PROBONO INDIA

COMPILATION OF SELECTED CASES OF SHRI M C MEHTA

PREPARED BY

Team ProBono India

ProBono India
SocioLegally Yours !

JUNE 2020

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DEDICATED TO
SHRI M C MEHTA

June 2020

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Team ProBono India has made all efforts to summarize the cases from original cases retrieved from AIR and SCC. For some cases, team has tried to summarize cases from the available sources as they could not find original ones.

Prof. (Dr.) S. Shanthakumar
Director

Gandhinagar, 01 July 2020
Dir/MMB/142/2020

FOREWORD

"A Journey of a thousand miles begins with a single step."
- Lao Tzu

In my over three decades of experience in the administration of legal education – there has been one value amongst many dearly held principles that I have followed fondly and that is underlined in the words stated above by Lao Tzu. Over the years, I have had many students under my wings whom I have had the good fortune to nurture and guide in the correct direction to yield a responsible generation for our country's holistic enhancement and I have always advised to each one of them who has come to me with a bundle of questions about their career paths in law and life and it has always been – *"start somewhere, take baby steps"* – because once you start walking the path, you start knowing the path.

I went through this case compilation of twenty selected cases of Mr. M.C. Mehta and I would like to congratulate Dr. Kalpeshkumar L Gupta not only on this new start of the Case Compilation Series but also on his legal startup ProBono India under whose banner these series are being released. I have always seen tremendous potential in Dr. Gupta as and when I knew of him from Gujarat National Law University (GNLU). In my opinion, the work done at ProBono India is highly commendable and to curate a team of young adults to help them take their first baby steps through this new venture was an excellent idea in itself which is now brought to reality.

There are two very strong attractions to this project – (i) first being that it is wholly and solely curated by eighteen law students coming from different law universities across India for a project this unique, and (ii) second being that the pioneer case compilation is a dedication to a living legend Mr. M.C. Mehta.

Gujarat National Law University Gandhinagar

I personally understand the essence of Mr. Mehta in our Indian legal jurisprudence especially in the formation of the Indian Environmental Law Jurisprudence. It was till 2004, that I was teaching at GLC Madurai in Tamil Nadu as a senior lecturer in law, teaching environmental and international law. I myself specialize in Environmental Law and follow the same passionately and thus, have even penned down three books on the subject – thereby, I can vouch that without Mr. M.C. Mehta, the Indian Environmental Law would not have the face that it has today.

I would hereby like to congratulate the entire team of eighteen enthusiastic budding lawyers and Dr. Kalpeshkumar L Gupta on their new beginning of case compilations and also, their perfect decision to begin by dedicating the pioneer compilation to a man, we all owe so much.

My best wishes to all these student contributors, for their future endeavors. My best wishes and assurance to the readers that this will add a lot to the knowledge after reading this powerful case compilation. It is not just for the legal fraternity but anyone and everyone who shares admiration for M.C. Mehta and his passion for a better environment.

Gujarat National Law University Gandhinagar

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PREFACE

The **year 2020** will go down in the history being known as a roller coaster. The year when all people across the globe were taken aback by the adversity that hit us all and seems to stay with us like a shadow for quite longer than desired. The age old theory of *'natural selectivity'* is always at play, now more so than ever. Post-COVID 19, the ones who would have championed a way to adapt to the new normal will come out victorious than the ones who fueled a new hobby of cribbing. Our entire life is trying to teach us a lesson i.e. ***"courage is grace under fire".***

In furtherance of this ideology, **Dr. Kalpeshkumar L Gupta (Founder, ProBono India)** came up with an excellent voluntary project to recruit enthusiastic interns who share the same ideology as his i.e. the only silver bullet to conquer this ongoing multi-aspect test of our preparedness is honing our skills and acquiring new ones. **On May 7, 2020,** Sir proposed his idea of launching a **Case Compilation Series under the ProBono India banner**.

This Case Compilation is titled **"Compilation of Selected Cases of Shri M.C. Mehta"** – it is **wholly and solely dedicated to the legend himself, M.C. Mehta Sir.** This compilation is the product of the concerted efforts of eighteen students of law and young enthusiastic supporters of the legend himself who even in these trying times flourished under the wings of Dr. Kalpeshkumar Gupta who kept us motivated throughout the month of our consolidated efforts to realize this common dream of the team.

Firstly I was selected as a student contributor and later it was my pleasure to be appointed as a Coordinator of this pioneer Compilation of ProBono India Case Compilation Series as I had the pleasure to actively share my admiration and regard for Shri M.C. Mehta with like-minded students of law, my team. Here's an introduction to my beloved team:

1. **Aarihanta Goyal** *(Manipal University, Jaipur,)*
2. **Aditi Dubey** *(Rajiv Gandhi National Law University, Patiala)*
3. **Adnan Hameed K.P.** *(Symbiosis Law School, Hyderabad)*
4. **Amrith R.** *(The Tamil Nadu Dr. Ambedkar Law University, Chennai)*
5. **Ankita Mishra** *(Indore Institute of Law, Indore)*
6. **Anuranjan Vatsalya** *(Symbiosis Law School, Pune)*
7. **Ashita Barve** *(Indore Institute of Law, Indore)*

8. **Bhavika Lohiya** *(United World School of Law, Gandhinagar)*
9. **Hananya A.S.** *(Tamil Nadu National Law University)*
10. **Mahima Patel** *(Amity Law School, Noida)*
11. **Mahimashree Kar** *(Indore Institute of Law, Indore)*
12. **Manisha Singh** *(Maharishi Dayanand University, Rohtak)*
13. **Nikhilesh Koundinya** *(Symbiosis Law School, Pune)*
14. **Nivedita Kushwaha** *(Indore Institute of Law, Indore)*
15. **Sumaiyah Fathima** *(Dr. Ambedkar Law University, Tamil Nadu)*
16. **Tanya Gupta** *(Bharati Vidyapeeth, Pune)*
17. **Yashwardhan Bansal** *(Christ University, Bengaluru)*

On June 15, 2020 we concluded our compilation and learned the lesson that Dr. Kalpeshkumar wanted us to learn all along – in the words of Oprah Winfrey, ***"be thankful for what you have, you will end up having more".*** Our hearts are filled with courage to thrive to reach our goals and we are grateful for the opportunities that we had here at ProBono India. We are thankful to Dr. Kalpeshkumar L Gupta and eternally indebted to Mr. M.C. Mehta for being our idol.

We hope our efforts assist and inspire you!

On behalf of the Team ProBono India,
Jahnavi Taneja
(Coordinator)

ABBREVIATION

AERB	Atomic Energy Regulatory Board
AIR	All India Reporter
AIR	All India Radio
ALL ER	All England Reporter
AMASRA	The Ancient Monuments And Archaeological Sites And Remains Act, 1958
AMPA	The Ancient Monuments Preservation Act, 1904
ASI	Archaeological Survey Of India
BARC	Bhabha Atomic Research Centre
BCE	Era Before Common Era
CEC	Central Empowered Committee
CETP	Common Effluent Treatment Plant
CGWB	Central Ground Water Board
CJI	Chief Justice Of India
CMPDIL	Central Mine Planning & Design Institute Limited
CNG	Compressed Natural Gas
CPC	Civil Procedure Code
CPCB	Central Pollution Control Board
CrPC	Criminal Procedure Code
CRZ	Coastal Regulation Zone
EIA	Environmental Impact Assessment
EMP	Environment Management Plan
EP	Environment Protection
ETP	Effluent Treatment Plant
FAO	Food And Agricultural Organization
HC	High Court
HPCB	Haryana Pollution Control Board
HTL	High Tide Line
LTL	Low Tide Line
MMRD ACT	Mines & Minerals (Regulation And Development) Act
MMSCMD	Million Metric Standard Cubic Meter Per Day
MoEF	Ministry Of Environment And Forest
NCERT	National Council of Educational Research And Training
NCT	National Capital Territory
NEERI	National Environmental Engineering Research Institute
NET	National Eligibility Test

NGT	National Green Tribunal
PIL	Public Interest Litigation
PM	Prime Minister
PPP	Polluter's Pay Principle
PTI	Press Trust Of India
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SPCB	State Pollution Control Board
TDS	Total Dissolved Solid
TNPCB	Tamil Nadu Pollution Control Board
TTZ	Taj Trapezium Zone
UGC	University Grant Commission
UNCRC	United Nations Conventions on The Rights of The Child
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific And Cultural Organization
UPSIDC	Uttar Pradesh State Industrial Development Corporation
V.	Versus
WP	Writ Petition

LIST OF CASES

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CASE NO. 1

M. C. MEHTA

V.

UNION OF INDIA

(AIR 1987 SC 1086)

SHRIRAM FOOD FERTILIZER CASE/

OLEUM GAS LEAK CASE

ABSTRACT

The following is the case summary of the famous case of M.C. Mehta v. Union of India which was filed after the infamous environmental tragedy of Oleum gas leak from one of the factories of Shriram Foods and Fertilizer Industries that shook the country, which unfortunately happened just in the gap of some days after the Bhopal gas tragedy. This case had major impact on environmental situation and laws in India, hence this case can be easily called as one the milestones of making good impact on the environmental situations and laws in India.

In this case a writ petition was filed under Article 32 of the Constitution and was brought before the court based on a reference rendered by a three Judges Bench. During the proceedings, certain issues of key significance and high constitutional value were presented when the writ petition was initially heard. The facts of the writ petition and the subsequent events were set out in some detail in the judgment given by the Bench of three Judges P. N. Bhagwati, C.J.I., D. P. Madon and G. L. Oza, JJ. on February 17th. However, the Bench of three Judges permitted Shriram Foods and Fertilizer Industries to restart its power plant as well as its plants for the manufacture of caustic soda and chlorine, including its by-products and recovery plants such as soap, glycerine and technical hard oil, subject to the conditions set out in the Judgment.

In this summary author tries to explain the case in a simple manner by using the mix of facts, laws, arguments of the parties and observation of the court and attempts to explain one of the

many environmental battles that was fought by Shri M.C. Mehta to sensitise the Indian laws on the very important topic "Environment".

1. PRIMARY DETAILS OF THE CASE:

Case No	:	Writ Petition (C) Nos. 12739 of 1985 and 26 of 1986
Jurisdiction	:	Supreme Court of India
Case Decided on	:	February 17, 1986
Judges	:	CJI P. N. Bhagwati, G. L. Oza, D. P. Madon JJ
Legal Provisions involved	:	Code of Criminal Procedure, 1973 (CrPC) - Section 133. Constitution of India - Article 21, Constitution of India - Article 32.
Case Summary Prepared by	:	Anuranjan Vatsalya (Student of Law, Symbiosis Law School, Pune)

2. BRIEF FACTS OF THE CASE:

- **Parties**

  The parties involved were environmental activist lawyer Shri M.C. Mehta as petitioner and respondent was the Union of India and others.

- **Factual**

a) The case was filed by Shri M.C. Mehta after the infamous Bhopal gas tragedy which happened on 4 December 1985, a significant leakage of oil gas occurred from one of the Shriram units and this leakage affected a large number of people, both among staff and the public, and, according to the petitioner, a lawyer working in Tis Hazari Courts died as a result of inhalation of oil gas. The leakage resulted from the collapse of the oil-gas tank as a result of the collapse of the foundation on which it was installed and caused a scare among the people living in the area. It was hard for people to get out of the shock of this disaster when, within two days, another leak, albeit a minor one this time, occurred as a result of the Oleum gas leakage from the pipe and lead to a major disaster.

b) Delhi Cloth Mills Ltd. is a public limited company with a registered office in Delhi. It runs a business called *Shriram Foods and Fertiliser Industries* and has a range of units engaged in the manufacture of caustic soda, chlorine, hydrochloric acid, stable bleaching powder, superphosphate, vanaspati, soap, sulphuric acid, alum anhydrous sodium sulphate, high assay hypochlorite and active fertilizer.

c) Such different units are all set up in a single area of approximately 76 acres and are surrounded by heavily settled colonies within a distance of 3 kilometers from this site, with a population of about 2,000,000.

d) The plant was commissioned in 1949 and has approximately 263 employees, including executives, supervisors, staff and workers. Prima Facie, it seemed that, before the Bhopal catastrophe, neither the management of Shriram Foods and Fertilizer Factories nor the government seemed to have been worried about the dangerous existence of the Shriram Foods and Fertilizers caustic chlorine factory, whose leakage caused the disaster.

- **Procedural**

a) On 4 December 1985, one month after the petition was filed, and one day after the first anniversary of Bhopal Gas Tragedy, the worst industrial mishap in human history, Oleum had leaked from the complex to the local city, resulting in one fatality and several injuries.

b) As the disaster at Bhopal was fresh in the mind of the people, there was a very strong uproar about this incident and the administration took a dramatic move forward. The Inspector of Factories and the Assistant Commissioner of Factories issued orders to shut down the plant on 7 and 24 December, respectively, pursuant to the Factories Act (1948).

c) Shriram replied by filing writ petitions on its own (No. 26 of 1986) for the termination of the two orders and the interim opening of its caustic chlorine plant; glycerine, soap, hard oil, etc.

d) On behalf of the gas leak victims, the Delhi Legal Aid and Advice Board and the Delhi Bar Association filed a claim for compensation along with the initial petition by M.C Mehta.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the present case is under the scope of Article 32 of Constitution?

II. Whether the rule of last Absolute Liability to be followed in the present case?

III. Whether compensation would be provided to the victims of the Oleum gas leak tragedy if so, then what would be the measurement of liability of such an enterprise engaged in caring hazardous industries?

4. ARGUMENTS OF THE PARTIES:

Petitioner

- The petitioner who appeared in person submitted vehemently and passionately that the court should not permit the caustic chlorine plant to be restarted because there was always an element of hazard or risk to the community in its operation. He urged that chlorine is a dangerous gas and even if the utmost care is taken the possibility of its accidental leakage cannot be ruled out and it would therefore be imprudent to rut. The risk of allowing the caustic chlorine plant to be restarted.
- Mrs. Kumarmangalam, learned Counsel appearing on behalf of Lokahit Congress Union as also the learned Counsel appearing on behalf of Karamchari Ekta Union, however, expressed themselves emphatically against the permanent closure of the caustic chlorine plant and submitted that if the caustic chlorine plant was not allowed to be restarted, it would not be possible to operate the plants manufacturing the downstream products and the result would be that about 4,000 workmen would be thrown out of employment.
- Both the learned Counsel submitted that since all the recommendations made in the reports of Manmohan Singh Committee and Nilay Choudhary Committee had been complied with by the management of Shriram and the possibility of risk or hazard to the community had been considerably minimized and in their opinion reduced to almost nil, the caustic chlorine plant should be allowed to be reopened.

Respondent

- The learned Addl. Solicitor General appearing on behalf of the Union of India and the Delhi Administration stated before us that his clients were not withdrawing their objection to the reopening of the caustic chlorine plant but if the court was satisfied that there was no real risk or hazard to the community by reason of various recommendations of Manmohan Singh Committee and Nilay Choudhary Committee having been carried out by the management of Shriram, the Court might make such order as it thinks fit, but in any event, strict conditions should be imposed with a view to ensuring the safety of the workmen and the people in the vicinity.
- The learned Counsel for Shriram strongly pleaded that now all the recommendations made in the reports of Manmohan Singh Committee and Nilay Choudhary Committee

had been complied with by the management and every possible step had been taken and measure adopted for the purpose of ensuring complete safety in the operation of the caustic chlorine plant, there was no real danger of escape of chlorine gas and even if there was some leakage it could be only of a small quantity and such leakage could easily be contained and there was therefore no reason for permanently closing down the caustic chlorine plant as it would result not only in less to the company but also in unemployment of about 4,000 workmen and non-availability of chlorine to Delhi Water Supply Undertaking and short supply of downstream products.

- These rival contentions raised a very difficult and delicate question before the court as to what course of action should be adopted by the Hon'ble Court.

5. LEGAL ASPECTS INVOLVED:

- This is environmental case which involved Article 32 and 21 of Constitution of India, so, as to decide the fate of Environmentally hazardous industries, whether hazardous enterprise in question in thickly populated area should be allowed to continue even after Oleum gas leak as there is risk to large number of people as sizable population is living in vicinity of plant - hazards cannot be completely eliminated but could be minimised by strict compliance of safety measures.
- It involved Section 133 (1) of CrPC, 1973 - closing down plant will prejudice employment interests of 4000 workmen where Court cannot adopt policy of hampering pace of development by closing down all hazardous industries simply by reason of danger or risk to community henceforth, Court allowed opening of plant temporarily subject to strict adherence to safety guidelines laid down by it.

6. JUDGEMENT IN BRIEF:

- **RATIONALE BEHIND IT**

1. Scope of Article 32

The court observed that apart from issuing directions, it can under Article 32 forge new remedies and fashion new strategies designed to enforce fundamental rights. The power under Article 32 is not confined to preventive measures when fundamental rights are threatened to be violated but it also extends to remedial measures when the rights are already violated (vide *Bandhua Mukti Morcha v. Union of India)* .The court however held that it has power to grant remedial relief in appropriate cases where

violation of fundamental rights is gross and patent and affects persons on a large scale or where affected persons are poor and backward.

2. Absolute Liability based on Rylands v. Fletcher case

a) Regarding the measure of liability of an industry engaged in hazardous or inherently dangerous activity in case of an accident the court examined whether the rule in Rylands vs. Fletcher would be applicable in such cases.

b) This rule laid down if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. The liability is thus strict and it is no defence that the thing escaped without the person's willful act, default or neglect.

c) The exceptions to this rule are that it does not apply to things naturally on the land or where the escape is due to an act of god, act of stranger or the default of the person injured or where there is statutory authority.

d) The court held that the rule in *Rylands v. Fletcher* wills all of its exceptions are not applicable for the industries engaged in hazardous activities.

e) The court introduced new "no fault" liability standard (absolute liability). An industry engaged in hazardous activities which poses a potential danger to health and safety of the persons working and residing near owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone. Such industry must conduct its activities with highest standards of safety and if any harm results, the industry must be absolutely liable to compensate for such harm. It should be no answer to industry to say that it has taken all reasonable care and that harm occurred without negligence on its part. Since the persons harm would not be in position to isolate the process of operation from the hazardous preparation of the substance that caused the harm, the industry must be held absolutely liable for causing such harm as a part of the social cost of carrying on the hazardous activities. This principle is also sustainable on the ground that the industry alone has the resource to discover and guard against the hazards or dangers and to provide warning against the potential hazards.

3. Issue of Compensation

a) It was held that the measure of compensation must be correlated to the magnitude and capacity of the industry so that the compensation will have a deterrent effect. The larger and more prosperous by the industry, the greater will be the amount of compensation payable by it.

b) The court did not order payment of compensation to victims since it left open the question due to lack of time to adjudicate whether Shriram, a private corporation was a state or authority which could be subjected to the discipline of Article 21.

- **OBITER DICTA**

a) In this case Supreme Court expounded that, "*This rule evolved in the 19th century at a time when all these developments of science and technology have not taken place. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in highly industrialized economy*".

b) Also, Chief Justice Bhagwati showed his sincere concern for the health of the people of Delhi from the leakage of dangerous substances such as gas. He was of the opinion that we should not follow a strategy to do away with chemical or toxic factories, because they would also help to improve the quality of life, and in this case this factory was supplying chlorine to the Delhi Water Supply Company, which is used to preserve the integrity of drinking water. Thus, even if dangerous, industries must be developed because they are necessary for economic growth and the advancement of people's well-being.

7. COMMENTARY:

a) In my view, the decision of the Supreme Court on the Shriram Gas Leak case was fair, balanced and acceptable for a number of reasons. Before reading this article, I had previously thought that this incident would draw several similarities to the Bhopal Gas Disaster, which was a complete miscarriage of justice. Therefore, just making them to pay compensation and not imprisoning the executive or closing down the whole plant was too soft on Shriram. As I read and analysed how objectively and

scientifically the Supreme Court decided the case, my opinion changed, and now I think the verdict of the Supreme Court is apt and fitting.

b) There must be a balance between industrialization and the quality of human life. The fact of the matter is that Shriram did better than harm, providing employment to at least 4000 people and their families who would otherwise have been destitute. The factory was also engaged in the manufacture of daily goods for the public and also in the purification of water. The decision needed to be made in such a way as to achieve compensation for the victims and not to impede economic development or frighten future industrialists. When the incident happened, the victims needed more urgent compensation to relieve their suffering than to imprison management members.

c) By using the principle of absolute liability, the Supreme Court seriously crippled Shriram's chances of making counter-arguments and of not taking the responsibility for the crash. And through the establishment of an expert committee to recommend changes, the case was dealt with very scientifically. This case set a precedent for all other companies to follow stringent safety standards and identified the Supreme Court of India as a de facto guardian of the environment and of human rights.

8. IMPORTANT CASES REFERRED:

- *M. C. Mehta v. Union of India, AIR 1987 SC 965.*
- *M. C. Mehta v. Union of India, AIR 1987 SC 982.*
- *M. C. Mehta v. Union of India, AIR 1987 SC 1086.*
- *Ryland v. Fletcher, (1868) LR 3 HL 330.*

CASE NO. 2

M. C. MEHTA
V.
UNION OF INDIA & ORS.

(AIR 1997 SC 734)

TAJ TRAPEZIUM CASE

ABSTRACT

The following is the case summary of the famous "M.C. Mehta v. Union of India" also known as 'Taj Trapezium Case'. In this case, the writ petition was filed under Article 32 of the Constitution of India by the petitioner because of increasing pollution around Taj Mahal causing deterioration of its marble.

This judgement is a compilation of various orders passed by Supreme Court to decrease the level of pollution in Taj Trapezium. Arguments have been heard from both the sides involving various learned counsel. The court also looked into extensive reports submitted by Varadharajan Committee and NEERI.

This case has indeed widened the scope of Environment Law and has placed nature on a higher pedestrian. In this case, the court tried to establish a balance between Industrial growth and environment with the help of Sustainable development.

The author will dwell deep into each and every intricacy involved in the case. The author will also discuss all the legal concepts involved in a very profuse manner. Further the author will conclude with some personal views and opinions regarding the judgement.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Writ Petition (C) 13381 of 1984
Jurisdiction	:	Supreme Court of India
Case Filed on	:	December 20, 1984
Case Decided on	:	1996

Judges	:	Bhagwati, P.N. (CJ)
Legal Provisions involved	:	Articles 21, 48-A and 51-A of the Constitution of India
Case Summary Prepared by	:	Aditi Dubey (Student of Law, Rajiv Gandhi National University of Law, Punjab)

2. BRIEF FACTS OF THE CASE:

Taj Mahal, being a cultural heritage, is considered as a pride of India. This monument attracts 8 million visitors every year and contributes almost Rs. 75 crores to the nation's revenue. It was also declared as a UNESCO World Heritage Site in 1983.The reason why this monument is considered as World's Wonder is because of its aesthetic value. In Justice Kuldip Singh's words, *"It is the perfect culmination and artistic interplay of architects' skills and Jeweller's inspiration"*. The artwork on marble in-walls is so impeccable that the viewers can fathom the love that King Shah Jahan had for his wife Mumtaz.

The marble of the monument was turning yellow and brown due to excessive amount of pollution in the arena of Taj Trapezium. Taj Trapezium is an area of 10,400 sq. km. in the shape of trapezium around Taj Mahal covering five districts in the region of Agra. The change in the colour of marbles was so evident that when M.C. Mehta visited the Taj Mahal "He saw that the monument's marble had turned yellow and was pitted as a result of pollutants from nearby industries. This compelled Mehta to file this petition before the Supreme Court."[1]Hence, it was upon the shoulders of Supreme Court to save the enchanting Taj Mahal from further deterioration.

The case involves two major reports i.e. NEERI Report and "Report on Environmental Impact of Mathura Refinery" by Varadharajan Committee. Both of the reports established that the major polluters emitting Sulphur Dioxide are the industries using coal consisting foundries, chemical/hazardous industries, a railway shunting area and the refinery at Mathura. A report submitted by the Central Board of the prevention and control of Water Pollution, New Delhi titled *"Inventory and Assessment of Pollution Emission in and around Agra Mathura Region,* specifically identifies that (i) Ferrous Metal Casting using Cupolas

[1] Prakash K. Dutt, 'Why Supreme Court is ready to shut down Taj Mahal' INDIA TODAY, (India Today, 11 July, 2018) <https://www.indiatoday.in/india/story/why-supreme-court-is-ready-to-shut-down-taj-mahal-1282739-2018-07-11> accessed 12 August 2018.

(Foundry); (ii) Ferro-alloy and Non-Ferrous Casting using crucibles, Rotary Furnaces etc.; (iii) Rubber Processing; (iv) Lime Oxidation and Pulverisation, (v) Engineering, (vi) Chemicals; and (vii) Bricks and Refactory Kilns, are the main units that are creating pollution. According to the NEERI report, the 4 hr. average value of SO2 around Taj Mahal is nearly 300ug/m^3 which is 10 fold of the promulgated CPCR standard of 30ug/m^3 for sensitive areas. The value also exceeds the maximum limit of industrial area i.e. 120ug/m^3.

So relying on the suggestions of Vardharajan Committee, the court finalised 512 industrials which are either to be shifted outside the Taj Trapezium or to start using natural gas in the place of Coke/Coal. To provide natural gas in Taj Trapezium, court directed Gas Authority of India Limited (GAIL) to build a loop line from Bijapur to Dadri via Mathura under its Gas Rehabilitation and Expansion Project so that the industries in Agra, Ferozabad and Mathura can have access to adequate natural gas. Those who wanted to shift outside the area were given land in Etah, Kosi and Salimpur.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the 'onus of proof' is on the industries of TTZ and whether the 'polluter pays principle' will be applicable?

II. Whether the defaulting industries should be closed down or shifted/ relocated in order to monitor the air pollution in consonance with the Air Act 1981?

4. ARGUMENTS OF THE PARTIES:

The Taj trapezium case is a bundle of orders thus, to throw light on the arguments of the parties it's directly significant to notes the order passed and directed by the court. The orders that highlight the arguments by the parties are:

- **NOTICE TO IDENTIFY MAJOR POLLUTING INDUSTRIES**
  After hearing the specific categories of polluting agents mentioned by the report of Central Board of the prevention and control of Water Pollution, the court directed U.P Pollution Control Board to get a survey done and prepare the list of specific industries and foundries which are polluting the area. After doing the survey, they are required to serve notices to all the identified industries and foundries to satisfy the board that they have taken necessary steps to control the pollution.

After the order, the board identified 511 industries and foundries and served notices to them. The board also complied with the order of the court and published the notice in two local newspapers and two national newspapers.

- **NOTICE TO ASSESS THE NEEDS AND TECHNICAL REQUIREMENTS TO REDUCE THE POLLUTION**

  According to Indian Oil Corporation, the most suitable alternative of Coke/Coal for industries in Agra, Ferozabad and Mathura, was natural gas but to provide that, GAIL needed a detailed survey of needs and requirements of the industries. NEERI voluntarily took the job to do the survey and reached to a very efficient conclusion. NEERI reported that *"The existing HBJ pipeline laid down by GAIL for transmission and distribution of CNG from the Western Offshore Region passing through Gujarat, MP, Rajasthan, UP, Delhi and Haryana can be tapped to serve these areas".* NEERI also identified that approximately 1.00 MMSCMD CNG will be required by the industries.

  The court also directed the U.P. State Industrial Development Corporation to identify area sufficient landed area required to shift the industries outside Taj Trapezium. Following the orders UPSIDC identified 220 acres of developed land in Industrial area in Kosi, Etah and Salimpur in Aligarh District. However the court also recognised the complex procedure involved in shifting an industry and asked to do it in a phased manner.

5. LEGAL ASPECTS INVOLVED:

- **THE PRECAUTIONARY PRINCIPLE**

  According to this principle, when there is severe damage to human and/or the environment, steps can be taken even in the absence of incontrovertible, conclusive, or definite scientific proof. It is an anti-thesis of the principle which believes in taking actions after the commitment of any harmful act. This principle is mentioned under Article 3 of the UN Framework Convention on Climate Change and considered as one of the most popular legal concepts.

  This concept was incorporated in Indian Environment Law by **Vellore Citizens' Welfare Forum vs. Union of India.** In this case, the court said that

i. The State government and statutory authority should anticipate, prevent and attack the causes of environmental degradation.

ii. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent degradation.

iii. The 'onus of proof' is on the actor or the developer and industrialist to show that his action is environmentally benign.[2]

- **POLLUTER PAYS PRINCIPLE**

According to this principle, polluter of the environment is liable to pay compensation for the damage that occurred and restore the environment to its original state. In this principle, the intention of polluter does not matter.

This principle was first incorporated in Indian Environmental Law **by Indian Council for Enviro Legal Action vs. Union of India** case. In this case, it was held that "once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on."[3]

Hence the court held that the industries are responsible to compensate the villagers for the polluted soil and underground water. They are also liable to remove all the polluting agents from the area and all the expenses occurred will have to be paid by the industries not by the government.

- **ARTICLE 21**

Article 21 forms a major part of the Constitution of India as it gives protection of life and personal liberty. In **Subhash Kumar v. State of Bihar,** the court held that right to life also includes right to clean water and clean air free from pollution. If anything that endangers this right, the aggrieved can reclaim it with the help of article 32 of the Indian Constitution. Hence, the industries were polluting air and water of Yamuna not only for Taj Mahal but also for the people living around it.

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[2]Vellore citizens' welfare forum vs. Union of India, (1996), 5, S.C.C., 647.

[3] Indian Council for Enviro-Legal Action vs. Union of India, (1996),3, S.C.C., 212.

- **ARTICLE 48-A**

  Article 48-A is a Directive Principle of State Policy which says "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

  Under article 48-A, State is under constitutional obligation to protect the environment and the forests. So to realise it, the government enacted Environment (Protection) Act, 1986 (for short the 'Act of 1986'). The legislature enacted various laws like the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and the Wildlife (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the Indian Forest Act, 1927 and the Biological Diversity Act, 2002.

  Under this case, the court referred to The Water (The Prevention and Control of Pollution) Act 1974, The Air (Prevention and Control of Pollution) Act 1981 and the environment protection act 1986.

- **ARTICLE 51-A**

  Article 51-A includes various duties that every citizen of India should abide by. Clause (g) of this article says that every citizen endeavour *"to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures".*

6. JUDGEMENT IN BRIEF:

The court held that industries using coke/coal are the major polluting agents and have damaging effect on Taj Mahal and people living in TTZ. According to the Polluter Pays principle, an effective step has to be taken to anticipate, prevent and attack the causes of environmental degradation. The 'onus of proof' was on the industries to prove that their actions are benign but they failed to prove.

Therefore, the court identified 292 industries to change over to Natural Gas as an Industrial Gas. Those industries that are not opting Natural Gas, will have to stop operating with the help of Coke/Coal in TTZ and relocate themselves. Those industries that do not opt for either of the alternatives will have to stop functioning.

The court also held that workmen employed in 292 factories shall be entitled to rights and benefits like, continuity of employment in new place, payment of full wages during the time of closure, one year wages as 'shifting bonus', compensation and gratuity.

The court further directed the following to monitor the air pollution in TTZ –

a) The setting up of hydro cracker unit and various other devices by the Mathura Refinery.
b) The setting up of 50 bed hospital and two mobile dispensaries by the Mathura Refinery to provide medical aid to the people living in TTZ.
c) Construction of Agra bypasses to divert all the traffic which passes through the city of Agra.
d) Additional amount of Rs. 99.54 crores sanctioned by the Planning Commission to be utilized by the State Government for the construction of electricity supply projects to ensure 100 per cent uninterrupted electricity to the TTZ.
e) The construction of Gokul Barrage, water supply work of Gokul Barrage, roads around Gokul Barrage, Agra Barrage and water supply of Agra barrage, have also been undertaken on a time schedule basis to supply drinking water to the residents of Agra and to bring life into river Yamuna which is next to the Taj (Court order dated May 10, 1996 and August 30, 1996).
f) Green belt as recommended by NEERI will be set up around Taj.
g) The Court suggested to the Planning Commission by order dated September 4, 1996 to consider sanctioning separate allocation for the city of Agra and the creation of separate cell under the control of Central Government to safeguard and preserve the Taj, the city of Agra and other national heritage monuments in the TT.
h) All emporia and shops functioning within the Taj premises have been directed to be closed.
i) Directions were issued to the Government of India to decide the issue, pertaining to declaration of Agra as heritage city, within two months.

7. COMMENTARY:

This case established a strong landmark in the arena of Environmental Law and proved that any technological advancement cannot be achieved at the altar of nature and environment. After the judgement government took various effective steps to reduce the pollution but its

major cost was paid by the industries. Over 500 industries had to give up their old land and establish a new industry outside the TTZ.

But the war against pollution for Taj Mahal is not over yet. Initially, the marble of Taj was turning yellow due to sulphur dioxide emitted by the industries. But now, the new villain for Taj is organic carbon particles emitted by vehicles. Organic carbon particle is slowly turning the marbles black. Earlier, the factor which was contributing only 1% in the pollution around TTZ has become a major emitter of organic carbon particles. Even after removing all the industries, the level of PM10 is still double in the area due to the vehicles. According to the regional transport authority data, the number of vehicles (two wheelers, cars, buses and heavy vehicles) in Agra district has nearly tripled from about 326,000 in 2002 to over 915,000 this year.[4] NEERI'S 2013 report mentions that over 48,000 diesel generators also contribute to the city's pollution.[5]

Indeed, the court took every effective measure possible to stop the pollution. But new time is posing new polluting agents. Anumita Roy Chowdhury, Executive Director of Delhi-based non-profit, Centre for Science and Environment said that "The second generation challenge in Taj Trapezium demands assessment of all sources of pollution and more stringent action not just around the Taj Mahal, but across the air shed of Agra and beyond,". Hence the government again have to identify the major polluting agents and eliminate them from doing any further damage.

8. IMPORTANT CASES REFERRED:

- *Indian Council for Enviro-Legal Action v. Union of India, [(1996) 3 SCC 212: JT (1996) 2 SC 196].*
- *Vellore Citizens' Welfare Forum vs. Union of India, AIR 1996 SC 2715.*

[4] Sunita Narain, Aruna P Sharma, Jyotsna Singh, Daunting Journey, Down to Earth, 17 August 2015, https://www.downtoearth.org.in/coverage/urbanisation/daunting-journey-49613
[5] NEERI Annual Report 2013.

CASE NO. 3

M. C. MEHTA

V.

UNION OF INDIA

(1987 (Supp) SCC 607)

GAMMA CHAMBER CASE / SAFEGUARD FROM RADIATION CASE

ABSTRACT

The following is a Case Summary of the infamous M. C. Mehta v. Union of India (1987), also commonly known as "Gamma Chamber Case" or "Safeguard from Radiation Case". This case of PIL was brought before the Apex Court in India 1987 by M. C. Mehta.

The petitioners' moved the Supreme Court exercising their constitutional right under Articles 32 and 21 of the Constitution of India saving the teachers and students of Jawaharlal Nehru University (JNU), New Delhi from the hazardous radiation of the Gamma Chamber. The Gamma Chambers are irradiators being extensively used in various universities, academic and research institutions for research and development purposes.

This case has witnessed appearance of many learned counsels and senior advocates along with expert reports from Bhabha Atomic Research Centre (BARC) and Atomic Energy Regulatory Board (AERB). This case highlights the hazardous situations caused by the radiations from such Gamma Chamber located anywhere around where people may be situated.

The author of this summary has made an informed attempt to curate a short summary in the form of a case brief for academic purposes.

1. PRIMARY DETAILS OF THE CASE:

Case No	:	Civil Miscellaneous Petition No. 7293/1987
Jurisdiction	:	Supreme Court

Case Filed on	:	1987
Case Decided on	:	March 12, 1987
Judges	:	R.S. Pathak, C.J.; and Ranganath Misra, J.
Legal Provisions involved	:	Article 32 and 21
Case Summary Prepared by	:	Sumaiyah Fathima (Student of Law, Central Law College, Tamil Nadu)

2. BRIEF FACTS OF THE CASE:

This case was brought before the Supreme Court of India in the form of a Public Interest Litigation (PIL) under Article 32 and 21 of the Constitution of India.

The appellant brought to light at the right time saving a huge population especially the students and the teachers, highlighting the severity of radiations emitted from the gamma chamber put up for the purpose of conducting research works in the Jawaharlal Nehru University, New Delhi.

This court, having heard the learned counsel, directed the Gamma Chambers to be sent to the Bhabha Atomic Research Centre, Bombay, for the recharging and be re-housed at the old site only, after being certified of the radiation level to be within the permissible limits after such recharging.

Further ordered to have the readings disclosed to the Atomic Energy Research Centre and have showed no objection to such radiation levels.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the location of Gamma Chambers at the Jawaharlal Nehru University, New Delhi amidst students, teachers and staff is meeting the safety obligations or not?

4. ARGUMENTS OF THE PARTIES:

The learned counsels for both, the petitioner and the defendant, very effectively argued their standpoints. The counsel for the petitioner argued of the hazardous nature and effects that the radiations could cause. The defendants on the other side argued of the significance of Gamma Chambers for the purpose of accompanying research works as a part of the institution.

5. LEGAL ASPECTS INVOLVED:

The case involves many crucial and fundamental provisions relating the lives of the common people and the environment. This case essentially highlights the prominence of the Environmental Protection Act, 1986. By way of penal provisions featured under Section 15 of the Act, any person who contravenes the provisions of the Act or its directions will be implied with punishment of imprisonment or fine or both, thus protecting the happening of any event that may regard to be hazardous or destructive to the environment or the surrounding.

Moreover the case signifies Articles 21, 32, 47, 48A, 51-A (g) and 226 of the Constitution of India – these are the most important Fundamental Rights and Directive Principles of State Policy embedded in the Indian Constitution for dealing with Environmental Rights.

The activities concerning establishment and utilisation of nuclear facilities and use of radioactive sources are carried out in India in accordance with the relevant provisions of the Atomic Energy Act, 1962. The regulations for the radiation protection aspects are as governed by the Radiation Protection Rules, 1962. Safe waste disposal is ensured by implementation of the Atomic Energy Safe Disposal of Radioactive Waste Rules, 1987.

The vital principles such as the “precautionary principle” and the “polluter pays principle” are considered the essential features of “Sustainable Development”. These principles highly stresses over the fact of prevention of environment from its degradation without any threats of serious irreversible damages where any lack of scientific certainty cannot be reasoned for postponing the measures taken for the prevention in every dimension.

6. JUDGEMENT IN BRIEF:

The court in its order on March 12, 1987, orders the for the Gamma Chamber that was housed at Jawaharlal Nehru University to be sent to Bhabha Atomic Research Centre, Bombay for recharging and be certified of the radiation level being within the permissible limits. Further was ordered to have disclosed such readings to the Atomic Energy Regulatory Board subject to its consent with no objection of the readings concerning the radiation level. After which the Gamma Chambers be re-housed at its old site.

7. COMMENTARY:

The contribution of M.C. Mehta towards the protection of the environment is numerous, achieving some remarkable goals in changing the fate of a whole generation. This case being one among many marks a great standpoint in emphasising the precarious effects of Gamma Chambers producing high levels of radioactive waves. This case, filed at the right time, has saved a huge population of students and teachers.

The Supreme Court of India had played a vital role by way of its decision making in taking into account of the already existed laws along with the shaping and developing of new sets of rules and regulations that would ensure the long term sustainability in every aspect. Moreover, when one approaches the Court for the enforcement of fundamental rights by way of Public Interest Litigation, the Supreme Court attempts to ensure observance of social and economic programmes frame for the benefits of the society which is certain in the judgement of the particular case.

In my opinion, there is no dearth of laws for the protection and conservation of the environment. However, the implementation of these laws continues to be very poor. The government agencies have vast powers to regulate industries and others who are potential polluters. They are, however, reluctant to use these powers to discipline the polluters. The poor performance of the government agencies in enforcing the laws has compelled the courts to play a proactive role in the matter of environment.

8. IMPORTANT CASES REFERRED:

- *Hem Chand v. State of Haryana, 1993; Writ Petition No. 15869/1992*
- *M.C. Mehta v. Union of India & Ors., 1986; Writ Petition (Civil) No. 12179/1985.*

CASE NO. 4

M C MEHTA

V.

UNION OF INDIA

(AIR 1988 SC 1037)

GANGA POLLUTION CASE/ MEHTA I/ KANPUR LEATHER TANNERIES CASE

ABSTRACT

The Ganga is a trans-boundary river of Asia flowing through India and Bangladesh. Ranked as the third largest river, it rises in the western Himalayas, and embarks on a long journey of 2,525 kilometres, flowing south and east through the Indo-Gangetic Plains, through Bangladesh and then empties itself into the Bay of Bengal. Worshipped as Goddess in Hinduism and referred to as *"Maa"* (mother), it has been the lifeline of many ancient civilisations and continues to be so for millions of people even today.

However, its sacred waters have been subject to abuse as dumping grounds for almost all forms of waste. With a population of 2.9 million, Kanpur is one of the most populated cities along its course. The city dumps a hefty amount of its domestic and industrial waste into the river, especially the leather tanneries. In 1985, M. C. Mehta filed a writ petition disposing domestic and industrial waste and effluents in the Ganga River. This writ petition was bifurcated by the Supreme Court into two parts known as Mehta I and Mehta II, which dealt with the tanneries of Kanpur and with the Municipal Corporations of Kanpur, respectively. This case analysis is based on Mehta I.

The Author has decided to use his free time to be productive and summarize this landmark case in the environmental law sector for purely academic purpose. The Author has been a huge fan of the legendary lawyer and has great admiration to this imminent personality, and considers this judgment to be a legal gem.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Writ Petition No. 3727 of 1985
Jurisdiction	:	The Supreme Court of India
Case Filed on	:	1985
Case Decided on	:	October 1987
Judges	:	E.S. Venkataramiah and K.N. Singh, JJ
Legal Provisions Involved		Art. 48A and Art. 51A of the Constitution of India; Sections 2(j), 16, 17 and 24 of the Water (Prevention and Control of Pollution) Act, 1974; Sections 3, 3(2) (v), 15 of Environment (Protection) Act, 1986.
Case Summary Prepared by	:	Adnan Hameed K.P. (Student of Law, Symbiosis Law School, Hyderabad)

2. BRIEF FACTS OF THE CASE:

Factual

This case was brought before the Supreme Court of India in the form of a Writ Petition under Article 32 of the Constitution of India by M.C Mehta.

The Judges for the petition were Justice E.S. Venkataramiah and Justice K.N. Singh

The advocates who appeared in this case on behalf of the appearing parties are B. Datta, R.A. Gunta, S.K. Dholakia, Miss Bina Gupta, **M.C Mehta**, B.P. Singh, S.R. Srivastava, Krishan Kumar, Vineet Kumar, R. Mohan, Mrs. Shobha Dixit, A. Sharan, D. Goburdhan, Mrs. G.S. Mishra, Paraieet Sinha, R.C. Verma, R.P. Singh and Ranjit Kumar, Advs. B.R.L. Iyengar, Adv.

M.C. Mehta, an environmental lawyer and social activist, filed a Public Interest Litigation (PIL) in the Supreme Court of India (*hereinafter referred to as* The Court) against about 89 respondents, wherein Respondent 1 was the Union of India, Respondent 7 was the Chairman of the Central Board for Prevention and Control of Pollution, Respondent 8 is the Chairman of Uttar Pradesh Pollution Control Board and Respondent 9 was Indian Standards Institute. The court ruling was initiated in 1985 in the pilgrimage city of Haridwar situated along the banks of the river Ganga, when a matchstick tossed by smoker resulted in the river catching fire for more than 30 hours. The fire was found to be a result of the presence of toxic inflammable chemical layer over the waters. The Court had considered the issue to be one of prime importance; however the vast scale of the case, i.e., the length of the river, was found to be intractable. The Court had thus requested Mr. Mehta to narrow down his focus,

following which he chose Kanpur, though he neither belonged from the city nor was a resident there.

At the preliminary hearing the Court had issued a notice under Order I Rule 8 of the CPC, treating the petition as a representative action and published a gist of the petition in the newspapers, calling upon all the industrialists, Municipal Corporations and the town Municipal Councils having jurisdiction over the areas through which the river Ganga flows to appear before the Court and to show cause as to why directions should not be issued to them, following which many industries and local authorities appeared before the Court. The Court had highlighted Article 51A of the Constitution which imposes upon all its citizens the fundamental duty to safeguard the environment and Article 48A which empowers the State to take actions in this direction. It also cited the importance of the Water (Prevention and Control of Pollution) Act, 1974 (*hereinafter referred to as* the Water Act) and its relevant sections.

Procedural

In this petition the petitioner requested the court to request the Supreme Court ("the Court") to restrain the respondents from releasing effluents into the Ganga river till the time they incorporate certain treatment plants for treatment of toxic effluents to arrest water pollution.

At the preliminary hearing the Court directed the issue of notice under Order I Rule 8 of the CPC, treating this case as a representative action by publishing a small gist of the petition in the newspapers calling upon all the industrialists, municipal corporations and the town municipal councils having jurisdiction over the areas through which the river Ganga flows to appear before the Court and to show cause as to why directions should not be issued to them. In pursuance of this notice many industries and local authorities appeared before the Supreme Court.

The Court highlighted the importance certain provisions in our constitutional framework which enshrine the importance and the need for protecting our environment. Article 48-A provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51-A of the Constitution of India, imposes a fundamental duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life.

The Court stated the importance of the **Water (Prevention and Control of Pollution) Act, 1974 ('the Water Act')**[1]**.** This act was passed to prevent and control water pollution and maintaining water quality. This act established central and stated boards and conferred them with power and functions relating to the control and prevention of water pollution.

Section 24 of the Act prohibits the use of the use of any 'stream' for disposal of polluting matter. A 'stream' under section 2(j) of the Act includes river, water course whether flowing or for the time being dry, inland water whether natural or artificial, sub-terrene waters, sea or tidal waters to such extent or as the case may be to such point as the State Government may by the notification in the official gazette may specify. The Act permits the establishment of Central Boards and State Boards. Section 16 and Section 17 of the Act describe the power of these boards.

One of the functions of the State Board ('the Board') is to inspect sewage or trade effluents, plants for treatment of sewage and trade effluents, data relating to such plants for the treatment of water and system for the disposal of sewage or trade effluent.

3. ISSUES INVOLVED IN THE CASE:

I. Whether all the leather tanneries had at least setup a primary treatment plant?
II. Whether the State Government had paid attention to the worsening condition of the sacred river and had initiated probation into the matter?
III. Whether any steps, if at all, had been taken by the state?
IV. Whether the smaller industries should be funded for setting up effluent treatment plants? If yes, what should be the criteria to determine 'smaller industries'?
V. What all steps should the Central Government must take to regulate pollutant discharge into the river throughout its course?

4. ARGUMENTS OF THE PARTIES:

Petitioner:

i. The Petitioner had grieved that neither the authorities nor the people, whose lives were intricately connected with the river and directed affected by it, seemed to be

concerned about the increasing levels of pollution of the Ganga and necessary steps were required to prevent the same.

ii. The Petitioner had therefore sought a Court order in the form of writ of mandamus, directing inter alia restricting the Respondents from releasing toxic effluents into the Ganga until they incorporate appropriate treatment plants to treat the effluents to arrest water pollution.

Respondents:

i. None of the tanneries disputed the fact that the effluent discharge from the tanneries grossly pollutes the Ganga.

ii. It was stated that they discharge the trade effluents into the sewage *nallah*, which leads to the Municipal Sewage Plants before discharge into the river.

iii. Some tanneries stated that they have already had primary treatment plants, while some are presently engaged in the same.

iv. Some of the tanneries who were members of the Hindustan Chambers of Commerce and some of the other tanneries guaranteed that with the approval of Respondent 8 (State Board), they would construct primary treatment plants which would be operational within a period of six months from the date of hearing and in failing to do so, will shut down their tanneries.

v. However they argued that it would not be possible for them to establish secondary treatment plants to treat the waste water further as it would involve huge expenditure which is beyond their means.

5. LEGAL ASPECTS INVOLVED:

The Court had cited the following Articles from the Constitution of India:-

- **Article 48A** states that *"State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."*
- **Article 51A (g)** states that *"to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."*(Fundamental duty).

The Court had relied upon the **Water Act** and its relevant sections. The Act was established with the intent of preventing water pollution and laid down Central and State Boards for the same. The following sections of the Act were cited:-

- **Section 2(j)** of the Act defines a stream as including a *"river; water course (whether flowing or for the time being dry); inland water (whether natural or artificial); subterranean waters; sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf."*
- **Section 16 and 17** of the Act describes the functions of the Central and State Boards, respectively.

One of the functions of the State Board is to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents, and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification and the system for the disposal of sewage or trade effluents.

The State Board is also entrusted with the power of making application to courts for restraining apprehended pollution of water in streams or well.

- **Section 24** of the Act prevents disposal of pollutants in a 'stream' as defined under Section 2(j) of the Act.

The Court had also relied upon the **Environment (Protection) Act, 1986** and cited the following relevant sections:-

- **Section 2 (a)** states that 'environment' *"includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property."*
- **Section 3** of the Act empowers the Central Government to take effective measures to protect and improve the environment and prevent pollution.
- **Section 3(2) (v)** empowers the Central Government to lay down standards for pollutant emission.

The Government is authorised to issue such directions to any person or authority to comply with the said standards. Such directions may include closure or regulation of any industry, stoppage or regulation of supply of electricity or water or any other service.

- **Section 15** provides for the penalties that are to be levied on violation of any provision of the Act.

6. JUDGEMENT IN BRIEF:

In its verdict the Court gave precedence to the importance of protecting and saving the holy Ganges by arresting the uncontrolled amount of water pollution. The Petitioner was an aware and concerned citizen, seeking to protect the interests of his fellow citizens whose lives depended on the waters of the Ganges. Therefore his right to maintain the petition was undisputed. The Court's order was based upon the fact that the river too is a part of India's rich heritage. It had witnessed the great Aryan civilisation which flourished in the Indo-Gangetic plains (then named as *Aryavarta*, i.e., the land of the Aryans) from 1000 BCE to 600 BCE (Later Vedic Age) and has stood witness to the rise and fall of great dynasties that had followed ever since. The river is not only of culturally and religiously important, but also economically, ecologically, climatically and is crucial to India's topography.

The judgement pronounced by the Court in the case can be summarised as follows:-

i. The pollution of the Ganga amounted to public nuisance.
ii. Despite the provisions in the Water Act, the State Board did not take any necessary step to monitor the effluent discharge into the Ganga.
iii. Despite the provisions of the Environment Protection Act, the Central Government too had neglected the necessity to implement effective measures to curb the public nuisance.
iv. It was mandatory for all the tanneries to set up a primary treatment plant, if not a secondary treatment. In view of the gravity of the situation, that is the least they could do.
v. The financial capacity of the tanneries in regards to afford to set up a primary treatment plant was rendered irrelevant.
vi. The Court drew comparison to validate its order. Incapability to set up a primary treatment plant is similar to a tannery which cannot pay wages to its employees and thus will not be permitted to continue business.
vii. It observed the Fiscal Plan and ruled for the establishment of a common effluent treatment plant for Indian Tanning Industry prepared by committee constituted by the Directorate General of Technical Development.

viii. It also referred to an Action Plan for prevention of pollution of the Ganga as prepared by the Department of Environment of the Government of India and stated that the laws of the land required that the industries be responsible for the wastes disposed by them and should take necessary measures to curb pollution due to the same.

7. COMMENTARY:

The Ganga enters Uttar Pradesh in the Bijnor district and flows through Aligarh, Kanpur, Allahabad, Varanasi, etc. For more than a century, Kanpur has been a major centre for India's tannery industry and is one of the three important industries besides paper and textiles. Most of these tanneries are located on the southern banks of the Ganga, outside the city of Kanpur and are highly polluting. Among all the cities of Uttar Pradesh, Kanpur contributes the highest pollution load into the Ganga which alone accounts for 75% of the river's pollution. One tonne of hide leads to the production of 20-80cubic metres of turbid and foul-smelling wastewater, including chromium levels of 100–400 milligrams per litre, sulphide levels of 200–800 milligrams per litre, as well as significant pathogen contamination. Tannery effluent is characterised by its strong colour (reddish or dull brown), high levels of biochemical oxygen demand (BOD), high pH, and large amounts of dissolved solid wastes.[6] The Central Pollution Control Board had called upon the Uttar Pradesh Pollution Control Board to explain its inability to control the drains in Kanpur and prevent water pollution.

In 2007, the Ganga was ranked as the fifth most populated river and is home to more than about 140 species of fish, 90 species of amphibians and also to the endangered Ganges river dolphin. The leather tanning industries release gallons of toxic waste water which reduce the oxygen levels in the water, thereby leading to the death of aquatic life. The Court had said in its judgement that the financial means of the industries were irrelevant with respect to setting up treatment plants. However it is of the author's personal opinion that the Court should have taken financial means into consideration, since if due to the lack of enough funds and just for the sake of abiding by the court order, a sub-standard treatment plant is established, the treatment of the waste water will not be as expected. Above all, it is our environment that is getting degraded and that should be the foremost concern. It would have been more

[6] Shareen Joshi, 'Ganga Pollution Cases: Impact on infant mortality' (International Growth Centre, 2 May 2011) <https://www.theigc.org/blog/ganga-pollution-cases-impact-on-infant-mortality/> accessed on 21 May 2020

favourable if the court had taken into consideration the alternative of funding small industries (not necessarily tanneries) which discharge their waste into the river and set standards for determining "small" industries. Such industries which were to be funded should have been registered and after a stipulated amount of time, independent inspection committees should have been assigned by the respective State Boards to ensure the funds were used for their initial purpose and to check the efficacy of the same. This order could have been extended to all industries on the bank of the river. However the Court had referred to the Fiscal Plan for setting up common effluent treatment plants for Indian Tanning Industry prepared by committee constituted by the Directorate General of Technical Development (Government of India).

The Court in its verdict in the case referred to an action plan for the prevention of pollution of the Ganga as prepared by Department of Environment, Government of India in 1985. The action plan imposed upon the industries the responsibility to treat the industrial effluents that it produced. Considering the vast length of the river and the innumerable number of industries that are located on its banks, it only seemed fair that these industries take up responsibility for their own wastes instead of playing a blame game with the government. It is not rational that the government monitors effluent discharge from all the industries. That is practically impossible. Protecting nature is not the sole responsibility of the government, but of all people who live, thrives and draws benefits from the environment. It is one of our fundamental duties as mentioned in our Constitution. When one enthusiastically enjoys one's fundamental rights, one must be equally enthusiastic about carrying out one's fundamental duties. Moreover, concern for nature is not only a constitutional duty, but also a moral one.

In the case of ***Pride of Derby and Derbyshire Angling Association v. British Celanese Ltd.***[7]**,** the Derby Corporation admitted that it had released insufficiently treated sewage and had thereby polluted the plaintiff's fisheries. The Derby Corporation Act, 1901 imposed an obligation to provide a sewerage system, and that the system which had been provided had become ineffective due to the overwhelming population of Derby.

At the time of the initiation of the Namami Gange project, the Modi Government had committed to providing INR 20,000 crores rupees to the cause of the river Ganga from 2015 to 2020. Rs. 7,700 was claimed to have been spent prominently for construction of sewage

[7]Pride of Derby and Derbyshire Angling Association v. British Celanese Ltd. [1953] Ch 149

treatment plants. Kanpur was allotted 1,000 crores more than any other city from the Rs. 20,000 crores.[8] Prime Minister Narendra Modi had personally donated Rs. 16.53 crores to the cause.[9] Under the programme, 13 out of 16 major drains had been trapped in Kanpur and the harmful effluents had been directed to the Common Effluent Treatment Plants. However the government's flagship programme has turned out to be a failure as Rishikesh and Haridwar, the starting points of the project, still remain far beyond the goal. As stated earlier, no government initiative can see the light of day as long as we, the people turn a blind eye and a deaf ear towards our duty to safeguard the nature we live in.

India is presently experiencing a national lockdown, which has brought all industries to a temporary halt until further government notifications and has reduced human activities. Nature is seemed to have begun to heal itself as nations all over the world are under lockdown due to COVID-19. In a very recent interview, while speaking to *India Today*, Ajay Pujari, a priest of the famous Parmat temple in Kanpur, said:

"The major cause of water pollution in Kanpur is the toxic industrial waste which is discharged into the river. Since all the factories are closed due to the lockdown, the Ganga River has become cleaner. The priests at the temple earlier used to refrain from taking a holy dip because the water was highly contaminated. However, since the past week, we are bathing in the river."[10]

8. IMPORTANT CASES REFERRED:

- *Pride of Derby and Derbyshire Angling Association v. British Celanese Ltd. [1953]1 All ER 1326.*

[8] Jacob Koshy, 'U.P. pollution control body pulled up for Ganga's plight' The Hindu (New Delhi, 28 February, 2020)
[9] PTI, 'PM reviews 'Namami Gange' project in Kanpur' (Deccan Herald, 14 December 2019) <https://www.deccanherald.com/national/north-and-central/pm-reviews-namami-gange-project-in-kanpur-785523.html>accessed on 22 May 2020.
[10] Jacob Koshy, 'U.P. pollution control body pulled up for Ganga's plight' The Hindu (New Delhi, 28 February, 2020)

CASE NO. 5

M. C. MEHTA
V.
UNION OF INDIA

(AIR 1988 SC 1115)

GANGA POLLUTION CASE- II/ MEHTA II/ KANPUR LEATHER TANNERIES CASE

ABSTRACT

The following is a Case Summary of the landmark case M.C. Mehta v. Union of India (II) (1988), also commonly known as the "*Ganga Pollution Case*". In 1985, M.C. Mehta filed a writ petition in the nature of mandamus to prevent these leather tanneries from disposing off domestic and industrial waste and effluents in the Ganga River. This writ petition was bifurcated by the Supreme Court into two parts known as Mehta I and Mehta II.

Ganga is a trans-boundary river of Asia flowing through India and Bangladesh. It is one of the most sacred rivers to the Hindus and a lifeline to a billion Indians who live along its course. One of the most populated cities along its course is Kanpur. This city has a population of approx. 29.2 lakhs (2.9 million). At this juncture of its course Ganga receives large amounts of toxic waste from the city´s domestic and industrial sectors, particularly the leather tanneries of Kanpur. The 8-10 respondents in Mr. Mehta's petition included all 75 tanneries of the Jajmau district the Union of India, the Chair of the Central Pollution Control Board (CPCB), the Chair of the Uttar Pradesh State Pollution Control Board (SPCB), and the Indian Standards Institute. The petition also claimed that the Municipal Corporation of Kanpur was not fulfilling its responsibilities. The Court subsequently bifurcated the petition into two parts. The first dealt with the tanneries of Kanpur and the second with the Municipal Corporation. The author of this summary has made an informed attempt to curate a short summary in the form of a case brief for part-II i.e. dealing with the Municipal Corporation. The author personally admires the work of M.C. Mehta and thus, considers this case as most significant water pollution litigation in the Indian court system.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Writ Petition No. 3727 of 1985
Jurisdiction	:	Supreme Court of India
Case Filed on	:	1985
Case Decided on	:	January 12, 1988
Judges	:	Before JJ., E.S Venkataramiah, K.N. Singh
Legal Provisions involved	:	Constitution of India – Article 51-A (g), 32, 21, 48-A Uttar Pradesh Nagar Maha Palika Adhiniyam, 1959 - Section 1-(3) Uttar Pradesh Municipalities Act, 1916- Section 7, 189, 191 Environment (Protection) Act, 1986 Code of Criminal Procedure, 1973 Corporation Act, 1901 Water (Prevention and Control) Act, 1974
Case Summary Prepared by	:	Ankita Mishra (Student of Law, Indore Institute of Law, Indore)

2. BRIEF FACTS OF THE CASE:

The petitioner filed this writ petition as a Public Interest Litigation against the public nuisance caused by the serious pollution of the river Ganga, for protecting the lives of the people using the Ganga water. This petition was taken up by the Court against the municipal bodies, the Kanpur Nagar Mahapalika in this case.

The advocates who appeared in this case on behalf of the appearing parties are: B. Datta, Additional Solicitor General, and R.K Jain. Vinod Bobde, R.N Trivedi, K.N Bhat, Tapash Ray and B.R.L Iyengar, Senior Advocates (R.P Singh, R.P Kapur, Ravinder Narain, S. Sukumaran, C.B Singh, S.K Dhingra, P.K Jain, D.N Goburdhan, Arvind Kumar, Ms Laxmi Arvind, Vineet Kumar, Deepak K. Thakur, T.V.S.N Chari, Vrinda Grover, Badri Nath, Rakesh Khanna, Mukul Mudgal, A.K Ghose, M.M Gangadeb, Probir Mitra, Sushil Kumar Jain, Suryakant, Pappy T. Mathews, Mrs. Mamta Kachhawaha, Mrs. Shobha Dikshit, G.S Misra, S.R Srivastava, Parijat Sinha, R. Mohan, Ms Bina Gupta, Ranjit Kumar, Krishna Kumar, R.C Verma, Arun Minocha, Sri Narain, E.C Aggarwala, S.R Setia, H.K. Puri, T.S Rana, Pramod Swarup, Ashok Grover, S. Markandeya, Swarup, Ms Lalita Kohli, K.C Dua, Rajbirbal, R.A Gupta and Ms A. Subashini, Advocates, with them) for the Respondents.

M.C. Mehta, an environmental lawyer, filed a PIL (Public Interest Litigation) in the Supreme Court of India against 89 respondents. The court ruling was initiated in 1985 in the city of

Haridwar situated along the banks of river Ganga, when a matchstick tossed by smoker resulted in river catching fire for more than 30 hours. The fire was the result of the presence of toxic inflammable chemical layers over the waters.

The court considered issue of utmost importance, but the length of the river was intractable. The court requested Mr. Mehta to narrow the focus and so he chose Kanpur. The court issued certain directions with regard to the industries in which the business of tanning was being carried on near Kanpur on the banks of the River Ganga. On that occasion, the Court had directed that the case in respect of the municipal bodies and the industries which were responsible for the pollution of the water in the river Ganga would be taken up next, and accordingly, the Court took up for consideration this case against the Kanpur Nagar Mahapalika, since it was found that Kanpur was one of the biggest cities on the banks of the river Ganga. Under the laws governing the local bodies, the Nagar Mahapalikas and Municipal Boards were primarily responsible for the maintenance of cleanliness in the areas under their jurisdiction and the protection of their environments.

3. ISSUES INVOLVED IN THE CASE:

I. Whether Court to issue appropriate directions for the prevention of Ganga water pollution requiring the Court to issue appropriate directions for the prevention of Ganga water pollution.

II. Whether Central and State Boards constituted under Water (Prevention and Control of Pollution) Act and the municipalities under the U.P. Nagar Mahapalika Adhiniyam, they have just remained on paper and no proper action had been taken pursuant thereto.

III. Whether the Enforcement of various statutory provisions which impose duties on the municipal and other authorities.

4. ARGUMENTS OF THE PARTIES:

- Argued that the nuisance caused by the pollution of the river Ganga is a public nuisance which is wide spread and affecting the lives of large number of persons and therefore any particular person can take proceedings to stop it as distinct from the community at large.

- Argued that to take action against the industries responsible for pollution, licenses to establish new industries should be granted only to those who make adequate provisions for the treatment of trade effluent flowing out of the factories.

5. LEGAL ASPECTS INVOLVED:

Many crucial environmental law provisions are the legal aspects involved in this case. This case sets an example to how the environmental matters shall be dealt with – this case highlights the importance of the Environment (Protection) Act, 1986; Water (Prevention and Control) Act, 1974 and Articles 21, 32, 47, 48, 51-A (g) and 226 of the Constitution of India – these are the most important Fundamental Rights and Directive Principles of State Policy embedded in the Indian Constitution for dealing with Environmental Rights.

The case highlights the Chapter V of the Adhiniyam. Clauses (iii) (vii) and (viii) of Section 114 of the Adhiniyam, which incorporates the obligatory duties of the Mahapalika.

Section 114 of the Adhiniyam states that, "It shall be incumbent on the Mahapalika to make reasonable an adequate provision, by any means (sic) which it is lawfully competent to it to use or to take."

The Court also relied on Section 251, 388, 396, 398, 405 and 407 of the Adhiniyam which provide provisions for disposal of sewage, prohibition of cultivation, use of manure, or irrigation injurious to health, power to require owners to clear away noxious vegetation and power of the Mukhya Nagar Adhikari to inspect any place at any time for the purpose of preventing spread of dangerous diseases.

The Court also relied on the provisions of the Water Act which provide the meaning of pollution, sewage effluent, stream and trade effluents.

6. JUDGEMENT IN BRIEF

- The Court directed the Kanpur Nagar Mahapalika to take appropriate action under the provisions of the Adhiniyam for the prevention of water pollution in the river. It was noted that a large number of dairies in Kanpur were also polluting the water of the river by disposing waste in it. The Supreme Court ordered the Kanpur Nagar

Mahapalika to direct the dairies to either shift to any other place outside the city or dispose waste outside the city area.

- Kanpur Nagar Mahapalika was ordered to increase the size of sewers in the labour colonies and increase the number of public latrines and urinals for the use of poor people.
- Whenever applications for licenses to establish new industries are made in future, such applications shall be refused unless adequate provision has been made for the treatment of trade effluents flowing out of the factories.

The above orders were made applicable to all Nagar Mahapalikas and Municipalities which have jurisdiction over the area through which the Ganga River flows.

In addition to this, the Supreme Court further relied on Article 52A (g) on the Constitution of India, which imposes a fundamental duty of protecting and improving the natural environment. The Court order that –

1) It is the duty of the Central Government to direct all the educational institutions throughout India to teach at least for one hour in a week lessons relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wildlife in the first ten classes.

2) The Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost. Children should be taught about the need for maintaining cleanliness commencing with the cleanliness of the house both inside and outside, and of the streets in which they live. Clean surroundings lead to healthy body and healthy mind. Training of teachers who teach this subject by the introduction of short term courses for such training shall also be considered. This should be done throughout India.

7. COMMENTARY:

Some of the most crucial environmental law provisions are the central legal aspects involved in this case and the precedent set by this case makes it earn its ‘landmark environmental law case’ label. In my opinion, the essence of this case lies in the Supreme Court taking the charge to define a manner to deal with the environmental cases, by instilling life in the statutory provisions of several Environmental Law special legislations as well as making

justice available by way of ensuring readily access to the Court via Article 32 or 226 (Writ Petitions) as well as embedding the right to clean, safe and healthy environment in the Fundamental Rights of all people in India.

In my opinion, this is one of the most comprehensive judgments which sets a path, leads by example and provides executory directions as well to follow-up to ensure successful implementation of the Law and Enforcement, as under Article-32 including issuance of directions for enforcement of human rights, the right to live contains the right to claim compensation for the victims of pollution hazards. This is a holistic judgement rendered by the Supreme Court of India declaring a practice of law by their judgment. This apex court judgement has been and shall be considered a successful win for the Indian Environmental Jurisprudence.

8. IMPORTANT CASES REFERRED:

- *Pride of Derby and Derbyshire Angling Association v. British Celanese Ltd. [1953] Cha 149.*
- *Virendra Gaur v. State of Haiyana 1995 (2). Sec 571, 580; Rural Litigation Entitlement. Kendra, Dehradun v. State of U.P. AIR 1998 SC 2187.*
- *Maxmuller (Ed.), the Sacred Book o/FmsI 1965 Vol. XIV Part II, p 389.*
- *V. K. Beena Kumari: Environmental Pollution and Common Law Remedies - in P. Leela Krishna's Law and Environment 1999.*

CASE NO. 6

M. C. MEHTA
V.
UNION OF INDIA

(1991 4 SCC 137)

INTRODUCTION OF CNG CASE/ DELHI VEHICULAR POLLUTION CASE

ABSTRACT

The following is a case summary of the infamous M.C. Mehta v. Union of India (1991). Air Pollution is one of the serious problems among the issues relating to environment. It leads to many health relating problems like ischaemic heart disease, stroke, chronic obstructive pulmonary disease, lung cancer and acute lower respiratory infections. In 1885, an initiative was taken by a Supreme Court advocate (Chairman of Environment Protection Cell of Delhi) for the very first time on the behalf of the petitioner regarding the air pollution control in the Union Territory of Delhi caused by vehicles. This petition gives rise to many backs to back changes for the air pollution. This case was known by the name Vehicular Pollution Case or Introduction of CNG Case.

The Petitioner moved the Supreme Court exercising his constitutional right under Article 32 of the Constitution of India because the problem of environmental pollution was at alarming rate in the Union territory of Delhi. And it was affecting the physical health of the peoples harshly.

It was fairly long case which saw the appearance of many learned advocates and senior advocates. This case reiterates that sustainable development is the only practical approach to balance ecology and development "*to meet the needs of the present generation without compromising the ability of the future generations to meet their needs.*"

The author of this summary has made an informed attempt to curate a short summary in the form of a case brief for academic purposes. The author personally admires the attempts of the M.C. Mehta.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Civil Writ Petition No. 13029/ 1985
Jurisdiction	:	Supreme Court of India
Case Filed on	:	October 1985
Case Decided on	:	March 1991
Judges	:	Before Misra, Ranganath (CJ) Kania, H (J), Kuldip Singh (J)
Legal Provisions involved	:	Articles 21, 32 and 51-A of Constitution of India, 1950. Section 3 of Environment Protection Act, 1986. Rules 115(6), 126 and 127 of Central Motor Vehicles Rules, 1989. Air (Prevention and Control of Pollution) Act, 1981.
Case Summary Prepared by	:	Manisha (Student of Law, Maharishi Dayanand University, Rohtak, Haryana).

2. BRIEF FACTS OF THE CASE:

The Supreme Court's involvement in Delhi's Air pollution problem originated over concerns that polluted air poisoning its citizens. A widely cited study conducted in Delhi estimated that 10,000 people die every due to complications from air pollution, a staggering total of one person every hour. Alarmed by this unchecked pollution and its impacts on the Delhi population, Supreme Court environmental advocate *M.C. Mehta* filed a Public Interest Litigation (PIL) suit in the Supreme Court against the Union of India in 1885, charging that existing environmental laws obligated the government to take steps to reduce air pollution in Delhi in interests of public health.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the petition filed was maintainable or not.
II. Whether the government was obligated to take steps to reduce Air Pollution in Delhi or not.

4. ARGUMENTS OF THE PARTIES:

Petitioner

- Argued that in Delhi estimated that 10,000 people die every due to complications from air pollution, a staggering total of one person every hour.
- Argued that the quality of was steadily decreasing and no effective steps were taken by the administration in this behalf.
- Argued that the existing situation violates the Fundamental right of individuals of Right to life.
- Argued that there is a violation of fundamental duty to protect and safeguard the environment.

Defendant

- Argued that without further improvement in the quality of diesel, it may not be possible to control fully the harmful emissions.
- Argued that it was examined through Research & Development (R&D) Wing of TELCO whether it is not possible to make certain modifications in the system of the vehicles to achieve Euro II or even stricter norms to get the best out of the vehicles operating on diesel to reduction of emission of sulphur content.
- Argued that TELCO has adopted some modifications and also in the process of modifying the system further to achieve EURO II norms to reduce to some extent the harmful effects of diesel emissions through diesel-operated vehicles.

5. LEGAL ASPECTS INVOLVED:

According to Article 21 of the Constitution of India no person can be deprived of his life and personal liberty by the state except procedure established by law. Article 21 is not merely the physical act of breathing but also gives a fundamental in right of life to live with dignity. It has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included the "right to live" under Article 21 of constitution[11]. Further Article 32 clause (1) guarantees the right to move the Supreme Court

[11]Subhas Kumar v. State of Bihar, AIR 1991 SC 420.

by "*appropriate proceedings"* for the enforcement of the fundamental rights conferred by Part III of the Constitution. In other words, whenever there is a violation of a fundamental right, any person can move the Court for an appropriate remedy. It is known as the Heart and Soul of the Constitution. Article 48-A provides that the State is endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51-A was inserted to the Constitution by the 42nd Amendment Act, 1976. This Article for the first time specifies a code of ten fundamental duties for citizen. Article 51-A (g) says 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 creature. It was marked by the Supreme Court that though Article 51-A doesn't cast any fundamental duty on the state defined in Article 12. But the facts remain that the duty of every citizen is the collective duty of the state[12].

Section 3 of Environment Protection Act, 1986empowers the government to take all necessary, reasonable and valid steps and measures for protecting and improving the quality of the environment and preventing controlling and abating environmental pollution. While keeping in the notice about the degrading quality of the environment, authorities should implement the '**precautionary principle'** and '**pollution pay principle'**.[13]

Central Motor Vehicles Rules, 1989

Rule 115(6) – Each motor vehicle manufactured on and after the dates specified in sub-rules (2), (3), (4) or (5), shall be certified by the manufacturers to be conforming to the standards specified in the said sub-sections , and further certify that components liable to effect the emission of gaseous pollutants are so designed, constructed and assembled as to enable the vehicle, in normal use, despite the vibration to which it may be subjected, to comply with the provisions of the said sub-rule.

Rule 126- It was substituted by GSR 338 (E) dt. 26-03-1993. On and from the date of the commencement of central motor vehicles (Amendment) Rules, 1993, every manufacturer of motor vehicles other than trailers and semi-trailers shall submit Prototype of the vehicle to be manufactured by him for test by the Vehicle Research and Development Establishment of the Ministry of Defence of the Government of Indian or Automotive Research Association of India, Pune ,or the Central Machinery

[12]AIIMS Students Union v. AIIMS, AIR 2001 SC 3262.
[13] Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647.

Testing and Training Institute, Bodoni(MP) or the Indian Institute of Petroleum, Dehradun, and such other agencies is may be specified by the Central Government for granting a certificate by that agency, to the compliance of the provisions of the Act and these Rules.

Rule 127 – On and from the date[14] of commencement of this rule, the sale of ever Motor Vehicle manufactured be accompanied by a certificate of road- worthiness by the manufacturer in Form 22.

6. JUDGEMENT IN BRIEF:

The Supreme Court acknowledged that the problem of environmental pollution is a global one. The effect of pollution is not restricted by the political boundaries of a country or a state. Its effect is widespread has both direct and indirect. The Declaration of the United Nations Conference on the Human Environment held in Stockholm in 1972 stated that – "Man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights-even of life itself."

Principle Number 1 of the same Declaration states that "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears solemn responsibility to protect and improve the environment for present and future generations."

Court placed reliance on Article 48A and Article 51A of the Constitution of India

[14] 1-4-1991, vide Not. No. so. 941 (E), dt. 11-12-1990.

The Court took cognizance of the 'report of a monitoring Committee on ambient and automotive emission levels' prepared by the Director of Transport, Delhi Administration, to assess the impact of pollution caused by vehicles on the air of Delhi. This report indicated that Delhi had a total number of 5,92,584 vehicles of which 65% were two-wheeler, 3.5% were three-wheeler, 25% cars, jeeps and other medium size vehicles and 1.5% were buses and the remaining 7% were goods carriers. This indicates that the vehicular population of 1990 was 13.5 lakhs. This means that within about 8 years there has been an increase of about 8 lakhs of vehicles in Delhi.

Respondent 3 was the Central Pollution Control Board set up by the Air (Prevention and Control of Pollution) Act, 1981[15]. The statute authorizes the government to instruct the Transport Authorities for developing expertise and reducing vehicular pollution .The Supreme Court kept this writ petition pending for the purpose of monitoring and passed the following interim orders –

1. Indian constitution recognises the importance of protection of environment, life, flora and fauna by the virtue of Article 51 A and Directive principles of state policy. Therefore, it is the duty of the state to protect the environment.
2. All persons using automobiles should have a fair idea of the harmful effects on the environment due to the emissions caused by their vehicles. Awareness is an effective way of reducing environmental pollution.
3. A committee was set up to look into the problem of Vehicular Pollution in Delhi and to find methods to arrest pollution. This committee was composed of a retired judge of the Supreme Court acting as the Chairman of the committee, M.C. Mehta (the petitioner), the Chairman of the Central Pollution Control Board and a person representing the Association of the Indian Automobiles Manufacturers. The members were given the power to take advises from not more than three members. The Joint Secretary in the Ministry of Environment and Forests was appointed as the Convener-Secretary of the Committee. This committee came into effect from 18th March, 1991 under the Notification of the Union Government.
4. The committee was setup with the following objectives –

[15]The Air (Prevention and Control of Pollution) Act, 1981, No. 14, Acts of Parliament, 1986.

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

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

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

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

(v) To make specific recommendations on the administrative/legal regulations required for implementing the recommendations in (iii) above.

5. This committee was ordered to furnish a report to the Supreme Court within two months stating the steps taken in the matter. The Union Government and Delhi Administration were directed to effectively cooperate with the committee for its smooth operation.

7. COMMENTARY:

This was a landmark judgment with respect to Vehicular pollution in India. Later the Supreme Court also passed orders for the provision of Lead-free petrol in the country and for the use of natural gas and other mode of fuels for use in the vehicles. Lead free petrol was introduced in four metropolitan cities in 1995. All cars manufactured after 1995 were fitted with catalytic convertors to reduce emissions. CNG outlets have been setup to provide CNG gas to vehicles. As a result of this case Delhi became the first city in the world to have a complete public transport running on Compressed Natural Gas.

8. IMPORTANT CASES REFERRED:

- *Subhas Kumar v. State of Bihar, AIR1991 SC 420.*
- *AIIMS Students Union v. AIIMS, AIR 2001 SC 3262.*
- *Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SSC647.*
- *The Air (Prevention and Control of Pollution) Act, 1981, No. 14, Acts of Parliament,1986.*

CASE NO. 7

M. C. MEHTA
V.
STATE OF ORISSA & ORS.

(AIR 1992 Ori.225)

WASTE AND HAZARDOUS SUBSTANCES CASE

ABSTRACT

The following is a Case Summary of the infamous M.C. Mehta v. State of Orissa and Ors. (1992), also commonly known as the Waste and Hazardous Substance case. In this case, a writ petition was filed to protect the health of thousands of people living in Cuttack and adjacent areas who were suffering from pollution from sewage being caused by the Municipal Committee Cuttack and the SCB Medical College Hospital, Cuttack. The main contention of the petitioner was that the dumping of untreated waste water of the hospital and some other parts of the city in the Taladanda canal was creating health problems in the city. The State, on the other hand contended that a central sewerage system had been installed in the hospital and that there is no sewage flow into the Taladanda canal as alleged. Further, it was asserted that the State had not received any information relating to either pollution or of epidemic of water borne diseases caused by contamination of the canal. During the course of the hearing of the petition the Court noticed that not a single Department of the State Government was willing to take any responsibility in the matter and were conveniently shifting the burden to another department. A startling revelation during the course of the hearing was the fact that there was a report culminating from a survey conducted earlier by the State Pollution Board, which had declared water in the city not fit for human consumption. Further reports that were obtained during the pendency of the petition revealed that the water was not even fit for bathing. After going into the constitutional provisions, and the recommendations of the State Pollution Control Board which had made stark revelations about the conditions of drinking water and health in the city, the Court directed the State to immediately take necessary steps to prevent and control water pollution and to maintain wholesomeness of water which is supplied for human consumption. A responsible Municipal

Council is constituted for the precise purpose of preserving public health. Provision of proper drainage system in working conditions cannot be avoided by pleading financial inability.

The author of this summary has made an informed attempt to curate a short summary in the form of a case brief for academic purposes. The author personally admires the work of M.C. Mehta and thus, considers this case as one of the monumental victories of the legend.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Writ Petition (Civil) 115 of 1990
Jurisdiction	:	High Court of Orissa
Case Decided on	:	March 6, 1992
Judges	:	Dr. Arijit Pasayat and S.K. Mohanty, JJ.
Legal Provisions involved	:	Article 21, 43 and 51A(g) of the Constitution of India. The Environment (Protection) Act, 1986 The Water (Prevention and Control of Pollution) Act, 1974
Case Summary Prepared by	:	Mahimashree Kar (Student of Law, Indore Institute of Law)

2. BRIEF FACTS OF THE CASE:

The petitioner came to go to the thousand year old Silver City, Cuttack hoping to possess a glance at the rich and cultural heritage of town. Instead what he found was a horrible pollution of water within the city. The petitioner visited certain areas nearby the Taladanda canal. This canal was excavated about 100 years back for the aim of irrigation of a component of Mahanadi delta of Cuttack district. But it's become a refuse of untreated waste-water of the hospital and a few other parts of town. The water of the capal consequently has become highly polluted. outsized sections of populace living within the bustees along the coast of the canal are using the water of the canal for bathing, drinking and other domestic purposes. The storm water drain which was constructed within the city for the aim of discharge of excess water during heavy rains into the river Kathajori to avoid water stagnation was intended to discharge such water through a sluice-gate. Unfortunately, the storm water drain which is predicted to stay dry except during the season is full throughout the year and sewage water from various parts of town gets into it and consequently to the river. The unsanitary condition of this drain creates pathological state within the city. A

sewage treatment plant was contemplated for town waste-water at Matagajpur, but the project has been abandoned mid-way. Steps are necessary to complete and upgrade the sewage treatment plant so on stop discharge of city waste-water into the storm water drain and into the Taladanda canal by constructing appropriate sewer system for town, and installing waste-water treatment plant at the hospital. due to unavoidable situations the people are guaranteed to drink contaminated water and consequentially becoming victims of water-borne diseases. The authorities by their callous acts have inflicted suffering and pain on the thousands of individuals by forcing them to drink the contaminated/polluted water rather than acting for his or her welfare to prevent it.

The Health Department isn't accountable for supply, of beverage to the people of Cuttack city and therefore the surrounding areas. up to now as discharge of storm water from the S.C.B. Medical College Hospital campus is worried, it's stated that open drains are installed. Sometimes waste-water apart from sewage flows through these drains to Taladanda canal. No specific case of epidemic of water-borne diseases caused by contamination of Taladanda canal has been indicated, and no such instance has come to the notice of the Health Department. The Board have not reported since 1983 about pollution of Taladanda canal by discharge of waste-water from the medical college campus thereto. As a matter of policy, government want to safeguard the water of Taladanda canal, and thus, arrangements are being made to forestall discharge of water from the medical college hospital to the canal.

3. ISSUES INVOLVED IN THE CASE:

I. Whether S.C.B Medical College Hospital are alleged in the violation of Article 21 of the Constitution of India.

II. Whether the National Health Policy, the Environment (Protection) Act, 1986, and the Water (Prevention and Control of Pollution) Act, 1974. The provisions of the last named Act being the pivotal statute in this application, which were same referred to 'Act' hereinafter.

III. Whether the problem has originated from Talanda Canal or the Mahanadi River.

4. ARGUMENTS OF THE PARTIES:

Petitioner

- Argued that it is the responsibility of the Municipal Corporation and the government to check water stagnation and sewage system.
- Argued that there should be monthly inspections done by the government and to check the welfare and the need of the people.
- Argued that there must be scheme which will be implemented subject to availability of funds for checking the sewage, stored water through rains in the 8th Plan.
- Argued that the Article 21 of people has been infringed including some other sections and acts.
- Argued that the Court must act urgently for enhancing environmental jurisprudence as well as setting compliance and force behind the already established constitutional and statutory environmental legal provisions.

Defendant:

- Argued that S.C.B Medical College Hospital has no part in violating in any articles or mandamus to the life of thousands people.
- Argue that there has been no pollution made by the any part of the state or college to the canal.

5. LEGAL ASPECTS INVOLVED:

Many crucial environmental law provisions are the legal aspects involved in this case. This case sets an example to how the environmental matters shall be dealt with – this case highlights the importance of the Environment (Protection) Act, 1986; Water (Prevention and Control) Act, 1974 and Articles 21, 32, 47, 48, 51-A (g) and 226 of the Constitution of India - these are the most important Fundamental Rights and Directive Principles of State Policy embedded in the Indian Constitution for dealing with Environmental Rights.

6. JUDGEMENT IN BRIEF:

- The Indian Constitution, within the 42nd Amendment, has laid the inspiration in Articles 48A and 51A for a jurisprudence of environmental protection. Today, the State and also the citizens are under a fundamental obligation to safeguard and

improve the environment, including forests, lakes, rivers, wildlife and to possess compassion for living creatures.

- If there's necessity and desirability of getting Sewage Treatment Plant or Plants, the identical are founded without further delay. The Storm Water Drain could also be operated in such a fashion on prevent entry of sewage water through it to the rivers. The exercises indicated by us and such other decisions and exercises as could also be necessary to forestall pollution of water could also be taken within one year from today.
- Chlorination should commence from some days (at least a week) earlier and also the dose should gradually be increased so decreased slowly till a few weeks after the Bali Yatra an outsized carnival related to the celebrations of the festival.
- There should be continuous monitoring of water quality which should indicate the adequacy.
- Specific zones located at a distance should clearly be demarcated for defecation.
- Trenches and pits should be filled up after use.
- It should be ensured that the hotels and sweetmeat vendors in Bali Yatra don't use the untreated river water under any circumstances.
- Offerings inside the river should be discouraged. The potential health hazards of polluted water should be widely publicised and also the public should be made aware that unless they conduct themselves properly.

7. COMMENTARY:

The case the court enlarged the scope of the right to live and ensured that the state had power to restrict hazardous industrial activities for the purpose of protecting the right of the people to live in a healthy environment, hi this case the court had to deal specifically with the impact of activities concerning manufacturing of hazardous products in a factory. In doing so the court found that the case raised some seminal questions concerning the scope and ambit of Article-21 and 32 of the Constitution. Let all become concerned as intellectuals and not become apes by provoking, antagonizing nature. Easiest way to provoke nature is by polluting water and/or remaining callous to pollution, because water is one of the greatest gifts of nature.

In my opinion, this is one of the most comprehensive judgments which sets a path, leads by example and provides executory directions as well to follow-up to ensure successful implementation of the “pollution”, “sewage effluent”, “sewer” and “stream” approach. This is a holistic judgement rendered by the Supreme Court of India declaring a practice of law by their judgment. This apex court judgement has been and shall be considered a successful win for the Indian Environmental Jurisprudence.

8. IMPORTANT CASES REFERRED:

- *Municipal Council, Ratlam v. Shri Vardhichand, AIR 1980 SC 1622.*

CASE NO. 8

M. C. MEHTA
V.
UNION OF INDIA

(AIR 1992 SC 382)

ENVIRONMENTAL EDUCATION CASE

ABSTRACT

The following is the Case Summary of M.C. Mehta v. Union of India (1992), also known as "*Environmental Education Case*". This case was brought before the Supreme Court by M.C. Mehta in 1991.

The petitioner moved to the Apex Court exercising their constitutional right under Article 32 of the Constitution of India. A Public Interest Litigation was filed requiring broadcasting environmental education to the public by mass media controlled by the government so that the lack of public awareness is retrieved. Petitioner made this application on the grounds that Article 51A (g) of the Constitution requires every citizen to protect and improve the natural environment. To fulfil these obligations to the environment, the petitioner argued that people needed to be better educated about the environment. The court observed that enactment of laws related to the air and water pollution was not enough as it does not sensitize people about the environmental concerns. Acceptance by the public is important in order to work effectively by any law. Hence, proper awareness is required among the public as necessary by the law.

The author of this case analysis has made an attempt to create a short summary in the form of a case brief for academic purposes. This summary has been created by the author after comprehensive research and reading of the original judgment. The author personally admires the work of M.C. Mehta and considers this case as one of his monumental victories.

1. PRIMARY DETAILS OF THE CASE:

Case No	:	Civil Appeal No 860 of 1991
Jurisdiction	:	Supreme Court
Case Filed on	:	1991
Case Decided on	:	November 22, 1991
Judges	:	Ranganath Misra, G.N. Ray, A.S Anand, JJ
Legal Provisions involved	:	Article 32, 51A (g) Water Pollution Control Act, 1974 Air Pollution Control Act, 1981 Environment Protection Act, 1986
Case Summary Prepared by	:	Mahima Patel (Student of Law, Amity Law School Noida, Amity University Uttar Pradesh)

2. BRIEF FACTS OF THE CASE:

M.C. Mehta brought this case before the Supreme Court of India in the form of a Public Interest Litigation (PIL).The petitioner moved to the Apex Court exercising their constitutional right under Article 32 of the Constitution of India. A Public Interest Litigation was filed requiring broadcasting environmental education to the public by mass media controlled by the government. Petitioner made this application on the grounds that Article 51A (g) of the Constitution requires every citizen to protect and improve the natural environment. To fulfil these obligations to the environment, the petitioner argued that people needed to be better educated about the environment. The court observed that enactment of laws related to the air and water pollution was not enough as it does not sensitize people about the environmental concerns. Acceptance by the public is important in order to work effectively by any law.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the general public be sensitized about the environmental concerns and the law governing them?
II. What steps should be taken by the government in order to aware people about the regarding such issues?

4. ARGUMENTS OF THE PARTIES:

M. C. Mehta, who has consistently been taking interest in matters relating to the environment and pollution, argued that general awareness is necessary in order to sensitize the public about the environmental issues. Hence, media can be considered an effective medium in order to aware people. The petitioner hence claimed in his application that appropriate directions must be issued to the cinema halls to show slides containing messages and information related to environment and its protection. All India Radio should broadcast information relating to the environment in the National and Regional languages. The petitioner also argued that short films should be produced regarding the environment and its protection to sensitize more and more people at a large scale. There is also a prayer from the petitioner regarding the mandate of environment as a compulsory subject in colleges and school as a graded system to ensure the general awareness among the youth and children.

5. LEGAL ASPECTS INVOLVED:

Many crucial environmental law provisions are the legal aspects involved in this case. This case highlights Article 51A of the Indian Constitution as it specifies the fundamental duties of every citizen of the country. Clause (g) of Article 51A states that it is the duty of every citizen of the country to protect and improve the natural environment including forests, lakes, and rivers and to have compassion for living creature.

Hence, people should be aware of the laws and duties which bind them and have compassion for the environment and the living creatures. Everyone should realise the importance of environment and the necessity of protecting it. There should be a general awareness among the public about the concerns regarding environment and realisation that the people have to live in tune with the environment in order to live a peaceful and happy life.

6. JUDGEMENT IN BRIEF:

The judgment is totally based on Protection of Environment and keeping it free of pollution as it is an indispensable necessity for life to survive on earth. According to the bench, enactment of environmental laws is not enough rather the government should sensitize the public in order to make the laws effective. No law can work effectively without the

acceptance by the public. The bench believed that it is necessary to educate people about the reforms and their duties towards the environment. The Attorney-General who appeared from the side of respondent has also appreciated the stand of the petitioner. Hence, the court issued the following directions:

a) The respondent was ordered to issue appropriate directions to the State Governments and Union Territories to enforce a condition for licence of the cinema halls, video parlour and touring cinemas to show at least two messages/slides on environment in each show started by the for free.
b) The Ministry of Environment was directed to come out with appropriate slide material within the next two months which should be brief but effectively demonstrate the message related to environment and pollution. It should be striking and should leave an impact on the general public.
c) These slides should be directly circulated to the Collectors who are responsible for the licence of the cinema halls under the respective State Laws and they should help such halls and video parlour to comply with the requirement of this order.
d) If there is a failure in compliance of this order, it should be treated as a ground for the cancellation of the licence by the authority.
e) The Ministry of Information and Broadcasting was ordered to start producing short but informative films depicting the various concerns related to environment and pollution. Such short films should be shown in one show every day by the cinema halls.
f) Doordarshan and AIR were directed to produce daily programs with duration of five to seven minutes with messages on the environment and a regular weekly programme on the subject.
g) The court also directed University Grants Commission to take appropriate steps and prescribe a course on environment to the universities. They should make it a compulsory subject at every level in college education.
h) In case of Education up to the college level, the court ordered the State government and the every Education Boards should immediately take steps to regulate compulsory education in environment.

7. COMMENTARY:

I totally agree with the fact that mere imposition of laws is not enough if the people are not educated related to the laws and environmental concerns and issues. In order that human conduct may be in harmony with the prescribed law, it is essential that there should be appropriate awareness and knowledge of what the law entails and an element of recognition by the people that the obligation of law is grounded in thinking, which is to be followed. This is achievable only when steps are taken to make the society aware of the obligatory necessity of their conduct being oriented in accordance with the compulsion of the law. The court therefore issued the following orders to the Government of India: 1) The Union Government was required to issue instructions to all the State Governments and the Union Territories to impose through collectors as a condition for license on all cinema halls, to obligatory show free of cost at least two slides/messages on environment during each show.2) The Ministry of Information and Broadcasting of Government of India should without delay, start producing information films of short duration emphasizing on the various aspects of environment and pollution and the benefits of clean environment on society 3) Doordarshan and AIR were directed to produce daily programmes with a duration of five to seven minutes with messages on the environment and a regular weekly programme on the subject; and 4)The Educational Boards were directed to take steps to enforce compulsory education on environment up to matriculation from the next academic year and the University Grants Commission (UGC) to consider the feasibility of making environment a compulsory subject at every level in college education. Hence after considering all the aspects, this case can be considered as a successful victory in the field of environmental law.

CASE NO. 9

INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION

V.

UNION OF INDIA

(WRIT PETITION NO. 967 OF 1989)

GROUND WATER POLLUTION CASE

ABSTRACT

The writ petition to be discussed in the following case note is Indian Council for Enviro-Legal Action v. Union of India (Writ Petition No. 967 of 1989). This writ petition was raised under Article 32 by an environmentalist organisation to address the woes of the unfortunate residents of Bichhri village of Udaipur District in Rajasthan after the setting up of a chemical industrial complex in the Udaipur belt. These chemical industries were involved in the production of highly toxic and corrosive materials like 'H' acid which resulted in the release of toxic effluents like iron-based and gypsum-based sludge.

The case talks about the applicability of social action litigation. The industries in this case constantly flouted the orders of the state control board and the apex court. Hence, this petition served as a reminder that there are still industries that work with the sole motive of profit without worrying themselves with the repercussions of their actions.

The author of this summary has attempted to bring a short yet accurate version of the judgement of this important case. This case provides an in-depth analysis of the development of environmental laws in the country and finding the balance between the need for industrialisation and protection of the environment and the rights of citizens.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Writ Petition No. 967 of 1989
Jurisdiction	:	Supreme Court
Case Filed on	:	August 1989
Case Decided on	:	February 13, 1996
Judges	:	B.P. Jeevan Reddy and B.N. Kirpal, JJ.
Legal Provisions involved	:	Article 32, Section 3, Sub-section 2, Section 4, Section 5, Section 7 of the Environmental Act, 1986 Article 48 A of the Constitution of India (Directive Principles of State Policy) Article 51 A (g), Constitution of India, (Fundamental Duties) Section 24 (1), Section 25 (I), Section 33, Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 Hazardous Wastes (Management and Handling) Rules, 1989
Case Summary Prepared by	:	Hananya A.S. (Student of Law, Tamil Nadu National Law University, Tiruchirappalli)

2. BRIEF FACTS OF THE CASE

Factual

- Bichhri, a small village in Udaipur district of Rajasthan experienced deaths and illnesses due to the contamination of the groundwater well in the area.
- This was caused due to the improper treatment of toxic effluents from Industrial Complexes set up by Hindustan Agro Chemicals Limited in the year 1987. They started producing certain chemicals like Oleum and Single Super Phosphate.
- The adjacent industry, Silver Chemicals too commenced production of 'H' acid in a plant located within the same industrial complex. 'H' acid manufactured gave rise to enormous quantities of highly toxic effluents like iron-based and gypsum-based sludge the quantity of which is estimated to be about 2500 tonnes of highly toxic

sludge produced while producing 375 tonnes of H-acid. Jyoti Chemicals is also a unit established to produce 'H' acid.

- The respondents also included certain fertiliser manufacturers namely Rajasthan Multi Fertilizers and Phosphates India.
- The toxic untreated wastewaters were allowed to flow out freely. The toxic substances then percolated deep into the bowels of the earth polluting the aquifers and the subterranean supply of water. The water in the wells and the streams turned dark and dirty rendering it unfit for human consumption, cattle consumption and irrigation. The soil has become polluted rendering it unfit for cultivation which led to the loss of significant livelihood. It spread disease, death and disaster in the village and the surrounding areas.
- Silver Chemicals and Jyoti Chemicals stopped manufacturing 'H' acid since January 1989 following an order under Section 144 of the CRPC.

Procedural

The Indian Council for Environment-Legal Action, an independent voluntary body, filed the Writ Petition in 1989 on behalf of the villagers of Bichhri village with praying to the Court for appropriate remedial action to be initiated in the area.

The Rajasthan Pollution Control Board (R.C.P.B) filed an affidavit about the appropriate permissions required and present with the industrial complex. It was found that Hindustan Agro Chemicals Ltd. obtained a NOC from the Board for the manufacturing of sulphuric acid and alumina sulphate. The unit, however, changed the products being produced without clearance from the Board and hence started manufacturing oleum and single super phosphate with no consent obtained. Directions were issued under the Air (Prevention and Control of Pollution) Act, 1981 for closing down of the unit. Silver Chemical also did not obtain NOC for the manufacturing of H-acid. The waste produced was found to be highly acidic and contained a very high concentration of dissolved solids along with several other pollutants. A detailed report of the same was submitted.

Further, The Govt. of Rajasthan in its counter-affidavit dated 20-1-1990 stated that it has initiated action through the Pollution Control Board in order to check further spread of pollution.

A report was also obtained from the National Environmental Engineering Research Institute (NEERI) on the situation in and around Bichhri village. NEERI submitted their report along with suggested remedial alternatives. Based on this report and other evidence submitted the Supreme Court directed that the sludge lying on the land should be removed immediately in order to minimise the risk that might occur due to seepage of toxic substances into the soil especially during the rainy season.

On April 4, 1990, the Court directed the Ministry of Environment & Forests, Government of India to appoint experts immediately to inspect the area in order to ascertain the existence and extent of gypsum-based and iron-based sludge and to initiate remedial measure and disposal procedures. The cost for the storage and transportation was directed to be recovered from the industries located in the Complex.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the industrial complexes are the root cause of pollution in the area?
II. Whether the court has the appropriate power to call for action against the respondents and if yes, to what extent?
III. What are the permissions required for the lawful functioning industrial complex in the case of a later amendment?
IV. What is the extent of liability of the polluter in such a case?
V. Whether the rule of absolute liability of the M. C. Mehta v. Union of India case and/or strict liability rule in Rylands v. Fletcher can be applied to the instant case?
VI. What is the extent of the cost to be paid by the Respondents and if it is restricted to the amount necessary to carry out appropriate remedial action or pay the amount with interest?

4. ARGUMENTS OF THE PARTIES:

Petitioner

- The petitioner alleged that the chemical industrial setup in the area producing the H acid were wholly responsible for the woes of the villagers of the area.

- They relied upon reports of expert committees to prove their case who surveyed the area within the village and surrounding the industries.
- The counsel argued that pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole.
- It is argued that the principle of accountability and it is the duty and obligation of the court to protect the fundamental rights of the citizens under Article 32
- They stated that the want for profits has made these industries blind to the suffering of the human life and hence, it is an infringement of Article 21 which is Right to Life that includes the Right to a healthy and dignified life.
- Mr. Mehta submitted that having regard to the respondent's conduct in the present case, it would be reasonable to impose an additional pecuniary penalty on them.

Respondent

- The respondents contended that they were private corporate bodies and not covered under the meaning 'State' under Article 12 of the Constitution. Hence, a writ petition under Article 32 of the Constitution cannot be used to issue directions for them.
- They stated that the RSPCB had adopted a hostile attitude towards the respondents from the very beginning and hence, the reports submitted by them are unreliable. They also express their desire to have an opportunity to test the veracity of the said Reports by cross-examining the experts to establish the validity of the reports.
- They claimed that blaming the respondents for the said pollution was incorrect and unjustified due to the persistent existence of Hindustan Zinc Limited who they claim had were also to be blamed for affecting the water in the wells, streams and aquifers.
- The respondents argue that there are about 70 industries in India manufacturing 'H' acid. In the matter of disposal of sludge, the directions given for its disposal in the case of other units are not as stringent as the process that has been prescribed in the case of respondents. The Gujarat High Court's decision in Pravinbhai Jashbhai Patel was used to support this.
- Theydenied the persistent existence of sludge outside the respondents' complex and claimed that toxic wastes from the Sulphuric Acid Plant were flowing through and leaching the sludge, creating a highly dangerous situation was untrue and incorrect. The supplemented this with the fact that the R.S.P.C.B. itself had constructed a

temporary E.T.P. for the Sulphuric Acid Plant pursuant to the Orders of this Court made in Writ Petition (C) No. 76 of 1994. Subsequently, a permanent E.T.P. has also been constructed.

- The case put forward by the R.S.P.C.B. about the respondents' units not having requisite permits/ consents as required under the Water Act, Air Act and the Environment [Protection] Act is not sustainable. The respondents' units were established before the amendment of Section 25 of the Water Act and, therefore did not require any prior consent for their establishment.
- The respondents were prepared to bear the cost of repairing the damage, if any, caused by them, but they held that the R.S.P.C.B. and other authorities should be made to compensate for the huge losses suffered by the respondents on account of their illegal and obstructionist policy adopted towards them.
- They also argued that the law laid down in Oleum Gas leak Case is at variance with the established legal position in other Commonwealth Countries and hence should not be applied to the instant case.

5. LEGAL ASPECTS INVOLVED:

Article 48A as a part of the Directive Principles of State Policy stated that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 51A of the fundamental duties includes "(g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures."

In furtherance of these objectives the Parliament enacted the Water (Prevention and Control of Pollution) Act in 1974. Section 24 (1) of the Act which provides that "subject to the provisions of this section, (a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter whether (directly or indirectly) into any stream or well....". Section 25 (I) as amended by Act 53 of 1988 reads "Subject to the provisions of this section, no person shall without the previous consent of the State Board, (a) establish or take any .steps to establish any industry, operation or process or any treatment and disposal system or

an extension or an addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage'); or (b) bring into use any new or altered outlets for the discharge of sewage or (c) begin to make any new discharge of sewage....". Section 33 A empowers the Board to order the closure of any industry and to stop the electricity, water and any other service to such industry if it finds such a direction necessary for effective implementation of the provisions of the Act.

The Environment (Protection) Act 1986 defines "environment" to include "water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, microorganism and property." Section 3 empowers the Central Government "to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution". Sub-section (2) elucidates the several powers inhering in Central Government in the matter of protection and promo-lion of environment. Section 5 empowers the Central Government to issue appropriate directions to any person, officer or authority to further the objects of the enactment. Section 6 confers rule-making powers upon the Central Government in respect to matters referred to in Section 3. Section7 of the act provides certain standards that ought to be maintained in which it is a must that no person is allowed to damage the environment and if a person is found guilty for causing damage to the environment by polluting the pollution pay principle.

The Central Government has also created the Hazardous Wastes (Management and Handling) Rules, 1989 in exercise of the power conferred upon it by Section 6 of the Environment (Protection) Act prescribing the manner in which the hazardous wastes shall be collected, treated, stored and disposed of.

6. JUDGEMENT IN BRIEF:

- The court heavily relied on the observations of the Constitution Bench Judgement in **M. C. Mehta and Another v. Union of India and Others (1987) 1 SCC 395** called **Oleum Gas Leak Case**. The rule of absolute liability was evolved in India after this case. According to the rule of absolute liability, if any person is engaged in an inherently dangerous or hazardous activity, and if any harm is caused to any person

due to an accident which occurred during carrying out such inherently dangerous and hazardous activity, then the person who is carrying out such activity will be 'absolutely liable'. This strays from the principle of strict liability held in Rylands v. Fletcher which still has certain defenses.

- The court in this case notably applied the principle of **Polluter Pays**. Under this principle, it's the polluter who must not only compensate the victims of the pollution, but also pay the prices and expenses of restoring the environmental degradation. The Supreme Court observed thus, once the activity carried on is hazardous or inherently dangerous; the person carrying on such activity must make good the loss which is caused to other person, no matter whether or not reasonable care was taken when carrying on such an activity. The Polluter Pays Principle thus imposes absolute liability in such cases.

- After hearing the learned counsels for the parties at length, the Court gave the subsequent directions: The Central Government would have to determine the amount required for carrying out the remedial measures. Just in case of failure of the said respondents to pay the said amount the same shall be recovered by the Central Government in accordance with law.

- The Court ordered the closure of all the plants and factories of the respondents located in the Bichhri Village and directly RSPCB to seal all the factories, plants, machinery of the said respondents.

- In 2011, almost 15 years after passing the ultimate judgment it wasn't enforced. Hence, a Writ Petition was filed in the Supreme Court under the same name **"Indian Council for Enviro-Legal Action v. Union of India" (2011) 8 SCC 161** arguing that respondents kept filing various interlocutory applications to avoid the liability of paying the amount for remediation and costs imposed by the court on the settled judicial doctrine that Polluter Pays Principle. The Supreme Court thus observed: *"A person in wrongful possession shouldn't only be aloof from that place as early as possible but be compelled to pay money for wrongful use of that premises. Any leniency would seriously affect the credibility of the system. No litigants can derive benefit from the mere pendency of a case in an exceedingly Court of Law. A party cannot be allowed to take benefits of his own wrong."*

- On the above observations, the Apex Court ordered the applicant industry to pay Rs.37.385 crores together with compound interest @12% per annum from November 14, 1997 till the amount is paid or recovered. The applicant industry is additionally directed to pay the price of litigation. The concept of inflation rate was also assumed as an argument.

- In addition, the Supreme Court directed applicant industry to pay cost of Rs.10 Lakhs which might be utilized for concluding remedial measure in the village Bichhri and surrounding areas in Udaipur.

7. COMMENTARY:

The case plays an important role in the usage of the 'polluter pays' principle. It was also a landmark case when it came to the levying of the full cost for the losses incurred by the RCPD in the process of clearing up the toxic sludge. The judges also called for the setting up of separate environmental courts which is extremely important in an increasingly industry-oriented country like ours.

This long drawn out case is an example of the exploitation of the process of law. In order to establish the credibility of the law stricter orders need to imposed and industries should be made to respect these orders. Especially in the case of addressing the sufferings of the underprivileged rural poor there should be a way for these persons to be equitably compensated for the trouble that they go through.

8. IMPORTANT CASES REFERRED:

- *Green View Tea & Industries v. Collector, Golaghat and Another (2002) 1 SCC 109.*
- *Indian Council for Enviro-Legal Action and others v. Union of India and Others (1996) 3 SCC 212.*
- *Kalabharati Advertising v. Hemant Vimalnath Narichania and others (2010) 9 SCC 437.*
- *M.C. Mehta and Another v. Union of India and Others (1987) 1 SCC 395 (Oleum Gas Leak Case).*
- *M.C. Mehta v. Kamal Nath and others (2000) 6 SCC 213.*

- *Manganese Ore (India) Ltd. v. The Regional Assistant Commissioner of Sales Tax, Jabalpur (1976) 4 SCC 124.*
- *Minister for the environment and Heritage v. Greentree (No.3) [2004] FCA 1317.*
- *Minister for the environment and Heritage v. Greentree (No.3) [2004] FCA 1317.*
- *Ramrameshwari Devi and Others v. Nirmala Devi and Others 2011(6) Scale 677.*
- *Rupa Ashok Hurra v. Ashok Hurra & Another (2002) 4 SCC 388.*
- *Ryland v. Fletcher (1868) LR 3 HL 330.*
- *Sita Ram Bhandar Society, New Delhi v. Lieutenant Governor, Government of NCT, Delhi & Others.*

CASE NO. 10

M. C. MEHTA
V.
UNION OF INDIA & ORS.

(AIR 1996 SC 1977)

BADKAL LAKE-SURAJKUND CASE/ MINING OPERATIONS CASE/ STONE CRUSHER'S CASE

ABSTRACT

The following case summary is related to the case of M.C Mehta v Union of India and others[16] which is also famously called as the "*mining operation case*". The case was brought to the apex court by the learned M.C Mehta who is an environmentalist who raised a PIL under Article 32 of the constitution[17] seeking a direction from the Haryana Pollution Control Board to control the pollution caused by the stone crushers, pulverisers and mine operators in the Faridabad- Balabgarh area.

The case went on for a year or so and in the process the court gave various directives to the companies who operate mines in those areas and after seeing the report presented by the government directing shutting down of mines 5km from Badkal Lake and Surajkund which were considered as tourist attractions. The case took an exciting turn when the counsel for respondents asked for separate testing of these lands while contesting that the mining operations affected a limited area and thus the 5km condition was unjustified. The case lead to an active role being played by the judiciary in directing the state and central government to take adequate steps and make the place beautiful again to attract tourism which is a huge source of economy.

The author of the summary has made an informed attempt to curate a short summary in the form of a case brief for academic purposes. The author personally admires the work of M.C. Mehta and thus, considers the case as one of the monumental victories of the legend.

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[16] 1991 AIR SC 1977
[17] Remedies for enforcement of rights conferred

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Writ Petition (C) No. 4677 of 1985
Case Filed on	:	November 20, 1995
Case Decided on	:	May 10, 1996
Judges	:	Before Kuldip Singh and K. Venkataswami, JJ.
Legal Provisions Involved	:	Article 32 of the Constitution, Explosives Act, 1884, Air (Prevention and Control of Pollution) Act, 1981
Case Summary Prepared by	:	Nikhilesh Koundinya (Student of Law, Symbiosis Law School, Pune)

2. BRIEF FACTS OF THE CASE:

Factual

This case was brought in the form of a Public Interest Litigation (PIL) under Article 32 of the Constitution by M.C. Mehta.

The case on the side of the petitioners was argued by M.C Mehta whereas Mr. Gopal Subramaniam argued on behalf of State of Haryana. The respondent's side which was a conglomerate of the mining companies in that area was represented by Mr. Shanti Bhushan, Mr. G.L Sanghi and Mr. R.S Suri.

The appellant pleaded before the court to issue directions to the Haryana Pollution Control Board to control the pollution caused by the stone crushers, pulverisers and mine operators in the Faridabad-Balabgarh area. The court directed a board to inspect and ascertain the impact of mining operations in the ecologically sensitive area of Badal Area and Surajkund. The inspection report was placed before the court along with an affidavit filed by SP Chakrabarti who was the secretary of the board. The report stated that for the purposes of mining, explosives are used for rock blasting. This being an unscientific method for mining overburdened materials was observed lying haphazardly on the road. Due to deep mining for extracting sand lumps mines lay unclaimed and abandoned. This slowly was leading to an ecological disaster in that area.

Thus, on investigation of these points the mining operations within the radius of 5 kms. were stopped by the Haryana government due to the recommendations made by the board. The respondents vehemently contested the 5 km ban and asked for an expert opinion to be taken.

The court directed the National Engineering Research Institute (NEERI) to investigate on the working of the said mines and decision taken to establish the 5 km ban.

The report presented by NEERI contained several recommendations after carrying out extensive research in the two places including checking the air quality, noise levels and the quality of the land/soil.

Procedural

The case went through many investigations and evidences. Under this heading we will be looking at the timelines established in the case:

- 20th November 1995- the court directed the board to inspect and ascertain the impact of mining operations on the ecologically sensitive area of Badkal Lake and Surajkund.
- 12th April 1996- the court directed NEERI to conduct an investigation in the said area to ascertain whether the mining operations in the said area must be stopped in the interest of environmental protection, pollution control and tourist department.
- 20th April 1996- NEERI submitted its report with the investigation summary and recommendations to the court.
- 10th May 1996- the court gave its judgement in favour of the petitioners after considering both the reports and making several recommendations to the state government of Haryana.

3. ISSUES INVOLVED IN THE CASE:

I. Whether closing 5 km of the area mentioned above justified even though the operations may not have any effect beyond certain distance?
II. Whether closing of the mines justified or is the government weighing ecological balance more than industrial development?

4. ARGUMENTS OF THE PARTIES:

Petitioner:

- Mining operations to be stopped within 5 km of Badkal Lake and Surajkund in the state of Haryana.

- Mining causes problems in the land quality and causes undue pollution in these ecologically sensitive areas.
- The report itself shows that mining activities are going on without obtaining consent of the Air act 1981.
- There should be steps taken to establish a green belt area which will be a positive step in curbing pollution and reclaiming the lost land and fertility.
- The mining operations must be undertaken in series and activities must be completed fully in one block before digging the next one.
- There is an urgent need of minimising duration of the blasting operations.
- The formations of Environment Management Plans (EMP) are very important to indicate steps taken by mining companies for land rejuvenation and afforestation programmes.

Defendant:

- Without hearing the mine owners and giving them an opportunity to explain themselves the mines have been closed.
- The pollution generated by the mines cannot go beyond a distance of 1 km and closure of mines within the area of 5 kms is wholly unjustified.
- Another opinion must be taken from an expert such as the NEERI to provide relief to the mining companies.

5. LEGAL ASPECTS INVOLVED:

There were many crucial provisions dealt with regards to this case. The first report submitted by the board appointed by the court indicated that the mining activities that were going on in the said areas was without obtaining consent required from the Air (Prevention and Control of Pollution) Act, 1981 from the Haryana State Pollution Control Board. In this regard the court directed the mines to obtain consent from the board before beginning its mining activities in the said area.

It was earlier pointed out that for conducting mining activities there was rock blasting conducted. For this process to take place there was a need to plant explosives into the soil and burst rocks. The report directed the mining companies to follow the procedure of rock blasting as laid down under the Explosives act, 1884.

Regarding the green belt development in the said area to counteract the pollution caused the board report directed the District Forest Department to take care of the plantation process.

There were a few recommendations made by the NEERI report which are key to the judgement in the present case:

- All mining companies need to prepare detailed mining plans and obtain approvals before the operations begin. These must include mine safety plans and ensuring installation of necessary devices for protection of mine workers.
- The Archaeological Survey of India (ASI) needs to collaborate with mine leaseholders on matters relating to excavation operations.
- The mining companies are also responsible for reducing the duration of blast operations.
- The tourism department is required to protect the quality of the lake waters and eliminate non-point sources of pollution.
- There needs to be stringent pollution control by the state government and environmental plans made to facilitate opportunities for construction materials and manpower while protecting the environment and ensuring safety of public health.
- The report also mentioned the need for preparing regional environmental plans for urgent implementation to enable eco-friendly regional development in mining areas.

6. JUDGEMENT IN BRIEF:

- There shall be **no mining activity within 2 km radius** of the tourist resorts of Badkal and Surajkund. All the mines which fall within the said radius shall not be reopened.
- The forest department of the State of Haryana shall undertake the **Development of Green Belts** as indicated in the NEERI report. The report has also suggested the development plan and types of tress to be planted. The court also directed the forest district officer Haryana and Faridabad to start plantation of trees for developing green belts and make all efforts to complete the plantations before the monsoon season of 1996.
- The mining companies **must comply with all the directions laid down by NEERI** and failure to comply with any of the directions will lead to closing of the mines.

- The court stated that from the date of the judgement **no more mining operations will take place within 5 km radius** of Badkal Lake and Surajkund. It also stated that all the areas that are open shall be converted into green belts in the said area.
- The court also made a mention to mining leases where it stated that no mining lease within the 2km to 5km radius shall be renewed without **obtaining prior no objection certificate from the Haryana Pollution Control Board** as also from the Central Pollution Control Board. Unless both these boards granted the certificate the mining leases in these areas will not be renewed.

7. COMMENTARY:

In my opinion this is one of the most comprehensive cases to understand the role judiciary plays with walking the tight rope between environment protection and industrial development. This particular case lays down many aspects mines to take care of before they start the mining process. This case is not only restricted to these areas but act as a procedure to be followed within the country. The reason why such a case may be referred to as "landmark" is because before the institution of such a PIL mines did not have any responsibility and even if they did, they did not take it seriously. In fact, before this judgement mines were only considered about the bottom line which was making profit without taking the environment into consideration. But after this judgement while making profit they also had the responsibility to replenish the lost environment and greenery in the areas where such operations to place. The case acted as deterrence to mining companies to follow the rules and also stated what would happen if they didn't comply with the said rules.

The court while passing this judgement also made it clear that it will give individuals the opportunity to always approach it and be the mediator to ensure justice. This is apparent from the inherent power given to people to approach the court under Article 32 and 226. The court thus ensures environment protection and can also direct the legislature to take steps to ensure that practices against environment don't take place.

The main observation made is the inherent relationship shared by the three functions in the government which include the legislature, judiciary and the executive. In this case the courts made a reference to the existing laws and ordered the state governments to enforce

these laws and make companies comply with them. The court also made a request to the legislature to form laws particularly targeting mines and their operations. This case is thus a classic example of interlinking between three functions of the government.

CASE NO. 11

VELLORE CITIZENS' WELFARE FORUM
V.
UNION OF INDIA

(AIR 1996 SC 2715)

TAMIL NADU TANNERIES CASE

ABSTRACT

The following is a Case Summary of the infamous Vellore Citizens' Welfare Forum v. Union of India (1996), also commonly known as the "*Tamil Nadu Tanneries Case*". This case was brought before the Apex Court of India in 1991 by M.C. Mehta appearing on behalf of the petitioner against the polluting tanneries of Tamil Nadu.

The petitioner's moved the Supreme Court exercising their constitutional right under Article 32 of the Constitution of India because over 900 tanneries in the state of Tamil Nadu made it a regular practice to discharge untreated effluents in the River *Palar* – which is the main source of water to the residents of this area – posing not only shortage of water supply but also health hazards, consequently violating the Fundamental Rights of the residents.

It was a fairly long case which saw the appearance of many learned advocates and senior advocates along with expert reports from expert committees of NEERI, TALCO and TNPCB. The case helps lay down guidelines for the functioning of the Authority directed to be formed by the Supreme Court under the wings of the Central Government vide Article 3(3) of the Environment (Protection) Act, 1986. This case helps amalgamate the salient features of Sustainable Development (*as stated in the 'Brundtland Report'*) like Precautionary Principle, Polluter pays Principle, Inter-generational Equity, Use and conservation of Natural Resources etc. among others. This case reiterates that Sustainable Development is the only practical approach to balance ecology and development *"to meet the needs of the present generation without compromising the ability of the future generations to meet their needs".*

The author of this summary has made an informed attempt to curate a short summary in the form of a case brief for academic purposes. The author personally admires the work of M.C. Mehta and thus, considers this case as one of the monumental victories of the legend – a case when unfolded tables various lessons.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Writ Petition (Civil) No. 914 of 1991
Jurisdiction	:	Supreme Court of India
Case Filed on	:	1991
Case Decided on	:	August 28, 1996
Judges	:	Before Kuldip Singh, Faizan Uddin and K. Venkataswami, JJ.
Legal Provisions involved	:	Constitution of India – Article 21, 32, 47, 48-B, 51-A (g) Environment (Protection) Act, 1986– Sections 3(3), 4, 5, 7 and 8. Environment (Protection) Rules, 1986 – Rules 3(1), 3(2) and 5(1). Water (Prevention and Control) Act, 1974
Case Summary Prepared by	:	Jahnavi Taneja (Student of Law, Amity Law School Noida, Amity University Uttar Pradesh)

2. BRIEF FACTS OF THE CASE:

Factual

This case was brought before the Supreme Court of India in the form of a Public Interest Litigation (PIL) under Article 32 of the Constitution of India by Vellore Citizens' Welfare Forum.

The advocates who appeared in this case on behalf of the appearing parties are: R. Mohan, V.A. Bobde, Kapil Sibal, M.R. Sharma, V.C. Mahajan and S.S. Ray,; Senior Advocates K.R.R. Pillai, **M.C. Mehta**, V. Krishnamurthi, M.S. Dahiya, Seema Midha, S. Sukumaran, Baby Krishna, Sudhir Walia, V.G. Pragasam, Vijay Panjawani, A.T.M. Sampath, Praveen Kumar, Sudhir Walia, Roy Abraham, P. Sukumar, Romesh C. Pathak, M.A. Krishnamoorthy, V. Krishnamurthi, Anil Katiyar, Deepak Divan, A.V. Rangam, Indra Sawhney, S.M. Jadhav, Zafarullah Khan, Shahid Rizvi, Shakil Ahmed Syed, Jaideep Gupta and Sanjau Hegde.

The appellant brought to light the severe water pollution of the River Palar by the untreated effluent discharge of over 900 tanneries in the state of Tamil Nadu. It was also stated that the

tanneries are discharging untreated waste into the agricultural fields, roadsides, waterways and open lands creating a waste hazard leading to an enormous environmental degradation vis-à-vis breaching environmental laws in India. The Appellant has relied on a survey by the Tamil Nadu Agricultural University Research Centre (Vellore) which stated "nearly 35,000 hectares of agricultural land in the tanneries belt has become either partially or totally unfit for cultivation". About 170 types of chemicals namely sodium chloride, ammonia, sulphuric acid among others in large quantities are degrading the river.

The situation became a burning concern as River Palar is the main source of water for the residents of the nearby village as well as Tamil Nadu in general. The list submitted vide an affidavit in 1992 to the Environment and Forests Department of Tamil Nadu lists 59 villages under three divisions namely Thirupathur, Vellore and Ranipet – that are directly and severely affected by the water pollution and hazardous substances in the waterways by conduct of the tanneries in this area. These areas consequently suffered from acute scarcity of water.

The tanneries in Tamil Nadu were given the option to either establish an individual Effluent Treatment Plant (ETP) or Common Effluent Treatment Plant (CETP) – they were given 10 years for the same. Later, it was observed that either the tanneries did not establish such ETP(s) or where they did, majority did not satisfy the basic standards or are established but not functioning. In conclusion, it was noted that there were 57 tanneries which have not established an ETP even after repeated notices and orders served by the Court.

The NEERI brought their observation in front of the Court that the physico-chemical characteristics of the groundwater from dug wells near tannery clusters was unfit for drinking and highly polluted.

Procedural

This case was a long drawn case and thus has gone through many steps and phases, the timeline has been such:

- On 1st May 1995: This Court ordered an immediate closure of the 57 tanneries/ industries listed under the Statement III. This Court gave these listed tanneries can option of closure, relocation or establishing a satisfactory ETP.

- On 28th July 1995: This Court suspended the order of closure in respect of 7 industries for 8 weeks.
- On 8th September 1995: Tamil Nadu Pollution Control Board (TNPCB) filed a report in which the Tamil Nadu Leather Development Corporation (TALCO) requested more time grant for these industries till 31st December 1995 in the interest of justice.
- On 20th October 1995: This Court directed NEERI (National Environmental Engineering Research Institute, Nagpur) to send a team of experts to examine the feasibility of establishing Common Effluent Treatment Plants (CETP) for cluster of tanneries.
- NEERI submitted two very important reports on 9th December 1995 and 12th February 1996 along with significant recommendations – which this Court directed the parties to comply with within 2 months.
- In January 1996: This Court ordered a closure of all the tanneries that are not connected with the 7 CETP(s) identified.
- M.C. Mehta (for the petitioner) brought to this Court's notice the Government's Order dated 30th March 1989 stating that no industry causing serious water pollution should be allowed within one kilometer from the embankments of rivers, streams, dams, etc. and that INPCB should furnish a list of such industries to all local bodies.
- This Court ordered NEERI on 9th April 1996 to check into the objection to Total Dissolved Solid (TDS) by the defendants. On 11th June 1996, NEERI submitted a report stating that the standards set by the Board for TDS are justifiable.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the tanneries have been degrading the environment under the disguise of development.

II. Whether the tanneries have the right to destroy the ecology, harm the environment and pose health hazards because they are huge foreign exchange earners for India.

III. Whether Sustainable Development with its key principles like Polluter Pays Principle and Precautionary Principle are executable with legal force.

IV. Whether right to clean environment is envisaged under the ambit of Article 21 of the Constitution of India.

4. ARGUMENTS OF THE PARTIES:

Petitioner

- Argued that these industries have no right to destroy ecology, degrade environment and pose a health-hazard in the name of development – as the Constitutional and Statutory Provisions protect a person's right to fresh air, clean water and pollution-free environment.
- Argued the immediate closure of all the tanneries with no satisfactory ETP or CETP established according to standards of the TNPCB and NEERI.
- Argued that these tanneries should be held liable under the Customary International Law and well-accepted Domestic Law Principle i.e. of Polluter's Pay Principle (PPP) and Precautionary Principle.
- Argued that this Court must act urgently and set an example for enhancing Environmental Jurisprudence as well as setting compliance and force behind the already established constitutional and statutory environmental legal provisions.

Defendant:

- Argued that the tanneries are progressing satisfactorily in setting up the ETP(s) or connecting with the CETP(s) – thus, more time should be granted in the best interests of justice and development.
- Argued that the Leather industry in India is a huge Foreign Exchange Earner and Tamil Nadu is the leading exporter amounting to 80% of the country's export in this industry.
- Argued objecting that the standards set by the TNPCB as well as NEERI for the Total Dissolved Solid (TDS) are not justified.

5. LEGAL ASPECTS INVOLVED:

Many crucial environmental law provisions are the legal aspects involved in this case. This case sets an example to how the environmental matters shall be dealt with – this case highlights the importance of the Environment (Protection) Act, 1986; Water (Prevention and Control) Act, 1974 and Articles 21, 32, 47, 48, 51-A (g) and 226 of the Constitution of India – these are the most important Fundamental Rights and Directive Principles of State Policy embedded in the Indian Constitution for dealing with Environmental Rights.

The case highlights the salient principles of "Sustainable Development" and appreciates and encourages acceptance of Rio Principles (1991), Agenda 21 blueprint and Stockholm Declaration (1972) not just as mere norms but also as principles to further the balance between ecology and development.

This case cites some other landmark cases (*mentioned ahead*) to prove that the principles of Sustainable Development (*like Precautionary Principle and Polluter Pays Principle*) are internationally accepted as Customary Law and all International as well as Customary Law that is not inconsistent with the domestic law is equivalent to being applicable to the domestic jurisdiction.

6. JUDGEMENT IN BRIEF:

- Directed the **Central Government to constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986** and shall confer all necessary powers on the said authority to deal with the situation created by the polluting tanneries. The authority shall be constituted before 30th September, 1996.
- The authority so constituted shall execute the principles of **"Precautionary Principle" and "Polluter Pays Principle".** The said authority shall also lay down a just and fair procedure for completing this exercise in order to **assess the damage and compensations.**
- The said authority shall **compute the compensation** under two heads namely, (i) reversing the ecology charge and (ii) payment to individuals/ families who suffered. The said authority shall compile a record and hand it over to the Collector/ District Magistrate who shall execute the same, collect and disburse such compensation.
- The said **authority shall direct closure of the industries that evade compensation payments or do not comply with the orders.**
- Directed that the industries can be made **liable to pay for past pollution** generated by the industries which has consequently harmed the environment.
- Directed the formation of a separate **"Environment Protection Fund"** – the collection of fines shall be deposited in this fund and utilized for paying compensations as well as restoring the environment. The Court **imposed a Rs. 10,000 fine on each of the tanneries** in the districts of North Arcot Ambedkar, Erode

Perriyar, Dindigul Anna, Trachi and Chergai M.G.R. All fines are supposed to be paid before 31st October 1996 or else shall be closed and help in contempt of court.

- The said **authority shall formulate schemes in consultation with expert bodies like NEERI, Central Board and the State Board.** The schemes shall be executed by the State Government under central Government's supervision with the help of the Environment Protection Fund or any other granted.
- **Court suspended the closure orders of all tanneries in the five districts** (mentioned above) and gave them time till 30thNovember 1996 to connect with CETP(s) or establish individual ETP(s) – if found unable to do so, the closure shall be executed.
- Court directed that the **tanneries must have permit from the Board and Authority**– if permit not granted, the closure shall follow. The **authority may direct permanent closure or relocation.**
- **Government Order No. 213 dated 30th March 1989 shall be enforced herewith.** No new industry listed in Annexure I to the notification shall be permitted to be set up within the prohibited area.
- The **standards stipulated by the Board regarding TDS and approved by the NEERI shall be operative.**
- Requested the Chief Justice of Madras High Court to **constitute a Special Bench i.e. "Green Bench"** to monitor the implementation of this case and to deal with other environmental matters.
- This **Court acknowledged and appreciated the assistance of M.C. Mehta in this case** – the same was placed on record and the court directed the State of Tamil Nadu to **reward M.C. Mehta by a payment of Rs. 50,000** towards legal fees and expenses incurred.

7. COMMENTARY:

Some of the most crucial environmental law provisions are the central legal aspects involved in this case and the precedent set by this case makes it earn its 'Landmark Environmental Law Case' label. In my opinion, the essence of this case lies in the Supreme Court taking the charge to define a manner to deal with the Environmental Cases, by instilling life in the statutory provisions of several Environmental Law special legislations as well as making justice available by way of ensuring readily access to the Court via Article 32 or 226 (Writ

Petitions) as well as embedding the right to clean, safe and healthy environment in the Fundamental Rights of all people in India.

In my opinion, this is one of the most comprehensive judgments which sets a path, leads by example and provides Executory Directions as well to follow-up to ensure successful implementation of the *'Sustainable Development'* approach. This is a holistic judgement rendered by the Supreme Court of India declaring a practice of law by their judgment. This apex court judgement has been and shall be considered a successful win for the Indian Environmental Jurisprudence.

8. IMPORTANT CASES REFERRED:

- *Indian council for Enviro-Legal Action v. Union of India, [(1996) 3 SCC 212: JT (1996) 2 SC 196].*
- *Gramophone Co. of India Ltd. V. Birendra Bahadur Pandey [(1984) 2 SCC 534: 1984 SCC (Cri) 313: AIR 1984 SC 667].*
- *Jolly George Varghese v. Bank of Cochin [(1980) 2 SCC 360: AIR 1980 SC 470].*
- *A.D.M. v. Shivkant Shukla, [(1976) 2 SCC 521: AIR 1976 SC 1207].*

CASE NO. 12

M. C. MEHTA
V.
STATE OF TAMIL NADU & ORS.

(AIR 1997 SC 699)

CHILD LABOUR CASE

ABSTRACT

The following is a Case Summary of the infamous M.C. Mehta vs. State of Tamil Nadu &Ors. (1997), also commonly known as the "*Child Labour Case*". This case was brought before the Court by M.C. Mehta throwing light upon the increasing menace of Child Labour in India.

Mr. Mehta moved the Supreme Court exercising the Constitutional Right under Article 32 of the Constitution of India as the rights of the children were being grossly violated in the town of *Sivaska* in the District of *Virudhanagar* in Tamil Nadu. This case centers around the unfortunate accident that unfolded in *Sivaska* in a match industry and thus, forced the entire nation to focus on this major violations of human rights of the children.

This case is evidence of the effort put in by the judiciary to find out information about the growth of this violation as well as its root causes. The bench appointed committees as well as accepted many reports on record and referred to a bunch of others (be it independent or governmental) to arrive at the decision in this case. The judgment gives hope and lays the rubric for the ideal of *"the child is the father of man – to enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so for as the society is concerned".*

The author of this summary has made an informed attempt to curate a short summary in the form of a case brief for academic purposes. The author personally admires the work of M.C.

Mehta and thus, considers this case as one of the monumental victories of the legend as well as the judiciary of India in reporting the menace as well as providing solutions in the form of directions.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Writ Petition (C) No. 465 of 1986
Jurisdiction	:	Supreme Court of India
Case Filed on	:	1986
Case Decided on	:	December 10, 1996
Judges	:	Before Kuldip Singh, B.L. Hansaria and S.B. Majumdar, JJ.
Legal Provisions involved	:	Constitution of India – Article 24, 32, 39(e) & (f), 41, 45, 47. Child Labour (Prohibition and Regulation) Act, 1986 – Sections 3, 14, 17. International Platform: Signatory to U.N. Convention on Rights of Child (CRC)
Case Summary Prepared by	:	Jahnavi Taneja (Student of Law, Amity Law School Noida, Amity University Uttar Pradesh)

2. BRIEF FACTS OF THE CASE:

Factual

This case was brought before the Supreme Court of India in the form of a Public Interest Litigation (PIL) under Article 32 of the Constitution of India by Shri. M.C. Mehta.

The advocates who appeared in this case on behalf of the appearing parties are: M.C. Mehta (Advocate), Mariarputham (Advocate), Aruna Mathur (Advocate), K.T.S. Tulsi (the then Addl. Solicitor General), C.B. Babu (Advocate), V.K. Verma (Advocate), R.A. Perumal (Advocate).

Shri. M.C. Mehta filed a petition bringing to light the matter of gross violation of fundamental rights of children and soaring child labour in “Sivakasi”. This is a town in the Virudhanagar District of the State of Tamil Nadu in India – which is also noted to be the worst offender in the matter of violations regarding the prohibition laws to employing child labour. Initially, this petition was filed by M.C. Mehta once before but back then it was disposed by an order dated October 31st 1990 by noting that a committee has been formed to

supervise and oversee the compliance of the directions given to industries and factories in this town. Subsequently, a horrific repot of an unfortunate event surfaced in the news of cracker factories in Sivakasi and thus, the case has been re-opened by this Court.

The facts of this case pertain to the fact that a horrific accident took place in a match industry taking away the lives of 39 and which brought Sivakasi – *which already holds the image of being the worst offender of the child labour in India* – back in the news.

This case in the present legal diaspora holds the stature of being a landmark case in India for Children's Rights as well as against Child Labour.

Procedural

- Initially, this petition was filed by M.C. Mehta once before but back then it was disposed by an order dated October 31st 1990 by noting that a committee has been formed to supervise and oversee the compliance of the directions given to industries and factories in this town. Subsequently, a horrific repot of an unfortunate event surfaced in the news of cracker factories in Sivakasi and thus, the case has been re-opened by this Court.
- The Tamil Nadu Government at the direction of the court were asked to file a report – which intimated the number of persons who died in the unfortunate accident at a cracker factory in Sivakasi – and the number of persons died were 39.
- The Court directed payment of compensation directions as well as formed an Advocates' Committee to submit a comprehensive report (committee consisted of Shri. R.K. Jain, Ms. Indira Jaisingh, and Mr. K.C. Dua). They submitted the report on 11thNovember 1991.
- An affidavit of the President of the All India Chamber of Match Industries (Sivakasi) is on record denying everything found and reported by the Advocates' Committee.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the industries and factories existing in the town of Sivakasi violate the laws against child labour.

II. Whether the industries and factories in the town of Sivakasi should be made liable for compensation as well as compliance to directions issued time and again by the Court.

III. Whether the legislation on Child Labour in India is suffice to fight the menace.

4. ARGUMENTS OF THE PARTIES:

Petitioner

- The Petitioners in this case argued that the increasing Child Labour in this town accrues to the fact that the laws are not implemented according to the statutes. Thus, argued in favour of payment of due compensation as well as penalising the offenders to set a deterrent effect.

Defendant:

- Merely issued an affidavit denying all findings of the Advocates' Committee Report.

5. LEGAL ASPECTS INVOLVED:

Many crucial legal aspects are involved in this case. A brief mention of all of them is mandatory to provide a gist of the legality involved in this landmark case:

A. Constitution of India:

- **Article 24** – No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- **Article 39 (e)** – that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- **Article 39 (f)** – that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- **Article 41** – Right to work, to education and to public assistance in certain cases.
- **Article 45** – Provision for free and compulsory education for children.

- **Article 47** – Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

B. <u>Other Statutory Provisions in India:</u>

- **Child Labour (Prohibition and Regulation) Act, 1986.** (Act 61 of 1986);
- **Section 67 of Factories Act, 1948:** Prohibition of employment of young children-No Child who has not completed his fourteenth year shall be required or allowed to work in any factory;
- **Section 24 of Plantation Labour Act, 1951:** No Child who has not completed his twelfth year shall be required or allowed to work in any plantation;
- **Section 21 of Motor Transport Workers Act, 1961:** No Child shall be required or allowed to work in any capacity in any motor transport undertaking;
- **Section 24 of Beedi and Cigar Workers (Conditions of Employment) Act, 1966:**Prohibition of Employment of Children-No Child shall be required or allowed to work in any industrial premises;
- Shops and Commercial Establishment Acts under different nomenclatures in various States, ***and others.***

6. JUDGEMENT IN BRIEF:

The Bench was very empathetic towards this case and thus wanted to ensure the safeguard of fundamental rights of children under the Constitution of India. Thus, they directed some directions to be followed by all concerned States:

- A survey would be made of the aforesaid type of child labour which would be completed within six months from today.
- To ensure Article 24 as entailed in the Constitution of India, the court reiterated the result of the list of industries mentioned by the National Child Labour Policy where actions must be taken on priority basis and they included Sivaska:
    - The match industry in Sivakasi, Tamil Nadu.
    - The diamond polishing industry in Surat, Gujarat.
    - The precious stone polishing industry in Jaipur, Rajasthan.
    - The glass industry in Firozabad, Uttar Pradesh.

    - The brass-ware industry in Moradabad, Uttar Pradesh.
    - The hand-made carpet industry in Mirzapur-Bhadohi, Uttar Pradesh.
    - The lock-making industry in Aligarh, Uttar Pradesh.
    - The slate industry in Markapur, Andhra Pradesh.
    - The slate industry in Mandsaur, Madhya Pradesh.
- The attempts should be made to provide an alternative employment by another adult family member of the family in exchange of sparing the child the burden of employment in childhood.
- In cases where no alternative employment is available, the parent/guardian will be paid Rs. 25,000 for each child every month – but it shall only continue to be operative as long as the parent/guardian sends the child to get education as well.
- As per Section 17 of the Act of 1986, it is the duty of the Inspector to supervise the implementation of the Act of 1986 in the designated area. Thus, Inspectors must carry out their duties diligently to keep the constitutional spirit alive.
- A separate cell in the Labour Department of the appropriate government can also be set to monitor the schemes of their State. Overall monitoring will be under the Ministry of Labour, Government of India.
- The Secretary to the Ministry of Labour, Government of India would apprise this Court within one year of today about the compliance of aforesaid directions.
- We should also like to observe that on the directions given being carried out, penal provision contained in the fore noted 1986 Act would be used where employment of a child labour, prohibited by the Act, would be found.
- Insofar, as the non-hazardous jobs are concerned, the Inspector shall have to see that the working hours of the child are not more than four to six hours a day and it receives education at least for two hours each day. It would also be seen that the entire cost of education is borne by the employer.
- The writ petition is disposed of accordingly.
- A copy of this judgment is to be sent to Chief Secretaries of all the State Governments and Union Territories; so also to the Secretary, Ministry of Labour, and Government of India for their information and doing the needful.

7. COMMENTARY:

This case is one of the landmark cases and it's very heart-warming to watch the judiciary take an active stand and reiterating the importance of judiciary as a main organ in the country. This case re-establishes one's faith in the stature of judiciary being the safeguard of the constitutional rights of the people of India (especially, children in this given case).

The bench in the end also compares India's fight against child labour surely has 'poverty' being a huge factor but it compares the state of India with the state of other nations like Zambia, Libya, Zimbabwe etc. who are also low-income nations but are way ahead than India in beating the menace of Child Labour. The Court even stated, "This shows that has caused the problem of child labour to persist here is really not dearth of resources, but lack of real zeal. Let this not continue. Let us all put our head and efforts together and assist the child for its good and greater good of the country."

In my opinion, the **Child Labour (Prohibition and Regulation) Act, 1986** is a very well-formulated legislation with a solid legislative intent to end Child Labour in India. Its **Section 3** prohibits Employment of Children in certain occupations and processes. Part A and Part B of the Schedule to the Act contain names of occupation and processes respectively from which the Employment of the Children in India is strictly prohibited. The penalty provision is under **Section 14** of the Act which specifies provision for punishment up to 1 year (minimum being 3 months) or with fine up to Rs.20,000 (minimum being ten thousand) or with both, to anyone who employs or even permits children to work in contravention of prohibitions under Section 3 of this Act. **Section 17** underlines that the Inspectors that are appointed in every area must ensure compliance of the industries and factories that come under the ambit of this legislation with the provisions of the Act.

8. IMPORTANT CASES REFERRED:

- *Unni Krishnan MANU/SC/0333/1993: [1993] 1 SCR 594.*

CASE NO. 13

S. JAGANNATHAN

V.

UNION OF INDIA

(AIR 1997 SC 811)

REGULATION OF PRAWN FARMING CASE

ABSTRACT

The following is the case summary for the famous case of S. Jagannathan vs. Union of India which is also known as “regulation of prawn farming case.

In this case the writ petition was filed under Article 32 of the Constitution of India by the petitioner seeking the enforcement of Coastal Zone Regulation Notification dated February 19, 1991 issued by the Government of India, stoppage of intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas, prohibition from using the waste and/wet lands for Prawn farming and the constitution of a National Coastal Management Authority to safeguard the marine life and coastal areas along with some other prayers too. This petition was directed against the setting up of Prawn farms in the coastal areas as it led to creation of serious environmental, social and economic problems for the rural people living along the coastal beds.

This case has been dealt by the Supreme Court in length and breath. Arguments have been heard from both the side of the parties involving the learned counsels and senior advocates. The apex court also counted on to the advice and the recommendations made by the expert committees such as NEERI, CPCB, EPCB, etc.

This case has widened the scope of the Environmental laws and considered the safety of the environment and the people residing in the coastal areas specifically, to be the most important concern. This case also involves the fundamental principles of the sustainable development such as "the Precautionary Principle" and "The Polluter Pays" principles.

The author of this summary has made an informed attempt to cast the case brief for academic purpose. This case is compiled after the comprehensive reading of the original judgment. The author personally admires the work of M.C. Mehta and thus, considers this case as one of the monumental victories of the legend.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Writ Petition (Civil) No. 561 of 1994
Jurisdiction	:	Supreme Court of India
Case Filed on	:	February 19, 1991
Case Decided on	:	December 11, 1996
Judges	:	Before Kuldip Singh and S. Saghir Ahmad, JJ
Legal Provisions involved	:	Environment Protection Act, 1986- Sections 2(a), 2(b), 2(c) and 2(e), 7, 8, 15. Constitution of India - Article 21, 47, 48A, 51A. The Water (Prevention & Control of Pollution) Act. 1974- Section 2(j) & (k). Hazardous Waste (Management and Handling) Rules, 1989- Rule 5 and 5(4).
Case Summary Prepared by	:	Nivedita Kushwaha (Student of Law, Indore Institute of law, Madhya Pradesh)

2. BRIEF FACTS OF THE CASE:

Factual

India being a developing country and shrimp culture being the high investment return business, the marine export weighed in 70,000 tonnes in 1993 and reached 200 thousand tonnes by the year 2000. But the new trend of more intensified shrimp farming in certain coastal areas of the country brought a serious threat to the Environment which led to the filing of this writ in the apex court. Ministry of Environment and Forests, Govt. of India issued a Notification dated February 19, 1991, under Clause (d) of Sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 which declared that the coastal stretches of seas, bays, estuaries, creeks, rivers and backwater which are influenced by the tidal action (in the landward side) up to 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL are Coastal Regulation Zone.

It was alleged that the coastal areas were allowing big business houses to develop prawn farms on a large scale in the economically fragile coastal areas which was violative of EPA,

1986 and such establishments in rural cultivable lands was creating serious ecological problems for the people living nearby. Coastal pollution was emerging as a matter of grave concern and thus, witnessing the noticeable decrease in marine pollution and consequential increase in marine resources, an action plan was introduced under United Nations Environment Programme (UNEP) in the background of Stockholm conference and 1982 Convention on "Law of the sea". This led to a legal obligation upon the Government of India and State Governments to control marine pollution and protect coastal environments.

As stated by CPCB in its report of November, 1995, there were a large number of marine coastal outfalls discharging the industrial and municipal effluents into the seas directly or indirectly without any treatment. Protection of ecologically sensitive areas, beaches and land sea interface resource area were equally important. The traditional shrimp culture methods were small scale, using low inputs and relied on tidal action for water exchange. However, the modern method was larger in scale, and intensive or semi intensive in nature in which artificial feed, chemical additives and antibiotics were used for higher production efficiency.

It was concluded in the reports of NEERI that the conversion of agricultural land and land under salt production into coastal aquaculture units infringed the Fundamental Rights of Life and Livelihood. This also caused unemployment to the landless labourers and loss of cultivable land. Unscientific Management practices adopted by the aqua-culture farmers to import the seeds resulted in skin, eye and water borne diseases in the contiguous population.

Conversion of Mangroves like Sundarbans into shrimp farms was significantly reducing the natural production of wild capture shrimp and other fisheries thereby, diminishing their production role for low lying coastal regions. The increased need for land by Shrimp Entrepreneurs gave way to dramatic rise in land prices due to which local farmers were left landless.

The common comments regarding the aqua-farming in the various coastal states as observed by NEERI team were organic pollution in creeks and estuaries with respect to BOD, deterioration of microbiological water quality, accumulation of organic carbon and heavy metals in the sediments of shrimp farms, Shannon Weaver index values less than 3 indicating organic contamination and conversion of cultivable land for the establishment of aqua farms/ hatcheries.

All the reports referred clearly indicated that local people had not only lost access to their fishing grounds and to their sources of riverine seafood and seaweeds, but they also to relinquish social and recreational activities traditionally taking place on their beaches.

Procedural

- The Court issued notice by the order dated October 3, 1994 directed all the respondent States not to permit the setting up of any Industry or the construction of any type on the area at least up to 500 metres from the sea water at the maximum High Tide.
- Court on March 27, 1995 passed an order directing NEERI, to formulate a team and visit the coastal areas of Andhra Pradesh and Tamil Nadu to check the farms which are set up and if there is any degradation of any fragile area. The report was submitted on 25th April 1995. Further they were asked to speculate the other coastal areas and report back within two months.
- This Court on May 9, 1995 directed the states not to give fresh licences/permission for setting up/establishment of any aqua-farm in their respective Territories till further orders and provide free access to fishermen through aquaculture units.
- The FAO report (hereinafter called as Alagarswami report) suggested the sustainable development to be the guiding principle for shrimp aquaculture and the use of drugs, chemicals and antibiotics in the shrimp culture farms should be banned. Except the traditional and improved methods, all other methods were polluting and caused adverse effect on the environment. The construction of the shrimp farms violated clause (viii) of Para 2 of the CRZ Notification which prohibits the disturbing the natural course of sea water. This report further highlighted drinking water problem, salinization and destruction of mangrove by the shrimp culture industry
- The two investigation reports dated April 23, 1995 and July 10, 1995 by NEERI regarding the Ecological Fragile coastal areas of India stated that the cost for eco-restoration of these areas must be borne by individual entrepreneurs of the coastal aquaculture farms in keeping with the Polluter-Pays principle. Also, the damage caused to ecology and economics by the aquaculture farming was higher than that earned from the sale of the produce.
- The State Government of TN enacted a Bill of provide for the regulation of coastal aquaculture on April 10, 1995 which was inconsonant with MEF's notification.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the CRZ notification issued by MEF been followed.

II. Whether the commercial shrimp aquaculture causing an adverse effect to the environment.

III. Whether the shrimp culture industry "directly related to water front" or "directly needing fore-shore facility".

IV. Whether the conversion of agricultural land and land under salt production into coastal aquaculture units was an infringement to Article 21.

4. ARGUMENTS OF THE PARTIES:

Petitioner

- Argued that despite the issue of the CRZ Notification, the unauthorised industries and other construction were being permitted by various States within the area which has been declared as Coastal Regulation Zone.
- Argued that villagers were facing problem in finding fresh water due to the occupied farms.
- Argued that modern techniques were highly polluting and detrimental to the coastal environment and marine ecology and thus, only traditional or improved methods must be permitted.
- Argued that shrimp culture industry was neither directly related to water front nor needing fore- shore facility.
- Argued that shrimp culture farms were discharging highly polluting effluent which is hazardous waste and none of these farms were authorised from the SPCB.

Respondent

- Argued that shrimp farms were directly related to water front and cannot exist without fore- shore facility.
- Argued that commercial shrimp farming had no adverse effect on environment and coastal ecology.
- Argued that the Act being a Central legislation had the overriding effect.

5. LEGAL ASPECTS INVOLVED:

There are certain legal aspects that have been referred to in this case. This case holds a very strong position for the environmental law. It highlights the important provisions of the Environmental Protection (EP) Act, 1986, Hazardous Waste (Management and Handling)

Rules, 1989, The Water (Prevention & Control of Pollution) Act. 1974, Air (Prevention and control of Pollution) Act, 1981. Article 21, Article 47, Article 48A, Article 51A of the Constitution of India have also been referred to in this case.

It cites some of the Landmark Judgements on Environmental Law which proved to be the follow up for the Judgement in the Present Case. This case involves the International Aspects; Stockholm Conference, 1972 and the 1982 Convention for the applicability of the Principles of Sustainable Development such as Precautionary Principle.

6. JUDGEMENT IN BRIEF:

- The Central Government ordered for the Constitution of an Authority before January 15, 1997, under section 3 (3) of the Environment (Protection) Act, 1986 and this authority would be conferred with all the powers necessary for the protection of the ecologically fragile coastal areas, sea shores, water front and other such areas, and to specifically deal with the situation related to shrimp culture industry. These powers would be directed as per section 5 of the Act and measured would be taken as per clauses of section 3 (2). This authority would be headed by the judge of a High court.
- The authority must implement "The Precautionary Principle" and "the Polluter Pays" Principles.
- As defined in the CRZ notification, No Shrimp Culture pond could be constructed within the coastal regulation zone. However this Direction gave an exception to the Coastal low lying areas as they practiced traditional and improved traditional types of technologies.
- All aquaculture industries/ shrimp culture industries or ponds should be demolished before 31st March, 1997. The Superintendent of Police/ Deputy Commissioner of Police and the District Magistrate of the respective areas were directed to enforce the same and the Compliance Report be submitted in the court before 15th April, 1997.
- The Farmers Operating Older Systems of Aquaculture could adopt improved technology with prior approval from the authority constituted herewith.
- The Agricultural Lands, Salt Pan Lands, Mangroves, Wet Lands, Forest Lands, Land for Village Common Purpose and the Land Meant for Public Purposes should not be used/ converted for Construction of Shrimp Culture Ponds.

- No Aquaculture Industry or any related shall be constructed within 1000 meter of Chilka Lake and Pulikat Lake including Bird Sanctuaries namely Yadurapattu and Nelapattu.
- Aquaculture Industry or Shrimp Culture ponds already operating and functioning in the said area of 1000 m shall be closed and demolished before 31st March, 1997. The Superintendent of Police/ Deputy Commissioner of Police and the District Magistrate of the respective areas must file the report of the same before 15th April, 1997
- Aquaculture industry/shrimp culture industry/shrimp culture ponds other than traditional and improved traditional may be set up/constructed outside the CRZ zone and outside 1000 meter of Chilka and Pulicat lakes with the prior approval of the "authority" as constituted by this Court. Industries which are already operating in the said areas shall seek authorisation from the "Authority" before April 30, 1997 failing which the industry concerned shall stop functioning with effect from the said date. It was further directed that any aquaculture activity including intensive and semi-intensive which could cause hazardous effect should not be allowed by the authority.
- The Aquaculture or Shrimp Industries which were functioning within these regions were liable to compensate the affected persons on the basis of the Polluter pays principle.
- The authority shall, with the help of expert opinion, and after giving opportunity to the concerned polluters assess the loss to environment and the people who have suffered and on that basis, determine the compensation as cost of reversing the damage caused. The process however should be fair and just.
- The Authority shall compute the Compensation and determine accordingly the amounts to be paid. A Statement must be prepared of the same and sent to the collector/ district magistrate of the area concerned so that he shall recover the amount from the polluters as arrears of land revenue and further disburse to the affected people.
- Any violation or non-compliance of the above-mentioned directions shall attract the provisions of contempt of courts act.
- The Compensation recovered from the polluters shall be deposited separately under Environment Protection Fund
- The Authority should frame schemes for reversing the damage caused to ecology in consultation with expert bodies like NEERI, CPCB, and SPCB etc. Execution and

Expenditure of which shall be done by the Respective State Governments under supervision of Central Government.

- The Workmen employed in the Shrimp Culture Industries which are to be closed in terms of this order, shall be deemed to be retrenched with effect from 30th April, 1997 provided they have been in continuous service for not less than a year before the said date. They shall be paid six years' wages as Compensation in addition to what they will be paid as per the industrial disputes act, 1947 before 31st May, 1997. The gratuity amount payable to the women shall be paid in addition.
- The cost exerted on the writ petition which was quantified by the court as Rs. 1,40,000 shall be realised from the seven coastal states in equal shares and be paid to M.C. Mehta who had assisted the case throughout.

7. COMMENTARY:

The present case can be considered to be the need of an hour for the protection of the environment and ecology. As rendered before that it is the fundamental right of every citizen to have a pollution free environment. If the ecology is protected; the life is protected. In my opinion, the way the Supreme Court has referred to the recommendations and suggestions of the expert committees such as NEERI, EPCA, and CPCB etc. make it a systematic and distinctive example for every other matter regarding environmental protection. And this distinctive approach makes this case to be most important landmark judgement in the Environmental Jurisprudence. This case also marks up to the successful execution of the "Sustainable Development" approach.

Hence, considering all the prospects this judgement is considered to be the successful win for the Indian Judiciary.

8. IMPORTANT CASES REFERRED:

- *Vellore Citizens Welfare Forum vs. Union of India & Ors. JT 1966 (7) SC 375.*

CASE NO. 14

M. C. MEHTA
V.
KAMAL NATH & ORS.

(1997 1 SCC 388)

BEAS RIVER/ KAMAL NATH CASE

ABSTRACT

The following is the case summary of the case M.C. Mehta v. Kamal Nath & Ors. also known as *River Beas case*. This case was taken under consideration by Supreme Court via a news report.

The court had discovered that the private company *"Span Motels Pvt . Ltd."* had built a motel on land leased by the Indian Government in 1981 on the bank of the Beas River. Span Motels also invaded another area of land adjacent to this leasehold area, which was later leased to Span Motels. The motel had used earthmovers and bulldozers to turn the River Beas course, create a new channel and divert the flow of the river. The river course was channelled away to save the motel from future floods.

In its judgment of 13, December, 1996 the case was ultimately resolved by the court. The case was placed before the court again only for the quantity of pollution fine to be determined. The key case had been resolved with the rulings, among others, that the doctrine of public trust was part of the law of the country, the previous lease-deed in favour of the Motel was quashed, the Motel had to pay compensation for the restoration of the area's ecosystem and ecology, and the Motel had to prove reason why pollution penalty was not levied on the Motel.

The Court studied the Polluter Pays concept in the national legal framework including its Context, International Growth, and Enforcement. It stressed that the Principle of Polluter pays was widely accepted as a means of paying for the Pollution and Control Costs. The Polluter, the wrongdoer, was obliged to make good the damage caused to the Environment.

However, holding that the pollution fine could be imposed on M / s Span Motel was difficult for the court. In addition to the damages that M / s Span Motel had to pay, as indicated in the main judgment, it could not be fined unless a certain procedure prescribed by national law was followed.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Civil Appeal 182 of 1996
Jurisdiction	:	Supreme Court of India
Case Filed on	:	February 25, 1996
Case Decided on	:	December 13, 1996
Judges	:	Kuldip Singh and S. Saghir Ahmed, J.J
Legal Provisions involved	:	Article 21, 32, 51-A(g) of the Constitution of India; Doctrine of Public Trust
Case Summary Prepared by	:	Bhavika Lohiya (Student of Law, United World School of Law, Gandhinagar)

2. BRIEF FACTS OF THE CASE:

Factual

The Indian Express published an article reporting that a private company, Span Motels Private Ltd., 'the Motel Company' had encroached the land which belonged to the State. Kamal Nath who was the Minister of Environment and Forests had direct links with this company. The Company encroached upon 27.12 *bigha* land which is included forest land. The land was regularized and subsequently leased out to the company on 11th April 1994 after many years of request.

This encroachment had an impact on the course of river Beas. For more than 5 months the Span Resorts Management moved bulldozers and earth movers to turn the course of the river for the second time for their Personal and Commercial use. In September, 1993, these activities by the company caused floods in the river and a property worth Rs. 105 Crores was destroyed.

3. ISSUES INVOLVED IN THE CASE:

I. Whether or not Mr. Kamal Nath has been rightly inducted as the Respondent in the writ petition?

II. Whether or not the Construction activity done by M/s SMPL was done with a view to protect the lease hold land from floods?

III. Whether or not the Public Trust Doctrine is a part of the Indian Legal System?

4. ARGUMENTS OF THE PARTIES:

Petitioner

- Mr. Mehta has contended that if a person disturbs the ecological balance and do mischievous act to hinder the flow of natural conditions of rivers, forests, air and water, which are the gifts of nature, he would be guilty of violating not only the fundamental rights, guaranteed under Article 21, but also be violating the fundamental duty to protect the environment under Article 51 - A (g) which provides that it shall be the duty of every citizen to protect and improve the environment.
- It has been that causing pollution is a civil wrong. A person, who is guilty of causing harm to the ecology, has to pay compensation. The powers of the highest court under Article 32 are not restricted and it can award damages in a PIL and a Writ Petition.

Defendant:

- Regarding the first issue the respondent never disputed the fact that Mr. Kamal Nath's family holds almost all the shares of the Motel Company. But Kamal Nath in his affidavit said that he was wrongly alleged as the respondent as he has no interest the particular land.
- On behalf of Span Motels Private Limited, Mr. Banwari Lal Mathur also made a similar argument that Mr. Kamal Nath had no right, title or interest in the property of SMPL.
- With respect to the second issue, the respondents contended that the construction activity was carried out by the Motel Company on a land under its possession with a view to protect the lease-hold property.

- Further, the Respondents contended that the construction activity was done by the Motel on the land under its possession to protect the lease-hold land from floods and the Divisional Forest Officer permitted the motel to carry out such construction activities subject to the condition that the department would not be liable to pay any amount incurred by the Motel Company for the said construction.
- The Supreme Court rejected this contention and held that the forest lands which have been given on lease to the Motel by the State Governments are situated at the bank of the river Beas. The Beas is a young and dynamic river and it changes its course very often. The right bank of the river is where the Motel is located comes under forest. The area is ecologically fragile and therefore it should not be converted into private ownership.
- Our legal system includes the said Doctrine as a part of its jurisprudence. The State is the trustee of all-natural resources which are by nature meant for public use and enjoyment.

5. LEGAL ASPECTS INVOLVED:

The Supreme Court applied the **'Doctrine of Public Trust'** to the present case. Doctrine of Public trust is an ancient legal doctrine which states that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Under the Roman law these resources were either owned by no one (res Nullius) or by everyone in common (*Res Communious*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing.

6. JUDGEMENT IN BRIEF:

- The public trust doctrine, as discussed in this judgment is a part of the law of the land.
- The Court quashed the lease-deed by which forested land was leased to the Motel Company and held that the construction activity carried out by the Motel Company was not justified.
- The Motel was ordered to pay compensation by way of cost for the restitution of the environment and ecology of the area.

- The Motel was ordered to construct a boundary wall at a distance of not more than 4 meters for the building of the motel beyond which they were not allowed to use the land of the river basin.
- The Court restricted the Motel from discharging untreated effluent into the river. Himachal Pradesh Pollution Control Board was directed to inspect and keep a check.

7. COMMENTARY:

The present case can be considered to be the need of an hour for the protection of the environment and ecology. As rendered before that it is the fundamental right of every citizen to have a pollution free environment. The natural resources like rivers, mountains, etc. are for public use and not for the personal commercial as the doctrine states. As the distinction approach which uses the Doctrine of Public Trust make it the landmark judgement.

Hence, considering the entire prospectus, this judgement is considered to be the successful for the Doctrine of Public Trust.

8. IMPORTANT CASES REFERRED:

- *Indian Council for Environment – Legal Action v. Union of India, (1996) 3 SCC 212.*
- *National Audubon Society V. Superior Court of Alpine County, 33 Cal 3d 419.*
- *Vellore Citizen's Welfare Forum v. Union of India, (1996) SCC 647.*

CASE NO. 15

M. C. MEHTA
V.
UNION OF INDIA

(AIR 2004 SC 4016)

DELHI RIDGE CASE

ABSTRACT

Aravallis mountain chain stops desertification and it prevents expansion of the desert into Delhi. On account of extensive mining on a disproportionate scale without taking remedial measures has resulted irreversible changes in the environment at Aravalli. As in the background afore stated, that any mining activity came to be banned under Order dated 29/30.10.2002. After that, Order. I - As were moved saying that applications have been filed for EIA and for approval of plans and it is at this stage that this Court ordered that no mining activity could be carried out without remedial measures being taken and for that purpose, it was necessary that EIA had to be done before any mining activity could be permitted.

In this M.C. Mehta case, decided on 18.3.2004, this Court observed that mining activity can be permitted only on the basis of sustainable development and on compliance with stringent conditions as the Aravalli Hill Range has to be protected at any cost and in case despite stringent conditions, mining results in an irreversible consequence on the ecology in the said area then at a later date the total stoppage of mining activity may have to be considered. In January 2009, the decision to ban/suspend mining in the above area has been taken by State of Haryana.

The author has focused on the essence this case has left behind. The Apex Court has now decided not to focus only on individual sites but to take a macro view of the matter, particularly while deciding the question of suspending mining operations. It is important to note that most of the Applicants who are seeking to mine today in the virgin areas have mined out areas in the past without taking remedial measures. They have abandoned the sites after mining without rehabilitation of the degraded lands and the consequence is devastation.

Based on sustainable development principle which is part of Articles 21, 48A and 51A (g) of the Constitution of India, the Court has decided that time has now come to suspend mining in the above Area till statutory provisions for restoration and reclamation are duly complied with, particularly in cases where pits/quarries have been left abandoned. The Reclamation Plan duly certified by State of Haryana, MoEF and CEC is prepared in accordance with the Mines and Minerals (Development and Regulation) Act, 1957 as well as with the Mineral Concession Rules, 1960 and Mineral Conservation and Development Rules, 1988.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Writ Petition No.(Civil) 4077 of 1985
Jurisdiction	:	Supreme Court of India
Case decided on	:	March 18, 2004
Judges	:	Before Y.K Sabarwal and H.K Seme, JJ
Legal Provisions involved	:	Section 18 of the Mines and Minerals Act Environmental Protection Act ,1986 Air Prevention and Protection Act, 1981 The Water Prevention and Control of Pollution Act ,1947 Water Conservation Act,1980
Case Summary Prepared by	:	Tanya Gupta (Student of Law, New Law College, Bharti Vidyapeeth,Pune)

2. BRIEF FACTS OF THE CASE:

Factual

Haryana Pollution Control Board (HPCB) reported that explosives are being used for rock blasting for the purpose of mining. Mining operations were resulting in soil erosion and causing an ecological disaster. It was recommended by HPCB that an Environmental Management Plan (EMP) should be prepared by mine lease holders for their mines and mines should be made operative only after the approval of HPCB. The report recommended a complete stoppage of mining activities within a radius of 5 kilometres from the Badal Lake and Surajkund in Haryana. The Haryana government therefore stopped all mining operations on the basis of this report. The mine operators raised objections to the recommendations of stoppage of mining operations. According to them, the pollution that was generated by the mining activities cannot go beyond a distance of 1 kilometre and stoppage was unjustified.

Procedural

NCERT also submitted its report which recommended a complete closure of mining operations in the concerned area. On the basis of the report submitted by NCERT and HPCB, the Supreme Court came to the conclusion that the mining activities in vicinity of tourist resorts are bound to cost serious impact on the local ecology and environment. The mining brings extensive attraction on the natural land profile of the area. The ambient air in the mining area gets highly polluted by the dust generated by blasting operations, vehicular movement, loading, unloading, transportation and exhaust gases from equipment and machinery used in mining operations.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the mining activity in area up to 5 kilometres from Delhi Haryana Border on the Haryana side of the ridge and Aravalli Hills causes environment degradation?

II. Whether the mining activity deserves to be absolutely banned or permitted on compliance of stringent conditions and by monitoring it to prevent the environment pollution?

4. ARGUMENTS OF THE PARTIES:

Petitioner:

- The Haryana Pollution Control Board (HPCB) submitted that the explosives are being used for rock blasting for the purpose of mining. Unscientific mining operations was resulting in lying of overburden materials and deep mining for extracting silica sand dumps is causing ecological disaster as these mines lie unreclaimed and abandoned.
- The Environmental Management Plan (EMP) should be prepared by mine lease holders for their mines. The EMP followed a time bound action plan, land reclamation and afforestation programs.
- The Haryana Government on the basis of recommendation made in the report, stoppage mining operations within the radius of 5 kilometres of Badal Lake and Surajkund.
- The Environmental Management Plans being formulated by the mine owners should include land rejuvenation and afforestation programs and other measures necessary to protect the quality of environment and human health. The mining operations should

commence only after the approval of EMPs. A time bound action plan needs to be initiated for the implementation of measures delineated an Environmental Management Plan.

Defendant:

- The mine operators raised objections to the recommendation of stoppage of mining operations.
- According to them, pollution if any that was generated by the mining activities cannot go beyond a distance of 1 kilometres and the stoppage was wholly unjustified.
- The mine lease owners need to undertake the mining operations in series that is mining activities must be completed to full potential in a block before moving to the next. This will help in reclamation of land in the block in which mining operations have been completed.
- It is considered necessary to prepare a regional Environmental Management Plan for urgent implementation to enable eco-friendly regional development in the area.

5. LEGAL ASPECTS INVOLVED:

The court relied on section18 of the Mines & Minerals (Regulation and Development) Act which talks about the commencement of mining activities. It was held that a mining lease holder is not only required to comply with MMRD Act but statutory provisions as well such as Environment(Protection)Act,1986, Air(Prevention & Protection) Act, 1981,The water Prevention and Control of Pollution Act,1947,Forest Conservation Act,1980.The court relied on Rules 31 to 41 in Chapter 5 of Mineral Conservation & Development Rules formed under Section 18 of the MMRD Act which deals with measures required to be taken by the lessee for the protection of environment from any adverse effect of mining or irreversible consequences thereof.

6. JUDGEMENT IN BRIEF:

- The notification of environment assessment clearance is applicable also when renewal of mining lease is considered after issue of the notification.

- On the facts of the case, the mining activity on areas covered under Section 4 and/or 5 of Punjab Land Preservation Act, 1900 cannot be undertaken without approval under the Forest (Conservation) Act, 1980.
- No mining activity can be carried out on area over which plantation has been undertaken under Aravalli project by utilization of foreign funds.
- The Court relied on a report prepared by the Central Mine Planning & Design Institute Limited (CMPDI). The CMPDI on being asked by the Central Pollution Control Board to conduct a study of environmental problems of Aravalli hills.
- The CMPDI recommended that the State government should improve inter-departmental coordination among various government departments to achieve a common goal which is ecological restoration of area affected by these mining operations.
- There should be a master plan which indicates the proposed eco- restoration plan to compensate the environmental degradation.
- The mining activities can be permitted only on the basis of sustainable development and on compliance of stringent conditions.
- There is an adverse irreversible effect on ecology in the Aravalli Hill range area at a later date, the total stoppage of the mining activity in the area may have to be considered. For similar reasons such stop may have to be considered in respect of mining in Faridabad district as well.
- Violation of any of the conditions would entail the risk of cancellation of mining lease. The mining activity shall continue only on strict compliance stipulated conditions. The matters are directed to be listed after reopening of the courts after summer vacation on receipt of the report from the monitoring committee.

7. COMMENTARY:

Ban on the mining activities and pumping of ground water in and from an area up to 5 kilometres from the Delhi-Haryana Border. All efforts must be made to ensure that the local economy is regimented, with the use of plantation and local water harvesting based opportunities. The Central Ground Water Board must be consulted urgently about what should be done with the huge standing water in the area. The Ministry of Environment and Forest (MoEF) should be asked to extend the notification under the Environment (Protection) Act to the Faridabad part of the Aravalli and Ridge as well. The mining area outside the 5

kilometres area must be demarcated and regulated. Constant monitoring of the area must be done by Central Government agency. The Environment Management Plan (EMP) for mining area should be made a public document.

8. IMPORTANT CASES REFERRED:

- *Subhash Kumar Vs. State of Bihar AIR 1921 Supreme Court 420.*
- *M.C Mehta Vs. Union of India 1987 SCC 463.*
- *Narmada Bachao Aandolan Vs. Union of India 2000 SCC 664.*
- *A.P Pollution Control Board Vs. Prof. M.V Nayudu 1999 SCC 718.*
- *P.N Godavarman Thirumulkpad Vs. Union of India 1991 SCC 665.*

CASE NO. 16

M. C. MEHTA

V.

UNION OF INDIA & ORS.

(WRIT PETITION (C) NO. 4677 OF 1985)

DELHI MASTER PLAN CASE

ABSTRACT

The following is the case summary for the famous M. C. Mehta v. Union of India also known as *Delhi Master Plan case.*

In this case the writ petition was filed under Article 32 of the Constitution of India by the petitioners because the mining operation in the area closer to Delhi-Haryana border causes gross ecological destruction which in turn is affecting the lives of the local people and the main area covering the Aravalli Hills.

This case has been dealt by the Supreme Court in length and breadth reaching out to nitty-gritty of the activities in the concerned areas. Arguments have been heard from both the side of the parties involving the learned counsels and senior advocates. The apex court also counted on to the advice and the recommendations made by the expert committees such as NEERI, CPCB, EPCB, etc.

This case has widened the scope of the Environmental laws and considered the safety of the environment to be the most important aspect of living. This case also involves the fundamental principles of the sustainable development such as precautionary principles.

The author of this summary has made an informed attempt to cast the case brief for academic purpose. This case is compiled after the comprehensive reading of the original judgment. The author personally admires the work of M.C. Mehta and thus, considers this case as one of the monumental victories of the legend.

1. PRIMARY DETAILS OF THE CASE:

Case no.	:	Writ Petition (Civil) No. 4677 of 1985
Jurisdiction	:	Supreme Court of India
Case filed on	:	1985
Case decided on	:	March 18, 2004
Judges	:	Y.K. Sabharwal and H.K. Sema, JJ.
Legal provisions involved	:	Environment (Protection) Act, 1986 - Sections 3, 3(1), 3(2), 3(3) and 23 National Capital Region Planning Board Act, 1985 – Sec. 2 Environment (Protection) Rules, 1986 - Rules 5, 5(3), 5(4) and 6(3) Forest (Conservation) Act, 1980 – Sec. 2 Constitution of India Articles 21, 47, 48A and 51A
Case summary prepared by	:	Ashita Barve (Student of Law, Indore Institute of Law, Indore, Madhya Pradesh)

2. BRIEF FACTS OF THE CASE:

Factual

The appellant by filing the present petition brought the light to the mining operation in the area closer to Delhi-Haryana border. The appellant pleaded that these mining activities are causing gross ecological destruction. With the report submitted by the Haryana Pollution Control Board (HPCB) it was found that the explosives are being used, unscientific methods of mining and deep mining for silica sand lumps is causing ecological disaster. The Haryana Government, on the basis of the recommendations made in the report, stopped mining operations within the radius of 5 kms. of Badkal Lake and Surajkund.

Also, the areas of mining that fall within the districts of Faridabad and Gurgaon in the Haryana State are also mentioned. It was contended that in the larger interest of maintaining the ecological balance of the environment and protecting the Asola Bhatti Wildlife Sanctuary and the ridge located in Delhi and adjoining Haryana, it is necessary to stop mining. As per the Central Pollution Control Board (CPCB) report "deep mining for silica is causing an ecological disaster".

The NOC given by the CPCB includes an explicit condition regarding ground water: That the mine owner will ensure that there is no discharge of effluent of ground water outside lease

premises. They must take measures for rain water harvesting and reuse of water so as not to affect the groundwater table in the areas. Most importantly, it stipulates that no mining operations shall be carried out in the water table area. This condition has been grossly violated.

The survey lay down by the Central Ground Water Board (CGWB) shows that the Aravalli hills are highly fractured, jointed and weathered making the major recharge zone for the surrounding areas. On the impact on the groundwater reserves due to mining, the observation shows the increase in groundwater levels in Anangpur, Mangar, after the mining has been stopped in May. Therefore, in spite of monsoon failure and continued abstraction of water, the observation wells have noted increased water levels within just 2 months of the mining being closed.

The continuance of the order dated 6th May, 2002 (*mentioned below)* has been strenuously objected to by the mining lease holders and also by the Government of Haryana. Various applications have been filed seeking vacation of the order and in support thereof, submissions have been made mainly by Mr. Shanti Bhushan, Dr. Rajeev Dhawan, Mr. Kapil Sibbal, Mr. K.B. Rohtagi and Mr. Dhruv Mehta representing the lease holders and Mr. Mukul Rohtagi, learned Additional Solicitor General representing the Government of Haryana. Contentions have also been made by Mr. Raju Ramachandran and Mr. Altaf Ahmad, learned Additional Solicitor General for the Ministry of Environment and Forest, Government of India, Mr. C.S. Vaidyanathan and Mr. Kaushik. Mr. Ranjit Kumar, learned Amicus and Mr. M.C. Mehta, Advocate/petitioner-in-person and Mr. Kailash Vasudeva for Government of Delhi have made submissions in support of closure of mining activity and for making the order dated 6th May, 2002 absolute by prohibiting all mining activities and pumping of ground water in and from an area up to 5 kms. from Delhi-Haryana Border in the Haryana side of the Ridge and also in the Aravalli Hills.

Procedural

- On 20th November, 1995 this court directed the Haryana Pollution Control Board (HPCB) to inspect and ascertain the impact of mining in the distance of 5kms in Badkal Lake and Surajkund. Reports further recommended the stoppage of mining activities within the radius of 5kms.
- On 12th April, 1996 the court sought the recommendation of NEERI on the same.

- On 20th April, 1996 report submitted by NEERI and this court concluded that the mining activities in tourist resort of Badkal Lake and Surajkund cast serious impact on the ecology. Hence, the mining activities within the radius of 2km must be stopped.

Prior to this order efforts made by the authorities to ensure compliance in this mining activities:

- In May 1992, parts of the Aravalli range were declared ecologically sensitive under the Environment (Protection) Act.
- In August 1992, the Forest Department of Haryana had issued a notification under the Punjab Land Preservation Act 1900, banning the breaking and cutting of land not under cultivation in the Badkal lake area.
- On 6th May, 2002 this court directed the chief secretory, Government of Haryana, to stop all the mining activities within 48 hrs. in the radius of 5kms, from Delhi-Haryana border in the Haryana side of the ridge and also in the Aravalli Hills.
- On 20th July, 2002 this court directed the Environmental Pollution Central Authority (EPCA) to give a report after the personal in the area.
- On 9th august, 2002 EPCA submitted it report and observed that there is a clear violation of the orders of this court dated 10th may, 1996.
- On 21st October, 2002; 26 mines were inspected and the report was submitted by EPCA.
- On 31st October, 2002 this court observed that before granting permission for any mining activities the Environmental Impact Assessment (EIA) must be done. Central Empowered Committee (CEC) was asked for the suggestions regarding the grant of such applications
- On July, 2003 Central Mine Planning & Design institute Limited (CMPDI) sort to provide reports to CPCB for mining activities in the Aravalli Hills and provide the action plan for the same.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the mining activities at the distance of 5km in the Delhi-Haryana border at the side of Haryana ridge is causing environmental degradation.

II. Whether the complete stoppage of mining activities within the radius of 5km is justified.

III. Whether the mining activity in areas falling within the district of Faridabad and Gurgaon and in Aravalli Hills within Gurgaon District deserves to be absolutely banned or permitted on compliance of stringent conditions and by monitoring it to prevent the environmental pollution.

4. ARGUMENTS OF THE PARTIES:

Petitioner

- Argued that article 21 includes right to pollution free environment and fresh air. Hence, the mining activities causing destruction to ecology must be stopped.
- Argued that even after the orders and recommendations of EPCA, NEERI, CPCB etc., there is a gross violation of such orders from the side of mining lease holders.
- Argued that proper information is not provided by the state governments to the concerned authorities.

Respondent

- Argued that the pollution, if any, which was generated by the mining activities cannot go beyond a distance of 1 km. and the stoppage was wholly unjustified.
- Argued by the Haryana government that the water flow from the Haryana side is not affecting the water flow to the Delhi side.
- Argued that no proper inspection has been held by Bhure Lal committee and the reports are not made on the basis of proper inspection.
- Argued that the area of lease that allegedly damages the plantation as a result of mining activities must be excluded from mining and not the entire area.

5. LEGAL ASPECTS INVOLVED:

There are certain legal aspects that are been referred to in this case. This case holds a very strong position for the environmental law. It highlights the important provision of the

Environmental Protection (EP) Act, 1986, Forest (Conservation) Act, 1980, National Environment Appellate Authority Act, 1997, Air (Prevention and control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974. Article 21, Article 48A, Article 51A, and Article 47 of the Constitution of India has also been referred to in this case.

It cites some of the landmark judgements on environmental law which proved to be the follow-up for the judgement in the present case. This case involves the international aspects; Rio Conference, 1992 for the applicability of the principles of sustainable development such as precautionary principle.

6. JUDGEMENT IN BRIEF:

- Any person who desires to involve in any sort of mining activities mentioned under the rule 5 of the section 3 of Environmental Protection act, 1986; shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.
- The permission must be granted within 3 months from the date of the receipt of such information, or refuse permission within the said time.
- This court held in its previous judgement whenever there is a point of doubt as to saving the economy or saving the environment, the latter must have precedence over the previous.
- Under section 13 of Mines and Minerals (Regulation and Development) Act (MMRD) the permission by the Ministry of Mines is for granting the mining of the lease and not for the commencement of mining activities.
- The mining lease holder must comply with the various statutory provisions such as Environment (protection) Act, 1966, Air (Prevention and control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974, Forest (Conservation) Act, 1980.
- No mining activity can be carried out on area over which plantation has been undertaken under Aravalli project by utilization of foreign funds.
- The mining activity can be permitted only on the basis of sustainable development and on compliance of stringent conditions.
- Permission cannot be granted for the mining activity on the area under plantation of the Aravalli project. The grant of leases for mining operation over such an area would be wholly arbitrary, unreasonable and illogical.

- Ministry of Environment and Forest (MoEF) is directed to prepare a short term and long-term action plan for the restoration of environmental quality of Aravalli hills in Gurgaon district having regard to what is stated in final report of CMPDI within four months.
- Constitution of Monitoring Committee to examine individually the activities of the mines; payment by the mine operators and/or by State Government towards environmental fund having regard to the precautionary principles and polluter pays principle.
- The order dated 6th May, 2002 cannot be vacated before the report submitted by the Monitoring committee.
- The Monitoring Committee is directed to inspect the mines in question and file a report within a period of three months
- Violation of any of the conditions would entail the risk of cancellation of mining lease. The mining activity shall continue only on strict compliance of the stipulated conditions.

7. COMMENTARY:

The present case can be considered to be the need of an hour for the protection of the environment and ecology. As rendered before that it is the fundamental right of every citizen to have a pollution free environment. If the ecology is protected; the life is protected. In my opinion, the way the Supreme Court has referred to the recommendations and suggestions of the expert committees such as NEERI, EPCA, CPCB etc. makes it a systematic and distinctive example for every other matter regarding environmental protection. And this distinctive approach makes this case to be most important landmark judgement in the environmental jurisprudence. This case also marks up to the successful execution of the "sustainable development" approach.

Hence, considering the entire prospectus this judgement is considered to be the successful win for the Indian judiciary.

8. IMPORTANT CASES REFERRED:

- *Narmada Bachao Andolan v. Union of India and Ors. [(2002)10SCC408].*

- *AP Pollution Control Board v. Prof. M.V. Nayuder (Retd) and Ors [(1999) 1 SCR 235].*
- *T.N. Godavarman Thirumulkpad v. Union of India and Ors. [AIR 1997 SC 1228].*
- *Ambica Quarry Works v. State of Gujarat and Ors. [(1987) 1 SCR562].*
- *Subhash Kumar v. State of Bihar [(1991)1SCR5].*

CASE NO. 17

M. C. MEHTA
V.
ARCHAEOLOGICAL SURVEY OF INDIA

(IA NO. 27 IN WRIT PETITION (C) NO. 476 OF 1996)

DELHI MONUMENTS CASE

ABSTRACT

The following is a Case Summary of the Infamous M.C. Mehta v. Archaeological Survey of India also commonly known as the *"Delhi Monuments Case".* This case was brought before court in 1996 by M.C. Mehta against the disaster caused by persons to the cultural monuments.

Monuments are structures which have a great national importance. And it is the duty of the Government and citizens to respect and protect them. It is the duty of the Supreme Court and High Court to implement the legal framework in order to protect the monuments for the benefit of preserving the culture, religion and tourism in our Country. We are duty bound under our Indian Constitution to preserve our cultural heritage. Although the Constitution recognizes the significance of cultural heritage and there are piece meal legislations, there is no authority at National and State level to deal with the management of cultural heritage in a wholesome manner. Cultural heritage management will require huge research, encouragement of NGOs in this field and creation of widespread information and awareness in the people. A country vast by stretch and width, India has natural resources plenty and rich. We are testimony of a civilization of thousands of years with languages so many and religions as many. The heritage splendour of India whether architectural, literary, moveable or intangible is monumental and enchanting. And it needs to be protected and preserved.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	IA No. 27 in Writ Petition (C) No. 476 of 1996
Jurisdiction	:	Supreme Court of India
Case Filed on	:	1996
Case Decided on	:	April 5, 2005
Judges	:	Before Justice S.N. Variava, Justice A.R. Lakshmanan, Justice S.H. Kapadia, JJ
Legal Provisions involved	:	Constitution of India- Article 29, 49, 51A(f) The Ancient Monuments and Archaeological Sites and Remains Act, 1958
Case Summary Prepared by	:	Aarihanta Goyal (Student of Law, Manipal University, Jaipur, Rajasthan)

2. BRIEF FACTS OF THE CASE:

Humayun's Tomb is the first mausoleum which was built by the Baburids in India. It is a historical monument. It is a mausoleum built for the Mughal emperor Humayun. The construction of the mausoleum was commenced by Humayun's senior widow Hamida Banu Begum nine years after his death. A Persian architect Mirak Mirza Ghiyath was commissioned to design and build it. It is stated to exemplify a synthesis of Persian and Indian traditions of architecture. The arched alcoves, corridors and the high double dome signify the Persian influence and the kiosks which give it a pyramidal outline from a distance are attributed to the Indian influence. It is believed to have inspired the design of the Taj Mahal, a monument built many years later in Agra by Humayun's great grandson Shahjahan.

Humayun's tomb is square red sandstone double-storeyed structure that rises from a 7 m. high square terrace, raised over a series of cells accessible through arches on each side. Externally on each side of the tomb are elevations decorated by marble borders and panels. Around the high marble double dome in the centre are pillared kiosks. The tomb is a beautiful sight to behold, even when viewed from a distance. The nearly 450 year old Humayun's tomb is a major tourist attraction in Delhi. The tomb has many other tombs and gardens on all its sides like Tomb and mosque of Isa Khan, Nila Gumbad, Bu Halima's Tomb and Garden, Afsarwala Tomb and mosque and Arab Seral. It has been declared as a UNESCO world heritage monument. It is a protected monument within the meaning of the Ancient

Monuments Archaeological Sites and Remains Act, 1958 and the Ancient Monuments Archaeological Sites and Remains Rules, 1959.

Consequent to a notification issued on 16th June 1992 by the central government, an area of 100m surrounding the Humayun's tomb has been declared a "prohibited area" within which no construction activity is permitted either by a public authority or private authority or not even by the Government.

Before the Tomb was declared as World Heritage site it was not maintained or protected much. It was being destroyed by and kept unclean by putting up dingy stalls at the main entrance, all sorts of heavy vehicles were allowed to be parked illegally in the open places and illegal encroachments were rampant at the site of the tomb, presenting a serious danger to the preservation of this invaluable treasure.

But the main issue was that no construction shall be allowed in 100 m area of the Humanyun's tomb. The Nila Gombad was not included in the main complex of monument so Archaeological Survey of India decided to protect it as it leads to the Tomb. In order to do so a construction was required in 100m radius but it was not allowed due to the 1992 notification. So advocate MC Mehta filed a suit for preservation of the monument in regards to 1992 notification. The case was filed and after considering arguments from both parties the Court decided to allow this construction because it was necessary to consider the Nila Gombad as a part of the monument and then from the Nila Gombad's line the 100m notification would be considered. The Court thus allowed the construction to secure the monument and preserve it.

On the Nila Gumbad side was a huge citadel of India's vote bank politics where thousands of 'slum dwellers' were kept by an influential section of the political leadership to serve as 'bonded voters' during elections. The environment of the dargah of Hazrat Nizamuddin Auliya had also been ruthlessly degraded and the holy tank had become a messy cesspool. In order to make necessary repairs and to prevent any construction or stalls or parkings in 100m area of the monument the Archaeological Survey of India decided to make renovation and relocate these people. And so the clusters of huts were relocated and given new homes elsewhere. And after the relocation the Nila Gumbad was merged into one big complex that would include all the big and small monuments in the vicinity of Humanyun's tomb which needed to be preserved and protected.

3. LEGAL ASPECTS INVOLVED:

Article 49 of the Indian Constitution states that it shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

Article 51 A(f) : the Indian Constitution states that it is the fundamental duty of every Indian citizen to value and preserve the rich heritage of our composite culture.

Article 29 of the Indian Constitution states that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. Article 29 lays down that every culture shall be respected and protected which includes the monuments and structures associated with the culture.

The Indian Treasure Trove Act, 1878 (ITTA)

First legislation post – establishment of the Archaeological Survey of India enacted to protect and preserve treasure found accidentally but having archaeological and historical value. Civil disputes and mutual rights of claimants are settled through the Collector. The Collector may acquire the treasure on behalf of the government on payment of the value. Grounds for acquisition are not stated in the Act. ITTA is not aimed at cultural heritage preservation.

The Antiquities (Export Control) Act, 1947

This provided for controlling the export of objects of antiquarian or historical interest or significance. It had been repealed and replaced by, The Antiquities and Art Treasures Act, 1972. (AATA)

The Ancient Monuments Preservation Act, 1904 (AMPA)

This was enacted to provide for the preservation of ancient monuments and of objects of archaeological, historical or artistic interest. AMPA is applied to ancient monuments other than those of national importance. But, many states have their own legislations on similar lines and in such states AMPA is either declared repealed or not applicable.

The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951

This was repealed by AMASRA.

The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASRA)

This was enacted on 28th August, 1958. The Act provides for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects. The Act was followed by AMASR Rules, 1959. Section 14 mandates the Central Government to maintain every monument acquired under the Act and every monument where guardianship is acquired.

4. JUDGEMENT IN BRIEF:

After considering the arguments of both cases the Court ordered Archaeological Survey of India to continue with the demolition in the presence of the police because few houses had only *Kuccha* house or huts and it was necessary to protect the monument. Thus, the demolition continued and the new complex developed.

5. COMMENTARY:

In today's world, it is our duty to preserve the monuments and protect them for the next generation as the contributions or achievements of our ancestors. . It is time to protect and preserve our monuments structurally, architecturally, emotionally and legally. Our monuments represent our culture, religion, diversity, intellect, history and our India and as a responsible citizen it is our duty to respect it and at no costs lower its guard. It is our duty to protect the inherent quality of our monuments i.e. unity and do our best to promote it. It is not just citizens but every private and public authority should protect the monuments and advertise more about it so that the message of "unity" reaches every corner of the world.

CASE NO. 18

M. C. MEHTA

V.

UNIVERSITY GRANTS COMMISSION & ORS.

(ORIGINAL APPLICATION NUMBER 12 OF 2014 IN NGT)

M. C. MEHTA - UGC CASE

ABSTRACT

The case to be discussed in the following note is M.C. Mehta v. University Grants Commission and Others (Original Application Number 12 of 2014). The applicant had filed a writ petition in 1991 being Civil Writ Petition No. 860/1991 titled M.C. Mehta v. Union of India before the Supreme Court of India, whereby the Hon'ble Supreme Court, on 22nd November 1991, gave various directions to the Central and the State Governments for providing compulsory environmental education to the students of schools, colleges and all educational institutions throughout the country. The applicant again filed a writ petition in 2003 in the Hon'ble Supreme Court, since the above direction had not been complied with by many states, upon which the Hon'ble Court vide its order dated 18th December, 2003 reiterated the direction requiring the authorities to comply with the same. In 2004, the University Grants Commission (UGC) and All India Council for Technical Education informed the Supreme Court that it had already prepared a syllabus which includes 'environmental science' and which is being updated and would be introduced from the following academic year. They also informed the Court that the syllabus pertaining to environmental education had been prescribed and the guidelines had been framed to be enacted in educational institutions.

However, in this application to the National Green Tribunal, the applicant stated that environmental science was being taught by teachers who were not qualified in terms of the UGC Guidelines. The applicant stated that the teachers who possessed specialization in other subjects had been assigned the task of teaching the subject of environmental science and that

this was against the letter and spirit of the judgments and orders passed by the Hon'ble Supreme Court.

This case was raised mainly under sections 14, 15, 16, read along with section 18 of the National Green Tribunal Act, 2010. The case, however, dealt with the maintainability of this particular application before the Principal Bench of the National Green Tribunal. This case provides an in-depth analysis of maintainability of suits in the National Green Tribunal (hereinafter referred to as NGT) and its jurisdiction.

1. PRIMARY DETAILS OF THE CASE

Case No	:	(Original Application Number 12 of 2014)
Jurisdiction	:	National Green Tribunal
Case Filed on	:	2014
Case Decided on	:	July 17, 2014
Judges	:	Swatanter Kumar J (Chairperson) and M. S. Nambiar J (Judicial Member)
Legal Provisions involved	:	Article 48A, Article 51A(g) of the Constitution of India. Section 14, 15, 16 read with Section 18 and Schedule I of the National Green Tribunal Act, 2010 Sections 16(2)(e) and 17(1)(e) of the Water (Prevention and Control of Pollution) Act, 1974 Section 16(2)(f) of the Air (Prevention and control of Pollution Act), 1981
Case Summary Prepared by	:	Amrith R. (Student of Law, School of Excellence in Law, The Tamil Nadu Dr. Ambedkar Law University, Chennai)

2. BRIEF FACTS OF THE CASE:

The applicant had filed a writ petition in 1991 being Civil Writ Petition No. 860/1991 titled *M.C. Mehta v. Union of India* before the Supreme Court of India, whereby the Hon'ble Supreme Court gave various directions to the Central and the State Governments for providing environmental education as a compulsory subject to the students of schools, colleges and all educational institutions throughout the country from the following academic

year. The Hon'ble Court did not consider it necessary to hear the State Government and the other interest groups who were the respondents of that case since there was a general acceptance that protection of environment and keeping it free of pollution is of paramount importance for life to survive on this earth.

- As the abovementioned direction had not been complied with by many States, the applicant again filed an interlocutory application (IA) in the above writ petition upon which the Hon'ble Supreme Court vide its order dated 18th December, 2003 reiterated the direction requiring the authorities to comply with the same. The Court ordered all States to see that all educational institutions under their control implement respective steps taken by them and implement them from the next academic year, 2004-05 at least, if not already implemented. The Court stated that non-compliance of the same by any of the institutions should be treated as a disobedience calling for instituting disciplinary action against such institutions.
- In 2004, the University Grants Commission (UGC) and All India Council for Technical Education informed the Supreme Court that it had already prepared a syllabus which includes 'environmental science' and which was being updated and would be introduced from the following academic year. They also informed the Court that the syllabus pertaining to environmental education had been prescribed and the guidelines had been framed to be enacted in educational institutions.

- However, the applicant, through this application to the Principal Bench of NGT, contended the subject was being taught by teachers who were not qualified in terms of the UGC Guidelines. The teachers who were specialized in subjects like Sanskrit, Hindi, English, Electronics, Political Science, Sociology, Mathematics, Physical Education, Home Science, Computer Science etc. were assigned the task of teaching the subject of environmental science, stated the applicant, and this was against the letter and spirit of the judgments and orders passed by the Hon'ble Supreme Court. Those who have qualified the National Eligibility Test (NET) in Environment Science or Ph.D. in terms of UGC guidelines are considered as eligible teachers. The applicant contended that the whole purpose of making 'environmental studies' as a compulsory subject was defeated. The applicant also contended that many states like the State of Haryana, Punjab, Goa, Mizoram, Delhi and the Union Territory of Chandigarh amongst others had not complied with the directions of the Supreme Court, since none

of these states had taken any steps, according to the applicant, to appoint qualified teachers who were competent to teach environmental science as a subject.

- While referring to some of the States, the applicant made a particular reference to the States of Haryana and Jammu and Kashmir and contented that except for holding meetings, the State Governments had not taken any concrete steps for compliance or for implementation of the directions of the Court. In fact, they had only been exchanging letters on what should or should not be the qualifications of the teachers who would teach the subject of Environment Science.

- The applicant submitted that the action of the respondents, in not providing environment education properly in educational institutions, was against the spirit of the order passed by the Supreme Court as well as the affidavits already given by the State Governments before the Hon'ble Court.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the Principal Bench of the National Green Tribunal has the jurisdiction to entertain the current plea of applicant?
II. Whether the actions of the respondents were against the judgements and order passed by the Hon'ble Supreme Court of India?
III. Whether the actions of the respondents violated Articles 48A and 51A(g) of the Constitution?

4. ARGUMENTS OF THE PARTIES:

Petitioner

- The applicant contended that the respondents' action of appointing unqualified teachers to teach environmental science as a compulsory subject was against the letter and spirit of the Hon'ble Supreme Court's judgement.
- The applicant stated that by not acting as per Supreme Court's directions, Article 48A of the Constitution which provides that the States should endure to protect and improve the environment and safeguard the forests and wildlife of the country and Article 51A(g) of the Constitution which imposes one of the fundamental duties

on every citizen to protect and improve the natural environment, including forests, rivers, lakes and wildlife and to have compassion for the living creatures, were being violated.

- The applicant submitted that lack of education in environment science would prejudicially affect the spirit of these Articles and thus, the applicant had been compelled to approach the Tribunal for redressal of his grievances.
- The applicant prayed to the Tribunal to issue directions to the respondents to ensure that compulsory subject of environment studies would be thereby taught by the qualified and eligible teachers as per UGC guidelines from academic session 2014 in both Government and Private Universities in India and to take appropriate action against the respondents for not implementing the judgments and orders of the Hon'ble Supreme Court.

Respondent

- The respondents stated that substantial compliance of directions of the judgment of the Hon'ble Supreme Court dated 22nd November, 1991 was maintained.
- The respondents, however, primarily took the preliminary objection with regard to maintainability of the application before the Tribunal. They contended that on proper interpretation of the provisions of Section 14 read with Section 18 and Schedule I of the NGT Act, 2010, the Tribunal had no jurisdiction to entertain and adjudicate the matters raised in the application.
- The respondents averred that it was a matter relating to imparting of education and does not raise any ‘substantial question relating to environment’ and in any case such question does not ‘arise out of the implementation of the enactments specified in Schedule I of the NGT Act’.
- The respondents also contended that the entire basis of the application is alleged violation of the order of the Supreme Court dated 22nd November, 1991. Therefore, the Tribunal, they contended, could neither initiate contempt proceedings against violator nor could it be an executing court for the orders passed by the Supreme Court of India.

5. LEGAL ASPECTS INVOLVED:

Section 14 of the NGT Act states that (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I and (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

Section 15 of the NGT Act states that The Tribunal may, by an order, provide: (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance); (b) for restitution of property damaged; (c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

Section 18 of the NGT Act states that, an application or appeal can be submitted to the Tribunal. Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed. An application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by the person, who has sustained the injury; or any person aggrieved, including any representative body or organization.

The argument of the maintainability of the application was treated as the preliminary issue by the Tribunal and arguments were heard on the maintainability of the petition without going into the merits. The applicant responded to the maintainability of the suit by raising a contention that the provisions of Section 14 read with Section 18 of the NGT Act are wide enough to give cause of action to ‘any person aggrieved’ to file any petition before this Tribunal, in relation to any environmental issue. Education in environmental science, thus, would be within the ambit of these provisions and hence, the applicant averred that the present petition would be maintainable.

Additionally, according to the applicant, Sections 16(2)(e) and 17(1)(e) of the Water (Prevention and Control of Pollution) Act, 1974 as well as under Section 16(2)(f) of the Air (Prevention and Control of Pollution) Act, 1981 lay down statutory functions for the Central

or the State Board, as the case may be, to "organize through mass media, a comprehensive programme regarding the prevention and control of water/air pollution", "planning and organizing the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water/air pollution" and to "organize mass education programmes relating thereto". Thus, the applicant contended that the subject of environmental education, would fall within the compass of these provisions and hence it would be an 'implementation of the enactments mentioned in Schedule I of the NGT Act'. The applicant contended that the expression 'any aggrieved person' should be interpreted in its wider sense. The applicant also stated that as per Articles 141 and 142 of the Constitution of India, the orders passed by the Hon'ble Supreme Court of India are 'law of the land' and are to be executed by all Courts and Tribunals.

However, the Tribunal did not accept the applicant's stance. The provisions raised by the applicant related only to the functions of the respective Boards to ensure prevention and control of water pollution; it did not have any bearing on the substance of the application. The comprehensive programme through mass media, even if it is deemed to include education as a part of the programme, would still not include the prescription and enforcement of educational qualifications of the teachers who are expected to teach environmental science. That cannot be an area that would squarely fall within the dimensions of Section 16 2(e) of the Water Act which elaborates the functions of Board, which is expected to perform in order to promote cleanliness of the wells in the different areas of the State. The Tribunal stated that the applicant cannot invoke these sections to seek directions from the Tribunal since it was beyond the scope of those sections.

This Tribunal stated that it was vested with three different jurisdictions. Firstly, it has the original jurisdiction in terms of Section 14 of the NGT Act to deal with all civil cases raising a 'substantial question relating to environment' and where such 'questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act'. Secondly, it is vested with appellate jurisdiction against the various orders, directions, or decisions as stated in Section 16 (a) to (j) of the NGT Act. Thirdly it has a special jurisdiction in terms of Section 15 to grant relief of compensation and restitution as per the scheme contemplated under that provision. Since the applicant's case was neither a question which arose due to implementation of enactments specified in Schedule I of NGT Act, nor was it any legal right enforcement of the environment, the Tribunal refused to interfere in the merits of the

application. The Tribunal asserted that it cannot deal with matters of education related to environment in educational institutions and educational qualifications of teachers since they were beyond the scope, meaning, understanding and jurisdiction of the sections 14, 15, 16 read with 18 of the NGT Act and the Scheduled Acts since they come under service jurisprudence which is not the Tribunal's domain.

The Tribunal referred to the case of ***Goa Foundation v. Union of India*** [2013(1) All India NGT Reporter, New Delhi, 234] in which the Tribunal had dealt in length the meaning of substantial question relating to environment. The cases where there was a direct violation of a specific statutory environmental obligation as a result of which the community at large is affected or is likely to be affected by the environmental consequences, or the cases where gravity of damage to the environment or property is substantial, were regarded as substantial questions. The other kinds of cases include where the environmental consequences relate to a specific activity or a point source of pollution. Where there is a direct violation of a statutory duty or obligation, it will be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal and would squarely fall under Section 14(1) of the Act. The Tribunal also referred to the case of ***Sanjay Gandhi Grih Nirman Sehkari Sansthan, Indore v. State of Madhya Pradesh***[AIR, 1991; MP 72], where the Court had stated that 'implementation' would mean that the "steps under the scheme or order have been taken and not that they ought to have been completed within the prescribed period." Since the substance of the application had no connection with the implementations of enactments mentioned in Schedule I of the NGT Act, the Tribunal stated that the application was not maintainable.

6. JUDGEMENT IN BRIEF:

- The Tribunal did not find any merit in the application because environment education cannot be included in the definition of 'implementation' under Schedule I of the NGT Act. The Tribunal held that the expression 'substantial question relating to environment' or 'enforcement of any legal right relating to environment' cannot be interpreted so generically and so widely that it would even include education relating to environment and educational qualifications to be prescribed to the teachers in colleges or schools.

- The substance of the application clearly fell within the framework of the constitution and service jurisprudence. The Tribunal conveyed that it does not raise any substantial question of environmental jurisprudence understood in its correct perspective within the provisions of the NGT Act and the Scheduled Acts. The contention that 'mass education' in sections 16(e) of the Water Act and 16 (f) of the Air Act would come to the aid of the applicant for issuance of such a direction was misconceived. The programmes contemplated under these provisions, the Tribunal held, must relate to prevention and control of pollution and not what should be the terms and conditions of appointment of teachers and how environmental science should be taught in an educational institution.

- The Tribunal asserted that there was no close connection or nexus between the dispute raised and the environment. The expression 'substantial question relating to environment' clearly conveys that the disputes determinable by the Tribunal had to relate to environment and not allied fields. The expression 'implementation' understood in its correct perspective cannot be extended, to empower the Tribunal to issue directions in relation to service matters involving education environmental sciences. The Tribunal also stated that legal right of the applicant was not violated and faced no legal grievance, as per the application submitted, and therefore, citing the case ***Kehar Singh v. State of Haryana*** [2013 (1) All India NGT Reporter, Delhi 556], held that he had no cause of action.

- The Tribunal asserted that it had to work within the confines of the statute under which it was created, i.e. the NGT Act, 2010. The Tribunal held that there was no provision in the NGT Act, invoking which, appropriate action for non-compliance of Supreme Court's order could be issued and it held that it would be inappropriate for it to take action as it was for that Court alone to deal with the matters of the kind that comes under service jurisprudence or any constitutional matters. The Tribunal, thus, held that it cannot entertain such an application as it would directly fall beyond the provisions of section 14 read with section 18 and Schedule I of the NGT Act.

- Therefore, the application filed by the applicant was dismissed by the Tribunal as it was not maintainable. However, the merits of the case were not examined by the Tribunal and it stated that the applicant was at his liberty to approach any court of

competent jurisdiction. It also stated that this particular order would in no way prejudice the rights and contentions of the applicant.

7. COMMENTARY:

The case explains in detail the jurisdiction of the National Green Tribunal and analyses the various nuances of its statute, the NGT Act, 2010, especially sections 14 read along with section 18. The Tribunal dismissed the case because the applicant's contentions were indeed based on service jurisprudence which was obviously not the domain of the Tribunal.

The fact that the respondents had not appointed teachers with the prescribed educational qualifications to teach environmental science as a compulsory subject in the educational universities across the country does not necessarily imply that there was a substantial question relating to law or that a legal enforcement of any right relating to environment was necessary. There was no cause of action as he faced no legal grievances; nor was there any nexus between the dispute mentioned by him and environment. The provisions of the Water Act and Air Act, which actually formed the substance of the application, had no connection with the prayers sought by the applicant.

8. IMPORTANT CASES REFERRED:

- *Goa Foundation v. Union of India [2013(1) All India NGT Reporter, New Delhi, 234].*
- *Sanjay Gandhi Grih Nirman Sehkari Sansthan, Indore v. State of Madhya Pradesh [AIR 1991 MP 72].*
- *Kehar Singh v. State of Haryana [2013 (1) All India NGT Reporter, Delhi 556].*

CASE NO. 19

M. C. MEHTA
V.
UNION OF INDIA & ORS.

(IA NOS. 158128 & 158129 OF 2019
IN WRIT PETITION (C) NO. 13029 OF 1985)

POLLUTION IN DELHI & NCR

ABSTRACT

The case addressed the development of a major threat to humans in the Delhi and National Capital Region. It reflects upon the different kinds of pollution that are causing health hazards to people living in Delhi and NCT Region. A specific emphasis on air pollution has been laid down by the court and different reports it received from different organizations and ministries.

The case analysis of the current scenario and harmful effects on the health of local people. It came up with the list of people that were negligent and their liabilities. It includes the causes of pollution like the burning of stubble, construction work, and petroleum-based vehicles. It takes various firm steps to prohibit the burning of stubble by farmers in neighbouring states of Rajasthan, Utter Pradesh, and Haryana. It even tries to analyse the steps taken by authorities in the past and the lack of implementation of both the initiatives and commands of different High Courts and Supreme Court.

The case analysis suggests various appropriate solutions to the problem and ways to reduce the pollution level in Delhi and NCT Region. The liabilities of different actors like local administrative authorities of the neighbouring states, Union ministries, municipal bodies, industries, and the local population have been laid down and their penalty. An outline of the future action plan for curbing pollution has to be laid down through the judgment.

1. PRIMARY DETAILS OF THE CASE:

Case No	:	IA Nos. 158128 & 158129 of 2019 In Writ Petition (C) No.13029 of 1985
Jurisdiction	:	Supreme Court
Case Decided on	:	January 13, 2020
Judges	:	Hon'ble Justice Arun Mishra and Hon'ble Justice Deepak Gupta
Legal Provisions involved	:	Article 21, 41, 47, 48, 48A, 51A(g) and 51A(h) Section 31A and 39 of Air (Prevention and Control of Pollution) Act, 1981 and Section 188 of Indian Penal Code.
Case Summary Prepared by	:	Yashwardhan Bansal (Student of Law, School of Law, Christ University, Bengaluru)

2. BRIEF FACTS OF THE CASE:

The case was filed by Advocate M.C. Mehta who is a public interest attorney in India. The respondent in the case is farmers from different states, the Union of India, and various other governmental bodies. The case was filed through a Public Interest Litigation (PIL) under Article 32 which is enshrined in The Constitution of India. The case was filed for public interest as the lives of millions of people were at stake and gigantic violation of their rights was being seen. The case was filed on environment pollution in the National Capital Region of Delhi and its detrimental effects on the lives of the local population. The case focused on various kinds of pollution like water, air, and land. A specific emphasis upon air pollution caused by the farmers of different neighbouring states to NCT of Delhi by burning stubble was made. The farmers of states like Utter Pradesh, Haryana, and Punjab were responsible for the burning and causing pollution on a large scale. The case was filed for years even after several notifications and prohibition various parties to the case were negligent in following the laws and contributed towards polluting the environment on a large scale. They didn't amend the pattern and process of their work and continued to pollute the environment. The pollutants released by them in air, water, and land risked the lives of the sizable population. They even failed to provide any support to the affected and choose to neglect the damage caused on such a large scale. The problems related to the respiratory system were increasing due to pollution and smog caused visibility issues leading to various problems like spurge in the number of accidents. The blatant violation of the right to life of the population living in

Delhi and NCR and an indication of the drop in the average life span of people living due to pollution is alarming.

Procedurally the state and its various branches failed to comply with the guidelines published by court and legislature at different levels. The three branches of the legislature at central, state and municipal levels failed to take the necessary step to curb or restrain the pollution. Even the panchayat level administrative machinery failed to discharge their duty to curb the pollution caused in their control area. The case was filed to fix accountability of the menace created by authorities and the violation of Article 21 enshrined in The Constitution of India by them. The case was even filed to fix the problem of stubble burning by the farmers and putting the lives of the sizable population at risk. The violation of court orders in the past by different authorities. The case was even filed to prohibit activities like construction and vehicle pressure on the road that caused pollution. The utter violation of public trust doctrine by burning of stubble and making violators liable to pay compensation to the deprived is the other reason for filing the case.

3. ISSUES INVOLVED IN THE CASE:

I. Whether the farmers are liable for the pollution caused in Delhi and NCR or not?
II. Whether the different administrative machinery is liable for the pollution in Delhi and NCR or not?
III. Whether pollution is harmful to the sizable population or not?
IV. Whether there is a need for building a mechanism to curb pollution or not?

4. ARGUMENTS OF THE PARTIES:

Plaintiff

- The satellite images projected that the burning of stubble was more in various parts of three states in the year 2019 when compared with previous year records.
- The entire machinery in the administration involved in the process of checking the burning of stubble by farmers should be held liable under tortuous law.
- The authorities have failed to find a solution to the problem of increasing pollution and their little efforts to curb them have failed.
- The authorities have even failed to take actions timely and preparing an action plan to prevent pollution.

- The odd-even scheme failed to change the scenario as it had various fallacies and limitations. It worked to curb a very minute percentage of vehicular pollution. States projected that it worked on 1.5% of total pollution caused in Delhi and NCR.
- The high pollution level and high density of pollutants in the air has caused a violation of Article 21 of people at large as lives are at risk.
- A violation of various other rights mentioned in the Indian constitution like Article 41, 47, 48, 48A, 51A(g), and 51A(h) has been observed as a healthy atmosphere and surrounding in no provided to people.
- The lack of ability of the state to act at an optimal level of its capacity has not been a scene. Even the basic standards of living of people have also been compromised by the state. Even the farmers caused the violation of these articles mentioned in the constitution of India.
- The state failed to maintain the environment in its pure and healthy state. The water bodies, air, and land have been polluted that are to be protected by the state.

Defendant

a. Farmers

- The short gap between harvest and sowing of two crops is the reason why the farmers indulge in burning the stubble.
- It is the most efficient and cheap way to get rid of the stubble so that the process of sowing for new crops could be initiated.
- The machines for the harvesting of stubbles are not available to marginalize and semi-marginalized farmers. The new machines are expensive and can't be afforded by these farmers.
- The rent for hiring the machines to harvest the stubble from the ground is also really high for these farmers.
- The state government has failed to provide farmers with financial support which is necessary as agriculture is the backbone of the nation's economy. The defence of bankruptcy can't be used as an escape by the state governments.

b. <u>Government and state authorities</u>

- The central government provided the four states namely NCT of Delhi, Utter Pradesh, Haryana, and Punjab with sufficient funds under the Scheme of Promotion of Agricultural Mechanization for the of 2018-2020 for Crop Residue Management so that the stage of burning the stubble doesn't arise.
- The states have planned to dedicate certain types of machinery for harvesting the stubble by marginal and small farmers.
- Even the operational cost is planned to be Bourne by state governments till a proper plan doesn't go into operation full-fledged.
- There have been various efforts made by the state to curb pollution by employing methods like antismog guns, reducing the vehicular movement, restricting the usage of liquid petroleum-based public transport, and other methods.
- Various industries have been shut that created pollution on a large scale and strict regulation to check pollution caused by remaining industries has been brought.

5. LEGAL ASPECTS INVOLVED:

A blatant violation of various provisions of the Constitution of India has been seen in the case. Article 21 which lays down the right to life and liberty to individuals was violated. The release of various pollutants that can cause health hazards to people is deprivation of the right to life of individuals. This has even lead to a significant drop in the average age of population living in Delhi and NCR. Article 41 lays down the duty of the state to secure and take care of old age, sickness, disablement, etc. of citizens within its economic capacity. In this case, an unconcealed violation of this law has been seen as the state failed to check pollution for the year and has failed to assist people suffering due to pollution in Delhi and NCR. Article 47 which impose a duty on the state to raise the level of nutrition and standard of living of its people and improvement of public health. The failure in complying with this duty has been seen as public health and wellness is at risk due to the absorbent level of pollution. The state even failed to curb pollution to a substantial level. Under Article 48, the state shall endeavour to organize agriculture with modern and scientific lines. A violation of this provision of constitution has been seen as the state failed to curb the burning of stubble by providing facilities to farmers to utilize the stubble for various other purposes. Article 48A deals with Protection and Safeguarding of Forests and Wildlife. Article 51A (g) outlines the duty of individuals to protect and improve the natural environment including forest, different water

bodies, and wildlife. The farmers and other individuals like industrialists by their insensitive acts have failed to comply with this duty of theirs. Article 51A (h) requires developing scientific temper, humanism, and the spirit of inquiry and reform. Its violation has also been observed by different actors in this case.

A violation and usage of various provisions enshrined under the Air (Prevention and Control of Pollution) Act, 1981 has been observed in this case. Section 31A of the act provides power to the central government to direct any individual, industry, and operation that is causing mass destruction to the environment by causing air pollution. A restriction over the supply of various essentials to an industry or organization like water and electricity can be done by the state. Section 39 provides for imposing penalties in case of violation of any provisions of the act. In case of violation, one can be punished by imprisonment and fines. Imprisonment can stretch to three months and fine can stretch to ten thousand rupees only. Section 188 of the Indian Penal code has also been used in the case as a violation of orders promulgated by public servants has been seen. Various acts of pollution prohibited were violated by farmers and they are to be held liable under it.

6. JUDGEMENT IN BRIEF:

- The division bench in the present case issued a long list of directions and notifications to curb the pollution in Delhi and NCR. The court orders reflected upon the worsening condition of air pollution and a large chunk of the population suffering from the side effects of breathing the pollution. The average life span of people was being reduced by the pollution caused by the activities of different actors. Apart from the suggestion and directions the court even the decision taken by a High-Level Committee constituted by the court was placed in the record and into effect for placating the situation. The action plan proposed and directed has been mentioned below.

- The court directed the Crop Residuary Management should be prepared and a comprehensive plan needs to be built for the management of stubble and residue left on the field after harvesting of crops. The usage of the stubble for various things like fertilizers, biofuel, and cattle food was recommended through the order. The central and state governments of Utter Pradesh, Punjab and Haryana were ordered to prepare

a scheme to provide farmers with the required equipment for harvesting the stubble and residue. The machine facilities like combine harvester and rotary slash to be provided to marginal and small farmers. The government of Delhi and NCR recognized various hotspots where the burning of stubble was taking place and they were to be managed for curbing the environmental destruction.

- There are various scientific methods directed by the court that is supposed to be implemented for checking and reducing the pollution level in Delhi and NCR. A direction for installation of 'Smog Towers' at various parts of Delhi like Connaught Place within three months for cleaning the air and making it better for human beings to breathe. The usage of 'Antismog guns' has been ordered to be used in various sites of construction like road repair, the building of huge structures, demolition activities, parking sites, and mining areas as they water can bring the dust and other pollutants to ground from air. For the coverage of cost polluter pay principle is imposed by the decision as various actors paying for activities are to borne cost of antismog guns.

- Industrial pollution is ordered to be curbed by the different government authorities by the court. The dumping of various kinds of waste by industries like plastic and dust has to be identified and banned by the local authorities. The pollution boards of the four states respectively are ordered to check industrial pollution in their respective states. The proposal of installation of oxy furnace in glass industries is ordered to be checked by DST Technical committee. The industries emitting gasses and chemicals are to be checked regularly. Stringent norms to be imposed by the authorities in case of violation of the law found, by the industries. The coal-based electricity generation industries were ordered to be banned and substitute for producing electricity should be used like 'Natural Gas'.

- Recycling of construction and demolition waste to be checked and developers failing to recycle shall be imposed with bans and high compensations. The road constructions are to be followed by a sprinkling of water so that the dust doesn't fly and mix with air. The compliance with waste management guidelines to be imposed by the authorities. Efforts to curb the burning of solid wastes in Delhi and NCR to be made by local authorities. The pollution created by vehicle movement in Delhi and NCR

based n kerosene as fuel to be reduced and a report to be provided to the court by Pollution Control Board. The court even ordered for regular checks of water samples from different freshwater sources so that dumping of chemicals and hazardous substances could be curbed. Sewage treatment plants and other facilities to be set up for efficient management of water resources.

- The local authorities functioning in Delhi and NCR, Governments of Haryana, Punjab, and Utter Pradesh were even ordered to take care of potholes and file a report on remaining work within three weeks. The authorities like Pollution Control Boards of different states and ECPA were ordered to submit various reports of development and checks of pollution.

7. COMMENTARY:

The modern times posses' new challenges towards human beings. Most of these challenges are manmade and cause of self-seeking nature of human beings. The deprivation of the environment is manmade and that has started affecting human life at large. The activities like burning of stubble, mass construction, burning of petroleum, etc. have caused the development of smog in NCT and Delhi. The case tries to reflect upon the pollution caused in Delhi and NCR and it critically analyses the activities contributing to it. The parties causing pollution have also been recognized in the case. An attempt to build an action plan and implement various actions to curb the pollution in both the long and short term has been seen in this case. The case is a reflection of the worse environmental conditions in India and the negligent behaviour of various authorities. The case limelight's the various effects of environmental pollution and the inability of the administration to curb or control the violation. The negligent behaviour and insensitivity among individuals towards the environment and health of fellow beings have been reflected through this case. The case provides for various methods of curbing pollution that is necessary for modern India as the pollution level has been at its acme in various parts of the country. The employment of various modern methods like the installation of Smog Towers, Antismog guns, and water sprinkling systems are efficient and essential for curbing pollution. The gigantic act of a court, in this case, to close industries in pollution prone areas and transition from fossil fuels to eco-friendly sources of fuel has been a trendsetter.

The case has lime lighted various activities that caused pollution on a high level like usage of kerosene as fuel, usage of generators, burning of solid wastes, and various domestic activities that caused a substantial level of pollution. The loopholes in schemes and actions by the government have been recognized in this particular case. The failure of initiatives like odd-even was reflected in the case as the percentage of pollution it curbed was very minimal. The need for prevention and curbing pollution was given a new outlook and people were sensitizing about the issue in the case. In this case, the plight of farmers is also reflected and the lack of resources available to them. The failure of the state to equip farmers with basic facilities was highlighted in the case which leads to the development of a substantial part of pollution caused. The application of various important principles like the 'polluter pay principle' has also been included in the judgment.

8. IMPORTANT CASES REFERRED:

- *Bhartikisan Union v. Union of India and Ors. AIR 1980 SC 1789.*
- *Charanpal Singh Bagri v. Union of India and Ors. W.P.(C) 6751/2019.*
- *Municipal Council, Ratlam v, Vardhivand and Ors. AIR 1980 SC 1622.*

CASE NO. 20

M. C. MEHTA
V.
STATE OF ORISSA & ORS.

(WRIT PETITION (Crl) No.1501 of 1984)

CHILDREN LANGUISHING IN JAILS CASE

ABSTRACT

The following is a Case Summary of the infamous M.C. Mehta v. State of Orissa and others also commonly known as the *Child Languishing in Jails case*. This case was brought before the Apex Court of India in 1984 by advocate M.C. Mehta who filed Public Interest Litigation against the unreasonable arresting of prisoners in the Orissa jails.

A petition was filed under article 32 of the Indian Constitution to address the severe bad conditions and maltreatment of children in Orissa Jails. The purpose was to get a fair treatment for those children who were without any reason or for petty reasons subjected to lock up in jails and harsh beating or ill-treatment by police officials and other public servants. So, in order to justify the injustice and to bring about equity this petition was filed before the Supreme Court.

The author of this summary has made an informed attempt to create a short summary in the form of a case brief for academic purposes. The author personally admires the work of Advocate M.C. Mehta and thus considers this case an important one which shaped the Rights of Children with respect to Human Rights and legal rights.

1. PRIMARY DETAILS OF THE CASE:

Case No.	:	Writ Petition (Crl) No. 1501 of 1984
Jurisdiction	:	Supreme Court of India
Case Filed on	:	1984

Legal Provisions involved	:	Constitution of India - Article 14, 15(3), 21, 23, 24, 42, 45 The Women's and Children's (Licensing) Act, 1956 Probation of Offenders Act, 1958 National Policy for Children, 1974
Case Summary Prepared by	:	Aarihanta Goyal (Student of Law, Manipal University Jaipur, Rajasthan)

2. BRIEF FACTS OF THE CASE:

This case was brought before the Supreme Court of India in the form of Public Interest Litigation under article 32 of the Indian Constitution by advocate M.C. Mehta.

The petition was filed to address issues based on the reports of Indian Express and a local newspaper of Orissa explaining the plight of children in jails. It is the duty of the State to ensure the well-being of those in its care to prisons and other State institutions. It is because the State has failed to treat such people with a semblance of dignity that these cases have come before the Court. Cases relating to prisons and prisoners, mental health and detention, hospitals and institutions for women and children all reveal a common concern. Various strands of concern can be identified including the long pendency of criminal cases, arresting without any reason or for petty offences, the use of fetters, handcuffs and solitary confinement, torture, the exploitation of prison labour, conditions in prisons, etc. and these are the concerns which acted as a reason for journalists to reach the prisoners especially children and provide their voices a platform. Based on the bad conditions of children who are in prison for under trial, convicts or those arrested for petty offence or those who are staying with their mothers in jails needed justice. The delay for access to justice, torture and deprivation was the main cause of this case. So, for this reason advocate M.C. Mehta filed a PIL for best interests of children and dignity as a human being.

The primary issue was unreasonable arrest of prisoners especially children who were treated as slaves in prisons.

The under trial prisoner has been a particular focus in this case, as many have been detained for lengthy periods, without having their guilt tested. The majority of such inmates belong to economically and socially disadvantaged sections of the population, to scheduled castes and scheduled tribes, easily intimidated and harassed by officials.

The third consideration is to examine the conditions of this confinement. Provided with few basic amenities, such as water and clothing, the inmates of State institutions have had to live in appalling conditions, no access to medical facilities, proper sanitation, legal aid, education and physical or mental well-being.

The reports of newspapers stated that 197 children were lodged in Orissa jails and were being maltreated, sodomized and used by hardened criminals. 20 children were reported to be living in each small cell that lacked even air to breathe and live. Having confirmed the press reports through sources in Orissa, Mr Mehta filed a PIL petition. The SC appointed a commission and Mr. Pramod Mishra, social activist and bank manager, was appointed Commissioner on the recommendation of Mr Mehta.

3. JUDGEMENT IN BRIEF:

Earlier, any offence committed by a person of age below 21 years was considered to be committed by a child but they were treated as hard criminals and convicted that way. They were sent to jails due to delay in gathering information or due to criminal justice system and were abused badly. They were never given the care and protection as needed by a child. Their human rights were neither at all protected nor even considered. They were not even considered as child while trying to get confessions from them for their crime. They were not even thought of a Human nor were there Constitutional rights respected. Indian Constitution guarantees its citizens fundamental rights and no one can infringe them not even a public authority. The Report confirmed the allegations and ultimately the children were released from the jails.

4. COMMENTARY:

According to the Indian constitution, the State governments are responsible to the administration and management of the prisons and other institutional homes. Every State government can make prison laws according to their own requirements. However, these state powers remains subjected to other centrally-enacted laws such as the Prisons Act, 1894. The guidelines should be framed around key areas such as food, medical facilities, accommodation, sanitation, age of residence, education, medical facilities, legal aid and recreation facilities. Article 21 of the Indian constitution guarantees the right to live with human dignity to every person. The Directive Principles enshrined within the Constitution

also provide such suitable opportunities to be given to children to ensure a healthy manner of development. Furthermore, India has ratified various international conventions, such as the UNCRC, which further creates an obligation on the Indian government to work towards the development of well-being of the children. Article 15(3) provides that nothing shall prevent the State from making any special provision for women and children. Article 24 prohibits employment of children below the age of fourteen years in any factory or mine or engagement in other hazardous employment. Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 39(f) directs the State to ensure that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation. Article 45 stipulates that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. It is of utmost importance that children grow and develop in proper environment so that they form a strong base for the generations to come and help in development of our nation. Children are upcoming youth whose input will be forming the better future for our nation.

TEAM PROBONO INDIA

JAHNAVI TANEJA is the **Co-ordinator** of the *"Case Compilation on "Selected Cases of M.C. Mehta"* by ProBono India. She is a student of law at the Amity Law School Noida, AUUP. She is a staunch believer of the holistic development approach thus leading her to participate in moot competitions, debates, acquire various online certified courses, writing research papers, actively participating in and leading various college events. She considers herself a student of law and life and her interests lie greatly in Family Law, Environmental Law, Constitutional Law and International Law. She has previously interned at the Law Commission of India, PUCL, K.K. Sharma & Co., and Socio Research and Reform Foundation. She recently finished her internship with ProBono India and was listed amongst the *"Top 5 Interns"* of her Summer Internship 2020 Batch at ProBono India.

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About ProBono India

Founded in October 2016 with an aim to integrate legal aid and awareness initiatives – ProBono India has ventured into different avenues viz. legal aid, legal awareness, legal intervention, legal journalism, legal activism etc. – all with the underlying objective of contributing to the positive development of the society with a strong socio-legal approach.

The activities at ProBono India include an active dissemination of legal information via the medium of its official website, rolling internship programmes for law students to help them develop a holistic personality with a socio-legal approach to their professional personality, interviews with eminent personalities working at the ground-level offering insights into their successful projects, providing a platform to promote and publish the art of research and legal writing, amongst many others.

The team of ProBono India works to promote legal activism as we believe that law and society are two sides of the same coin. Law and society are so inextricably interdependent that to both need to be equally improved in order to lead the world into the desired new order. We at ProBono India believe in a better and brighter tomorrow. We believe not just in being passengers on this drive to change – rather, we aim to drive towards the change.

Vision

Integrate Legal Aid and Legal Awareness Initiatives.

Mission

To provide the legal aid, conduct legal awareness activities, disseminate legal aid, legal awareness activities of various organizations of the world and conduct research on overall aspects of legal aid and legal awareness.

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