorine gas from the caustic chlorine plant, whether by reason of negligence of the management or due to accidental release. It is for this reason the Court made following observation -

> We cannot, therefore, ignore the possible hazard to the health and well-being of the workmen and the people living in the vicinity on account of escape of chlorine gas. We also cannot overlook the old and worn out state of machinery and equipment, the negligence of the management in the maintenance and operation of the caustic chlorine plant and the indifference shown by the management in installing proper safety devices and safety instruments and taking proper and adequate measures for ensuring safety of the workmen and the people living in the vicinity. These are considerations which are very relevant in deciding whether the caustic chlorine plant should be allowed to be restarted.[106]

But at the same time the Court took into account the fact that all the recommendations made in the reports of expert committees had been carried out by the management of Shriram and it was the opinion of the expert committees that since all the recommendations had been complied with by the management in

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106. *Id.* at 521.

satisfactory manner, Shriram might be allowed to restart the caustic chlorine plant. The Court further observed -

> We cannot also ignore the interests of the workmen while deciding this delicate and complex question. It could not be disputed either by the Government of India or by the Delhi Administration or even by the petitioner that the effect of permanently closing down the caustic chlorine plant would be to throw about 4,000 workmen out of employment and that such closure would lead to their utter impoverishment. The Delhi Water Supply Undertaking which gets its supply of chlorine from Shriram would also have to find alternative sources of supply and it was common ground between the parties that such sources may be quite distant from Delhi. The production of down stream products would also be seriously affected resulting to some extent in short supply of these products.[107]

After weighing various considerations from both sides, with considerable hesitation, bordering almost on trepidation, the Court reached to the conclusion that, pending consideration of the issue whether the caustic chlorine plant should be directed to be shifted and relocated at some other place, it should be allowed to be restarted by the management of Shriram, subject to certain stringent conditions laid down by the Court. The Court further pointed out that there were many other plants in Delhi which were employing hazardous technology or were engaged in manufacture of hazardous goods and if proper and adequate precautions were not taken, they too were likely to endanger the life and health of the community. Therefore, the Court requested the Government of India to take the necessary steps at the earliest for setting up of a High Powered Authority for overseeing functioning of hazardous industries with a view to ensuring that there were no defects or deficiencies in the design of their plant and machinery, there was no negligence in maintenance and operation of the plant and proper safety standards and procedures were strictly followed. The Court further pointed out -

> [W]hen science and technology are increasingly employed in producing goods and service calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We cannot possibly adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard or risk to the community. If

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107. *Id.*

> such a policy were adopted, it would mean the end of all progress and development. Such industries, even if hazardous, have to be set up since they are essential for economic development and advancement of well-being of the people. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk or danger to the community and maximising safety requirements in such industries.[108]

For the reasons given above, the Court impressed upon the Government of India to evolve a national policy for location of chemical and other hazardous industries in areas where population is scare and there is little hazard or risk to the community and when hazardous industries are located in such area, every care must be taken to see that large human habitation does not grow around them. The Court further stated that there should preferably be a green belt of 1 to 5 km. width around such hazardous industries.

The effort of Court is really praise worthy as this was the first case of its kind and the Court had no previous experience of solving the techno scientific questions involved in the case. The Court took help from the views of experts in the field and minimized the danger to workers and the surrounding community by asking Shriram to take stringent safety measures before restarting its caustic chlorine plant. "Some of these conditions, viz, making senior level management responsible for hazardous industrial operations, introducing workers' participation in safety management, publicizing preventive measures in the case of an emergency and requiring trained and experienced personnel to handle hazardous substances - have been codified into the Factories Act by the 1987 amendment".[109] By appointing monitoring committees that were required to report back to the Court regarding the measures taken to make the Shrirams plant and operational procedure safe, the Court ensured the strict compliance of its order.

This writ petition was subsequently referred to a Bench of five judges.[110] The reference was made because certain questions of seminal importance and high Constitutional significance were raised before the three judges bench in the course of arguments when the writ petition was originally heard. One such question was about

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108. *Id.* at 981.

109. *Supra* note 18 at 527.

110. *M.C. Mehta v. Union of India,* AIR 1987 SC 1086.

the measure of liability of an enterprise which was engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or injured.

The Court held that since the victim would not be in a position to isolate the process of operation from the hazardous preparation of substance that caused the harm, "the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity".[111] The Court further pointed out that the enterprise alone has the resource to discover and guard against hazards and, therefore, where an enterprise is engaged in an hazardous or inherently dangerous activity and harm results to any one on account of an accident in the operation of such activity, the enterprise was strictly and absolutely liable to compensate all those who were affected by the accident and the measure of compensation in such case must be correlated to the magnitude and capacity of the enterprise.[112]

The validity of the principle laid down in aforesaid case relating to measure of compensation was questioned in *Charan Lal Sahu v. Union of India.*[113] The case was relating to Constitutional validity of Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, but certain opinion expressed by learned Judges appear to weaken the *Oleum gas leak* Case principle that the quantum of damages should be on the basis of the monetary capacity of the delinquent.

On the night of December 2, 1984, there was massive escape of lethal gas from the MIC storage tank at Bhopal plant of the Union Carbide (I) Ltd. (UCIL), resulting in large scale death and disaster. When the matter was pending before the Supreme Court, a settlement was arrived at between the Union of India and UCC under which a sum of US Dollars 470 million was agreed to be paid by the UCC. The Union of India also agreed to withdraw certain prosecutions that had been initiated against the officials of the UCC and UCIL in this connection. It was contended before the Court that the UCC and UCIL were accountable to the public for the damages caused by their industrial activities not only on a basis of strict liability but also on the basis that

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111. *Id.* at 1099.

112. *See* Chapter 8 for more discussion on 'absolute liability' principle.

113. AIR 1990 SC 1480.

the damages to be awarded against them should include an element of punitive liability and that, this had been lost sight of while approving of the said settlement.

Mukharji, C.J. for himself and Saikia J. opined that the formulation of a concept of damages, blending both civil and criminal liabilities i.e. 'concept of punitive damages' in respect of a civil action which can be integrated and enforced by the judicial process involves serious difficulties. Further he pointed out that it is still very uncertain how far decision based on such a concept would have been a decision according to 'due process of law acceptable by international standard'.[114]

Justice Ranganathan for himself and Ahmadi J. concurred with the views expressed by Mukherji J. and observed -

> Whether the settlement should have taken into account [the *Oleum gas leak* principle of punitive liability] is, in the first place, a moot question. Mukharji, C.J. has pointed out-and we are inclined to agree - that this is an 'uncertain province of the law' and it is premature to say whether this yardstick has been, or will be, accepted in this country, not to speak of its international acceptance which may be necessary should occasion arise for executing a decree based on such yardstick in another country.[115]

However, Justice K.N. Singh who was also a member of the *Oleum gas leak* Court did not express any opinion on the issue of quantum of damages and allowed the majority opinion to cast serious doubts over his earlier decision.

The Court stressed upon formulation of the principles of law guiding the Government and the authorities to permit carrying on of trade dealing with materials and things which had dangerous consequences within sufficient specific safeguards especially in case of multinational corporations trading in India. Further more K.N. Singh J., in his concurring opinion suggested as follows -

> Industrial development in our country and the hazards involved therein, pose a mandatory need to constitute a statutory 'Industrial Disaster Fund', contributions to which may be made, by the government, the industries whether they are transnational corporations or domestic under takings, public or private ... The Fund should be permanent in nature, so that money is readily available for providing immediate effective relief to the victims...

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114. *Id.* at 1532.

115. *Id.* at 1557.

> The Government and the Parliament should therefore take immediate steps for enacting laws, having regard to these suggestions, consistent with the international norms and guidelines as contained in the United Nations Code of conduct on Transnational Corporations.[116]

As per Ranganathan and Ahmadi, J.J while it may be a matter for scientists and technicians to find solutions to avoid such large scale disasters, the law must provide an effective and speedy remedy to the victims of such torts. Such law according to them should *inter-alia* contain appropriate provisions in regard to the following matters-

"(i) The payment of a fixed minimum compensation on a 'no fault liability basis, pending final adjudication of the claims by a prescribed forum;

(ii) The creation of a special forum with specific power to grant interim relief in appropriate cases;

(iii) The evolution of a procedure to be followed by such forum which will be conducive to the expeditious determination of claims and avoid the high degree of formalism that attaches to proceedings in regular Courts; and

(iv) A provision requiring industries and concerns engaged in hazardous activities to take out compulsory insurance against third party risks".[117]

It seems that opinions given by the Court in this case were taken seriously by the Government and therefore, the Parliament enacted the Public Liability Insurance Act, 1991 on the lines of the suggestion made by the judges.

In review of the Bhopal Case settlement[118] Chief Justice Ranganath Misra questioned the validity of absolute liability enunciated in the *Oleum Gas Leak* Case. In his concurring judgment Misra, C.J. observed that in Oleum case no compensation was awarded as the Court could not decide that the delinquent company came within the meaning of 'State' in Article12 so as to be liable under Article 32 of the Constitution. Thus, what was said was essentially obiter.[119] Here it may be noted, that the majority judgment delivered by M.N. Venkatachaliah, J. did not express any opinion on this issue.

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116. *Id.* at 1551 - 1552.
117. *Id.* at 1561 - 1563.
118. *Union Carbide Corporation v. Union of India,* AIR 1992 SC 248.
119. *Id.* at 261.

The controversy relating to validity of *Oleum Gas leak* principles again surfaced in *Indian Council for Enviro-Legal Action v. Union of India.*[120] Here a writ petition filed by an environmentalist organisation brought to light the woes of people living in the vicinity of chemical industrial plants in India. People living in a small village called Bichhri in Udaipur District of Rajasthan became victim of certain chemical industries producing chemicals like oleum and single super phosphate and 'H' acid. These chemical industries were releasing enormous quantities of highly toxic effluents- in particular, iron based and gypsum-based sludge - which if not treated properly could poison the earth, the water and everything in contact with it. Here it may be noted that because of pernicious wastes emerging from the production of 'H' acid, its manufacture has been banned in the western countries. But the need of 'H' acid continues in the West. That need is being catered by the industries like the industries which were in question. The production of 'H' acid by the two chemical industries namely, Silver Chemicals and Jyoti Chemicals had given birth to about 2400-2500 MT of highly toxic sludge besides other pollutants.

The petitioner alleged that the toxic untreated waste waters were allowed to flow out freely and because the untreated toxic sludge was thrown in the open in and around the complex, the toxic substances had percolated deep into the bowels of the earth polluting the aquifers and the subterranean supply of water. The water in the wells and the streams had turned dark and dirty rendering it unfit for human consumption. It became unfit for cattle to drink and for irrigating the land. It spread disease, death and disaster in the village and the surrounding areas.

Jeevan Reddy, J. referred the *Oleum Gas Leak* Case and expressing his view said that he found it difficult to say that the law declared in *Oleum Gas Leak* Case was obiter as it did not appear to be unnecessary for the purposes of that case. Further, the Court concluded that on account of the continuous, persistent and insolent violation of law, the attempts to conceal the sludge, the discharge of toxic effluents from the Sulphuric Acid Plant and the non-implementation of the order of the Court, the respondent industries had earned the dubious distinction of being characterised as 'rogue

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120. AIR 1996 SC 1446.

industries'. The Court ordered the closure of all the plants and factories which were causing hazards in Bichhri village. The reopening of these plants was made dependent upon their compliance with the directions made and obtaining of all requisite permission and consent from the relevant authorities.[121]

The Court asked the Central Government to consider whether it would be appropriate that chemical industries be treated as a category apart and held as follows-

> 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 around them. It appears that most of these industries are water-intensive industries. If so, the advisability of allowing the establishment of these industries in arid areas may also require examination. Even the existing chemical industries may be subjected to such a study and if it is found on such scrutiny that it is necessary to take any steps in the interests of environment, appropriate directions in that behalf may be issued under sections 3 and 5 of the Environment Act. The Central Government shall ensure that the directions given by it are implemented forthwith.[122]

Thus, the tough stand taken by the Court against chemical industries operating illegally and without any concern for environment and health problems of villagers, once again established the grit and determination of the Apex Court to protect the environment from pollution caused by hazardous substances.

Occupational health hazards to the workmen employed in asbestos industries was the concern of the Court in *Consumer Education & Research Centre v. Union of India*[123] The petitioner, an accredited society wanted the Court to fill in the yearning gaps in regulations and remedial measures for the protection of the health of the workers engaged in mines and asbestos industries.

The Court referred various papers and documents relating to the 'Asbestos-related disease' and observed -

> ... [The] disease occurs wherever the exposure to the toxic or carcinogenic

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121. *Id.* at 1463.
122. *Id.* at 1468-1469.
123. AIR 1995 SC 922.

> agent occurs regardless of the country, the type of industry, job title, job assignment or location of exposure. The disease will follow the trail of the exposure and extend the chain of carcinogenic risk beyond the work-place... The exposure to asbestos and the resultant long tragic chain of adverse medical, legal and societal consequences, reminds the legal and social responsibility of the employers or the producer not to endanger the workmen or the community or the society.[124]

Furthermore, the Court held that the employer or the producer were not absolved of the inherent responsibility to the exposed workmen or the society at large. They had the responsibility - legal, moral and to the public or all those who were exposed to the harmful consequence of their products. The Court allowed the writ petition and passed following directions to industries -

(1) to maintain and keep maintaining the health record of every worker up to a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of the employment whichever is later;

(2) the Membrane Filter test to detect asbestos fibre should be adopted by all the factories or establishments;

(3) all the factories whether covered by the Employees' State Insurance Act or Workmen's Compensation Act or otherwise were directed to compulsorily insure health coverage to every worker.

Following directions were issued by the Court for the Union and the State Governments -

(1) to review the standards of permissible exposure limit value of fibre/cc in tune with the international standards reducing the permissible content;

(2) to consider inclusion of small-scale factory or factories or industries to protect health hazards of the workers engaged in the manufacture of asbestos or its ancillary products,

The apropriate inspector of Factories, in particular of the State of Gujrat, was directed by the Court to send all the workers, who were examined earlier by the ESI hospital concerned, for re-examination by the National Institute of Occupational Health to detect whether all or any of them were suffering from asbestos. Those workers who

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124. *Id.* at 937-938.

test positive for the disease were directed to be paid compensation of a sum of rupees one lakh each, payable by the factory or industry or establishment concerned within a period of three months from the date of certification by the National Institute of Occupational Health.

The judgment of the Supreme Court seems to be a path finder as judges indulged themselves in solving an issue involving technical question relating to law and medical sciences and found a visible solution for the problem.

In *Dr. Ashok v. Union of India,*[125] on the basis of a letter by one Dr. Ashok addressed to the Chief justice of India indicating therein that several insecticides, colour additives, food additives were in widespread use in India which had already been banned in several advanced countries as it had been found that they were carcinogenic, the Supreme Court treated the letter as a petition under Article 32 of the Constitution and took up the matter as a Public Interest Litigation.

On examining the counter-affidavits of the different ministries of the Government, it appeared to the Court that though sufficient steps had been taken to either ban or to allow restrictive use of insecticides but still there was no coordinated effort and different ministries of the Government of India were involved. It was realized by the Court that there had been no continuous effort to have research conducted or to have minimum information about the adverse effects of the use of such pesticides and other chemicals as a result of which people at large suffer to a great extent. The Court opined -

> If insecticides and chemicals are permitted to be freely used in protecting the food grains and in increasing the agricultural production then that will bring insurmountable hazards to all those countrymen who consume those food articles. To check these maladies what is essential for the Government of India is to have a coordinated and sustained effort.

The Court was by and large satisfied with the different measures taken by the Central Government in totally prohibiting hazardous insecticides and chemicals in some cases and in permitting restricted use in some other cases, as the Court felt that such measures were adequate steps from the health hazards point of view. Therefore,

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125. AIR 1997 SC 2298.

no further direction was issued by the Court in respect of 40 items of insecticides and chemical identified in the petition filed. However, the Court directed that a Committee of four senior officers from the different ministries involved should be constituted and that committee should have deliberations at least once in three months and take suitable measures in future in respect of any other insecticides and chemicals which was found to be hazardous for health.

In the same judgment the Court examined various provisions of the Insecticides Act, 1969 and pointed out -

> Once a substance is specified in the Schedule as contemplated under section 3(e)(i) then there is no power for cancelling the registration certificate issued in respect of the same substance even if on scientific study it appears that the substance in question is grossly detrimental to the human health. This is a lacuna in the legislation itself...[126]

The Court, therefore, held that steps should be taken for appropriate amendment to the legislation.

The Supreme Court tried to strengthen import barriers for hazardous substances. The Court banned the import of hazardous wastes as an interim measure on 5th May 1997 in a writ petition filed by the research foundation for science, technology and Natural Resource Policy.[127] On 4th August 1997, the Court found that despite the lapse of several years, the authorities had not taken effective steps; for implementing the Hazardous Wastes Rules and observed, "We are left with the impression that even now all the authorities do not appear to appreciate the gravity of the situation and the need for prompt measures being taken to protect serious adverse consequences if the problem is not tackled immediately".[128] The Court constituted a High-Powered Committee on 13th October, 1997 with a charter to examine in depth all matters relating to hazardous waste and to give their report and recommendations at the earliest. Again on 15th December, 1997 the Court directed the Committee to examine the quantum and nature of hazardous stock lying at the docks/ports/ICDS and also to recommend a mechanism

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126. *Id.* at 2311.

127. Writ petition (Civil) No 657/1995.

128. *Research Foundation for Science v. Union of India,* 1997 (5) SCALE 495.

for its safe disposal or re-export to original exporter.[129] The committee found containers holding hazardous wastes at Delhi and Bombay. Pending the committee's final report and recommendations, the authorities having custody of hazardous wastes directed neither to release nor auction such waste.[130] On 10th December 1999, the disposal of hazardous wastes that were lying at the ports were permitted by the Court in accordance with the recommendations of the committee. The Court also directed the Central Pollution Control Board to over see the disposal of the imported wastes by the industries having proper storage, processing and disposal facilities.[131]

The Court insists that the hazardous substances be handled with utmost care and caution, the workers of such undertaking where these substances are being handled must be provided with all safeguards and medical treatment if required. The liability of the owners of hazardous industries is absolute and they are liable to pay for the reversal of damages to the environment, remedial measures and also for the compensation to the victim in case an accident occurs in their undertaking. It is note worthy that on the initiatives of the Court the Parliament and the government of India have come out with various laws and regulations to regulate the hazardous substances.

9.7. Sanitation and the Waste Management :

One of the major environmental problem being faced by the Indians, specially the urban population, is the poor sanitation and waste management. The leading case on sanitation and the duty of a municipal corporation to keep the city clean is the *Ratlam Municipality v. Vardhichand.*[132] Residents of a locality within limits of Ratlam Municipality were suffering because of stench and stink caused by the effluents from the Alcohol Plant flowing into the street, open drains and public excretion by nearby slum-dwellers. They moved the Magistrate under Section 133 of Criminal Procedure Code to require Municipality to do its duty towards the members of the public. The Magistrate held that the Municipality have taken no steps what so ever to remove the nuisance and ordered, for the health and convenience of the people, the removal of all

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129. *Research Foundation for Science v. Union of India,* (1999)1SCC 223.
130. *Id.* at 225.
131. *Research Foundation for Science v. Union of India,* 1999 (7) SCALE 612.
132. AIR 1980 SC 1622.

the nuisance, construction of proper drainage system and covering of pits etc. In appeal, Sessions Court reversed the order. The High Court, however, approved the order of Magistrate. The Municipality then preferred an appeal against the order of the High Court before the Supreme Court where Krishna Iyer, J., on behalf of O. Chinnappa Reddy and himself passed the remarkable judgment. The Court noted that the "circumstances of the case are typical and overflow the particular municipality and the solutions to the key questions emerging from the matrix of facts are capable of universal application".[133]

The Court examined the relevant provisions of Criminal Procedure Code and the Indian Penal Code and observed -

> 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. Like wise, the grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under nature's pressure, bashfulness becomes a luxury and dignity a difficult art. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage system - not pompous and attractive, but in working condition and sufficient to meet the needs of the people - cannot be evaded if the municipality is to justify its existence. A base study of the statutory provisions makes this position clear.[134]

The Supreme Court affirming the Magistrate's order and upholding the High Court's decision issued supplementary directions to the municipal authority and the state Government. The directions may be enumerated as follows -

(i) The Ratlam Municipal Council was directed to take immediate action, to stop the effluents from the Alcohol Plant flowing into the street. The State Government and the Sub-Divisional Magistrate were also asked by the Court to exercise their powers to stop the pollution and the nuisance so caused.

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133. *Id.* at 1623.
134. *Id.* at 1629.

(ii) The Municipal Council was asked by the Court to construct a sufficient number of public latrines within six months and to provide water supply and scavenging service morning and evening for ensuring sanitation along with training to the local people in using and keeping the toilets in clean conditions.

(iii) The State Government was directed to instruct the Malaria Eradication Wing to stop mosquito breeding in the Ward.

(iv) The Municipality was also directed to fill up cesspools and other pits of filth and use its sanitary staff to keep the place free from accumulations of filth.

The Court in order to ensure the strict compliance of its order directed the Health Officer of the Municipality to furnish a report, at the end of the six-monthly term, that the work has been completed. Further the Court made it clear that in case of non-compliance of its direction, the Sub-Divisional Magistrate will prosecute the Officers responsible and the Court may also punish any officer for its contempt. The Court also expressed hope that the State Government will make available sufficient financial aid to the Ratlam Municipality to enable it to fulfil its obligations under the order passed by the Court.

On the plea of the municipal council that the Court should be pragmatic and should not enforce impracticable orders on it since the municipality had no where withal to execute the order, the Court's response was positive. Krishna Iyer, J. accepted that "law is realistic and not idealistic and what cannot be performed under given circumstances cannot be prescribed as a norm to be carried out".[135] But at the same time the Court held the budgetary constraints did not absolve a municipality from performing its statutory obligation to provide sanitation facilities. The case is a path finder for another reason as well, here the Court interpreted section 133 of Criminal Procedure Code to impose a mandatory duty on a magistrate to remove a public nuisance whenever one exists.

In *Delhi Garbage* Case,[136] the petitioner, an advocate, sought directions to the Municipal Corporation of Delhi (MCD) and the New Delhi Municipal Council (NDMC) to perform their statutory duties in particular the collection, removal and

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135. *Id.* at 1630.

136. *Dr. B.L. Wadehra v. Union of India*, AIR 1996 SC 2969.

disposal of garbage and other waste. The Court observed that -

> River Yamuna-the main source of drinking water supply-is the free dumping place for untreated sewage and industrial waste. Apart from air and water pollution, the city is virtually an open dustbin. Garbage strewn all over Delhi is a common sight... It is no doubt correct that rapid industrial development, urbanisation and regular flow of persons from rural to urban areas have made major contribution towards environmental degradation but at the same time the authorities - entrusted with the work of pollution control - cannot be permitted to sit back with folded hands on the pretext that they have no financial or other means to control pollution and protect the environment.[137]

In its earlier order dated 16/12/1994 the Court had directed the MCD and DDA to place on record the list of all garbage dumping places and city garbage collection centres. They were also asked to state what steps were being taken by them to keep those places clean and tidy.

The gravity of the garbage disposal problem can easily be understood by the affidavit filed before the Court by the Executive Engineer, MCD, dated 30/01/1995. It was mentioned that "about 4,000 metric tons (MT) of garbage is collected daily by the MCD. The disposal of the garbage is done mainly by 'Land Fill Method'. The total number of garbage collection centres are 1804 (337 *dhalaos,* 1284 dustbins, 176 open sites and 7 steel bins). The garbage collection trucks collect the garbage from the collection centres and take it to the nearest Sanitary Land Fill (SFL)".[138] It was further stated that "19 hospitals, 156 dispensaries, 160 maternity and child welfare centres, 5 primary health centres and 14 clinics are functioning under the control of MCD. Except RBTB Hospital, no other hospital etc. has installed incinerator to burn the hospital waste".[139] It was highlighted in the affidavit that "about 45% of the total population of Delhi is living in slums; unauthorised colonies and clusters. There are about 4,80,000 jhuggies in Delhi. According to a rough estimate about 6 persons stay in each jhuggi. They throw their garbage on the road or nearby dustbins".[140]

The Court passed another order in this case on 15/09/1995, where it was pointed

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137. *Id.* at 2970.
138. *Id.*
139. *Id.*
140. *Id.*

out by the Court that the collection and disposal of garbage in the city of Delhi was causing serious problem. It was not for the Court to keep on monitoring such problems. The officers who were manning institutions like MCD and NDMC must realize their responsibilities and show the end result. Further the court asked the petitioner and other learned counsel to assist the Court on next hearing regarding the statutory duties and functions of various authorities in regard to the sanitation in the city of Delhi. The officers concerned with the problem of sanitation were directed by the Court to consider various issues arising in the petition, at their own level and give information to the Court on the next date of hearing i.e. 12/10/1995, regarding the final date by which they shall short out the problem of collection and disposal of the garbage in the city. Authorities were also asked by the Court to place before the Court, the difficulties which were likely to come up in their way. But at the same time the Court made it clear that from the date which may be given by the authorities concerned, "not a drop of garbage is to be seen any where in the city of Delhi on early morning each day. The whole of the work of garbage collection must be completed over-night and the city is to be left absolutely clean of the residents for their use".[141] The Court issued notice to the Secretary (Health), Delhi Administration, for the purpose of seeking assistance regarding nursing homes and hospitals under the control of Delhi Administration.

Pursuant to the above mentioned order the NDMC, MCD, Ministry of Health, Government of India, Government of National Capital Territory of Delhi etc. filed affidavits and various proposals to improve the sanitation in Delhi. The Court mentioned that MCD had a very large force of workers, it had 38311 safai karamcharis and more than 1400 Sanitary Inspectors to keep clean and tidy an area of 1399.29 sq. km. The simple arithmetic showed that there were 27 safai karamcharis and one sanitary inspector for one sq. km. of area. The NDMC was found by the Court in still better position, having 2172 safai karamcharis for cleaning an area of 42.40 sq. km. i.e. 50 karamcharis for one sq. km. The Court held that there was no reason whatsoever why with such a huge manpower at their command the MCD and NDMC cannot present a

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141. *Id.* at 2972.

(6) The Government of NCT, Delhi was directed to appoint Municipal Magistrates for the trial of offences under the Delhi Act and the New Delhi Act.

(7) 'Doordarshan' was asked to undertake a programme of educating the residents of Delhi regarding their civic duties under the Delhi Act and the New Delhi Act.

(8) The Ministry of Defence Production, Government of India was directed to have the already ordered Tippers supplied to the MCD as expeditiously as possible and preferably within three months.

(9) The Development Commissioner, Government of NCT, Delhi was directed to hand over two sites, neat Badarpur on Jaitpur/Tejpur pits and Mandi village near Jaunpur Quiry pits, to be used as SLF sites within three months.

(10) Direction was issued to review and put into operation the compost plant at Okhla MCD was also asked to examine the construction of four additional compost plants as recommended by Jag Mohan Committee.

(11) The MCD was instructed not to use the filled-up SLFs for any other purpose except forestry. MCD was directed to develop forests and gardens on all 12 such sites.

(12) The MCD and NDMC were directed to construct or install additional garbage collection centres in the form of dhalaos, trolley and steelbins within four months.

(13) The directions were issued to the Union of India and NCT, Delhi Administration to consider the request from MCD and NDMC for financial assistance, in a just and fair manner.

(14) As disposal of garbage and solid waste by 'SLF' method may not be possible after some time due to non-availability of sites, the NCT Delhi Administration and also the MCD and NDMC were directed by the Court to join hands and engage an expert body like NEERI to find out alternate methods of garbage and solid waste disposal.

In order to ensure strict compliance of its directions the Court asked the concerned officer, authority or bodies to file affidavits before the Court regarding steps taken by them to fulfil the requirements of directions issued to them by the Court.

The question of solid waste disposal was once again brought before the Court in

Almitra H. Patel v. Union of India.[146] In its order dated 16th January, 1998 the Court constituted a Committee to look into all aspects of urban solid waste management and in particular to the following areas -

(1) Examine the existing practices and to suggest hygienic processing and waste disposal practices and proven technologies on the basis of economic feasibility and safety which the corporations/Government may directly or indirectly adopt or sponsor.

(2) Examine and suggest ways to improve conditions in the formal and informal sector for promoting eco-friendly sorting, collection, transportation, disposal, recycling and reuse.

(3) To review municipal bye-laws and the powers of local bodies and regional planning authorities and suggest necessary modifications to ensure effective budgeting, financing, administration, monitoring and compliance.

(4) Examine and formulate standards and regulations for management of urban solid waste, and set time - frame within which the authorities shall be bound to implement the same.

The local authorities and State Governments and Union Territories concerned were instructed by the Court to extend all cooperation and assistance to the Committee for its proper functioning.

The committee first submitted first a preliminary and then the final report before the Court. Notices were issued to all the states who were required to file their responses to the report of the Committee. The Court noted that none of the States really opposed the recommendations made by the committee and their responses were in fact positive.

The Court in its order dated 15th October, 1999 indicated that it will take up the question of cleaning of four metropolitan cities, namely, Mumbai, Chennai, Calcutta and Delhi as also the city of Bangalore. During the proceedings of the case the Court came to know that the 14 directions issued by it in *Dr. B.L. Wadehra's* Case have not

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146. AIR 2000 SC 1256.

been complied till date. The Court opined that keeping Delhi clean was not an easy task but then it was not an impossible one either. What was required was initiative, selfless zeal and dedication and professional pride. The Court pointed out that domestic garbage and sewage was a large contributor of solid waste and the problem became more complex because of a large number of inhabitants living in unauthorised colonies and slums, having no proper means of dealing with the domestic effluence. The Court stressed upon the need to deal with the garbage and solid waste generated by slums most expeditiously and on the basis of priority.

The effect of failure of the direction issued in *Delhi garbage* Case was clearly reflected in the judgment when the Court accepted its limitations and observed -

> We believe it is not for this Court to direct as to how the municipal authorities should carry out their functions and resolve difficulties in regard to the management of solid waste. The Court, in fact, is ill equipped to do so. Without doubt the Government agencies including the local authorities have all the powers of the State to take action and ensure that the city remains clean. They have only to wake up and act. The Court should, however, direct that the local authorities, Government and all statutory authorities must discharge their statutory duties and obligations in keeping the city at least reasonably clean.[147]

Thus, the same Court which was averse to see "a drop of garbage any where in the city of Delhi an early morning each day" just four years ago[148] settled for discharge of duties by local authorities and Government in keeping the city "at least reasonably clean" this time. The Court passed further directions which were in addition to and not in derogation of the orders passed by it in *Delhi Garbage* Case. Those directions may be enumerated as follows.[149]

(1) The Municipal Corporation of Delhi, the Cantonment Board and all concerned officials were directed to ensure that the relevant provisions of the DMC Act, 1957, New Delhi Municipal Council Act, 1994 and the Cantonments Act, 1924 relating to sanitation and public health prohibiting accumulation of any rubbish, filth, garbage or

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147. *Id.* at 1259.
148. *Supra* note 136 at 2972.
149. *Supra* note 146 at 1260-1261.

other polluted obnoxious matters in any premises and/or prohibiting any person from depositing the same in any street or public place shall be scrupulously complied.

(2) The streets, public premises such as parks etc. shall be surface cleaned on daily basis, including on Sundays and public holidays.

(3) The MCD, NDMC and other statutory authorities were authorised to levy and recover charges and costs from any person littering or violating provisions of the diverse Acts, bye-laws and regulations relating to sanitation and health, for violating the directions being issued by the Court.

(4) The MCD, NDMC and other statutory authorities were directed to ensure proper and scientific disposal of waste in a manner so as to sub serve the common good.

(5) The Court directed that sites for landfills be identified bearing in mind the environmental considerations and the requirement of Delhi for the next twenty years within a period of four weeks. The sites so identified shall be handed over to the MCD and/or NDMC within two weeks of the identification, free from all encumbrances and without MCD or the NDMC having to make any payment in respect thereof.

(6) Union of India, Government of NCT Delhi, MCD, NDMC and other statutory authorities like DDA and Railways were directed to take appropriate steps for preventing any fresh encroachment or unauthorised occupation of public land for the purpose of devilling resulting in creation of a slum. Further direction was given to take appropriate steps to improve the sanitation in the existing slums hill they are removed and the land reclaimed.

(7) The Court further directed to identify and make available to the MCD and NDMC within four weeks eight sites for setting up compost plants. Such sites be handed over to the MCD/NDMC free of cost and free from all encumbrances within two weeks of identification. MCD and NDMC were asked to take appropriate steps there after to have the compost plants/processing plants established or caused to be established and to be in operation by 30th September, 2000.

(8) Direction was issued by the Court to regularly publish the names of concerned Superintendents of sanitation and such equivalent officers who are responsible for cleaning Delhi, who can be approached for any complaint/grievance by the citizens of Delhi together with their latest office and residential telephone numbers

and address.

(9) The Government of NCT Delhi was directed to appoint Magistrates within a period of six weeks for each Board/Circle/Ward for ensuring compliance of the provisions of the MCD and NDMC Acts and to try the offences specified therefore in relation to littering and causing nuisance, sanitation and public health.

(10) The Court asked all the concerned authorities to file compliance reports of these directions within eight weeks. The Central Pollution Central Board was also directed to file within the same time an affidavit indicating as to what extent the directions issued have been complied with.

It is clear from aforesaid discussion, the Court has maintained that Municipalities, Nagar mahapalikas and other similar local bodies must perform their duties to keep towns clean and tidy. The expert committees were constituted by the Court for solving the problems relating to sanitation and waste management. The Central and State Governments were also asked by the Court to help local bodies in maintaining proper sanitation and waste management facilities.

9.8. Vehicular Pollution and the Traffic Management :

One of the major problem being faced by the city dwellers in India is the air pollution being 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 create the deadly cocktail of gases that constitute the unhealthy air in urban India. The Supreme Court has been concerned with the problem of traffic management and control of vehicular pollution specially since 1985, when Mr. M.C. Mehta filed a petition[150] asking the Court to close down hazardous industries located in the densely populated areas in Delhi, to regulate air pollution caused by automobiles operating in the areas and to reduce pollution from the thermal power stations generating energy for the Delhi Electricity Supply Undertaking (DESU).

The Ministry of Environment, Government of India, accepted before the Court that the pollution in Delhi is mainly on account of the high rise in the number of vehicles

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150. Writ Petition (Civil) No. 13029 of 1985.

driven by petrol and diesel operating within the Delhi and New Delhi areas.[151] Consequently on March 14, 1991 the Supreme Court passed a judgment. The judgment of the Court was delivered by Ranganath Misra, C.J. on behalf of M.H. Kania, Kuldip Singh, J.J. and himself. The Court pointed out that the Union Territory of Delhi had a total population of about 96 lakhs, out of which a population of around 90 lakhs lived in the urban area and the vehicles in Delhi were increasing at the rate of about 1 lakh per year. In course of the hearing of the matter the Court called upon counsel to look at the problem not as an adversarial litigation but to come forward with useful deliberations so that something concrete could finally emerge for easing the situation.

On the insistence of the Ministry of Environment and Forests the Court recommended the constitution of a committee consisting of Mr. Justice K.N. Saikia as Chairman and Chairman of the Central Pollution Control Board; representative of the Association of Indian Automobile Manufacturers and the petitioner, Mr. M.C. Mehta were other members of the Committee. The Joint Secretary in the Ministry of Environment and Forests was made the Convener Secretary of the Committee. Mr. Justice Saikia was provided all the benefits to which a retired Judge of the Supreme Court while called back to duty is entitled.

The Court held that the Committee may be constituted with effect from March 18, 1991, under an appropriate notification of the Union Government. The terms of reference as recommended by the Ministry were the following -

(i) To make an assessment of the technologies available for vehicular pollution control in the world;

(ii) To make an assessment of the current status of technology available in India for controlling vehicular pollution;

(iii) To look at the low cost alternatives for operating vehicles at reduced pollution levels in the metropolitan cities of India.

(iv) To examine the feasibility of measures to reduce/eliminate pollution from motor vehicles both on short term and long term basis and make appropriate recommendations in this regard;

(v) To make specific recommendations on the administrative/legal regulations

required for implementing the recommendations in (iii) above.

The Court held that apart from these, other relevant aspects may also be taken into consideration by the Committee.[152] The Committee was asked to submit a report to the Court once in two months as to the steps taken in the matter.

The aspect of proper management and control of the traffic in the National Capital Region (NCR) and the National Capital Territory (NCT), Delhi to ensure the maximum possible safeguard which are necessary for public safety has been considered by the Court in *M.C. Mehta v. Union of India.*[153]

The Court opined that the provisions of the Motor Vehicles Act, 1988, in addition to the provisions in the existing laws, such as, the Police Act and the Code of Criminal Procedure, confer ample powers on the authorities to take necessary steps to control and regulate road traffic. Further the Court held, "the requirement of maintaining the motor vehicles in the manner prescribed and its use if road worthy in a manner which does not endanger the public, has to be ensured by the authorities".[154] In exercise of the power under Article 32 read with Article 142 of the Constitution, the Supreme Court issued directions to the police and all other authorities entrusted with the administration and enforcement of the Motor Vehicles Act. The directions included-installation of speed control devices in heavy and medium vehicles; restriction on over taking; segregation of bus lanes; stoppage of bus at designated bus stop; photograph of authorised driver in the vehicle; eligibility of a school bus driver; constitution of flying squads to enforce the Motor Vehicles Act; reduction of traffic congestion; and removal of hording from the road sides. The Court ensured the publicity of its order by directing the Union Government to give coverage in print as well as the electronic media. In its order dated 10/12/1997[155] the Court clarified that every hoarding, other than traffic signs and road signs on the road sides have to be removed irrespective of its kind.

Further directions regarding traffic management and control in National Capital

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151. *M.C. Mehta v. Union of India,* (1991) 2 SCC 137.
152. *M.C. Mehta v. Union of India,* (1991) 2 SCC 353, 359.
153. (1997) 8 SCC 770.
154. *Id.* at 776.
155. *M.C. Mehta v. Union of India,* (1998) 1 SCC 363.

Region and National Capital Territory were issued by the Court in its order dated 16/12/1997.[156] This order also modified the earlier order dated 20/11/1997 by the Court. Various affidavits and the status report filed by the Government identified the TSR (two-seater rickshaw using a two-stroke engine) as one of the major pollutants. In the interest of the environment, the Court directed to freeze the number of TSRs at the existing level by banning the grant of fresh permits in respect of the TSR.

The Court expressed dissatisfaction on the performance of concerned authorities in tackling the acute problem of vehicular pollution and traffic regulation in Delhi. In its order dated 12/05/1998[157] the Court noted that the directions given by the Court, from time to time, had not evoked the response they were expected to evoke. Meanwhile the Government of India, Ministry of Environment and Forests constituted an authority under the chairmanship of Shri Bhure Lal, known as the 'Environment Pollution (Prevention and Control) Authority' (EPPCA). The Court directed this Authority to submit a report about the action taken by it for controlling vehicular pollution and the connected matters, and also to submit a draft action plan to tackle the situation within ten weeks.

In its order dated 28/07/1998[158] the Supreme Court yet again expressed distress at the apathy of the State Administration and pointed out, "in spite of the matter having engaged the attention of this Court for a longer time and lengthy debates on each hearing, precious little appears to have been done by the State Administration to check and control the vehicular pollution".[159] This time the Court insisted that to arrest the growing pollution of air, certain steps need to be taken immediately and therefore, all commercial vehicles including taxis which were 15 years old directed to remain off the road by 2 October 1998. The Court approved the following directions and the time-frame given by the EPPCA -

		Time - frame
(A)	Augmentation of public transport to 10,000 buses.	01-04-2001
(B)	Elimination of leaded petrol from NCT Delhi.	01-09-1998

156. *M.C. Mehta v. Union of India,* (1998) 1 SCC 676.
157. *M.C. Mehta v. Union of India,* (1998) 6 SCC 60.
158. *M.C. Mehta v. Union of India,* (1998) 6 SCC 63.
159. *Id.* at 64.

(C)	Supply of only pre-mix petrol in all petrol-filling stations to two - stroke engine vehicles.	31-12-1998
(D)	Replacement of all pre-1990 autos and taxis with new vehicles on clean fuels.	31-03-2000
(E)	Financial incentives for replacement of all post-1990 autos and taxis with new vehicles on clean fuels.	31-03-2001
(F)	No 8 year old buses to ply except on CNG or other clean fuels.	01-04-2000
(G)	Entire city bus fleet (DTC and Private) to be steadily converted to single fuel mode on CNG.	31-03-2001
(H)	New ISBTs to be built at entry points in North and South-West to avoid pollution due to entry of inter-state buses.	31-03-2000
(I)	GAIL to expedite and expand from 09 to 80 CNG supply outlets.	31-03-2000
(J)	Two independent fuel-testing labs to be established.	01-06-1999
(K)	Automated inspection on maintenance facilities to be set up for commercial vehicles.	Immediate
(L)	Comprehensive I/M programme to be started by Transport Department and private sector.	31-03-2000
(M)	CPCB/DPCC to set up new stations and strengthen existing air quality monitoring stations from critical pollutants.[160]	01-04-2000

Later on the Court modified latter, its direction relating to commercial vehicles which were more than 15 years old. To mitigate the hardship to the owners of such vehicles in particular and to the general public which makes use of such vehicles in general, the Court directed that -

(a) all commercial/transport vehicles which are more than 20 years' old (9349) shall be phased out and not permitted to ply in the national capital territory of Delhi after 02-10-1998;

(b) all such commercial/transport vehicles which are 17 to 19 years' old (3200) shall not be permitted to play after 15-11-1998;

(c) such of the commercial/transport vehicles which are 15 years and 16 years' old (4962) shall not be permitted to ply after 31-12-1998.[161]

The directions by the Court relating to vehicular pollution and traffic conditions were applicable over all concerned not with standing any order or direction given by

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160. *Id.* at 65.

161. (1998) 8 SCC 206.

any authority, Court or tribunal.[162]

The pollution problem created by the diesel driven vehicles got Court's attention when it was informed that more than 90% of the nitrogen oxide (NOx) and respirable particulate matter (RSPM) from vehicular exhaust over Delhi was due to diesel emissions and that diesel particulate had potential to cause cancer. The Court noticed that more and more private vehicles (non-commercial) were turning to diesel as the fuel of choice primarily because of the price differential between diesel and petrol. It was felt by the Court that on account of extensive use of diesel there was rise in environmental pollution at a phenomenal level in the NCT of Delhi.[163] On the prayer of learned amicus that registration of diesel vehicles be suspended forthwith, the Court sought the information about the number of diesel and petrol-driven private vehicles registered in NCR in 1997 and 1998 through affidavit of a responsible officer.

After considering the suggestions made by Bhure Lal Committee and in the application field by the learned amicus and hearing learned counsel for various parties including automobile manufacturers, the Court issued the following interim directions-

1. All private (non-commercial) vehicles which conform to Euro-II norms may be registered in NCR without any restriction.

2. All private (non-commercial) vehicles shall conform to Euro-I norms by 01.06.1999. All private (non-commercial) vehicles shall conform to Euro-II norms by 01.04.2000. Vehicles may in the mean while be registered in the manner indicate below -

With effect from 01.05.1999, 250 diesel-driven vehicles per month and 1250 petrol-driven vehicles per month may be registered on first-cum-first-service basis in NCR, till 01.04.2000 only if they conform to Euro-I norms. From 01.04.2000, no vehicle shall be registered unless it conforms to Euro-II norms.[164]

The aforesaid directions of the Court were applicable for both diesel as well as petrol driven car (Private non-commercial vehicles). Further the Court reiterated that

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162. *M.C. Mehta v. Union of India,* (1999) 1 SCC 413, 416.
163. *M.C. Mehta v. Union of India,* (1999) 6 SCC 9, 10.
164. *M.C. Mehta v. Union of India,* (1999) 6 SCC 12, 13.

no diesel taxi would be registered unless it conforms to Euro-II norms. The Supreme Court clarified that Euro-I norms for the purpose of its order meant India 2000 norms as notified by the Government of India vide GSR No. 493 (E) dated 28.08.1997 but those norms would be effective from 01.06.1999.[165]

In its order 26.03.2001[166] the Supreme Court showed great dissatisfaction over steps taken by the governmental authorities and the private bus operators in order to comply with the Courts directions issued on 28.07.1998[167] to the effect that the entire "city bus fleet was to be steadily converted to a single-fuel mode of CNG by 31.03.2001" and "no eight-year old buses were to ply except on CNG or other clean fuel after 01.04.200".

The transport operators contended before the Court that all their existing buses were meeting emission norms for diesel vehicles as prescribed under the Motor Vehicles Act and, therefore they could not be denied their right to ply their buses even if they did not conform to the directions issued by the Court, since they were not heard before fixing the time schedule. The Court rejected this argument and held that its order was an order in *rem* and not an order in *personam* and therefore, all private operators, who operate their buses in Delhi are bound by the orders. Further the Court held that directions issued by the Bhure Lal Committee had legal sanctions and when accepted and incorporated by the Court became a part of its order, binding on all parties. The Court removed all doubts about the validity of directions issued by it in following words -

> Besides, directions given for safeguarding health of the people, a right provided and protected by Article 21 of the Constitution, would override provisions of every statute including the Motor Vehicles Act, if they militate against the constitutional mandate of Article 21. We must, however, hasten to add that norms fixed under the Motor Vehicles Act are in addition to and not in derogation of the requirements of the Environment Protection Act. If the owners of the stage-carriage buses chose to ignore the directions

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165. *M.C. Mehta v. Union of India,* (1999) 6 SCC 14, 15.
166. *M.C. Mehta v. Union of India,* (2001) 3 SCC 756.
167. *Supra* note 158.

issued by this Court on 28.07.1998, they did so at their own peril.[168]

The Court however, in public interest and with a view to mitigate the suffering of the commuter public in general and the school children, in particular made certain relaxations and exemptions in earlier directions and reiterated that except such relaxation, no other commercial vehicles should ply in Delhi unless converted to single-fuel mode of CNG with effect from 01.04.2001.[169]

The quality of fuel has direct relationship with the level of pollution. On the assurance of the Ministry of Petroleum and Natural Gas to supply diesel and petrol with 0.05% of sulphur content as well as petrol with 1% benzene content from 01.04.2000 and 01.10.2000 respectively in NCT, Delhi, the Supreme Court directed the Ministry of Petroleum and Natural Gas to ensure that -

(i) Petrol with 0.05% sulphur content is made available in National Capital Region (NCR) by 31.05.2000.

(ii) Petrol with 1% benzene content is made available in National Capital Territory (NCT), Delhi by 01.10.2000.

(iii) Petrol with 1% benzene content is made available in N.C.R. by 31.03.2001.

(iv) Diesel with 0.05% sulphur content is made available in N.C.T., Delhi by 31.12.2000.

(v) Diesel with 0.05% sulphur content is made available in N.C.R. by 30.06.2001.[170]

In *M.C. Mehta v. Union of India,*[171] the Court observed that it had been passing various orders since 1986 only to protect the health of the people of Delhi and to persuade the governmental authorities to take such steps as would reduce the air pollution. It was as a result of intervention by the Supreme Court that the following measures were taken in controlling pollution to some extent -

(a) Lowering of sulphur content in diesel, first to 0.5% and then to 0.05%;

(b) ensuring supply of only lead-free petrol;

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168. *Supra* note 166 at 759.

169. *Id.* at 762.

170. *M.C. Mehta v. Union of India,* (2001) 3 SCC 767, 768.

171. (2002) 4 SCC 356.

(c) requiring the fitting of catalytic converters;

(d) supply of pre-mix 2T oil for lubrication of engines of two-wheelers and three-wheelers;

(e) phasing out of grossly polluting old vehicles;

(f) lowering of the benzene content in petrol; and

(g) ensuring that new vehicles, petrol and diesel, meet Euro-II standards by September 2000.[172]

The Court pulled up the Government of India for setting up a Committee headed by Mr. R.A. Mashelkar and pointed out that none of its members was either a doctor, or an expert in public health. The recommendation of the Committee that emission norms should be laid down, and that the choice of the fuel should be left to the users, was rejected by the Court. The Court opined, "the Committee seemed to have overlooked the fact that such norms had been in place for a long time with hardly any compliance hereof ... it is naive of the Mashelkar Committee to expect that merely laying down fresh emission norms will be effective or sufficient to check or control vehicular pollution".[173]

The Court rejected the plea of the Government that CNG was in short supply, and that it was not possible to supply adequate quantity. The Court said, "this is clearly a deliberate attempt to frustrate the orders passed by this Court. Particulars filed in the Court show that as of today no CNG is being imported. The indigenous produce is far in excess of what is supplied to the transport sector".[174] Further the Court observed that if there was a short supply of an essential commodity, then the priority must be of public health, as opposed to the health of the balance sheet of the private company. The Court criticised the action of the government for allocating CNG earmarked for the Pragati Power Station, Delhi to the industries in the neighbourhood of Delhi and not to the transport sector. The Court observed, "to enable industries to cut their losses, or make more profit at the cost of public health, is not a sign of good governance, and this is contrary to the Constitutional mandate of Articles

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172. *Id.* at 363.

173. *Id.* at 364.

174. *Id.* at 366.

39(e), 47 and 48-a".[175]

Serious charges were levied against the government by the Court on the proposal to cut supply of CNG to Maruti Udyod Limited (MUL) when the Court observed -

> It is not as if there has been a *pro rata* cut of all the industrial units in and around Delhi, including MUL, with a view to increase supply to the transport sector. The proposed cut appears to be nothing more than an attempt to punish MUL because its Managing Director is a member of the Bhure Lal Committee, which has recommended CNG and, therefore, the Managing Director and this company must suffer. It is clear that there is a desire to benefit private industries at the cost of public health and the public exchequer. A major portion of CNG goes to industries, and the Government and its undertakings get less than what it would realise from supplying CNG to the transport sector. Such economics is baffling, to say the least.[176]

Further, the Court suggested import of CNG like crude oil in case of shortage of supply, so that less pollution could be ensured.

On the submission of the Union of India that diesel and CNG are not materially different in the matter of air pollution and instead of 100% switch over the CNG if there was a mix of CNG and diesel buses of equal proportion the difference would only be of 2% in the pollution levels, the Court opined that there was no valid basis for the aforesaid submission as the emissions from the CNG vehicles were more than comparable with Euro-IV standards. The Court made it aptly clear that the alternative fuel of CNG, LPG and electricity was a preferred technology which critically polluted cities like Delhi needed as a leapfrogging technological option.[177]

The Court took notice of the CPCB data which showed that at least nine other polluted cities in India have the critical air quality. These cities are Agra, Lucknow, Jharia, Kanpur, Varanasi, Faridabad, Patna, Jodhpur and Pune. The Court observed, "... there appears to be no effective action plan to address the problem of these cities and the Mashelkar Report ensures their suffering for quite some time. If no immediate action is taken, then it may become necessary for some orders being passed so as to

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175. *Id.*
176. *Id.* at 367.
177. *Id.* at 372.

bring relief to the residents of those cities".[178] This remark of the Supreme Court is in the true spirit of PIL and has brought hopes for the country men residing out side the capital of India as well.

In absence of proper response from the governmental authorities, the Court issued following directions in order to ensure CNG based transport system in Delhi -

1. The Union of India will give priority to the transport sector including private vehicles all over India with regard to the allocation of CNG. This means that first the transport sector in Delhi, and in the other air polluted cities of India, CNG will be allocated and made available and it is only thereafter, if any CNG is available, that the same can be allocated to the industries, preference being shown to public sector undertakings and projects.

2. IA of the Union of India for extension of time to run diesel buses is dismissed with costs of Rs. 20,000. It is made clear, and it is obvious in our Constitutional set-up, that orders and directions of this Court cannot be nullified or modified or in any way altered by any administrative decision of the Central or the State Governments. The administrative decision to continue to ply diesel buses is, therefore, clearly in violation of this Court's orders.

3. Those persons who have placed orders with the bus manufacturers, and have not taken delivery of the same shall do so within two weeks from today, failing which their permits shall stand automatically cancelled.

4. As owners of diesel buses have continued to ply diesel buses beyond 31-01-2002, contrary to this Court's orders, for the disobedience of the said orders, the Directors of Transport, Delhi, will collect from them costs at the rate of Rs. 500 per bus per day increasing to Rs. 1000 per day after 30 days of operation of the diesel buses with effect from tomorrow and the same shall be deposited in this Court by the Director of Transport by the 10th day of every month.

5. NCT of Delhi shall phase out 800 diesel buses per month starting from 01.05.2002. Till all the diesel buses are replaced, the bus-owners who continue to ply the diesel buses shall pay as per direction 4 here in above.

6. For implementing these directions, the Union of India and all governmental authorities, including IGL shall -

(a) allocated and make available 16.1 lakh kg. per day (2 mmscmd) of CNG in NCT of Delhi by 30.06.2002 for use by the transport sector;

(b) increase the above supply of CNG whenever the need arises;

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178. *Id* at 374.

(c) prepare a scheme containing a time schedule for supply of CNG to the other polluted cities of India and furnish the same to this Court by 03.05.2002 for its consideration; and

(d) it will be open to the Union of India to supply LPG in addition to CNG as an alternate fuel or to supply any other clean non-adulterable fuel as the Bhure Lal Committee may recommend.

7. NCT of Delhi had announced a scheme for financing CNG vans, to be run as taxis, for SC/ST. We direct a similar financing scheme be framed by the Union of India jointly with NCT of Delhi, whereby those of the permits of owners of diesel buses which are cancelled due to non-conversion to CNG, the same should, in the first instance, be allotted to SC/ST and to the other weaker sections of the society. Such a scheme should be prepared and implemented and a compliance report be filed within four weeks. The costs deposited under direction 4 above can be utilised in implementing the proposed scheme.[179]

It appears, therefore, that the Court had tried everything possible to improve traffic management and control of vehicular pollution. The Court, after consulting expert bodies and committees, issued various orders relating to vehicular problems of Delhi and also ensured publicity of such orders so that general public may understand and follow the directives issued by it. The Court has achieved commendable success in controlling the vehicular air pollution by ensuring supply of lead free petrol, petrol and diesel with less sulphur content and pre mixing of 2T oil for all two stroke engine vehicles. Introduction of CNG based public transport system for Delhi is yet another glaring example of Court's commitment to ensure the right to clean environment for Delhiites. The remark of the Court that vehicular pollution problem of nine other highly polluted cities of the country need to be addressed effectively has raised hopes for the countrymen living out side the capital of India as well.

9.9. Protection of Coastal Regions :

India has a privilege to own lengthy coastline, running into 6000 kms which has abundance of natural endowments, geographic attraction and natural beauty supporting national economic needs, fishing communities and sea transport. Many villages, towns and cities are wholly dependent on sea for the survival of their habitants. The struggle to find the right balance by protecting coastal ecology and at the same

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179. *Id.* at 374 - 375.

time fulfilling the economic needs of the local community as well the nation, is still on. Human interventions like maritime trade, over exploitation of ocean resources, on-land coastal development and pollution brought by the rivers ending into the ocean are some of the problems which require immediate attention in order to save the ecosystem of the coastal areas and the ocean.

"India's ocean resources are primarily threatened by terrestrial sources of pollution, seemingly regulated under the Water Act of 1974 and the Environment (Protection) Act of 1986. Several Indian coastal cities such as Bombay directly discharge untreated city sewage into the sea. Industrial wastes and pesticide run off contaminate the ocean through rivers and creeks".[180] The marine pollution control mechanism has been provided by the territorial waters, continental shelf, Exclusive Economic Zone and other Maritime Zones Act of 1976. The Act confer exclusive jurisdiction on the Central Government to preserve and protect the marine environment and to prevent and control marine pollution within the continental shelf and the Exclusive Economic Zone. The Indian Coast Guard patrols the maritime zones and is responsible for taking such measures as are necessary to preserve and protect the maritime environment and to prevent and control marine pollution under the Coast Guard Act, 1978.

Here it may be noted that working groups set up by the Ministry of Environment and Forests in 1982 for the purpose of preparing environmental guidelines for development of beaches and coastal areas promulgated environmental guidelines for beaches in July 1983 which, *inter alia,* stated -

> The traditional use of sea water as a dump site from our land-derived waste has increased the polluted loads of sea and reduced its development potential including the economic support it provides to people living nearby. Degradation and misutilization of beaches are affecting the aesthetic and environmental loss. These could be avoided through prudent coastal development and management based on assessment of ecological values and potential damages from coastal developments.[181]

These guidelines further stated that adverse direct impact of development activities

180. *Supra* note 18 at 475.

181. Quoted in *Indian Council for Enviro-Legal Action v. Union of India,* (1996) 5 SCC 281, 286.

was possible within 500 metres from the high water mark or beyond two kilometres from it. The example which was given was that the sand-dunes and vegetation clearing, high density construction etc. along the coast could alter the ecological system of the area.

One of the major problems that has disturbed the ecology of the coastal region is the development along coastal stretches. The Union Ministry of Environment and Forests issued the Coastal Regulation Zone (CRZ) notification, 1991[182] (hereinafter referred to as the main notification) under the Environment (Protection) Act of 1986 to check the growing problem. But the bad drafting of the CRZ Regulation created lot of uncertainty. The non-standard format of these regulations contributes to the confusion.

The regulations defines the regulatory zone as under -

> (T)he coastal stretches of seas, bays, estuaries, creeks, rivers and back waters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL.

Clause 2 of the main Notification prohibits 13 designated activities including establishing new industries and expanding existing units, except those directly related to water front or directly needing foreshore facilities. The prohibition extends to dumping of wastes, land reclamation, binding or disturbing the natural course of sea water, the mining of sand, rocks and other substrata materials, the harvesting or drawl of ground water, the construction activities in ecologically sensitive area and the dressing or altering of sand dunes, hills natural features etc.

Clause 3 provides for the regulation of permissible activities. Clearance may be granted within the Coastal Regulation Zone only where the activity requires water front and foreshore facilities. The clause designates certain activities, such as construction for defence ports and harbours and light houses, thermal power plants, and all other activities with investment exceeding rupees five crores, that require environmental clearance from the Ministry of Environment and Forests (MEF), Government of India. Clause 3(3) requires coastal states and union territory

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182. Vide S.O. No.114(E) dated 19th February, 1991.

administrations to prepare within one year from the date of the 'main notification' Coastal Zone Management Plans (CZMPs) identifying and classifying the CRZ areas within their respective territories and obtain approval (with or without modifications) of the Central Government in the MEF. All development within the CRZ should conform to the CZMP. Pending approval of the CZMP, all development along the coast must not violate the provisions of the 'main notification'.

Clause 4 of the notification envisages monitoring and enforcement of the CRZ Regulations by the Ministry of Environment and Forests and the Government of State of Union Territory and such other authorise at the State or Union Territory levels, as may be designated for this purpose, within their respective jurisdiction.

There are two annexure, namely, Annexure-I and Annexure-II to the main Notification. While Annexure-I contains the coastal area classification and Development Regulations which are for general application, Annexure-II is the specific provision which contains the guidelines for development of beach resort/hotels in the designated area of CRZ-III for temporary occupation of tourists/visitors with prior approval of the Ministry of Environment and Forests.

In *Indian Council for Enviro-Legal Action v. Union of India,*[183] the main grievance of the petitioner in this Public Interest Litigation was that the notification dated 19-02-1991 declaring coastal stretches as Coastal Regulation Zones (hereinafter referred to as 'the Regulation Zones') which regulates the activities in the said zones had not been implemented or enforced resulting into continued degradation of ecology in the coastal areas. There was also a challenge to the validity of the notification dated 18.08.1994 whereby the first notification dated 19.02.1991 had been amended, resulting in further relaxations of the provisions of the 1991 notification.

The petition was filed by a registered voluntary organisation working for the cause of environment protection in India. According to the petitioner those coastal areas were highly complex and had dynamic ecosystems, sensitive to development pressures. The stresses and pressure of high population growth, non-restrained

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183. (1996) 5 SCC 281.

development, lack of adequate infrastructure facilities for the resident population were stated to be some of the factors responsible for the decline in environmental quality in those areas. The development activities in the coastal areas were stated to cause short-term and long-term physical chemical and biological changes that would and had caused damage to flora and fauna, public health and environment. It was further alleged that as a consequence of indiscriminate industrialisation and urbanisation, without the requisite pollution control systems, the coastal waters were highly polluted. The petitioner also alleged that over exploitation of ground-water in the coastal areas in places like Madras and Vishakhapatnam, had resulted in growing intrusion of salt water from the sea to inland areas and fresh water aquifers previously used for drinking, agriculture and horticulture were getting highly damaged.

The petitioner contended that there had been a blatant violation of the CRZ notification and industries were illegally being set up, thereby causing serious damage to the environment and ecology of the area. It was also alleged that the Ministry of Environment and Forests had taken no steps to follow up its own directions contained in the CRZ notification.

The Supreme Court after examining the facts agreed that there were serious lapses on the part of various governmental authorities. The Court remarked as follow-

> The present case also shows that having issued the main notification, no follow-up action was taken either by the Coastal States and Union Territories or by the Central Government. The provisions of the main notification appear to have been ignored and, possibly violated with impunity. The Coastal States and Union Territory administrations were required to prepare Management Plans within a period of one year from the date of the Notification but this was not done. The Central Government was to approve the plans which were to be prepared but it did not appear to have reminded any of the Coastal States or the Union Territory administrations that the plans had not been received by it. Clause 4 of the main notification required the Central Government and the State Governments as well as Union Territory administrations to monitor and enforce the provisions of the main Notification, but no effective steps appear to have been taken and this is what led to the filing of the present writ petition.[184]

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184. *Id.* at 293 - 294.

According to the Union of India, while implementing the main notification, certain practical difficulties were faced by the authorities concerned. There was a need for having sustainable development of tourism in coastal areas and that amendments were effected after giving due consideration to all relevant issues pertaining to environment protection and balancing of the same with the requirement of development. A committee headed by Mr. B.B. Vohra and having three environmentalist members was set up by the Government in response to the need for examining the issues relating to development of tourism and hotel industry in coastal areas and to regulate the same keeping in view the requirements of sustainable development and the fragile coastal ecology. According to the Union of India, the Government had accepted the recommendations of the Vohra Committee with slight modifications. According to it, there had been no blanket relaxation in any area as alleged and adequate environmental safeguards had been provided in the 1994 notification.

The Supreme Court gave greater emphasis on the role to be played by the High Courts in environmental matters by making following observation -

> For effective orders to be passed so as to ensure that there can be protection of environment along with development, it becomes necessary for the Court dealing with such issues to know about the local conditions. Such conditions in different parts of the country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arises or pertain to the geographical areas within their respective states.[185]

The Court has resolved the issue of six amendments in the main Notification by strucking the right balance between the protection of coastal areas and the developmental and other needs. This is evident from the table given below containing the important points of the main Notification, the recommendations made by the Vohra Committee, the amendments made by notification of 1994 and the Judgment of the Court.

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185. *Id.* at 301.

Sl. No.	Main CRZ Notification : Issues for relaxation	Vohra Committee recommendations	Amending notification dated 18.8.94	Judgment of the Supreme Court dated 18.4.96
1.	200 metres from HTL is no development zone.	Relaxation allowed in rocky and hilly areas; no limit specified.	Blanket relaxation for all areas up to HTL if Central Government so desires.	The amendment quashed.
2.	No-development zone for rivers, creeks and back-waters -100 metres	Clarification demanded about limits; no relaxation suggested.	No-development zone relaxed to 50 metres.	The amendment was declared contrary to the object of the Environment Act and therefore, held to be illegal.
3.	No levelling or digging of sand-dunes or sand.	Allows destruction of sand-dunes.	No destruction of sand-dunes allowed. However, goal-posts, net-posts, lam-posts allowed.	No illegality in allowing the goalposts, netposts and lamposts, the erection of these would facilitate or lead to more enjoyment of the beaches. Therefore, the challenge to this amendment fails.
4.	No-development zone area cannot be used for FSI calculations.	no-development zone area be permitted for FSI calculations.	Relevant section not amended but explanation added as an after thought in the notification permitting no-development zone area to be included for FSI calculations.	A private owner of land in NDZ shall be entitled to take into account half of such land for the purpose of permissible FSI in respect of the construction undertaken by him outside the NDZ.
5.	No basements allowed area not to be included in FSI.	Basements permitted.	Basements allowed subject to the satisfaction of the authorities concerned.	Basements allowed subject the satisfaction of the authorities concerned.
6.	No fencing permitted within 200 metre-zone from HTL.	Only green fencing permitted, no barbed wire fencing allowed.	Allows green and barbed wire fencing.	Fencing should not be raised in such a manner so as to prevent access of the public to public beaches. The amendment as made, does not call for any interference.

Following directions were issued by the Supreme Court in the case -

1) If any question arises with regard to the enforcement or implementation or infringement of the main Notification as amended by the notification of 1994, the same should be raised before and dealt with by the respective High Courts.

2) Any allegation with regard to the infringement of any of the notifications dated 19.02.1991, 20.06.1991 and 18.08.1994 be filed in the High Courts having territorial jurisdiction over the areas in respect of which the allegations are made.

3) The Central Government should consider setting up under section 3 of the Act, State Coastal Management Authorities in each State or zone and also a National Coastal Management Authority.

4) The States which have not filed the Management Plans with the Central Government are directed to file the complete plans by 30.06.1996. The Central Government shall finalise and approve the said plans with or without modifications within three months thereafter. The decision by the Ministry of Environment and Forests in this regard shall be final and binding.

5) Pending finalisation of the plans, the interim orders passed by the Court shall continue to operate.

6) Four States, namely, Andhra Pradesh, Gujrat, Karnataka and Kerla have not yet submitted their Management Plans to the Central Government. The Court issue notices to these States asking explanation for this non-compliance.[186]

Thus, the Court not only solved the questions before it but also reminded the High Courts, the State Governments and the Union Government to perform their duties towards environment. The idea of having the State Coastal Management Authorities along with the National Coastal Management Authority is appreciable as it is not possible for a single Authority to look after the lengthy coastal stretches of the Nation.

In *S. Jagannath v. Union of India,*[187] a PIL under Article 32 of the Constitution of India was filed by S. Jagannathan, Chairman of *Gram Swaraj* Movement, a voluntary organisation working for the upliftment of the weaker section of society. Along with other prayers the petitioner sought the enforcement of Coastal Zone Regulation Notification dated 19.02.1991 issued by the Government of India, stoppage

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186. *Id.* at 303-304.

187. AIR 1997 SC 811.

of intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas, prohibition from using the waste lands/wet lands for prawn farming and the Constitution of a National Coastal Management Authority to safeguard the marine life and coastal areas.

Shrimp (Prawn) Culture Industry is taking roots in India. Since long the fishermen in India have been following the traditional rice/shrimp rotating aquaculture system. However, in recent years the traditional system which, apart from producing rice, produced 140 kgs. of shrimp per hectare of land began to give way to more intensive methods of shrimp culture which could produce thousands of kilograms per hectare. A large number of private companies and multinational corporations have started investing in shrimp farms. In the last few years more than eighty thousand hectares of land have been converted to shrimp farming. The shrimp farming advocates regard aquaculture as potential saviours of developing countries because it is a short-duration crop that provides a high investment return and enjoys an expanding market. The said expectation is sought to be achieved by replacing the environmentally benign traditional mode of culture by semi-intensive and intensive methods. The new trend of more intensified shrimp farming in certain parts of the country-without much control of feeds, seeds and other inputs and water management practices - has brought to the fore a serious threat to the environment and ecology which was high-lighted before the Supreme Court.[188]

Mr. M.C. Mehta, learned counsel for the petitioner vehemently contended before the Court that setting up of shrimp farms on the coastal stretches of seas, bays, estuaries, creeks, rivers and back waters up 500 metres from the High Tide Line (HTL) and the line between the Low Tide Line (LTL) and the HTL is totally prohibited under Para 2 of the CRZ Notification dated 19.02.1991. According to him the shrimp culture industry was neither "directly related to water iron" nor "directly needing foreshore facility" and as such it was a prohibited activity under Para 2(f) of the CRZ Notification. On the other hand the representative of shrimp industries argued that a shrimp farm is an industry which is directly related to water front and cannot exist without foreshore facilities.

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188. *Id.* at 814.

The Court held after a close scrutiny that shrimp culture farming had no relation or connection with the 'water front'. What was required was the "brackish water" and not the 'water front' and the brackish water can be drawn from any source including sea and carried to any distance by pipes etc. It was not possible to set up a shrimp culture farm in the "foreshore" because it would completely submerge in water at the High Tide, therefore, foreshore facilities were neither directly nor indirectly needed in the setting up of a shrimp farm. Further, the Court observed -

> The purpose of CRZ Notification is to protect the ecological fragile coastal areas and to safeguard the aesthetic qualities and uses of the sea coast. The setting up of modern shrimp aquaculture farms right on the sea coast and construction of ponds and other infrastructure there on is *pe se* hazardous and is bound to degrade the marine ecology, coastal environment and the aesthetic uses of the sea coast.[189]

The issue was examined by the Court from another angle as well. The Court opined that sea coast and beaches are a gift of the nature to the mankind and therefore, the aesthetic qualities and recreational utility of the said area has to be maintained. Any activity having effect of degrading the environment cannot be permitted. Apart from that the right of the fishermen and farmers living in the coastal areas to eke their living by way of fishing and farming cannot be denied to them. After considering the Alagarswami report, two reports of NERI dated April 23, 1995 and July 10, 1995 and the report prepared by Solon Barraclong and Andrea Finger called some 'Ecological and Social Implications of Commercial Shrimp Farming in Asia', dated June 19, 1995 (The UN Report), the Court concluded that the traditional and improved traditional types of shrimp farm technologies were environmentally benign and pollution free. Other types of technologies - extensive, modified extensive, semi intensive and intensive - created pollution and had degrading affect on the environment and coastal ecology.[190]

The Court was of the view that before any shrimp industry or shrimp pond is permitted to be installed in the ecology Fragile coastal area it must pass through a strict environment test. The Court held -

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189. *Id.* at 823.
190. *Id.* at 844.

> There has to be high powered 'Authority' under the Act to scrutinise each and every case from the environmental point of view. There must be an environmental impact assessment before permission is granted to install commercial shrimp farms. The conceptual framework of the assessment must be broad based primarily concerning environmental degradation linked with shrimp farming. The assessment must also include the social impact on different population strata in the area. The quality of the assessment must be analytically based on superior technology. It must take into consideration the inter-generational equity and the compensation for those who are affected and prejudiced.[191]

In this case the Supreme Court issued sixteen directions which may be summarised as follows -

1) The Central Government shall constitute an authority under section 3(3) of the Environment (Protection) Act, 1986 before January 15, 1997 and shall confer on the said authority all the powers necessary to protect the ecologically fragile coastal areas, sea shore, water front and other coastal areas and specially to deal with the situation created by the shrimp culture industry in the Coastal States and Union Territories. The authority shall be headed by a retired judge of a High Court.

2) The authority so constituted by the Central Government shall implement 'the precautionary principle' and 'the polluter pays' principles.

3) No Shrimp culture pond can be constructed or set up within the coastal regulation zone. This shall be applicable to all seas, bays, estuaries, creeks, rivers and back waters. This direction shall not apply to traditional and improved traditional types of technologies.

4) All aqua culture industries/shrimp culture industries/shrimp culture ponds operating/set up in the coastal regulation zone shall be demolished and removed from the said area before March 31, 1997.

5) The farmers who are operating traditional and improved traditional systems of aquaculture may adopt improved technology for increased production, productivity and return with prior approval of the 'authority' constituted by the Court's order.

6) The agricultural lands, salt pan lands, mangrove, wet lands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of shrimp culture ponds.

7) No aquaculture industry/shrimp culture industry/shrimp culture ponds shall be constructed/set up within 1000 meter of Chilka Lake and Pulicat Lake (including Bird Sanctuaries namely Yadurapattu and Nelapattu).

8) Aquaculture industry/shrimp aquaculture industry/shrimp culture ponds already operating and functioning in the said area of 1000 meter shall be closed and demolished before March 31, 1997.

9) Aquaculture industry/shrimp culture industry/shrimp culture ponds other

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191. *Id.* at 848.

than traditional and improved traditional may be set up/constructed outside the coastal regulation zone and outside 1000 meter of Chilka and Pulicat Lakes with the prior approval of the authority as constituted by the Court. The existing industries shall detain authorisation from the 'Authority' before April 30, 1997 failing which the industry concerned shall stop functioning with effect from the said date.

10) Aquaculture industry/shrimp culture industry/shrimp culture ponds which have been functioning/operating within the coastal regulation zone and within 1000 meter from Chilka and Pulicat Lakes shall be liable to compensate the affected persons on the basis of the 'polluter pays' principle.

11) The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families.

12) The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals.

13) Any violation or non-compliance of the directions of the Court shall attract the provisions of the Contempt of Courts Act in addition.

14) The compensation amount recovered from the polluters shall be deposited under a separate head called 'Environment Protection Fund' and shall be utilised for compensating the affected persons as identified by the authority and also for restoring the damaged environment.

15) The authority in consultation with expert bodies like NEERI, Central Pollution Control Board, respective State Pollution Control Boards shall from scheme/ schemes for reversing the damage caused to the ecology and environment by pollution in the Coastal States/Union Territories.

16) The workmen employed in the shrimp culture industries which are to be closed in terms of this order, shall be deemed to have been retrenched with effect from 30.04.1997 provided they have been in continuous service for not less than one year in the industry concerned before the said date. They shall be paid compensation in terms of section 25-F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, six years' wages as additional compensation. The compensation shall be paid to the workmen before 31.05.1997. The gratuity amount payable to the workmen shall be paid in addition.[192]

The Court allowed the writ petition with the costs of Rs. 1,40,000 (Rupees one lakh forty thousand) to be paid by the states of Gujrat, Maharastra, Orissa, Kerala, Tamil Nadu, Andhra Pradesh and West Bengal in equal shares of Rs. 20,000 each.

In *Gopi Aqua Farms v. Union of India,*[193] the petitioners argued that they were

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192. *Id.* at 848 - 850.

193. AIR 1997 SC 3519.

not parties to the proceedings before the Court in the case of *Jagannath,* and therefore, the decision is not binding upon them. The Court rejected the argument and said that the case of *Jagannath*[194] had received widest publicity. It was difficult to believe that the petitioners were unaware of all those events. A large number of shrimp farmers and organisations representing them appeared in Court and placed their points of view about the dispute. The Court further held -

> ...(T)here is no question of invoking the principle of Order-1, Rule 8 of the Code of Civil Procedure. It was a public interest litigation. There are Aqua Culture farms all over India along the coast-line. A large number of them appeared and the case was argued at great length for very many days and the decision was ultimately given. Now a few persons cannot come up and says that they were not made parties in that case or that they were unaware of that case altogether and, therefore, the judgment does not bind them and the case should be heard all over again. If this practice is allowed, there will be no end to litigation.[195]

The Court dismissed the petitions as they were not maintainable.

In *P. Navin Kumar v. Bombay Municipal Corporation,*[196] the petitioner contended against the observation of the Bombay High Court that "the entire city of Mumbai would fall within the ambit of Coastal Regulation Zone-II". Earlier the petitioners had filed a PIL under Article 226 before the Bombay High Court seeking to prevent the construction of a new public toilet block abutting the sea on the northern side of the plaza of the Gateway of India and for the demolition of the existing old toilet block. The High Court found the case not fit for interference under Article 226 holding that since the Gateway of India was a place visited by thousands every day, public toilets were necessary in its vicinity in order to prevent the nuisance of unauthorised use of open spaces there about.

Instead of pressing their case against the toilets, the petitioners contended that the observation of the High Court that "the entire city of Mumbai would fall within the ambit of Coastal Regulation Zone-II" would be fatal for other writ petitions pending

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194. *Supra* note 187.
195. *Supra* note 193 at 3520.
196. (1999) 4 SCC 120.

before the High Court seeking relief under the CRZ Notification 1999 and other provisions of the Environment (Protection) Act, 1986.

After examination of the record of the case the Supreme Court held, "we do not think it is any body's case that the whole of Mumbai would fall within the ambit of CRZ-II. Observations of the High Court that the entire city of Mumbai would fall within the ambit of CRZ-II do not appear to be quite warranted".[197] The Court further held that the matter need not be considered at this stage in view of the State Government's statement and that revised guidelines for the CRZ would soon be issued.

In pursuance of the judgment passed by the Supreme Court in *Indian Council for Enviro-Legal Action* Case,[198] the Central Government constituted the central authority by its notification dated 26.11.1998. The Supreme Court *Suo motu* raised question as to why three persons from the same State (Maharastra) had been inducted into Central Authority, moreover, when none were specialists.[199] The Court opined that "one from State of Maharashtra is understandable, but why the other two persons have been inducted in the national authority is not understandable, as in their place some other states could have been represented." The Court asked the learned Additional Solicitor General to obtain instructions within two weeks as to whether it would be possible to induct people from other coastal states in the national authority in place of at least two persons from the state of Maharastra.

In *Goa Foundation, Goa v. Diksha Holdings Pvt. Ltd.*,[200] an appeal was filed against the judgment of the Bombay High Court dated 08.10.1999 before the Supreme Court. The appellant had filed the writ petition before the High Court as a public interest litigation, objecting to the construction of a hotel on a plot of land situated in the area of Nagorcem, Palolem, Taluka Concona, Goa, *inter alia,* on the ground that the lands in question comes within CRZ-I, and as such it is not permissible to have any construction on the same plot of land. It was also contended that the plan and sanction obtained for such construction from the competent authority, are in

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197. *Id.* at 122.

198. *Supra* note 183.

199. *Indian Council for Enviro-Legal Action v. Union of India,* (2000) 2 SCC 293.

200. AIR 2001 SC 184.

contravention of the provisions of the Environment (Protection) Act and, there exist large number of sand dunes and by permitting the respondent to have the hotel complex on the plot of land will ultimately lead to irreversible ecological damage of the coastal area, and, therefore, the Court should prevent such construction.

The High Court in the impugned judgment took into consideration the balancing task of maintaining and preserving the environment and ecology of the pristine beach with sand dunes and the development of hotels and holiday resorts for economical development of the state. After considering relevant laws and expert opinions relating to the issue and applying the law relating to the approach of a Court in a public interest litigation, the High Court came to the conclusion that "the appropriate authority have accorded permission for construction of the hotel on the disputed side, after consideration of relevant and germane materials and the writ petitioner has failed to establish any illegality in the matter of grant of such permission." The High Court further held that site where the hotel complex was proposed to be build up was under category CRZ-III and as such there was no prohibition for construction of the hotel within that area and accordingly, dismissed the writ petition filed by the Goa Foundation.

The Supreme Court bench consisting of Pattnaik, J. and Banerjee, J.J. concluded as follows -

> In our considered opinion, the appellant has utterly failed to establish by referring to any authentic material that there has been an infraction of any provisions of the CRZ Notification or the approved Management Plan of Goa nor is there any illegality in the order of the Government of India, granting environmental clearance as well as the order of the state authorities in sanctioning the project on the basis of such environmental clearance. This appeal, accordingly fails and is dismissed.[201]

Banerjee, J. in his supplementing and concurrent judgment observed, "while it is true that nature will not tolerate after a certain degree of its destruction and it will have its toll definitely, though, may not be felt in present; and the present day society has a responsibility towards the posterity so as to allow normal breathing and living in cleaner environment but that does not by itself mean and imply stoppage of all

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201. *Id.* at 191.

projects".[202] He further added that harmonisation of the two namely, the issue of ecology and development project cannot but be termed to be the order of the day and the need of the hour. About Goa and its Costal Zone he observed -

> Coastal Zone of Goa attracts tourists by reason of availability of nature's bounty but infrastructural facility is also required to develop this recently growing tourism industry provided, of course, there is no permanent affection of environment in the area in question. The record depict that the issue of affectation of environment, be it permanent or even temporary does not and cannot arise in the contextual facts. Environment is beauty, environment is our sustenance, as such in the event, the same perishes, humanity also would perish may not be today or tomorrow but certainly a day or two later.[203]

The aforesaid observation of the Court shows its concern and inclination towards the protection of the natural environment of coastal region. But in absence of any lacunae on the part of hotel project the Court held that the judgment under appeal cannot be faulted in any way, and allowed the construction of the hotel.

It is evident that the Supreme Court favoured sustainable development but at the same time prime importance to the coastal environment was also accorded by it. The Court foiled the attempt to dilute the criteria for development in the coastal zones and asked the Central Government to constitute Authority for tackling the problems pertaining to the coastal regions. The High Courts were persuaded by the Court to share greater responsibilities for protection of coastal region. The Court insisted on the compliance of precautionary principle and the polluter pays principle and directed the authority to assess the amount to be paid by the polluter for compensating the damage done to the environment and to the victims of pollution.

9.10. Large Infrastructural Projects :

India ranks among the countries which are developing with a considerable pace. For the proper development of a nation sufficient power supply, irrigation facilities, transport facilities and other infrastructural facilities are must. But construction of a Dam which is important for hydro electric power plant and provides irrigation to a

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202. *Id.* at 192.
203. *Id* at 196.

large area may involve destruction of forests, ecological disturbances and displacement of the people living in the area. Similarly in order to create transport facilities if the state tries to construct High ways or Railways track one cannot rule out some damage to the environment. Thus, the nation is facing the problem of balancing the need to develop and protection of the natural environment. One way of reducing the environmental harm from a large project could be the environmental impact assessment of the said project. "Environmental Impact Assessment (EIA) is an effort to anticipate, measure and weigh the socio-economic and bio-physical changes that may result from a proposed project. It assists decision-makers in considering the proposed project's environmental costs and benefits. Where the benefits sufficiently exceeds the costs, the project can be viewed as environmentally justified".[204]

The Environment Impact Assessment in India was carried out under administrative guidelines prior to the issuance of Environmental Impact Assessment Regulations in January, 1994 by the Ministry of Environment and Forests, Government of India.[205] The EIA Regulation has made it mandatory to seek prior environmental clearance from the Central Government if the said project falls in any of the 29 categories enumerated under schedule-I of the Regulation. Now it is obligatory to prepare and submit a project report including the EIA, an Environment Management Plan, and details of public hearing to an Impact Assessment Agency for clearance of the proposed project. The Regulations provide for the Union Ministry of Environment and Forests to act as the Impact Assessment Agency. The Agency may consult a Committee of experts if required. According to the Regulations, "the assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing and decision conveyed within thirty days thereafter. The clearance granted shall be valid for a period of five years from commencement of the construction or operation of the project".[206] The EIA, if done properly can save the earth by reducing 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 money

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204. *Supra* note 18 at 417.

205. *Vide* Notification No. S.O. 60 (E), dated 27 January, 1994.

206. The Environmental Impact Assessment Regulations, 1994, Sub-para III (C) of para 2.

time and energy.

The Courts are facing challenges relating to land acquisition, resettlement and rehabilitation, human rights violations and environmental threats in matters relating to construction of large projects.

In *Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply*[207] (BSES), the petitioner, an Environment Protection Groups objected to the clearance, by the State of Maharastra and the Union of India, of a proposal of the Bombay Sub-urban Electricity Supply Company Limited (hereinafter referred to as 'BSES') for the construction of a thermal power plant over an area of 800 hectares in Dahanu, Maharashtra. They filed writ petitions in the Bombay High Court challenging the aforesaid clearance. The High Court, dismissed the writ petitions. Against this order of the High Court, the petitioners filed special leave petition before the Supreme Court.

The three judge bench of the Supreme Court thought that the scope for any interference by it under Article 136 of the Constitution is primarily very narrow and observed as under -

> ...(I)t is primarily for the governments concerned 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, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The Court's role is restricted to examine whether the Government has taken into account all relevant aspects and has neither ignored nor overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision.[208]

As the project was very vital for the citizens of Bombay and its suburbs and the petitioner claimed that the decision of the Government was arrived at in disregard of certain guidelines prescribed and the recommendations of an expert committee set up

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207. (1991) 2 SCC 539.

208. *Id.* at 541.

by the Union Government itself, the Court agreed to look into the matter in detail.

The contention of the petitioner was that after surveys in 1976 the BSES selected about ten probable sites for establishment of a thermal power station and Dahanu was not one of them. After consideration, a site at Bassein was cleared in 1985 but the State Government objected to this site as it was located within a distance of one kilometre from the sea shore and 500 meters from the river banks. When this happened, the petitioner alleged that the company manoeuvred to get approval for the plant location at Dahanu although even the company had not found it suitable earlier and the objections raised about Bassein equally apply to Dahanu.

The Court held the criticism unfounded as the Bassein site fell within the extended Bombay metropolitan region whereas Dahanu was outside this region. Dahanu being close to Bombay after Bassein and beyond the metropolitan development region had been chosen, there was nothing wrong in it.

The principal objection on behalf of the petitioner was that the Appraisal Committee for Thermal Power Stations (EAC), after examining the various aspects, considered the site at Dahanu unsuitable and listed nine reasons for this conclusion. The Government of India cleared the proposal, despite the opinion of the EAC, without disclosing any reasons for rejecting the expert body's report. This, it was urged, showed absence of application of mind on the part of the government to the dimensions of the problem.

The Court opined that the findings of the EAC could not be treated as conclusive or binding on the Central Government, Central Government had before it, not only the EAC report but also the findings of a State Expert Committee which had gone into the matter in detail and recommended the Dahanu site. The State Government in turn had before it several reports of expert bodies. Further more, the Court held -

> We are not concerned with the question whether the decision taken is right or wrong; the question is whether it has been taken after a consideration of all relevant aspects. It is clear that in the circumstances outlined above and having regard to all the material that has been made available, it is not possible to agree with the counsel for the petitioners that the government decision should be faulted as it runs counter to the views of the EAC or that the government has not applied its mind to all relevant aspects of the setting up

of a thermal power station at Dahanu.[209]

Another grievance of the petitioner was that the clearance had been issued contrary to the 'Environmental Guidelines for Thermal Power Plants' issued by the Government of India in 1987. The guidelines lay down various criteria including following -

1) thermal power plants should not be located within 25 kms. of the outer peripheries of metropolitan cities, national parks, and wildlife sanctuaries and ecologically sensitive areas like tropical forests; and

2) in order to protect coastal areas, a distance of 500 metres from the high tide line (HTL) and a further buffer zone of 5 km. from the seashore should be kept free of any thermal power station.

It was pointed out that the EAC had decided against the Dahanu location as it is the only green belt left in the region having about 40 to 60 per cent of forest cover located in Thane district and also as Dahanu town has chikoo gardens and forests areas located at about 3 to 7 kms. from the power station.

The Court agreed with the argument placed by the Government that "the distance mentioned in the guidelines are only intended as a safeguard against possible pollution effects; it cannot be treated as rigid and inflexible irrespective of local conditions. It is, therefore, quite natural for the Government of India to decide that the site could be cleared subject to stringent conditions to prevent danger of pollution".[210]

Finally the Court dismissed the special leave petition and held -

> [W]e are satisfied that the clearance to the thermal power station was granted by the Central Government after fully considering all relevant aspects and in particular the aspects of the environmental pollution. Sufficient safeguards against pollution of air, water and environment have been insisted upon in the conditions of grant.[211]

The Court also directed at the same time that in case any proposal from the company comes to relax any condition subject to which the plant has been cleared, neither the State Government nor the Union Government should permit such relaxation without

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209. *Id.* at 543 - 544.

210. *Id.* at 545.

211. *Id.* at 548.

giving notice of the proposed changes to the petitioner groups and giving them an opportunity of being heard.

Thus, it is clear that the Court has adopted a soft line by not insisting the strict compliance of the Environmental Guidelines for Thermal Power Plants. Also the Court instead of having independent expert opinion relied upon the Governmental reports. It seems therefore that the Court gave priority to the need of power supply in and around Bombay (Mumbai) over the environmental apprehensions.

Narmada Bachao Andolan v. Union of India,[212] is the case where the objections were raised against the construction of the Sardar Sarovar Dam which was a part of the Narmada Valley Project. It is perhaps the largest irrigation project as a single unit, anywhere in the world. The Narmada Bachao Andolan, the petitioner filed the petition before the Court in April, 1994 *inter alia* praying that the Union of India and other respondents should be restrained from proceeding with the construction of the Sardar Sarovar Dam and they should be ordered to open the sluices. The petitioner sought to contend that it was necessary for some independent judicial authority to review the entire project, examine the current best estimates of all costs (social, environmental, financial), benefits and alternatives in order to determine whether the project was required in its present form in the national interest or whether it needed to be restructured/modified.

Here it may be noted that the Narmada Valley Project was conceived in 1946 but the final planning and work on it could commence only after the passing of its final award by the 'Narmada Water Disputes Tribunal' on 7th December, 1979. This Tribunal was established in 1969 under section 4 of the Inter-State Water Disputes Act, 1956 to resolve the dispute on river water among the riparian states of Madhya Pradesh, Gujrat and Maharashtra. The Tribunal was headed by Hon'ble Mr. Justice V. Ramaswamy, a retired judge of the Supreme Court. In arriving at its final decision, the issues regarding allocation, height of dam, hydrology and other related issues came to be subjected to comprehensive and thorough examination by the Tribunal.

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212. AIR 2000 SC 3751.

Extensive studies were done by the irrigation commission and Drought Research Unit of India Meteorological Department in matters of catchment area of Narmade Basin, major tributaries of Narmada Basin, drainage area of Narmada Basin, climate, rainfall, variability of rainfall, arid and the semi-arid zones and scarcity area of Gujrat. Various technical literature were also consulted by the Tribunal before giving its award.

One can note a fractured verdict from the Apex Court. Mr. Justice S.P. Bharucha took the minority view where as the majority decision was taken by Dr. A.S. Anand, C.J. and B.N. Kirpal, J.

The minority opinion of the Court was that the environmental clearance to the Project given in 1987 by the Union Government was based on next to no data in regard to the environmental impact of the project. It was contrary to the terms of the then policy of the Union of India in regard to environmental clearances and, therefore, no clearance at all. It was clear from the record before the Court that the necessary particulars in regard to the environmental impact of the project, as required by the guidelines, were not available when the environmental clearance was given. The conditions upon which the environmental clearance was given were the detailed surveys and studies would be carried out and the Narmada Control Authority would ensure that environmental safeguard measures were planned and implemented *pari passu* with the progress of work on the Project. No further assessment of the environmental impact of the project was contemplated for the environmental clearance, nor, indeed, was it ever carried out. Bharucha, J. observed -

> An adverse impact on the environment can have disastrous consequences for this generation and generations to come. This Court has in its judgments on Article 21 of the Constitution recognised this. This Court cannot place its seal of approval on so vast an undertaking as the project without first ensuring that those best fitted to do so have had the opportunity of gathering all necessary data on the environmental impact of the project and of assessing it. They must then decide if environmental clearance to the project can be given, and, if it can, what environmental safeguard measured have to be adopted, and their cost.[213]

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213. *Id.* at 3770.

Further more, he directed the Ministry of Environment and Forests of the Union of India to appoint forthwith a committee of experts in the fields mentioned in Schedule-III of the Environmental Impact Assessment Notification, 1994 for taking decision over environmental clearance of the Project. It was held by him, "until environmental clearance to the project is accorded by the committee of experts as aforestated, further construction work on the dam shall cease".[214]

The argument relating to the petitioners being guilty of laches was also rejected by Bharucha, J. and he opined, "given what has been held in respect of the environmental clearance, when the public interest is so demonstrably involved, it would be against public interest to decline relief only on the ground that the Court was approached belatedly".[215]

The majority opinion of the Court, however, was that the petitioner which had been agitating against the dam since 1986 were guilty of latches in not approaching the Court at an earlier point of time. The Court held -

> When such projects are undertaken and hundreds of crores of public money is spent, individual or organisations in the grab of PIL cannot be permitted to challenge the policy decision taken after a lapse of time. 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 pleas relating to height of the dam and the extent of submergence, environment studies and clearance, hydrology, seismicity and other issues, except implementation of relief and rehabilitation, cannot be permitted to be raised at this belated stage.[216]

The Court also made it clear that only protection of the fundamental rights of the oustees under Article 21 of the Constitution of India led them to entertain the present petition. The Court held, "it is the Relief and Rehabilitation measures that this Court is really concerned with".[217] However, the Court dealt with some other issues as well raised in the petition.

214.*Id.* at 3771 - 3772.

215.*Id.* at 3771.

216.*Id.* at 3782.

217.*Id.* at 3783.

One contention of the petitioner was supported by the view of Madhya Pradesh Government to the effect that the height of the dam should be reduced in order to decrease the number of oustees. The Court pointed out that the Tribunal had in no uncertain terms came to the conclusion that the height of the dam should be 445 ft. It had rejected the contention of the State of Madhya Pradesh for fixing the height at a lower level. Moreover, any issue which had been decided by the Tribunal would, in law, be binding on the respective states." The Court made it aptly clear, once the Award is binding on the States, it will not be open to a third party like the petitioners to challenge the correctness thereof. Thus, "in terms of award, the State of Gujrat has a right to construct a dam upto the height of 455 ft. and, the same time, the oustees have a right to demand relief and resettlement as directed in the Award".[218]

The petitioners submitted that the forcible displacement of tribals and other marginal farmers from their land and other sources of livelihood for a project which was not in the national or public interest was a violation of their fundamental rights under Article 21 of the Constitution of India read with ILO Convention 107 to which India is a signatory. The Court while accepting the petitioners submission observed that International Treaties and Covenant can be read into the domestic laws of the country and pointed out that Article 12 of the ILO Convention No. 107[219] clearly suggested, when removal of the tribal population was necessary as an exceptional measure, they should be provided with land of quality at least equal to that of the land previously occupied by them and they should be fully compensated for any resulting loss or injury. The Court held that *prima facie* it seemed that the land required to be allotted to the tribals was likely to be equal, if not better, than what they had owned.

The allegation that the said project was not in the national or public interest was also turned down by the Court. The Court was convinced with the following contention of the respondents that -

There would be a positive impact on preservation of ecology as result

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218. *Id.* at 3783 - 3784.

219. The ILO Convention No. 107, Article 12 - the populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations relating to national security, or in the interest of national economic development or of the health of said populations.

> from the project. The SSP would be making positive contribution for preservation of environment in several ways. The project by taking water to drought-prone and arid parts of Gujarat and Rajasthan would effectively arrest ecological degradation which was returning to make these areas inhabitable due to salinity ingress, advancement of desert, ground water depletion, fluoride and nitrite affected water and vanishing green cover. The ecology of water scarcity areas is under stress and transfer of Narmada water to these areas will lead to sustainable agriculture and spread of green cover. There will also be improvement of fodder availability which will reduce pressure on biodiversity and vegetation. The SSP by generating clean eco-friendly hydro power will save the air pollution which would otherwise take place by thermal generation power of similar capacity.[220]

The Court inferred that the displacement of the tribals and other persons would not *per se* result in the violation of their fundamental or other rights rather, gradual assimilation in the main stream of the society will lead to their betterment and progress.

The petitioners raised following four major environmental issues before the Court -

(i). Whether the execution of a large project having diverse and far reaching environmental impact, without the proper study and understanding of its environmental impact and without proper planning of mitigative measures is a violation of fundamental rights of the affected people guaranteed under Article 21 of the Constitution of India?

(ii). Whether the diverse environmental impacts of the Sardar Sarovar Project have been properly studied and understood?

(iii). Whether any independent authority has examined the environmental costs and mitigative measures to be undertaken in order to decide whether the environmental costs are acceptable and mitigative measures practical?

(iv). Whether the environmental conditions imposed by the Ministry of Environment have been violated and if so, what is the legal effect of the violations?[221]

The petitioners challenged the validity of the environmental clearance granted in 1987 *inter alia* on the ground that it was not preceded by adequate studies and it was not a considered opinion and there was non-application of mind while clearing the project. The Court, however, reached to the conclusion after going through the documents and records placed before it that, "it is more than evident that the Government

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220. *Supra* note 212 at 3786 - 3787.

221. *Id.* at 3787.

of India was deeply concerned with he environmental aspects of the Narmada Sagar and Sardar Sarovar Project." Rejecting the plea of the petitioners that the environmental clearance of the project was given without application of mind the Court held -

> The Government was aware of the fact that number of studies and data had to be collected relating to environment. Keeping this in mind, a conscious decision was taken to grant environmental clearance and in order to ensure that environmental management plans are implemented *pari passu* with engineering and other works, the Narmada Management authority was directed to be constituted.[222]

The petitioners contended on the basis of *A.P. Pollution Control Board v. Professor M.V. Nayadu,*[223] that in cases pertaining to environment, the onus of proof is on the person who wants to change the *status quo* and therefore, it is for the respondents to satisfy the Court that there will be no environmental degradation. The Court, differentiated the present case with that of the *A.P. Pollution Control Board's* and held, "we are not concerned with the polluting industry which is being established." What is being constructed is a large dam. Further the Court made following observations -

> The dam is neither a nuclear establishment nor a polluting industry. The construction of a dam undoubtedly would result in the change of environment but it will not be correct to presume that the construction of a large dam like the Sardar Sarovar will result in ecological disaster. India has an experience of over 40 years in the construction of dams. The experience does not show that construction of a large dam is not cost effective or leads to ecological or environmental degradation. On the contrary there has been ecological upgradation with the construction of large dams. What is the impact on environment with the construction of a dam is well-known in India and, therefore, the decision in A.P. Pollution Control Board's Case will have no application in the present case[224].

On the issue of a fresh environmental clearance according to the Notification of 1994, the Court held that the notification was clearly prospective and *inter alia* prohibited the undertaking of a new project listed in Schedule-I without prior

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222. *Id.* at 3795.

223. AIR 1999 SC 812.

224. *Supra* note 212 at 3804.

environmental clearance of the Central Government in accordance with the procedure specified. In the present case clearance was given by the Central Government in 1987 and at that time no procedure was prescribed by any statute, rule or regulation. "The procedure now provided in 1994 for getting prior clearance cannot apply retrospectively to the project whose construction commenced nearly eight years prior thereto".[225]

The Court strongly favoured the projects of national importance and held that it was well-settled that the Courts, in the exercise of their jurisdiction, would not transgress into the field of policy decision. "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".[226] Further the Court said that it had, a duty to see that in the undertaking of a decision, no law was violated and people's fundamental rights were not transgressed upon except to the extent permissible under the Constitution.

The Courts made the following observation as policy statement -

> In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in Public Interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the Court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the under taking of the project, which view may have been considered by the Government, is possible.[227]

The Court found no material so that it could conclude that the decision to construct the dam was *mala fide* and therefore, it observed that "a hard decision need not necessarily be a bad decision". Further, the Court stressed upon the need to look

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225. *Id.* at 3805.

226. *Id.* at 3827.

227. *Id.* at 3827 - 3828.

at the environmental problem with a holistic approach and observed -

> While an area of land will submerge but the construction of the Dam will result in multifold improvement in the environment of the areas where the canal waters will reach. Apart from bringing drinking water within easy reach the supply of water to Rajasthan will also help in checking the advancement of the Thar Desert.[228]

The petition was disposed of by the Court with the direction that "every endeavour shall be made to see that the project is completed as expeditiously as possible".

It is clear from the decisions of the Court that in cases where a public project designed to provide infrastructural facilities comes under challenge, the Court will not interfere in it unless and until it can be proved that there is a blatant illegality in the undertaking of the project or in its execution.

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228. *Id.* at 3828.