Conference on
Environmental Issues and Climate change
Jharkhand Chapter

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Department of Forest, Environment & Climate Change, Government of Jharkhand
NEWLY BORN CHILD OF JHARKHAND MAY LIVE TO WITNESS THE EXTINCTION OF HUMANS

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Introduction

Global context

When I came across this picture, I was reminded of the statement of W.S. Gilbert who said, Man is nature’s only mistake. Mr. Gilbert’s opinion is fortified by the different studies conducted worldwide which suggest that our planet Earth is headed for its sixth mass extinction. According to a new study published in journal Science Advances, the number of animals that went extinct in the past century is equivalent to the number of animals that typically would go extinct within a period of 800 – 10,000 years. Thus as per this study, the Earth is headed towards a mass extinction of a size that hasn’t been since dinosaurs were wiped off the planet 65 million years ago. However, this time the extinction would be different from the previous ones, as it would not be attributable to any continental drift or an asteroid, but the culprit would be us.

The rapid depletion of the Earth’s biodiversity, the doubling of the human population in the last 35 years, the decline of animal life on Earth has led the Earth on the path to its final journey, the journey of extinction. The cycle which nature created in the form of ecosystem has been badly affected, and as such, the loss of larger animals like elephants, tigers, bears, means an increase in the number of rodents which in turn results in an increase of the disease – transporting ectoparasites that come with them. Similarly, as the brilliant physicist Albert Einstein opined, if the bee disappeared of the surface of the globe, then man would only have four years of life left. No more bees, no more pollination, no more plants, no more animals, no more man. The entire world’s food production would be threatened if the insects like bees stop pollination, which is responsible for about 75 percent of the world’s food crops.

A latest study further reveals that due to rising temperature, growth of children in the womb is being affected and babies with low birth weight are being born. As per the World Health Organization, low birth weight is any baby born under 2500 grams. Low birth weight infants are more susceptible to illness, face a higher risk of mortality, are more likely to develop disabilities and are less likely to attain the same level of education and income as an infant born within a healthy weight range.

Thus, if the Earth keeps getting hotter, not only there is danger of its extinction, but those who are being born are also likely to come with reduced level of immunity and efficiency. The emerging trends of environmentalism, save the Earth, go green, are concepts which have been developed in the twentieth century after scientists, geologists and environmentalists realized that the virus which is eating-up the Earth is none other...
than the man himself. A need was felt by the United Nations to address the problem of environmental pollution at the global level leading to the organisation of World Conference on human environment at Stockholm in 1972 and thereafter a series of Declarations, Conventions and Commissions have been set-up to solve the global problem of conservation and regulation of environment by international agreements. The world at large finally realized that the developed as well as the developing countries for their economic and industrial development are exploiting the material resources to the maximum and if this trend continues, there would be no Earth to live on. This realization, albeit a little late dawned upon the man kind that he needs to defend and improve the environment not only for the present generation, but also for the coming ones.

Indian context: Religion as the care taker of environment

The world realized the importance of nature only in the later half of the twentieth century, but so far as our ancient civilizations are concerned, we were completely in awe of nature and environment was considered as very dominant. Hindu texts namely Vedas, Upanishadas and Smritis are replete with hymns in praise of nature, urging people to protect, preserve and worship the natural resources. The Rigveda propounded the concept of Panchtatva i.e. Bhumi (Earth), Jal (water), Vayu (air), Agni (Fire) and Akash (space or sky) and the conservation and protection of these five elements was considered indispensable for the well being of the people. The Atharvaveda explained the significance of domestic cattle and all living creatures and since ancient days, cows, bulls and snakes are worshipped by the people. In fact, such was the importance of animals in the Hindu mythology that every deity had an animal or bird associated with it.

The ancient Hindu society had huge reverence for the rivers and the trees. Trees like Peepal, Neem, Banyan, Mango, Banana, Ashoka and plants like Tulsi were not only revered but it was seen that they were never cut or destroyed. Today, the entire west has understood the importance of Tulsi and its medicinal properties, a plant worshipped by the Hindu society due to its association with Lord Vishnu. The ancient texts very intelligently prescribed to treat the rivers as goddesses as they were the source of life and the civilization was entirely dependent on them. The Rivers were considered sacred and pious and they were worshipped and this belief helped the ancient societies to keep the banks as well as the river beds clean. The seven rivers, namely Ganga, Yamuna, Saraswati, Narmada, Godavari, Sindhu and Kaveri are considered pious even today and are worshipped. However, it is sad that today’s man takes a dip in these rivers to wash of his sins but does nothing to keep them clean.
Ganges, the holy river and the life line of the nation is heavily polluted today due to the heavy industrialization. The situation regarding other rivers is also pathetic and as such the Hon’ble Apex Court intervened in the matter and directed for the closure of the tanneries which had failed to take minimum steps required for the primary treatment of industrial effluent. The Indian way of life, from birth to death cannot be imagined without the Ganges. Justice K.N. Singh described the value of Ganges in profound words;

The river Ganga is one of the greatest rivers of the world, although its entire course is only 1560 miles from its source in Himalaya to the sea. There are many rivers larger in shape and longer in size but no river in the world has been so great as the Ganga. It is great because to millions of people since centuries it is the most sacred river. It is called “Sursari” river of the Gods, ‘Paitipawani’ purifier of all sins and ‘Ganga Ma’ Mother Ganges. To millions of Hindus, it is the most sacred, most venerated river on Earth. According the Hindu belief and mythology to bathe in it, is to wash away guilt, to drink the water, having bathed in it, and to carry it away in containers for those who may have not had the good fortune to make the pilgrimage, to it, is meritorious. To be cremated on its banks, or to die there, and to have one’s ashes cast on its waters, is the wish of very Hindu. Many saints and sages have pursued their quest for knowledge and enlightenment on the banks of the river Ganga. 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 towns and place of pilgrimage are situated on its banks. The river Ganga has been part of Hindu civilization. Pt. Jawahar Lal Nehru who did not consider himself a devout Hindu gave expression to his feelings for the Ganga that is to be found in his will and testament, a short extract from which is as under:

My desire to have a handful of my ashes thrown into the Ganga at Allahabad has no religious significance, so far as I am concerned. I have no religious sentiment in the matter. I have been attached to the Ganga and the Jamuna rivers in Allahabad ever since my childhood and, as I have grown older, this attachment has also grown. I have watched their varying moods as the seasons changed, and have often thought of the history and myth and tradition and song and story that have become attached to them through the long ages and become part of their flowing waters. The Ganga, especially, as the river of India, beloved of her people, round which are intertwined her racial memories, her hopes and fears, her songs of triumph, her victories and her defeats. She has been a symbol of India’s age-long culture and civilization, ever-changing, ever—flowing, and yet ever the same Ganga. She reminds me of the snow-covered peaks and the deep valleys
of the Himalayas, which I have loved so much, and of the rich and vast plains below, where my life and work have been cast.

Nature is god and god is nature was what our ancestors believed. Unfortunately, the modern man is god fearing but not nature fearing. God sleeps in the minerals, awakens in plants, walks in animals, and thinks in man, but man is stupid enough to assume that he is the absolute owner of nature and its resources, hence authorized to misuse it, destroy it and damage it.

Today’s generation might boast of being mere technologically advanced, but our earlier ones were intelligent enough to understand that the existence of human civilization was fully dependant on nature and as such the biosphere with its components such as air, water, land, mountains, forests and animals were not only held in high esteem but were worshipped. There was an unspoken harmony between man and environment and the presence of the almighty in the form of nature was acknowledged by the ancient Indian society. Unfortunately, the modern man is searching for god in Temples, Churches, Mosques and Gurudwaras, but misses out His presence everywhere around us, as beautifully penned down by a nature loving poet,

The man whispered, “God, speak to me”
and a meadow lark sang.
But, the man did not hear.

So the man yelled, “God, speak to me”
And the thunder rolled across the sky.
But, the man did not listen.

The man looked around and said, “God, let me see you”
And a star shone brightly.
But, the man did not notice.

The man shouted, “God, show me a miracle!”
And a life was born.
But, the man did not see.

So, the man cried out in despair, “Touch me God,
And let me know you are here!”
Whereupon, God reached down and touched the man.

But, the man brushed the butterfly away and walked on.

Thus we see that our society has always been environmentally conscious and we are not used to taking nature for granted. In the ancient times, religion was the caretaker of environment and was the epicenter of the human existence, however, in the present
days, environment has taken a backseat. Now it is the judiciary which has come to
the rescue of environment with the aid of public spirited environmentalists like M.C.
Mehta, T.N. Godaverman & many others, and has gone to the extent of developing the
concept of right to “healthy environment” as part of the right to “life” under Article
21 of our constitution. This report is a small endeavour towards highlighting some of
the pro-active measures taken by the Hon’ble Supreme Court of India as well by the
Hon’ble Jharkhand High Court towards preservation of nature and its resources. So far
as the State of Jharkhand is concerned, its very creation was due to its ecology and, if,
immediate drastic steps are not taken to prevent the same, nothing would be left for the
coming generations, probably not even the humans.

NOTES
1. University of Utah, “Climate change negatively affects birth weight”, Science Daily, 29
September, 2015.
2. 1987(4) SCC 463.
3. Ibid, para 20 at Page 480, 481.
5. Poem, Don’t Miss Out.
Constitutional and Legislative Mandate for Environmental Protection.

The Indian Constitution was perhaps one of the first in the world to bring an amendment in response to the Stockholm Conference on Human Environment of 1972 and the growing awareness of the environmental crisis.

The Constitution (Forty–Second Amendment) Act, 1976, makes it a fundamental duty to protect and improve the natural environment. According to Article 48A, ‘the state shall endeavor to protect and improve the environment and to safeguard forests and wildlife of the country’.

The directive principle had a new Article namely Article 51A(g), wherein a corresponding duty has been assigned to every citizen of India that ‘it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.’

The insertion of twin provisions, one imposing a duty on the state and the corresponding duty on the citizen is reflective of a very vital aspect of environmental protection i.e the state alone cannot do the same, there has to be equal participation of the citizens.

After the Stockholm conference, both central and state governments passed series of statutory acts for the protection and improvement of environment. These may be summed up as follows:

(i) The Water (Prevention and Control of Pollution) Act 1974;
(ii) The Air (Prevention and Control of Pollution) Act, 1981;
(iii) The Environment (Protection) Act, 1986 (EPA);
(iv) The Manufacture, storage and Import of Hazardous Chemical Rules, 1989;
(v) The Hazardous waste (Management and Handling ) Rules , 1989;
(vii) The Public Liability Insurance Act, 1991;
(viii) The National Environmental Tribunal Act,1995,
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(xii) The National Environment Appellate Authority Act, 1997,

(xiii) The National Environment Appellate Authority Act, 1997,

(xiv) The Recycled Plastic Manufacture and Usage Rules, 1999,

(xv) The Biomedical Waste (Management & Handling) Rules, 2000;

(xvi) The Ozone Depleting Substances (Regulation and Control) Rules, 2000;

(xvii) The Noise Pollution (Regulation and Control) Rules, 2000;

(xviii) The Batteries (Management and Handling) Rules, 2001;

(xix) The Biodiversity Protection Act, 2002;

(xx) The National Environmental Policy, 2006, and


This long list is indicative of the fact that the legislature has done its level best to formulate laws for the protection of environment, even to the extent of a constitutional amendment. It is said, if there is intent, there would be action, the legislative intent is manifested by the presence of the aforementioned Acts and Rules, and as such, Governments cannot be blamed for non-promulgation of laws relating to the safety of environment.
The evolution of Environmental Jurisprudence in India

In the last chapter we saw that there is no dearth of legislations for preserving and protecting the natural resources, approximately over 200 central and state statutes. Though, these Acts and Constitutional provisions are to provide effective solutions for the degradation of the environment, but the results are abysmally dissatisfactory and there has been little headway in controlling the depletion of the natural resources.

It is a matter of common knowledge that environmental laws, by and large, remain unenforced or mismanaged, at times due to deficit governance and at times due to the non sharpness of the teething provisions attached to these laws. And as such, despite the presence of a natural environmental policy, the constitutional mandate of environmental protection, and a basket full of legislations and administrative infrastructure for implementation, the Ganges, the Yamuna, the Damodar, the Subernrekha, and many of our revered rivers and freshwater streams are polluted with industrial waste or effluents.

In recent years we have also been a rapid increase in casualties due to respiratory disorders caused by widespread air pollution and the national capital welcomes its visitors with smoke and dust laden air. The floods and Landslides in Uttaranchal is manifestation of nature’s fury due to massive de-forestation. The effects of forest destruction on soil erosion, floods, siltation of reservoirs, loss of genetic diversity, etc. is very much known to all but without blink of an eye-lid, trees are being cut down to suit the ever increasing needs of the urban population.

It is ironically true that governance in the field of environmental protection and improvement is till date taken lightly in comparison to the other laws. Not only the agencies and the stake holders are callous but also lethargic. Due to deficit governance and non implementation of the environmental statutes, public spirited citizens, non-government organizations (NGOs) and, environmentalists have approach the courts, Particularly the higher judiciary, i.e the Supreme Court and the various High Courts of the country for seeking environmental justice.

As a watch dog of the Indian Constitution, the Supreme Court of India responded in a pro-active manner in matters concerning environment and ensured that not only the legislature enacts laws which are in conformity with constitutional provisions, but also that the administrative agency implement these laws for the protection and improvement of the environment.
The scope and ambit of the Right to Life enshrined under Article 21 of the constitution of India has been given new horizons by the Supreme Court of India. In Chhetriya Pradushan Mukti Samiti Vs State of U.P. & others, Sabyasachi Mukherjee C.J. observed:

Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of Constitution of India.

In Andhra Pradesh Pollution Control Board Vs M.V. Nayudu the apex court propounded the proposition that Environmental concerns and human rights are equally important and are traceable to Article 21 of the constitution of India.

Similarly in K.M. Chinappa Vs Union of India, the Apex Court observed that Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment. Ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, hygienic environment is an integral part of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment.

Though the doctrine of separation of powers authorized the executive and the legislature to perform in governance, the judiciary has taken unto itself a very important role in the environmental governance process in the Indian experience. The Supreme Court as well as the High courts have been intervening in matters of environmental concerns which has led to the evolution of an entirely new subject for the students of law as well as socio-legal scholars, namely the environmental jurisprudence.

According to Christopher D Stone, it is no answer to say that streams and forests cannot have standing because streams and forests cannot speak. Corporations cannot speak either; nor can states, estates, infants, incompetents, municipalities or universities. Lawyers speak for them, as they customarily do for the ordinary citizen with legal problems.

The most significant aspect of environmental jurisprudence has been the relaxation of the traditional concept of locus standi. The dynamic efforts of Justice P.N. Bhagwati & Justice V.R. Krishna Iyer introduced the concept of public interest litigation and now the initiation of litigation is no more a prerogative of the aggrieved individual. Initially, the courts were reluctant to entertain third party seeking relief against an injury not occurring directly and for redressal of environmental damages, one had to take recourse to the law of Torts and Criminal Law provisions for public nuisance envisaged under the Indian Penal Code.
However, now the judiciary has widened the concept of aggrieved and in *Rural Litigation Entitlement Kendra Vs State of U.P*., the Apex court for the first time entertained a public Interest Litigation filed by the Rural Litigation Entitlement Kendra for closure of limestone quarries which were causing imbalance to ecology and were hazardous to healthily environment.

The Supreme Court of India fully agreed with the observations of Mr. Stone quoted above and went on to allow third parties to bring matters of environmental concern to court’s notice and has thus rendered motion to the rights of inanimate objects.

A list of cases in which the Hon’ble Supreme Court of India has intervened in matters of environmental concern is being annexed herewith to show how green our Apex Court is.

<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Nature of Pollution</th>
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<tbody>
<tr>
<td>Dhangadha Chemical Works Ltd. Vs. Dhangadha Municipality</td>
<td>Industrial effluent affecting groundwater and soil of the surrounding area</td>
<td>Showed concern for public health and directed the municipality to take appropriate action.</td>
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<td>Gwalior Rayon Silk Mfg (Wvg) Co Ltd. Mavoor V The Appellate Committee for Water Cess, Trivandrum &amp; other respondent</td>
<td>Gwalior Rayon discharging their trade effluent into the Chaliyar river, causing pollution of its river.</td>
<td>The Court found that the company has installed the instrument of purifying water, so, the ‘pollution board’ should revise the cess charges / fine imposed on the company.</td>
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<td>Z Kotasek and Another Vs. The State of Bihar &amp; Another</td>
<td>Bata India Ltd., Mokamaghat, Patna, were discharging their poisonous effluent in the water of streams without getting them treated.</td>
<td>The appeal was filed against the Additional Chief Judicial Magistrate for taking the cognizance of offence of pollution in the river water. After going through the facts, the court held that ‘the accused company discharged the affluent rendering that portion of the Ganges completely polluted and dismissed the appeal.</td>
</tr>
<tr>
<td>Rural Litigation &amp; Entitlement Kendra, Dehradun Vs. State of Uttar Pradesh</td>
<td>The question was of balancing the conflict between mining of lime stone, quarries in mussoorie and environmental preservation.</td>
<td>Different committees were set up by Government of India to examining the mining condition in Mussoorie hills. The mines were categorized in A, B and C types. After considering the reports of the various committees the apex court directed the closure of mines of B and C types and ordered expiry of all lease within the four weeks of the judgment. It was also said that the workman thrown out of the employment were to be re-employed for the purposes of reclamations of the land.</td>
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<td>MC Mehta Vs. Union of India &amp; Others⁹</td>
<td>Public Interest Litigation filed for prevention of the river Ganges, which was over polluted due to the discharge of effluents by the tanneries.</td>
<td>The tanneries in Jajmau, Kanpur were directed to close their business within one month time if they failed to install primary effluent treatment plants, and directed that the Uttar Pradesh Pollution Board would enforce the judgment.</td>
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<tr>
<td>MC Mehta &amp; Another Vs. Union of India¹⁰</td>
<td>Regarding compensation to the persons suffering from oleum gas from the units.</td>
<td>The court said ‘…..[A] petition under Art. 32 should not be used as a substitute for the enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of Civil Court. It is only in exceptional case. Compensation may be awarded in a petition under Art.32.’ It has also said ‘where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example is strictly and absolutely liable to compensate all those who are affected by the accident and such liability will not be subject to any exceptions…’</td>
</tr>
<tr>
<td>MC Mehta Vs. Union of India &amp; Others¹¹</td>
<td>Pollution of the rivers in the country by the leather units.</td>
<td>Directions were passed for closure of the leather industries.</td>
</tr>
<tr>
<td>Sir Shadi Lal Enterprises Ltd. Vs. Chief Judicial Magistrate, Sharanpur &amp; Another¹²</td>
<td>Discharge of trade effluents from factories.</td>
<td>The Court said ‘ complete stoppage of the discharge of effluents from the factory even into the lagoons shall take place forthwith…..’</td>
</tr>
<tr>
<td>MC Mehta Vs. Union of India¹³</td>
<td>Pollution caused by the mining operation near Badkal Lake and Surajkund.</td>
<td>The court said ‘there shall be no mining activity within 2 km. Radius of the tourist resorts of Bedkal and Surajkund. All the mines which fall within the said radius shall not be reopened.’</td>
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<td>Vellore Citizens Welfare Forum Vs. Union of India(^{14})</td>
<td>Tanneries were discharging untreated effluent into agricultural fields, water ways and open fields in the State of Tamilnadu.</td>
<td>The court had directed the pollution control Board to close the industries and tanneries and pay the compensation on two heads: (1) for reversing the ecology; and (2) for the payment of individuals who are effected by the pollution. In addition to that, the apex court has imposed Rs. 10,000 as pollution fine and the same to be recovered from polluter as part of land revenue.</td>
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<tr>
<td>MC Mehta Vs. Kamal Nath &amp; Others(^{13})</td>
<td>The river flow of Beas River was diverted by building a club at the bank of the river and in this process, forest land had been encroached.</td>
<td>The court said ‘….the motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. ‘The compensation will be determined on the basis of NEERI Reports.</td>
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<tr>
<td>MC Mehta Vs. Kamal Nath &amp; Ors(^{16})</td>
<td>The construction of walls and bunds on the river bank in Manali after opening a motel at the river bank.</td>
<td>Award of exemplary damages quantum fixed at Rs. 10 Lakhs only.</td>
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<td>S Jagannath Vs. Union of India &amp; Others(^{17})</td>
<td>The shrimp culture industry was leading to considerable degradation of the ecosystem.</td>
<td>The court held that ‘the aquaculture industry / shrimp culture industry / shrimp culture ponds already operating and functioning in the said area of 1000 mts shall be closed and demolished.’ The said industry will be liable to pay the compensation according to ‘polluter pays’ principle to reverse the environmental damages and also the affected persons.</td>
</tr>
<tr>
<td>MC Mehta Vs. Union of India(^{18})</td>
<td>Discharge of effluent from the tanneries in open drains at Calcutta creating health hazards.</td>
<td>The Court imposed Rs. 10,000 fine on all tanneries which was to be utilized for damaged environment and ecology.</td>
</tr>
<tr>
<td>MC Mehta Vs. Union of India(^{19})</td>
<td>The sulphur di-oxide emission by Mathura Refineries causing degradation of Taj Mahal at Agra.</td>
<td>Industries shall change over to natural gas as industrial fuel, otherwise they shall stop functioning and relocate.</td>
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<tr>
<td>K Muniswami Gowda Vs. State of Karnataka(^{20})</td>
<td>The Rice Milling Industries near residential houses causing health hazards.</td>
<td>Closure of the said industry forthwith and Rs. 21000 as exemplary damages to be paid.</td>
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<td>Re Bhavani River Sakti Sugars Ltd&lt;sup&gt;21&lt;/sup&gt;</td>
<td>Causing pollution of river by discharge of objectionable effluents from distillery into the river.</td>
<td>High Court will minor the matter and burden the industry with such cost as deemed fit.</td>
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<tr>
<td>Andhra Pradesh Pollution Control Board Vs. MV Nayuda&lt;sup&gt;22&lt;/sup&gt;</td>
<td>Industries causing pollution.</td>
<td>It was left to the appropriate authority to decide the matter on the basis of material placed before it.</td>
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<td>Tehri Bandh Virodhi Sangarsh Samiti and others Vrs. State of Uttar Pradesh and others&lt;sup&gt;23&lt;/sup&gt;</td>
<td>Necessary directions need to be given to conduct further safety tests so as to ensure the safety of the dam alongwith compliance of the conditions attached to the environmental clearance.</td>
<td>Made in clear that the questions of whether or not to have an infrastructural project and 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. However, a note of caution was struck in that the courts have a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights as guaranteed under the constitution are not transgressed upon except to the extent permissible under the constitution. When a law has been enacted in relation to the protection of environment and such a law is being given effect to and there is no challenge to such law, the duty of the courts would be to see that the government and other respondents act in accordance with law. There is no other obligation for the court to investigate further in the matter.</td>
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<tr>
<td>T.N. Godavarman Thirumulpad Vs. Union of India and others&lt;sup&gt;24&lt;/sup&gt;</td>
<td>Protection and conservation of forests throughout India and implementation of Forest Conservation Act (69 of 1980)</td>
<td>Ruled that the Forest Act is applicable to all forests irrespective of nature of ownership or classification thereof. The word ‘forest’ is to be understood as per its dictionary meaning. Also ordered that no forest will be delivered for no-forest purpose without the approval of the Central Government.</td>
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<td>World saviors Vs. Union of India and others25</td>
<td>M/s Doon Vally Distillers was not complying with the pollution control standards and as a result, water pollution caused by discharge of effluents to farmers’ lands was likely to cause harm to the subsoil water, since the discharge was beyond the tolerance level.</td>
<td>Under such circumstances, the court was left with no alternative but to direct the closure of the industry.</td>
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<td>T.N. Godavarman Vrs. Union of India &amp; Ors26</td>
<td>Forest conservation, felling of trees and plantations.</td>
<td>Apart from directing the respondents to deposit essential amount of money to the implementation agency for forest development several directions issued including the planting of double trees when felled down for road construction.</td>
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</tbody>
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**NOTES**

1. AIR 1990SC 2060,(Para 8 at Page 2062).
2. AIR 1999 SC 812.
3. AIR 2003 SC 724.( para 17 at page 731)
5. AIR 1959 SC 1271.
6. AIR 1983 Ker 110.
8. AIR 1985 SC 652.
10. AIR 1987 SC 1086.
11. AIR 1988 SC 1037
22. AIR 1999 SC 812.
23. 1992 Supp (1) SCC 44.
Sustainable Development: The Basic Tenet of Environmental Jurisprudence

Due to the industrial revolution, a whole new era of social order had emerged and its requirements were face to face with the environment. A period had come in the history of mankind, wherein development and environment were pitted against each other. At the same time, a new school of thought was germinating which advocated for a harmonious relationship between economic growth and development and environmental degradation. In 1987, the United Nations world commission on environment and development came out with the report Our Common future, commonly known as the Brudtland Report. This report still holds one of the most widely recognized definitions of sustainable development.

Meaning

Sustainable Development is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it, two key concepts:

- The concepts of ‘needs’, in particular, the essential needs of the world’s poor, to which overriding priority should be given;
- The idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.

It would not be out of place to mention here that, much before the rest of the world woke up to environmental consciousness, our father of the nation, Mahatama Gandhi had reasonable apprehensions of Man’s infinite and unending desires, and as such he had opined way back—“Mother Nature has enough for our needs but not enough for our greed”. Mahatma Gandhi might not be an environmentalist in the modern sense, but much before the coining of the term sustainable development by the Brudtland Report, here was this epitome of simplicity who believed, “without the cooperation and sacrifice of both human beings and non-human beings evolution is not possible. Being rational human beings, we are custodians of the rest of the creation and should respect their rights and cherish the Diversity. It is for these reason that taking more than required resources is seen as theft.”

The Gandhian philosophies of gram Swaraj, Swadeshi, non-violence, simple life style were indicative of reducing one’s wants to a minimum, bearing the poverty of the other in mind. In other words, taking minimum from nature and using it in consonance with
the requirements of the needy, the poor, the deprived, the last man in the last row is what the twentieth century defines as sustainable development and which this great genius felt much before.

In *N.D. Jayal Versus Union of India*¹, the apex court opined regarding sustainable development, “It is a guarantee to the present generation and a bequeath to the future generations”.

The Judicial Institutions across the globe have a full commitment to contributing towards the realization of the goals of sustainable development through the judicial mandate to implement, develop and enforce the law, and to uphold the Rule of Law and the democratic process.²

Immediately thereafter, in *Tehri Bandh Case*,³ the supreme court observed that the adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development and went on to declare that, the concept of “Sustainable development” is to be treated as an integral part of “life” under Article 21.

Salient features

The salient features of the principle of sustainable Development has been very elaborately discussed by Justice Kuldeep Singh in the case of *Vellore citizen’s Welfare Forum Versus Union of India*⁴ as the “The Precautionary principle” and “The Polluter Pays” principle.

(A) **The precautionary principle:** The underlying concept of this principle is ‘prevention is better than cure’. This principle involves anticipation of environmental harm likely to be caused due to environmental degradation and taking all possible efforts to avoid it or to adopt a mechanism so as to eliminate such harm. This principle in particular is extremely relevant for industrial owners or manufacturers of hazardous products, who are duty bound to install anti-pollution devices or adequate treatment plants to dispose of pollutant and hazardous wastes detrimental to environmental health.

In *Research Foundation for Science Vrs. Union of India*⁵ the Supreme Court has explained the concept of precautionary principle as an approach to the protection of the environment or human health based around precaution even when there is no clear evidence of harm or risk of harm from an activity or substance. It is a part of the principle of sustainable development, it provides for taking protection against specific environmental risks before specific harms are experienced.

(B) **The “polluter pays” Principle:** The “polluter pays” principle has been officially incorporated in the Environment protection Act 1986 as well as the Public liability
NEWLY BORN CHILD OF JHARKHAND MAY LIVE TO WITNESS THE EXTINCTION OF HUMANS

Insurance Act 1991. The objective behind the principle is to attack the root cause at its source so that it does not result in damaging the environment. The polluting Industry / Unit pays for the expenses incurred in adopting measures to prevent pollution caused by it.

In Indian Council for Enviro-Legal Action Versus Union of India the Supreme Court applied the principle of “polluter pays” and directed the respondents to pay for the removal of sludge deposited on account of the production of ‘H’ acid from the Sulphuric Acid plant of the respondents and also to carry out all necessary remedial measures to restore the soil, water sources and the environment in general to its former state.

However, the “polluter pays” principle cannot be construed to be a ticket for the polluter Industry to cause damage by not following the environmental norms and then made to pay after the damage is caused. In Research Foundation for Science V/s Union of India the Supreme Court has opined that the principle of “polluter pays” does not mean that the polluter can pollute and pay for it.

These two principles are very relevant in the context of the State of Jharkhand, which accounts for nine percent of India’s forests, twenty nine percent of India’s coal and forty percent of its iron ore reserves. The over enthusiastic call of the Government to the mineral industries has resulted in an extraction of the natural resources beyond the sustainable limits and as such, the precautionary principle and the polluter pays principle should be applied liberally by the agencies as well as the courts for the conservation of the environment.

Notes
1. 2004 (9) SCC 362
3. 2004 (9) SCC 362(382).
4. AIR 1996 SC 2715 (2721).
5. 2005(13) SCC 186.
7. 1996(3)SCC 212(Popularly known as H-acid case).
8. Supra. at note 5, para-29 at page 201.
The State of Jharkhand: Environmental Concerns

The word Jharkhand connotes an area of land covered with forests. The word Jharkhand has been derived from the Sanskrit word, Jhari Khanda the ancient name depicting the regions’ dense forest. Thus, naturally as well as symbolically, the states’ very existence is associated with forests. Another remarkable aspect is the presence of various ethnic groups in the region such as Munda, Ho, Oraon, Santhal, Paharia, Chero, Birjea, Asura, Kharia and many others. These indigenous tribes have lived in harmonious relationship with their environment and have developed a culture, which is completely nature-centric. The tribals have a symbiotic relationship with nature as is reflected from the festivals like Karma and Sarhul, wherein trees are worshiped. Since these aboriginal races are closely connected with nature, the large scale exploitation of natural resources has not only had an adverse impact on the environment, but has also drastically affected their lives.

Rich Mineral Resources: Bane or Boon

Boon: The State of Jharkhand has immensely rich mineral resources amounting to approximately 50% of the countries’ resources. Minerals like iron ore, coal, copper, mica, bauxite, manganese, lime stone, uranium and many more are found in abundance in the State. Several Steel giants, Thermal Power Generation Units and aluminum plants are dependent on supply of iron, coal and bauxite available in the State. Massive Industrialization, a booming economy and employment opportunities are some of the boons of being a mineral rich state.

Bane: Unfortunately, being rich in mineral resources did not aid to its growth rather, it destroyed the basic essence of the State, i.e. its rich greenery, flowing streams, virgin waterfalls and rare wild animals. Uncontrolled mining and the greed to extract more and more from the Earth has not only destroyed the forest area, but also the wild life and the livelihood of the tribal communities, who are fully dependent on the forests. The density of Saranda Forest once popularly known as a forest where the sun rays had difficulty in penetrating and where the elephants had a cozy habitat is decreasing day by day. Mining can never be a innocuous activity. Unless the mining activities are checked, carefully planned and executed they are bound to ruin the land, water, forest and air. Due to haphazard mining, rich forests and agricultural lands of the indigenous tribals is lying waste. Due to open cast mining operations, there has been and alteration of soil profile and degradation of the productive capacity of the lands. During production,
coal carries methane gas which can ignite spontaneously. Since, the last 70 years, an underground fire has raged in the Jharia Coalfields, burning millions of tones of coal.

Due to unsustainable mining of natural resources, the Bio-diversity in the State has been badly affected. Due to decreasing forest area, the number of elephants, tiger, leopard, sloth bear and other such animals is decreasing day by day. Large scale mining operations have adversely affected ground water table. Damodar, once consider a sacred river by the tribals is a black shrunken sewage cannal filled with filth and contaminated with toxic materials like arsenic, mercury, fluoride and lead. The water of Damodar was once the support system of the local inhabitants, but now it can neither be used for drinking nor for bathing. Similarly, Subarnrekha which means streak of gold was the lifeline of tribal communities, but is now a recipient of domestic, industrial and radioactive pollution. Once home of rich aquatic life and fishery, today has very little to offer to those who live around her. Due to the uranium mining in Jadugora, the people in the area are affected by the radiation and are falling prey to innumerable diseases like fatigue, lack of appetite, thalassemia, downs’ syndrome, skeletal deformities and many more.

Unfortunately, much has not been done on behalf of the State to combat the pollution or to protect and preserve the rich natural heritage, which is the symbolism of the State. Till the recent past we have seen that the Pollution Control Board, which is the major stake holder in matters concerning environment was defunct in the State and was an office probably only to fill-up political vacancies. The lethargic attitude of the Pollution Control Board is apparent from the Saga of pollution related activities spread across the State. It is high time that the watch dog of the environment wakes-up to the call of nature and realizes that they are accountable and answerable, if pollution is not being checked and the environment at large is suffering.

As per the report of the Centre for Science and Environment (CSE), a horrific picture of devastation has been wrought by mining in the country. The statistics of the report reveal a shocking and alarming situation:

- Between 1950 and 1991, mining displaced about 2.6 million people – not even 25 percent of these displaced have been rehabilitated. About 52 percent of these displaced were tribals.

- For every 1 percent that mining contributes to India’s GDP, it displaces 3-4 times more people than all the development projects put together.

- Forest land diversion for mining has been going up. So has water use and air pollution in the mining hotspots. An estimated 1.64 lakh hectare of forest land has already been diverted for mining in the country. Iron ore mining in India used
up 77 million tone of water in 2005-06, enough to meet the daily water needs of more than 3 million people.

• Mining of major minerals generated about 1.84 billion tone of waste in 2006 most of which has not been disposed off properly. Coal mining has been the chief culprit: every tone of coal extracted generates 3-4 tone of wastes.

In Jharkhand, rampant mining has turned large tracts of forests into wasteland. According to the Union Ministry of Environment and Forests, between 1985-2004, more than 9,000 hectare of forest land had been diverted for mining in the state. This was approximately 10 percent of the total forest and diverted for mining in India- and this did not include the thousands of hectares diverted by the coal mining sector.

Naturally, Jharkhand’s people, who include, the fifth highest concentration of forest-dwellers and tribals in the country, have been badly hit. It is estimated that 55 percent of the people displaced due to mining in the state are tribals. Says the CSE report: “The very people for whom Jharkhand was ostensibly created are now being sacrificed in the name of their own state’s development”2.

The Jharkhand High Court being the highest court of the land could not have sat with closed eyes over the massive environmental destruction and in a series of public interest litigation, at times suo-moto and at times on the call of public spirited citizens has taken cognizance of environmental issues and has directed the State Government to perform its statutory duties.

The enviro-social activities of the Jharkhand High Court are being discussed in the following pages.

1. CSE report released by Governor of Jharkhand on 28.01.2008.
2. Ibid.
Enviro-social litigations of Jharkhand High Court

Prevention of the discharge of sewerage & other hazardous effluents into the Harmu River

[W.P. (P.I.L.) No. 3585 of 2002 (Rakesh Kumar Jha Vrs. The State of Jharkhand & Ors.)]

Brief facts: The Jharkhand State Housing Board which provides housing facilities does not have an effective sewerage system and as such, the entire sewage and other hazardous effluents is discharged into the Harmu River. This Public Interest Litigation was filed immediately after the formation of the new State for a direction upon the JSHB, the Municipal Corporation, RRDA, and the Pollution Control Board, to provide an effective sewerage system.

Environmental damage: The hazardous effluents which are discharged into the Harmu River are carried by the same and its tributaries into the Getalsud Reservoir which is a major source of drinking water supply to the town of Ranchi. Thus there was risk of people of Ranchi being exposed to contaminate drinking water.

Judicial Cognizance: The Hon’ble Court issued following directions by way of an interim measure:

(i) The State of Jharkhand represented by the Chief Secretary to the Government is directed to ensure that the Environment Protection laws enacted in public interest are strictly enforced in the State with a view to protect the environment and public health.

(ii) We direct the Jharkhand State Housing Board to ensure that no Housing Colony is planned or created by it without first ensuring that adequate provisions are made for prevention of pollution in terms of the Environment Protection Act; the Air Act and the Water Act and that where they have already brought into existence colonies, adequate and immediate steps be taken to prevent air, water and noise pollution.

(iii) We direct the Ranchi Regional Development Authority and other Regional Development Authorities in the State not to permit any construction or setting up of any industry, without first ensuring that adequate provisions are made for protection of the environment and to avert and avoid air and water pollution. The Regional Department Authorities will also ensure that the provisions of the Regional Development Authorities Act and the Rules
under it are fully enforced and no construction in violation of the said Act or the Rules is permitted.

(iv) We direct the Ranchi Municipal Corporation and other Municipal Corporations and Municipalities to take steps to ensure that within their respective areas of operation, all steps contemplated by the Environment Protection Act, the Air Act and the Water Act are taken and that the duty of the Cooperation under the Municipalities Act or Municipal Corporations are duly and properly performed so as to maintain health and prevent pollution.

(v) We direct the Jharkhand State Pollution Control Board to take rigorous steps to enforce the provisions of the Environment Protection Act, the Air Act and the Water Act and the Noise Pollution Control Rules in whole of the State and also launch prosecutions under the various Act against persons, authority or statutory bodies who are found to violate the various pollutions control enactments or Rules. The Pollution Control Board is also directed to ensure that no industry is permitted to be established or set up within the State without ensuring that adequate pollution control measures as contemplated by the various Acts are adopted by the concerned industry”.

Steps Taken:

The P.I.L. was disposed off on 28.04.2008 on the assurance of the State Government that the directions of this Hon’ble Court are being complied and State is taking all necessary effects and measures to comply the direction of this Hon’ble Court. However, after three years, the pitiable condition of the water bodies in the State of Jharkhand came to the notice of this Hon’ble Court vide newspaper report and once again the Hon’ble Court took cognizance of the matter vide W.P. (P.I.L.) No. 1325 of 2011 and since this Hon’ble Court’s orders were not complied with by the State Government, notices of contempt were issued vide order dated 01.04.2011 in W.P. (P.I.L.) No. 1325 of 2011.

The P.I.L. No. 1325 of 2011 is pending, but P.I.L. No. 3585 of 2002 has been directed to be tagged along with P.I.L. No. 1325 of 2011. The matter concerning pollution of rivers is pending and is being keenly monitored by the Jharkhand High Court.
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Emission of Methane gas from the tube wells of Chandankiyari Block of Bokaro District


Brief facts: On 01.02.2008, a memorandum of understanding was entered into between Electro Steel Integrated Ltd. and the State of Jharkhand in order to Industrialize the State and to provide job opportunity for the common masses. In paragraph 4.4 of the MOU, it has been mentioned that “The State Govt. will permit drawl of required quantity of water for proposed integrated steel plant as well as the captive minds from the nearby river, dam and/or reservoir in accordance with the rules, policies and tariff rates fixed from time-to-time by State Govt. and within the overall allocation of water earmarked for industrial/commercial use. If the unit desires to meet the water requirement through tube well, the company shall also make necessary provisions required for recharging the ground water in its premises and shall be subject to provision of any legislation for the purpose and it has also been mentioned in paragraph no. 4.6 about the safeguard of the environment by the company”. As per the MOU, the company had to make necessary provisions required for recharging the ground water in its premises and for doing so the company has been allowed 8-10 tube wells throughout its area, but the company has dug not less than 250 tube wells in absolute contravention of the MOU and the NOC granted by the State Govt. to the company. As per the clearance given by the Pollution Control Board, the company was supposed to do 100% rain water harvesting and was to maintain the quality as well as the level of the ground water intact, but it has been overlooked by the company.

Environmental damage: As a result of the callous attitude of the company and overlooking of the terms and conditions of the MOU as well as the NOC, excess exploitation of ground water has been done by the company as a result of which, the water table has collapsed from 80 feet to 200 feet and due to this act of company, the water available in the cracks of the rock exploited by deep boring has caused replacement of water by methane gas and every day the residence are getting burnt and injury is being caused due to fire in their hand pumps and tube well.

Judicial Cognizance: Looking to the gravity of the matter, this PIL was entertained by this Hon’ble Court, the Principal Chief Conservator of Forest, Van Bhavan, Ranchi and Director General of Mines (Safety), Dhanbad, were directed to conduct a physical
verification of the area concerned and submit a report whether the methane gas emission is due to the uncontrolled blasting and whether such emission of methane gas is affecting the people living in and around the vicinity of the Electrosteel Steel Ltd./Electrosteel Casting Ltd.

**Steps taken:**

In-compliance of the Hon’ble Court’s order, a detailed report has been submitted, but the cause of methane gas emission has not been ascertained. It has further been directed to the authorities to find out the reason for the emission of methane gas.

The matter is pending before the Hon’ble High Court and is being monitored.

**Disappearing of hills due to illegal mining**

(Court on its own motion Vrs. The State of Jharkhand & Ors.)]

**Brief facts:** On 23.04.2015, a leading news paper “Prabhat Khabar” came out with a headline that 38 hills have disappeared from five different districts of State of Jharkhand. The News Paper reported that without permission mining activities are being carried out in more than five districts such as Latehar, Gumla, Lohardaga, Koderma, Sahibganj and Hazaribag. It was also reported that if no preventive steps will be taken immediately another 24 hills are likely to be vanished in the near future. The Hon’ble High Court of Jharkhand, on the basis of aforementioned news suo-moto took cognizance and treated this news paper publication as a public interest litigation.

**Environmental damage:** Since Jharkhand is known for its forests and natural beauty and the existence of various tribes whose way of life is connected with hills in as much as they worship hills and mountains since thousands of years and their life circle is very much connected with the hills, mountains and the forests. Many small rivers flow through such hills and mountains and if there will be no hills, it will seriously hamper the tribal way of life and in fact, their entire existence, which is very much nature oriented shall be endangered.

**Judicial Cognizance:** The Hon’ble High Court has taken a strict note of the fact that in spite of task force constituted by the State, way back in the year 2005, illegal mining has not been stopped causing serious damage to the flora and fauna of the State. The Court directed:
(i) Closure of all mining operations being carried out without a lease / without valid consent to operate. In this regard, State and JSPCB shall file action taken report on or before the next date of hearing.

(ii) State is directed to produce a complete list of all the leases of minor mineral with the following details (district wise)

(a) Lease date
(b) Approved mining plan
(c) Environmental clearance
(d) Forest clearance

(iii) JSPCB is also directed to produce the details of holders of valid consent to operate in the entire State of Jharkhand with specific details of date of issue and date of expiry as also apprising the court as to what steps have been taken by JSPCB to ensure that the terms and conditions are being complied with.

(iv) State Government is also directed to inform the Court on the action taken by it in compliance to the direction of the Hon’ble Supreme Court judgment rendered in the case of ‘Deepak Kumar Vs. State of Haryana’ reported in 2012 (4) SCC 629.

Steps taken:

The State Government thereafter, woke up from its deep slumber and came out with a 10 Point action plan and notified it by resolution vide Gazette No. 486 dated 09.07.2015, which is briefly given below:-

(I) For identification of illegal mining sites, list of all lessees and registered mineral dealers shall be sent by the concerned District Mining Officers to respective Deputy Commissioners, Superintendent of Police and Divisional Forest Officers within 10 days from the date of notifications.

(II) Initially the District Taskforce will make continuous raids and inspections for 3 months 10 check illegal operation in the field of mines, mineral, transportation etc. and the concerned department who are also the member of the taskforce shall initiate action in accordance with provisions laid in their rules. The Action Taken Report shall be submitted to the Mines Department on monthly basis.

(III) The District Mining Officer shall submit a report to the Energy Department for cancellation of Electrical Connection of unregistered mining lease / mineral trader sites.
(IV) The District Mining Officer shall issue NOC before approval of mineral based industry or business.

(V) Respective Deputy Director, Mines shall make surprise inspection / raids for a minimum of 5 days in a month jointly with the District / Assistant Mining Officers.

(VI) The District Taskforce shall maintain regular vigilance on the sensitive areas.

(VII) The District Taskforce shall submit an Action Taken Report (ATR) through the Divisional Commissioner on steps taken for curbing illegal mining / storage / trade.

(VIII) The State Level Taskforce shall also inspect any district on quarterly basis.

(IX) Persons / establishments found convicted by any court of law shall be debarred to obtain mining leases / licences.

(X) The Commercial Tax Department shall send TIN No. of traders / lessees on quarterly basis to the District Mining Offices for verifications so that persons engaged in illegal generation of e-challan are identified for taking suitable actions. During the pendency of the case, several mines which were operating illegally and without a valid licence have been closed down and F.I.Rs. have been lodged against the persons involved in illegal mining.

The matter is still pending and is being monitored by the Hon’ble High Court of Jharkhand at Ranchi.

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**Encroachment of River Banks & their Pollution**

[W.P. (P.I.L.) No. 1325 of 2011 (Court on its own motion Vrs. State of Jharkhand & Ors.)]

**Brief facts:** On 09.03.2011, a report was carried out by the daily newspaper ‘PRABHAT Khabar’ that the banks of rivers are being encroached resulting into their degradation and drying up of the rivers.

**Environmental damage:** This was an alarming situation, since, the very existence of the name of the State of Jharkhand is dependent on the existence of forest. If the rivers are treated in the way in which they are being treated presently the forest will be at loss and the very significance of the name of the State will be in jeopardy. If encroachments are permitted on the banks, not only the rivers’ existence will be in
danger, but its natural ambiance will be lost which a river can otherwise give to the city for a better and nicely inhabited human habitation.

**Judicial Cognizance:** The Hon’ble High Court exercising power under Article 51-A of the Constitution of India, treated the news paper report as public interest litigation and issued following directions to the concerned authorities:

1. The position regarding availability of water in the State of Jharkhand and the sources of water in the State of Jharkhand.
2. The average supply and consumption of water in the State of Jharkhand.
3. The details of encroachments in and around banks of rivers, ponds and dams.
4. The other persons as to why the water sources are drying up.
5. The proposed action to be taken for ensuring adequate water in rivers.

**Steps Taken:**

During one of the court proceedings, Tata Steel came forward and deposed that it is no more dumping the slag in the river bed area and they are still of the same stand and an undertaking was also given on behalf of the Steel Company that they will not dump the slag or any pollutant in the river nor put it in the bank of the river anywhere. Some remedial measures in public interest were also suggested to M/s Tata Steel for compensating the damage which has been already caused. Thereafter various meetings were convened under the Chairmanship of the Chief Secretary, State of Jharkhand and nine issues have been considered, which are being addressed by the respective authorities and bodies and which are:

1. The Jharkhand Pollution Control Board is to examine the road map and submit report to the Chief Secretary.
2. The Principal Secretary, Forest and Environment is to direct to review the action taken by the Jharkhand Pollution Control Board.
3. The report of the Pollution Control Board submitted to the Chief Secretary, indicates that river water is being polluted due to flow of municipal waste and therefore the Secretary, Urban Development Department, has been directed to ensure effective measures to protect flow of municipal waste to the river and alongwith that it has been directed to prepare and Action Plan to conserve the rivers of the State.
4. The river banks of Subarnrekha and Kharkai have been made free from encroachment and boundary walls have been constructed to protect waste materials from being mixed in the river water.

5. The Central Water Commission is taking measures to examine the matter of disturbance of hydrology of Subarnrekha and Kharkai rivers due to slag dumping by Tata Steel Company and the Hydrology Directorate in consultation with Mahanadi and Eastern River Organization, C.W.C., Bhubneshwar, have been requested to examine the issue and submit the report.

6. The Pollution Control Board has been directed to examine the level of pollution in different places of Damodar River.

Apart from these, the subsequent court proceedings reveal that Union of India was directed to consider the sanctioning of amount for the project of ‘Solid Waste Management’. The State of Jharkhand and the Union of India are working in consonance, so that the Municipalities get their sewerage projects and the rivers are prevented from being polluted by dumping of garbage.

The matter is still pending before the Hon’ble High Court of Jharkhand and is being monitored by the Hon’ble High Court of Jharkhand.

**Disposal of Bio-Medical Waste**

(Jharkhand Human Rights Conference Vrs. The State of Jharkhand & Ors.)]

**Brief facts:** The petitioner, a registered society filed this Public Interest Litigation for a direction to the respondents to take appropriate steps for implementation of the Bio-Medical Waste (Management and Handling) Rules, 1998, enacted under the provisions of Environment (Protection) Act, 1986, for proper management and handling of Bio-Medical Waste being generated in the State of Jharkhand including the Districts of East Singhbhum and to take appropriate steps against the erring Nursing Homes / Hospitals.

**Environmental damage:** Scientific study shows that Bio-Medical Waste is one of the most serious and hazardous pollutants and it can produce large number of infectious diseases which would be very harmful to the humanity at large. Due to this, it is mandatory that such Bio-Medical Waste is dealt with strictly in accordance with Rules of 1998 to ensure that Bio-Medical Waste does not cause any injury to public health and environment.
Judicial Cognizance: The Hon’ble High Court considering the involvement of vital public interest in the P.I.L. and finding no definite answer from the State regarding total number of Hospitals, Nursing Homes, Clinics, Dispensaries, pathological Laboratories and Blood Banks, etc. which were generating Bio-Medical Waste directed the Member Secretary of the Jharkhand State Pollution Control Board to:

(a) To give details about the total numbers of Hospitals, Clinics, Dispensaries, Veterinary Institutions, Animal Houses, Pathological Laboratories and Blood Banks both private and public with the name of their occupier, addresses and if possible with landline telephone numbers.

(b) Enquire whether every occupier as defined under Rule 3 (8) has set-up the requisite Bio-Medical Waste Treatment Facilities like incineration, auto clave, micro web system extra.

(c) Whether every occupier / operator is submitting the annual report to the prescribed authority in form no. (ii) by 31st of January every year regarding the categories and quantities of Bio-Medical Waste handled during preceding year.

Steps Taken:

Due to awareness drive carried out by the State through print and electronic media 4613 clinics have got themselves registered under the Jharkhand State Clinical Establishment (Registration and Regulation) Rules, 2013, as on 08.09.2015 in comparison to 3797 on 27.07.2015, and as such, there has been an increase of 800 registrations.

Another major step was taken by the Ranchi Municipal Corporation which has identified the land duly approved by the State Pollution Control Board for setting-up of a common incineration plant for dumping of the waste material.

The Hon’ble Court has further directed the Member Secretary, Jharkhand State Pollution Control Board for filing an action taken report in this regard not only in reference to Ranchi, but also of Jamshedpur and Dhanbad.

The matter is still pending before the Hon’ble High Court and is being monitored.
Occupational Health & Safety Measures of Coal Fired Thermal Power Plants (CFTPPs)

[W.P. (P.I.L.) No. 1073 of 2014
(Court on its own motion Vrs. The State of Jharkhand & Ors.)]

Brief facts: This Public Interest Litigation found its way to the Hon’ble Jharkhand High Court in compliance of an order passed by the Hon’ble Supreme Court of India in W.P. (C) No. 79 of 2005, dated 31.01.2014, wherein the different High Courts of the country were directed to examine the issue of safety standards and the Rules and Regulations relating to the health of the employees working in various Coal Fired Thermal Power Plants (CFTPPs) situated in their respective jurisdictions.

Environmental damage: As per the reports submitted by the National Institute of Occupational Health (NIOH) titled Environment, Health and Safety issues in Coal Fired Thermal Power Plants of the year 2011, the occupational exposure to high heat in different Thermal Power Plants may cause heat related disorders like heat exhaustion. Noise and vibration exposures in high doses than the permissible limits may result in noise induced hearing loss, raised blood pressure, regional vascular disorders, musculo-skeletal disorders, human error, productivity loss, accidents and injuries. Different chemicals such as chlorine, ammonia, fuel oil, used in the CFTPPs may be responsible for wide range of acute as well as chronic health impairments. Due to the emission of polluting gasses such carbon dioxide, sulfur dioxide, oxides of nitrogen and other such gasses, the air pollution around any thermal power plant is deteriorated and apart from the population surrounding the power plant, the agriculture and wild life of the area may also be affected.

Judicial Cognizance: The Hon’ble High Court took cognizance of the matter and issued notice to the different stake holders and on the last day of hearing i.e. on 22.09.2015, constituted a High Power Standing Committee to implement the safety norms in order to prevent occupational hazardous in CFTPPs in the State.

Steps to be Taken:

(i) The Chief Secretary of the State is to allocate a fund of Rs. 25 lacs for running the operation of the High Power Committee formed by the Hon’ble High Court.

(ii) The High Power Committee is to be headed by the Chief Secretary and the Principal Secretaries of Department of Labour, Health, Industries and Energy are to be its key members along with the Chairman of the Jharkhand State Pollution Control Board.
(iii) The Court enjoined Regional Occupational Health Centre (ROHC) which is a Pioneer Institute based at Kolkata, which deals with studies pertaining to occupational risks and dangers. The ROHC has been directed to physically survey the 21 odd Power Stations and captive Power Plants in the State and thereafter shall prepare a report of the same.

(iv) The Bench further observed that the Committee will hold periodic reviews of the environment, health and safety of CFTPPs and will also suggest for continual improvement of the environment.

(v) The State Government was further directed to ensure that proper infrastructure and logistic support is extended to the ROHC team, so that proper inspection of the CFTPPs in the State can be done.

The matter is still pending before the Hon’ble Court and is being monitored.

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**Closure of “coal siding” in the green belt of McCluskiganj**

[W.P. (P.I.L.) No. 6525 of 2013
(Glen Josheph Galstaun Vrs. The State of Jharkhand & Ors.)]

**Brief facts:** McCluskiganj also known as Mini Landon is the only Anglo Indian village of the world. It has rich natural heritage. Due to its flourishing flora and fauna, tourists in large number visit this place. The key point of the small village is its closeness to nature. However, the Railways decided to open their coal siding at McCluskiganj, which will not only disturb the ecological balance of the green belt, but will also destroy this storiically important place.

**Environmental damage:** Since McCluskiganj is a tourist spot only because of its greenery and historical important, the opening of the railway siding will inherently cause ecological disbalance as the dust particles emitted are seriously going to affect the natural surroundings of the area and shall cause enormous damage to the Flora and Fauna.

**Judicial Cognizance:** The Hon’ble Court issued notice to the concerned respondents and directed the Pollution Control Board to file necessary criminal complaint under Section 22 (A) of the Air (Prevention and Control of Pollution) Act, 1981, and Section 5 of the Environment (Protection) Act, 1986, against the Erring Officers of the Railways.

**Steps Taken:**
(i) Complaint case against the Erring Officials of East Central Railway, Dhanbad, and M/s. Balajee Transport and Railway Pvt. Ltd., Barakar, West Bengal, has been filed in the Court of Chief Judicial Magistrate, Ranchi, vide Case No. C III- 34/15.

(ii) The Railways have stopped the construction of coal siding in the green belt of McCluskiganj and hence the rich natural heritage of this ‘Mini London’ will remain intact.

**Threat to the residents of Kariyama Village by the proposed ash-pond near the residential locality**

[W.P. (P.I.L.) No. 3659 of 2015 (Kaleshwar Singh & Others. Vs. The Union of India & Ors.)]

**Brief facts:** Due to the construction of the ash-pond of Koderma Thermal Power Project within 100 feet from the residential area of the village, the very existence of the villagers has come under threat and as such, this Public Interest Litigation was filed for restraining the respondents from dumping the waste / fly ash in the proposed ash-pond or the village pond.

**Environmental damage:** The pollution caused by ash-pond is likely to cause several diseases as the ash pond is situated only 100 feet from the residential area and it endangers the physical and mental health of not only the villagers, but also the domesticated cattle and other animals of the village. Apart from this, the agricultural lands on which the villagers are dependent shall also be polluted as coal ash contains high level of arsenics lead selenium, mercury and other such toxic heavy metals.

**Judicial Cognizance:** The Hon’ble Court issued notice to all the stake holders and a detailed report is awaited.

**Steps Taken:**

The P.I.L. is as its preliminary stage, wherein the respondents have been directed to file reply. The matter is pending and is being monitored by this Hon’ble Court.
Rehabilitation of ousted tribals

(Rajmahal Pahar Bachao Andolan Vs. The Union of India & Ors.)]

**Brief facts:** The Government of Jharkhand had acquired 674.02 hectares of agricultural lands and around 400 hectares of forest land situated in Pachuwara Central Block in the district of Pakur and had given the same on lease to Penem Coal Mines Ltd. for captive mining. The acquired lands fall within 9 villages and the petitioner is recognized by its President namely Binej Hembrom, who is the parganeith of those 9 villages. A Memorandum of Understanding was arrived at between the petitioner and Penem Coal Mines Ltd., wherein it was stated that the tribal people shall retain absolute ownership over the acquired lands and as soon as the excavation in one village is over, the company shall refill and re-level the lands in question and make them in a cultivable condition by making its top soil free from rocks and other substances. Apart from this various other measures were to be taken by the company to rehabilitate the tribals whose land had been acquired. However, it was contended that even after the passage of 7 years, the company has completely failed to give effect to the terms and conditions of the Memorandum of Understanding and the socio-economic justice of the tribals has been denied to them.

**Environmental damage:** The non-relevelling and refilling of the excavated land has resulted in making the lands non-cultivable. The common grazing field for every village required for grazing animals has resulted in deterioration in the number of cattle. The non-planting of tree saplings is making the area barren and as promised by the company three times water is not being sprinkled as a consequence of which the coal dust get spread to nearby paddy fields adversely affecting fertility and health of the tribal people.

**Judicial Cognizance:** The Hon’ble High Court has directed the concerned authorities to submit a detailed report regarding the implementation of the MOU.

The matter is still pending and is being monitored.
Felling of trees for Road Construction (Environment Protection)

(Court on its own motion Vrs. State of Jharkhand & Ors.)]

Brief facts: On 23.06.2014, a report was published in daily Hindi News Paper ‘PRABHAT Khabar’ that the thousands of trees are being cut fearlessly for Road Construction and after cutting, saplings are not being planted. The Hon’ble High Court vide order dated 14.07.2014, suo-moto has taken cognizance into the matter and W.P. (P.I.L.) No. 3503 of 2014 was registered.

On 09.06.2015, when Hon’ble Mr. Justice P.P. Bhatt was returning from Birsa Munda Airport, he saw large number of trees being cut-down in Doranda area for construction of road. Suo-moto cognizance of the matter was taken and the engineers of the concerned departments were called and thereafter W.P. (P.I.L.) No. 2470 of 2015 was registered and was tagged alongwith W.P. (P.I.L.) No. 3503 of 2014.

Environmental damage: A tree thus felt resembles like cutting a man. However, trees for generations and especially in Jharkhand are not only a means of living, fire wood, but most and mainly a means of providing oxygen which is essential for mankind to grow. A survey was done, and it was found the trees are being felled in most illegal fashion by the Road Construction Department in the name of widening of roads. Ranchi was once called the summer capital of the State of Bihar. This city had not seen fans leave alone air conditioners. However, the city has seen a mushroom of growth in multi-storeyed apartments, shopping malls etc. There is no water harvesting worth its name, nor is there any plantation. Encroachment is at ultimate, not only do people and builders in specific adhere to setbacks. Rather, they build on the roads. The main issue would be to set back the encroachments and when the roads are made free from encroachments, tree plantation can be done.

Judicial Cognizance: The Hon’ble Supreme Court of India, while considering a similar question in a case reported in (2013) 11 SCC 466 (T.N. Godavarman Thirumulpad Vs. Union of India & Ors.), directed the National Highway Authority of India to plant twice number of trees for every tree felled by them and also directed to maintain those trees for five years or deposit amount for maintenance of those trees. The High Court exercising power under Article 51-A of the Constitution of India, treated the news paper report as public interest litigation and issued following directions to the concerned authorities:
1. Road site plantation on all the National Highways located / situated in the State.

2. State Highways road site plantation on all the State Highways.

3. Road site plantation on city / town roads.

4. Road site plantation on village roads.

5. Tree plantation should be made in all Government office premises.

6. Tree plantation should be made in all school premises of the State.

7. Tree plantation should be made in all public / charitable institutions with the following logo:

8. Tree plantation should be made in the campus of Non-Governmental Organizations.

9. Tree plantation should be made in all the court complexes of the State.

10. Green belts are required to be developed in each and every town/city.

11. Parks and gardens are also required to be developed in all the cities / towns of the state with the following logo:

12. Extensive tree plantation should be done at the site of new High Court Complex, New Site of Vidhansabha and at the proposed site of New Sachivalaya Complex.

13. More number of trees should be planted in and around the complex of Government Hospitals, Primary Health Centres (PHCs) etc.

14. Tree plantation should be made in the Recreation Centres in the City/town.

15. Tree plantation should also be made extensively in Army Cantonment area.

16. Tree plantation should also be made in and around village / gram panchayats as well as community centres (Samudayik bhawan), Anganwadi, Pragya Kendra, etc.

17. Tree plantation should be made in all Government /semi Government institutions at block level also.

18. Likewise tree plantation should also be made at the district Headquarters.

19. Extensive plantation should be made in mining areas.

20. For the purpose of developing and maintaining saplings, the nurseries be developed in all the districts of State of Jharkhand.
21. Bio-diversity Park / Botanical Park, as it has been developed at the Ring Road, Ranchi, be also developed in the other parts of the State.

22. As a part of Awareness Campaign for saving and protecting the trees, the concerned department may also place some Hording Containing SLOGANS with pictures, some of which are as depicted in the order itself, at the conspicuous places in the city of Ranchi and other towns of the State.

23. To take necessary steps for plantation of the trees in the afore-narrated manner and procurement of required machines for re-plantation of the trees.

24. The State Government will follow judgment delivered by the Hon’ble Apex Court and the guidelines issued by the Ministry of Forest and Environment from time-to-time in this regard strictly.

25. Henceforth all proposals for cutting / removal of trees received in the office of the D.F.O’s of the State shall not be sanctioned in a mechanical manner.

The State of Jharkhand has been directed to resolve that all such proposals before being approved by the competent authority, shall be referred to and scrutinized by the high power committee, consisting of (i) Chief Conservator of Forest, Ranchi (ii) Superintending Engineer, RCD, Ranchi (iii) CEO, RMC, Ranchi, (iv) Vice-Chairman, RRDA, Ranchi (v) Representative of the Requisitioning Deptt. and (vi) D.F.O., Ranchi, East. The terms of the reference of this committee shall be as follows:

(i) To Scrutinize the project in detail and see if it is indispensable to execute the project or not.

(ii) To scrutinize and examine whether an alternative site or alignment is feasible that can minimize the number of trees that are proposed to be felled.

(iii) Suggests the site and number of compensatory trees that must be planted by the requisitioning department.

The Hon’ble High Court has further directed that the committee must hold its meeting within a week of the receipt of the proposal as far as feasible, the site must be inspected by the Committee before formulating its opinion on the issue. The competent authority i.e. DFO, Ranchi East, shall act on the recommendations of the said committee. The permission granted by the DFO shall be reviewed by the High Power Committee as mentioned herein above.

For the purpose of taking extensive tree plantation programme, the concerned department of the State Government shall organize appropriate programmes to sensitize their officers and organize awareness campaign / programme to make public aware. The corporate sector be also involved and given certain responsibilities for such
programmes as a part of corporate – social responsibilities. The concerned department may also involve non-Governmental Organizations (NGOs) for the purpose of tree plantation programmes and for development of Nature Park, such as NCC Cadets & N.S.S. Volunteers, Rama Krishna Mission and such other reputed Non-Governmental organizations working in the field of environmental protection. The school teachers, students and para-legal volunteers of the Jharkhand State Legal Services Authorities (JHALSA) may also be involved in such campaigns.

Steps taken:

After the direction of this Hon’ble Court, the different departments of the Government have been collaborating and a detailed report comprising of the progress / steps taken is to be submitted before the Hon’ble Court.

The matter is still pending before the Hon’ble High Court of Jharkhand and is being monitored.

Air Pollution (Implementation of Environmental Protection Act, Rules & Motor Vehicles Act)

(Rajneesh Misra Vrs. State of Jharkhand & Ors.)]

Brief facts: Urban travel mode in Indian cities is a predominant composition of walking, cycling, organized Public Transport (Bus, local / ring Trains and Metros) and Intermediate Public Transport (IPT) i.e. taxis, auto rickshaws etc.). The variation within these four is a function of city size and per capita income. In big cities, auto rickshaws play a role of a feeder service to organized public transport (bus, trains or Metro); in medium sized cities, auto play a larger role due to absence or inefficient public transport; and in smaller cities they are solely responsible for catering to public transport needs. Some auto rickshaws provide taxi like services which are flexible door to door and are demand based. In some cities, bus like service is provided by shuttle auto rickshaws in that they have fixed route and have intermediate stops for boarding and alighting. Some of the benefits of auto rickshaws are mobility and connectivity, source of employment, complementarities role, efficient, low-cost service and market responsive. Public transport systems in cities have not been able to keep pace with the rapid and substantial increases in demand over the past few years. As a result, people have turned towards personalized modes such as mopeds, scooters, motorcycle, and cars and intermediate public transport modes such as auto-rickshaws, tempos, and taxis. Cities cannot afford to cater only to the private vehicles and there has to be a general
recognition that policy should be designed in such a way that reduces the need to travel by personalized modes and boosts public transport, particularly bus and metro transport system. Much needs to be done if public transport is to play a significant role in the life of a city. The problem of acute road congestion, rising air pollution, and a high level of accident risk faced in cities of the State are assuming serious proportions and is a crucial factor in the perception of poor quality of life by the denizens of the city.

The Public Interest Litigation has been filed seeking a direction to the Government to forthwith implement the direction of the Central Government, issued under the Environmental Protection Act, all the Rules, the Air (Prevention of Pollution) Act, and also under the Motor Vehicles Act, so that the cities of the State can be free from pollution.

**Environmental damage:** Although Indian Cities lower vehicle ownership rate than their counterparts in developed countries, they suffer from more congestion, delay, pollution, and accidents than the cities in developed countries. The problem of congestion and delay is not only faced by metropolitan cities only but also by most of the cities which indicates both the amount of time and energy that are wasted and the scale of opportunity for improvement. A high level of pollution is another undesirable feature of overloaded streets. The transport crisis also takes a human toll. Statistics indicate that traffic accidents are a primary cause of accidental deaths in the Indian cities including the State of Jharkhand. The main reason for all these is the prevailing imbalance in modal split, besides inadequate transport infrastructure and its sub-optimal use (Since, 2008). The Cities of the State are facing serious environmental problem due to growing air pollution caused by fuels used in vehicles. Atmospheric pollutants commonly associated with motor vehicles are nitrogen oxides, hydrocarbons, carbon monoxide, sulphur oxides, and Suspended Particulate Matters (SPM). Pollutants from vehicular emission have various adverse health effects (refer Table 3). A report by Central Pollution Control Board in 2009 states that of a total of 127 cities monitored under the National Air Quality Monitoring Programme, only 3 have low air pollution, and 101 cities report at least one pollutant exceeding the annual average air quality standard.

**Judicial Cognizance:**

The Hon’ble High Court gave the following directions:

(i) The State Government to implement the Act and Rules strictly. This Hon’ble Court further directed the Transport Department to furnish the details of the vehicles whose registration have been suspended, and actions have been taken under the Rules.

(ii) The Main Road, Ranchi, declared as ‘No Parking Zone’.
(iii) A committee consisting of a retired High Court’s Judge being the Chairman, and the Senior Officers of the State, being the Members, be appointed, who shall find out the suitable places in the Ranchi Town and will prepare scheme for settlement/rehabilitation of the hawkers.

(iv) The Union of India has been directed to obtain instructions initially from the Ministry of Petroleum, Government of India, as to which department or Ministry of the Central Government is empowered to decide the spread of uses of CNG in place of polluting fuels and whether the said department or Ministry has made any survey of the levels of pollution in the various cities of the country for taking a decision as to which city of which State in the country should get priority for supply and uses of CNG.

(v) In the drive for removal of encroachments, the petitioner has been directed to take a weekly videography of the roads and lanes where the encroachments are rampant.

(vi) The Banks and commercial organizations have been directed to remove illegal occupation of spaces, meant for parking.

(vii) The Union of India has been directed to seek instruction from the Ministry and to find out the possibility of CNG outlets in the city of Ranchi as this type of opening in Delhi has a great success.

(viii) The Pollution Control Board shall submit a report about the level of pollution in various places of Ranchi, so that it may be estimated whether there is any control of sound and other pollutions by implementing the provisions of Motor Vehicles Rules, 1989, in relation to the noise pollution and emission by the vehicles.

(ix) The State Government has been directed that all diesel autos should be banned entry into the thickly populated area of the city and alternate to patrol, LPG and CNG may be used as fuel and the ring road should be completed on war footing so as to polluting diesel commercial vehicles may by pass the city and more than 15 years old vehicle should not be allowed to run in the city.

(x) The Hon’ble Court constitute a committee again who may look into the issues referred in para-3 of the brief orders of the Hon’ble Supreme Court delivered in the case of M.C. Mehta Vs. Union of India & Ors, reported in (1998) 6 SCC 63.

(xi) This Hon’ble Court has further directed that all auto rickshaws having permits to ply within the limits of Ranchi Town will not be allowed to come on road, if the certificate from Pollution Control Board required in this connection is not obtained.
(xii) The State would ensure that pressure horns prohibited under the provisions of Motor Vehicles Rules, 1989.

Steps Taken:

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, envisages the survey of street vendors, development of cities street vending plans and development plan for infrastructure, development of vending zones, among other things.

(a) The State of Jharkhand has flouted an e-tender for selection of Agency / Consultant for survey of street vendors, development of city street vending plans and development plan for infrastructure.

(b) A street vendors vigilance team has been formed and a drive has been launched by the team to keep a vigil on the street vendors, so that they do not create obstruction to the smooth flow of traffic on the roads of Ranchi.

(c) A vendor market is being constructed at Madhukam and southern side of Jaipal Singh Stadium.

(d) A parking lot in front of Big Bazar on the main road is being renovated to improve its usability and customer’s satisfaction.

(e) Another parking lot near Hanuman Mandir is being renovated to improve its capacity, usability and customer’s satisfaction.

(f) A vending area near Albert Ekka Chowk (Firayalal Chowk) is being renovated for removing traffic congestion.

(g) The main road is being strengthening and construction of footpath over covered drains on both sides of the main road will commence soon. Similar work has been taken on Harmu Bye-pass also.

(h) A joint survey of openings in the road medians has been done by S.P. Traffic & Executive Engineer, RCD, and it has been decided that around 15 dangerous openings in the medians of main road and Harmu Bye-pass will be closed using sliding barriers as a temporary arrangement. It has also been decided that IDFC has been appointed as consultant for preparing comprehensive mobility plan of Ranchi. ITDP, Transportation Plan Advisor will make a survey of the main road and will give their recommendations regarding openings in medians and pedestrian crossing.

(i) During the school timing in between 06.30 A.M. to 08.30 A.M., police personnel will be posted at 10 posts near schools and at 83 posts, the police personnel have been deputed near the school for regulate the traffic properly.
NEWLY BORN CHILD OF JHARKHAND MAY LIVE TO WITNESS THE EXTINCTION OF HUMANS

(j) The State of Jharkhand has decided for maintaining the traffic lights, one private company has been engaged on PPP mode.

(k) Traffic Police with the help of Municipal Corporation, prepared a estimate for maintaining the existence traffic lights and selected some places where installation of blinkers and new traffic lights are required.

(l) A work estimate is being prepared for construction of Zebra Crossing, Road Signage and other work.

The matter is still pending before the Hon'ble High Court of Jharkhand and is being monitored. The High Court has directed the State Authorities to submit the progress report / steps taken, as per the aforesaid directions and observation.

Reduction in the area of demarcated forest land as well as in the number of tigers.

[W.P. (P.I.L.) No. 1615 of 2013 (Vikash Mahto Vrs. The Union of India and others)]

Brief facts: At the time of creation of the State of Jharkhand i.e. 15.11.2000 notified and demarcating forest land area was 23,605.47 Sq. Kilometer and number of tigers was 34 as per the leaflet of Divisional forest Officer Publicity and Extension, Ranchi and Department of Forest and Environment, Government of Jharkhand, which has reduced to 22,937.49 Sq. Kilometer in the plan of 2009-10. There has been loss of 66,798 hectare of forest land.

Environmental damage: The depletion of the forest land and the disappearing number of tigers is a matter of major concern for the State of Jharkhand, wherein the tribal population is fully dependent on the forests and their life is centered around it and apart from the fact that forests attract rain and if there will be no forest, there would be no rains. The decrease in the number of tigers is also of great concern.

Judicial Cognizance: The Hon’ble High Court considering the involvement of vital public interest in the P.I.L., directed the Principal Chief Conservator of Forests, State of Jharkhand, to up-date information regarding the status of the forests in the State of Jharkhand and to provide the latest report comprising of district-wise forest coverage as also a report of the tiger review.

The matter is still pending before the Hon’ble High Court and is being monitored.
Construction of Punasi Dam in the district of Deoghar

(Nishikant @ Nishikant Dubey Vrs. State of Jharkhand & Ors.)

Brief facts: In the year 1982, the then Bihar Government sanctioned the construction of ‘Punasi Dam’ in the district of Deoghar now within the State of Jharkhand. However, the Dam could not be constructed due to one obstruction or the other.

Environmental issue: The proposed Dam shall save the land of Santhal Pargana from becoming a dry zone / desert. It will also provide irrigation to thousands of hectare of agricultural lands and prevent the same from being unproductive. The Dam will provide natural habitat to wild life and as such, the construction of the Dam will aid to enriching the flora and fauna of the region.

Judicial Cognizance: The Hon’ble High Court has entertained this public interest litigation and has issued various orders time-to-time to the State Authorities.

Steps Taken: 5286.7 hectares of land has already been acquired by the State Government, out of which some portion of the land is forest area, in lieu of which compensatory land has been given to the Forest Department by the State. Thereafter proposal was sent to the concerned Ministry of the Union of India for its approval and the matter is before it.

The matter is still pending before the Hon’ble High Court and is being monitored.

Development of sewerage system in the capital


Brief facts: The contempt application being Cont. Case (Civil) No. 64 of 2010 was preferred because of non-implementation of certain directions contained in W.P. (P.I.L.) No. 3585 of 2002. In W.P. (P.I.L.) No. 3585 of 2002, an undertaking was given on behalf of the State Government that elected body has taken charge of Ranchi Municipal Corporation and therefore it is for the elected body to continue implementation of the orders of this Hon’ble Court and the same shall be done. However, even after the passage of 13 years, Ranchi city does not have a sewerage system and the public are dragged to live in an absolutely unhygienic environment.
NEWLY BORN CHILD OF JHARKHAND MAY LIVE TO WITNESS THE EXTINCTION OF HUMANS

Environmental issue: Due to the absence of a sewerage and drainage system, there is no treatment plant for the treatment of domestic effluent, and as such, the same is hazardous to the vast urban population.

Judicial Cognizance: The Hon’ble High Court took serious note of the matter that even after the passage of innumerable orders from 2006–08, no efforts have been taken for developing a sewerage system, and as such, a clear contempt is made out.

Steps Taken: The Central Sanctioning and Monitoring Committee (CSMC) of the Union of India has approved the Sewerage and Drainage project of Ranchi, Zone-I, under Jawahar Lal Nehru Urban Renewable Mission (JnNURM), which is at an estimated cost of Rs. 30225.91 lakhs. The CSMC has approved the project and 80% of the estimated cost is of the Central Government. The 1st installment of Rs. 6045.18 lakhs is likely to be released and the water supply project along with the sewerage project is in the offing.

The matter is still pending before the Hon’ble High Court and is being monitored.

Emission of smoke from hard coke plants in the district of Dhanbad.

[W.P. (P.I.L.) No. 2663/2011 (Vishal Kumar Vrs. Union of India & Ors.)]

Brief facts: In the district of Dhanbad 115 Bee-Hive coke plants is in successful operation manufacturing metallurgical grade of hard coke. The unit Bee-Hive coke oven plants consists of handling of coal up to feeding point of coal crusher, receiving of crust coal directly to trolley placed before the chute of crusher, transfer of crust coal to MT oven by manual movement of rail line and discharging of coal from trolley to oven for carbonization of coal and after 35 to 40 hours, quenching of coke by water spraying.

The Central Pollution Control Board along with the Jharkhand State Pollution Control Board had fixed the control of particulate matter within the limit of 150 Mg/Nm3 and further reduced to 100 mg/Nm3. Further by notification no. GSR 176E dated 02.04.1996 new units were allotted to ventilate particulate matter to the emission limit of 150 mg/Nm3 and the existing units were allotted to emit particulate 150 mg/Nm3.

Vide office order no. B-4005/DCI(SSI) dated March 13, 2009 the Member Secretary of C.P.C.B. constituted the National Task Force for Pollution Control in Bee-Hive Coke Plants. The existing limit of 150 mg/Nm3 for S.S.I. Bee-Hive Coke Oven Plants has been further reduced to 100 mg/Nm3. The Control emission of particular matters of different points of time, different modes were prescribed and in compliance thereof, the Hard Coke Plants were not able to take any effective steps for brining the limit of particulate matter within the specified limit of 150 mg/Nm3. Inspite of the fact that most of Hard Coke Plants in pursuance to the direction, constructed 17 feet single chimney, the emission of particulate matter has not been reduced to the specification given by the Pollution Control Board. Under Section 6 of the Air (Prevention & Control of Pollution) Act, 1981, the Jharkhand State Pollution Control Board ought to have provided the needed technology to the Hard Coke Plants so as to prevent the hazardous emission, but that has not been done. The owners of the Hard Coke Plants have submitted their own designs prepared by the competent engineers, so that pollution may be reduced, but the Jharkhand State Pollution Control Board has not passed the approval of such designs and as such, the pollution hazards are increasing day by day affecting the flora and fauna of the area.

**Environmental issue:** Due to the emission of smoke from the coke plants and fly ash discharged by the power plants, the entire atmosphere of the district of Dhanbad is polluted including the water bodies, the agriculture and the flora and fauna.

**Judicial Cognizance:** The High Court directed the Jharkhand State Pollution Control Board to inspect and file a fresh report keeping in view the various parameters required to be complied with and also to inspect whether fly ash discharged from the power generating company (Maithon Power Limited) is within the permissible limits. The Jharkhand State Pollution Control Board was also directed to file a report as to whether the individual companies have complied the requirement of the pollution loss.

**Steps Taken:**

(i) The Jharkhand State Pollution Control Board constituted a committee for inspection of the area.

(ii) M/s National Environmental Engineering Research Institute (in short NEERI) was engaged by the State Pollution Control Board, as per the direction of this Hon’ble Court for ascertaining the quality of fly ash discharged by M/s Maithon Power Ltd., Dhanbad, and for assessing its effect on environment, air, water and its effects on agriculture.

(iii) M/s NEERI inspected the area and submitted a report, pursuant to which preliminary direction has been issued by the Jharkhand State Pollution Control
Installation of Mobile Towers over residential buildings.


**Brief facts:** The telecommunication companies are installing mobile towers over the buildings in residential areas without following the rules and norms of the Telecommunication Regulatory Authority (TRA). The companies have not also bothered to take permission from the local authorities including R.R.D.A. and Ranchi Municipal Corporation.

**Environmental issue:** The arbitrary installation of mobile towers has caused serious threats of health hazards as the radiation caused by the mobile towers badly affects human beings, birds and animals.

**Judicial Cognizance:** The High Court directed the Ranchi Municipal Corporation as well as the R.R.D.A. to provide a detailed report with respect to installation of mobile towers as per rules and regulations.

**Steps Taken:**

(i) The Urban Development Department constituted an expert committee to study the impact of radiation of mobile towers on man, birds and animals.

(ii) A report was also submitted by the Civil Surgeon-cum-Chief Medical Officers of different districts informing that no complaint of any ill-effect has been received from persons living in their areas.

(iii) The Expert Committee submitted its report observing as under:

“*The expert committee members examined the data supplied by the RMC. The data (for broadband measurement of power density in W/m²) obtained at all the locations except one, are found to be in compliance with the norms (<0.45 W/m²) specified by Department of Telecommunication (DoT), New Delhi.*”

Since, various steps were taken by the respondent authorities to see to it that mobile towers are installed in accordance with the rules and regulations and in view of the report submitted by the expert committee, the matter was disposed of.
Recommendations and Suggestions

In order to prepare this project report, I have been attending the court procedures relating to environmental litigations. During such exercise, I noticed some basic lacunae which needs to be addressed. The following suggestions and recommendations might be of some help.

• **Adopting a cooperative model instead of a conflicting one:** The first and the foremost requirement in the field of environmental justice is that we come out of the conflicting model of governance. This model is a remnant of the colonial era, wherein the ruler resolved the conflict in favour of one party or the other and punished the culprits. The legislature and the Executive were primarily focused on catching hold of the wrong doer instead of finding alternatives through which the various agencies of the society could work in tandem to achieve the common goals of the society. Environmental litigations even today are being contested on this old model. The various stake holders like the State, the Pollution Control Board, the Ministry of Forest & Environment, contest the cases concerning environment in the same manner and the prime goal is to fasten the burden on one department or the other.

It is high time that enviro-socio litigations be treated differently and instead of adopting the *policing theory*, a cooperative approach be inculcated among the different stake holders, the industries, the power plants, the state, the Pollution Control Board and the environmentalists, wherein they are not pitted against each other as sworn enemies. Such functioning mechanism has to be developed which can come out with alternatives through which the various agencies can find out means and ways to curb pollution and to conserve the environment.

The State and its instrumentalities have to come-out of the role of adversary in environmental litigations. A deep rooted change has to be envisaged in the functioning of the state authorities to understand this basic concept that being the trustee of the natural resources falling within its territory, it can never be an adversary in matters related to environment. The co-operation and co-ordination among the different departments needs to be done at the beurocratic level and no more cry of shortage of funds or staffs should be made at the state’s behest.

**Public participation:** In the past, we have seen, People’s Movements being launched to generate awareness among the people regarding need for pollution free environment and to take steps for the protection of forests, trees and plants from destruction for industrial and residential purposes. When the Sardar Sarovar Dam was being constructed on the river Narmada in Gujrat, a movement was initiated by noted environmentalists
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Baba Amte, supported by Ms. Medha Patkar. The question was of the displacement of village people residing nearby the dam side and the payment of adequate compensation for the acquisition of their lands. Since the natural resources belong to the public at large, they have every right to participate in the decision making process relating to environment and this fact was manifested in this song which was composed during the Narmada Bachao Andolan

Whose, are the forests and the land?
Ours, they are ours.
Whose, the wood, the fuel?
Ours, they are ours.
Whose, the flowers and the grass?
Ours, they are ours.
Whose, the cow, the cattle?
Ours, they are ours.
Whose are the bamboo grooves?
Ours, they are ours.

Similar public movements namely Chipko Andolan, Tebri Bandh Virodhi Andolan, Movement against Silent Valley Project were launched showing people’s concern for the protection of environment. The immediate victims of pollution are the people in the locality wherein the development project is to commence and as such they have every right to know what kind of pollutant is to be discharged, how the trees which have been cut are going to be rehabilitated and to what extent their neighbouring rivers or streams are going to be contaminated. To some extent, the 1997 amendment to the Environment Impact Assessment has made it mandatory to have a public hearing before environmental clearance is given.

A handful of social activists cannot bring the desired results of environmental protection. Still, the majority is unaware and unacquainted with the legal provisions and the judicial mandates granting them the right to wholesome environment and as such many times bear the sufferings occurring to them due to industrial pollution. The people living in the vicinity of Damodar as well as Subarnrekha rivers are such examples. Thus the Government is required to spread awareness among the people at large, so that they acknowledge their rights vis-à-vis environment and can approach the authorities when there is any breach. Through media, radio, television, news paper, cinema halls and hoardings, the provisions of law under the Environmental Acts can be highlighted, so that the people can invoke them as and when required.

• Alternative forums to be strengthened: An already over burdened judiciary has certain limitations while reviewing substantive questions relating to environment.
In *Andhra Pradesh Pollution Control Board Vrs. M.V. Nayudu*[^1], the Apex Court observed:

> Of paramount importance is the establishment of environmental courts, authorities and tribunals is the need for providing adequate judicial and scientific inputs rather than have complicated disputes regarding environmental pollution to officers drawn only from the executive.

In the later years also the Supreme Court went on emphasizing the need for specialized courts and tribunals. The Law Commission of India seriously considered the matter and has made a proposal for the constitution of environment courts[^2]. The constitution of environment courts can reduce the burden on the High Courts and the Supreme Court and can magnify the concept of environmental jurisprudence propounded by the Supreme Court.

- **Contempt for dishonouring court orders:** In matters concerning environment, the courts should not adopt liberal attitude towards non-compliance of its orders, rather a very stern and strict approach is required. In *M.C. Mehta Vrs. Union of India*[^3], the Supreme Court did not accept the apology tendered by the contemnor and observed:

> The pollution of air is causing deleterious affect on the health of entire society. We have also considered the larger interest of the society and orders passed by this court in the interest of the society at large. Liberty of an individual, which is so dear to every citizen of this country, must necessarily be balanced with the duties and obligations towards his fellow citizens. Every citizen of this country has freedom to breathe unpolluted air. In air pollution related matter or in any matter relating to environmental hazard, the orders of the highest court are disobeyed as sought to be done in this case, the health of the entire society is at risk. We are, therefore, convinced to send strong signal by imposing exemplary punishment so that like-minded people would not repeat and such recurrence thwarted.

- **Boards & Municipalities to be placed at higher pedestal:** The Pollution Control Boards as well as the Municipalities are to protect the environment and the society. The Pollution Control Boards are not expected to be the mouth piece of the erring industry as they have been endowed with specific powers and responsibilities under the Environment Protection Act, 1986. Time and again the courts have been criticizing the lethargy of the Boards in taking coercive action against violators of law. In *State of M.P. Vrs. Kedia Leather and Liquor Ltd. & Ors.*[^4], the Supreme Court even went to the extent of saying that a statutory body is constituted for implementation of the rules framed thereunder and not only for...
holding post or wielding power and no purpose is served in maintaining a board that fails to discharge its functions and overlooks apparent defaults.

The Pollution Control Boards have a vital role in the preservation of the environment, however, they have utterly failed in their duties to do so. The state government in particular the State of Jharkhand should provide the required infrastructure, so that the Board can perform its duties without any complain. The Environment Protection Act, 1986 has given teeth to the Pollution Control Boards, but that is rarely used to deter the polluting agencies, and as such, it is high time this realization of having immense power to control environmental degeneration dawns upon the Boards and they start functioning with more dynamism. The first effort in this direction should be by the appointment of an environmentally conscious person as the Chairman and not to fill-up a political post.

Notes
1. AIR 1999 SC 812, 822.
4. 2001(9) SCC 605
Conclusion

Regarding the presence of Green colour in our national flag, Dr. Sarvepalli Radhakrishnan explained ‘The green colour shows our relation to (the) soil, our relation to the plant life here, on which all other life depends’.

The explanation given by Dr. Radha Krishnan is manifestation of the fact that greenness is implicit in our nationality. Since, the natural resources like air, water, land, forests, coastal zones do not have their own political and geographical boundaries, they are fully dependant on the state for their conservation and protection. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources.

It is a cardinal principle that every right has a corresponding duty. It is sad that state and its instrumentalities exercise their rights but completely forget the corresponding duties towards the environment. Once the case is disposed of, it becomes a part of the record room and the enforcement agencies keep postponing the implementation of the order given by the courts, under the garb of one excuse or the other. In the context of Jharkhand, W.P (P.I.L) 3582/02 is an example, where the Hon’ble High Court had issued directions which were not complied with.

In the context of Union of India, the directions given in Ganga river pollution case have not been implemented. There are many such cases in which the courts’ directions have not been complied with and this has led to the evolution of the doctrine of Continuing Mandamus and one of such cases in the Godavarman’s case which has unparallel expansive standards for monitoring and implementing the enforcement of forest laws across the nation. Starting from 1996, till 2013 series of orders have been passed in this case for the protection of forest, wild life, biodiversity including the constitution of a Central Empowered committee for monitoring the implementation of its orders and to place the non-compliance cases before it.

In the process of preparation of this report, I have been following the court proceedings for observing the public interest litigation related to environment. The State had one common reply, there is shortage of funds and man power, steps are being taken. It is high time that the state and its instrumentalities come to terms with this vital fact that being the custodian of the natural resources falling within its territory, it is not an adversary in matters related to environment, rather it should be one of the aggrieved parties. On the direction of this Hon’ble Court to furnish any action taken report, the general response is that there is no problem and all is well. Then, one is bound to ask in special reference to Jharkhand, if all is well, then why is Damodar a black drain, why
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Subarnrekha has no fish, why mountains and hills are varnishing and why Ranchi is no more the summer capital, as it used to be.

The answer does not lie only with the government. It is true that pollution is not only attributable to thermal power plants, steel industries, or mining Companies. The massive usage of polythene, the treating of the rivers like private places of ‘easing oneself’ and the never ending lust of extracting natural resources is also answerable. The State has to remember its constitutional duty but so are to WE THE PEOPLE.

The Courts are doing their part, but we are not. The Earth is moving towards its sixth mass extinction. Let not the tiger, the bear, the elephant, the trees, the mountains, the rivers and the humans be seen only on calendars just as the Dinosaurs. It has to be remembered that Man can live with nature but not without it. I conclude, by quoting the famous lines of Robert Frost,

The woods are lovely, dark and deep,
But I have promises to keep,
And Miles to go before I sleep,
And Miles to go before I sleep.

The journey is on.........

Notes
1. 1997 (1) SCC 338 (para 34, page 413)
2. Supra. at Page 18.
“We torture and kill two billion sentient living beings every week. 10,000 entire species are wiped out every year because of the actions of one, and we are now facing the sixth mass extinction in cosmological history. If any other organism did this, a biologist would consider them a virus.”
- Philip Wollen