

Case Note: The petition was filed to stop a project involving the construction of a fish landing Centre at Talchua it was detrimental to the ecology and environment of Bhitarkanika Wildlife Sanctuary. The Court ordered for the constitution of a Committee to probe into the matter. The Committee submitted its report to the Hon'ble court. The Court after referring the Committees Report and the arguments of the parties, observed that there couldn't be a golden scale to evaluate these problems. The Court further laid down the directions to be followed by observance of conditions of the Environmental Statutes like the Wildlife Protection Act 1972, in the interest of the local people without affecting the environment.

This document is available at www.ielrc.org/content/e9814.pdf

Disposing the petition, the Court passed the following orders:

1. All possible attempts for the influx of migratory human population of the surrounding area.
2. To restrict the State Government from furthering the construction of bridges and developmental activities? in the Sanctuary.

Equivalent Citation: AIR1999Ori15

IN THE HIGH COURT OF ORISSA

O.J.C. No. 3128 of 1994

Decided On: 14.05.1998

**Centre for Environmental Law World Wide Fund for Nature (WWF), India
Vs.**

State of Orissa and Ors.

Hon'ble Judges:

A. Pasayat and P.C. Naik, JJ.

JUDGMENT

Pasayat, J.

1. Petitioner and some of the interveners, who wanted to be heard in the matter, have alleged that the people, flora and fauna are directly and adversely affected by various activities which are going on in and around the Bhitarkanika Wildlife Sanctuary, and have prayed for stoppage of project to construct a fish landing centre at Talchua. They express concern that these activities would have adverse effect on the Bhitarkanika Ecosystem including the Olive Ridley sea turtle habitat. Some of the opposite parties have characterized the petition as a publicity seeking gimmick. They have asserted that the petitioner, and large number of such so-called environment lovers are in reality perpetrating fraud on the judicial system by presenting "publicity interest litigation" in the garb of public interest litigation. These persons are busy bees, publicity hungry and make wild, baseless allegations and present a distorted version far fetched from reality. They assert that a large number of people numbering a few lakhs will be deprived of basic amenities of life, and in the last part of Twentieth

Century they shall continue to live as nomads of the pre-historic ages far detached from the advancement in all spheres. For them, it is settled, life would continue to be mere animal existence and that would be against the very concept of Article 21 of the Constitution of India, 1950 (in short, 'the Constitution'). They pose a pertinent question. If the human race become extinct on account of deprivation of bigger needs of life what purpose would be served if flora and fauna are protected? If a man is bitten by snake, he cannot be taken to a hospital because there is no road. No transport facility can be stopped for protection of environment. According to them, petitioner and so-called lovers of environment shed crocodile tears for Olive Ridley Sea turtles oblivious of fate that would befall on few lakhs of human beings. It has to be noted that prayers in the writ application are essentially to the following effect:--

(a) to restrain the State of Orissa from constructing jetties, fishing complex road, bridges etc. within and around the Bhitarkanika Sanctuary;

(b) to direct the State to provide infrastructure, personnel etc. for effective implementation of the Orissa Marine Fishing Regulation Act, Wildlife Protection Act and Indian Forest Act to protect and conserve the mangrove forest and the endangered species of wildlife of the Bhitarkanika Sanctuary and its surrounding area; and

(c) to appoint a Committee to carry out an environmental impact analysis of the construction of the jetty, fishing complex, roads, bridges etc. and of the tiger prawn farming in brackish water and fishing by mechanised boats in and around the Bhitarkanika Wildlife Sanctuary and to determine the area which needs protection.

2. "Environment" is a difficult word to define. Its normal meaning relates to surroundings, but obviously that is a concept which is relatable to whatever object it is which is surrounded. Einstein had once observed, "The environment is everything that isn't me." About one and half century ago, in 1854 the wise Indian Chief of Seattle replied to the offer of the great White Chief in Washington to buy their land. The reply is profound. It is beautiful. It is timeless. It contains the wisdom of the ages. It is the first ever and the most understanding statement on environment. The whole of it is worth quoting as any extract from it is to destroy its beauty.

"How can you buy or sell the sky, the warmth of the land? The idea is strange to us.

If we do not own the freshness of the air and the sparkle of the water, how can you buy them?

Every part of the earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in the memory and experience of my people. The sap which courses through the trees carries the memories of the red man.

'the white man's deed forget the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters; the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man --all belong to the same family.'

So, when the Great Chief in Washington sends word and he wishes to buy our land, he asks much of us. The Great Chief sends word he will reserve us a place so that we

can live comfortably to ourselves. He will be our father and we will be his children. So we will consider your offer to buy our land. But it will not be easy. For this land is sacred to us.

This shining water moves in the streams" and rivers is not just water but the blood of our ancestors. If we sell you land, you must remember that it is sacred, and you must teach your children that it is sacred and that each ghostly reflection in the clear water of the lakes tells of events and memories in the life of my people. The water's murmur is the voice of my father's father.

The rivers are our brothers, they quench our thirst. The rivers carry our canoes, and feed our children. If we sell you our land you must remember, and teach your children, that the rivers are our brothers, and yours and you must henceforth give the kindness you would give any brother.

We know that the white man does not understand our ways. One portion of land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother but his enemy. and when he has conquered it, he moves on. He leaves his father's graves behind, and he does not care.

He kidnaps the earth from his children. His father's grave and his children's birthright are forgotten. He treats his mother, the earth, and his brother, the sky, as things to be bought, plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert.

I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and does not understand.

There is no quiet place in the white man's cities. No place to hear the unfurling of leaves in spring or the rustle of an insect's wings. But perhaps it is because I am a savage and do not understand. The clatter only seems to insult the ears. And what is there in life if a man cannot hear the lonely cry of the whippoorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the smell of the wind itself, cleansed by a mid-day rain, or scented with the pinon pine.

The air is precious to the red man, for all things share the same breath -- the beast, the tree, the man, they all share the same breath. The white man does not seem to notice the air he breathes. Like a man lying for many days, he is numb to the stench. But if we sell you our land, you must remember that the air is precious to us, that the air shares its spirit with all the life it supports. The wind that gave our grandfather his first breath also receives the last sign. And if we sell you our land, you must keep it apart and sacred as a place where even the white man can go to taste the wind that is sweetened by the meadow's flowers.

So we will consider your offer to buy our land. If we decide to accept, I will make one condition. The white man must treat the beasts of this land as his brother.

I am a savage and I do not understand any other way. I have seen thousand rotting buffaloes on the prairie, left by the white man who shot them from a passing train. I

am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive.

What is man without the beasts? if all the beasts were gone, man would die from a great loneliness of spirit. For whatever happens to the beasts soon happens to man. All things are connected.

You must teach your children that the ground beneath their feet is the ashes of our grandfathers, so that they will respect the land. Tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children, that the earth is our mother. Whatever befalls the earth befalls the sons of the earth. If man spit upon the ground, they spit upon themselves.

This we know : The earth does not belong to man, man belongs to the earth. This we know : All things are connected like the blood which unites one family. All things are connected.

Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life; he is merely a strand in it. Whatever he does to the web he does to himself.

Even the white man, whose God walks and talks with him as friend to friend cannot be exempt from (he common destiny. We may be brothers after all. We shall Section One thing we know, which the white man may one day discover -- our God is the same God. You may think now that you own him as you wish to own our land; but you cannot. He is the God of man. and his compassion is equal for the red man and the white. This earth is precious to him, and to harm the earth is to heap contempt on the creator. The white too shall pass perhaps sooner than all other tribes. Contaminate your bed and you will one night suffocate in your own waste.

But in your perishing you will shine brightly fired by the strength of the God who brought you this land and for some special purpose gave you dominion over this land and over the red man. That destiny is a mystery to us. for we do not understand when the wild buffaloes are slaughtered, the wild horses are lamed, the secret corners of the forest heavy with scent of many men and the view of the ripe hills blotted by talking wires. Where-is the thicket? Gone, where is me eagle? Gone. The end of living and the beginning of survival."

"Nature hates monopolies and knows no exception. It has always some levelling agency that puts the overbearing, the strong, the rich, the fortunate substantially on me same ground with all other;," said Zarathustra. Environment is polycentric and multifacet problem affecting (he human existence. The Stockholm Declaration of United Nations on Human Environment, 1972, reads its Principle No. 3, inter alia, thus :

"Man has the fundamental right to freedom, equality, and adequate conditions of life. In an environment of equality that permits a life of dignity and well being and he bears a solemn responsibility to protect and improve the environment for present and future generations."

The declaration, 'therefore, says that' in the developing countries, most of the environmental problems are caused by underdevelopments.' The Declaration suggests to safe actions with prudent care for ecological balance. It is necessary to avoid massive and irreversible harm to the earthly environment and strife for achieving

present generation and the posterity a better life in an environment more in keeping with the needs and hopes. In this context immediately comes to mind the words of Pythagoras who said :

"For so long as man continues to be the ruthless destroyer of lower living beings, he will never know health or peace. For so long as men massacre animals, they will kill each other. Indeed, they who sow the seeds of murder and pain cannot reap joy and love."

3. Article 48A in Part IV (Directive Principles) of the Constitution of India, 1950 brought by the Constitution (42nd Amendment) Act, 1976, enjoins that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests, lakes, rivers and wild life and to have compassion for living creatures. The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance." It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 31 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contravention of acts or actions would cause environmental pollution. Environmental ecological, air, water, pollution, etc, should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is constitutional imperative on the State Government and the Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measure to promote, protect and improve the environment manmade and the natural environment.

Industrialization, urbanization, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oasis, he is also leaving behind deserts in the place of oasis. In the last century, a great German materialist philosopher warned mankind : "Let us not, however, flatter ourselves over much on account of our human victories over nature. For each such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different, unforeseen effects which only too often cancel the first. Ecologists

are of the opinion that the most important ecological and social problem is the wide spread disappearance all over the world of certain species of living organisms. Ecologists forecast the extinction of animal and plant species on a scale that is incompatibly greater than their extinction over the course of millions of years. It is said that over half the species which became extinct over the last 2,000 years did so after 1900. The International Association for the Protection of Nature and Natural Resources calculates that now, on average, one species or sub-species is lost every year. It is said that approximately 1,000 birds and animal species are facing extinction at present. So it is that the environmental question has become urgent and it has to be properly understood and squarely met by man. Nature and history are two component parts of the environment in which we live, move and prove ourselves. The Apex Court in *Sachidanand Pandey v. State of West Bengal*, AIR 1987 SC 1109 and in *Virender Gaur v. State of Haryana*, (1994) 5 Scale 211 : (1995 AIR SCW 306) has highlighted these aspects.

4. Environmental law is an instrument to protect and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. In view of the enormous challenges thrown by the industrial revolution, the legislatures throughout the world are busy in this exercise. Many have enacted laws long back and they are busy in remodeling the environmental law. The others have moved their law making machineries in this direction except the under-developed States who have yet to come in this wave length. India was one of those few countries which paid attention right from the ancient time down to the present age and till date, the tailoring of the existing law to suit the changing conditions is going on. The problem of law-making and amending is a difficult task in this area. There are a variety of colors of this problem. For example, the industrial revolution and the evolution of certain cultural and moral values of the humanity and the rural and urban areas developments in agricultural technology, waste, barren or industrial belts; developed, developing and under-developed parts of the lands; the rich and poor Indians; the population explosion and the industrial implosion; the people's increasing awareness and the decreasing State Exchequer; the promises in the political manifestos and the State's development action. In this whole gamut of the problems the Tiwari Committee came out with the date that we have in India "nearly five hundred environmental laws" and the Committee pointed out that no systematic study had been undertaken to evaluate those legislative developments. Some legal controls and techniques have been adopted by the legislatures in the field of Indian Environmental Law. Different legislative controls right from the ancient time, down to the modern period make interesting reading. Attention has to be paid to identify the areas of great concern to the legislature; the techniques adopted to solve those problems; the pollutants which required continuous exercises; the role of legislature and people's participation outside. These are some of many areas which attract the attention in the study of history of the Indian Environmental Law.

5. The rivers also enjoyed a high position in the life of the society. They were considered as Goddesses having not only the purifying capacity but also self-purifying ability. Fouling of the water of a river was considered a sin and it attracted punishments of different grades which included, penance, out casting, fine, etc. The earth or soil also equally had the same importance, and the ancient literature provided the means to purify the polluted soil. The above are some of the many illustrations to support the view that environmental pollution was controlled rigidly in the ancient

time. It was not an affair limited to an individual or individuals but the society as a whole accepted its duty to protect the environment. The 'dharma' of environment was to sustain and ensure progress and welfare of all. The inner urge of the individuals to follow the set norms of the society, motivated them to allow the natural objects to remain in the natural state. Apart from this motivation, there was the fear of punishment. There were efforts not just to punish the culprit but to balance the eco-systems. The noteworthy development in this period was that each individual knew his duty to protect the environment and he tried to act accordingly. Those aspects have been highlighted by a learned author C.M. Jariwala in his article "Changing Dimensions of the Indian Environmental Law" in the book "Law and Environment" by P. Leelakrishnan.

6. The economic and social Council of the United Nations passed a resolution on the 30th July, 1968 on the question of convening an International Conference on problems of human environment. In the United Nations Conference on Human Environment at Stockholm from 6th to 16th June, 1972. Proclamation was made on 'United Nations on Human Environment. It was stated in the proclamation in these profound words :

"Man is both creature and moulder of his environment which gives his 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 the 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 the right to life itself.

The protection and improvement of the human environment is a major issue which affects the well being of people and economic development throughout the world. It is the urgent desire of the peoples of the whole world and the duty of all Governments."

7. When the necessity to promote the environment turned grave, doubt was expressed by some commentators whether the issue of the environment would last. They have been proved wrong, since it is clearly one of the big issues, perhaps the biggest issue of the 1990s. It is a big issue in political terms, since protection of the environment is high on most people's priorities for the 1990s. As a result political parties and Governments are falling over each other in their eagerness to appear green, even if as yet their actions rarely match their rhetoric. It is big in terms of the size of the problem faced and the solutions required; global warming, the destruction of the ozone layer, acid rain, deforestation; overpopulation and toxic waste are all global issues which require an appropriately global response. It is big in terms of the range of problems and issues—air pollution, water pollution, noise pollution, waste disposal, radioactivity, pesticides, countryside protection, conservation of wildlife -- the list is virtually endless. As observed by Simon Bell and Stuart Bell in 'Environmental Law':

"..... In the words of the White Paper on the Environment. This Common Inheritance (cm. 1200. 1090) the issues range 'from the street corner to the stratosphere.' Finally, it is big in terms of the knowledge and skills required to understand a particular issue. Law is only one element in what is a major cross-disciplinary topic. Lawyers need

some understanding of the scientific, political and economic processes involved in environmental degradation. Equally all those whose activities and interests relate to the environment need to acquire an understanding of the structure and content of environmental law, since it has a large and increasing role to play in environmental protection."

Apart from the direct cost, to business of complying with stricter regulatory controls, the potential liabilities for non-compliance are also increasing. These liabilities fall into five general categories;

(a) Criminal liabilities :

The number of criminal offences for non-compliance with environmental legislation is immense, and in recent years the regulation agencies have shown a increased willingness to resort to prosecution. Private prosecution is also a possibility. Fines will be the normal penalty, though in a number of cases sentences of imprisonment have been imposed (there is normally a potential personal liability for directors and senior managers). Maximum fine levels have risen in recent years, as have actual levels of fines imposed.

(h) Administrative sanctions :

In most regulatory systems there is a range of options available to the regulator, including variation, suspension or revocation of a license, since these steps may lead to the closure of a plant, they are obviously of great importance.

(c) Clean up costs :

In most environmental legislation there is a power to clean up after a pollution incident and recover the cost from the polluter or (in some cases) the occupier.

(d) Civil liability :

There is growing interest in the toxic torts, although many of the actions have in fact been around for a long time. Many environmental actions rest upon strict liability. Although liability may often be difficult to establish, the size of claims may be very high indeed.

(e) Adverse publicity :

in practice the publicity attracted as a result of infringements of the law may be as costly as any direct costs.

In the light of all these risks, not to mention the increased costs of waste disposal and of complying with stricter standards, some of the most significant recent developments in the environmental field relate to management issues. For example, a British Standard on Environmental Management Systems (BS 7750) has completed its pilot programme and is suspected to be finalized by the end of 1993. This relates mainly to the introduction of appropriate systems. The BS has agreed a Regulation on Eco-Management and Auditing (Regulation, 1836/93), which goes further in some respects by requiring a public statement of environmental performance, external verification procedures, and a commitment to continuing improvements in

environmental performance. Both these schemes are voluntary in the sense that there is to be no compulsion to join them. However, it appears that the pressures from supply chains and from the public may well be such that in practice many firms will be forced to introduce some form of environmental auditing of their business.

8. The questions raised are complex. Volumes of materials in support of respective stands were pressed into service by the parties. The stands of the State and the Central Governments on some question were so divergent that at one point of time, we thought it impossible to decide these aspects involving factual disputes in a writ application. But a ray of light was provided by the Central Government by its letter dated 14-6-1994 in the Ministry of Environment and Forests, Government of India. By the said letter addressed to the Chief Secretary of the State and other functionaries of the State, reference has been made to the State Government's proposal to constitute a Study Group to undertake Environment Impact Assessment Study (E.I.A.S.) in the Bhitarkanika Sanctuary as suggested by the Ministry. The parties agreed that the Committee constituted on the lines suggested can throw substantial light on the controversy. Therefore, by Order dated 12-7-1994 we directed the State to constitute E.I.A.S. Study Group, and directed it to grant opportunity to those who were interested to submit their proposals, suggestions etc. and to submit its report after consideration of such suggestions, proposals etc. A report has been submitted by the Committee constituted by the Govt. of Orissa. The Committee has done its job admirably by making an in depth study of the problem and has made valuable suggestions which, in its view, would be ideal for all concerned. We shall refer to this report in details, but before we do that it is necessary to highlight the problems posed and the factual scenario. Before doing that, it is necessary to deal with the controversy whether the present petition is public interest litigation.

9. The tide of judicial considerations in environmental litigation in India symbolizes the anxiety of Courts in finding out appropriate remedies for environmental maladies. At global level, the right to live is now recognised as a fundamental right to an environment adequate for health and well being of human beings. (See World Commission on Environment and Development Our Common Future (1987) Annex. P348. To commemorate the tenth anniversary of the Stockholm Conference, the World Community of States assembled in Nairobi (May 10-18, 1982) to review the action taken on to implement Stockholm Declaration. It expressed serious concern about the State of environment world, wide and recognised the urgent need of intensifying the effort at the global, regional and national levels to protect and improve it.

10. Forest and waste lands of Kanika Ex-Zamindary were declared as protected forests by Government of Orissa, Development (Forest) Department Notification No. 33233/D. dated the 4th October 1961. Bhitarkanika Wild life Sanctuary' comprising of forests and waste lands known as Kanika Forests in (sic) Rajnagar. Pattamundai and Mahakalapada Police Stations within Kendrapara Civil Sub-Division in the undivided district of Cuttack was constituted in 1975 vide Notification No. 695S-4F-(W)-34/75-FFAH. dated 22nd April, 1975.

11. Bhitarkanika Wildlife Sanctuary covers an area of 672 square kilometres spread in the present Kendrapara district. It covers 28 Gram Panchayats of Rajnagar Tahsil and Rajkanika blocks with 399 revenue villages and has population of nearly 1.7 lakhs. The sanctuary is a unique mangrove eco-system, and is the second largest stretch of

mangrove forests in the Indian mainland, its richness floristically is apparent from the fact that of the 67 known Indian mangrove species 62 are found in this sanctuary. The sanctuary is a unique reptilian refuge. It is the home of estuarine crocodile (commonly known as Gharial). Partial albino specimens (Sankhua) are also found. Water monitor lizards, giant specimens of India's largest lizard are found in large numbers. Large number of endangered snakes like Indian Python and King Cobra have their refuges in this sanctuary. As indicated in the report of the Committee. Fishing Cat, Hyena, Jackal, Chital, Sambar, Wildpig, Porcupine, Indian Otter, Dolphins etc. are part of mammalian fauna of the sanctuary. Large number of species of various birds are also found. But the greatest importance of the sanctuary is the Gahirmatha beach which is the largest rookery of Olive Ridley turtles in the world. This type of turtle is one of the five different varieties of sea turtles found in the Indian coastal waters. Of these, only four species are known from coastal waters of Orissa as well as Gahirmatha coast. In Order of abundance these are :

1. The Olive Ridley Sea Turtle (*Lepidochelys olivacea*)
2. The Hawksbill Sea Turtle (*Eretmochelys imbricata*)
3. The Leatherback Sea Turtle (*Dermochelys coriacea*)
4. The Green Sea Turtle (*Chelonia mydas*) All the four species of sea turtles found in Orissa are protected under Schedule I of the Indian Wildlife (Protection) Act, 1972 (Amended 1991). All these species of sea turtles are listed as 'endangered' as per IUCN Red Data Book. The sea turtles are also protected under the 'Migratory Species Convention' and CITES (Convention on International Trade on Endangered Species of Wild Flora and Fauna). India is a signatory nation to all these conventions.

12. Gahirmatha occupies a unique place of importance in the Ridley rookeries in the world. There are four such known rookeries in the world. One is found in Mexico, two in Costa Rica and the fourth one is Gahirmatha. The nesting ground spreads over 15 km long, and 50 metres wide stretch along Gahirmatha. After 1989 devastating cyclones, it is restricted to about 10 kms long and 30-50 metres wide area near Ekakulanasi. They hold one to three nesting sessions between December to April. On an average, a female turtle lays about 120 eggs in a hole dug in the sands. After incubating for about 60 days, the infants come out of the hole and move towards the sea. The average life expectancy of turtles is about 100 years. According to the environmentalists, protection of the rookery is of paramount importance. Number of estimated nesting and the number of dead sea turtles in the last ten years are approximately as follows :

Nesting season	Estimated nesting (in lakhs)	Number of dead sea turtles
1984-85	2.918	3418
1985-86	0.500	5436

1986-87	6.360	2404
1987-88	0.010	3348
1988-89	3.150	2576
1989-90	2.060	2499
1990-91	6.520	1210
1991-92	3.700	1119
1992-93	6.874	1356
1993-94	6.945	4856
1994-95	3.390	3875
1995-96	2.900	1244
1996-97	No mass nesting	3634

In the report it has been indicated that there is considerable fluctuation in the area of nesting, and there is no definite trend. The Committee has found that there is no clear relationship of the operation of fishing boats with the considerable fluctuations. The Committee in its report has highlighted the impact evaluation and mitigating measures, inter alia, as follows :

(a) Impact of Talchua Fish Landing Centre on the ecology of Bhitarkanika Wildlife Sanctuary :--

It has expressed the view that construction of fish landing centre at Talchua in the revenue village Rajendranagar will provide a decent and hygienic landing place and will save from the inconveniences of depending on Dharmra for unloading the fish catch. The Committee, however, suggested that there are certain secondary effects, which, unless mitigated, might have serious adverse impacts on the mangrove forests.

(b) Impact of Talchua Fish Landing Centre on the mass nesting of the Olive Ridley Sea Turtles --

According to the Committee, there is no clear relationship of the fluctuation with the operation of fishing, and certain protective measures have been suggested.

(c) Improvement of the roads and construction of bridges on Bhitarkanika Ecosystem is -

The Committee has suggested certain protective measures to minimise the adverse impact.

(d) Fish Landing Centres at Tantiapal, Jambop and Kharnasi-

It has been stated by the Committee that as per Notification No. SO 595(E) dated 16-8-1994, the fish landing centres proposed at Tantiapal, Jamboo and Kharnasi attract Coastal Zone Regulations. Part of the proposed road (Khola to Talchua via Dangmal) will have some adverse impact on the ecology of Bhitarkanika Sanctuary. The Committee has recommended realignment of this part of the road via Nalitapatia along with banks of river Brahmani and not along the boundary of the forest blocks.

13. The parties were given opportunity by to have their say on the findings/suggestions given by the Committee. There is unanimity that the Committee has done a commendable job of making an in-depth study of the problems. Certain suggestions were, however, given. Petitioner has made a grievance that the Committee has not given due attention to relevant aspects.

14. The State Government with references to the report submitted by the Committee pursuant to the direction given by this Court submitted that the suggestions and views expressed by it have been accepted by the State Government in toto. It has been stated that so far the directions given to implement the mitigating measures and the recommendations given by the Committee are concerned, the Government is willing to do so to see that the projects can be implemented without infringing the statutory provisions of law and without affecting the eco-system of Bhitarkanika Sanctuary, and side by side protecting the interests of inhabitants. It has been indicated that the allegation that there has been violation of various statutory provisions is a myth. In the garb of public interest litigation wild allegations have been made. It has been prayed by the State Government that directions should be given to abide by the suggestions and recommendations given by the Committee for implementation of any work or project within the disputed area in accordance with law so that possibility of violation of the statutory provisions will not arise, and the controversy can be put to an end.

So far as allegations of violation of various statutory provisions are concerned, it has been specifically stated that the scheme of the State Government is to implement the project of construction of Jetties at Talchua, Tantiapal, Karnagi and Jamboo, and to improve the existing roads including the construction of bridges in Rajnagar, Dangmal and Talchua in the larger interest of the inhabitants of the villages of that area which has been in public interest, implementation of the aforesaid scheme/project should not normally be prohibited under the guise of mere allegation of possible impact on Bhitarkanika eco-system including the nesting of Olive Ridley Sea Turtles, in the event proposals and the recommendations of the Committee are strictly adhered to. It has been stated that there has been no violation of any statutory provision and even if any infraction is there, same can be rectified in order to safeguard and protect the local inhabitant who are till date far away from the civilization and in the garb of preservation of wild life sanctuary and protecting the Olive Ridley Sea Turtles, the inhabitants of the locality cannot be left out to the mercy of the God.

15. As per the notification on dated 19-2-1991 of the Ministry of Environment and Forest, Coastal Regulation Zone (in short, 'CRZ') has been declared imposing

restrictions on industries, operations and processes in the CRZ. The restrictive area of operation has been declared as "The Coastal Stretches of seas, bases, estuaries, creeks, rivers and back water which are influenced by tidal in action (land word side) up to 500 meter from the high tide line (in short, 'HTL') and the land between the low tide line and the HTL as Coastal Regulation Zone.

The Jetties, one of them has been construed, i.e., Talchua Jetty, are at a distance of much more than 500 meter from the HTL and therefore, the restriction imposed by the aforesaid notification do not apply to the scheme for the purpose of construction of the Jetty on the bank of the creeks.

Except the aforesaid notification which was published on 19-2-1991, there is no other provision that can be attracted as prohibitory in nature regarding the activities to be carried out within the Coastal Regulation Zone at the time when the construction was made at Talchua, Jamboo and Karnasi.

There is a subsequent notification dated 16-8-1994 which is amendment of the earlier notification of 1991, substituting the meaning of high tide line and its applicability. In the event the 1994 notification is made applicable to the Scheme, then the restriction imposed will affect the construction of the jetties in the places indicated above.

The applicability of the 1994 notification is only prospective in nature and it has no application to the acts and things already done prior to the coming into force of the said notification and since Talchua Jetty has already been constructed and substantial portion of two other jetties at Jamboo and Kharnasi have already progressed, there is no question of applicability of the restriction of 1994 notification to those jetties and it cannot be said that there has been any violation to the Environment (Protection) Act or the Orissa Marine Fishing Regulation Act, 1982 (in short, 'Fishing Regulation Act').

It may be clarified here that Fishing Regulation Act prohibited mechanized boat from fishing five (sic) Ms of the 'Gahirmatha' Coastline and the Amendment Act prohibited an operation of Trawlers within the radius of 20 kms of the 'Gahirmatha' area of 'Bhitarkanika' Wild Life sanctuary (Sea ward). As such, construction of jetties by no way infringes Fishing Regulation Act as there was no proposal of fishing within the restricted area, as indicated in the Act and adequate remedial and protective measures are being taken and will be taken to preserve and protect the prohibition imposed under the statute from infringement of the same.

16. In the affidavit filed by opposite party No. 1 in relation to me counter filed by opposite party No. 2 dated 9-1-1996, a document vide Annexure 6 has been filed to show that after 1994 amendment of the notification, under the Coastal Zone Regulation, 1994. due application for permission was made and quarries were sought for and vide office memo dated 12th December, 1995 clearance from the Central Government in the Ministry of Fishery and ARD has already been obtained for construction of fish landing centres at Tanliapal. A copy of the same has also been annexed to the affidavit vide Annexure C. In the counter-affidavit dated 9-1-1996 and also rejoinder dated 9-1-1996, the opposite party No. 1 has indicated that completion of the Jetties at Jamboo and Karnasi, application is pending for clearance before the Central Government and for operation of Talchua Jetty, necessary clearance is awaited with due regard to the environmental laws as per the meeting held between

the Government and the Principal Chief Conservator of Forests (Wildlife) and other concerned departmental authorities. Under the premises, the question of violation of the Coastal Zone Regulation or any other provision of Environment (Protection) Act or Fishing Regulation Act does not arise.

Since the construction of Talchua Jetty had already been completed at the time when the 'Committee made an enquiry and submitted its report and the reference, 'The impact Of CER on Talchua Jetty' has not been indicated, inasmuch as the 1991 Regulation has not been isolated, the question of its impact was never required to be answered to.

17. The effect of notification dated 19-8-1991 is considered by the Apex Court in Indian Council for Environmental Action v. Union of India (1995) 5 Scale 578. Validity of the notification dated 18-8-1994 was also considered therein. It was *inter alia* observed as follows :

"While examining the validity of the 1994 notification, it has to be borne in mind that normally, such notifications are issued after a detailed study and examination of all relevant issues. In matters relating to environment, it may not always be possible to lay down rigid or uniform standard for the entire country. While issuing the notification like the present, the Government has to balance various interests including economic, ecological, social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation, at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words there should not be development at the cost of environment and vice versa, but there should be development while taking due care and regarding the protection of environment, This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation activity is sought to be regulated."

Conclusions were arrived at in paragraphs 35 to 41 of the said judgment, and directions given in the judgment are as follows :

"(1) Keeping in view the aforesaid observations in mind, we would direct that if any question arise with regard to the enforcement or implementation or infringement of main notification as amended by the Notification of 1994, the same should be raised before and dealt with by the respective High Courts. In the present case, there were allegations of infringement having been taking place by allowing the setting up of industries in Dahanu Taluka in Maharashtra in violation of the provisions of main notification and which industries are stated to be causing pollution. Similarly, there were allegations of non-compliance with the provisions of law by a unit manufacturing alcohol in Pondicherry; with regard to Goa also allegations have been made. As we have already observed, it will be more appropriate if the allegations so made are dealt with by the respective High Courts, for they would be in a better position to know about and appreciate the local conditions which are prevailing and the extent of environmental damage which is being caused. We, accordingly, direct that the contentions raised in the petition regarding infringement of the main notification and of the notification dated 20-6-1991 relating to Dahanu Taluka should

be dealt with by the Born-bay High Court. The High Court may issue such directions as it may deem fit and proper in Order to ensure that the said notifications are effectively implemented and complied with. A copy of the writ petition along with a copy of the judgment should be sent to the High Court by the Registry for appropriate orders. As regards LA. Nos. 17-18 of 1995 is concerned relating to alcohol manufacturing unit at Pondicherry, the said application is transferred to the Madras High Court for disposal in accordance with law.

(2) Any allegation with regard to the infringement of any of the Notification dated 19-2-1991, 20-6-1991 and 18-8-1994 be filed in the High Courts having territorial jurisdictions over the areas in respect of which the allegations are made. As far as this Court is concerned, this matter stands concluded except to examine the reports which are to be filed by all the States with regard to the approval of the Management Plans, or any classification which may be sought.

(3) Considering the fact that the Pollution Control Boards are not only overworked but simultaneously have a limited role to play in so far as it relates to controlling of pollution for the purpose of ensuring effective implementation of the Notifications of 1991 and 1994 as also of the Management Plans, the Central Government should consider setting up under Section 3 of the Act. State Coastal Management Authorities in each State or Zone and also a National Coastal Management Authority.

(4) The States which have not filed the Management Plans with the Central Government are directed to file the complete plans by 30-6-1996. The Central Government shall finalize and approve the said plans, with or without modification within three months thereafter. It is possible that the plans as submitted by the respective State Governments and Union Territories may not be acceptable to the Ministry of Environment and Forests. Returning the said plans for modifications and then resubmission of the same may become an unnecessary time consuming and, perhaps, a futile exercise. In order to ensure that these plans are finalised at the very earliest, we direct that the plans as submitted will be examined by the Central Government who will inform the State Government or the Union Territory concerned with regard to any shortcomings or modifications which the Ministry of Environment and Forests may suggest. If necessary, a discussion amongst the representatives of the State Governments and the Ministry of Environment and Forest should take place and thereafter the plans should be finalized by the Ministry of Environment, if necessary, by carrying out such modifications as may be required. The decision by the Ministry of Environment and Forests in this regard shall be final and binding. A report with regard to the submission and the finalization of the plans should be filed in this Court and the case will be listed for noting compliance in September. 1996.

(5) Pending finalization of the plans, the interim orders passed by this Court on 12-12-1994 and 9-3-1995 shall continue to operate.

(6) Four States, namely Andhra Pradesh, Gujarat, Karnataka and Kerala have not yet submitted their Management Plans to the Central Government. There is thus a clear non-compliance with the direction issued by this Court on 12-12-1994, and 9-3-1995. We issue notices to the Chief Secretaries of these States to explain and show cause any further appropriate action be not taken for this non-compliance. The notices are to be returnable after six weeks."

In that view of the matter, there is no scope for any grievance by any of the parties. As it has been accepted by the State Government, the directions given by the Apex Court have been strictly adhered to.

18. With regard to the development activities regarding the construction of road and the bridges, opposite party No. 1 while filing the detailed counter-affidavit on 9-1-1996 in paragraph 7 at pages 10-12 specifically indicated the requirement of development of road and the construction of the bridges, the main purpose of which is to provide facilities to the area for relief operation during the natural calamities such as flood and cyclone which is remedial in view of the situation in the coastal zone. It has also been indicated that the Executive Engineer by letter dated 22-3-1994, has also requested the Principal Chief Conservator of Forests, Wildlife to accord necessary permission for completion of the construction of two bridges over Khola and Karriasi under the provisions of Wildlife Act, 1972 since construction of Khola Bridge has been complete since October, 1994 and is near the finishing stage and the work of Patshala Bridge has also been completed but has been held up since 1994 after the intervention of this Court. The forest authorities could use this road and the bridges for their supervision and protection of the sanctuary and they also regulate the movement of traffic in the interest of environment protection. The road and the bridges, they run close to the sanctuary and within the forest and do not by itself violate or affect the wildlife sanctuary because the roads are not general public but can be used with restrictions for limited purposes as has been indicated in the report of the Committee for the developmental activities of the inhabitants.

19. It has been indicated by the State that by notification dated 27-9-1997 of the Forest and Environment Department (published in the Orissa Gazette Extraordinary No. 1268 dated 17-10-1997) in exercise of powers conferred by Clause (b) of Sub-Section (1) of Section 26A of the Wildlife (Protection) Act, 1972, the area indicated in the Schedules 'A' and 'B' have been declared as a sanctuary known as 'Gahiramatha (Marine) Wildlife Sanctuary.' Certain activities have been notified to be unlawful in terms of Section 26(a) and Section 35(4) of the said Act, by the Collector, Kandrapara and notices in that regard have been issued under Section 21 on 25-1-1997 in respect of Bhitarkanika Wildlife Sanctuary. Notices in terms of Sub-Section (1) of Section 35 of the Act for the purpose of declaring certain area as Bhitarkanika National Garden were issued by Notification No. 22904 dated 3-10-1988, and claims if any were directed to be lodged by 31-1-1997, by notice dated 25-1-1997 of the Collector, Kanirapara, purported to have been issued in terms of Sub-Section (3) of Section 35 and Section 21.

20. Further question is whether there has been any statutory infraction. It is a highly disputed area. The State Government has not indicated that there has been any infraction, and even if there is any infraction, that question cannot be decided in a writ application. Forums are provided under different statutes which are duly authorised and are competent to deal with the matter. It has to be noted that there has been piquant situation necessitating the question whether the State Government has fairly highlighted that there has been violation of statutory provisions. The position has been disputed. That being the situation, it would not be proper to say that there has been violation of the statutory provisions. In fact if there has been any violation, it is open to the prescribed authority under the very statute to deal with the matter in accordance with law. We express no opinion in that regard. 21. After taking into consideration the report of the Committee, and various submissions made by the learned counsel for

parties, we feel that while there can be no golden scale evaluation of the problems, the following arrangements can be in the interest of the people of the locality without affecting environment. In case Talchua Fish Landing Centre is intended to be made functional, apart from observance of statutory prescriptions, following factors shall be taken note of.

(i) All possible attempts should be made to curb the influx of migratory human population of the surrounding area. Sea-going vessels with required staff and police should be stationed at vintage points during Ist of November to the end of May, every year to ensure that trawlers do not enter the Gahirmatha area. The points where the staff and police are to be stationed are to be decided by the Forest Department in consultation with the police authorities. Though the Committee has suggested the restriction period to be from October 15 to May 15, considering the fact that the nesting session is normally between December to April, we have modified the period suggested.

(ii) The saline embankment and construction of bridges at Khola and Mansiga can be for the purpose of improvement and the following restrictions are to be ensured.

(a) Since part of the proposed road (Khola to Talchua via Dangmal) will have some adverse impact on the ecology of Bhitarkanika Sanctuary, it is necessary to have realignment of this part of the road via Halitapatia (Khola-Nalitapatia-Talchua) along the bank of the river Brahmani and not-along the boundary of the forest blocks:

(b) More check gates and additional staff with equipment be provided to the concerned D.F.O. for having effectively strengthened protection net-work.

It is a matter of grave concern that there is large scale unauthorised fishing in the high turtle congregation of Gahiramatha, It is pointed out that during the period from 13-12-1997 to 26-1 -1998, 55 trawlers and 23 gill centers were apprehended. On 30-1 -1998, 6 trawlers and 3 gill centres were apprehended from the core area of the Gahiramatha (Marine) Wildlife Sanctuary. It is pointed out by the learned counsel for State that protective special force deployment cannot take care of the massive organised illegal fishing activities. It would be appropriate if the State Government and the Central Government take statutory measures for conferring powers of confiscation of vehicles, vessels, tools, weapons etc. connected with wildlife offences.

(c) The stretch of the road between Khola to Talchua shall not be permitted to be used for heavy vehicles like buses and trucks, beyond a particular capacity. The State Government shall take a decision as to the number of light vehicles, both passenger and carriage. This shall be fixed by taking into consideration the requirement of use of such vehicles, and other basic materials.

(d) The stretch of the road from Khola to Talchua shall have no vehicular traffic between 9 p.m. to 5 a.m. The road must have provision to have tidal inundation and rapid discharge of flood waters.

(c) Immediate steps be taken to evict the unauthorised occupants of forest land, including rivers and creeks within the boundary of Bhitarkanika Wildlife Sanctuary. The encroachers should be legally dealt with, and if any lease has been granted it should not be renewed after expiry of the period of lease.

(f) All forest lands including rivers and creeks within the boundary of Bhitarkanika Wildlife Sanctuary should be declared as reserve forest and be treated as property of the forest Department and restored to it.

(g) No new leases for land, and water bodies should be granted within the Sanctuary.

(h) The aquaculture farms (semi-intensive and intensive) should not be allowed within the Sanctuary boundary.

(i) Eco-development programme should be undertaken on priority basis in the Sanctuary with the object of conservation of the habitat with its biotic diversity. This becomes important in view of the uniqueness and rich bio-diversity of the area.

(j) Attempts should be made to state that there is appropriate use of natural resources for improving the quality of life of the people living in and around the Sanctuary.

(k) Efforts should be made to involve the local people and attempts should be made to bring in participatory sense of involvement in them. It should be brought to their notice that preservation of resources shall be ultimately for their benefit. A feeling should be generated in them that there should be decreased dependence on the forests, and encourage them to avail acceptance of the alternatives. Efforts of development of self-employment facilities should be undertaken. Apiculture, pisciculture except intensive and semi-intensive prawn culture, dairy, poultry, energy plantation etc. may be introduced by full-time or part-time vocational trainings. Aggregation of degraded mangrove areas is desirable, efforts should be made for providing better educational and health facilities. Eco-tourism development should be encouraged. But proper care should be taken to see that tourists do not destroy the serenity of the atmosphere. Drinking water facilities are extremely necessary. -Energy conservation measures through biogas plants, solar lighting systems etc. can be introduced.

(l) All trawlers operating in the area shall be required to use devices like Turtle extrusion Device (TED) to avoid entanglement to sea turtles. Poaching or netting of sea turtles should be seriously dealt with. The coast guard operating system should be strengthened to prevent poaching and netting the sea turtles.

(m) Steps for determination, acquisition or settlement of rights under Sections 19, 21, 22 of the Wildlife Protection Act, 1972 may be undertaken forthwith. This shall be done in the line directed by the Apex Court by orders dated 22-8-1997, and 16-1-1998 in the case of Centre for Environmental Law (WWP) India v. Union of India (I.A. No. 2 in W.P. (C) No. 337 of 1995). It is accepted by the parties that the proclamation under Section 21 has been issued and the process has to be completed within one year.

(n) For the purpose of protection and management, there should be proper demarcation of the two compact areas within the Sanctuary, i.e., one in the north of river Pathasala and the other to its south upto the Bay of Bengal.

(o) An authentic record of the mangrove species along with their associates, and to identify the vulnerable/endangered elements should be maintained, for this purpose an extensive as well as exhaustive floristic and faunistic survey should be undertaken. As notification dated 27-9-1997 under Section 26(A) has been issued by the State Government constituting Gahiramatha (Marine) Wildlife Sanctuary has been issued, it

has been accepted by the parties that Mangrove Forest in Mahanadi Estuarine System is covered by the said notification.

(p) Research and development activities for survey and demarcation of forest boundaries, collection of baseline data and identification of flora and fauna and their complex inter-relationships should be undertaken.

(q) To avoid the possibility of any adverse impact due to increase in the number of mechanised boats, there should be a ceiling to the number of licences to be issued to the fishing boats for operation at Talchua. The maximum number of mechanized vessels should not be more than fifty, and the traditional crafts not more than three hundred.

(r) The ceiling on the number of mechanized boats along with several crafts provided under the Fishing Regulation Act, and the Rules made thereunder would be sufficient to protect the impact of traditional fishermen.

It should be ensured by the concerned department that the boats do not stray into the Gahiramatha situated about 15 kilometres south east of Talchua. The area between the polmyra point and shorts island should be demarcated with buoys. No trawler should be allowed beyond this area. They would enter the sea from the western side of the Shorts island. However, the above would be subject to the terms of the notification declaring Gahiramatha (Marine) Wildlife Sanctuary. This position, has been accepted by the opposite party No. 1 in the affidavit dated 10-3-1998 by stating that the aforesaid notification covers an area more than that what has been considered in the report for mass nesting of the sea turtles, and that same would imply restriction of fishing activity over a wider and larger area vis-avis Talchua fish landing centre and hence greater protection to marine fauna.

22. Precautionary measures be taken in respect of mangrove forests in the Mahanadi estuarine system including Mukitola, Jamboo, and adjoining forest blocks. Steps be taken to examine whether forest blocks in the Mahanadi estuary arc to be declared as reserve forests, and if it is found that it is to be so done immediate steps be taken.

Keeping in view the massiveness and sensitive nature of the functions to be undertaken, a permanent body should be constituted to study the environmental impact and suggest steps for protecting the environment with due regard to the interest on developmental activities. High placed officials of the Forest Department should be included in the body so that in future unnecessary disputes can be avoided. A High Level Committee for protection, conservation and research on sea turtles should be set up. In addition to those who may be nominated by the State Government and the Central Government to constitute the Committee, such of the following officers shall be there -- Nominees of the Ministry of Environment and Forest of the State and the Central Governments not below the rank of Secretary of the concerned Department, I.G.F., A.I.G.F.(Wildlife), representative of Coast Guard and Sea Turtle Experts, an official of the Forest Department of the State not below the rank of Secretary, the Principal Chief Conservator of Forests, Police Officials not below the rank of Deputy Inspector General. The Committee shall have the power to appoint such sub-committees for meeting periodically for regular assessment of the problems. These sub-committees shall periodically submit their reports to the High Level Committee so that remedial measures and suggestions can be given.

Proposal with regard to Fish Landing Centres at Tangiapal. Jamboo and Karnasi shall be processed keeping in view the Coastal Zone Regulations as indication in Notification No. SO. 59598 dated 16-8-1994.

23. There is a maxim that nothing was more pure than state of nature and nothing more unpolluted than man in the state of nature, it strikes to any one. as it struck to Rousseau that the so many writers who have hastily concluded that man is naturally corrupt or prone to pollution, and requires civil institutions to make him pure both in terms of his ego and his ecology are really very far not only from the state of nature but also from state of truth.

24. Progress and pollution go together. As the Apex Court observed in *M.C. Mehta v. Union of India*, AIR 1987 SC 965, when science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk of danger to the community and maximizing safety requirements. As observed in the United Nations Conference held at Stockholm in June, 1972, economic and social development was essential for ensuring a favourable living and working environment for man and for creating condition on earth that were necessary for the improvement of the quality of life.

25. The tragedy of the predicament of the civilized man is that 'Every source from which man has increased his power on earth has been used to diminish the prospectus of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee'. There is increase in awareness of the compelling need to restore the serious ecological imbalances introduced by the depredations inflicted on nature by man. The State to which the ecological imbalance and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. In his fore word to *International Wild Life Law*, M.R.M. Prince Philip the Duke of Edinburgh said:

"Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the country-side. Sadly, perhaps, it is a great deal more complicated than that..... As usual with all legal systems, the crucial requirement is for the terms of the conversions to be widely accepted and rapidly implemented..... Regretfully progress in this direction is proving disastrously slow."

(See *International Wild Life Law* by Simon Lyster, Cambridge - Grotius Publications Ltd., 1985 Edn.)

The United National General Assembly adopted on October 29, 1982, 'the World Charter for Nature'. The Chapter declares the Awareness that :

"(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.

(b) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation."

Towards the end of his reign, King Asoka in the third century B.C. issued a decree that it was a particularly contemporary ring in the matter of preservation of wild life and environment. He had written:

"Twenty-six years after my coronation, I declare that the following animals were not to be killed, parrots, mynas, the aruna, ruddy geese wild geese, the nandimukha, cranes, bats, queen, ants, terrapins, boneless fish, rhinoceroses....and all quadrupeds which are not useful or edible.....Forests must not be burned?."

26. As observed by the Apex Court in Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, AIR 1987 SC 359, natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources has to be done with requisite attention and care so that ecology and environment may not be affected in any serious way; there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation.

27. Protection of environment is a Constitutional goal. It has to be realised by active guards of the State and the citizens thereof. As was directed by the Apex Court in Charanlal Sahu v. Union of India, AIR 1990 SC 1480, steps should be taken to create separate Tribunals, and appoint a Body of Experts to advise the Government in environmental issues. State should play a positive role for protection of environment. This being a Constitutional mandate, welfare of the people at large has to be looked into, and in such matters the Court cannot sit with eyes closed.

28. Let the State and Central Governments take necessary steps to see that the aforesaid directions are implemented forthwith. With the hope that the Olive Ridley and the young fisher-boy eking out his living by catching fish smile at and not run away from each other, we part with the case.

The writ application is accordingly disposed of.

P.C. Naik, J.

29. I agree.

Note: This document has been provided online by International Environmental Law Research Centre (IELRC) for the convenience of researchers and other readers interested in water law. IELRC makes no claim as to the accuracy of the text reproduced which should under no circumstances be deemed to constitute the official version of the document.