



THE UNQUIET RIVER

**An Overview of Select decisions of the
Courts on the River Yamuna**



Ritwick Dutta



PEACE Institute Charitable Trust

2009

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A report by

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◀ ABBREVIATIONS ▶

| | |
|---------|--|
| (C) | Civil |
| AIR | All India Reporter |
| AQFMY | And Quiet Flows the Maily Yamuna |
| BOD | Biochemical Oxygen Demand |
| CBI | Central Bureau of Investigation |
| CCEA | Cabinet Committee on Economic Affairs |
| Cdr | Commander |
| CMD | Chairman & Managing Director |
| CPCB | Central Pollution Control Board |
| CPWD | Central Public Works Department |
| Cumecs | Cubic Meter Per Second |
| CWPRS | Central Water and Power Research Station |
| DCP | District Commissioner of Police |
| DDA | Delhi Development Authority |
| Dist. | District |
| DLT | Delhi Law Times |
| DMRC | Delhi Metro Rail Corporation |
| DND | Delhi-Noida-Delhi |
| DTTDC | Delhi Tourism & Transportation Development Corporation Ltd |
| EAC | Expert Appraisal Committee |
| EFC | Expenditure Finance Committee |
| EIA | Environmental Impact Assessment |
| EPA | Environment Protection Act |
| Extn. | Extension |
| FIR | First Information Report |
| GOI | Government of India |
| Govt. | Government |
| Hon'ble | Honourable |
| HP | Himachal Pradesh |
| IFS | Indian Forest Service |
| INTACH | Indian National Trust for Art and Cultural Heritage |
| ISBT | Inter State Bus Terminal |

| | |
|-------|---|
| ITO | Income Tax Office |
| JJ | Jhuggi Jhopri |
| Km | Kilo Meter |
| LM | Land Management |
| MCD | Municipal Corporation of Delhi |
| ml | Milli litre |
| MOEF | Ministry of Environment & Forests |
| NCT | National Capital Territory |
| NDMC | New Delhi Municipal Corporation |
| NEERI | National Environmental Engineering Research Institute |
| NGO | Non Government Organisation |
| NOC | No Objection Certificate |
| NOIDA | New Okhla Industrial Development Authority |
| NPCC | National Projects and Construction Corporation |
| NTBCL | Noida Toll Bridge Company Limited |
| PIL | Public Interest Litigation |
| PR | Public Relations |
| PWD | Public Works Department |
| SC | Supreme Court |
| SCC | Supreme Court Cases |
| SHOs | Station House Officers |
| STP | Sewage Treatment Plant |
| TOR | Terms of Reference |
| TTZ | Taj Trapezium Zone |
| UOI | Union of India |
| UP | Uttar Pradesh |
| US | United States |
| VC | Vice Chairman |
| Vs. | Versus |
| W.P | Writ Petition |

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◀ P R E F A C E ▶

And Quiet Flows the Don (1934) is the first part of the great epic written by Noble laureate Mikhail Sholokhov. It originally appeared in a serialized form between 1928 and 1940. The novel deals with the family life of the Cossacks living in the Don River valley at Tatarsk, Russia during the early part of 20th century just prior to the World War I. Interestingly, the book deals not only with the struggles and sufferings of the Cossacks, but vividly brings to life the landscape of the region.

Many decades later in another part of the world, a newspaper article titled '*And Quiet Flows the Maily Yamuna*' was converted *suo moto* by the Court into a Public Interest Litigation (PIL) aimed at saving a river in India. This has been heard for over a decade in the Supreme Court of India. There is a remarkable analogy between Sholokhov's novel and the litigation many decades later in India. The various orders of the Court in its attempt to clean up the Yamuna reveal the suffering not just of a family (as in Sholokhov's novel) but of the whole population of a city and those who live downstream of it as well of the river itself which has been polluted and choked beyond all limits. The fact that it (the river) still exists in some form, is in itself, nothing short of a miracle.

Perhaps no other river in India other than the holy Ganga has attracted as much judicial attention as its' key tributary namely the river Yamuna. Ironically despite such attention its (Yamuna) condition continues to worsen with each passing day. The present work traces the journey of the river Yamuna through the various courts in India and analyses to what extent the contours of law and judicial decisions have helped shape its (river) character both in terms of flow (quantity) and quality.

The river Yamuna flows through the northern Indian state of Uttarakhand (where it originates at Yamunotri) and briefly forms an inter state border of Uttarakhand with Himachal Pradesh, before flowing into the plains of Uttar Pradesh, Haryana, Delhi and again into Uttar Pradesh and Haryana before finally merging with the mighty river Ganga at Allahabad (UP). As it flows over its length and breadth it not only flows through different landscapes ranging from the mighty Himalayas on the one hand to the arid plains of Haryana and Uttar Pradesh, but it also flows through different political, economic and social landscapes. This brings about changes in the manner in which the people interact with and depend on the river as well the problems and issues that face the river. Some of the notable contentious issues related to the river and brought before the Courts have ranged from water sharing disputes, land tenures (in the river bed cum flood plain), pollution, encroachment, construction and mining. This is not an exhaustive list but merely illustrative of the range of issues that has required legal and semi-legal intervention from time to time.

One of the initial litigation, although dealing indirectly with the river, was at the Supreme Court and dealt with the impact of mining (for lime stone) in Dehradun district on forests as well as the river Yamuna. Over the years, a number of litigation came to be filed and numerous decisions in them have been given by the courts.

Although, the present work aims to cover the judicial decisions of all the High Courts through which the Yamuna passes, the vast majority of cases concern Delhi. It is an irony that despite having the least length and area of the river Yamuna, Delhi contributes the maximum in terms of its pollution as well as in reducing its flow. Series of attempts have been made by the Judiciary over the last two decades or so to turn the tide so far as the declining quality of the river Yamuna is concerned. The Judiciary acknowledges that despite its passing various orders the pollution levels in the river have only gone up.

The present work aims to give an overview of some of the important cases relating to the river Yamuna. Having gone through the plethora of orders and decisions of the various Courts in the land, one can say that the Yamuna may surely be 'maily' (dirty) today but surely it has not been quiet. One can only hope that from a perusal of these judicial orders and observations an effective action plan to revive this great river would be facilitated. As Justice Mahinder Narain states in *Baldev Singh Dhillon*:

"Yamuna is as old as India is old, it has already existed forever. No development can last longer than forever. Yamuna has been there in India since forever. It is better to preserve it than to have "developments"

Ritwick Dutta

The Yamuna in the Supreme Court

The river Yamuna flows through the national capital territory of Delhi. Of all the states through which the Yamuna flows, Delhi comprises the least area and length yet it contributes the most in terms of pollution of the river. As the Supreme Court noted '*Delhi succeeds in reducing the oxygen level to 0 %*'. The river Yamuna is also the river located closest to the Supreme Court of India and has also seen a concerted effort by the highest court of the land in trying to improve its condition.

The story of Yamuna in the Supreme Court has been one of continuous engagement in its 'attempt' to get it cleaned and to prevent its' further degradation. The court has at many occasions expressed its displeasure and even helplessness in the face of continuing executive apathy to the issues facing the river. It observed "*in any metropolitan town in a civilized country, it would not have been necessary for the highest Court of the land to give such a direction, but it is unfortunate that because of the laxity on the part of the authorities concerned, the Court had to step in and tell the authorities to do what they should have done themselves*". The Supreme Court has dealt with a range of issues concerning the Yamuna over the last three decades. These have ranged from the issue of mining and its impact on the catchment area; to pollution due to disposal of blood and other slaughter house waste into it; to problems due to encroachments on the river bed. Unfortunately, as noted by the Court on many occasions that despite its directions for action to the executive, the pollution levels in the river have only gone up!

1.1 Mining Devastates Local Ecology

One of the earliest references in Public Interest Litigation (PIL) to the River Yamuna at the Supreme Court is in the famous case titled *Rural Litigation and Entitlement Kendra Vs Union of India*¹ popularly known as the 'Doon Mining case'. This was among the early cases on environment protection wherein the Court treated a letter written to the Supreme Court as a writ petition. It is worth noting the opening paragraph of the Judgment delivered in the case by Justice Ranganath Mishra:

¹ AIR1988SC2187, (1989)1CompLJ105(SC), JT1988(3)SC787, 1988(2)SCALE1574, 1989Supp(1)SCC504, [1988]Supp2SCR690, 1988(2)UJ680(SC)

" On July 14, 1983, a letter received from the Rural Litigation and Entitlement Kendra, Dehradun, bearing the date July 2, 1983, was directed to be registered as a writ petition under Article 32 of the Constitution and notice was ordered to the State of Uttar Pradesh and the Collector of Dehradun. Allegations of unauthorised and illegal mining in the Mussoorie-Dehradun belt which adversely affected the ecology of the area and led to environmental disorder were made. Later on another application with similar allegations was directed to be tagged with the earlier one. That is how these two writ petitions were both in the registry of this Court in a very innocuous manner as public interest litigation. The number of parties inflated both under the orders of the Court and on application to be added. Apart from the Governments of the Union and of Uttar Pradesh, several government agencies and mining lessees appeared in the proceedings. What initially appeared to be two simple applications for limited relief got expanded into a comprehensive litigation requiring appointment of committees, inspections and reports by them from time to time, serious exercises on the part of the mine owners before the committees, filing of affidavits both original and further, and lengthy arguments at the Bar. These also necessitated several comprehensive interlocutory directions and orders."

Although, the case concerned itself with stopping mining activities in the hills of Mussoorie (Dehradun) it did highlight the adverse impact from the mining activities on the catchment area of the river Yamuna.

The Court noted:

" The Himalayan ranges apart from operating as a natural seal on the northern border against intruders, have influenced the climate, culture, ecology and environment of the sub continent. These are the ranges from where originate several perennial rivers like the Ganges and the Yamuna. These two rivers which mingle at Allahabad and later flow into the Bay of Bengal as one river have built up what is known as the gangetic belt - the most fertile part of India. The legendary tradition of our culture is deeply associated with these two rivers. Apart from providing succor to millions of people who inhabit this belt Yamuna is said to have provided the backdrop of Krishna Leela. The catchment area of this river is spread over the Mussoorie Hills-otherwise known as the Doon Valley with which we are concerned. Before a quarter of a century, Yamuna was having adequate water flow through-out the year. Unlike the Ganges which has her main tributaries originating from the snow-clad regions of the mountain range and melting snow in summer helping the tributaries to be perennial, the Yamuna used to receive the bulk of her water from the streams joining her in the lower regions. The Doon Valley used to receive sumptuous rains during the season; the tree roots helped the water to be stored; the lime stone mines operated as aquifers. The stored water was released in a continuous process and the streams even without the support of melting snow, provided perennial supply to the Yamuna. Assured of such supply, the twin cities of Mussoorie and Dehradun grew up. Lower down, hundreds of villages and small towns had also sprung up".

The Court highlighted the negative impact of mining on the hills and Yamuna:

"Lime stone mining operations in the Doon Valley became widespread during the decade between 1955 and 1965 and many of the leases were granted in 1962. In the decade after 1965, the depredations of mining began to be felt. Peace and tranquility of the Valley was gone. Trees were felled at random and lush green forests disappeared. Blasting affected and shook up the hills. Rocks and scree rolled down and killed or injured the cattle, damaged the cultivable lands and adversely affected the villagers. The natural beauty of the Queen of the hill stations was no more to be seen. With the felling of the forests, rains became less, with the trees gone and the lime stone dug out, the aquifers ceased to exist. The streams got blocked by scree and stones and the flow of water was substantially reduced. Tourist traffic was adversely affected. Irrigation was no more possible. The tributaries no longer fed the Yamuna sufficiently. Dehradun experienced scarcity of even drinking water".

The Court in its Judgment besides prohibiting mining set up a Monitoring Committee as well as a Rehabilitation Committee in order to oversee the implementation of the orders of the Court as well as ensure afforestation in the already mined areas.

1.2 Let the River Flow!

The leading case of continuing mandamus in the Supreme Court on River Yamuna is the case titled *Cdr Sureshwar D Sinha Vs Union of India*. W.P.(C) 537 of 1992. It is necessary to consider this case in some details here.

The Petitioner who is a regular visitor to the Yamuna river, observed that not only has the average flow in the river been reduced, the quality of water is now totally degraded on account of pollution and discharge of industrial and trade effluents, domestic sewage, poisonous, noxious or polluting matter to the extent that it can support no animal life and only reduced amount of plankton.

In a survey of 730 Km of the Yamuna from Agra to Allahabad, (*Waters of Hope P.266*) there were 573 fishing villages and hundred of fishing boats. Similarly fishing was a major source of income for some villages between Delhi and Agra.

This Public interest petition was filed to seek the enforcement of measures to stop the high rate of pollution in the river Yamuna at Delhi. It also sought court's orders to permit fair levels of water flow in the rivers Ganga and Yamuna that have been severely curtailed depriving millions of people in downstream areas, of the benefits of these rivers. Wild life and fish have been killed and been deprived of fresh water that once flowed in these rivers.

The Petitioner highlighted many aspects in his petition with respect to the river Yamuna:

Importance of Yamuna for Fisheries:

The Petitioner relied on the book by B.G. Varghese titled '*Waters of Hope*' which states that "Effluents draining into the Yamuna have resulted in mass fish-kills at Okhla in Delhi". In a survey, according to the book, of 730 km of the river Yamuna from Agra to Allahabad, there were 573 fishing villages and hundred of fishing boats. Similarly fishing was a major source of income for some villages between Delhi and Agra.

The pollution in the Yamuna at Delhi has already destroyed most living organisms including a wide variety of fish. Polluted waters flowing out into the Agra Canal are causing serious problems of salinity in the irrigated area, leading to degradation of the fertility of its rich alluvial soil. The stoppage of the flow in the great rivers of Ganga and Yamuna downstream of the barrages at Narora and at Okhla respectively for some nine months of the year destroys all living organism and fish over long stretches of these rivers and deprives millions of people of the great benefits bestowed on them by the waters of these rivers.

Lack of Equitable Distribution of the Yamuna waters:

The Central Government had failed in its duty to protect the Yamuna, a valuable asset of our people, and failed to equitably apportion its waters to those who live below the city of Delhi. The doctrine of "equitable apportionment" was eloquently stated by Justice Oliver Wendell Holmes in the U.S. Supreme Court in a case concerning the Delaware river. He said that a river was "more than an amenity, it is a treasure. It offers a necessity of life that must be rationed among those who have power over it. New York has the physical power to cut off all the water within its jurisdiction. But clearly the exercise of such power to the destruction of the interests of lower states could not be tolerated. And on the other hand, equally little could New Jersey be permitted to require New York to give up its power altogether in order that the river may come down to it undiminished. The different traditions and practices in different parts of the country may lead to varying results but the effort always is to secure an equitable apportionment without quibbling over formulas (Meuaffery, March 1987). With the apportionment of the Yamuna waters decided upon by the Central government, the new barrage at Okhla discharges no water into the river bed between the nine months of October to June, and only during the monsoon is there an overflow into the main channel. All fishes have been killed in the stretch from Delhi to Hamirpur where the Chambal flows into the Yamuna bed. The river is virtually dead on this stretch, and only drains flow into it giving off a stench as would a corpse.

The Petition further states: "The River which has mention in the Rig Veda (Mandala, V Hymn 52-17) and in which thousands used to bathe at Mathura on sacred occasions now lies as a helpless relic of its past glory. The river is part of our national ethos, and

is proudly mentioned in the national anthem. To kill such a pristine natural inheritance of this county is surely a grave crime”.

Substantial Injury and the Helsinki Rule:

According to the Petitioner, 'The International Law Association has adopted a widely acclaimed set of principles at its session in Helsinki in 1966. The "Helsinki Rule" refers to rivers as drainage basins and defines it as a geographical area extending over two or more states determined by the watershed limits of the system of waters, including surface and underground, flowing into a common terminus". The Rules of equitable utilization states that "each state is entitled within its territory to a reasonable and equitable share" in the waters of a basin but adds that the needs of a basin state may be satisfied without causing "substantial injury" to a co-basin state. Such injury can also be caused through severe pollution, as is the case with the river Yamuna in Delhi.'

It was further pointed out that although the British had built the Agra canal with its headworks at Okhla but it was the successor Indian Government that progressively diverted more Yamuna waters from Wazirabad, virtually stopping its flow today during the non monsoon months. With heavy inflow of sewage the river is virtually a drain of Delhi. A World Health Organisation report on pollution in Delhi has estimated the sewage flows in Delhi is about 1500 million litres per day. Of this nearly half is non-treated sewage from domestic and industrial users. This includes nearly 450 tonnes of dissolved solids and over 200 tonnes of suspended solids. The Escherichia Coli Count at Wazirabad is 75/ml, while that at Okhla it is 240,000/ml.

The summary of the main contention of the Petitioner is:

- (i) The Central Govt. has no right to approve plans that kills the Yamuna river for nine months in the year by virtually stopping its flow at the Okhla barrage.
- (ii) Both the Central and U.P. Govt. similarly have no right to curtail the flow of the Ganga Waters at the Narora Headworks thereby denying the benefit of its waters to districts in U.P., Bihar and Bengal on the banks of the river below the Narora Barrage.
- (iii) The D.D.A is guilty of permitting the discharge of non-treated effluents into the river, converting it into a virtual drain.
- (iv) The M.C.D regularly colludes with guilty industrial units that discharge untreated effluents into drain that flow into the river Yamuna.

As nearly 90% of the monsoon waters of most rivers in India flow into the sea, the Central Government ought to have executed plans to conserve this excess flow and divert them to tanks and jheels that were connected through sub-teranean channels to the wells of the country. Earlier Delhi is reported to have had twelve such tanks, which could have been used. In any case the government has no right to deprive the districts of Uttar Pradesh downstream of Okhla upto Hamirpur (where the Chambal joins) of the waters of the Yamuna, thereby killing all the fish and depriving millions of people of the benefits of the benevolent waters of the Yamuna.

Response of Central Pollution Control Board:

To the above issue, the Member Secretary of the Central Pollution Control Board filed an affidavit² which highlighted the grave situation facing the Yamuna and the Ganga. The main highlights of the Affidavit were:

- That the clean water flowing in the Ganga & Yamuna rivers is being diverted for irrigation and drinking purpose in foot-hill regions, through canals. This has affected the normal flow of these rivers. Since the demand for water has considerably increased in summer months practically no water is allowed to flow in these rivers.
- The Yamuna river is diverted into Western Yamuna Canal and Eastern Yamuna Canal at Tajewala (Haryana) and into Agra Canal at Okhla (Delhi). These diversions have significantly affected the flow of the river. In summer seasons, due to increased demand of water for irrigation and drinking, no water is allowed to flow downstream of the diversion barrages. Thus, the rivers remain dry in various segments.
- That the water scarcity in these rivers has magnified the pollution problem in urban centres. Due to non-availability of fresh water flow, it is very difficult to achieve the water quality targets in these rivers, even if the entire wastewater discharge is treated up to the secondary level (only techno-economic feasible option). **Thus criteria of CPCB cannot be achieved in the absence of natural flow in the rivers.**
- That any wastewater treatment technology which is economically feasible cannot make wastewater totally free from pollution. Some residual pollution is always left in the treated wastewater which is to be taken care by the receiving water body through the process of dilution and self purification. These processes are possible only when there is adequate natural flow in any water body. That the minimum flow required to maintain ecological system and natural self-purification capacity of the Ganga and the Yamuna was estimated by an expert group as 1400 cusecs & 352 cusecs in the Ganga downstream of Narora and the Yamuna in Delhi stretch respectively. This is required particularly during the lean season to ensure the assimilative and regenerative capacities of the rivers.

..”even if the sewage and industrial effluents presently under various stages of control under the Ganga Action Plan and the Yamuna Action Plan, are fully treated, the water quality objectives as defined under “Designated Best Use” will not be achieved in the absence of natural flow in the river.

AFFIDAVIT OF CPCB

² 26-4-1999 filed by B Sengupta

The High Powered Committee and the issue of Minimum Flow:

The Supreme Court was informed on 14th May, 1999 by the Petitioner of the minutes of meeting of the *High Powered Committee (HPC)* which was constituted by River Conservation Authority under the chairmanship of Member, Planning Commission, Shri Thimayya and which consisted of the Chief Secretaries of the States of Delhi, Himachal Pradesh, Haryana, Uttar Pradesh and Rajasthan as members. Based on these minutes of the meeting of HPC, the Supreme Court ordered that "*a minimum flow of 10 cumecs (353 cusecs) must be allowed to flow throughout the river Yamuna*".

The High Powered Committee held four meetings and suggested long term and short term measures with respect to maintenance of the flow of the river Yamuna.

The terms of reference (TOR) of the High Powered Committee were

- To assess the requirement of a minimum flow in the river Yamuna to facilitate restoration of the desired river water quality.
- To suggest remedial measures both short term and long term for maintaining the minimum flow in the river.

After deliberations on two dates, namely on 4.2.1998 and 2.9.1998, the High Powered Committee suggested the following major short and long term measures:

Short Term Measures

- (a) All the sewage treatment plants (STP's) are expected to be completed by the year 2000. The work needs to be monitored closely so that there is no slippage in their budget. It was observed that the treatment plants in Delhi were designed for a BOD level of 20 mg/l in the treated waste water. After all the STP's are in place, there will be 100% sewage treatment.
- (b) Since the availability of even 10 cumecs of fresh water in the river particularly along Delhi will not be adequate for the purpose of dilution of treated waste water to bring its BOD down to the desired level, construction of a truck sewerage system along the Delhi stretch of the river (between Wazirabad and Okhla) to carry the treated waste water upto Okhla for irrigation purposes is necessary. From Okhla, the treated sewage water should be entirely diverted for irrigation through the existing canal system.
- (c) For this purpose, a quick survey and investigation may be undertaken by the Government of Delhi to assess the feasibility and cost of such a treated sewage water diversion system. This exercise should be completed by the Delhi Government in three months by engaging a team of professional consultants.
- (d) It was informed that Haryana was already transferring 4 cumecs of fresh water through the Yamuna channel in Delhi for irrigation purposes in South Haryana. This water is being put into the river just below Wazirabad barrage. It was decided that the riparian states, in a mutually agreed ration should ensure release of the

remaining 6 cumecs for purposes of maintaining a minimum flow of 10 cumecs of fresh water in the river. With the diversion of the entire treated sewage water away from the river, the 10 cumecs of fresh water will remain fresh in the river throughout. It was felt that the diverted treated waste water rich in nutrients from Delhi will be quite suitable for irrigation purposes in U.P. and Haryana.

- (e) The Committee recommended the measures should be taken in the riparian states to improve the water use efficiency and economize on its uses. This will be an important factor both in short-term and in the long-term management of the river system. Economy in water use is particularly recommended for Delhi.

Long Term Measures

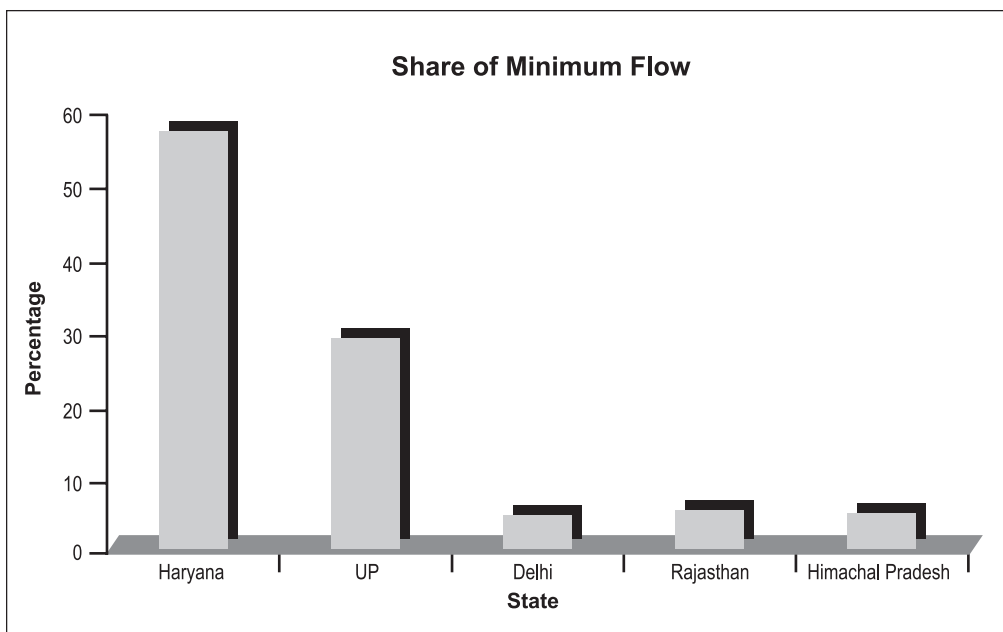
- Under the long-term measures, the status of Renuka Dam in H.P. and Kishau and Tehri Dam in U.P. was reviewed. It was informed that the project report of the Renuka Dam had been examined in Central Water Commission and was likely to be cleared subject to the clearance of Ministry of Environment and Forests (MOEF). Chairman directed Central Water Commission that this project should be posed to MOEF for their appraisal from all environmental angles including the maintenance of minimum flow in the river Yamuna. If funds were made available, it was indicated that the work could be completed in about 10 years. As for the Kishau Dam, it was informed that the project was still at a preliminary stage of examination. The Tehri Dam is meant for storing the monsoon flow of the Ganga river.
- The possibility of releasing of water in river Yamuna at Tajewala from Tajewala-Bhakra Link should also be examined and taken as alternative for maintaining the minimum flow in river Yamuna.
- Under the National Perspective Plan, two links viz Tajewala from Tajewala-Bhakra and Gang-Sirhind Canal have been proposed under Himalayan Rivers Development Component. The National Water Authority has been assigned with the responsibility to survey, investigate and prepare feasibility reports of all such proposed links. Since these proposed links could augment the flow in Yamuna river the work of preparation of their feasibility reports should be expedited.

Share of Riparian states to the 10 cumecs of minimum flow:

In order to decide about the share of riparian states in the proposed 10 cumecs of minimum flow, the following formula was agreed to by the participating states:

Table: Share of Minimum Flow

| State | Percentage |
|------------------|------------|
| Haryana | 57 |
| UP | 28.7 |
| Delhi | 4.6 |
| Rajasthan | 5.2 |
| Himachal Pradesh | 4.8 |



The Supreme Court on 21st July 1999 passed the following order:-

"By our order dated 14th of May, 1999, we had, inter-alia, directed that the High Powered Committee shall take a decision with respect to the share of riparian states and the said decision would be implemented by the concerned riparian states "forthwith". The High Powered Committee met on 25th May 1999 and took a decision and determined the share of respective riparian states. The share of State of Haryana was indicated as 56.7%. In the affidavit dated 17th July, 1999 filed on behalf of State of Haryana it is indicated that the decision of the High Powered Committee was implemented by them with effect from 23^d June, 1999 and with effect from that date it has started releasing 5.67 cumecs of water in river Yamuna for maintaining its minimum flow. The decision of the High Powered Committee was thus not implemented for almost a month which being the months of May and June were the most crucial period so far as the requirement of water in river Yamuna was concerned. We, therefore, direct a notice shall be issued to the Chief Secretary, Stated of Haryana requiring him to show cause why action of contempt be not taken against him. The Chief Secretary shall not be required to appear in person. He shall, however, send the reply within two weeks.

The Supreme Court through order dated 18th August 1999 directed the High Powered Committee to monitor the implementation of its decision to maintain a minimum flow of 10 cumecs throughout the river Yamuna. The Committee was also directed to monitor the implementation of the short term and long term measures recommended by it for maintaining the ecology of the river.

MUSIC CONCERT ON THE YAMUNA BANK

The Yamuna has been the target for many activities which surely do not need a waterfront. But the vast (though diminishing) flood plains and river bed offer opportunities for various events which end up causing long term damage to the river.

Earlier, in 1998 the plans to have a music performance by Yanni, the famous Greek Pianist, led M.C Mehta to move the Supreme Court to take urgent action to stop any destruction of the River bed. The Supreme Court passed the following order:

“Yanni has set up the venue for organising the sound show and a photograph has been placed before us showing that it was across River Yamuna in the sand belt wherein there is no green belt existing and does not exist and that, therefore, there will not be any effect on the Taj Mahal by organising the show. He also suggested that they have given directions that on the eastern side of the Taj Mahal at Shilpgram the vehicles would stop at a distance of 750 m. From there, the visitors would be taken by battery-operated buses up to a distance of 200 m away from the bridge and from there they would go by walk. The buses would stop beyond 200 m from the bridge. On the western side, all the vehicles would stop at the Red Fort and from there the visitors would be taken by buses up to a distance of 600 m away from the Taj Mahal outer wall. From there the visitors would go by walk. It is also stated that there is no damage to the existing green belt. Presently there is no access into the green belt by the visitors. Therefore, the apprehension of the petitioner that the green belt will get damaged is not correct.

With a view to effectively ensure compliance thereof, we are of the view that an officer from the Archaeological Survey of India, one officer from the Agra Development Authority, one officer from the Central Pollution Control Board, one from the NEERI and one officer from the Ministry of Environment and Forests, Government of India would be constituted as a Committee. They will strictly monitor the above directions and they would also monitor the pollution to the Taj Mahal on account of sound or air pollution. With regard to the air pollution during night as per Schedule III of the Environmental Protection Rule, 1986, Ambient Air Quality Standards in respect of noise during silence zone, it should not exceed 40 decibels (db)”.

[M.C. Mehta v. Union of India, (1998) 9 SCC 93, at page 94]

1.3 Not So Quiet Flows the Maily Yamuna?

The second case on the issue of Yamuna before the Supreme Court is titled, in a 1994 news item in *Hindustan Times* wherein the 'A.Q.F.M.Y' stands for "*And quiet flows the maily Yamuna*". The Court took *suo moto* action based on the article that drew the attention of the Court to the fact that the quality of water declines sharply during the course of journey of the river through Delhi after it enters the city state at Palla. The Court observed that "*with the quality of water deteriorating in an alarming extent, some drastic measures may have to be taken. These may include passing orders prohibiting contaminated water or discharge going into the Yamuna which alone is responsible for causing the deterioration of the quality of water. According to the Court the Government of N.C.T of Delhi has all the power and infrastructure available with it to ensure the improvement in the quality of water. If it chooses not to exercise its power in preventing the pollution of the Yamuna, that indeed would be unfortunate. In such a situation, there may be no option but to pass appropriate orders requiring the government to govern. These are problems which should be tackled at governmental level and it is indeed unfortunate that this court has to give direction in this regard in an effort to cleanse the Yamuna, whose contamination is posing a serious health hazard at least to the residents of Delhi*".

In order to ensure that the directions which are issued by the court are carried out the Chief Secretary, Delhi was directed to be personally present in the court in the next date of hearing because till now, according to the Court '*the Delhi Government seems to have done precious little to effectively deal with Yamuna's pollution*'³.

The Court identified two sources of Pollution of River Yamuna viz

- untreated sewage and;
- untreated industrial discharge.

According to the Court "*in matters concerning pollution it is not for the Court to determine the manner in which the pollution is to be tackled and should therefore leave it to the State to tackle it in appropriate manner. However, the Courts can definitely hold the state accountable in case pollution continues and the quality of water in the river Yamuna does not improve. The Court emphasized that there are enough laws at the command of the State to enable it to take appropriate action to see that the river is not polluted. If the state chooses not to exercise its powers in that behalf it must be held responsible for in action*"⁴.

³ Order dated 9-8-1999

⁴ Order dated 27-8-1999

Although, the Court did mention that it was not for it to stipulate the manner in which the pollution needs to be tackled, yet it did through its various orders minutely monitor the controlling of further pollution of the river Yamuna. It also authorized officers to exercise powers under various statutes for the purpose of controlling pollution. Thus it issued orders to the Chief Secretary of Delhi, Haryana and Uttar Pradesh to the effect that the Chief Secretary can pass order under section 5 of EPA and Water Act to ensure that no industrial effluent is allowed to be discharged directly or indirectly into the river Yamuna with effect from 1st November 1999⁵. As is generally seen not much happened after it and after 3 months the Supreme Court issued Notices to the Chief Secretary for non compliance of its orders⁶. Despite these Notices, the non compliance continued. In May 2000 a fine of Rs 10,000 was levied on the Government of NCT of Delhi for non compliance of the orders of the Court⁷. The Court was dismayed by the latest report of Central Pollution Control Board which did not indicate any substantial improvement in water quality and the fact that it revealed that the dissolved oxygen at Okhla after meeting the Shahdara canal continued to be 'nil'. In fact, the Court was scathing in its observation when it said that *Delhi succeeds in reducing the dissolved oxygen level of water to 0 % and that although court has been seized of the matter since a number of years but till today no effective steps have been taken to ensure the improvement of the quality of the water*⁸.

The Court was aware of the multiplicity of agencies responsible for different aspects concerning the Yamuna and the fact that it has only complicated the issue. With the existence of numerous agencies in Delhi no single entity can be held responsible for cleaning the river Yamuna and therefore directed the Ministry of Urban development of tell how it plans to implement an integrated action plan on the Yamuna.

*This Court has been seized of this issue for the last about ten years. We hope that now, on all these issues, a concerted and integrated effort will be made, matter thoroughly examined and then placed before this Court. For this purpose, we grant to the authorities a period of four weeks. The requisite affidavits with materials shall be filed within four weeks. In case the state/authorities are not in a position to make available the basic services in respect whereof it is admitted that there are severe limitations, there shall be no regularisation of unauthorised colonies. In other words, it means that the regularisation should be made only if it is possible for the respondents to make available the basic services*⁹.

⁵ Order dated 13-09-1999

⁶ Order dated 17-12-1999

⁷ Order dated 11-05-2000

⁸ Order dated 10-4-2001

⁹ Order dated 14-6-2006

The direction of the case unfortunately shifted in 2001 when rather than concentrating on the direct causes relating to pollution of the Yamuna viz., the pollution due to drains and untreated sewage discharge, the Court expanded the scope of the case to include illegal encroachments and unauthorized construction also to a large extent contribute to polluting the river Yamuna because without sewer connections the effluents/discharge is dumped into the drains which meet the river Yamuna. This issue was brought to the attention of the Court through the Solicitor General of India.

The entire chronology of this case, which is in the nature of a continuing mandamus, is listed in Appendix 2.

1.4 Garbage Dumping in the Yamuna?

Disposal of solid waste and poor garbage management is a major reason for the pollution of the River Yamuna. The Supreme Court dealt with the issue of Garbage disposal and solid waste management in two important cases namely *B.L Wadhera Vs Union of India* and *Almitra Patel Vs Union of India* and ors.

The *B. L Wadhera*¹⁰ case was filed by an advocate seeking directions to the MCD and the NDMC to perform their statutory duty and in particular in removal, collection and disposal of garbage in the city of Delhi. *Almitra Patel* case was also directed towards the same problem but focused the country at large.

In *B.L Wadhera* case the Court observed that the "*River Yamuna the main source of drinking water supply - is the free dumping place for untreated sewage and industrial waste*"¹¹. This was reiterated by the Supreme Court in *Almitra Patel Vs Union of India* [See box]. The Court in *B.L Wadhera* relying on the famous Judgement of Justice Krishna Iyer in *Ratlam Municipality Vs Vardichand*¹² held that "*it is clear that the Municipal Corporation of Delhi and the New Delhi Municipal Council are under a statutory obligation to scavenge and clean the city of Delhi. It is mandatory for these authorities to collect and dispose of the garbage/waste generated from various sources in the city. We have no hesitation in observing that the MCD and the NDMC have been wholly remiss in the performance of their statutory duties. Apart from the rights guaranteed under the Constitution the residents of Delhi have a statutory right to live in a clean city. The courts are justified in directing the MCD and NDMC to perform their duties under the law. Non availability of funds, inadequacy or inefficiency of the staff, insufficiency of machinery etc. cannot be pleaded as grounds for non-performance of their statutory obligations*"¹³.

¹⁰ (1996) 2 SCC 594

¹¹ AIR1996SC2969, JT1996(3)SC38, 2001(5)SCALE304, (1996)2SCC594, [1996]3SCR80,

¹² AIR 1980 SC 1622

¹³ 2001(5)SCALE304, (1996)2SCC594, [1996]3SCR80

SUPREME COURTS OBSERVATIONS ON THE PLIGHT OF DELHI AND YAMUNA

Almitra Patel Vs Union of India

1. More in anguish, than out of anger, this Court nearly four years ago in *Dr. B.L. Wadhwa v. Union of India and Ors.* observed: "*Historic city of Delhi - the capital of India - is one of the most polluted cities in the world. The authorities, responsible for pollution control and environment protection, have not been able to provide clean and healthy environment to the residents of Delhi. The ambient air is so much polluted that it is difficult to breathe. More and more Delhi are suffering from respiratory diseases and throat infections. River Yamuna the main source of drinking water supply - is the free dumping place for untreated sewage and industrial waste. Apart from air and water pollution, the city is virtually an open dustbin. Garbage strewn all over Delhi is a common sight. The Municipal Corporation of Delhi (the MCD) constituted under the Delhi Municipal Corporation Act, 1957 (Delhi Act) and the New Delhi Municipal Council (the NDMC) constituted under the New Delhi Municipal Council Act, 1994 (New Delhi Act) are wholly re-miss in the discharge of their duties under law. It is no doubt correct that rapid industrial development, urbanisation and regular flow of persons from rural to urban areas have made major contribution towards environmental degradation but at the same time the authorities - entrusted with the work of pollution control - cannot be permitted to sit back with folded hands on the pretext that they have no financial or other means to control pollution and protect the environment.*" The Court then proceeded to issue 14 directions in an effort to see that the capital of the biggest democracy in the world is not branded as being one of the most polluted cities in the world.

2. *It is indeed unfortunate that despite more than sufficient time having elapsed the condition of Delhi has not improved. The citizens of Delhi increasingly suffer from respiratory and other diseases, the River Yamuna is highly polluted and garbage and untreated domestic and industrial waste is being either freely dumped into the said river or is left on open land, large volume of which remains unattended.*

9. *Keeping Delhi clean is not an easy task but then it is not an impossible one either. What is required is initiative, selfless zeal and dedication and professional pride, elements which are sadly lacking here.*

JT2000(2)SC341, 2000(1)SCALE568, (2000)2SCC166,
[2000]1SCR841

JAI NARAIN AND ORS VS UNION OF INDIA

"Delhi - the capital of India - one of the world's great and historic cities has come to be listed as third / fourth most polluted and grubbier city in the world. Apart from air-pollution, the waters of River Yamuna are wholly contaminated. It is a paradox that the Delhiites – despite River Yamuna being the primary source of water supply - are discharging almost totality of untreated sewage into the river. There are eighteen drains including Najafgarh drain which carry industrial and domestic waste including sewage to river Yamuna. Thirty eight smaller drains fall into Najafgarh drain. The Najafgarh drain basin is the biggest polluter to river Yamuna. Eight of the drains including Najafgarh drain are untrapped, four fully trapped and remaining six are partially trapped. All these eighteen drains, by and large, carry untreated industrial and domestic wastes and fall into river Yamuna. The river Yamuna enters Delhi at Wazirabad in the North and leaves at Okhla in the South after travelling a distance of about twenty five kilometers. The water of river Yamuna till it enters Najafgarh is fit for drinking after treatment, but the confluence of Najafgarh drain and seventeen other drains make the water heavily polluted. The water quality of Yamuna in Delhi stretch is neither fit for drinking nor for bathing. The Biochemical Oxygen Demand (BOD) level in the river has gone so high that no flora or fauna can survive. It is of utmost importance and urgency to complete the construction of the STP's in the city of Delhi. The project is of great public importance. It is indeed of national importance."

AIR1996SC697, JT1995(9)SC323, 1995(6)SCALE664, (1996)1SCC9,
[1995]Supp5SCR769

1.5 The Taj Heritage Corridor

The construction of a so called 'heritage corridor' in the vicinity of the Taj Mahal at Agra on the Bank of the River Yamuna in 2003 attracted the attention of the Supreme Court which passed orders against top politicians and officers for misuse of public funds and allowing constructions contrary to the law.

Earlier, the Supreme Court had passed numerous orders in *M.C Mehta Vs Union of India*¹⁴ in what is popularly known as Taj Trapezium Zone (TTZ) Case with respect to protection of the Taj Mahal. These included orders for removal of industries and shifting to cleaner fuel. The Court also appointed a Monitoring Committee to report to the

¹⁴ AIR 1997 SC 734

Court on various measures taken to comply with the orders of the Court. On 25-3-2003, a report was filed before the Supreme Court requesting for stopping the diversion of the River Yamuna and construction on the Yamuna River Bed in the vicinity of the Taj Mahal till the Environment Impact Assessment report is cleared by the Central Government.

'Taj Heritage Corridor Project' was initiated by the Government of Uttar Pradesh. One of the main purpose for which the same was undertaken was to divert the River Yamuna and to reclaim 75 acres of land between Agra Fort and the Taj Mahal and use the reclaimed land for constructing food plazas, shops and amusement activities.

On 16.7.2003, the Court directed CBI inquiry in the matter, wherein it was inter alia mentioned that for some ulterior motive under the directions of some persons without getting necessary clearance from the concerned authority, work of the project had continued. The Court took strong exception to the use of the word heritage for such a work which was intended to only destroy the heritage of the area. According to the Court:

It was also mentioned that "it was painful to note that instead of creating something new which could be classified as a World Heritage or National Heritage, concerned persons who were in power were inclined to damage or endanger the World Heritage by their hasty/irregular/illegal activities."¹⁵ "

It was significant that based on investigation by the Central Bureau of Investigation (CBI), the Court directed that departmental proceedings should take place against the then Secretary, Ministry of Environment and Forest (K. C. Mishra) for tampering with official documents.

The Court also directed the Central Water and Power Research Station (CWPRS), Khadakwasla to assess the behavior of the river and the impact of reclamation on river bed on the monuments in Agra and its protection thereof. The Court took a serious view of the fact that the construction work commenced without clearance from the Ministry of Environment and Forest.

"it was painful to note that instead of creating something new which could be classified as a World Heritage or National Heritage, concerned persons who were in power were inclined to damage or endanger the World Heritage by their hasty/irregular/illegal activities."

Supreme Court order

¹⁵ JT2003(Suppl1)SC391, 2003(7)SCALE636, (2003)8SCC696

The construction of the Taj Heritage Corridor included the following:

- Component A:- On the right bank between upstream end of Taj Mahal to upstream end of Fort (near Railway Bridge).
- Component B:- On left bank between Ram Bagh and opposite Agra Fort and upstream of Rambagh.
- Component C:- On the right bank upstream of Agra Fort up to the point opposite of Ram Bagh.
- Component D:- On the left bank from the point opposite the upstream of Agra Fort to near Mehtab Bagh and right bank down stream of Taj.

These basically involved reclamation work on the river bank and filling up of the area.

The CBI submitted a Report on 11.9.2003 to the Court which highlighted the following illegality:

- An amount of Rs. 17 crores was unauthorisedly released by Shri R.K. Sharma, Secretary (Environment) U.P. without the approval of the departmental Minister.
- Contrary to the provisions existing in the State Government which require that in case of every non-recurring expenditure of Rs. 5 crores and above, approval of the Expenditure Finance Committee (EFC) of the State Government is required, no such approval was either sought or obtained before sanctioning the amount of Rs. 17 crores.
- An amount of Rs. 20 crores was sanctioned by Shri Naseemuddin Siddiqui, the then Minister (Environment), U.P. for release without approval of DPRs and techno-feasibility reports and without clearance of the Expenditure Finance Committee (EFC) of the State Government and CCEA, Government of India
- Shri Siddiqui subsequently tampered with the file and made interpolations in the Government records with an objective to cover up the fact that he had sanctioned Rs. 20 crores on 21. 05. 2003.
- Shri Siddiqui and Dr. V.K. Gupta, the present Secretary (Environment), U.P. pressurized Shri Rajendra Prasad, Under Secretary, Environment Department, U.P. who also tampered with the file and made interpolations to cover the fact that the Minister had sanctioned Rs. 20 crores.
- Shri K.C. Mishra, Secretary, Environment and Forest, Government of India tampered with the file and made interpolations in Government records in order to cover up his omissions of not approving the proposals of his Joint Secretary and Special Secretary for writing to the State Government for a report and to ask them to carry out work only after necessary approvals and clearances. He obscured some portions of the notes dated 21. 10. 2002 and 08. 05. 2003 of Dr. Saroj, Additional Director, Ministry of Environment and Forest so as to show that he was not a part of the decision making and had not shown his consent to the proposed project.
- Central Forensic Science Laboratory has given a report that interpolations were made in the files by Shri Naseemuddin Siddiqui, the then Minister, U.P., Shri Rajendra

Prasad, Under Secretary, U.P. and Shri K.C. Misra, Secretary, Environment and Forests, Government of India

- Collection of information/intelligence and discreet verification of assets acquired/held by the persons/officers involved with decision-making process in this case could not be completed. Considering the enormity of task, it is likely to take considerable time.

Based on the above report, the Court directed as follows:

- I. The Central Government to hold immediate departmental inquiry against Shri K.C. Mishra, former Secretary, Environment, Union of India;*
- II. The State of Uttar Pradesh to hold departmental inquiry against Shri R.K. Sharma, former Principal Environment Secretary, Shri P.L. Punia, former Principal Secretary to Chief Minister, Shri D.S. Bagga, Chief Secretary, Shri V.K. Gupta, former Secretary - Environment; and*
- III. NPCC or the competent authority including the Central Government to hold inquiry against Shri S.C. Bali, Managing Director of NPCC;*
- IV. The State Government as well as the concerned officers of the Central Government are directed to see that departmental inquiry is completed within four months from today. The State of U.P. and Central Government would appoint respective inquiry officers for holding inquiry, within a period of seven days from today;*
- V. It would be open to the State Government if called for to pass order for suspension of delinquent officers in accordance with the rules;*
- VI. For the officers and the persons involved in the matter, CBI is directed to lodge FIR and make further investigation in accordance with law;*
- VII. CBI shall take appropriate steps for holding investigation against Chief Minister Ms. Mayawati and Naseemuddin Siddiqui, former Minister for Environment, U.P. and other officers involved;*
- VIII. Income Tax Department is also directed to cooperate in further investigation which is required to be carried out by the CBI.*
- IX. CBI would take into consideration all the relevant Acts i.e. IPC/Prevention of Corruption Act and the Water (Prevention and Control of Pollution) Act, 1974 etc.*
- X. CBI to submit self contained note to the Chief Secretary to the Government of Uttar Pradesh as well as to the Cabinet Secretary, Union Government and to the concerned Minister dealing with the NPCC.*

1.6 Concrete in the River Bed / Flood Plains!

1.6.1 Akshardham Temple

One of significant cases of construction on the Yamuna river bed is the Akshardham temple at Delhi which was challenged in the Supreme Court in 2004 by the U.P State Employees Confederation & Anr. in W.P. (C) No. 353/2004.

The story of Akshardham in Delhi started in 1984 when the Bochasanwasi Sri Akshar Pushottam Sansthan, a registered society applied to DDA for allotment of land for the construction of a school building. The Directorate of Education, GNCT sponsored their case vide their letter dated 23.8.1984. Resultantly the Institutional Allotment Committee in its meeting held on 9.10.1984 recommended for allotment of a plot measuring 2000 sq m to the Sansthan in Trans Yamuna in Pandav Nagar Institutional Area. But the same could not be handed over to the Sansthan since the Sanstha desired to have a bigger plot of land to cover its activities.

Later a plot measuring 17.5 ha (plus another 6 ha for parking purposes) was allotted and handed over to the Sansthan by the DDA in the river bed, next to the Yamuna Pushta Bund on 21.4.2000 subject to compliances of undertaking regarding payment to DDA and compensation to the cultivators as per rules and the condition that no tree will be cut without prior permission of competent authority. An area of 4 ha east of the said site till the bund which belonged to UP Irrigation Department was also leased out to the Sansthan by the UP government.

The principle ground for challenge by the petitioners was that the allotment was of land belonging to the State of Uttar Pradesh and the construction of the same would affect the ground water recharge. The petition was dismissed by the Supreme Court on 12 January 2005¹⁶ after imposing a short stay on the construction. The short order of the Court states that the construction was permitted by the Delhi Development Authority after obtaining the opinion of the National Environmental Engineering Research Institute (NEERI). A further ground for dismissal was that the petitioners were unable to rebut the statement made by the respondents (DDA).

1.6.2 Commonwealth Games Village and DMRC depot

Delhi is to host the Common Wealth Games (CWG) in October 2010. Several new structures and infrastructural facilities are being built across the city in preparation for the same. One such complex is the Games Village consisting of over 1000 residential units as well as other facilities for sportspersons scheduled to participate at the Games, which is being built in the river bed of Yamuna by the Delhi Development Authority (DDA). The Delhi Metro Rail Corporation (DMRC) Limited is also constructing a Metro Depot on the river bed. Two writ petitions were filed in the High Court of Delhi in 2007 challenging these constructions in the Yamuna river bed.

The first writ petition W.P. (C) 6729/2007 was filed by Vinod Jain from *Tapas* NGO. The single Judge bench of Justice Gita Mittal who heard the matter while observing that the issues raised in the case were similar to those being heard by the Division Bench in another writ petition placed this matter before the Division Bench. But before

¹⁶ (2009) 8 SCC 582

placing the matter before the Division Bench, Justice Gita Mittal identified several issues worthy of consideration, including the following:

- *Whether the respondents have adequately explored alternative sites for the construction to be undertaken and conducted environmental impact assessments of such site through independent experts, including the present one?*
- *The river, the riverbed, river basin, the flood plain of the river is not within the meaning of the expression 'land' and consequently its change of user is not permissible (Ref : order dated 3rd May, 2005 in W.P.(C) No. 689/2004; order dated 31st March, 2003 in W.P.(C) No. 8227/2002. Therefore, the river Yamuna its bed, basin and flood plain is a 'water body', is not 'land' and can be utilised only as a water body.*
- *As the work on identification of the Yamuna plain has commenced, pending its determination and issuance of a notification no construction activity along the river could be permitted.*
- *Whether the action of the respondents in constructing the bund in the year 2000, amounts to artificially restricting the flood plain of the river and the construction amounts to reclaiming land which forms part of the river environment. The same is illegal as it violates both the Precautionary Principle and the Doctrine of Public Trust.*
- *Whether the decision of the respondents to allow construction/encroachments taking place within and upto 300 meters beyond the floodplain is contrary to their policy on water harvesting and, in general, a flagrant disregard of well-established principles of water management?*
- *Whether the change of prescribed user and the proposed user are based on relevant material are permitted after considering the same including the Reports submitted by NEERI; the various pronouncements by the Apex Court and other available recommendations on the subject and studies including the Study by Wetlands International.*
- *Does the policy and decision of the respondent to allow constructions and its allotment to other authorities on the locations along the river not violate the Public Trust Doctrine and the Precautionary Principle, since the riverbed/floodplain are natural resources and have to be protected at all costs for the present and future generations? (Re: (1997) 1 SCC 388 Paras 23 to 35) M. C. Mehta v. Kamal Nath and Others; 1996 (5) SCC 647 Vallore Citizens Forum v. UOI and Others.*
- *Whether the Government of India being a signatory to the Ramsar Convention (1971) and Stockholm Declaration is not under obligation to abide by the norms laid down therein for the protection and conservation of the environment especially the wetlands, to which the Yamuna floodplain area belongs? (Re: 1987 (4) SCC 647 M.C.Mehta v. UOI and other (River Ganges).*
- *Is the citizens' fundamental right to life and personal liberty under Article 21 of the Constitution being violated by carrying out construction upon the riverbed and the floodplain, as its adverse impact would be felt by all consumers of water in Delhi and millions of people living downstream more?*
- *Does the action of the authorities in raising permanent construction and proposals*

amount to violation of Delhi Master Plan 2021, the recommendations in the reports of the National Environmental Engineering Research Institute in 1999 and 2005 and the decision of the Central Ground Water Authorities.

- *Whether in view of the inability of the respondents to reduce the pollution level of the river and since the river has no biological carrying capacity due to alarming levels of pollution, and many stretches of this river have been declared dead; since its water has been declared unfit for human and animal consumption, bathing, irrigation, or any other purpose; and since it has been reduced to a cesspool of toxic chemicals, effluents, and raw sewage discharge from municipal drains, is it not necessary that further construction/illegal activities are prevented from being carried out, both in order to save the river and in the larger public interest of people living in Delhi and downstream?*
- *Do the constructions on the riverbed/floodplain amount to the dereliction of duty by the State to clean the river Yamuna and a violation of the right to life and the religious freedom guaranteed under the Constitution of India, since the river is considered one of the sacred rivers? (Re: 1987 (4) SCC 463, M.C.Mehta v. UOI (River Ganges matter))*
- *Since the self-purifying and environmental regenerative capacities of the river have already been exhausted, and the only way to revive the same is by restoring the Yamuna's riverbed / floodplain to its pristine state, should under the above circumstances any further construction / encroachments be allowed, as it would directly affect the lives of millions of people living in Delhi and downstream? (Re: Master Plans for Delhi-Perspective 1962, 2000 and 2021; (1996) 4 SCC 351 M.C.Mehta v. UOI)*
- *Can development activity / constructions in the riverbed / floodplain for the purposes of economic exploitation override the irreversible and permanent ecological damage to the floodplain? (Re: 1997(1) SCC 388 M.C.Mehta v. Kamal Nath; AIR 2002 SC 1696 paras 11, 14 and 16) M.C.Mehta v. UOI and Others)*
- *Whether the construction of the residential flats under the shield of Games Village not amount to illegal conversion of a natural resource and gift of nature to private ownership for commercial gains? (Re : M.C.Mehta vs. Kamal Nath)*
- *Does the decision taken and the pending proposals to permit construction along the River not amount to breach of the statutory provisions of the Environment (Protection) Act; the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981.*
- *Whether the construction of the Akshardham temple gives sanctity to all constructions which may be proposed on the bed / basins / bank / flood plain / embankment of the river?*
- *The construction which is being raised on grounds that the same is in the name of national interest, whether interest of ecology and environment and rights of the citizens under Article 21 in national interest would have a priority over any other claims?*
- *The respondents having failed to effectuate any rejuvenation of the river Yamuna despite the orders of the Apex Court since 1994 and thereafter, cannot be permitted to put any more pressure on the river Yamuna and its surroundings.*

- *Whether the decision taken by the respondent has considered the impact of the traffic on the circulation areas and air pollution which would be generated by the movement of vehicles to and from the village prior to during or after the games are over nor the impact of the influx of huge population on the fragile ecology of the area?*
- *Whether the present writ petition under Article 226 of the Constitution of India, making a grievance of violation of constitutional rights of the citizens; failure to perform statutory duties and functions and failure to discharge responsibilities and commitments in International Treaties is maintainable?*

The second writ petition W.P. (C) 7506 / 2007 was filed by four petitioners- Rajendra Singh, Magsaysay Award Winner and 'Water Man' of India ; Manoj Misra, former IFS Officer and currently Convenor of the *Yamuna Jiye Abhiyaan*; INTACH, a non-profit organisation set up to protect and conserve India's vast natural and cultural heritage; and Sanjay Kaul, a leading civil rights' activist. This petition was heard by a Division Bench of the Delhi High Court consisting of Justice AK Sikri and Justice Rekha Sharma.

The salient points raised in the writ petition W.P. (C) 7506 / 2007 were the following:

- a) The Yamuna river bed in Delhi is an ecologically sensitive area and hence to be protected and preserved. Therefore, any construction, filling up, digging etc made so far should be stopped and the ecology of Yamuna river bed should be restored.
- b) Any construction in the Yamuna river bed would permanently destroy the ecology of river Yamuna and its ground water recharge ability. This would violate the doctrine of public trust and the precautionary principle which are part of Article 21 of the Constitution.
- c) The Environmental Clearances granted by the Ministry of Environment and Forests on 14.12.2006, 22.01.2007, 29.03.2007 and 02.04.2007 favoring the construction of the Games Village on the river bed violates Article 21 of the Constitution.

Two separate judgments were delivered by the Court in this matter on 03.11.2008. Justice A.K. Sikri in his judgment identified the main issue as being *the conflict between development of the city couple with national prestige and the concerns regarding the irreversible damage that the river and its ecology would suffer due to construction*. The respondents had raised a preliminary objection to the effect that the petition is barred by delay and laches. The site in question was finalized in 2003 by the respondent for the Commonwealth Games Village and for the Metro Depot and the Yamuna Bank Station it had been finalized by the Delhi Metro Rail Corporation in 2002. As the petition was filed only in 2007, the respondents submitted that it should be barred due to delay. Justice Sikri considered this submission and observed that "*while the petitioners could have approached the Court earlier, the issue of preservation and protection of ecology was extremely important and therefore required deliberation and adjudication*".

After highlighting the various submissions made by the petitioners and respondents, Justice Sikri spends a significant portion of his judgment identifying the settled principles of environmental jurisprudence that were applicable to the case. He quotes from the Stockholm Declaration 1972 and the Rio Declaration of 1992 and then moves on to identifying the provisions in the Constitution of India relating to environmental protection and the cases of the Supreme Court which discusses these constitutional provisions. He then traces the development of the doctrine of public trust through American and Indian case law. Finally he addresses the principle of inter-generational equity and quotes from Supreme Court cases on this principle.

While discussing the present state of the river Yamuna, Justice Sikri observes-

44. *“It is a known fact that the river Yamuna in Delhi has been in a bad shape for quite some time now and is referred to as a dead river. Once the lifeline of Delhi, Yamuna has now become the most polluted water resource of the country. It has been reduced to a pale, sickly drain and poses a threat to the human life. It overflows with filth, effluents, dirt and even dead bodies. It is said that there is a visible difference between the water quality at Palla (where the Yamuna enters Delhi) and at Okhla (where it leaves Delhi). As the Yamuna traverses through the city, it is slowly converted from a river to a drain. It is estimated that the 22 km stretch of the Yamuna that runs along Delhi – from Wazirabad in the both to the Okhla Barrage in the South-contributes 80-90 percent of the total sewage discharge into the river, reducing it to a stinking drain. From big industries and factories to people living in big colonies, slums and rural areas, all pollute the river with impunity because of untreated water.*
45. *The change of status of Yamuna (from a river to a drain) is owing to several factors, First, the huge water demand of Delhi city makes sure that a lot of water is withdrawn the very moment Yamuna touches Delhi. This reduces and volume of total water in the river as it flows through the city, leading to a reduction in the self – cleaning capacity. This water is then released back into the river, when it leaves the city (as sewage) which is the second most serious problem. There is a paucity of Sewage Treatment Plants (STPs) in the capital. There is also an incorrect estimation of the total number of such plants needed as the volume of water that is diverted from the river for drinking purpose is less than that released as waste – back to the river. Increasing pollution of the Yamuna has now become an international issue and a cause of concern for environmentalists. No doubt there was a time when river Yamuna was a lifeline of Delhi providing precious potable water to its residents. At present, the quality of river Yamuna is categorized as ‘E’. This makes the water of river Yamuna unfit for even animal consumption”.*

He then goes on to quote from different judgments of the Supreme Court and the High Court of Delhi which have similarly expressed grave concern at the status of the river Yamuna. Various plans that have been created to conserve the river including special emphasis in the Master Plan of Delhi – Perspective 2001, Yamuna Action Plan

I and II, and setting up of a Committee by the Supreme Court but they have all failed despite huge expenditure of public money.

The 1999 and 2005 reports prepared by the NEERI on Yamuna Environmental Management and the alternatives presented in these reports are discussed in the judgment. The change in the land use of a part area of the land in question from 'agricultural and water body' to 'Public and Semi-Public facilities' was notified in 1999. The land use of another part of the land (where the construction in question is coming up) was changed in 2006 from 'Agriculture and Water Body' to 'residential' and 'commercial/hotel'. The Ministry of Environment and Forests accorded environmental clearance to the Common wealth Games Village on 14.12.2006 to the DDA with the condition that the work should not be of permanent nature and that proposals for structures should proceed on the assumption that the river bed may have to be restored back to the river. First on 21.01.2007 and then again on 29.03.2007 the MoEF modified this clearance order by stating that DDA could go ahead with "planning" their construction works, temporary or permanent, but actual work would not be started till such time that mitigation/abatement measures against upstream flooding as identified by the Central Water and Power Research Station, Pune (CWPRS) are complete. The final approval was granted by the MoEF on 02.04.2007 allowing the DDA to go ahead with the "construction" of permanent or temporary structures.

The judgment then goes on to discuss the benefits accruing to a city when it hosts big international events such as the Common wealth Games but also questions the price that would be paid by the citizens of Delhi while hosting the Games. The DDA had submitted a counter affidavit during the case proceedings in which it had submitted that all remedial measures listed by the MoEF in its clearance were being duly taken care of.

Whether the construction was taking place on a river bed or not was another issue discussed by Justice Sikri. He quotes from English decisions as well as the Blacks' Law Dictionary and Wikipedia Encyclopedia to establish the definition of river bed. He finally reached the conclusion that whether the present site was part of a flood plain/river bed or not required the consideration of an expert committee. At the same time he observed that construction of the flood plains was widely prevalent globally as several big cities across the world are located on the banks of rivers.

Justice Sikri finally comes to the conclusion that the environmental concerns arising from the construction of the Village has received expert attention at various levels. The Group of Ministers, constituted by the Prime Minister in September 2004, had approved all the venues for the games. Various Committees such as the Organising Committee, Committee of Secretaries, Empowered Committee have been set up to act according to the policies of the Union as well as the State governments. Interestingly, he observed that all decisions with reference to the Games are policy decisions which have been made in good faith and that judges should be slow in to interfere with Expert Bodies-

It is the trite law that courts are not to interfere with the decisions of the expert bodies unless it is shown that such decisions are arbitrary, irrational or illegal and the court cannot substitute those decisions by providing its own wisdom and stating that there could be a better policy decision.

While emphasizing the need for expert bodies in reaching a conclusion in such matters, Justice Sikri does not hesitate to criticize the NEERI in so far as the report prepared by it in 2008 was inadequate and appeared to be tailor-made for the party commissioning the report. The affidavit submitted by NEERI to the court in 2008 during the case proceedings clarified that the site in question was not 'deemed' to be a flood plain after the construction of the Akshardham bund. In response to this Justice Sikri said-

We are constrained to observe that this affidavit is the result of some of the loopholes in its earlier reports which were picked up by the petitioners and pointed out to the Court. From an institution of this repute, it was not expected that report of this kind would be submitted. The Court gathers an impression that it is a tailor-made report given to suit the requirement of the respondents. In the earlier report given by NEERI, as pointed out above, it had recommended only construction of temporary structures. It is not at all explained as to what were the changed circumstances which weighed with NEERI to opine that structures can be of permanent nature.

Despite making such a critical observation, Justice Sikri does not accept the plea of the petitioners that the construction should be stopped. This is primarily on the ground that as the petitioners did not approach the Court in time, there was not enough time to initiate construction on an alternative site and complete the structure in time for the Games. He, however, found it necessary that further steps needed to be taken to address some of the significant issues raised by the petitioners. For this he constituted an Expert committee with Dr. R. K. Pachauri, as its Chairman and directed the committee to "undertake specific study about the construction in question from the point of view of its impact on the ecology and protection of Yamuna river and submit its report to the Court to enable the Court to pass further orders thereupon".

In a post script, Justice Sikri writes that he entirely agrees with all directions given by Justice Rekha Sharma who delivered a separate opinion in the same matter and therefore those directions may be deemed as directions of the Bench.

Justice Rekha Sharma's judgment was much shorter and did not address all the contentions of the petitioners and the respondents to the extent which Justice Sikri did. She in fact makes it a point to state that '*it was at no point in dispute that development has to co-exist and not endanger or cause irreversible damage to nature. I therefore need not go into any lengthy discussion on this aspect of the matter or on what the courts have said, for they have also not said anything different*'.

For her one of the crucial issues that need to be decided is whether the construction is taking place on a river bed or not. She quotes from the 2005 report of NEERI, the

Expert Appraisal Committee and the Environmental Clearance of 14.12.2006 to come to the conclusion "*that without doubt the site was on the river bed*". Alternatively, she states, "*even if it is assumed that the site in question is not on a river bed, the urbanisation and colossal construction may adversely affect the environment, the river and the ecology*". She quotes from the Master Plan of Delhi to support her point.

The respondents in the case had relied on the Supreme Court's decision in the *UP Employees Federation Case* in which the Court had dismissed an appeal against the construction of the Akshardham temple. Justice Rekha Sharma distinguishes the present case from the *UP Employees Federation Case* by observing that the larger issues raised in the present case had not been gone into the *UP Employees Federation Case* and therefore it (Akshardham Case) could not be treated as a binding precedent for this case.

She then goes on to heavily criticize the NEERI as according to her it had 'changed colours and has not bothered to contradict itself'. While the 2005 report of NEERI warned against heavy capital investment and encroachments, building activity and urban sprawl and spoke of maintenance of ecological balance, the 2008 affidavit was as, and she quotes from Justice Sikri, *the result of some of the loopholes in its earlier reports which were picked up by the petitioners and pointed out to the Court. From an institution of this repute, it was not expected that report of this kind would be submitted.*

Along with NEERI, she finds the MoEF also 'equally guilty of changing its position'. Adopting the recommendation of the Expert Appraisal Committee, the MoEF had accorded clearance to the project on 14.12.2006 clearly stating that no permanent structure should be constructed. After few days it ignored the EAC's recommendations and allowed the DDA to go ahead with permanent construction subject to conditions of little significance. She goes to the extent of saying that the report produced by the CWPRS, based on which DDA continued the permanent construction was dubious. She categorically states that *'neither NEERI nor the Ministry of Environment and Forest nor DDA can be said to have acted fairly and objectively. Their hands appear to be tainted*'. She agrees with Justice Sikri with regard to the necessity of constituting an Expert Committee. As he had not elaborated on the constitution and working of this Committee she issued directions in that direction. The Committee would constitute of four members under the Chairmanship of Dr. RK Pachauri. Each party was directed to nominate two persons within three weeks and of the names proposed the Court would then appoint the Committee in consultation with the Chairman. The Committee would undertake study of all constructions whether proposed, underway or completed as to whether they are in any way affecting the ecology of the Yamuna river bed, its ground water recharge ability, or the public trust doctrine. A report is to be submitted to the court within four months of the constitution of the Committee. An interim report could also be filed in case a situation requires immediate remedial action. The Central Government was directed to provide the necessary facilities to the Committee. She further noted that the Bench had made it amply clear that during the pendency of the court proceedings if any third party interests

were created, the respondents were doing so at their own peril.

Interestingly, neither judge referred to Justice Gita Mittal's detailed order which had identified several issues important to the case. Both judges reached their conclusions without looking at the issues relating to the possible violation of constitutional rights. They both reached the same conclusion, that the construction would not be stopped and that an Expert Committee should be set up to look into the matter. Justice Sikri reached the conclusion mainly based on the delay in bringing the case to Court, while Justice Sharma being very critical of the governmental agencies does not address the issue of delay. In fact, it left to the reader to imagine the reasons why when after making such adverse comments, she decided not to stop the construction.

After the decision of the High Court, all parties approached the Supreme Court through separate Special Leave Petitions. The Petitioners in the High Court, approached the Supreme Court limited to some inaccuracies and misreadings leading to misinterpretations in the judgment of Justice Sikri. The original respondents, including the DDA, Ministry of Urban Development and Poverty Alleviation, and the Ministry for Youth Affairs and Sports filed separate SLPs as they were aggrieved by the High Court's judgment which set up a Committee and stated that third party rights created were at the peril of the respondents. A three-judge Bench of Justices BS Chauhan, KG Balakrishnan and P Sathasivam heard the case and the judgment was delivered by Justice P Sathasivam. The Supreme Court disposed off all the petitions through a common judgment dated 30.07.2009. After going through the submissions of both parties in some detail the Court came to the following conclusions:

- (a) *"In view of notification in the Gazette of the Government of India dated 21.09.1999 relating to change of land use and to the fact that the site in question for the construction of Games Village had been chosen and widely published way back in the year 2003 itself, the writ petitions which were filed before the High Court of Delhi only in the year 2007, in the absence of proper explanation, the High Court ought not to have probed the matter at this juncture.*
- (b) *On a conjoint reading of NEERI reports 1999, 2005 and January, 2008 coupled with its assertion in the form of an affidavit dated 29.01.2008 clearly show that the Games Village site is not either on a "riverbed" or on the "floodplain" of the Yamuna river.*
- (c) *The decision of expert and autonomous body – NEERI supported by materials placed by other bodies such as CWPRS and MoEF, the same cannot be lightly interfered with by the Court without adequate contra materials.*
- (d) *After due deliberations by the DDA with other departments including the Yamuna Committee and pursuant to the elaborate discussion on 10.11.1997 itself, 35 hectares of land were recommended for change of land use and the same was approved (Pocket-III) on 21.09.1999 for "public and semi-public purpose".*
- (e) *Before change of the land use, the authority concerned issued public notice, heard objections/suggestions and in consultation with expert bodies such as NEERI,*

CWPRS and MoEF, approved the said proposal and permitted the DDA to use the area covered under Pocket- III for "public and semi-public purpose".

- (f) The observation and conclusion of the High Court that the site in question is on a "riverbed" cannot be sustained. The High Court disregarded and ignored material scientific literature and the opinion of experts and scientific bodies which have categorically held that the Games Village site is neither located on a "riverbed" nor on the "floodplain". Further, in view of the change of the land use which was approved way back in 1997 by the Yamuna Committee and by NEERI permitting the DDA to use Pocket-III for "public and semi-public purpose", the contrary conclusion arrived at by the High Court is liable to be set aside.*
- (g) In as much as the Akshardham Temple site is adjacent to Games Village site, the decision of this Court dated 12.01.2005 in Writ Petition (C) No. 353 of 2004 has bearing on the issue and it is a binding precedent for all purposes.*
- (h) The direction of the Division Bench for formation of a fresh Committee by the Government to examine and monitor the construction carried out by the DMRC is also liable to be set aside. However, as assured by the Attorney General for India, the Committee approved by the Prime Minister of India consisting of Lt. Governor of Delhi as Chairperson, Chief Minister of Delhi as Vice Chairperson and other members who are all representing various departments should monitor the entire activities in association with Dr. R.K. Pachauri.*
- (i) In view of our conclusion, the DDA and other authorities are free to proceed with the work at Games Village site."*

With these directions the Supreme Court allowed the Petitions of the earlier respondents (the governmental agencies) and dismissed the petitions of the earlier Petitioners.

The Court while taking the question of delay on the part of the petitioners in approaching the Court as material seem to have ignored the fact (details carried in its own judgment) that the land use for the site in question was changed by the DDA from 'agriculture and water body' to 'residential' and 'commercial' only in the year 2006. Hence the 1999 order for change in land use which related to adjoining land over part of which, Akshardham temple stands, was not applicable to the case at hand. In addition the Supreme Court, just like the High Court, completely ignored the important constitutional and public interest issues raised in the order of Justice Gita Mittal in W.P. (C) 6729/2007. It is a moot point whether the latter PIL was adjudicated at all by the Courts.

The Court while taking the question of delay on the part of the petitioners in approaching the Court as material seem to have ignored the fact (details carried in its own judgment) that the land use for the site in question was changed by the DDA from 'agriculture and water body' to 'residential' and 'commercial' only in the year 2006. Hence the 1999 order for change in land use which related to adjoining land over part of which, Akshardham temple stands, was not applicable to the case at hand.

Subsequently, a review petition against the Judgement of the SC has been filed by the original petitioners in the case.

Yamuna in the High Courts

Issues relating to river Yamuna have been matter of litigation before various High Courts. The Yamuna flows through the jurisdiction variously of the Uttarakhand High Court; the Himachal Pradesh High Court; the UP High Court; the Punjab and Haryana High Court and the Delhi High Court. An overview of some of the major cases at these courts provides an interesting insight on how these have dealt with various issues relating to the river.

2.1 Himachal Pradesh High Court

2.1.1 *Drugs in the River*

A significant case was *Baldev Singh Vs State of Himachal Pradesh*¹⁷. The Judgment delivered by Justice Deepak Gupta on 27-7-2006 is perhaps one of the most detailed judicial orders on the process of environmental clearance (EC) as well as the preparation of EIA reports. It dealt at length on the importance of 'zoning atlas', and on the need for a comprehensive EIA as opposed to a rapid EIA and the safeguards necessary before any hazardous activities were allowed.

This writ petition under Article 226 of the Constitution of India was filed in public interest by some residents of villages Batamandi and Ganguwala falling in Tehsil Paonta Sahib of District Sirmaur in Himachal Pradesh. The petitioners questioned the legality and propriety of the expansion of the existing fermentation plant of Ranbaxy Laboratories Limited at Ganguwala for manufacture of bulk drugs and setting up of a new formulation plant.

One of the main issues raised was with regard to the withdrawal of ground water by M/s Ranbaxy Laboratories for the two plants and the effect of this withdrawal on the availability of ground water to the villagers. It was stated by the petitioners that the effluent of the plant is highly toxic and will have great adverse effect on the river Yamuna on the banks of which the plant is situated. It was contended that the plant if permitted to be set up will cause massive pollution affecting the health of the residents in the area.

¹⁷ Citation: 2006(3) Shimla LC135

The petitioner's contention was that the 'zoning atlas' as prepared by the Central Pollution Control Board (CPCB) stipulates the siting criteria for different industries. The objectives of preparing 'zoning atlas' for siting of industries are (i) to zone and classify the environment in a District; (ii) to identify locations for siting of industries; and (iii) to identify industries suitable to the identified sites. This has been violated since the same prohibits the setting up of a bulk drug manufacturing unit in Paonta Sahib.

On 1.4.2005 on the request of and with the consent of the parties concerned the Court set up a Committee consisting of Principal Secretary (PW & Industries), Principal Secretary (Education) and Secretary (Science & Technology and Information Technology). According to the Terms of Reference (TOR) of the Committee, it was required to go into the questions of legality, propriety and correctness of the setting up of the units and inter alia to enquire, find out and report whether in setting up these units any laws relating to the acquisition / transfer / alienation / possession of land in any manner had been violated or not, and if violated to what effect. The Committee was empowered to co-opt 3 to 5 members who are experts in the concerned fields.

The Court after considering the detailed report of the Committee came to the conclusion that the entire district of Sirmaur has been termed as highly aerial sensitive area and therefore A-I Industries cannot be set-up in that area. With regard to water pollution again as per the zoning atlas the fermentation plant of the Ranbaxy Laboratory was held to have the potential of water pollution of the category W-I (very high impact potential). The highest risk areas for water pollution are on the river banks of Markanda, Bata and Yamuna rivers where the zoning atlas advises that 'no water polluting industries should be situated'.

The Court held so far as the issue of zoning atlas is concerned that "*there can be no gainsaying the fact that the Zoning Atlas is a very important document and must be given due weightage. Since it is prepared on a large scale it may not be used to straightway reject or accept the proposal of an industry. However, the guidelines given in the Zoning Atlas must be looked into and one of the most important guidelines in the Zoning Atlas is that before an industry is set up micro level analysis must be done by preparation of a comprehensive Environment Impact Assessment (EIA). The other guidelines of the Zoning Atlas with regard to maintenance of buffer zone especially for reserve forests and sanctuaries etc. must be kept in mind while preparing EIA. As observed by the Committee at times it may not be feasible and practical to follow each and every guideline given in the Zoning Atlas. All these aspects must be taken into consideration when the EIA is prepared and only thereafter the site should be approved or rejected*".

The EIA notification envisages that a comprehensive EIA report must be submitted based on one year data. It is only in case the project is unlikely to cause significant impact on the environment that this requirement may be dispensed with. A project

proponent must satisfy the Impact Assessment Agency (MoEF in this case) that a comprehensive EIA can be dispensed with in the peculiar facts and circumstances of the case.

The Court took note of the fact that the fermentation unit at Ganguwala is a hazardous industry involving high levels of air and water pollution. In fact although a rapid EIA based on three months data has also not been prepared or submitted till date, a surprising aspect of the matter is that a comprehensive EIA appears to have been prepared in the year 1992. This is no longer relevant since the expansion is to take place more than 14 years thereafter and the very basis of the data would have changed during this period. In fact the earlier comprehensive EIA relates to the production of an entirely different compound (Cephalosporin) production whereof was limited to 8 TPA, however, what is to be manufactured is Statin drugs i.e. Lovastatin & Pravastatin and that too with a capacity of 120 TPA. The Court noted that "*In fact we observe with dismay that the Pollution Control Board has acted in a highly negligent manner in permitting the respondent No. 4 (Ranbaxy) to manufacture Statin drugs without obtaining any EIA whatsoever*".

The Court in conclusion held as follows:

■ *In our view no industry can be set up without a proper EIA. It is for the Impact Assessment Authority and not for the proponent of the Industry to decide whether a comprehensive EIA should be prepared or the rapid EIA is sufficient to meet the needs of the Industry. Till this comprehensive EIA is filed and approved by the Impact Assessment Authority no further construction can be permitted to take place.*

■ *In our view the EIA notification is a very important notification and in the present case the same has been violated in letter and spirit. The only EIA till date is for the manufacture of Cephalosporins. In our considered view before respondent No. 4 is permitted to set-up the plant it must get prepared a comprehensive EIA as well as Environment Management Plan. These two documents will take into consideration the recommendations made in the Development Plan and also various guidelines issued in the Zoning Atlas. These documents would also show as to whether the guidelines are being complied with or not. In case the guidelines are being violated then there should be a recommendation whether they should be relaxed or not and if any guidelines are to be relaxed the reasons thereof.*

"In our view no industry can be set up without a proper EIA. It is for the Impact Assessment Authority and not for the proponent of the Industry to decide whether a comprehensive EIA should be prepared or the Rapid EIA is sufficient to meet the needs of the Industry"

2.2 Allahabad High Court

2.2.1 *The Yamuna at Krishna's abode*

The sorry state of the river Yamuna at Mathura and Vrindavan, was highlighted through a letter petition to the Allahabad High court in 1998 which subsequently was heard as a PIL titled *Gopeshwar Nath Chaturvedi vs. State of Uttar Pradesh and others (No. 1644 of 1998)* and led to series of directions. The main arguments of the petitioner as highlighted in the petition were:

- River Yamuna, which is not only the lifeline of millions of people residing on its banks, but is also considered as one of the holy rivers of India is under serious threat from pollution and contamination caused by dumping of large amount of untreated industrial and domestic waste into the river from the towns of Mathura and Vrindavan. The twin holy towns of Mathura and Vrindavan are visited by millions of pilgrims as these places are closely associated with the religious sentiments of the people. Both Mathura, the ancient city and Vrindavan, believed to be the birth place of Lord Krishna, are foremost pilgrimage centers of the country. Holy Yamuna water is transported by special van to Nathdwara Temple in Rajasthan from the famous Vishram ghat of Mathura, and the holy water from this ghat is used in the temples for worshipping and preparing 'prasad'. The religious importance of the ghats is such that Yamuna water is filled in copper pots from here and taken by millions of pilgrims all over the world for religious ceremonies.
- Mathura town does not have a full-fledged sewerage system. The trunk sewers get choked and all the branch sewer lines are discharging the wastewater into the drains. These drains further discharge the untreated waste into river Yamuna causing severe pollution of the river. There are more than 18 drains carrying highly toxic domestic and industrial waste into the river Yamuna, making the river unfit for drinking, washing and bathing purposes. These 18 drains discharge untreated sewage into the river. It is brought to your kind notice that millions of pilgrims and the local population bathing or drinking the river water or carrying it with them for religious ceremonies, have become victims of negligence and indifference on the part of the authorities responsible for the upkeep and maintenance of the bathing ghats and keeping the river water clean and healthy. The religious sentiments of the people are seriously hurt and they feel helpless and disgusted at the inaction on the part of Govt. of India and the State of U.P. who are bound to protect life and health of the people as well as religious sentiments of the worshippers of river Yamuna. As extensively reported in Newspapers, Yamuna water at Mathura has been found to be contaminated with insects, dead bodies of animals and humans and highly toxic dirty wastewater carried by the drains / Nalas, which not only offends the religious sentiments of lakhs of pilgrims, but also poses a serious health hazard to them and to local population. Incidents of large scale fish deaths have become more and more common in the toxic waters of river Yamuna at Mathura.
- The authorities should also take suitable action against the polluting industries like the Saree and cloth printing & dyeing industry, iron & steel industries and others

which do not have effluent treatment plants and are discharging untreated effluents into the river.

- There is a dire need to establish River Police to check contamination of the river Yamuna caused by throwing of dead bodies of humans and animals and other waste into the river by private persons and to upgrade and maintain the ghats and provide hygienic facilities at these pilgrimage places and to take steps to make the Yamuna water fit for bathing standards in Mathura and Vrindavan

Justice Giridhar Malviya made a site visit to see first hand the condition of the river and in his order dated 14 September 1998 stated as follows:

" During the visit to Govardhan at Mathura by one of us (Giridhar Malviya, Justice) on 2nd and 3rd Sept. 1998 the condition of Mansi Ganga was found to be extremely unhealthy. A large number of pilgrims and tourists from all over the country go to Mathura and perform the Parikrama of Govardhan and during that visit the people, since time immemorial, had been harbouring a wish to take a dip at Mansi Ganga and also perform Archana by its water. The condition of water at Mansi Ganga was such that aside the question of taking a dip in it or performing Achaman one had to be careful that even water of Mansi Ganga may not touch the feet of any person. On enquiry it was revealed that the drains of the adjoining building containing faeces and other dirty water are constantly flowing into Mansi Ganga with the result that its water not only has become highly polluted but also unhealthy and it stinks and it has become the catchment area of entire township of Govardhan as the water and drains falling around it come in it. It was reported that Mansi Ganga and its surrounding places are owned by private persons and are their personal properties. The fact still remains that it is visited by pilgrims from all over the country. Since tourists visit Mansi Ganga and its temple throughout the area this sacred place cannot be left to be taken care by the trust alone which might be really and legally responsible for its maintenance and upkeep. The Department of Tourism has to be energised and made responsible to keep all such places of pilgrimage neat and clean. Responsibility of the local administration also cannot be minimised once it is found that the drain water from the toilets is ultimately reaching this sacred place" .

The order led to series of directions on setting up of Sewage Treatment Plant and diversion of waste water.

2.2.2 Crematorium on The Banks

In *Sri Ramdas Vs State of UP and others*¹⁸ a public interest litigation was filed seeking directions to restrain respondents from construction of a crematorium (*Shavdah Grih*) at Sri Bansibat place by the side of Vrindavan Panchkoshi Parikrama Marg on plot No.

¹⁸ Civil Misc. Writ Petition No. 37055 of 2001

514 on the banks of river Yamuna. The petitioner stated that Vrindavan, a place of Raas-Lila of Lord Krishna has its religious importance amongst the Hindus. The Vrindavan is the actual place of Ras-Lila of Lord Krishna and is famous throughout the world. The pilgrims do parikrama on their feet, as well as by crawling on the parikrama marg. Crores of people come here to do parikrama as well as to worship Lord Krishna. The Yamuna Pollution Control Unit of U.P. Jal Nigam, taking care of the pollution of river Yamuna has proposed to construct a crematorium on plot No. 514 at village Dangoli, Tehsil-Mant, District-Mathura, and has constructed four platforms in the year 1995 which were never used. They have started construction of a boundary wall and three rooms. There are religious institutions, as well as dense residential colony around the place. The petitioner has objections to the selection of the site and construction of crematorium at Vanshivat and claims to be representing the entire Hindu community. His main objections are that there are religious sentiments attached to the place. It will cause disturbance to the residents and pilgrims walking on the parikrama marg adjacent to the proposed construction.

The Court however, saw a private motive behind the Petition. According to the Court, the petitioner in the present case is illegally occupying the land near the proposed site in question. The Court had invited objections from the residents of the area. No one has come forward to support the petitioner's case. The Court held that "*We cannot rely upon the letters written by the Managers and secretaries of Ashram, Temples and Schools in support of petitioner's objection, as these persons are not before us. We, therefore, find that the petitioner as an unauthorised occupant of adjoining land, and with no direct relation with the cause espoused by him, does not have sufficient interest to maintain this writ petition.*"

The Court concluded based on the report of a Committee appointed by it that the site was selected by the District Administration after its allotment by the District Magistrate and the approval of the Yamuna Pollution Control Unit, of the U.P. Jal Nigam, Mathura. It was also approved by Ministry of Environment and Forest (National River Conservation Directorate) Government of India and that the State Government released the grant for construction of the modern wood base crematorium. The 'Vrindavan Vikas Samiti' resolved to improve the area by planting trees. The Assistant Environment Engineer, Mathura, who had prepared the report, for selecting the site has also filed his affidavit dated 13.5.2002 giving reasons including the object of checking pollution of river in selecting the site.

The Court also took note of the changing course of the River Yamuna: "we find that after river Yamuna changed its course and started flowing at about one and half kilometers from Panighat the residents of Vrindavan have used the site at Vanshivat on the bank of the river for cremation. For the last about twenty five years this place has been used as crematorium without any objection from any citizen, religious institutions or organisation. This site was selected and preferred with the approval of all the authorities. The authorities must have considered all the aspects before selecting

the site. The objection that the burning of dead bodies near Panchkosi Parikrama Marg will hurt religious sentiments of the pilgrims is also not sustainable from the site plan filed by the parties on record. We find that the site is more than 50 feet from the parikrama marg. Further the crematorium is surrounded by a 7 feet boundary wall and with its modern construction of cast iron platforms and tin shed it will not cause such emissions or smell, which may disturb the pilgrims or hurt their sentiments”

The Petition was accordingly dismissed.

2.2.3 Protecting the rights of the traditional user

Zunaid Ahmad Vs State of Uttar Pradesh¹⁹ is an interesting case with respect to the right of traditional users of the river. The petitioners were mining lease holders of sand on the Yamuna River bed in parts of Kaushambi district. They were granted mining leases in the year 2006 which were operative for a period of three years till 2009. There was a condition in the lease deed that the lease holder will not conduct mining operations by use of machines except with the permission of the District Magistrate. The petitioners (lease holders) were aggrieved by the stoppage of their mining operations on the basis of oral orders of the District Magistrate.

The Government order permits use of machines in the mining operations but provides that the lease deed would contain a condition that if the authorities are satisfied that the use of machines would cause damage to the environment or to the river bank or to the natural flow of the river, it would be open to the authorities to stop the use of machines.

The Court after perusing various provisions of the law concluded that *it appears that the prohibition on the use of machines can be made not only on account of the fact that the use of machines will cause damage to the environment or would affect the natural flow of the river but also if it is found that the use of the machines will displace the persons of castes traditionally engaged in mining.*

The Court referred to a news paper report in 'Amar Ujala' which stated that about 5000 labourers traditionally engaged in excavation of sand who were rendered unemployed on account of use of machines launched an agitation on the river bank of Yamuna in the Kaushambi and Allahabad Districts and destroyed machines and one Thekedar had also fired to protect his machines and had thereby severely wounded a labourer. The Report goes on to say that the unemployed labourers had been agitating against the use of machines by the Thekedars for a long time but the district administration paid no heed. The Court specifically observed:

¹⁹ Equivalent Citation: 2008(4)AWC3616

“Even a week before the incident the workers had held a meeting warning the district administration but even that had no impact upon the administration. No doubt a Newspaper Report is not admissible as primary evidence, but it has also been stated in paragraph 13 of the counter affidavit of the State that use of machines creates a social problem of unemployment which in turn leads to a law and order problem. In paragraph 14 of the counter affidavit the incident relating to destruction of machines has been referred to. Although there may be different versions about the incident but the occurrence reported in the newspaper has not been denied. The shape which the agitation took takes time to ferment. It appears that timely intervention of the district administration stopping the use of machines and respond to the grievances of the people could have averted the incident referred to in the Newspaper. The sentiment of the people in the situation of this case may be expressed in the following words:

For ages has the Yamuna brought
From Mountains high the golden sands
And we did make a living bare
From the bounty strewn on the submerged lands.
But now the minerals have been leased
To people who have better means
They use machines to suck the stream
And make employment for us a wishful dream.
While they get richer day by day
Our right to live has been snatched away
Oh injustice and thine serpent 'hiss'!
We wont bear thee but strike against this!

The Writ Petition was accordingly dismissed.

2.3 Delhi High Court

2.3.1 *There is Blood in the River*

An important case was **Maneka Gandhi Versus Union Territory of Delhi and ors**²⁰. In the petition it was stated that the pollution generated by the slaughtering of animals on such a large scale has created havoc in the lives of people living in Delhi, Haryana and U.P. It is averred in the petition that about 13,000 litres of blood is discharged in the Yamuna daily from the Idgah slaughter house alone and almost a similar quantity from other illegal slaughtering places. As a result, the residents of Delhi and adjoining states are compelled to drink such polluted and contaminated water of river Yamuna.

It was stated that because of such horrifying conditions at the Idgah slaughter house, the risk of spread of communicable diseases is extremely high. A large meat eating

²⁰ ILR1995Delhi49

population is also being put to a great risk of life and health as the people are not aware of the appalling conditions under which animals are slaughtered, transported and sold. They do not know that the meat offered to them for consumption comes from a healthy or a sick and diseased animal. Contaminated and diseased meat is responsible for many meat borne diseases and food-poisoning. Filthy interiors littered with an amalgam of urine, dung, blood and viscera, flies, maggots and roaches present a macabre sight and causes pollution in the water and air leading to serious health hazard. Effluents discharged in open drains and sewers go to Okhla and at times without or partial treatment joins the river Yamuna.

According to the Petitioner, The Municipal Corporation of Delhi (MCD) has failed to discharge the obligation as envisaged under the Municipal Corporation Act. According to the petitioner in addition to the 13000 litres of blood discharged into the Yamuna from Idgah slaughter house perhaps the same amount of blood from illegal slaughtering flows in the Yamuna water. The water of Yamuna is the main source of drinking water for the people residing in Delhi, U. P. and Haryana.

One of the interveners in the case submitted that supply of wholesome and clean drinking water is part of the fundamental rights of the residents of Delhi, as enshrined under Article 21 of the Constitution. This fundamental right of the residents of Delhi and of adjoining areas is flagrantly violated by the Municipal Corporation of Delhi, by not providing wholesome and clean drinking water. When according to the petitioner, 13000 litres of blood and other effluents from the said slaughter house are permitted to be discharged in the Yamuna River, then how the M.C.D. is ensuring supply of wholesome and clean water to the residents of Delhi.

The Delhi High Court dealt at length with the various issues. It set up a committee of lawyers to make a site visit and give a report. The horrific condition of the slaughter house shocked the Court. The Court saw a close link between the inhuman cruelty perpetuated on animals, the lack of even basic facilities and the resultant pollution caused. It is pertinent to refer to few paragraphs in the Court's order to appreciate the concern of the Court:

" 88. The petitioner has placed on record 15 colored photographs. For convenience, the photographs have been numbered from 1 to 15, Photograph No. 1 depicts rows of slaughtered animals and dirt. From this photograph, it is clear that the blood was freely flowing on the floor. The second photograph depicts slaughtered animals lying in blood and urine flowing all around. The third photograph depicts slaughtered buffaloes with free flowing of blood. The fourth photograph depicts large number of carcasses lying in the heap of filth. The fifth photo graph depicts pigs being slaughtered in the most barbaric way. The sixth photograph shows viscera and other organs under most unhygienic conditions in a small pond. The seventh photograph shows skinning of animals carried out under unhygienic condition. Even skin of semi-conscious animals is taken out. The eighth photograph shows a single rope which passed through the nostrils so that they cannot move.

The ninth photograph depicts that large number of buffaloes are virtually lying dead. The tenth photograph shows a buffalo lying completely exhausted in a heap of filth, garbage and mud. The eleventh photograph shows intestines, stomach and internal organs lying in open. The twelfth photograph shows that large number of buffaloes has been loaded in cycle rickshaw in most cruel way. The thirteenth photograph shows rods being inserted in buffaloes. The fourteenth photograph shows that large number of animals are loaded in a truck in a most barbaric way, with the rope passing through their nostrils so that they cannot move. The fifteenth photograph shows that in one truck dozens of large animals are put in the most inhuman manner.

89. Similarly, large number of photographs has been placed by the lawyers' committee, which also depicts extremely pathetic unhygienic and inhuman condition prevalent at the slaughter house. All the photographs and video film were taken in the presence of butchers and other functionaries of the slaughter house. The video cassette and the photographs depict extremely horrible unhygienic, distressing and disgusting conditions prevalent at the slaughterhouse. There is no semblance of hygienic conditions prevalent there. Animals are slaughtered in most inhuman and barbaric manner. It seems the effort is not to reduce the avoidable pain but to inflict as much pain and torture as possible. Some photographs depict the filth almost up to the ankle level.

90. It was with extreme difficulty that we could see these photographs and witness the video cassette. It requires enormous courage to see the video cassette".

With respect to the disposal of waste water, although the Municipal Corporation of Delhi took the stand that the waste water is discharged into the Yamuna River only after treatment, the court found it difficult to agree. According to it:

" Admittedly, the waste water joins river Yamuna, the main source of water supply in Delhi. The only question remains, whether it joins river Yamuna after full treatment or partial treatment or without any treatment. It is difficult to completely adjudicate upon the conflicting claims of the parties in these proceedings but after seeing large number of colour photographs and video film and the report of the Lawyers' Committee, we can safely come to the conclusion that conditions prevalent at the slaughter house are most unhygienic and are posing serious threat to life and health of entire population of Delhi, and particularly to the large meat-eating population of Delhi" .

Based on the submissions and the report of the lawyers committee, the Court reiterated an earlier order that the Idgah slaughter house must be closed down. Further, it directed that in view of the pollution caused due to the slaughter houses, the Municipal Corporation of Delhi must ensure supply of wholesome and pure drinking water to the residents of Delhi and adjoining areas. The Administrator of the Municipal Corporation of Delhi must set up a committee of experts to ensure supply of wholesome

and pure water. The committee must send its monthly report to the high-powered committee, set up by this court.

2.3.2 Making Yamuna the Thames!

In *Baldev Singh Dhillon Vs Union of India*²¹, the petitioner challenged the Notification issued by the Government for acquiring his land under the Land Acquisition Act for what is termed as "Planned development of Delhi viz., Channelization of River Yamuna".

The case was finally decided by Justice Sikri after the division bench of Justice Mahendra Narain and Justice Goel gave separate judgments in the case.

A background to the case has been provided as under by Justice Sikri:

" In this batch of writ petitions relief claimed is the same. All the petitioners are impugning Notification dated 23rd June, 1989 issued under Section 4 of the Land Acquisition Act (in short 'the Act') and declaration dated 22nd June, 1990 issued under Section 6 of Act. There is some dispute about the dates of publication of these notifications which would be taken note of at appropriate stage. What needs to be noted at this stage is that all these petitions were heard earlier by a Division Bench of this court comprising of Mahinder Narain, J. and J.B. Goel, J. Lead case was Writ No. 2556/1990. After hearing the parties the two Judges differed with each other. In their separate pronouncements dated 11th September, 1996, while Mahinder Narain, J. Held that the impugned notifications were illegal and quashed the same, according to J.B. Goel, J., there was no infirmity in the two notifications, which were perfectly legal and valid and, therefore, writ petitions were required to be dismissed. In view of these divergent opinions, matter was referred to the third Judge. However, for some reason or the other the matter kept pending and ultimately entrusted to me in December, 2003" .

Justice Sikri went on to mention:

" The land in question is large tract covering numerous villages, 15 villages to be precise, on the bank of river Yamuna. Total area of the land is 3500 hectares. Purpose of acquisition is "Planned Development of Delhi, viz. channelisation of Yamuna River". Notification dated 23rd June, 1989 under Section 4 of the Act was issued which, according to the respondents, was published in the Delhi Gazette on 23rd June, 1989, in 'Veer Arjun' (Hindi) on 21st July, 1989 and in 'The Times of India' (English) on 22nd July, 1989 and was also notified in the locality on 17th July, 1989. Some of the persons, likely to be affected thereby had filed objection under Section 5A of the Act. These objections were considered by the Land Acquisition Collector, who submitted separate reports in respect of each village

²¹ 64(1996)DLT329

and after consideration thereof the Government issued declaration dated 22nd June, 1990 under Section 6 of the Act. According to the respondents, this declaration was duly published in the Delhi Gazette on 22nd June, 1990'.

What was being planned in Delhi was the Thames model. The Master Plan 2001 refers to "channelisation" of river Yamuna in following terms:

"Rivers in the major metropolitan cities of the world like Thames in London and Seine in Paris have been channelised providing unlimited opportunities to develop the river fronts. After the results of the C model studies for the channelisation the river become available, development of river front should be taken up, considering all the ecological and scientific aspects, as a project of special significance for the city".

The words of Justice Mahinder Narain in the matter are strong and emotive and are perhaps the strongest words in favour of saving the river Yamuna. It is therefore pertinent to quote some of the relevant paragraphs from his landmark judgment which surely can provide a strong precedent for future litigation if any, on the Yamuna. It is also pertinent to point out that details about channelization and its implications are based on the Judges' own research on the subject.

- *"In order to understand what is involved in channelisation of River Yamuna as postulated by the said notification, it is necessary to know what is channelisation. Whereas a canal is necessarily man made, a natural river channel is not. Channelisation is the work of man, just like making a canal is the work of man. Canal making is resorted to take away waters of river from its channel, channelisation may mean deepening of the natural river channel or creating a new channel in the river bed, or its flood plains.*
- *During the course of arguments in view of what is stated in the notifications for acquisition and in the Master Plan Perspective 2001, three things had to be explained by the Counsel for the respondents :*
 - (i) *How is river Yamuna to be made pollution free? (As this is stated in the Master Plan for Perspective 2001)*
 - (ii) *How is river Yamuna to be channelised? (This is the stated purpose of acquisition of land)*
 - (iii) *Is it correct to say that river Thames in London and river Seine in Paris have been channelised? (It is so asserted in the Master Plan Perspective 2001).*
- *None of these three questions were answered, perhaps deliberately, as answers to these questions would have had adverse effect on the case of the respondents. The answers to these three questions were quite simple.*
 - (i) River Yamuna is to be made pollution free by treatment of the drain waters discharged into it;

- (ii) River Yamuna is to be channelised by making plans, maps, alignments, depth of flow charts of its course through the Union Territory of Delhi, working drawings etc., all drawn to scale;
- (iii) River Thames has throughout centuries been navigable river. There is no need for deepening its channels.

- *These are the answers which flow from the information which has been gathered by me, and set out here below. Also indicated here below the sources from which the information has been gathered, so that either in this case, or in any other case, the information can be of use. I apprehend that had this information been given by the respondents, the hearing of the case would not have lasted as long as it did. If Counsel for respondents did not give this information regarding water treatment, or show us the plans drawn to scale in connection with channelisation of River Yamuna, not giving any information regarding channelisation of River Thames or River Seine, they must have had good reasons.*
- *As stated hereafter, ever since the aforesaid Notification, to date, no scheme of channelisation of river Yamuna or maps drawn to scale showing the areas which are going to be channelised has been shown to us despite the Delhi Administration and the Delhi Development Authority being asked several times to produce such a scheme or map, or both.*
- *Reference to David Gordon Wilson's book makes it clear that what is stated in the Master Plan about River Thames is factually incorrect whereas River Thames was used for commerce and trade and was navigable by a suitable type of crafts called Barges. It is common knowledge that there has been no River traffic worth the name in the river Yamuna as it passes through the territory of Delhi. The fact that canals have been in existence in the city of London does not establish that the River Thames is channelised. As noted by D.G. Wilson, River Thames was used for navigation since Saxon times. It continues to be so used even today.*
- *It appears that it is only during the rainy season, when the canals of Haryana cannot carry the larger quantity of waters from the catchment areas that the river Yamuna is permitted to become a river. It is surprising that the waters of river Yamuna are almost entirely appropriated by the State of Haryana; and the State of Uttar Pradesh. Surely it was not the intent in 1892 to starve Delhi of Yamuna waters, surely the Constitution of India and the laws enacted thereafter, did not so intend. Why has this sorry state been permitted to become so nightmarish for Delhi? Would it not be far simpler to feed the canals of Haryana with waters from two rivers Satluj and Beas through the Govindsagar by constructing suitable linking canals?*

If Yamuna River had been as polluted as it is now in Delhi — Vrindavan — Mathura—Agra Section, in the times when legends of Lord Krishna had been created, there would have been no Raas-Leela of Krishna and his gopis frolicking in the Yamuna waters!! Surely, Krishna would not have cavorted with his companions in a dirty drain!!

- *It appears to me that one way of improving the quality of water for Delhi would be to increase the supply of pure water in river Yamuna. Increased supply of water would automatically bring down the percentage of pollutants in the Yamuna waters. Primarily, the drains that discharge waters in Yamuna must have water treatment plants to eliminate the polluting matter.*
- *The length of river Yamuna in National Capital Territory of Delhi is about 50 km with 50% of the length in present urban limits and the balance in rural areas of Delhi with a width varying from 1.5 km to 3 km. River Yamuna has become an intolerable centre of pollutants to such an extent that in half of its length the quality of water is E (not fit even for animal consumption) due to fall of 17 large storm water drains.*
- *It is clear that unless the quality of water of Yamuna, as it flows through the city of Delhi, is improved by increasing the water supply and providing adequate number of water treatment plants river Yamuna, as it flows through the city of Delhi, would be nothing but a big sewage drain, bigger than any of the 17 drains that discharge unhealthy polluted water into the river.*
- *In view of the quantity and quality of water which is now flowing through the River Yamuna, it is necessary at least, to supplement the quantity of water coming into the river Yamuna by increasing the discharge of pure water into the natural bed of river Yamuna at Tajewala. If necessary, this be done by reducing the flow of water into the eastern and the western Yamuna canals. Increasing the quantity of pure water would itself have the consequence of reducing the percentage of impurities in the Yamuna in Delhi.*
- *Instead of providing "recreation" the polluted river will spread sickness, and death. Yamuna which is not pollution free is only likely to be a source of misery rather than "recreation" for the citizens of Delhi.*
- *There is no similarity between river Thames and river Yamuna as far as navigation and use of river transport is concerned. In any case, the Tajewala water works were constructed for feeding the western and the eastern Yamuna canal. At that time Punjab, Delhi and Uttar Pradesh were treated alike by the then British rulers (See preamble to the Northern India Canal and Drainage Act, 1873). Despite these two canals taking waters from the river Yamuna, it still had sufficient water for Delhi. Perhaps with the creation of Haryana, the western Yamuna canal network was extended beyond the capacity of Yamuna to provide waters. The waters are not put back into Yamuna to maintain the waters of Yamuna during its passage through the Union Territory of Delhi despite the facts that according to law relating to river waters, (cf. American Jurisprudence 2nd Vol. 78, p. 429 - 885), it is clear that Riparian owners of land i.e. those whose lands are adjacent to*

Till Yamuna is made pollution free, it will be a folly to carry on any scheme of making "recreational areas", and urban development on the course of the River. Unless the river is made pollution free, instead of providing healthy environment, any development proposal will ensure disease, if not epidemic.

the river banks are permitted to take waters for their use, and have an obligation to put the waters back into the river. It seems to me that it would not be permissible for any person or body, or even a federating State to take away the waters, by diverting the course of the rivers, through canals or otherwise, and not put the same back after reasonable use thereof. It would not be permissible for one riparian owner to so appropriate the waters of a perennial river that the river is rendered virtually completely devoid of waters down stream, virtually extinguishing the rights of lower riparian owners or lower riparian States. The resultant inadequate water supply in river Yamuna has ensured that river Yamuna cannot be used for any navigation purposes and therefore, to say in the Master Plan that river Yamuna should be channelised is an attempt to mislead, if not an attempt to defraud the public at large.

- *As stated hereinabove, the quality of water in the river Yamuna is categorised as 'E'. This makes the water of river Yamuna unfit for even animal consumption. It appears to me that unless quality of water is improved to make it fit for human consumption, it is pointless to talk in terms of channelising. I see no useful purpose in channelising something which is a mere drain without first ensuring that waters discharged by the drains are so effectively treated that the river waters become fit for human consumption. Till the waters of the drains which are discharging sewage waters into the river Yamuna, which come from various parts of city of Delhi, are properly treated there is no likelihood of water of river Yamuna being rendered free from dangers to the health of the citizens and visitors of Delhi.*
- *I am of the view that it is essential that the river Yamuna be restored its pristine glory being one of the two great rivers which traverse the width of the subcontinent of India (from west to east) along with the river Ganga, so that the benefits of clean water is made available to each and every city, town or village, located close to the river Yamuna instead of Yamuna from Tajewala water works upto the time it meets with the river Ganga at Allahabad, being reduced to the status of a sewage drain. A good deal of callous neglect on the part of the authorities concerned appears to be the reason for the river Yamuna having water which is unfit for human consumption, as untreated sewage waters and sewage drains waters have been made to enter the river Yamuna. Presently the waters in the river Yamuna are not even fit for animal consumption.*
- *"Channelisation" of river Yamuna, would mean that a natural perennial river like Yamuna is to be so interfered with that,*

River Yamuna is as old as India is old, it has already existed forever. No development can last longer than forever Yamuna has been there in India since forever. It is better to preserve it than to have "developments", which may be proposed for it by any person, or body, for any building or engineering activity....

a perennial river which a large section of the population regard as holy, is to be converted, by alleged “planned development”, into an artificial canal. Can there be anything which could be more destructive of the bio-ecological system of river Yamuna? Anything can be more perverse?

- *The Delhi Development Authority is a body created for urban planning. Statutorily the Delhi Development Authority cannot do any river planning for an inter-state perennial river like river Yamuna. For the aforesaid reasons it cannot be said that any statutorily valid plan is in existence for making the canal/channel.*
- *Yamuna is as old as India is old, it has already existed forever. No development can last longer than forever. Yamuna has been there in India since forever. It is better to preserve it than to have “developments”, which may be proposed for it by any person, or body, for any building or engineering activity.*
- *I give directions that the flood plains of the river Yamuna, as it flows through Delhi, should be clearly got demarcated with the help of the revenue records, which already contain sufficient material, to indicate which lands adjacent to the river Yamuna are flood prone, as they are located in the flood plains (“Sailab” lands), and inasmuch as it is dangerous to build on the flood plains without there being adequate flood control measures, I issue an injunction, restraining carrying of any construction activity of any nature or description in the flood plains of the river Yamuna or in the river bed, except insofar as such construction activity is necessary or incidental to the construction of bridges, weirs, barrages on the same. I also direct that in case the river Yamuna has to be channelised, then the Union of India should act in accordance with law and constitute River Boards, if not already constituted, who would make plans for channelisation of the river Yamuna.*

“Channelisation” of river Yamuna, would mean that a natural perennial river like Yamuna is to be so interfered with that, a perennial river which a large section of the population regard as holy, is to be converted, by alleged “planned development”, into an artificial canal.

Since the division bench differed on the matter and Justice Goel wrote the dissenting Judgement, the matter was referred to the third Judge. However, for some reason or the other the matter kept pending and was ultimately entrusted to Justice A.K Sikri in December 2003. Justice Sikri in his judgement did not agree with Justice Mahinder Narain in substance but agreed with the spirit of Justice Narain’s judgment in so far as it referred to the sad fate of river Yamuna in Delhi.

According to Justice Sikri²² :

" The material on record clarifies that although the project was given the nomenclature 'Channelisation of River Yamuna', it was not confined to river channelisation alone as channelisation of the river is commonly understood. Entire discussion regarding meaning of channelisation and discussion about river Thames, London and river Seine, Paris in the judgment of Mahinder Narain, J. would, therefore, be of no avail. It may be that what is discussed is an erudite exposition of the concept of river channelisations and the suggestions as to what is required to improve the condition of river Yamuna, would be of immense value which policy makers may take into consideration at appropriate stage and occasion. But validity of notifications acquiring land cannot be examined from this angle. We are here concerned with the action of the Government in acquiring the land. Material on record suggests that the scheme in contemplation includes improvement of river belt on both sides although loosely described as "Channelisation of river Yamuna ". What is relevant is the understanding of the scheme framers as discussed in various meetings, put on record and conceptualisation of the policy makers which led to the decision to acquire the land. If the Government is of the opinion that it needs land for such a project (and the project as envisaged and conceived) and the decision does not suffer from any vices known in the administrative law which may be ground for interfering with such administrative action, the Courts would not interfere with such an administrative action. Similarly it is not for the Court to give its own interpretation to the scheme by assigning literal meaning to the phrase "Channelisation of Yamuna River", more particularly when the respondents have explained with reference to the record as to what they understood by the project."

In his epilogue, Justice Sikri however agreed with Justice Narain with respect to the urgent need to protect the Yamuna:

" I have considered the matter up to this stage purely from legal angle. Challenges which are made to the acquisition of land in question are found to be unsustainable. However, before I close it would be necessary to say something about the planning of Yamuna river although in the Master Plan and in the impugned notifications concept is described as "Channelisation of River Yamuna". I have already mentioned that from the records it appears that it was not only channelisation of river Yamuna which was conceptualised and the policy makers had (and still have) in mind the development of river bed, including channelisation of the river. The river Yamuna is one of the most important natural features of Delhi and supposed to be a major source of water supply to the city. River Yamuna in NCT of Delhi cuts through the city from the North to south for a length of merely 50 kms. The total of about 9700 hectares of land is situated in the designated river bed defined by the existing

²² Baldev Singh Dhillon Vs union of India 121(2005)DLT606

marginal bund on the Eastern and Western side. In a telling account of the present state of affair of river Yamuna, Mahinder Narain, J. has rightly brought out the sordid state of affair. That part of the river Yamuna which flows in Delhi can hardly be called a river. It is a big dirty drain today. Discharge of industrial effluents and other pollutants have caused havoc to this river. Delhi is practically without any natural source of water. With swelling population, which increases by at least half a million every year, there is serious water crisis. Need / Demand of water far exceeds the supply. For this limited supply also, Delhi has to depend on neighbouring cities / states. It is a matter of common knowledge that the much hyped 'Sonia Vihar Jal Yojana', the project which started with fan-fare, is in a quandary only because we do not have water and neighbouring states have thus far expressed their inability to oblige Delhi in this regard. Therefore, it is high time that Yamuna is restored as a river with pure water - and "Krishna Teri Yamuna Maily" tag is removed. The suggestions which are made by Mahinder Narain, J. in his critique require serious consideration by the policy makers for cleansing Yamuna, though the said critique may be out of context in so far as legality of the issue at hand is concerned."

2.3.3 Securing the River Bed

The Wazirpur Bartan Nirmata Sangh case WP (C) 2112/2002 started in the High Court of Delhi in 2002. As the case is of the nature of a continuing mandamus, it continues to be heard on a regular basis. Till date the Court has issued over fifty orders and judgments in this matter. This case is one of the landmark cases in the jurisprudence relating to the River Yamuna as it led to the removal of thousands of encroachments of varying nature from the banks of the river.

Interestingly this case was filed for reasons entirely unrelated to the pollution in river Yamuna. It was filed by an organisation to remove squatters and encroachers from public land. The Court passed an important order on 29.11.2002 in which it held the Government's policy to allot land which it had acquired to squatters to be unlawful. The Court's direction in this case led to a massive eviction drive of encroachers in the Yamuna Pushta area.

The Delhi High Court passed an order on 03.03.2003 in which it elaborated the causes of the pollution of the River Yamuna and stressed on the fact that encroachments on the river bed with no drainage facility mean that the sewerage and filthy water from these encroachments pollute the river. The Court held that-

"...River Yamuna which is a major source of water has been polluted like never before. Yamuna Bed and both the sides of the river have been encroached by unscrupulous persons with the connivance of the authorities. Yamuna Bed as well as its embankment has to be cleared from such encroachments. Rivers are perennial source of life and throughout the civilised world, rivers, its water and its surroundings have not only been preserved, beautified but special efforts have been made to

see that the river flow is free from pollution and environmental degradation. The Yamuna River has been polluted not only on account of dumping of waste, including industrial waste, medical waste as well as discharge of unhygienic material but the Yamuna Bed and its embankment have been unauthorisedly and illegally encroached by construction of pucca houses, jhuggies and places for religious worship, which cannot be permitted any more. As a matter of fact, under the garb of reallocation, encroachers are paid premium for further encroachment. Delhi with its present population of twenty million people can take no more. In view of the encroachment and construction of jhuggies/pucca structure in the Yamuna Bed and its embankment with no drainage facility, sewerage water and other filth is discharged in Yamuna water. The citizens of Delhi are silent spectators to this state of affairs."

This order shifted the focus of the case from unlawful allocation of public land to encroachers to protecting the River Yamuna from pollution caused due to encroachments on the river bed. Given the absence of a coherent policy of the Government of National Capital Territory of Delhi (Govt. of NCT) to protect the river, one of the first moves of the Court was to pass an order on 16.11.2005 in which the Court set up a Monitoring Committee chaired by Justice Usha Mehra (retd.) to remove encroachments and to monitor the activities along the river front. The Committee consisted of a former Commissioner of Police, Vice-Chairman, Delhi Development Authority (DDA), Commissioner, Municipal Corporation of Delhi (MCD), Chief Engineer, UP State Irrigation Department, a Senior Advocate, and a retired Additional District Judge, Delhi, who was appointed as the Convenor of the said Committee. This Committee, which came to be known as the **Yamuna- Removal of Encroachment Monitoring Committee**, was initially set up for a period of one year starting from 01.01.2006 but given the nature of the matter and the significant progress made by the Committee, its tenure was extended twice with the Court in its order of 04.12.2008 extending the tenure till further orders. The constitution of the Committee ensured that all concerned government agencies were represented through senior officers and the fact that it was chaired by a retired judge of the same High Court meant that the Committee's findings would be taken seriously. Mr. Chandiok, a Senior Advocate was appointed the amicus curiae in the case to assist the Court. The Government of Delhi was directed to bear all the costs of the Committee including the honorarium paid to its members.

From the very beginning there was no point of argument on how polluted the river Yamuna is once it enters Delhi - it was not contested by any of the respondents and nor did the Court undertake any serious scientific analysis to measure the extent of the pollution and the other causes of the pollution. The Court zeroed in on encroachments as the cause of pollution and notwithstanding the nature of encroachment it continued to direct their removal. On 08.12.2005, the Court gave a directive which became the basis of the several orders that followed –

“Encroachments on river beds and embankment have become order of the day. No effective steps have been taken to make Yamuna free from encroachments and pollution of all kinds. It is because of this realization that we have entrusted the task to the Committee headed by Justice Usha Mehra (Retired). We direct the Committee to take up in right earnestness and on day-to-day basis the task of removing encroachments upto 300 meters from both sides of River Yamuna in the first instance. No encroachment either in the form of jhuggi jhopri clusters or in any other manner by any person or organization shall be permitted. Yamuna has to be re-developed in such a manner that it becomes the habitat for trees, forests and center for re-creation. We are making it clear that no structure whether it pertains to religious, residential or commercial or any other purpose shall be allowed to exist. We are also making it clear that no sullage, no sewers, no industry, no factory shall be permitted on both sides of the embankment of Yamuna so as to prevent pollution of the river and if any such structure is found steps will be taken by the Committee to get the same removed.

(emphasis supplied)

In this order the Court also made it clear that no request for grant of any time should be entertained by the Committee. Illegal occupants of the river bed did not have the right to pollute the river and if there was a policy to relocate or rehabilitate them somewhere else, the eviction measure would not wait for such a policy to be implemented. This was somewhat a throwback to the Court’s initial orders holding relocation policy of the government to be unlawful.

The orders that followed mainly discussed the various reports (**Appendix 3**) submitted by the Committee to the Court and the progress (or not) made by the various government agencies to remove encroachments from the river bed. The Committee made frequent inspection of the areas in question and reported to the Court diligently through its monthly reports. If there was a case of violation of the Committee’s directions or the Court’s orders it was reported by the Committee to the Court which then took action accordingly. Depending on how well a government agency had performed, the Court would direct a senior officer of the agency to be present in Court or recall the order requiring him to be present in Court if there was a good progress report from the Committee. This move of the Court ensured that all government agencies followed the directions of the Court and also that the Court had a clear picture of the ground realities. On several occasions, the Court hauled up agencies such as the Delhi Development Authority (DDA) and the Public Works Department (PWD) for not following the directions of the Court.

The Court’s order of 29.03.2006 was significant as it ordered all courts subordinate to the Delhi High Court not to entertain any matter with regard to grant of stay against removal of illegal encroachers from the river embankment. The same was to be placed before the High Court as and when such case is filed. The Commissioner, MCD was

directed to ensure that no new construction took place within 300 meters from the river bed.

As a result of the above direction, some of the Court's orders in this case were in relation to particular instances of occupation of the river bed where the petitioners pleaded that they should not be evicted. For instance, an application was made to clarify that the Court's orders did not apply to ghats. The Court held that as the ghats were for religious practices they were not to be removed. However, the authorities were asked to beautify these areas and to ensure that no activities are undertaken at the ghats which would pollute the river. The Court further allowed the construction of residential facilities for the pandas near the ghats but warned the authorities that no sewerage from the facilities should reach the river.

By May 2006 the authorities had removed 2000 jhuggies and 100 dhobi ghats from the banks of the river as a result of directions issued by the Committee and the Court. As reports of compliance of Court's orders started coming in the Court's next step was to ensure monitoring and for this reason its order dated 03.05.2006 directed the Commissioner of Police to direct all the Station House Officers (SHOs) in whose jurisdiction the river Yamuna is passing, that henceforth it shall be their personal responsibility in case any encroachment takes place in their area in future. All these SHOs were to report to the Committee directly for onward instructions. The Court directed that boards be put on sites which had been cleared by the authorities which warned trespassers. In one instance of miscreants breaking into the barbed wire put up by the authorities, the Court issued a contempt notice to the concerned SHO and directions were issued to remove the renewed encroachment immediately. Placing personal responsibility on individual police officers was the Court's way of ensuring that once the land was made free of encroachments, it remained that way.

In June 2006 the Court was forced to clarify its order of 08.12.2005 in light of the DDA's different interpretation. DDA was measuring 300 meters from the middle point of the river flow which meant that over 200 structures which should have been removed according to the Court's instructions were not thus found. The Court clarified its orders on 01.06.2006 and held that the distance which has to be measured by the DDA would be from the edge of the water of river Yamuna. It further held that no structure which was on the river bed or within 300 meters of the edge of the water could be regularised.

"We make it clear that no structure which comes on the River bed or within 300 meters of the edge of the water of river Yamuna can be regularised even if it finds mention somewhere else and that would be playing not only with River Yamuna but it will be making mockery of the various orders passed by the Supreme Court, the plan made by the Central Government called 'Channelisation of River Yamuna' and tax payers' money amounting to thousands of crores of rupees which have already been spent for this purpose without getting any desired result. Apart from that such regularisation will have a massive ecological and environmental imbalance

and degradation due to large scale unplanned construction on both sides of River Yamuna and its embankment. We must not forget that river Yamuna is the lifeline for the citizens of Delhi and if we allow encroachment or unauthorised construction on the river bed or its embankment it will convert Yamuna into a huge sewage drain causing irreparable damage to the vast majority of the citizens of Delhi. Inconvenience to a few cannot be at the cost of convenience to the majority. The right of people of Delhi to have clean potable water from river Yamuna and health and friendly environment from its bed and embankment is a constitutional right”.

By May 2006, 9253 jhuggies and pucca structures including religious places as well 130 dhobi ghats were removed from various places at both banks of river Yamuna by the DDA, PWD, MCD and the Irrigation Department of the UP Government (Appendix 1).

But, the Court did make certain exceptions to the 300 meters mark. When the Kalindi bypass road construction came up before the Court, based on the Committee's recommendation, the Court allowed the construction of the bye-pass road on the condition that its alignment throughout would be at least 120 meters from the river edge. This figure was arrived at because the existing Ring Road was at an average distance of 120 meters from the edge of the river. The Court made it very clear that it was making this exception because of peculiarity of the case.

An interesting aspect of governance that was brought about through this case was the need for various governmental agencies to work in coordination to ensure that the encroachments are removed. Some of the Tibetan refugees' resettlement colonies existed within the 300 meters range from the river. The Court directed the Govt. of NCT to coordinate with the Ministry of External Affairs to ensure that the refugees are relocated somewhere else in more hygienic conditions. The Court took notice of the lack of any positive steps being taken either by these agencies on this matter and directed the Secretaries of Ministry of External Affairs and Ministry of Urban Affairs along with the Govt. of NCT to resolve the relocation problem of the refugees immediately. The Court itself came up against another body – the Religious Committee constituted by the Govt. of NCT. The demolition of any religious structure apparently required the permission of this Religious Committee. The Court without going into the legality of the constitution of the Committee held that its order was a blanket order for all unauthorised construction and therefore religious structures were not exempt from this order. However, the Court distinguished the ancient temples and authorised religious structures from those which are unauthorised and the Court asked the authorities to be careful not to hurt religious sentiments by removing authorised religious structures.

The Court during the hearing held on 04.12.2008 was informed that since the Committee's tenure was coming to an end, social elements with active connivance and blessings of SHO, Kashmere Gate and staff of DDA had encroached on vast area of riverbed and its flood plain within 300 meters of the river water between Jwala Ghat, ISBT Bela Road and Old Rail Road Bridge. Based on this information, the Court extended the tenure of the Committee until further orders. The matter has been listed

subsequently on several occasions. However, no substantial order has been delivered in 2009.

It is worth noting that the Court while issuing its order dated 14 12 2005 directing removal of all encroachments upto 300 m from both sides of the river in the first instance, did not provide a) any basis for arriving at the figure of 300 m; b) did not define what it meant 'from both sides of the river'. Resultantly while 300 m became some kind of a bench mark without any scientific basis with government authorities turning it into some kind of a sacrosanct limit, on the other the term 'from the river' came to be interpreted differently by various agencies resulting in the Court clarifying its order later on 1.6.2006 to mean 'from the river' as the distance from the edge of the of river Yamuna. The use of the term 'in the first instance' by the Court which clearly meant that the Court ultimately wished to rid the river bed between the original embankments on either side of the river of all structures, but in a gradual fashion, got lost on all including the Court itself as was seen from the minutes and reports of the Court appointed committee for the purpose (Appendix 3).

It may be interesting to note that at a later date on 8th January 2007 it was left to the CWC's Yamuna Standing Committee (YSC) to finally in its 72nd meeting, define the active river edge in the context of the High Court's Judgment as being 1650 m width which must be preserved for the river to play. Thus on technical grounds, the minimum width within which no structure in the river bed should be permitted to exist, in the first instance, in the context of the High Court's judgment is $1650 + 600 \text{ m}$ (300m on either side) = 2250 m.

2.3.4 Bringing Dubai to Delhi

In 2007, the Delhi High Court was seized of a matter concerning a month long shopping festival on the Yamuna bank called the 'Times Global Village' organized by Dubai based e4e entertainment company in collaboration with Delhi Tourism, DND flyway and The Times of India Group. The matter was referred by the Court to the Yamuna Removal of Encroachment Monitoring Committee which submitted a detailed report (Appendix 4) after conducting a site visit. The Committee concluded that the constructions have come up in large number in violations of the order of the High court for the protection of the Yamuna River which had prohibited any construction activity within 300 m of edge of river water. It has thus caused serious environmental degradation and grave harm to the ground water recharge capacity of the river. The Committee therefore recommended to the High Court that all structures whether temporary or permanent be removed from the site and all roads and access roads be dismantled in accordance with the "polluter pays principle". The Committee also dealt with certain other issues. It recommended that the surplus land with the Delhi Noida Delhi (DND) flyway which is located on the flood plain of the river Yamuna on its western bank be quashed on the same principle as the lease deed executed by the Government of Himachal Pradesh in favour of M/S Span Motels Pvt Ltd was quashed by the Supreme Court.

The Delhi High Court accepted only part of the Report. It ordered only after the month long event was over for the restoration of the Yamuna plains and dismantling of the structures. The issue with respect to surplus land of DND was not dealt with by the Court. The Court order dated 4.5.2007 read as under:

" The Convenor of the Encroachment Monitoring Committee has filed a report which is termed as 16th report of the Committee. We have perused the report submitted with regard to Times Global Village from which it transpires that for the purpose of holding the aforesaid fair in the Times Global Village certain construction of the nature of temporary and semi-pucca have been made.

Mr Harish Salve appearing for the Times Global Village authorities states that all such constructions of whatever nature whether temporary or pucca constructions made within 300 meters including roads, access ramps shall be removed within a period of four week from today. In this view of the matter, after the expiry of the four weeks it shall be open to the Committee to inspect the premises and submit a report as to whether or not all such constructions including roads and ramps have been removed. Mr Salve also states that in future they shall not make any construction of any nature within 300 meters of the edge of the river water".

...final words

The Yamuna today represents not just an environmental but a judicial challenge. For the last two decades, the Courts in India have been pursuing the issue of how to save and revive the river Yamuna in the face of relentless assault on it resulting from pollution, encroachment and declining flow. The judicial activism has seen many up's and down's, with the Court coming down heavily on the violators and at times only expressing their disappointment and anguish over the pathetic state of the river. In various orders one can clearly see the anguish of the judges and their keenness in trying to improve the situation. The Courts have tried to work out many solutions in its attempt to resolve the issue with respect to the pollution of the river. These have included stipulating minimum flow in the river; segregation of wastes; erection of sewage treatment plants; directing that no dumping of garbage should take place; regulating slaughter houses and removing slums and encroachments from the river bed. These steps were not always implemented with the same sense of urgency or within the Court's stipulated time frame. While in some instances the administrative machinery was slow to respond to the orders of the Courts, in some others, the directions had their own set of implications. For example, the setting up of Sewage Treatment Plants involved land acquisition much against the wishes of the occupiers. The clearing of slums from the river bed on the basis of orders of the Court appointed committees while at the same time allowing 'authorized' apartment blocks for short term mega events raises critical questions on environmental justice as regards marginalized sections of the society who end up paying a disproportionate price in the river's cleaning up efforts. The poor today are on one hand the direct victim of the after effects of river Yamuna's pollution and ironically also end up becoming the victim in any effort to clean up the Yamuna. This unfortunately seems to be true in many of the environmental issues in the country and the river Yamuna is no exception.

The plethora of orders by the Courts on the Yamuna reflects the serious effort on the part of the Courts to clean up and revive the river. Yet the result is for all to see and in their various orders the Courts whether it is the Supreme Court or the High Court acknowledges the lack of any improvement in the condition of the river which continues to get worse with every passing day.

It is notable that the Courts have often found themselves not fully equipped to deal with complex environmental issues. In *A.P Pollution Control Board Vs Prof M. V Nayadu*, the Supreme Court acknowledged the problem of the Courts in this respect. The Court observed:

“In matters relating to industrial pollutionserious issues involving pollution and related technology have been arising ...in this Court and in the High Court. The cases involve the correctness of the technological and scientific opinions presented to the Courts In such a situation considerable difficulty is experienced by this court or the High Court in adjudicating upon the correctness of the technological and scientific opinion presented to the Court with regard to the efficiency of the technology proposed to be adopted by the industry or in regard to the alternative technology or modification as suggested by the Pollution Control Board”.

The judicial intervention to clean the Yamuna cannot be seen in isolation with other similar efforts by the higher courts in India in saving or at least trying to save the ecology. Thus in respect to forest and wildlife issues²³, we have seen a continuous engagement of the courts and their resorting to various innovations like the use of the provisions of the Environment (Protection) Act, 1986 in creating Authorities and Committees to oversee the implementation of their orders on subjects like the hazardous waste²⁴ to devising a comprehensive system of assessing the value of forests. Unfortunately, one has not seen much judicial innovation so far as the issues related to the Yamuna or for that matter rivers in the country is concerned. For example the draft notification concerning regulation of constructions in river bed and flood plains namely the River Regulation Zone (RRZ) has remained on paper despite a number of petitions to the Courts seeking its promulgation. Perusal of various relevant orders of the Courts reveal that either the Courts have approved technology based infrastructural solutions for dealing with the river pollution or have routinely reiterated the pitiable condition of the river Yamuna. Many of the orders in fact provide interesting anecdotal description of the river itself that go to reflect the concern for the river of some of the judges. However as the chronology of various cases and orders indicate that after a series of strong directions the momentum in the case gets lost after a few months/years and it is left to another outburst from the same or another Judge/s to put things back on course. Such a situation has not facilitated the emergence of long term solutions to the problem as most orders tend to be reactive than proactive.

There have been attempts by the Courts to work through the ‘Committee’ mode by setting up of Court appointed Committees. One such example is the Yamuna Monitoring of Encroachment Removal Committee. However, as the composition and the minutes of the meetings (Appendix 3) reveal that it has been packed with the same people who are potential or current violators so far as the Yamuna is concerned. Further for lack of any statutory backing these authorities / committees remain at best *ad hoc* committees with very short tenure.

The problems facing the Yamuna are complex and require a multidisciplinary approach. It is difficult for the Court's to become the sole agent in the cleaning up and revival

²³ T.N Godavarman Thirumulpad Vs Union of India W.P (C) 202 of

²⁴ Research Foundation for Science Technology and Ecology Vs Union of India

effort and it urgently needs political, administrative and public support for the needful. So long as the public at large remains apathetic to the plight of the Yamuna, few public spirited persons approaching the court in itself may not result in any real change in the situation vis a vis the river. The experience of judicial intervention over the last few years clearly stands testimony to this fact. 'Continuing mandamus' has a definite shelf life and if the litigation prolongs beyond a reasonable time without any outcome, either the case loses momentum on account of lack of interest of the bench or the petitioners or the orders gets reversed or modified on the basis of a *fait accompli* situations often resulting from prolonged litigation, being presented to the Courts. Such state of affairs might even lead to a piquant situation whence a violation of the Court's order might be taking place without either the petitioner keeping track or the Court's remaining actively aware of it.

Finally, the Courts can at best remedy a situation if there is blatant violation of legal provisions. It cannot become a substitute for either inept administrative machinery or lack of political will to save the river. Tragically the Yamuna is today gasping for breath and has become a symbol of bureaucratic lethargy, political and social apathy and fluctuating judicial intervention something that does not augur well for the future of this once mighty river.

Appendix 1

Chronology of removal of JJ structures (till May 2006) supervised by the Usha Mehra Committee

| Date | Details |
|---------|--|
| 31.1.06 | 26 JJ / structures removed from the Mool Chand Basti by DDA. 300 JJ removed from near Akshardham by UP Irrigation Department. |
| 29.4.06 | 1949 jhuggies comprising of all Jhuggis situated in Bela Gaon, Mool Chand Basti, I, II & III, Kisan Colony near Chandgi Ram Akhara, Ganga Vihar opposite ISBT Sarai Kale Khan, Thokar No. 8, Vikas Marg near Shakarpur Chungi and almost 200 out of 300 jhuggies and pucca hutments situated at Ghat No. 1, Yamuna Bazar and near Jwala Ghat by DDA. |
| 1.5.06 | About 4000 jhuggies situated in Samachar Apartments and southern strip of ITO bridge and between the northern side of ITO bridge and Geeta Colony on the eastern embankment of river Yamuna were removed by Irrigation Deptt. Of UP . |
| 6.5.06 | 2778 jhuggies removed between 6.5.06 and 14.5.06 by the PWD, Delhi |

Appendix 2

Chronology of AQFM case

| Date | Summary of orders in "And Quite Flows the Maily Yamuna" |
|-----------|---|
| 9-8-1999 | <p>Pollution in River Yamuna in Delhi – Attention of the Court drawn to the fact that the quality of water declines sharply during the course of journey of the river through Delhi after it enters Delhi through Palla – Court notes that "with the quality of water deteriorating in an alarming extent, some drastic measures may have to be taken. These may include passing orders prohibiting contaminated water or discharge going into the Yamuna which alone is responsible for causing the deterioration of the quality of water – Held – the Government of N.C.T of Delhi has all the power and infrastructure available with it to ensure the improvement in the quality of water. If it chooses not to exercise its power in preventing the pollution of the Yamuna, that indeed would be unfortunate. In such a situation, there may be no option but to pass appropriate orders requiring the government to govern. These are problems which should be tackled at governmental level and it is indeed unfortunate that this court has to give direction in this regard in an effort to cleanse the Yamuna, whose contamination is posing a serious health hazard at least to the residents of Delhi". Hence Held – In order to ensure that the directions which are issued by the court are carried out, the chief secretary, Delhi is requested to be personally present in the court in the next date of hearing because till now, the Delhi Government seems to have precious little to effectively deal with Yamuna's pollution"</p> |
| 27-8-1999 | <p>Pollution of River Yamuna – two type of effluents which are responsible for the pollution of the river viz. untreated sewage an untreated industrial discharge – principle to be followed by the Courts – Court not to determine the manner in which the pollution is to be tackled, and leave it to the state to tackle it in appropriate manner, but hold the state accountable in case pollution continues and the quality of water in the river Yamuna does not improve - Held – there are enough laws at the command of the state to enable</p> |

(contd...)

| Date | Summary of orders in "And Quite Flows the Maily Yamuna" |
|------------|---|
| | it to take appropriate action to see that the river is not polluted. If the state chooses not to exercise its powers in that behalf it must be held responsible for inaction – Direction – HSPCB and CPCB to set up monitoring committee at Palla and DPC and CPCB to set up the same in 19 drains. |
| 13-09-1999 | Direction – Chief Secretary to pass order under section 5 of EPA and Water Act to ensure that no industrial effluent is allowed to be discharged directly or indirectly into the river Yamuna w.e.f 1 st November 1999 – similar directions to states of Haryana and Uttar Pradesh |
| 17-12-1999 | Held – despite order of 13-09-1999 nothing appears to have been done except notices – Notice issued to Chief Secretary for non Compliance |
| 24-01-2000 | Direction- every industry in Delhi not to discharge their effluents into the drain leading to Yamuna River |
| 10-3-2000 | Observation- report on water quality of Yamuna placed before Court- Report shows that by the time the river leaves Delhi it is no longer a river but a sewage drain – Directions to Chief Secretary for compliance of the orders – Further held – no authority or individual to interfere in the implementation of the orders. |
| 9-5-2000 | Notice issued as to why fine should not be levied on the NCT through the Chief Secretary for non compliance |
| 11-5-2000 | High Level of Pollution – Held- Mere promises to improve the quality of water is not enough – Nominal fine of Rs 10,000 imposed on Delhi Administration |
| 11-7-2000 | Submitted – Latest report of CPCB- does not indicate any substantial improvement in water quality, the dissolved oxygen at Okhla after meeting the Shahdara continues to be nil |
| 10-4-2001 | Held – Right to Life would surely include right to clean water – Delhi succeeds in reducing the dissolved oxygen level of water to 0 per cent – Further held – although court has been seized of the matter since a number of years but till today no effective steps have been taken to ensure the improvement of the quality of the water. The quality has deteriorated only – Affidavit by Ministry of Urban Development filed – Integrated Action Plan for improving water quality of Yamuna proposed – However, with the existence |

(contd...)

| Date | Summary of orders in "And Quite Flows the Maily Yamuna" |
|------------|---|
| | of numerous agencies in Delhi no single entity can be held responsible for cleaning the river Yamuna – Direction – MoUD to file affidavit as to how it plans to implement the integrated action plan. |
| 09-05-2001 | Court's attention drawn by Solicitor General to the fact that illegal encroachments and unauthorized construction also to a large extent contribute to polluting the river Yamuna because without sewer connections the effluents/discharge is dumped into the drains which meet the river Yamuna. |
| 31-07-2001 | Affidavits filed by Vice Chairman DDA, Chairperson NDMC etc – Held – Parties concerned have not even touched the tip of the iceberg as far as demolition of unauthorized constructions are concerned – Direction – Chief Secretary to file affidavit as to the total encroached area in Delhi as well as the number of unauthorized/ illegal constructions which have been raised – MCD to inform on action against gross misuse of the buildings in the residential areas for commercial purposes. |
| 6-11-2001 | Latest data of CPCB – shows no improvement since last two –three years- oxygen in the water still nil – Direction – Delhi Administration to file affidavit showing how it will ensure that pollution levels will come down by March 2003 |
| 4-12-2001 | Affidavit filed by Chief Secretary – Does not indicate how it proposes to meet the future requirement of treating waste water – Suggestion of Solicitor General – EIA should be applicable for town planning – Central Government to inform court whether it should not amend the EPA so as to require EIA for the purposes of town planning Acts – Notice issued to MoEF – Notice to Delhi Government as to why there should not be a stay on construction of extra floors considering the fact that basic amenities including sewage are not available. |
| 20-2-2002 | Direction – MCD to file an Affidavit on what it intends to stop the gross misuse of buildings in residential areas which are being used for commercial purposes. |
| 04-08-2004 | Held – There are no signs of improvement despite a decade of the court examining the issue of pollution of the river Yamuna – Direction – all authorities must sit together, apply their minds to various factors including the source of the generation of waste and industrial effluents and draw a plan which may help in achieving results at |

(contd...)

| Date | Summary of orders in "And Quite Flows the Maily Yamuna" |
|------------|---|
| | the ground level since monitoring in the last 4 years has not resulted in improving the quality of water |
| 24-11-2004 | Report on Integrated Action Plan on Yamuna submitted – DJB to respond to the same – MCD to place on record as to which parks are permitted to use parks for holding functions. |
| 12-04-2005 | Integrated Action Plan for the Yamuna –suggestion- shifting of all the Jhuggies on the bank of the Yamuna and the drains – Held – Despite integrated action plan being approved by Union Cabinet – It could not be implemented in letter and spirit – this is the most unsatisfactory way of tackling the problem which as per the governments perception is alarming and emergent – Held – It seems evident that the government and its functionaries have failed in its public duty and obligation towards the citizens of Delhi. |
| 07-09-2005 | Suggestion of two pronged strategy – sewerage treatment facility at the mouth of the river – model of Thames river may be followed – Apex committee of experts to be set up for six monthly compliance |
| 12-12-2005 | Constitution of Apex Committee – Secretary Urban Development and Sunita Narain and Ranjit Kumar to be members – Held – Despite specific direction not even monthly monitoring was done – Commissioner MCD and CEO DJB to be personally present |
| 10-1-2006 | Held – It has to be ensured that there is no multiplicity of proceedings as the High Court is also dealing with the issue of encroachments. |
| 14-02-2006 | Unauthorized colonies – Held – If basic services cannot be made available then in such situation there should be no regularization of unauthorized colonies. |
| 25-07-2006 | Appointment of A.D.N Rao as convener of the Apex Committee – Apex Committee to provide concrete suggestions to the Court |
| 21-11-2006 | Adjourned –matter to be listed in the first week of Jan 2007 |
| 30-1-2008 | Interceptor Sewerage System - Delhi Jal Board to file revised Affidavit |

Appendix 3

Minutes, reports and orders in the matter of 'The Yamuna – Removal of Encroachments Monitoring Committee' – A Chronology

| Date | Particulars | Members Present | Remarks |
|-----------|--------------------------------|---|--|
| 23 Dec'05 | First Meeting of the Committee | <p>Hon'ble Justice Usha Mehra (Retd.).</p> <p>Chairperson Sri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.)</p> <p>Vice Chairman, DDA</p> <p>Commissioner, MCD</p> <p>Chief Engineer, Okhla Barrage, Govt. of UP</p> <p>Dy. Commissioner of Police (South) on behalf of Commissioner of Police, Delhi</p> | <p>To get the survey conducted of their respective Yamuna bed area and prepare a detailed plan of the encroachments made y the juggi dwellers as well as other persons on the Yamuna bed and provide the same to the Committee by 16 Jan'06.</p> <p>The Chairperson directed that all the land owning agencies may be requested to prepare their plan for identification and shifting jhuggies and other illegal encroachments from the Yamuna bed within three weeks. A letter be sent to all these agencies in this regard.</p> <p>No representative of the member would be allowed to attend the meeting.</p> <p>A new bank a/c was opened and an initial amount of Rs. 5 lakhs be deposited therein. This amount would be shared equally by the DDA and MCD.</p> |

(contd...)

| Date | Particulars | Members Present | Remarks |
|-----------|---------------------------------|--|--|
| | | | <p>Chairperson directed that the DDA will nominate a Sr. officer as nodal officer for the work of the Committee so that Shri P.K. Jha, Asst. Director (PR), S&JJ Dept. can contact whenever required and the officer should be competent to convey the sanction and decision on behalf of the Vice Chairman.</p> |
| 16 Jan'06 | Second Meeting of the Committee | <p>Hon'ble Justice Usha Mehra (Retd.). Chairperson Shri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.) Shri V.N. Singh, Former Police Commissioner Sri Dinesh Rai, Vice Chairman, DDA Sri Ashok Kumar Nigam, Commissioner, MCD Sri A.S. Chandhiok, Sr. Advocate, Delhi High Court</p> <p>Others: Mr. Kishan Kumar, Addl. CP / G.A. (PHQ) Sri A.K. Gupta, Chief Engineer,</p> | <p>Chief Engineer Okhla Barrage & CP, did not attend the meeting.</p> <p>Land & Development Office of the Min. of Urban Dev. Gol, has now transferred the entire Yamuna Pushta to the DDA for Integrated Development of Water Front and care and maintenance as 'green'.</p> <p>Committee decided that the DDA shall remove all illegal encroachments number about 397 jhuggies in the Mool Chand Basti No. I, II, III behind Shanti Van and near the western side Pushta of the river Yamuna. This should be done positively within 15 days i.e. Latest by 31 Jan'06.</p> <p>Committee also directed Chief Engineer, Okhla Barrage, Govt. of UP to remove all illegal encroachments in the shape of Jhuggis which have been shown as point 'B' in the sketch submitted by the DDA, within 10 days.</p> |

(contd...)

| Date | Particulars | Members Present | Remarks |
|----------|--------------------------------|---|--|
| | | Irrigation & Flood Control Dept., Govt. of NCT Delhi Sri K.L., Chugh, Superintending Engineer, Irrigation & Flood Control Dept., Sri Rajiv Kumar, Executive Engineer, Okhla Barrage, Govt. of UP Sri C.K. Chaturvedi, Chief Legal Advisor, DDA Sri R.K. Singh, Commissioner Land, DDA | <p>DDA shall submit by 31st Jan'06, area wise plan indicating the number of Jhuggis clusters and unauthorized structure at various places on the bank of river Yamuna showing the land area under the DDA control and the unauthorized structures falling within the radius of 300 meters from the bundh of the river Yamuna.</p> <p>It was noted that while removal of illegal encroachments, some of the inhabitant may approach the Civil Court for stalling the programme of removal of illegal constructions.</p> <p>It will be the duty of the land owning agency and the local Police headed by the office of concerned Deputy Commissioner of Police to ensure that the area cleared from illegal encroachments is preserved and not allowed to be encroached upon again.</p> |
| 6 Feb'06 | Third Meeting of the Committee | Hon'ble Justice Usha Mehra (Retd.). Chairperson Shri V.N. Singh, Former Police Commissioner Dr. K.K. Paul, Commissioner of | Chairperson asked the Vice Chairman DDA, as to why revised consolidated sketch with area-wise sketches clearly demarcating the illegal encroachments and number Jhuggis/pucca structures were not submitted as decided in the 2 nd Meeting. The VC |

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| | | <p>Police, Delhi Sri Dinesh Rai, Vice Chairman, DDA Sri Ashok Kumar Nigam, Commissioner, MCD Sri A.S. Chandhiok, Sr. Advocate, Delhi High Court Sri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.)</p> <p>Others: Sri Rajiv Kumar, Executive Engineer, Okhla Barrage, Govt. of UP Sri R.K. Singh, (Commissioner Land), DDA</p> | <p>promised that a road map / blue print indicating specific plan of action for removal of all encroachments from Western side of Yamuna embankment within a week or so.</p> <p>Chairperson asked the DDA as to why only 26 jhuggis / structures as against 397 jhuggis / structures situated at Mool Chand Basti were removed as decided on 16.1.2006. VC pointed out that they could not locate sufficient land for relocation of unauthorized occupants as per the Govt. policy and full police force was not available on 31.1.2006, when the operation of removal was planned and the police force was busy on account of Republic Day functions. He promised to remove all by 1st week of March, 2006.</p> <p>It was decided that the members of the Committee would inspect the site cleared by the DDA in April and May 2004, as to how it is/has being/been redeveloped.</p> <p>VC said that 300 bighas of land situated in the area of Narela already acquired will be taken by DDA in a week's time and shall be laid with basic amenity of water etc. on emergent basis to be used as</p> |

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| Date | Particulars | Members Present | Remarks |
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| | | | <p>a transit camp for the evictees pending allocation/allotment as per Govt. policy.</p> <p>The Chief Engineer, Irrigation Dept. of Govt. of UP has since retired and the new will attend the next meeting.</p> <p>Sri Rajiv Kumar said that after removal of 300 jhuggis from near Akshardham Temple area on 30.1.2006, with the help of Delhi Police, some of the displaced persons are making efforts to re-occupy the already cleared area and a complaint was lodged with the Pandav Nagar Police Station on 31.1.2006 and 1.2.2006. UP Govt., did not put any fencing around the cleared area because of lack of fund with the Irrigation Dept. He also said that UP do not have any land for relocating the Jhuggis dwellers. It was decided that Engineer-in-Chief and/or Principal Secretary of Govt. of UP be requested to participate in the next meeting of the Committee.</p> <p>It is Delhi Police's responsibility that no fresh encroachment/trespass takes place in the cleared area, so that the project of removal of encroachments should not remain a pipe dream.</p> |

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| | | | <p>Jhuggis near Samachar Apartments to be removed by 7.2.2006.</p> <p>Commissioner or Police was directed by the Chairperson to ensure that proper action on the complaints of Revenue Dept / Irrigation Dept of UP regarding fresh encroachment / illegal trespass was taken by the local police immediately.</p> |
| 3 Mar'06 | Fourth Meeting of the Committee | <p>Hon'ble Justice Usha Mehra (Retd.). Chairperson Shri V.N. Singh, Former Police Commissioner Sri Ashok Kumar Nigam, Commissioner, MCD Sri Hari Shanker, Chief Engineer, Irrigation Okhla Barrage, Govt. of UP. Sri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.)</p> <p>Spl. Invitee: Sri Naresh Dayal, Addl. Secretary, MoEF</p> | <p>Sri Dayal said that no funds can be released to any other agency of Govt. of NCT of Delhi for the removal of the encroachers from Yamuna belt or their rehabilitation or for beautification of the encroachment cleared area of Yamuna. He report back to the Committee if the Forestry Division of the Ministry could provide some assistance in this matter.</p> <p>1412 plots lying un-allotted in Bawana and Holambi Kalan were required to be used for resettlement /relocation of evictees of Ridge areas as per the directions of SC of India. Area of Sawada-Ghevra could be temporarily housed for the eligible encroachers of Yamuna bet.</p> <p>Sri VN Singh reiterated that the MCD was given a grant</p> |

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| Date | Particulars | Members Present | Remarks |
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| | | | <p>of Rs. 30 crores for development of plots for relocation to eligible encroachers of Yamuna embankment. Sri Nigam, MCD reiterated that against Rs. 25 crores received from the Min. of Urban Dev., MCD has spent about Rs. 45 crores for dev. Of plots. They also submitted that 5804 plots had already been allotted whereas 7500 plots have been given on loan to the DDA for rehabilitation of eligible encroachers removed from Yamuna. Sri Singh asked as to what happened to 19000 plots given by the Min. of Urban Dev. To MCD as revealed from the Minutes of the Meeting held in Jan'04. Sri Nigam pointed out that not a single plot as alleged was even given by the Min. of Urban Dev to MCD. Now no plot is available.</p> <p>Chairperson asked Mr. Vats, Commissioner (LM) DDA to prepone the Action Plan for removal of encroachment from last week of April, 2006 to 3rd week of March'06.</p> <p>Chairperson directed the Members of the Committee shall visit the site earmarked for temporary relocation of these encroachers of Yamuna belt on 20.3.2006.</p> |

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| Date | Particulars | Members Present | Remarks |
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| | | | <p>The Committee did not appreciate the role of the DDA in not submitting the names of the other Land Owning Agencies owning land at various places on the Western side of the Yamuna river embankment as under taken by the DDA on 24.2.2006. Sri Vats promised to submit the report within 3-4 days.</p> <p>Chairperson directed the Chief Engineer, UP Govt, and the MCD to demolish all the Jhuggis are claimed to have been removed on 30.1.2006 from 8.3.2006 onwards. The local SHO will ensure that the cleared area near Akshardham temple was not allowed to be encroached again.</p> <p>Action taken report by Chief Engineer, Govt. of UP to be submitted by 20.3.2006 and Sri Vats will submit his action taken report by 10.3.2006.</p> |
| 20 Mar'06 | Fifth Meeting of the Committee | Hon'ble Justice Usha Mehra (Retd.). Chairperson Sri V.N. Singh, Former Police Commissioner Sri Dinesh Rai, Vice Chairman, DDA Sri Ashok Kumar | <p>Sri Rai committed that the Jhuggis will be removed by 30.4.2006 and the basic amenities will be in place at the site being developed for relocation at Bawana latest by 31.3.2006.</p> <p>As per schedule, the members of the Committee were taken to the site at Bawana where</p> |

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| | | <p>Nigam, Commissioner, MCD Sri Hari Shanker, Chief Engineer, Irrigation Okhla Barrage, Govt. of UP. Sri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.)</p> | <p>the eligible encroachers would be relocated by the DDA from 9.4.2006, where it was found that only one tube-well had been made operational and one portable lavatory had been made available.</p> |
| 27 Mar'06 | Sixth Meeting of the Committee | <p>Hon'ble Justice Usha Mehra (Retd.). Chairperson Sri V.N. Singh, Former Police Commissioner Sri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.)</p> | <p>It was desired by the Chairperson that all the members should contribute at least by attending the meetings regularly and continued absence may be brought to the notice of the Hon'ble High Court of Delhi.</p> <p>It was decided by the Committee that all the Jhuggis to be removed by 30 April, 2006 operation.</p> <p>Sri Vats gave in writing that the DDA has already paid Rs. 19.68 lakhs to the Slum & JJ Wing of the MCD for relocation of about 80 jhuggis existing on Jwala Ghat opposite ISBT, Kashmere Gate.</p> <p>The Convenor of the Committee in his site visit had found several temporary structure and instructed MCD to remove the same by 13.4.2006.</p> |

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| 1 May'06 | Seventh Meeting of the Committee | <p>Hon'ble Justice Usha Mehra (Retd.). Chairperson Shri V.N. Singh, Former Police Commissioner Dr. K.K. Paul, Commissioner of Police, Delhi Sri Dinesh Rai, Vice Chairman, DDA Sri Ashok Kumar Nigam, Commissioner, MCD Sri Hari Shanker, Chief Engineer, Irrigation Okhla Barrage, Govt. of UP. Sri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.)</p> <p>Special Invitees: Sri R. Subramaniam, Engineer-in-Chief, PWD Sri J.J. Lall, Superintending Engineer, CPWD</p> | <p>29.4.2006: Sri Rakesh Kumar Vats submitted written status report that DDA on the direction of the Committee has removed 1949 jhuggies comprising of all Jhuggis situated in Bela Gaon, Mool Chand Basti, I, II & III, Kisan Colony near Chandgi Ram Akhara, Ganga Vihar opposite ISBT Sarai Kale Khan, Thokar No. 8, Vikas Marg near Shakarpur Chungi and almost 200 out of 300 jhuggies and pucca hutments situated at Ghat No. 1, Yamuna Bazar and near Jwala Ghat.</p> <p>The Committee decided that the DDA will undertake complete and thorough survey of all jhuggies and unauthorized structures of all kinds which have come up between Noida toll bridge and Kalindi Kunj and DDA will also display and give notice to the various occupants for peaceful vacation of encroached land and the Survey Report shall be submitted by 15.5.2006.</p> <p>Chief Engineer, Irrigation Dept. of UP submitted that about 4000 jhuggies situated in Samachar Apartments and southern strip of ITO bridge and between the northern side of ITO bridge and Geeta Colony on the eastern embank-</p> |

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| Date | Particulars | Members Present | Remarks |
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| | | | <p>ment of river Yamuna have been successfully removed.</p> <p>The Irrigation Dept. has been directed to fence the cleared area to ensure that no further encroachment takes place. Sri Lall said that CPWD does not own any land on either side of river embankment and therefore, CPWD has no role to play in removal of jhuggies.</p> <p>Sri R. Subramaniam has submitted written application regarding proposed 8 lane road to be built from Saligarh Chowk upto IP stadium. The report of the working group and 2 sketches were also enclosed with the report.</p> |
| 15 May'06 | Eighth Meeting of the Committee | Hon'ble Justice Usha Mehra (Retd.). Chairperson Shri V.N. Singh, Former Police Commissioner Sri Dinesh Rai, Vice Chairman, DDA Sri Ashok Kumar Nigam, Commissioner, MCD Sri A.S. Chandhiok, Sr. Advocate, Delhi HC | Sri Dinesh Rai, Vice Chairman, DDA submitted rough location plan of Yamuna river front from Noida Toll Bridge upto Kalindi Kunj showing existence of 4 unauthorized residential colonies known as Jogabai Batla House Extn., Okhla Batla House, Abul Fazal Enclave Part-I and Abul Fazal Enclave Part II which were located within the peripheral of 300 meters from the river Yamuna. DDA has thus not fulfilled its commitment to submit comprehensive survey report as directed by the Committee in its meeting held on |

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| Date | Particulars | Members Present | Remarks |
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| | | <p>Sri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.)</p> <p>Special Invitees: Sri R. Subramanium, Engineer-in-Chief, PWD Sri J.J. Lall, Superintending Engineer, CPWD</p> | <p>1.5.2006 and as ordered by the Hon'ble High Court in its order dated 3.5.2006. Vice Chairman, DDA committed to submit the same by 22 May'06.</p> <p>Sri Vats explained that there is a move for regularization of these four unauthorized colonies by the government. It was felt that it should not be allowed.</p> <p>Chief Engineer, Irrigation Dept of UP is directed to submit comprehensive action taken report within a week.</p> <p>Sri R. Subramanium submitted a written action taken report of various operations undertaken between 6.5.2006 and 14.5.2006 where they removed 2778 jhuggies.</p> <p>Sri Chandhiok informed that the Rajya Sabha has also passed the Delhi Laws (Special Provisions) Bill, 2006 this evening.</p> |
| 26 May'06 | Ninth Meeting of the Committee | <p>Hon'ble Justice Usha Mehra (Retd.). Chairperson Shri V.N. Singh, Former Police Commissioner</p> | <p>DDA has submitted its comprehensive survey report of all encroachment from Noida toll bridge upto Kalindi Kunj from southern portion of Yamuna in its Western embankment by 22.5.06. A status note along with a location map but with-</p> |

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| | | <p>Sri K.K. Paul, Commissioner of Police, Delhi</p> <p>Sri Ashok Kumar Nigam, Commissioner, MCD</p> <p>Sri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.)</p> <p>Special Invitees: Sri R. Subramaniam, Engineer-in-Chief, PWD</p> | <p>out field revenue officer's report was received.</p> <p>DDA has claimed that if the distance of 300 meters is measured from the river bank (actual flow of river water) about 300 kuccha and pucca residential structures and three religious places in Jogabai Revenue Estate now known as Batla House Extn., would come within the purview of the demolition. However according to DDA if the distance of 300 meters is measured from the river middle point of the river flow about 100 residential structures and one religious place would be covered.</p> <p>Convenor pointed out that the Dhobis are still working near the Salimgarh Chowk. The Commissioner, MCD promised to submit the status report cum action taken report by 29.5.2006.</p> <p>Neither DDA nor MCD have submitted any scheme report for rehabilitation or relocation of Pandas engaged in the performance of ritual pooja at various Ghats of river Yamuna near Yamuna Bazar in terms of direction given by the Hon'ble High Court in its order dated 3.5.2006.</p> |

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| | | | Committee directed that all agencies would take appropriate steps in ensuring that no fresh encroachment takes place in any part of river banks. |
| 6 June'06 | Tenth Meeting of the Committee | <p>Hon'ble Justice Usha Mehra (Retd.). Chairperson Shri V.N. Singh, Former Police Commissioner Sri Ashok Kumar Nigam, Commissioner, MCD Sri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.)</p> <p>Special Invitees: Sri R. Subramaniam, Engineer-in-Chief, PWD</p> | <p>DDA committed that the entire area between Jwala Ghat near Metro over bridge ISBT and Nigam Both Ghat, Kisan Colony near Chandgi Ram Akhara, entire area from Salimgarh Fort upto ITO bridge and the areas cleared in Ganga Vihar opposite ISBT Sarai Kale Khan will be fully fenced with warbed wires and fencing poles by 30.6.2006 and a status report shall be submitted to the Committee.</p> <p>DDA committed to submit the survey report by 23.6.06.</p> <p>PWD shall remove all encroachments from the right of way between Rajghat and Metcalf House near Chandgi Ram Akhara within 15 days and next 15 days all encroachments on right of way belonging to the PWD shall be removed between Metcalf House and Wazirabad T Point.</p> |
| 30 June'06 | Eleventh Meeting of the Committee | <p>Hon'ble Justice Usha Mehra (Retd.). Chairperson</p> | DDA did not submit the status report as committed by Sri Rakesh Vats regarding the fencing of the entire area already cleared of encroachments. |

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| | | <p>Shri V.N. Singh, Former Police Commissioner</p> <p>Sri Dinesh Rai, Vice Chairman, DDA</p> <p>Sri A.S. Chandhiok, Sr. Advocate, Delhi HC</p> <p>Sri K.K. Paul, Commissioner of Police, Delhi</p> <p>Sri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.)</p> | <p>It should be submitted by 7.7.2006.</p> <p>DDA has not removed all religious structures situated in the erstwhile Bela Gaon, Mool Chand Basti – I, II, III and other places already cleared of encroachments, as committed by DDA.</p> <p>The Committee directed that all the religious structures in these areas shall be removed and the status cum action taken report shall e submitted to the Convenor by 4.7.2006.</p> <p>28.6.2006: DDA submitted the survey report regarding existence of unauthorized structures within 300 meters from the edge of river water between Noida toll bridge and Kalindi Kunj. DDA committed that all the unauthorized structures including religious places totally about 300 will be removed and the cleared area shall be fenced with warbed wire by 17.7.06 and action taken report to be submitted by 18.7.2006.</p> <p>The Commissioner of MCD submitted the status report to the Convenor on 29.6.06. In that report it was mentioned that the building activities in the area of Tibetan settlement</p> |

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| Date | Particulars | Members Present | Remarks |
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| | | | <p>colony in Civil Lines and Majnu ka Tila have been notified to be under development area No. 173 and so all building activities of this area are under the jurisdictional control of the DDA.</p> <p>Committee requested the Vice Chairman, DDA to place on record in writing by 18.7.2006 as to whether any building activity in any part of development area No. 173 which is the Yamuna river front has been permitted by the DDA. If so, details of such sanctioned plans will be given. If the answer to this query is negative, learned Vice Chairman will clarify as to how these large scale unauthorized construction activities were allowed by the DDA and as per their record when these unauthorized constructions came into existence.</p> <p>Committee directed the Police Commissioner that the concerned SHO should prevent dumping of garbage in future in the bed of river Yamuna. If SHOs fails in their duties to ensure this direction, the matter will be reported to the Hon'ble High Court.</p> <p>Irrigation Dept. of UP shall take appropriate measure in</p> |

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| Date | Particulars | Members Present | Remarks |
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| | | | <p>fencing the area already cleared encroachments so that no further encroachment shall take place.</p> <p>Proposal of the PWD for growing plantation on the stepped up embankment beyond 300 meters from the edge of river Yamuna has been accepted by the Committee.</p> <p>A hearing was granted to the residents of Abul Fazal Enclaves on 12.7.2006 by the Committee.</p> <p>A hearing was also granted to the Tibetan Refugee representative.</p> |
| 18 Aug'06 | Twelfth Meeting of the Committee | <p>Hon'ble Justice Usha Mehra (Retd.). Chairperson Shri V.N. Singh, Former Police Commissioner Sri Dinesh Rai, Vice Chairman, DDA Sri S.M. Aggarwal, Addl. Dist. & Sessions Judge (Retd.)</p> | <p>It was felt that all Land Owning Agencies should put in their best efforts for successful removal of all encroachments on both sides of river Yamuna so that work is completed by 31.12.2006.</p> <p>It was decided that DDA shall remove all encroachments and structures of whatever nature including religious structures, if any from all Ghats existing on Kudsia Ghat between ISBT flyover and Tibetan settlements at Ladakh Budha Vihar leaving Tibetan settlements undisturbed. Action taken report will be submitted by</p> |

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| | | | <p>4.9.2006. Committee can submit the report on 5.9.2006 before the Hon'ble High Court.</p> <p>DDA and MCD shall ensure removal of all encroachments in the shape of jhuggies in any of the parks existing in Yamuna Bazar and all jhuggies, shops and stalls existing in any lane of Yamuna Bazar and on the main road going from Hanuman Temple to Old Railway Bridge. Action taken report shall be submitted by DDA as well as MCD by 4.9.2006.</p> <p>It was decided that all the structures of residential or commercial nature should be demolished from the Ghats (No. 1 to 32 abutting Yamuna bazaar) keeping the religious structures regarding which decision will be taken by the Committee on a subsequent date for final decision of the Hon'ble Court.</p> <p>PWD has submitted written note along with fresh re-alignment plan of proposed Kalindi By Pass as per direction of the Hon'ble Court.</p> |

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| | Order | Issued by Justice Usha Mehra (Retd.) – Chairperson | <p>In regard to unauthorized structures in the Jogabai Extension and Batla House Extension</p> <p>As per the direction of the Hon'ble Division Bench of the High Court of Delhi in Writ Petitions No. WP(C) 2112 of 2002 and WPC (C) No. 689 of 2004, these structures may be allowed to be demolished within a time bound programme and therefore to fence the cleared area with warbed wire and fencing poles which the DDA had earlier undertaken to do so latest by 15.7.2006.</p> <p>Status Report on Survey of Structures within 300 meters of river Yamuna from Noida Toll bridge up to Kalindi Kunj by DDA:</p> <p>Jasola: As per the site position, the present flow of Yamuna is in Khasra No. 475. However no structure is notice within 300 meters from the edge of river water of Yamuna near other three Thokars.</p> <p>Okhla: It is found that no structure is effected within the 300 meters between the western side of Kh No. 323 and upto the forward bund. The distance of 300 meters from edge of river water falls short of forward bund.</p> |

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| | | | <p>This area is the acquired land of government, but possession has not been handed over to DDA by LAC/L&B except the land required by PWD for construction of Road No. NH-2.</p> <p>The office-cum-residential complex of Irrigation Dept., is located on the western side of the Yamuna River which comes within 300 meters from the edge of river water of Yamuna.</p> <p>Jagobai / Okhla: As per the revenue records, the Yamuna river is shown in kh. No. 260, which is heavily built up at site. A total number of about 950 structures are located within this area / Khasra No. 260. This location has been shown as 'Dariya', however the distance of 300 meters from the existing edge of Yamuna falls short of this locality. It can therefore be construed that the river Yamuna has changed its course drastically in the last 80-100 years. It is also mentioned that this area which is called Batla House, comes within the list of unauthorized colonies slated for regularization.</p> <p>As per the site position the flow of Yamuna is in kh. No. 262 – 267 of village Jogabai. The measurements from the</p> |

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| | | | <p>western side of the present flow of Yamuna, River, was taken and it is revealed that about 300 kacha pucca structures including some religious places are located within this area. Most structure are built recently and are within an unauthorized colony namely Batla House Extn., which is not within the list of 1432 unauthorised colonies slated for regularization.</p> |
| | Order | Issued by Justice Usha Mehra (Retd.) – Chairperson | <p>In regard to unauthorized structures in the Abul Fazal Enclave Part – I and II</p> <p>In view of the material submitted by the PWD of Govt. of NCT of Delhi, who are in the midst of constructing Kalindi Bye Pass road at a cost of more than 100 crores, we are of the prima-facie strong opinion that the distance between the edge of river water and the edge of present pushta road varies from 265 meters near the sand tila (sand mound) to 180 meters towards Kalindi Kunj front of these two colonies. However, in view of the conflicting measurements given in the survey map prepared by the Flood Control Dept. of Govt. of NCT of Delhi, at this stage we do not propose to recommend to the Hon'ble High Court of Delhi</p> |

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| | | | <p>demolition of any structure of these two colonies situated across the western side of pushta road pending further verification of the measurement mentioned in the Survey map of the Flood Control Dept. of Govt. of NCT of Delhi.</p> <p>CM No. 15516-18/2006 in WP (C) 2112/2002 The Convenor of the Committee was authorized to pass the order dated 5.9.2006 for recommending demolition of all structures on Ghat No. 13 in unauthorized occupation of the Society.</p> <p>All the structures of adjoining 11 Ghats have already been demolished on 31.8.2006.</p> |
| 7 Sep'06 | 7 th Report of the Committee | <p>In the matter of : Wazirpur Bartan Nirmata Sangh Vs UOI & Others & Public Interest Litigation In the matter of : Wazirpur Bartan Nirmata Sangh Vs UOI & Others & Public Interest Litigation</p> | <p>CM No . 10710/2006 in WP (C) 2112/2002</p> <p>The Committee has authorized the Convenor to pass the appropriate order for demolition of the structures existing on Ghat No. 6, Kudsia Ghat, Bela Road, Delhi. The Convenor has passed the order in this respect dated 5.9. 2006 ordering that the applicants being in unauthorized occupation of Ghat No. 6 Kudsia Ghat all structures are required to be demolished.</p> |

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| | | | <p>The applicants have been given time up to 12.9.2006 to voluntarily demolish and remove the super structures existing on Ghat No. 6 Kudsia Ghat failing which, DDA was authorized to demolish the same any time after 12.9.2006.</p> <p>Prayer: Most of the allottees / their representatives have been in occupation of super structures built on these Ghats for more than 30 to 50 years in an area of about 1000 Sq Yds., and therefore the Committee very respectfully recommends that the Hon'ble Court be pleased to direct the DDA to allot them land measuring about 40 to 50 sq meters at the nearest place available to meet the end of justice to one main erstwhile licensee or occupant of each of these Ghats. The other family / families found living in any part of these Ghats can be treated as jhuggi dwellers for alternative site.</p> <p>The Committee respectfully recommends that the Hon'ble Court be pleased to permit the Dandi Swami Ashram to use the adjoining small strip of vacant land on western side wall of the Ashram on which side one large size door of the Ashram already exists since</p> |

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| | | | <p>long. This strip of land is not part of the Dandi Swami Park, though it is an extended strip of land. If this approval is accorded by the Hon'ble Court, the Dandi Swami Ashram will give up their right over almost half of Dandi Swami Park and withdraw all litigation.</p> <p>The Hon'ble Court be pleased to direct the DDA to remove all structures coming in this range existing in Batla House Extension and Jogabai Extension.</p> <p>The Committee respectfully recommends that the Hon'ble Court be pleased to direct that in view of the specific direction of this Hon'ble Court contained in the order dated 8.12.2005 that all encroachments of every type including religious premises maybe demolished within 300 meters of river water, there is no need for any Land Owning Agency to seek permission of the Religious Committee of Govt. of NCT of Delhi with the condition that no Land Owning Agency will demolish any religious structure without express permission / direction of this Committee because some damage to three historical religious premises has already been caused without permission of the Committee.</p> |

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| | | | <p>The Committee very respectfully recommends that the Hon'ble Court may be pleased to either order demolitions and/or removal of all structures belonging to Sailing Club and the Irrigation Dept. of UP Govt. coming within a mischief of 300 meters from the edge of river water as per order dated 8.12.2005 or in the alternative direct the UP Govt. of surrender a strip of land of 45 meters width required for the purpose of Kalindi Bye Pass for appropriate compensation to be paid by the Govt. of NCT of Delhi keeping the rest of structures and Yamunotri Guest House for use of UP Government undisturbed as an exception.</p> <p>The Hon'ble Court was pleased to direct the MCD and DDA to file status report regarding unauthorized construction at or near Gurudwara Majnu Ka Tila.</p> <p>The DDA and the Police did not take any action against the unauthorized construction at Gurudwara Majnu Ka Tila. The Convenor wrote letters to Police and DDA authorities. DDA reported that demolition programme of these structures was undertaken on 1.9.06 and the Police and DDA staff faced</p> |

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| Date | Particulars | Members Present | Remarks |
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| | | | <p>heavy public agitation. The Secretary, Urban Development Ministry, Govt. of India and Chief Secretary of the Govt. of NCT of Delhi as well as the Hon'ble Governor of Haryana, now In-charge of Delhi also spoke to the Vice Chairman, DDA that law and order position should be kept in mind and if possible some time may be given to the local Gurudwara authorities. DDA brought the matter to the notice of Hon'ble Chairperson of the Committee on phone and she kindly agreed to grant local Gurudwara authorities an audience at 5.30 p.m. on that day. The Hon'ble Court may be pleased to pass appropriate direction in the matter as no written undertaking as mentioned by the Vice Chairman, DDA was given by the management of the Gurudwara.</p> |
| 16 Oct'06 | 10 th Report of the Committee | In the matter of : Wazirpur Bartan Nirmata Sangh Vs UOI & Others & Public Interest Litigation | <p>The Hon'ble Court was pleased to fix the tenure of the Committee as one year ending 31.12.2006 or till such time the work assigned to the Committee is fully accomplished.</p> <p><u>Prayer:</u> It is prayed that the Hon'ble Court may be pleased to pass appropriate directions to the</p> |

(contd...)

| Date | Particulars | Members Present | Remarks |
|------|-------------|-----------------|---|
| | | | <p>DDA, PWD, MCD and Northern Railway.</p> <p>The Hon'ble High Court vide its order dated 29.3.06 the authorities to ensure that no construction takes place within the vicinity of 300meters of either side of Yamuna river.</p> <p>The Hon'ble Court vide its order dated 20.7.06 had directed the Chief Secretary of Govt of NCT of Delhi evolves some policy / guidelines for relocation of Tibetan refugees settled at Majnuka Tila and ISBT, Bela Road, Delhi at some other places with more hygienic conditions and all infrastructural facilities to the present settlements have to be removed as they are located within less than 120 and 180 meters from the edge of river water.</p> <p>Principal Secretaries of the Govt of NCT of Delhi were aware of these directions passed by the Hon'ble Court. Despite this the very fact that the Irrigation and Flood Dept. of Govt of Delhi had the audacity to recently undertake a plan of building the road at a distance of about 60 meters from the edge of river water by encroaching river bed just</p> |

(contd...)

| Date | Particulars | Members Present | Remarks |
|------|-------------|-----------------|--|
| | | | <p>to provide a motorable passage at the Tibetan settlement who had grossly extended their area of occupation towards river Yamuna in the recent years shows utter disregard of the Hon'ble Court's directions.</p> <p>It is therefore, recommended that exemplary action should be taken against the Principal Secretary of Irrigation Dept. of Govt of NCT of Delhi and other persons found responsible for this project.</p> <p>Surrender of 45 meters width land by the UP Govt for the proposed Kalindi Bye Pass Road:</p> <p>The Govt of UP has rejected the project of Kalindi Bye Pass Road as neither feasible nor viable. According to the Chief Secretary, no road can be allowed inside the UP Govt Yamunotan Guest House complex due to security reasons also. It may be pertinent to mentioned that entire sewage and sullage is directly discharged in the river Yamuna by the residents of UP Irrigation Dept complex.</p> <p>The Committee can be permitted to get the entire encroached area cleared.</p> |

(contd...)

| Date | Particulars | Members Present | Remarks |
|----------|--|--|--|
| 3 Nov'06 | 11 th Report of the Committee | In the matter of : Wazirpur Bartan Nirmata Sangh Vs UOI & Others & Public Interest Litigation | <p>The Committee has been able to get removed 10680 jhuggies and pucca structures including many religious premises and Dhobi Ghats from various places at both banks of river Yamuna.</p> <p>The Hon'ble Court may be pleased to extend the tenure of this Committee up to 31.12.2007 or till such time the work assigned to the Committee is fully accomplished.</p> <p>Work of clearance assigned to various Land Owning Agencies (DDA, MCD, Northern Railway, PWD. It is therefore prayed that the Hon'ble Court may be pleased to pass appropriate direction to the DDA, PWD, MCD and Northern Railway to ensure completion of the assigned job without any reservation.</p> <p>Allotment of office sites to Karamkandi, Mahabrahmin Sabhas of Nigam Bodh Ghat: The Committee feels that since the members of these two Mahabrahmin Sabhas are engaged in discharge of essential services to the community for completing cremation rites etc., no licence fee should be charged from these two Sabhas in the same manner,</p> |

(contd...)

| Date | Particulars | Members Present | Remarks |
|-----------|--|--|---|
| | | | <p>the 'Arya Samaj' who is presently managing the Nigam Bogh Ghat is not being charged any licence fee for.</p> |
| 28 Nov'06 | 12 th Report of the Committee | In the matter of : Wazirpur Bartan Nirmata Sangh Vs UOI & Others & Public Interest Litigation | <p>The Committee has been able to get removed 10680 jhuggies and pucca structures including many religious premises and Dhobi Ghats from various places at both banks of river Yamuna.</p> <p>The Hon'ble Court may be pleased to direct the MCD to allot the office-cum-storage sites to the two sabhas (Karamkandi Mahabrahmin and Sabhas of Nigam Bodh Ghat) free of charge.</p> <p>Non-Compliance of orders of the Hon'ble Court by the DDA regarding Dandi Swami Ashram & Dandi Swami Park:</p> <p>It is, therefore recommended that the Hon'ble Court may be pleased to direct the DDA to comply the direction of the Hon'ble Court contained in the orders dated 20th July, 2006 and 14.9.2006 forthwith by exchange of two strips of land, so that the Dandi Swami Ashram can withdraw litigation pending against the DDA. The DDA be also directed to immediately resume development of the park.</p> |

(contd...)

| Date | Particulars | Members Present | Remarks |
|------|-------------|-----------------|--|
| | | | <p>Non Cooperation of Delhi Police for Clearance of Nangla Gaon: The Committee, therefore, feels that the excuse of non-availability of police force taken by the Police authorities was not tenable particularly when Dr. K.K. Paul, Commissioner of Police happens to be a member of this Committee.</p> <p>It is therefore, prayed that the Hon'ble Court may be pleased to direct the Divisional Railway Manager (Northern Railway), Municipal Commissioner and Commissioner of Police to complete the clearance operation of Nangla Gaon within two weeks.</p> <p>Non clearance of unauthorized structures in the river bed at Jogabai Extn. & Batla House Extn. By the DDA deliberately: It is therefore, recommended that strict direction to be issued to the Vice Chairman, DDA to carry out demolition and clearance of these structures existing in the river bed at Jogabai Extn., and Batla House Extn., within about two weeks and appropriate action which may be deemed just and proper, may be taken against the concerned officer/officers of the DDA.</p> |

(contd...)

| Date | Particulars | Members Present | Remarks |
|-----------|--|--|---|
| | | | <p>Violation of the order of the Hon'ble Court and false statement made by the DDA in regard to demolition of two structures under construction in Tibetan Colony at Majnu Ka Tila:</p> <p>The Commissioner (LM) DDA had deliberately misled the Hon'ble Court claiming that two unauthorized constructions which were still under construction had been fully demolished much before 7.9.2006.</p> <p>In view of the aforesaid, appropriate exemplary action if deemed proper may be taken against the Commissioner (LM) DDA for flouting direction of the Hon'ble Court and for giving false report to the Hon'ble Court on 7.9.2006.</p> |
| 13 Dec'06 | 13 th Report of the Committee | In the matter of: Wazirpur Bartan Nirmata Sangh Vs UOI & Others & Public Interest Litigation | <p>The Committee has been able to get removed 11280 jhuggies and pucca structures including many religious premises and Dhobi Ghats from various places at both banks of river Yamuna.</p> <p>Allotment of office sites to Karamkandi, Mahabrahmin Sabhas of Nigam Bodh Ghat: The Hon'ble Court maybe pleased to direct the MCD to allot the office-cum-storage sites to these two Sabhas free of charge.</p> |

(contd...)

| Date | Particulars | Members Present | Remarks |
|------|-------------|-----------------|--|
| | | | <p>Non-Compliance of orders of the Hon'ble Court by the DDA regarding Dandi Swami Ashram & Dandi Swami Park: It is, therefore, recommended that the Hon'ble Court maybe pleased to direct the DDA to comply the direction of the Hon'ble Court contained in the orders dated 20th July, 2006 and 14.9.2006 forth-with by exchange of two strips of land, so that the Dandi Swami Ashram can withdraw litigation pending against the DDA. The DDA be also directed to immediately resume development of the park.</p> <p>Non Cooperation of Delhi Police for Clearance of Nangla Gaon: It is therefore, recommended that strict direction be issued to the Vice Chairman, DDA to carryout demolition and clearance of about 300 structures existing in the river bed at Jogabai Extn., and Batla House Extn., within about two weeks and appropriate action which may be deemed just and proper may be taken against the concerned officer/officers of the DDA for flouting the direction of the Hon'ble Court. The Police commissioner may also be directed to provide adequate police force and protection for the demolition opera-</p> |

(contd...)

| Date | Particulars | Members Present | Remarks |
|------|-------------|-----------------|---|
| | | | <p>tion without any reservation or excuse.</p> <p>Violation of the order of the Hon'ble Court and false statement made by the DDA in regard to demolition of two structures under construction in Tibetan Colony at Majnu Ka Tila:</p> <p>The Committee, therefore recommends that appropriate exemplary action, which may be deemed proper, may be taken against the Commissioner (LM) DDA for flouting direction of the Hon'ble Court given vide order dated 31.8.2006 passed in CM NO. 10710-11/2006 filed by residents of Ghat No. 6, Kudsia Ghat and for giving false report to the Hon'ble Court on 7.9.2006.</p> |

16th Report of The Yamuna – Removal of Encroachments Monitoring Committee

IN THE HON'BLE HIGH COURT OF DELHI: AT NEW DELHI:

WP (C) No. 2112/2002 & WP (C) No. 689/2004

IN THE MATTER OF:

WAZIRPUR BARTAN NIRMATA SANGH

Versus

UNION OF INDIA & ORS

AND

PUBLIC INTEREST LITIGATION

N. D. O. H.: 25.4.2007

16TH REPORT OF THE COMMITTEE

(This report mainly deals with the on going Times Global Village festival and under Construction DND Flyway – Mayur Vihar Link Road)

BACKGROUND

1. The petitioners S/Shri Anand Arya and Manoj Mishra, who were writ petitioners before the Hon'ble Court in Writ Petition (Civil) No. 2344 of 2007 claiming to be involved with various environmental issues of riverine habitats and revival of the river Yamuna had filed representation before the Committee on 3.4.2007 as directed by the Hon'ble Court in its order dated 28.3.2007 to approach this Committee which was directed to submit its report after examining the issues and contentions raised in their representation. The petitioners had sought immediate action for stopping the on going Times Global Village festival being held in approximately 80 acres of land in the western bank of river Yamuna and on the north of DND Flyway and the under construction DND Flyway Mayur Vihar Link Road as both these projects were not only in violation of various orders passed by the Hon'ble

Court but were also causing serious damage, to the integrity of the river flood plain, the ecology of the river system and capacity of the river to recharge aquifers (under ground water recharge system). It was also claimed that the aforesaid activities were located within the eastern Marginal Bund Road embankment and the Ring Road being the western embankment of the river Yamuna and also within 300 mtrs. of the edge of the river water. After visiting the site on 6.4.2007, the Convenor confirmed that Times Global Village festival was being held in the land which was meant for 'Channelization of River Yamuna' which not only envisages streamlining of the river but also envisages the development of its banks for maintaining ecological balance of the entire city of Delhi M/s. Noida Toll Bridge Company Limited (hereinafter called "NTBCL") had claimed that Time Global Village festival was neither an unauthorized nor illegal construction as it was being held after obtaining all requisite approvals from different authorities on lands in valid possession of NTBC Ltd. After consulting the Chairperson hearing notices were sent to the petitioners as well as to the NTBCL for hearing by the Committee on 17.4.2007.

2. The petitioners and their learned counsel Shri Ritwick Dutta on the one hand and Shri Rajiv Nayyar, learned Sr. Advocate on behalf of NTBCL were heard by the Committee represented by the Chairperson, S/Shri V.N. Singh, Dinesh Rai. Vice Chairman, DDA members and Convenor of the Committee Dr. K.K. Paul, Commissioner of Police, Shri A.K. Nigam, Commissioner, M.C.D., Shri A. S. Chandhiok, Sr. Advocate and Shri Hari Shanker, Chief Engineer (Ganga) Govt. of UP, the other members could not / did not attend the meeting. After the matter was heard at length, it was decided that the members of the Committee shall visit the site at about 11.30 AM on 18.4.2007 in the presence of the petitioners and the representatives of NTBC Ltd. The site was accordingly inspected for about an hour by the Chairperson, S/Shri V. N. Singh and Dinesh Rai, members of the Committee and Mr. S. M. Aggarwal, Convenor of the Committee.

Times Global Village

Main discussion and findings:

3. A Month long Times Global Village festival is being organized and held by Dubai based e4e (e4 Entertainment Company Pvt. Ltd.) in collaboration and cooperation with and assistance of NTBC Ltd. And the Delhi Tourism & Transportation Development Corporation Ltd. (DTTDC) over an area of about 80 acres of land in the flood plain of the river Yamuna on its western bank at a distance of hardly 35 mtrs. from the western edge of water of river Yamuna. The Hon'ble High Court of Delhi in para 67 on page 647 of judgment dated 20.5.2005 in the case of Baldev Singh Dhillon, reported in 121 (2005), DLT page 606 while upholding the acquisition of land of 15 villages of the purpose of "Channalization of River Yamuna" had held that "River Yamuna in the NCT of Delhi cuts through the city from north to

south for a length of merely 50 kms. The total of about 9700 hectares of land is situated in the designated river bed defined by the existing Marginal Bund on the eastern and western side” in para 9.2.1 under the heading “River Yamuna” the Master Plan – 2010 also concedes that the length of the river in the NCT of Delhi is 48 Kms. From Palla in the North to Okhla in the South, with a total river bed / flood plain area of about 97 km

4. In the Times Global Village, the Committee found numerous restaurants, many pavilions of various countries, dancing floor, shopping arcades, gaming zones for children all made of plywood with underground support. We also found 6-7 huge joyrides embedded in the underground. Exact replicas of the Colosseum, the Taj Mahal, the Great Wall of China Sphinx guarding a huge pyramid and the Mount Rushmore standing tall over a pagoda made of wood with heavy underground support of iron girders and sand bags were found near the entrance gate welcoming the visitors. Many pucca roads along with access ramps were found having been built leading to the Times Global Village festival site. Huge parking area spread in the area of about 20 acres has also been provided. There was tell – tale evidence of huge earthwork having been undertaken raising the natural surface level of the area by about a meter at some places and about 2 mtrs. at other places so that underground support to huge structures could be provided and underground sanitary, sewage water and electrical fittings could be put in place for running the show purely as a commercial venture. The Committee is of the considered opinion that some constructions which have come up in large nos. and a number of roads and access ramps which have been built by the NTBC Ltd. As per memorandum of understanding between the parties for holding the mela by e4e are in utter violation of the orders of the Hon’ble Court dated 8.12.2005, 29.3.2006 and 1.6.2006 which had prohibited any construction activity and construction of any road within 300 mtrs. of edge of river water.
5. The Committee also noticed that large concentration of reed plants grown in this flood plain which used to serve as natural habitat for many migratory birds along with many small water bodies existing there have been fully destroyed for raising the natural surface level for holding the festival. It has thus caused serious environmental degradation and grave harm to the ground water recharge capacity of the river.
6. The Committee is also of the considered opinion that the Times Global Village festival is being held without obtaining mandatory permission or NOC of the Chief Fire Officer of Delhi although, it was claimed by learned Sr. Advocate on behalf of NTBC Ltd and by the C.M.D of DTTDC Ltd. In his letter dated 10.4.2007 that prior approval of all authorities had been obtained for holding this festival at this site. The Member Secretary of the Yamuna Standing Committee had accorded approval vide his letter dated 4.5.2006 addressed to the CMD of DTTDC Ltd only for flood point of view of the river Yamuna on the condition that natural surface level on the area was not to be raised by filling which condition has

been violated with impunity. (Annexure A). The approval of the Yamuna Standing Committee was sought by the CMD of DTTDC Ltd vide his letter dated 20.4.2006 because the proposed site of the Times Global Village festival even according to him falls under flood plain of the river Yamuna. The D.C.P. (Licensing) had granted temporary licence on 30.3.2007 to Shri Sanat Kaul, CMD of DTTC Ltd authorizing him to organize Times Global Village festival from 30.3.2007 to 24.4.2007 prima facie without application of mind on various terms and conditions attached with the licence (Annexure B). This licence was granted on the basis of so called No Objection Certificate dated 19.3.2007 purported to have been issued by Dy. Chief Fire Officer of Delhi Fire Service, Which was a mandatory requirement. Perusal of this so called NOC letter dated 19.3.2007 addressed by Dy Chief Fire Officer to D.C.P. (Licencing) in reference to his letter dated 8.3.2007 would show that according to him the party (e4e) had submitted an undertaking/ affidavit undertaking not to erect any temporary structure / pandals / shamianas for The said event and hence NOC was not required from the Dy. Chief Fire Officer (Annexure – C). The organizers had also not sought any approval or sanction of the Technical Committee of the DDA for constructing roads and access ramps and other development works at the festival site which was mandatory as the site fell in Development Area No. 173 as notified by the Administrator of Delhi on 29.3.1989.

7. The Times Global Village festival was permitted by the DCP (Licencing) only up to 24.7.2007 and so, in the opinion of the Committee this event has become a fait compli. As regards the undertaking of the e4e and NTBC Ltd. for dismantling all the temporary structures within one month of the conclusion of the festival, the Committee feels, that in view of para 3.4. and 3.5 under the heading ' Obligation of DTTDC ' in the MOU dated 31.1.2006 executed between e4e. DTTDC Ltd. and NTBC Ltd. stipulating holding of similar events during the balance part of the year by the NTBC Ltd and DTTDC Ltd. the site developed for holding the Times Global Village festival with various roads and access ramps is likely to be a permanent feature (Annexure – D)

Recommendation No.1: The Committee, therefore, recommends that the Hon'ble Court may be graciously pleased to direct the DTTDC Ltd. and NTBC Ltd and e4e to remove all temporary or semi-pucca structures from the site and dismantle all roads and access ramps within a month and restrain them from holding any event or festival in future at least within 300 mtrs. of edge of river water in order to protect the flood plain of the river and that too should not be done without permission of the Hon'ble Court.

Recommendation No.2: "The Pollutor – Pays" principle has been held to be a sound principle by the Hon'ble Supreme Court in the Indian Council for Enviro – Legal Action Vs. UOI JT (1996) 2 SC page 196 and in M.C. Mehta Vs. Kamal Nath & Ors. (1997) 1 SCC page 388 cases and hence it is recommended that all three organizers namely, DTTDC Ltd, NTBC Ltd. and e4e be imposed heavy damages for causing damage to

the environment and ecology of the river system and for adversely affecting the ground water recharge potential of the flood plain of the river.

Should not surplus land of River Flood Plain in possession of NTBC Ltd. be resumed by the Govt.?

8. A large tract of land measuring 3500 hectares equivalent to 8648 acres covering 15 villages including Village Kilokri, Village Khizrabad and Village Chackchilla located on the western side of the river Yamuna between Nizammuddin Bridge and Okhla Barrage was sought to be acquired by the Lieutenant Governor of Delhi in 1989 for planned development of Delhi viz. "Channelization of River Yamuna" which not only contemplates streamlining of river Yamuna but also development of its river fronts for maintaining ecological balance of the entire city of Delhi. Awards dated 19.6.1992 were made in respect of 14524 Bight 12 Biswas equivalent to 3026 acres of land of 15 notified villages.
9. The Hon'ble Lieutenant Governor of Delhi vide his order dated 30.3.1998 had ordered suo moto resumption of land measuring 206.72 acres comprising 153.43 acres of village of Kilokri, 11.05 acres of Village Khizrabad and 42.24 acres of Village Chackchilla from DDA out of the acquired land for transfer on lease of New Okhla Industrial Development Authority (NOIDA) for the purpose of construction of Delhi – NOIDA Bridge (DND Flyway) (Annexure – E). Possession of the aforesaid land measuring 206.72 acres was handed over to the NOIDA on 24.4.1998. Subsequently, 141 acres of land comprising of 533 Bigha 10 Biswas land of Village Khizrabad, 32.10 Bight of Village Okhla, 16.16 Bigha of Village Jogabai and 105 Bigha 1 Biswa of Village Chackchilla was acquired in the mane of Hon'ble Lt. Governor by issuing notification (Annexure – F Colly) under Section 4 of L.A. Act dated 2.4.1998 for the construction of Delhi Noida Bridge Project. Possession of subsequently acquired land measuring about 141 acre was delivered to the Noida on 8.5.1998. A Memorandum of Understanding between NOIDA, Delhi Administration and infrastructure Leasing and Financial Services Limited which is a promoter holding company of NTBC Ltd. had been earlier executed on 7.4.1992 for construction of 8 lane Corridor Bridge across river Yamuna and approach road on the Maharani Bagh side and approach road on the area of NOIDA side. In clause 7 (c) it was stipulated that the Delhi Administration will assist NOIDA to acquire necessary land for construction of the bridge and for access roads including land in Maharani Bagh area and will deliver possession of the land to I.L.F.S for execution of the project. A lease deed dated 23.10.1998 was thereafter executed in the mane of the President of India by the Secretary (Land) Govt. of NCT of Delhi and the aforesaid land measuring 206.72 acres resumed on 30.3.1998, along with subsequently acquired land measuring about 141 acres was leased for a period of 31 years on annual lease rent of Re. 1/- (Re. One) and payment of Rs. 50/_ was received in consideration of possible extension of the lease period up to 50 years. Simultaneously, a Sub lease deed dated 23.10.1998 registered on 26.12.1998 was executed between NOIDA

and NTBC Ltd. for leasing out the aforesaid Delhi land for construction of NOIDA DND Flyway.

10. It is common knowledge that this project has long been completed and daily Toll tax is being recovered by the NTBC Ltd. to recover their investments. About 80 acres of land out of the aforesaid leased land is presently being used by the NTBC Ltd. for holding Times Global Village festival. There may be some more land of this lot which has not been utilized for the project of construction of DND Flyway for which specific purpose the possession of land measuring about 347.72 acres had been given to Noida. This surplus land under lease with NOIDA and NTBC Ltd should not be allowed to remain with them as it has to be used for the "Channelisation of River Yamuna" and development of its river fronts, land being located in the flood plain of the river Yamuna.
11. **Recommendation No. 3:** The Lease Deed dated 23.10.1998 in so far as it pertains to unutilized excess surplus land remaining after construction of the DND Flyway located in the flood plain of river Yamuna on its western bank be quashed on the same principle the Lease Deed executed by Govt. of Himachal Pradesh in favour of M/s Span Motels Pvt. Ltd., for leasing ecologically fragile land at the bank of river Beas in Kullu was quashed by the Hon'ble Supreme Court in the case of M.C. Mehta Vs. Kamal Nath & Ors Reported in (1997) 1 SCC page 388 and its possession be ordered to be given to the DDA for the development of the river front.

Construction of DND Flyway

Mayur Vihar Link Road:

12. The petitioners have claimed that this road under construction is being constructed between the river Yamuna and eastern Marginal Bund which is a flood plain area of the river Yamuna, and therefore, the construction of this road should be stopped, particularly when according to the petitioners, the distance of road is within 300 mtrs from the edge of river water. The Yamuna Standing Committee which is a statutory body of Central Water Commission in the back drop of 1978 flood which had caused havoc in the city of Delhi had framed guidelines for future flood protection work on the river Yamuna in its meeting held on 26.5.1979. It was decided that the minimum spacing between future embankments on the banks of the river Yamuna should be 5.00 kms. and the embankments should be aligned at minimum distance of at least 600 mtrs. from the active river edge at the time of construction of embankments.
13. Admittedly the DND Flyway Mayur Vihar Link Road is being built by the NTBC Ltd., between the edge of the river water and the eastern embankment which is Marginal Bund road connecting east Delhi with Noida. According to NTBC Ltd.,

the road under construction is at a distance of 386 mtrs. from the edge of river water which is beyond 300 mtrs. within which distance construction of road was prohibited by the Hon'ble Court vide order dated 1.6.2006. It was also contended that this road is being constructed after obtaining sanction and prior approval of the Yamuna Standing Committee. According to the A.S.O. (NL), DDA Shri R.S. Dahiya who had been requested to take measurement, the nearest point of the road under construction is at a distance of 317 mtrs. from the edge of river water and the farthest point is at a distance of 480 mtrs. The Yamuna Standing Committee in its 72nd meeting held on 8.1.2007 had decided that a minimum width of 1150 mtrs. (500 + 2 x 300) should be available for the river to flow and play. Thus, approval of the Yamuna Standing Committee for giving go ahead to this project flies in the face of its own guidelines laid down on 26.5.1979 and 8.1.2007 and cannot be said to be correct and valid. However, there is no violation of Hon'ble Court's order dated 1.6.2006 as the nearest point of road under construction is at a distance of more than 300 mtrs from the present edge of river water.

14. **Recommendation No. 4:** In case the Hon'ble Court permits completion of the road in public interest, the Yamuna Standing Committee be directed to ensure that the conditions imposed by it while according approval have been fulfilled by the NTBC Ltd. in letter and spirit.
15. The Committee has noted with grave concern the manner in which the Chief Town Planner of MCD has violated the well settled Doctrine of 'Public Trust' by abdicating his duty to ensure that his road becomes a 'Public Street' after expiry of a reasonable period during which period the NTBC Ltd., could collect toll tax from users of the road to recover its investment with reasonable return thereon. It is very unfortunate that the Chief Town Planner by executing Confirmation Agreement dated 9.1.2005 (Annexure-G) had given undertaking on behalf of the MCD not to declare this road as a "Public Street" and to recognize the right of the NTBC Ltd., to operate and maintain the said road as a 'Private Street' and charge user fee in respect thereof which stipulation amounts to declaring the road as 'Private Street' in perpetuity.
16. **Recommendation No. 5:** It is recommended that the Confirmation Agreement dated 9.1.2005 be quashed being in violation of the Doctrine of 'Public Trust' and the provisions of chapter XV of the Municipal Corporation Act, 1957 and the DND Flyway Mayur Vihar Link Road be declared as a 'Public Street' after expiry of 25-30 years of its completion.

(S.M.AGGARWAL)
CONVENOR

Dated: 23.4.2007

Appendix 5

Why River Front Development on Lines of European Rivers is not a Viable Option in India?

Comparative Statement of average Monthly Rainfall (1970-2000)

| Month | New Delhi (Yamuna) | | Oxford (Thames) | | Paris (Seine) | | Vienna (Danube) | |
|-------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| | Mean Total Rainfall (mm) | Mean Number of Rain Days | Mean Total Rainfall (mm) | Mean Number of Rain Days | Mean Total Rainfall (mm) | Mean Number of Rain Days | Mean Total Rainfall (mm) | Mean Number of Rain Days |
| Jan | 20.3 | 1.7 | 57.5 | 11.5 | 53.7 | 10.2 | 37.2 | 7.3 |
| Feb | 15.0 | 1.3 | 42.6 | 9.2 | 43.7 | 9.3 | 39.4 | 7.6 |
| Mar | 15.8 | 1.2 | 50.0 | 10.5 | 48.5 | 10.4 | 46.1 | 8.3 |
| Apr | 6.7 | 0.9 | 46.2 | 8.7 | 53.0 | 9.4 | 51.7 | 7.5 |
| May | 17.5 | 1.4 | 53.9 | 9.1 | 65.0 | 10.3 | 61.8 | 8.5 |
| Jun | 54.9 | 3.6 | 54.5 | 8.7 | 54.6 | 8.6 | 70.2 | 9.1 |
| Jul | 231.5 | 10.0 | 38.2 | 6.7 | 63.1 | 8.0 | 68.2 | 9.0 |
| Aug | 258.7 | 11.3 | 54.4 | 7.8 | 43.0 | 6.9 | 57.8 | 8.0 |
| Sep | 127.8 | 5.4 | 58.9 | 9.1 | 54.7 | 8.5 | 53.5 | 7.0 |
| Oct | 36.3 | 1.6 | 61.8 | 10.6 | 59.7 | 9.5 | 40.0 | 6.0 |
| Nov | 5.0 | 0.1 | 59.4 | 10.1 | 51.9 | 9.7 | 50.0 | 8.3 |
| Dec | 7.8 | 0.6 | 64.7 | 10.9 | 58.7 | 10.7 | 44.4 | 8.2 |
| Total | 797.3 | | 642.1 | | 649.6 | | 620.3 | |

Source: World Meteorological Organisation

Analysis

It is clear from the above data that:

- While rain fall is an every other day feature in Europe, the same is not true in monsoonal countries like India.
- Rain in India comes in torrents almost every monsoon (258 mm in 10 rain days) it is much gentler in Europe (60 mm in 10 rain days).

- c) Risk of flood is much greater in India as we witness each monsoon in some or the other part of our country
- d) Indian rivers would need much wider spread of flood plain for the torrential flood waters to spread and seep below into ground as compared to rivers in Europe
- e) Ground water recharge during monsoon months is a key element of water security in India while such a requirement would be a non issue in Europe where ground water recharge would be taking place almost every other day
- f) Clearly Indian rivers are not like European rivers and hence the kind of river front development which is common (although not entirely safe there too) in Europe is not an option in India.
- g) One of the key reasons that Yamuna cannot be Thames is the fact that for river Thames perennial flow in it was never an issue, it being a tidal river. What mattered there was pollution from sewers which once fixed helped revive the river with ease. While the major problem with river Yamuna is utter lack of lean season flow in this once perennial river compounded with pollution from city sewers.

Perhaps no other river in India other than the holy Ganga has attracted as much judicial attention as its' key tributary namely the river Yamuna. Ironically despite such attention its (Yamuna) condition continues to worsen with each passing day. The present work traces the journey of the river Yamuna through the various courts in India and analyses to what extent the contours of law and judicial decisions have helped shape its (river) character both in terms of flow (quantity) and quality.

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