

# ● ROLE OF JUDICIARY IN ENVIRONMENTAL CONSERVATION IN INDIA



**Tarak Nath Prasad\***

---

## **Abstract**

*The task of environmental conservation is an important task for humanity. To deal this task all states requires to frame policy and law. The development of policies and laws towards an effective environmental management and conservation in most of the countries received momentum from the international development. India has implemented most of the international instruments either in the form of policy or in the form of law. However, India has always had its limitations in the implementation of all the policies and laws due to its socio-economic structure. The present paper examines the role of Indian judiciary in developing environment conservation mechanism in the form of effective pronouncements and guidelines to the State.*

---

## **Key words**

*Environment, Conservation, Health, Sustainable Development and Judicial Activism.*

---

## **INTRODUCTION**

Policy developments towards an effective environmental management and conservation in most countries received momentum from the international developments. The Stockholm Conference is regarded as a major development of the time which guided most of the polities to legislate for environmental conservation. India is no exception to this observation. However, India has always had its own limitations in the implementation of all the laws with socio-economic consequences. Environmental laws also have the effect of curtailing the developmental and economic activities and so it also faced the difficulties all throughout. This was further impeded by the slow pace of development of such laws. Environmental consciousness in India underwent a series of developments after the Bhopal gas leak disaster. In the wake of this incident, the Environment Protection Act, 1986 was passed and a number of laws developed further.

Despite all the legislative developments the state of conservation in India was not prosperous. This onerous task was then taken over by the activist judiciary in the country which interpreted the constitutional provisions to be inclusive of the right to clean and healthy environment. Apart from Part Third of the Constitution, so many laws were positively interpreted and several doctrines were propounded afresh by the Indian judiciary. Apart from an accommodative stretch in the law, the implementation aspect was also contributed by such activism. Several industries were ordered to be shut down and many more had to relocate. Even the

---

\* Professor and Director, Institute of Legal Studies, Shri Ramswaroop Memorial University, Lucknow.  
Author may be contacted at [tarak\\_prasad@yahoo.com](mailto:tarak_prasad@yahoo.com).

environmental clearance regime was led further by the judiciary in setting right several executive actions in granting clearance to unsustainable projects.

The present paper aims at evaluating the role of Indian judiciary in developing the environmental conservation laws and their implementation. Through this paper the author establishes that the judiciary has contributed more than the other limbs of governance. The author also concludes that judicial activism has played a very positive role in this regard. For this the author looks into the relevant statutory provisions and analyzes important judicial pronouncements related to environmental protection. It is not necessary that every smile be reason of happiness, perhaps, it may work as a hiding factor for tears. One has to understand by applying this philosophy in the case of nature and its exploitation. What we have received from our ancestors is available with us but what we are going to give to our decedents is a big question mark.

Legal interventions towards conservation of the environment gained momentum after the Stockholm Conference of 1972. By this time it had become undeniable that ignoring the environment and overexploitation of resources is not affordable. This would not be incorrect to state that environmental legislations in most countries have received inspiration from the international fora. This applies for India more significantly. India enacted several environmental laws in the seventh decade of the twentieth century. However, the need of umbrella legislation in this regard, was unfulfilled till 1986 when the Environment Protection Act was passed. This appears to have been a lesson learnt from the Bhopal Gas disaster and the legislative vacuum was attempted to be filled in urgently. Despite all these efforts the legislative lethargy and incompleteness were nonetheless existent; and the rich body of environmental laws in India would not have evolved unless contributed by the active judiciary of the country. Supreme Court of India has developed a rich body of law that guarantees a fundamental right to live in a clean and healthy environment.<sup>1</sup> Through the development of Public Interest Litigation, the Supreme Court of India has greatly broadened the procedural right of Indian citizens to present environment-related challenges against the government and its agencies.<sup>2</sup> Beyond the letter of the law, the judiciary has addressed an array of environment related issues related to its accelerated economic growth; for example, the right to live in a clean and healthy environment, interpreted within Article 21.

When India became independent, the socio-economic situation was dominated by a small class of large land owners, and a vast mass of impoverished cultivators. In subsequent years, land reforms were enacted; surplus private land was acquired by the state.<sup>3</sup> Public policy was founded on the thesis that farming would lift people out of poverty. This tended to give a certain degree of legitimacy to encroachment on public as well as community land, even though this often favoured the relatively rich, over the relatively poor.

---

<sup>1</sup> *Subhash Kumar v. State of Bihar* AIR 1991 SC 420; *M.C. Mehta v. Kamal Nath* AIR 2000 SC 1997; *Rural Litigation Entitlement Kendra v. State of U.P.* AIR 1987 SC 1037; *Ratlam Municipality v. Vardhi Chand and Others* AIR 1980 SC 1622

<sup>2</sup> Rosencranz Armin and Jackson Michael, "The Delhi Pollution Case: The Supreme Court of India and the Limits of Judicial Power", 23 *Columbia Journal of Environmental Law*, 2003, pp.23-30 quoting in *Bandhua Mukti Morcha v. Union of India* AIR 1984 SC 802

<sup>3</sup> "Empowering People for Sustainable Development", 2001, Approach Paper to the Tenth Five Year Plan (2002-07), Ministry of Environment and Forests 2002.



## LEGISLATIVE EFFORTS TOWARDS CONSERVATION

Since independence the Indian Parliament enacted a series of environmental regulations. In 1974, the government passed the Water (Prevention and Control of Pollution) Act (hereinafter called Water Act)<sup>4</sup>; its purpose is to provide for the prevention and control of water pollution and the maintaining and restoring of wholesomeness of water.<sup>5</sup> The Water Act established Central and State Pollution Control Boards to oversee the prevention, abatement, and control of water pollution.<sup>6</sup> The Boards are responsible for conducting site inspections and acquiring information regarding non-compliance with any aspect of the Water Act.<sup>7</sup> Similarly, in 1981 the Central Government enacted the Air (Prevention and Control of Pollution) Act (hereinafter called Air Act) to provide for the prevention, control, and abatement of air pollution.<sup>8</sup> Like the Water Act, the Air Act provides for Central and State Control Boards to handle all matters associated with the improvement of air quality.<sup>9</sup>

Subsequent to the Water and Air Acts, the President of India promulgated the Environment (Protection) Act (hereinafter called Environment Act) in 1986 to cure deficiencies left in India's core body of environmental law.<sup>10</sup> The Environment Act provides the central government with the broad power to take all measures necessary for the purpose of protecting and improving the quality of the environment and preventing, controlling, and abating environmental pollution.<sup>11</sup> Together, these pieces of environmental legislation provide a framework for the Indian people, as well as the judiciary, to enforce environmental protections. Finally, according to the Energy Information Administration, emissions resulting from India's fossil fuel consumption account for fourteen percent of total global carbon dioxide emissions, and is projected to increase to eighteen percent by 2025.<sup>12</sup> Thus, as India continues to demand access to energy and relevant technologies, it must address the environmental consequences of such rapid economic growth.

## ENVIRONMENTAL PROTECTION AND THE CONSTITUTION OF INDIA

India's most significant legislative effort towards conservation of the environment is a Constitutional Amendment. It was the forty second Amendment to add Article 48-A, which includes a provision for environmental protection and states that a clean and

---

<sup>4</sup> The Water (Prevention and Control of Pollution) Act, 1974; the Environment (Protection) Act, 1986; and a series of environmental legislations have been enacted in India.

<sup>5</sup> *Id.*, Purpose of the Water Act

<sup>6</sup> *Ibid.*

<sup>7</sup> *Id.*, Chapter 4 Defining Powers and Functions of Environmental Control Boards under the Water Act

<sup>8</sup> *Id.*, Responsibilities of Boards under the Water Act

<sup>9</sup> The Air (Prevention and Control of Pollution) Act, 1981, Purpose

<sup>10</sup> *Id.*, Regarding the role of Environmental Pollution Control Boards

<sup>11</sup> The Environment (Protection) Act, 1986, providing examples of possible measures to expand environmental protection.

<sup>12</sup> Rosencranz Armin and Jackson Michael, "The Delhi Pollution Case: The Supreme Court of India and the Limits of Judicial Power", 23 *Columbia Journal of Environmental Law*, 2003, pp.23-30 quoting in *Bandhua Mukti Morcha v. Union of India* AIR 1984 SC 802, Statement of David Pumphrey, Deputy Assistant Secretary for International Energy Cooperation, Department of Energy, explaining India's current and projected levels of energy consumption. If India's current civilian nuclear energy program stays on target, it is expected to reach 20,000 megawatts electric by 2020, up from a current capacity of 3,850 megawatts.

healthy environment is now a directive to the state policy. Article 48-A states that the State shall endeavour to protect and improve the environment. The key fundamental rights provision of the Indian Constitution, Article 21 guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law. Under this provision, the Court has expanded the right to life to include protection from harmful environmental elements. In a seminal decision, *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*<sup>13</sup>, the Supreme Court of India resolved issues related to environmental and ecological balance as a result of a quarrying operation that mined limestone. In its ruling, the Supreme Court ordered the permanent closure of the quarries. The Court recognized that its judgment would have great financial consequences for the business, but noted that it is a price that has to be paid for protecting and safe-guarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment. While the Supreme Court did not explicitly refer to Article 48-A nor Article 21 of the Indian Constitution, its judgment was in accordance with these fundamental environmental rights.

In a separate decision by the High Court of Andhra Pradesh, *T. Ramakrishna Rao v. Hyderabad Urban Development*<sup>14</sup>, the court expressly invoked Article 21 and noted that the right to a clean environment is a fundamental right when it stated, "the slow poisoning of the atmosphere caused by the environmental pollution and spoliation should be regarded as amounting to a violation of Article 21 of the Constitution." Thus, the Supreme Court of India and other lower courts have expanded fundamental rights within the penumbra of the Indian Constitution to include environmental protections and have judiciously supported a right to a clean and healthy environment. The Indian Constitution is one of the earliest constitutions in the world that contain specific provisions on the environment. The Directive Principles of State Policy and the Fundamental Duties chapters explicitly enunciate the national commitment to protect and improve the environment. Apart from these, the fundamental duties enumerated in the part IV-A of the Constitution, also cover duty to protect the environment. Article 51-A establishes that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wild life and to have compassion for living creatures.

## JUDICIAL ACTIVISM TOWARDS ENVIRONMENTAL PROTECTION

The Supreme Court of India has reacted to perceived bureaucratic failures by taking an activist stance toward the enforcement of environmental regulations. The Court, however, hands down decisions and recommendations that are often too difficult to implement, thus leading to greater confusion in the area of environmental enforcement. Furthermore, the Court ignores the logistical difficulties associated with implementation of their ideas of environment protection. Most striking is the Court's failure to establish a standard for acceptable pollution; therefore, any level of pollution may constitute a violation.<sup>15</sup> Moreover, the Court continues to turn a blind eye to current environmental laws, instead creating its own committees and reporting systems. Rather than this activist position, the Court should take steps to

---

<sup>13</sup> AIR 1987 SC 1142

<sup>14</sup> AIR 1990 AP 998

<sup>15</sup> *Supra* note 12



support both current environmental regulations and government actors in their enforcement. The results of such activist actions are clear: if the Court begins to create legislation, it bypasses the democratic means. By creating its own committees, the Court is signaling to the public that legislatively created committees are inefficient and lack credibility. Furthermore, the Court's criticism of the government and its agencies' actions undermines confidence in administrative proceedings. Despite some criticism of the Supreme Court's activist approach, it is undoubted that the Court's dedication to environmental issues has increased public and governmental awareness.

Public interest lawyering is another significant milestone towards constructive judicial activism in India. It has served as a major contributor towards environmental protection advancement through the Indian court system. Through Public Interest Litigation, the Supreme Court has taken steps to recognize that good health is a fundamental right, and so are conditions that promote good health, such as clean air and water. Ultimately, through a series of cases, the Court determined that there is an obligation to protect the environment that is derived from the protection of fundamental rights. Judiciary has shown its contribution by dealing the cases with regard to the legality of Environmental clearance granted to the developmental projects and hence supported in resolving environmental controversies. Judiciary is the Forum, where fairness of the Authority in granting Environmental clearance to a project and its impact on Public Interest can be adjudged. It is also to balance the sustainable development. Indian Judiciary has taken up the task of filling up the gaps existent in the overall legal system. This covers an activist role of the judiciary in protecting the environment also. Some of the cases to this effect and discussed and analyzed as follow:

### ***M.C. Mehta v. Union of India***<sup>16</sup>

In the aftermath of the Bhopal Gas leak disaster a lot of consciousness grew towards environmental conservation and health safety measures. It was the Oleum Gas leak case, wherein the Supreme Court considered the importance of safety measures in the hazardous industries. In this case the Court propounded the absolute liability principle. In another case filed by M.C. Mehta<sup>17</sup>, the Supreme Court took the opportunity to evolve and invoke the doctrine of public trust. This doctrine binds the state as being trustee of all the natural resources for public at large as the beneficiary. In another action brought by Mehta<sup>18</sup>, the apex court looked into the issue of decreasing ground water level in the national capital region, due to uncontrolled illegal mining. The Court issued stern orders on this and once again judicial activism was visible to the protection of environment. The same petitioner also filed a petition for preventing the continuous pollution of the holy river the Ganges. In this case<sup>19</sup> the Supreme Court dealt with the pollution of the Ganges due to the negligence of the leather tanneries in Kanpur. In *M.C. Mehta v. Union of India*<sup>20</sup>, the Supreme Court empowered the municipalities and the state boards to take immediate steps for prevention of the continuing wrongs. In *M.C. Mehta v. State of Orissa*<sup>21</sup>, the Orissa High Court dealt with the same question of providing sewage system when a medical

---

<sup>16</sup> *M.C. Mehta v. Union of India* AIR 1987 SC 1086

<sup>17</sup> *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388

<sup>18</sup> *M.C. Mehta v. Union of India* AIR 2004 SC 4016

<sup>19</sup> *M.C. Mehta v. Union of India* AIR 1988 SC 1037

<sup>20</sup> *M.C. Mehta v. Union of India* AIR 1988 SC 1115

<sup>21</sup> *M.C. Mehta v. State of Orissa* AIR 1992 Ori 225

college complex was being set up. The M. C. Mehta cases have contributed immensely to the development of environmental laws in India. This attracts and warrants a salute to the spirit and efforts of the petitioner but these judgments are essentially examples of judicial activism and the constructive role played by the judiciary in this regard, cannot be undermined.

### ***Municipal Council Ratlam v. Vardhichand***<sup>22</sup>

In this case against the Ratlam municipality, the judicial activism of the eighties made its impact felt more in the area of environmental conservation than in other fields. In this case the Supreme Court identified the responsibilities of the local bodies towards protection of environment and developed the law of public nuisance in the criminal procedure as a potent instrument for enforcement of municipal duties. The residents within Ratlam municipal corporation area were suffering for a long time from a pungent smell emanating from the open drains. The odour caused by public excretion in slums and the liquids flowing on the street from the distilleries forced the people to approach the magistrate for a remedy. Instead of complying the order of the magistrate to clean the waste and so to remove the nuisance, the municipality opted to challenge it. When the case came to the Supreme Court, the Court observed that a statutory body like the municipality is duty bound to discharge the claimed responsibility. This case is important not only because of being one of the earliest decisions of its kind but also due to the nature of remedy made available by the Court, under the law of public nuisance.

### ***Tehri Bandh Virodhi Sangharsh Samiti v. State of UP and Others***<sup>23</sup>

The writ petition was filed praying directions restraining the Union of India, State of UP and the Tehri Hydro Development Corporation from constructing and implementing the Tehri Hydro Power project. The main contention against the construction of the dam was on the basis that the plan for the Tehri project had not considered the safety aspect of the dam and serious threat existed due to this construction, as north India is prone to earthquakes. The design of the dam was on a site which was prone to seismic activity hence posing grave danger to the people residing in that area. Based on the fact and circumstances of the case, the Court came to the conclusion that the Union of India had considered the question of safety of the project in various details more than once and that it had taken into account the reports of experts on various aspects. In the circumstances, the court held that it was not possible to hold that the Union of India had not applied its mind or had not considered the relevant aspects of safety of the dam. The Court lacked expertise in deciding such technical and scientific details, but would always judge to the fact whether or not the Government had taken all relevant consideration, while clearing the project or not.

### ***Narmada Bachao Andolan v. Union of India & Others***<sup>24</sup>

In 1987 ministry of Environment and Forest accorded environmental clearance to build dam subject to certain conditions. A PIL was filed against the decision of making the Dam. The issue was whether environment clearance granted in 1987 without proper application of mind and whether forcible displacement of tribals from their land violative of their fundamental rights under constitution of India Art. 21. The petitioner was an anti-dam organization in existence since 1986 but had chosen to

<sup>22</sup> AIR 1980 SC 1622

<sup>23</sup> 1990 (2) SCALE 1003

<sup>24</sup> AIR 1994 SC 319



challenge the clearance given in 1987 by filing a writ petition in 1994. While issuing directions and disposing of this case,

**Two conditions have to be kept in mind:-**

- (i) The completion of project at the earliest.
- (ii) Ensuring compliance with conditions on which clearance of the project was given including completion of relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection in compliance with the scheme framed by the Government thereby protecting the rights under Article 21 of the Constitution. Keeping these principles in view.

**The court issued the following directions.**

- i. Construction of the dam will continue as per the award of the tribunal
- ii. As the relief and rehabilitation sub-group has cleared the construction up to 90 meters, the same can be undertaken immediately. Further increasing of the height will be only *pari passu* with the implementation of the relief and rehabilitation and on the clearance by the Relief and Rehabilitation Sub-group after consulting the three Grievances redressal Authorities.
- iii. The Environment Sub-group will consider and give, at each stage of the construction of the dam, environmental clearance before further construction beyond 90 meters can be undertaken.
- iv. The permission to raise the dam height beyond 90 meters will be given by the Narmada Control Authority, from time to time, after it obtains the above-mentioned clearances from the Relief and Rehabilitation Sub-group and the Environment Sub-group.
- v. The States of Madhya Pradesh, Maharashtra and Gujarat are directed to implement the award and give relief and rehabilitation to the oustees in terms of the packages and these States shall comply with any direction in this regard which is given either by the Narmada Construction Authority (NCA) or the Review Committee or the Grievances Redressal Authorities.
- vi. Even though there has been substantial compliance with the conditions imposed under the environmental clearance the NCA and the Environment Sub-group will continue to monitor and ensure that all steps are taken not only to protect but to restore and improve the environment.
- vii. The NCA will within four weeks draw up an action plan in relation to further construction and the relief and rehabilitation work to be undertaken. Such an action plan will fix a time frame so as to ensure relief and rehabilitation *pari passu* with the increase in the height of the dam.
- viii. The Review Committee shall meet whenever required to do so in the event of there being any un-resolved dispute on an issue which is before the NCA. In any event the Review Committee shall meet at least once in three months so as to oversee the progress of construction of the dam and implementation of the Relief and Rehabilitation programs. In case any serious differences in implementation of the award arise and the same cannot be resolved in the Review Committee, the Committee may refer the same to the Prime Minister whose decision, in respect thereof, shall be final and binding on all concerned.
- ix. The Grievances Redressal Authorities will be at liberty, in case the needs arises, to issue appropriate directions to the respective states for due implementation of

the redressal and rehabilitation programs and in case of non-implementation of its directions, the GRAs will be at liberty to approach the Review Committee for appropriate orders.

- x. Every endeavour shall be made to see that the project is completed as expeditiously as possible.

The court held, when such projects are undertaken and hundreds of crores of public money is spent, individual or organizations in the garb of PIL cannot be permitted to challenge the policy decision taken after a lapse of time. It is against national interest and contrary to the established principles of law that decisions to undertake development projects are permitted to be challenged after a number of years during which period public money has been spent in the execution of the project.

### ***Vellore Citizens Welfare Forum v. Union of India and Ors*<sup>25</sup>**

The Supreme Court, in *Vellore Citizens Welfare Forum v. Union of India and Others*, has observed that the development and environment protection must go together. There should be balance between development and environment protection. It is, therefore, necessary that before the proposed Complex of the DDA is brought into execution, it should have environment clearance from the authorities concerned. The whole of the area has to be surveyed from the point of view of environment protection. In other words, the environmental impact assessment of the area has to be done by the experts. The court was of the view that the authority contemplated by Section 3(3) of the Environment (Protection) Act, 1986 can be the only appropriate Authority to look into the environment protection side of the present project or any other project which the DDA or any other Authority may initiate in future. Needless to say that the City of Delhi is already highly congested and has been rated by the World Health Organization as the 4th most polluted city so far as the air pollution is concerned. It is, therefore, necessary that the development in the city should have environmental clearance.

### ***T.N. Godavarman Thirumulpad v. Union of India and Ors*<sup>26</sup>**

In *T.N. Godavarman Thirumulpad v. Union of India and Others*, the Delhi Development Authority (DDA) proposed the development of International Hotel Complex on 315 hectares of land situated in the Vasant Kunj area after the same area was identified in the Master Plan for Delhi 2001 for urban use area under the earlier Master Plan 1962 was identified as green area but there was a change of user to urban area under the latter Master Plan. Supreme Court by an order dated 19.8.1997 held that 92 hectares of land out of 315 hectares was a constraint area and only in respect of the balance 223 hectares of land, the constructions have to abide by the conditions of clearance. The applicant contended that 92 hectares of land were a part of the ridge and that report of Environmental Pollution (Prevention and Control) Authority stated that environmental factors were not in favour of urban development use of land and the entire parcel of land should be developed as green and not for industrial use. Respondent contended that 92 hectares was constraint area and was not an integral part of Delhi Ridge, and that only 19 hectares were sought to be utilized for the purpose of construction. A bare reading of the order dated 19.8.1997 apparently made a proposition that the Court had treated the land as constraint area and Environmental Pollution Control Authority (EPCA)'s report nowhere indicated that the land was a part of the ridge. It would be inappropriate to reopen the whole

<sup>25</sup> (1996) 5 SCC 647

<sup>26</sup> (2006)10 SCC 490



issue as to whether the land in question was a constraint area or ridge land. Even if the land is held to be constraint area the constructions thereon were to be made only after having the requisite clearance.

### ***Academy for Mountain Enviroincs v. State of Orissa and Others***<sup>27</sup>

Vedanta Alumina Limited, a subsidiary of M/s Sterlite Industries (India) Ltd had proposed a one million ton per annum capacity alumina refinery project together with a 75 MW coal based captive power plant. Interestingly, the Alumina refinery was granted environmental clearance without linking the project with the Mining of Bauxite. M/s Sterlite (the parent company of M/s Vedanta) applied for environmental clearance on 19.03.2003 to the Ministry of Environment and Forest. In the application, Vedanta stated that no forestland is involved and that within the radius of 10 kms there is no reserve forest. M/s Vedanta thereafter on 16.08.2004 applied for use of 58.943 ha forest land consisting of 28.943 ha village forest and 30 ha reserve forest. However, the application for environmental clearance was not modified and the same was processed on the premise that no forestland is involved.

Further, though mining at Lanjigarh was integral part of the Alumina refinery project, Vedanta could not have started the work on the Alumina refinery without getting the clearance for mining also. As per the guidelines for projects requiring clearance from forest as well as environment angles, separate communications of sanction will be issued, and the project would be deemed to be cleared only after clearance from both angles. M/s Vedanta requested the ministry to grant environmental clearance for the Alumina Refinery Plant stating that it would take three years to construct the refinery plant whereas mines can be opened up in one year. In its application for seeking environmental clearance for the project dated 19.3.2003 it is stated that no forestland was required for the alumina refinery and that within a radius of 10 km of the project site there is no reserve forest, which was contrary to the facts on record.

Subsequently, on 16.8.2004 a proposal for allowing the use of 58.943 ha forestland, consisting of 28.943 acre of "Gramya Jungle Jogya" land and 30 ha of reserve forest, was moved under the Forest Conservation Act through the State Government to the Ministry of Environment and Forest. Out of the above, 26.123 ha forestland was required for the refinery, 25.82 ha for the mine access road and the balance 7.0 ha was required for the construction of the conveyor belt for the transportation of the mineral from the mine site to the plant.

The union ministry gave environmental clearance for Alumina Refinery Project by delinking it with mining project. In the environmental clearance it is stated that no forestland is involved, even though the application under the Forest Conservation Act was still pending. As per Para 4.4 of the guidelines laid down by the Ministry of Environment and Forest "Some projects involve use of forest land as well as non-forest land. State Governments or Project Authorities sometimes start work on non-forest lands in anticipation of the approval of the Central Government for release of the forest lands required for the projects. Though the provisions of the Act might not have technically been violated by starting of work on non-forestlands, expenditure incurred on works on non-forest lands may prove to be in fructuous if diversion of forest land involved is not approved. It was, therefore, decided that if a project involved forest as well as non-forest land, work should not be started on non-forest land till approval of the Central Government for release of forestland under the Act has been given" But Vedanta had started the work on Alumina Refinery in blatant violation of this provision.

---

<sup>27</sup> (2006) 10 SCC 1475

Accordingly the applicant had filed an Application before the Central Empowered Committee on the 21st of September 2005 and the Central Empowered Committee (CEC) gave its recommendations to the Hon'ble Supreme Court of India. Accordingly the CEC was of the opinion that the Court should consider revoking the environmental clearance dated 29/09/04 granted by the Ministry of Environment and Forest for setting up of the Alumina Refinery Plant by M/s Vedanta and directing them to stop further work on the project.

## **CONCLUSION**

To the uninformed observer, India's current emphasis on economic development seems to eclipse its environmental protection efforts. But the combination of strong legislative mandates, an activist judiciary, aggressive public interest litigators, and a proliferation of highly committed environmental NGOs means that India is no longer the heaven it once was for industries indifferent to environmental values. However there is no denying the fact that a lot is yet to be done. Furthermore serious impedance to the conservationists' agenda lies in the lack of awareness of the population. Certain state initiatives which may help improve the situation may be promotion of research in the relevant field and making available the environment friendly technology wherever applicable. To conclude, the role of judiciary in India has undoubtedly been tireless and highly constructive towards protection of the environment.