Political Struggle Through Law:

The Public Interest Litigation (PIL) route to environmental security in India with special reference to the environment movement in Goa.

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It is well known all over India, even among top Central Government bureaucrats, that Goans are very protective of their environment. After all, it is their most precious asset. They rely upon it for their livelihood, for agriculture, fishing and tourism and even for mining. Consciousness about protecting the natural environment is written deep in the Goan psyche. In fact, long before environment became a fashionable word globally, Goans were already fiercely agitating against agencies that were thoughtlessly, and often with official sanction, investing in businesses and economic activities that led to active degradation of the natural environment.

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The environment movement in Goa dates back to the early 1970s, commencing almost around the same time as global awareness emerged of the urgent need to protect the earth's resources. At the famous Stockholm Environment Conference of 1972, heads of state assembled for the first time with a single point agenda: to affirm their commitment to protection of the environment in the interests of life on earth.

In Goa, in place of platitudes, environment concern manifested itself in the form of protests and agitations. Of course, agitations were always preceded by a long period of persuasion when citizens did their best to make authorities aware of their grievances through discussions with local officers, letters to the authorities, signature campaigns and even lobbying through their elected representatives. When all failed, the protesters prepared themselves for battle on the streets, with dharnas, bandhs, demonstrations, rasta rokos, morchas etc. these being the weapons at their disposal. Such strategies involving mass mobilisation could be very effective and in fact are very much in use even today.

One can still recall the successful Ramponkar agitation against the chemical pollution unleashed by Zuari Agro Chemicals (today, Zuari Industries) and the havoc it brought to the coastal village of Sancoale. Dangerous chemicals including arsenic leached into the soil, the rivulets and the creeks resulting in the withering away of standing agricultural crops in the fields as well as mass fish mortality which washed up on the Velsao beach.

Or one recalls the more recent Nylon 6,6 agitation where citizens successfully brought America's largest chemical multinational to its knees by their steadfast refusal to allow the factory to be set up in their pristine environment at Keri.

One vital ingredient for the success of any agitation is the availability of large numbers of protesters prepared to give time and energy to persevering with the agitation for unknown lengths of time. The course of an agitation is always difficult to predict and much depends on the response of the administration and the skill of the campaign's leaders. However, it is not possible for citizens burdened with the demands of conducting their ordinary lives to be able to resort to street agitations every time they want a grievance redressed.

Moreover, as development went into fast track, citizens concerned about environment protection found they had to fight simultaneously on several fronts: huge tracts of forests were mowed down as leases were issued to mining companies; sand dunes were bulldozed and levelled to make room for luxury resorts; wells in some villages ran dry as some people pumped out water day and night from open wells to sell to those who wanted to put up huge constructions; recently commissioned metal factories spewed toxic fumes into the air and untreated effluents into streams and rivers that people used for obtaining drinking water. The list could go on and on. And yet the government had on the cards more of such thoughtless activity: more hotels, more industries, golf courses, more development.

Citizens were thus forced to look for *other* ways of protesting and alternate fora for quick and effective redressal of their grievances. It is in these circumstances that some environment NGOs began to turn to the judiciary, notably the Panaji Bench of the Bombay High Court, for relief. Access to the court was thus an option which people exercised when they found that the Government remained unmoved by their petitioning and unresponsive even to persistent requests for a re-evaluation of projects and other industrial activities which were beginning to destroy the quality of life of large numbers of people.

Another reason for approaching the court was that some problems cannot really be resolved through street action: for example, stopping an activity for which legal permission has already been obtained or ensuring that only a person properly qualified to hold a key environment post is appointed to it. Such Government decisions, if left unchallenged – and they can only be challenged via writ petitions – eventually take an equally severe toll of the environment and it is often difficult to repair the damage later on.

To their good fortune, NGOs found the judiciary a powerful ally in their struggle for effective enforcement of environment law or for setting aside Government decisions wrongly taken. For one thing, the judiciary was highly respected by all. Government, which was usually deaf to all forms of protest, promptly took notice of judicial summons. It sent its emissaries (advocates) to be present in court on the appointed day. It read the citizens' petition carefully and filed a reply, bringing on record documents which the citizens would otherwise find hard to get a hold of. Sometimes, in fact, Government even abandoned its arrogant behaviour and was polite to the point of actually being humble and contrite for its deeds of omission and commission. Citizens could never even remotely hope to receive such treatment outside the precincts of the courtroom, as when for example they directly addressed or approached government officers about these issues.

Secondly, the court invariably showed clear displeasure when it found that the law was being violated. It was extremely harsh on those who took the law into their own hands or carried on business without seeking the necessary approvals when such permissions and NOCs were required by law. Citizens naturally felt pleased to discover that there were others too who, like themselves, believed in the rule of law and equality before the law.

Thirdly, the court showed a willingness to act. If a petitioner was able to make out what is called a *prima facie* case, it issued interim orders calling the activity involved to a halt. The court forced the authorities to explain their acts of omission or commission. It set up

Expert Committees and Commissioners to study situations and report on them if it felt this would help the court understand citizens' grievances better.

Finally, and most important, citizens found that directions issued by the court were invariably obeyed, whether issued to private parties or to the government. Appeals against the court's order might eventually be filed but till a contrary direction came from the appellate courts, the court's order would prevail howsoever harsh its impact on the respondent concerned. Rare indeed was there a party willing to buck the court's directions and not comply with it.[1]

Thus, through the instrument of PILs, citizens were not only able to obtain speedy action but they also found that their desire to protect the environment was not scorned or spurned. On the contrary, such concern found favour with the judiciary provided the petitioner could assure the Court that the PIL genuinely espoused a public cause and that the petitioner had no personal axe to grind in the matter.

For the public who had grown accustomed to harsh and callous treatment from the bureaucracy, such courtesies brought unprecedented relief. PILs at once raised the hopes of people who had begun to despair of finding a way to save their natural heritage. They opened new vistas to those who did not feel capable of organizing public agitations and morchas but were willing to make other significant forms of contribution to the protection of nature.

In the past two decades, the courts in Goa have dealt with a wide variety of public issues and provided relief to citizens on numerous occasions. From the first cases filed in the eighties till today the scope of PILs has widened. This is not to say that the court is the ultimate guarantee for redressal of environment grievances. Far from it. There are several instances where the court has shown itself wholly inadequate to deal with the challenges presented to it and where the citizens would have been better off espousing their cause on the streets instead. On numerous occasions, the ignorance of judges on ecological issues

[1] A summary introduction to many PIL judgements is given in Appendix 1.

has rudely dashed citizens' hopes and their PILs have been unceremoniously dismissed. There are also occasions when matters drag on and on either at the High Court level or at the Supreme Court and the adage "justice delayed is justice denied" becomes only too true. But despite all these shortcomings, all said and argued, it has to be admitted that the court remains a significant option for a beleaguered citizenry after it has run out of all other options.

I will highlight some of the important issues that citizens in Goa have taken to the courts in PILs. Some of these cases have been filed by individuals, most of them by citizens groups, either registered NGOs or loosely formed Nagrik Samitis. Through this narration and discussion of issues, I hope to highlight:

(a) The nature of citizens' environmental concerns brought before the court and the manner in which these have led to expansion of environmental consciousness in the state of Goa;

(b) The response of the court to the environment petitions brought before it and the kind of reliefs it has been able to give citizens;

(c) The quality of the impact of judicial activism in the area of environment protection and how this might be improved.

I hope that the discussion will lead to an understanding of when and why courts interfere in environment matters (and when they do not), the extent of work and commitment that citizens must be willing to do if they want their PIL to have a wide and effective impact on society and the consequences that citizens must be prepared for once they decide to enter the portals of the court via a PIL.

PROTECTION OF COASTAL ASSETS

It is entirely natural – Goa having a prominent and beautiful coastline – that among the first environment issues that the citizens would take before the court was a plea for the protection of the ecological endowments on the beaches of Goa. Prominent among these natural assets were the sand dunes.

The very first case in fact was not a PIL.[2] It was an appeal filed by some individuals against certain government orders that had rejected their applications for renewal of their leases to mine sands from the beaches. Removal of sand from the beaches had been for some time a legitimate, officially permitted activity. The environment consequences of the extraction had never been considered. Such extraction led to depletion of a valuable ecological asset. An Anti-Sand Extraction Committee had been protesting and agitating against such extraction in south Goa since the 70s. In the mid-80s, the government finally took a policy decision to cancel the leases and not to renew them any further. The beneficiaries of the leases challenged this order in the form of a writ petition to the High Court.

Citizens were now concerned about the final outcome of the struggle to stop the mining of sand. Were the judges knowledgeable in the matter? Would proper facts be placed before them? The lessees' writ petitions were in a sense the final battleground for settling the issue and the citizens must ensure that the matter was not lost. It was entirely possible that government counsel – burdened already with several other matters – might not be as well prepared on the subject as the counsels of private parties who were paid handsome fees and researched the matter thoroughly. It was also entirely possible that the government might not even actually defend its decision forcefully.

The Goa Foundation (then a newly formed environment NGO) was requested by some concerned citizens to file an intervenor application to espouse the public interest aspect of the matter. The idea was to apprise the court of the sound ecological reasons available to support the government's decision and to actively canvass the issue by bringing before

[2] See Appendix 2 for a comprehensive list of PILS filed by the Goa Foundation on environment matters.

the court studies and scientific data to show that any reversal of the government's decision would be disastrous for coastal ecology.

The strategy worked. The High Court upheld the decision of the government to cancel the leases (a subsequent appeal to the Supreme Court by the private parties also failed). The judgement was hailed as a victory for the environment. In its judgement, the Court commended the NGO for taking the initiative to present itself before the court in order to assist in the matter. It also appreciated the pains that the NGO took to enlighten the Court on scientific matters. Such judicial approval undoubtedly fired the zeal of citizens even more and encouraged them to take seriously their constitutional duty under Article 51 (g) of the Constitution of India "to protect and improve the natural environment and to have compassion for living creatures".

But the sand dunes were not safe as yet. Assault on them now came from an entirely different quarter. The tourism boom around the late '80s led to a plethora of approvals for locating massive 5 star hotels along the coastline. Most of them had their own visions of the landscape they wished to entice their clientele with. Sometimes it was Hawaiian landscapes; some hotels were designed reminiscent of Portuguese cities, still others looked to the colonial era for inspiration. All of them wished to enable their guests to escape from real life into an ethereal dream world. Naturally, such dreams involved altering the natural landscape and creating unsustainable artificial enclaves.

What suffered in the process were the natural features of the beach areas, particularly the sand dunes and the coastal vegetation. Sand dunes were levelled mercilessly as the architect or the designer preferred to work on a clean landscape and the construction engineers found it cheaper to simply use the sand thus displaced in the construction of the buildings themselves, often to pack the plinths.

From 1987 onwards, the subject of protection to be accorded to the sand dunes has presented itself time and again before the courts. Sorry to relate, the courts have sent out mixed signals on the nature of protection to be accorded to these ancient structures. The

issue remains unresolved till the present day. The response of the judiciary is worth exploring.

A word first about sand dunes. As any person living along the coast knows, dunes are vital to the stability of the coastal region as they are buffers created by nature to protect the hinterland from the ravages of the sea. Destroy the dunes and you make the beach area vulnerable to inundation, fresh water aquifers disappear and the sea gets a golden opportunity to expand its horizon landwards. Hence dunes are described as nature's first line of defence in the coastal region. It is only if one understands the significance of the dunes that one realizes why it is necessary that they be given absolute protection wherever nature has thought to create them and despite the fact that these locations sometimes come in the way of our visions for development.

But judges are not always familiar with such ecological assets. Not every judicial officer comes from the coastal area. Many have never seen dunes or perchance have noted them as mere mounds of sand distributed carelessly and for no discernible reason by nature in large or small heaps all along the coastline. The task of impressing upon the Court the value of leaving the dunes untouched *in situ* places an enormous burden on the petitioner in the PIL, more so if the judiciary is unwilling to admit ignorance. In the Ramada case, in response to the petitioner's attempt to enlighten the judiciary on dune ecology, the presiding judge dismissed the effort with the curt remark – "Everyone knows about dunes. We have all played with sand castles when we visited the beach as children."

But why blame judges alone? In the Dalmia Resorts case, the counsel for the 5-star resort argued the affidavit filed by the company that the dunes would in fact be strengthened by the construction of buildings on them since after all cement and concrete are much stronger materials than mere sand. Consequently, the response of the judiciary to the sand dune issue has been greatly affected by the wisdom and knowledge of the individual judges hearing the cases at different times.

In the very first of the PILs against resorts which came before the court – The Ramada Renaissance in 1988 – the environment clearance from the Central government allowed the resort company to construct hotel buildings beyond 200m from the HTL. Environmentalists alleged the area in question was full of sand dunes, in some cases going even beyond 500m from the HTL. The court asked former Chief Town Planner, S.P. Deshpande, for an expert opinion on whether constructions beyond 200 m from the HTL would cause ecological damage. Deshpande's report stated that the area upto 200m was ecologically sensitive and usually contained the primary sand dunes which must not be touched or removed under any circumstances. Beyond that, his report said, the secondary and tertiary line of dunes could be sacrificed in the interests of development. Deshpande was a town planner with expertise in planning, not ecology. His bias was towards development, more so as he was even then a consultant for coastal projects. But Deshpande's expert opinion fit very nicely into the limits of development permitted by the Central government. Thus 200m from the HTL became the acceptable limit for protection of the sand dunes.

Environmentalists were not happy with this outcome and took their struggle to save the dunes to the Ministry of Environment. They believed they met with success when the Coastal Zone Management Plan issued in 1997 under the CRZ Notification demarcated sand dunes as CRZ I implying thereby that dunes occurring upto 500m would be protected. The struggle took ten years during which time large numbers of dunes simply vanished to make way for concrete.

Even this achievement appears to be now in question with the recent judgement of the Supreme Court in the Diksha Holdings case. In that judgement, the Supreme Court permitted the 5-star resort to be constructed in dune area, even as it affirmed its commitment to the protection of environment. The Diksha case is important because it shows how wide is the disparity in perception on ecological issues among the judges and it also shows how judgements can be delivered on the basis of selective, and sometimes, erroneous reading of facts.

On two separate occasions the courts stayed the construction of the Diksha Resort. The first occasion was when it admitted the PIL filed by the Goa Foundation against the construction of the Resort. The second occasion was when the apex court admitted an appeal filed by the Foundation against the final judgement of the Bombay High Court dismissing its petition. The PIL and the court's interim stay orders both relied on a Report of the National Institute of Oceanography (a premier institute in coastal ecology, which has published several volumes on the sand dune system). The NIO Report clearly stated that the Diksha Resort was on dune area and that the development work done so far had already massacred the dunes.

Yet the Supreme Court bench which finally heard the Goa Foundation appeal refused to look at the very same NIO Report *on the ground that the petitioner had procured the report during the pendency of the appeal before the apex court*. This was a gross factual error. And a very crucial one too. Without the report it was easy to reject all the arguments put forward by the NGO. It was akin to pulling the mat out from under its feet, so that the court could allow the construction of Diksha. What is even more curious is that despite efforts of the NGO to get the apex court to see its error, the court has steadfastly stonewalled the NGO.

The Diksha judgement is bound to be relied upon by all those who see these "mounds of sand" obstructing their development plans. Already, in the Piva Resorts petition, the Apex Court has permitted the largest dune in Baga – which occurs at a distance of around 300-400m from the HTL – to be likewise completely encircled by the resort's buildings, naively believing that dunes although completely cut off from the sea (their source of life and nourishment) will somehow survive in such imprisoned conditions.

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Sand dunes are not the only aspect of coastal ecology whose protection environmentalists have laboured to protect. As it was obvious that the demands of industry and of tourism were likely to destroy the coastal stretches beyond repair if allowed without controls, environmentalists pressed for regulation and close monitoring of the coastal stretches so as to ensure that their carrying capacity was not exceeded. For 10 years, starting with the

late PM Indira Gandhi's famous letter to the CMs of all coastal states calling for a halt to degradation of the beaches, the coastal stretch remained under scrutiny of the Central Govt. and guidelines indicating permissible development activities were issued to the coastal states. Eventually statutory protection was accorded to the coastal area with the issue of the CRZ Notification in February 1991.

Indeed, if the mere promulgation of statutes and laws could cure ills then India would be the cleanest, greenest place on earth since we have the widest plethora of laws designed to protect the environment. Starting with the Water and Air Acts in the 70s, new legislations have come into operation practically every other year. The problem of course is monitoring the implementation of these statutes.

NGOs initially worked with the Central government monitoring the development on the coast and reporting on violations. The Central government accepted this partnership and responded by issuing orders and directives to state governments to ensure compliance. The State governments in fact were the only unwilling partner. For this reason, the NGOs decided to take their battle to the court in the form of PILs.

The judiciary has shown that it is capable of ensuring that even the most powerful comply with the law of the land. What would be its response to this challenge? Would it be able to strengthen the hands of the NGOs and the Central government and force the hotel trade to respect the environment?

In response to a series of writ petitions filed against 5 star hotels (Taj, Majorda, Leela Venture, Cidade de Goa, Goan Heritage, Dalmia Resort) for violating the terms of their environment clearances, the High Court either restrained on-going construction activity or if the construction was completed, took undertakings from the developers that no additional constructions would be made by the parties. It is difficult to even contemplate such identical swift action from the government's. The court sent out a clear signal that restrictions on development were entirely valid as they were in the interests of protecting the ecology. Developers were bound to honour the terms of the environment clearance

and strictly follow the guidelines laid down. Such directions could not merely remain on paper.

The hotel lobby was taken entirely by surprise by the judicial response. It never imagined it had to actually abide by the little piece of paper called 'environment clearance' which it had accepted, then quietly filed away. Perhaps it had not even bothered to read the conditions imposed. Together the resort owners came up with a strategy which included:

i) Deny the violation or deny the value of the environmental asset;
ii) Try to ensure modification of the terms of clearance;
iii) Confuse the issue;
iv) Insist that such restrictions were incompatible with development, which the country badly needed for purposes of foreign exchange etc.

While denying the violation was difficult as photographic evidence was usually produced by the petitioners, denial of the value of the environmental asset could sometimes make a dent on the mind of the judges, depending (as explained earlier) on the capacity or inclination of individual judges to understand environmental issues.

Modification of the conditions imposed by the environment clearance letter was possible only in the case of the very powerful. For instance, Ramada got the Central government to condone its violation of the height restriction (the norm was 9 metres only, whereas Ramada had touched 24 metres) midway through the court proceedings. The tragedy is that the court accepted the individual relaxation without a murmur.

Confusing the issue was a strategy which also worked well with violators: the demarcation of the HTL being the easiest target. Even though Goa was very familiar with the concept of High Tide Line since a decree restricting constructions upto 90m from HTL existed in Portuguese times, the Courts were constantly informed that one authority or another was still marking the HTL. What is most astonishing is that the Court did not find it unusual that the same HTL marked on the development plans while granting

development permission was found unacceptable to the violator when confronted with the violation.

It is most unfortunate that the Court allowed the confusion to carry on and itself later became embroiled in the controversy. It stayed demolition orders issued by the Central government (in some cases, these stays remained active for over a decade) but it did not correspondingly restrain the violator from use of the premises, thus allowing the resort owner to actually benefit from his misdeeds. Undoubtedly, gleeful at the Court's reaction, the HTL controversy became the refuge of everyone dragged to the court for illegal constructions on the coastal stretch. It also contributed to an increasing number of such violations, making the coastal law look like a grand farce. The Central government soon lost the will to monitor its permissions. It even stopped issuing directions to bring offenders to book as it found every one of its directions stayed by the Court, usually *ex-parte*, because of the HTL controversy.

It is, however, the fourth objection that seemed to weigh most heavily with the judges: the classic "development v/s environment" dilemma. Should the judiciary interfere to enforce environment statutes if it meant that development would thereby come to a halt? Some judges, when faced with such situations, displayed remarkable anguish, perhaps not realizing that the CRZ notification itself was the result of a balance between the demands of environment and those of development: it permitted certain activities while restricting others. Where was the need for the courts to be uncomfortable about enforcing the law?

MINING PROBLEMS

Mining companies in Goa have been the biggest beneficiaries of such judicial apprehension about the conflicting demands of development and environment, a situation they have exploited to the hilt to ensure that they remain scot free as far as possible even as they ruin the countryside and people's lives. For decades, despite awareness that

mining activity was wreaking havoc on the agricultural produce, the inland waters, and public health, it seemed impossible to get any order curtailing the activities of the mining companies because of the fear of unemployment for the local people and economic collapse. (Mining has been held to be the backbone of the Goan economy). So despite knowledge of the violations of various mining statutes even environment NGOs were reluctant to approach the courts for relief and mining companies continued with their destructive activities.

It is only very recently that the scenario has changed somewhat and the Court is now asking some hard questions to the mining companies and forcing them to clean up their act. The result is that citizens from mining areas are now flocking to the courts complaining of the destruction of their livelihoods by mining activities and demanding compensation, relief and better environment conditions.

Petitions involving dust pollution from mining are symptomatic of this trend. In 1989, a PIL was filed on the dust pollution caused to the residents of the towns of Curchorem and Sanvordem in Sanguem taluka. That the dust pollution was severe was borne out by several reports, not the least a detailed 3 years' study commissioned by the Goa Legislative Assembly itself. The High Court admitted the petition but refused to give any interim relief till all the transport companies and truck owners ferrying the ore were joined as respondents. Such action was clearly impossible for the petitioner to comply with as the respondents would run into hundreds and service on all parties would financially ruin the petitioner. So the petition merely languished in the court records.

Ten years later, in 1999, another set of petitioners approached the High court praying for similar reliefs and the court swung into action. It directed that all trucks be covered with tarpaulin and the ore be properly wetted in the railway yard. Truck owners were not made parties but the court did not ask for their presence. It was enough that the mining companies were respondents for obviously the transport companies were acting at the behest of the mining companies. Trucks that were found violating the directions had their vehicles seized under orders of the court and the owners faced contempt action.

What had caused this difference in the attitude of the courts during the intervening 10 years? I think much awareness has dawned of how exaggerated were the tall claims of the mining industry regarding their contribution to the economy of the state of Goa. (The Goa government has acknowledged that it receives revenue of not more than Rs.12 crores from the entire mining industry in the State.) On the other hand, the vast destruction unleashed on the environment and the lives of people has also received wide publicity. Fearless journalists and editors have written extensively on the subject, and it is no longer possible for anyone to uncritically accept the claims of the mining lobby. The attitude of the mine-owners and their well known hold over the political scenario made it apparent to all but those already in their pockets that strong measures were required if there is to be justice for all.

Three writ petitions filed in the year 2001 by villagers from different parts of Goa on the environmental pollution due to mining dump sites located on the banks of the Advai and Sonshi Nullahs and the Kushavati river received the urgent attention of the High Court. Interim orders were passed restraining the continuance of the areas as dump sites. The State Pollution Control Board was directed to inspect the sites and file a detailed report. The Reports were devastating. They revealed that the mining activities were entirely detrimental to agriculture which is an important activity in these areas and that the conflict between mining and agriculture would ensure that the latter would become unviable in the future even though it is well known that mining is not expected to last forever. In several areas the situation was already irreversible but other areas also affected could be saved if corrective action was taken urgently. The writ petitions themselves revealed that the people had begged and pleaded with the authorities through numerous letters, complaints, delegations etc. but none took note of their complaints. Ultimately only the court brought them some measure of relief and monetary compensation.

THE POLLUTION CONTROL BOARD

A few remarks on the functioning of the State Pollution Control Board would not be out of place here. The Board, whose mandate it is to ensure check on polluting activities, has generally done nothing on its own and is seen as a toothless tiger by one and all. In fact it is mockingly referred to as the Goa Pollution Board even in government circles.

In the case of dust pollution at Curchorem-Sanvordem, the court had to direct it to take air samples and confirm that the air pollution was well over the stipulated limits. In the case of pollution of the Dorwol springs by Zuari Industries and consequent fish mortality in Cola Bay and Velsao beach, the Board refused to act despite complaints having been filed under the relevant provisions of the Environment Protection Act. Ultimately the petitioner had to file a PIL in the High court complaining of inaction by the Board. The Board first shamelessly tried to defend its position by stating that as the complaint was related to pollution within the factory, duty to act rested with the Chief Inspector of Factories. When confronted with the fact that the pollution was occurring in the area outside the factory, it still tried to pass the buck by stating that it had no equipment to do water studies. This prompted the court to ask the Board in sheer disgust whether it was interested in controlling pollution in the state or not. Ultimately the court was compelled to direct the Board to take air and water samples in affected areas when citizens complained under the environment statutes. In another PIL, monitoring stations were set up by the Board under the court's directions to continually monitor the air pollution caused by Zuari Industries.

For a long while citizens watched with dismay the progressive deterioration of the Pollution Control Board and eventually came to the conclusion that the main problem was the quality and competence of the persons manning sensitive and key positions in the institution. The Chairman and Member Secretary, for example, have enormous powers that opportunists can easily exploit for personal gain. State governments empowered to make these key appointments use them as plum postings to be offered as rewards to politicians in exchange for political support. The Board thus becomes a pawn in the hands of government.

This is precisely what has happened in the State of Goa. Matters reached an all time low when the post of Chairman of the Board was given to a MLA of the ruling party whose only qualification was that he taught geography to school students of 9th and 10th class before he became an MLA. The government refused to see reason when its citizens approached it asking for a competent person to be appointed. So the NGO went to Court and obtained a restraint order against the Chairman from functioning as such except for routine clerical tasks like signing salary cheques etc. As a consequence of the Court order the Board remained dysfunctional for over two years till the Chairman found himself suddenly divested of his post when he fell out with the ruling party. No one even noticed that the Board was not functioning during that period since in any case it generally never functioned at all. The issue of how to ensure that competent, upright persons are appointed to hold these important posts still lingers on. The NGO has now approached the Court for directions to the State government to set up a Selection Committee which will advertise the posts, scrutinize applications and recommend deserving candidates to the government That will perhaps be the first step to ensure that the right candidates are appointed to these posts.

NOISE POLLUTION CONTROL

Judicial enforcement of the Noise Rules issued under the Environment Protection Act came after citizens' complaints about noise literally fell on deaf ears. Having failed to impress the local authorities viz., the panchayats, the Mamlatdars, the local police and the Pollution Control Board about the seriousness of the situation, citizens took their troubles to the High Court and got almost instant relief. The Court imposed with immediate effect a total ban on loud music from 10p.m to 6 a.m. For citizens, particularly those residing in the coastal belt, who had been driven crazy with earsplitting music night after night emanating from rent-back hotels and all night acid parties, the ban order came as badly needed relief.

The entertainment industry immediately cried foul but was forced to comply as the court stood its ground, using the weapon of contempt to ensure that its directives were obeyed.

The Court also made the government draw up a scheme for implementing the Noise Rules. This was soon produced, complete with officers to receive and act on complaints, instruments to measure sound levels and demarcation of zones in accordance with the Noise Regulations. The result? The authorities were forced to stop issuing permissions for conducting late night activities if they involved loud music. Discos once held in the open air went into sound-proof rooms allowing those who wished to bust their eardrums to do so without disturbing the peace of the neighbourhood. Even social occasions like weddings started ending at reasonable hours much to the relief of many. Entertainment spots in the vicinity of hospitals were forced to close as these became silent zones. The gains were indeed enormous.

It is a tragedy that the government, watching the manner in which the court has enforced the law for so many years, does not take a cue from it and enforce the law in a similar manner. After all, the government is vested with enormous powers – it issues the licenses permitting such activities and it can very well terminate these if the conditions are violated. There is no dearth of legislation to fall back upon for taking action against offending parties. The Air Act, Water Act, Environment Protection Act, Noise Rules, Hazardous Waste Rules etc. detail all that needs to be done to ensure protection of the environment even as development is permitted. All that remains is the desire to enforce the law and the political will to implement the same. Yet the government prefers to act helpless and enfeebled, always (unfairly) abdicating its responsibility to the courts.

THE MONSOON FISHING BAN

While it is well recognized that PILs are an effective means of getting the laws enforced, citizens have also successfully managed to use the PIL route to persuade the courts to make law when it has been necessary for safeguarding the "right to life" of the people at large. Such PILs are an effective manner of compelling government – constantly under pressure from vested interests – to act *pro publico bono* (for the common good) and in the

pursuit of sustainable development. The case of the ban on fishing during the monsoon is one of the best such examples of a proactive judicial action.

A letter was addressed by a citizen to the High Court complaining that there was severe ecological damage because of the Government's decision to reduce the ban on mechanized fishing from 90 days (1st June to 31st August) to a mere 54 days (ending 24th July). The petitioner informed the court that the monsoons were the breeding season for large number of fish species especially those consumed by the common man. The decision to relax the ban period on monsoon fishing, he alleged, was taken at the behest of the mechanized fishing lobby which included several elected representatives who were holding the government to ransom. If this situation continued, it would mean depletion of fish resources leading to fish famines in the immediate future. It would also ruin the livelihood of the vast communities of traditional fisherfolk.

The court converted the letter into a *suo moto* PIL and geared up for action. It asked the State Government to produce the data used to justify the reduction in the ban period and to inform the Court of the measures taken to ensure compliance with the ban by mechanized vessels. It asked the National Institute of Oceanography to report on the breeding season of fish found in Goa's coastal waters. It also called upon the Central Government to throw light on the issue of a uniform policy for a ban on mechanized monsoon fishing along the entire west coast of India.

The replies filed by the government were truly revealing. Government admitted that the ban was reduced in view of representations received from the mechanised fishing operators that the 90 days ban was too harsh and would deprive them from earnings on assets acquired through loans from banks. The Department of Fisheries stated it had only one patrol boat and could not therefore monitor activities along the coastline, so enforcement measures were non-existent.

The NIO reported that June to August was indeed the breeding season for mackerel and sardine, the two fish which constitute 75% of the total catch along the west coast and

which constitute the only available cheap source of protein for the people. The Central Government reported that while the question of imposing a uniform ban period was most advisable, despite several years of discussions with representatives of the 5 west coast states, no dates had yet been agreed upon.

In the face of such overwhelming data supporting the desirability of a ban on mechansied fishing during the monsoons and also faced with the knowledge that there was total apathy on the part of the State and Central Governments to conserve the ecology, prevent depletion of fishing resources, ensure proper nutrition for the ordinary people and protect the livelihood of traditional fisherfolk who constitute large numbers in the coastal stretches, the court found ample justification for it to make the law which it did through a series of directions.

The court directed the ban period would be from 10th June to 15th August or Nariyal Poornima, whichever is earlier. (Nariyal Poornima is commonly celebrated by fisherfolk as the end of the monsoons.) It also directed the Central Government to fix uniform dates for a monsoon ban for all states on the west coast before the onset of the next monsoon i.e. May 2003.

The court also laid down the manner of enforcement of the ban, directing the following measures for effective implementation: seizure of stocks of fish, fishing vessels and cancellation of licenses of those found violating the ban; sealing of fishing jetties and closure of petrol pumps supplying fuel to mechanized vessels; prohibition on insurance companies from entertaining claims for compensation due to mishaps arising out of fishing activity during the ban period; patrolling of the seas by the Coast Guard and of the beaches by monitoring committees set up by the government.

Finally it directed the Govt. to give wide publicity to its orders in the first week of June each year so that all are aware of the dates of the monsoon ban as well as of the stringent conditions imposed by the court.

The directions of the court are an example of how the Government ought to have acted in order to protect the ecology and the right to life of its citizens instead of dilly-dallying on the issue and allowing itself to be pressurized by vested interests.

GARBAGE DISPOSAL, WATER SHORTAGES AND KHAZAN PROTECTION

But even with the best of intentions, PILs sometimes fall short of their goals and for a variety of reasons. The cases listed below illustrate this point.

THE GARBAGE ISSUE

The Court *suo moto* took up the issue of disposal of garbage all over Goa as a result of numerous reports appearing in the newspapers that garbage dumpsites were filled to capacity and still continued to be used, as a result of which garbage was overflowing onto the area around. The dumpsites themselves were unhygienic places, yet poor folk were foraging therein for refuse that would earn them a meagre living. Letters to the editor also reflected the desperation of people living in the vicinity of garbage dumpsites as they were forced to live with the stink of untreated wastes, and had to negotiate streets littered with filth while simultaneously encountering stray dogs and cattle which made garbage areas their permanent home. Once again it was obvious that something desperately needed to be done by the authorities yet the only action one could see in the municipal councils and panchayats was the jockeying of the members for lucrative posts.

At the outset and in order to apprise itself of the situation, the Court directed every municipality and panchayat to file affidavits indicating the steps they were taking in the matter of disposal of waste from their jurisdictions. What was shocking to note in the thousand plus pages of affidavits that were filed before the court was that barring a miniscule number of municipalities who had some scheme for disposal of waste, howsoever inadequate it may have been, the majority of municipal councils and panchayats were blissfully ignorant that a problem even existed and had not the faintest idea that this was an elementary civic responsibility they owed to the public that had

elected them. Instead they all claimed that they had no funds for dealing with garbage disposal. Finding a way out of this mess would certainly require tremendous judicial activism.

Initially only the civic authorities were respondents in the PIL but as word of the PIL got around, NGOs who had been working for years in the area of garbage management and receiving, as expected, little appreciation from the authorities, got themselves impleaded as intervenors in the PIL, hoping that their suggestions would be considered by the Court. The NGOs informed the Court of the existing laws on the subject and the steps to be taken by the authorities. They tabulated all the affidavit data for the Court in the form of a ready reckoner so that the Court could handle the information in a manageable way.

Soon the Court recognized that merely directing general compliance would not bring about desired results. So it patiently commenced to prod the authorities into complying first with sections of the Act which did not even need finances. Garbage Monitoring Committees were soon set up in several areas. These had to include citizens groups from the area and although they had initially little idea of how to go about the task, they soon learnt from each other. The importance of involving people actually affected by the problem began to be seen.

This set the ball rolling and slowly but surely the lethargic machinery began to swing into gear. A committee headed by the Director of Municipal Administration was constituted and together with the Directorate of Science, Technology and Environment a detailed scheme was drawn up for tackling the problem of solid wastes. Major steps included a scheme for segregation of garbage at source, door-to-door collection and proper sites for depositing and treatment of garbage. The NGOs were pleased that their efforts were bearing fruit. Getting appropriate directions from the Court to the municipalities and panchayats to enforce the scheme was widely seen as merely a matter of time. Unfortunately the PIL itself came to an abrupt end when it came up before a new division bench of the Court, which inexplicably chose to close the matter and dispose of the petition solely on the assurance made by the State government that new regulations (the

Municipal Solid Waste Rules, 2000) dealing nationwide with the problem of garbage disposal had recently come into force and that the authorities would be bound comply with them. The PIL being *suo moto* (i.e initiated by the Court), none could insist on its being kept alive to find out whether this would actually happen. And as everyone is all too aware, we are now back to square one. None of the authorities wish to implement the new MSW Rules since they require intelligent action, commitment and a concern for public health. The elaborate scheme prepared and submitted to the court has itself been dumped and the garbage problem has increased manifold.

WATER SHORTAGES IN GOA

A letter from a poor uneducated villager residing in a remote village in Pernem informing the court that his village folk faced a lot of difficulties to obtain drinking water (as the springs which in yester years provided water had now dried up and government owned water tankers were too few and far between) moved the Court to take up the issue of water shortage experienced by many citizens especially during the dry summer months.

Initially the Court restricted its enquiry to Pernem taluka. Later, it expanded the scope of the petition to include other areas of Goa as well. The Court wished to examine whether there was equitable distribution of this precious resource from government reservoirs to the various parts of Goa or whether affluent areas – where people had clout – were being favoured.

In the course of the proceedings the court also got an opportunity to scrutinize the extent of loss of water which occurs through broken pipes, illegal water connections etc. Unfortunately, none of the NGOs which have been canvassing this issue intervened in this matter to either point out the inadequacies or inaccuracies in the government affidavits or to steer the PIL into also examining the larger question of why is it that despite receiving 3000 mm of rain every monsoon, water tankers ferrying this precious liquid have become a common sight in umpteen parts of the state. Eventually the Court

passed some directions which gave relief to the people who had approached it and the matter ended there.

KHAZAN PROTECTION

A newspaper article titled "Mandovi's Islands in Peril" drew the attention of the Court to the islands of Chorao, Capao, Jua, Divar and Cumbarjua which – according to the article – would become submerged if the maintenance work on the breached bunds that surrounded and protected these islands continued to be neglected. The writer of the article was summoned to the court and a *suo moto* PIL registered. The writer explained in great detail the studies already carried out which informed the government of the steps required to be undertaken on a war footing and the political forces at play that ensured that nothing was done.

The Court expressed its displeasure at the careless attitude of the government to this important problem and directed that an up to date assessment be made of the work required be immediately carried out. As a consequence the breaches urgently requiring repairs were identified and repairs carried out before the following monsoon. By and large, the matter ended there, as there was no organisation to follow up.

The Court's effort to save the khazan lands of Salcete did not meet with even such limited success. Acting on a letter petition alleging that agricultural lands were being deliberately inundated with saline water for the purpose of pisciculture, the Court directed the Mamlatdar to ensure that notice was issued to the offenders and the khazan lands drained out. The Mamlatdar, while filing a compliance report, added that despite the action taken the problem persisted since the sluice gates were being breached at night and he was unable to trace the culprits. Faced with this situation and not receiving any suggestions as to how the problem could now be tackled, the Court disposed of the matter, merely directing that vigilance be maintained as best as was possible.

POLICY MATTERS

There are occasions when the Court has simply refused to grant relief in a PIL no matter how serious the environment consequences. Challenge a policy decision of the government and it is unlikely to meet with any success. In the PIL challenging the government's decision to allow the setting up of the Reliance Salgaoncar Power Plant, the water requirement of the plant was one of the environmental concerns. The petitioner also produced enough data to show that construction of the power plant was entirely unnecessary as the problem of poor power supply could best be solved by improving the transmission lines and that the expensive power would in fact become a burden on the.exchequer. The Court however refused to interfere as it decided that a State's decision to allow the setting up of a power plant was a policy matter.

Similarly, when environmentalists approached the court for enforcement of a Report on the Transport of Hazardous Chemicals in the State of Goa which detailed the steps to be taken to avoid road accidents caused by trucks laden with poisonous chemicals, the Court did not interfere when government informed it that it did not deem it fit to implement the report in toto, as it had serious financial implications. Till today, such accidents continue to occur with unfailing regularity as proper controls are not exercised over these vehicles which race down Goa's narrow streets putting the innocent population at risk.

A petition against the chosen alignment of the Konkan Railway line traversing through the khazans, an ecological asset unique and vital to Goa, received negative response from the Court despite the fact that a large section of the Goan public was agonized over the alignment. The Court rejected the petition partly because it saw it as a case of development v/s environment: the Central govt. had taken a policy decision to construct the railroad line and judicial interference was uncalled for.

FORESTS

On the other hand, however, there are some areas where the courts enforce protection of ecological assets with great vigour. For example, forests.

Starting way back in the 70s when a powerful industrialist sought to clear fell a forest on the ground that he wished to plant a revenue-earning cash crop instead, the court has steadfastly rejected all schemes for development if they involve destruction of the forest. In fact, much before the Supreme Court's directives in the *Godavarman* case, the Goa bench of the Bombay High Court had already interpreted the provisions of the Forest Conservation Act in a manner that would ensure protection for forests. It held that the widest interpretation must be given to the term "forest" and that the opinion of the forest officer on whether or not the land in question is forest was "expert" opinion. Merely because there was a wrong classification of the nature of the land in the government records, that would not be sufficient ground to avoid applicability of the Forest Conservation Act, 1980 if the land on inspection was actually found to be forest.

PILs filed for protection of forest have certainly benefitted from this approach of the Court and environmentalists have thus been able to stop mining companies from clear felling virgin forest (the Chowgule's pelletisation plant at Sanguem) and developers from clearing forest patches to make room for luxury apartments (Tata Housing). In both these cases, the parties had already obtained approval for the projects from the State government and therefore no amount of appeals to the government in the form of public protests, signature campaigns, would have been able to produce the desired result. The Court was really the only option.

PUBLIC ACCESS

Another area where courts readily respond to petitioning from the public is when the issue involves blocking of public access to public places. No matter how powerful the person against whom the PIL is directed, the court makes sure that the public is not deprived of its right to access a public resource. In fact, not only in PILs but even in private interest writ petitions, courts are very conscious of this obligation that members of

the society have towards each other and always grant relief, provided of course the grievance is *bona fide* and not merely a means of establishing a claim over another's property. Resorts like the Taj, the Leela, Cidade de Goa, Kenilworth and Beach Ark were all made to remove the obstructions by which they prevented the public from accessing the beach in front of their resorts. In some cases they were even directed to construct proper access to the beach for the public through their hotel properties.

CONCLUSION

This brief survey of some of the PILs that citizens and NGOs in Goa have taken to the courts will undoubtedly show that the courts in no small measure have assisted the environment movement in its efforts to protect the ecological assets of this state. By entertaining PILs on environment matters, courts have in fact legitimised environment concerns, given them judicial recognition, and also acknowledged environmental groups as legitimate interests and as an important component of the ecological endowment of the State.

PILs help civil society to focus an issue in a manner that seminars and lectures can rarely aspire to match. Whether it is the construction of a hotel or the destruction of hill slopes, a subject that the environmentalists have been discussing only among themselves or with a small section of the people suddenly gets projected into the limelight. Editorials are written on the issue, letters to the editor appear and the subject becomes a matter of common concern. Only public agitations can do the job better.

PILs also enable environmentalists themselves to clear their minds and focus on the subject in a disciplined manner. Rigours of law can be very demanding. The subject has to be scrutinized without focusing on personalities. In public speeches it is possible to be melodramatic and one need not be strict about facts. Public opinion can be swayed with oratory. In law one has to be much more careful. It is necessary to have discipline, to assemble facts, to have them thoroughly checked and cross checked as errors can be the downfall of a PIL.

Some PILs have also had a far wider impact that the petitioners originally intended. For example, when the court passed an order directing that mining trucks in Curchorem-Sanvordem be covered with tarpaulin to avoid the ore falling all over the place, government subsequently issued a notification requiring that all vehicles in the State would henceforth carry such substances covered with tarpaulin. When environmentalists approached the court pointing put that constructions in Calangute coastal area had gone beyond the limits allowed by the CRZ Notification, the Court asked the government to report on the situation in other parts of Goa as well. When the government could neither come up with a convincing reply nor produce adequate data, the court prohibited it from granting any further permissions in the entire CRZ of the State till the matter was examined by it. When animal rights activists took the issue of shooting of stray dogs to court, the Court found that there was in fact no institution for monitoring animal welfare. With the persuasion of the court, the State Advisory Board for Animal Welfare was set up in Goa.

Such strides can be made only if there is singular dedication on the part of the citizen or NGO to the cause. PILs require immense patience and perseverance. One needs to be prepared for a long wait as appeals and revision applications are always filed by the losing parties. It is necessary to be prepared to expand the scope of the petition if the court is so inclined. In private litigation one is concerned only about one's own success. But PIL calls for helping even those who haven't asked for it.

It is obvious therefore that to make a PIL successful one needs to constantly present the Court with suggestions for implementation as well as have an infrastructure for monitoring violations so that corrective action can be taken. People who write letters to the court which are converted into writ petitions often do not have the capacity to follow up in subsequent proceedings, and the PIL after a brief burst of energy subsequently quietly collapses.

Careless work in a PIL proceeding can have far-reaching consequences. In a private litigation, one of two parties will lose at the expense of the other. But when a bona fide PIL is rejected, it is not the petitioner or NGO alone that loses – the entire society as well as the environment loses as well. Even the bench delivering the judgement loses. The Constitution loses. Therefore every effort must be taken to ensure that the hard work required to ensure the petition's success is carried out. If one's petition is dismissed even after persistence, dedication and hard work, that is a different matter.

As we have seen, this often happens too. This is because courts rarely go to the root cause of the problem that has given rise to the petition. For instance, despite being faced with enormous facts of corruption, *mala fide* permissions etc. the courts are still not inclined to punish guilty officials. Or, faced with a dilemma, judges will pass a judgement evading the issue completely. Courts also do not believe that they need to be consistent. Sometimes judges will assert they are not experts and neither will they question the conclusions of experts. On other occasions, they will discard expert opinions and disclose full readiness to act as experts themselves. One of the most easily noted features of the Indian judicial system is its inability to speak with one mind on environment matters.

However, we do not live in an ideal world. If filing a PIL and pursuing it still has a chance of making significant positive consequences for the protection of the environment that is what matters in the end.

Ends

Annexure 1

Noteworthy Public Interest Litigations

Regarding Environment and Mining

Three writ petitions filed in the year 2001 by villagers from different parts of Goa on the environment pollution due to mining dump sites located on the banks of rivers and the damage caused to agricultural activities received the urgent attention of the High Court and interim orders were passed restraining the continuance of the mining activities. The State Pollution Control Board was also directed to inspect the sites and file detailed reports including suggestions on what is to be done.

The three areas are Advai (WP 77/2001), Sonshi (WP 284/2001) and Khushavati (WP 7/2001).
Advai — The Agricultural Farmers' Association of Advai village prayed for payment of compensation to the farmers due to crop loss, stoppage of further dumping of mining rejects on the existing dumps on the banks of Advai and desilting of Advai nallah.

Advai nallah is a rivulet starting from Ovalyam village and flowing via Advai to finally join the River Madei. Among the mining companies which have dumped their rejects alongside the nallah are Timblos, Bandodkars, Chowgules, Salgaonkars and Sesa Goa. The dump sites, some dead, some active, are more than 50 metres in height. The mining companies have constructed check bunds with laterite rubble and gunny bags, to restrict the flow of water into the nallah. However, these preventive measures have proved ineffective as washout from the dumps during the heavy monsoon carrying substantial quantity of eroded material into the nallah is visible. All the dump bear marks of rain water erosion on the surface of the dumps.

Sesa Goa Ltd. has even diverted part of the nallah passing through their plot for their convenience and the villagers say that this diversion has affected the natural streams feeding water into this nallah.

Advai villagers' traditional occupation is mainly agriculture. However it is now becoming very difficult to keep it alive since the dumping of mining rejects has increased manifold during the last decade. That the damage is caused to the farms is evident from the fact that mining companies have had to compensate the villagers for crop loss. However the compensation only partly compensates the loss incurred and in any case the deposition of rejects in their fields leave behind the residual impact of reduction in the productivity of the farm.

The Goa State Pollution Control Board in its report stated that while the company officials' claim that the activities are in compliance with the Environment Management Plan, duly approved by the Indian Bureau of Mines, is true, it appears that the IBM, which is a competent authority under the Mines & Minerals Act, 1957, have approved the dumping of mining rejects outside the areas earmarked for mining. This amounts to extension of mining activity into areas not earmarked for mining.

GSPCB concludes its report by stating that:

'Advai nallah occupies important position in the agricultural activity in the said area. The State Government has invested substantial amount to install a lift irrigation scheme on the said nallah for the benefit of the farmers. Frequent silting and de-silting of the nallah with mining rejects and the decline in productivity of the fields affected by the washout from the dumps will in due course of time, make the agriculture in this area an unviable exercise.'

'The issue at Advai is of the conflict between mining and agriculture. If the dumps are allowed to be grown at the present pace, in passage of time erosion from the dumps will damage the agriculture to such extent that the farmers will be compelled to distance themselves from their farms. Even after culmination of the mining, it will not be possible to restore the farms. As such the only remedial measure for protection of Advai nallah and thus safeguarding the interests of the agriculture is to restrict the mining activities to the mining areas.

In March 2001, the Court directed the mining companies to immediately stop the dumping on the disputed sites and to take on preventive and remedial steps to avoid further collapse of the dumps. The compensation fixed by the Zonal Agricultural Officer to the farmers was also directed to be paid to the farmers/agriculturists.

On 24th September the Court, after perusing the report of the State Pollution Control Board, directed the mining companies to find alternative sites for depositing the rejects. The Court also directed that complete desilting be done of the nallah under the supervision of the Irrigation Department of the State Government, costs for which would be assigned subsequently. Periodic reports are to be submitted to the Court.

Sonshi — The reliefs prayed for by the villagers mainly pertained to protection of Sonshi nallah from mining activities.

Sonshi nallah is about 14 kms long. It is not a rainwater drain but a stream which originates in the hillocks near village Volvoilem and after flowing through Sonshi it joins the Harvalem River at the waterfalls. The first 5 kms length of the nallah passes through the area covered by mining leases granted to various mining companies including V.M. Salgaonkar, Sesa Goa, V.S. Dempo, P. Timblo & V.G. Quenim.

The mining companies have used the banks of the Sonshi nallah for dumping their rejects. Most of the dumps are over 50 metres in height. Although the dumps are not active at present, they are not stable. The runoff from the dumps flow into the river, especially during the rainy season. The dumps show permanent rainwater erosion marks at many places. V.G. Quenim, has one of its mining pits right on the course of the nallah. The company has suspended operations on this pit as it is now totally filled with water. Quenim Mining Co. has also permitted Goa Glass Fibre Ltd., Colvale, to dump the accumulated fibreglass waste in one of its abandoned mining pits.

The villagers state that the area on the banks of the nallah, which is under the dumps of mining rejects, used to be under cultivation in the olden days. Today, only two of horticultural gardens remain under cultivation.

The Goa State Pollution Control Board report states that the mining activities on the banks of the nallah have affected horticultural activities in two ways:

1. Repeated silting of the nallah during the rains has altered the course of the nallah and the damage to the nallah is almost irrevocable. The once perennial nallah now gets dried up by January whereas water springs emerge in the deep mining pits.
2. Mining silt is deposited in cultivable lands when the nallah waters inundate the fields after heavy showers and this adversely affects the productivity of the soil.

The SPCB report concludes as follows: 'In the conflict between mining and agriculture, agriculture is pushed to a tight corner even though it is known that the mining industry is not expected to last forever. After conclusion of mining activities, rehabilitation of agricultural areas has to be done by the mining company as this is the condition incorporated in the lease deed.' However the situation at Sonshi gives the impression that rehabilitation of the agricultural areas lost in the conflict is a distant dream.

In its order of December 2001, the High Court has directed that the question of supplying water for irrigation needs to be worked out by the Government. In the meantime, temporary

arrangements as made earlier are to continue. The mining companies were also directed to install pumps at their cost for supply of water to the villagers.

Kushavati — Suo Moto Writ Petition No.7 of 2001 was initiated when the High Court took note of press reports, clippings of which were submitted to the Court by villagers from the habitations on the banks of the River Kushavati, highlighting the threat to the river by indiscriminate washing of manganese ore on its banks.

River Kushavati is one of the main sweet water rivers in South Goa originating in Sanguem and passing through Quepem to finally join the River Zuari at Kelvona. The areas through which the river flows are mainly agricultural areas. The petitioners say that there are more than 500 pump sets installed with permission of the Water Resource Department for lifting river water for irrigating the fields and horticultural gardens along its banks. The State Government has also installed a lift irrigation scheme on this river at Kelvona.

The State Pollution Control Board's report admits that substantial quantity of manganese ore was seen scattered on the banks of the River Kushavati, either as residual fines, marketable lumps or rejects, all sites being right inside the agricultural land, plantations.

The SPCB identified the problem as being the indiscriminate washing of manganese ore on the bank of the river which leaves behind residue, which gets washed into the river during the washing process and also the monsoon.

No special machinery or plant is installed for washing the ore. Washing is carried out in portable mixers used for mixing concrete. The wash water emptied on the ground is allowed to find its own way into the river and the water required for washing is lifted from the river by pumps which were installed for purposes of irrigation. Despite the fact that the cost of manganese ore is so high that one truckload of good quality ore is valued at Rs 1 lakh, contractors prefer to use this crude process of washing the ore as it enables them to earn rich returns and pass on the cost to the environment.

The mining companies claim that the Indian Bureau of Mines officials regularly monitor their performance but in support of their statement, they could only display copies of Monitoring Reports prepared and submitted by them to the Indian Bureau of Mines.

In August 2001, the Court directed the State Government to take immediate steps to clear the dumps and to see that mining waste does not get mixed with the flow of the Kushavati River. Costs for recovery of expenses for these works is yet to be fixed by the Court. The parties responsible for washing manganese ore on the banks of the river were also restrained from dumping iron ore rejects within 50 mts. of the banks of the river or its rivulets.

Transport of Hazardous Substances: Chlorine

The Public Liability Insurance Act, 1991 was applied for the first time in Goa in 1992 after a tanker carrying chlorine met with an accident at Chinchinim and discharged chlorine into the atmosphere. The chlorine caused damage to people and the environment. On 10.12.1992 the Collector made an award of Rs 38,927 in favour of the persons affected by the accident. The Collector held both the companies, namely M/s Ballarpur Industries, Karwar, who had made the ex-factory sales and M/s Hindustan Ciba Geigy who were to be the recipient of the consignment, as well as M/s Arif Transport Ltd. who were transporting the consignment as equally responsible to pay the compensation in equal proportion to the claimants.

Coal Dust Pollution in Mormugao

The Goa Citizens Watchdog Association addressed a letter petition to the High Court complaining of the pollution caused by the transportation, loading, unloading and handling of coal and iron ore by Mormugao Port Trust which is affecting the citizens of Vasco town. In addition to the coal dust pollution, the petitioner also complained that the poisonous fumes emptied by three petroleum companies, Indian Oil Corporation, Hindustan Petroleum and Bharat Petroleum add to the air pollution which the citizens have to face on daily basis, without respite. The combined effect is highly deleterious to the health of the citizens of Vasco. The Court directed that the petition be styled as a Suo Moto PIL Writ Petition and issued notices to MPT and the petroleum companies.

The affidavits filed by IOC, HPL and BPL stated that while the companies do handle petroleum products such as petrol, naphtha, diesel, kerosene, etc. which are all received from various destinations by ocean containers at Mormugao harbour, these are pumped directly to the respective installations at Vasco through pipeline from the sea jetty and are stored in tanks (which have floating roofs) at the shore. The operations are totally controlled and there is no possibility of spillage or escape of petroleum/vapour. Hence the Court discharged these parties from the proceedings.

MPT has however been directed to give details of the measures it is taking and proposes to take to control the dust pollution. MPT's affidavit records that during 1999-2000 MPT handled 15.5 million tonnes of iron ore, 0.14 million tonnes of alumina and 1.88 million tonnes of coal coke.

Ban on Fishing During Monsoon

A letter petition addressed to the High Court in July 2000, praying for judicial intervention because Government of Goa had reduced the ban on monsoon fishing from 90 days (1st June to 31st August) to 54 days (1st June to 24th July), and that this decision (which was taken only to satisfy the greed of the trawlers owners having influence in the corridors of power) had caused ecological imbalance and vastly reduced fisheries was converted into a Writ Petition by the Goa Bench of the Bombay High Court.

Directions were issued to the State Government to file detailed affidavit giving all relevant information including the steps which can be taken to prevent mechanised fishing boats operating in the rivers and in the seas during the ban period.

The Court also directed the National Institute of Oceanography to inform the Court of the breeding season of fish found on the Goa coast and the period for which the ban should be imposed to protect the fish breeding grounds.

On perusal of the material brought on record and as an interim measure, the High Court directed that there will be a complete ban on mechanised fishing from 1st June till 15th August each year. When it was brought to the notice of the Court that the trawler owners were violating the interim orders, the Court banned the use of all 7 jetties for fishing purposes and suspended the licences of the trawlers during the period of the ban.

Application filed by the Government to modify the order in the light of the fact that Cabinet took a decision to ban monsoon fishing from 1st June to 31st July (an extension of 7 days on the earlier cut off date) was rejected by the Court. The period of the monsoon ban on mechanised fishing remains from 1st June to 15th August till the final hearing of this petition.

Saving Islands

The Panjim Bench of the Bombay High Court on March 15, 1999, took cognizance of an article titled 'Mandovi's Islands in Peril' by Dr. Nandkumar Kamat, wherein it was stated that though the Goa Assembly had passed a resolution to conserve certain islands in the State, no steps had been taken.

The islands, identified as important from the point of natural heritage, were Chorao, Capao, Jua, Divar and Cumbarjua. The Court directed that the said article be treated as a writ petition.

The judges expressed dissatisfaction that no effective steps were taken to tackle the problem of breached bunds on the islands, which have been disrupting normal life for several years. Although the State Land Resources Management Committee had been constituted in October 1993, nothing had been done besides constituting the Committee.

The Bench therefore directed the Government to immediately identify all breaches in bunds in all the 5 islands and place a report before the Court, along with measures to be taken to fill the same at the earliest. The Director of Agriculture thereafter filed an affidavit stating that work on two major bunds which had been breached would be completed by June 15th, 1999.

The Court directed the Government to report to the Court with more details and measures undertaken and to be undertaken to tackle the problem.

Rehabilitation of Khazans

Acting on a plea made by a citizen from Rachol in Salcete Taluka that inundation of khazan lands with saline water was causing environmental destruction of the fields, the High Court directed the Mamlatdars to take necessary action in accordance with the provisions of law.

The Salcete mamlatdar in whose jurisdiction there are over 28 khazan lands, the majority of them being inundated for pisciculture without permission in contravention of the provisions under Section 32 of the Goa Daman and Diu Land Revenue Code and Section 38 of the Goa Daman and Diu Agricultural Act, 1964, gave notice to all the Khazan Land Associations to drain out the saline water from the paddy fields within 24 hours of the receipt of the notice.

Despite the notice, no action has been taken in the matter and the khazan lands continue to be inundated with saline water. The Mamlatdar states that it is difficult to keep a check on the khazan sluice gates as the activities take place late at night. The Agriculture Minister has stated that inundation of the khazan lands is totally illegal, but due to political interference tenant associations have been violating the law with impunity.

Halting a 'Millennium Bash' on grounds of violating CRZ and Noise Regulations

This event to be held at Anjuna Beach over 10 days, from 23rd December 1999 to 2nd January 2000, and widely advertised as being held on the third largest dance floor in Asia, drew the attention of the Court when a Writ Petition was filed by Peter D'Souza, a journalist, alleging that the promoters, Mr. Norman Azavedo and Mr. Jay Wadia had violated the CRZ Notification by the constructions raised at Paraiso de Anjuna and they would also violate the noise pollution control laws if the party were allowed to take place at the same venue. The advertisements announced nonstop, 24 hours, loud music during the 10 day period.

To host the party the promoters had made massive developments in the No Development Zone of the CRZ. The promoters had scooped out portions of the beach area, cut down acacia trees which were specially grown under a Social Forestry scheme, cut steps into the hill and pitched tents all over the plot. Several permanent structures were constructed, like a huge dance floor and foundations for other structures.

The Court finding prima facie evidence of violation of the laws as alleged, stopped the party immediately. Subsequently, after examining the matter, the Court directed demolition of all the structures, which was carried out by the authorities.

However, two years later, the same area was reconstructed by Nandan Kuchadkar and once again, year-end revelries were held, albeit on a smaller scale, in December 2001. These structures were demolished for the second time by the Director of Tourism in the year 2002.

Protecting Tenanted Lands from Development

On 1st July 2000, the Panjim Bench of the Bombay High Court comprising Justices F.I. Rebello and V.C. Daga issued Interim Orders in a writ petition filed in public interest on the subject of conversion of agricultural land to nonagricultural uses. The Court's interim order was meant to curb the widespread sale of tenanted land, which was being diverted away from agricultural to other uses, mainly commercial.

The Interim Order records that Goa Land Use (Regulation) Act, 1991 (in force from November 2, 1990), having been enacted so that lands used for agriculture, on which rights of ownership have been conferred on tenants as part of the agrarian reform, conversion of such lands for nonagricultural purposes cannot be permitted as this would defeat the very objective of the Land Use Act.

The Order also records that no civil court has the jurisdiction to decide or deal with any question which is required to be settled, decided or dealt with by the authorities under this Act and no order passed by these authorities can be called into question in a civil or criminal court. If therefore, there were any proceedings between landlord and tenant relating to rent, tenancy or purchase of land, the order of the civil court would be of no consequence as it would be an order without jurisdiction. Similarly, change in the survey records, even if on the basis of affidavits, would be fraudulent.

As the writ petition brought to the notice of the Court that there were several cases where land was transferred from the original owner/tenant to various parties for nonagricultural use, the Court held that prima facie such acts of change of use of land (unless they are bonafide) are a fraud on the Act.

The Court therefore directed the SDOs who are authorised to grant conversion certificates to stay all constructions on such plots from 2.11.1990 and to review all cases of land conversion from 2.11.1990. The SDOs were also directed to take the assistance of Mamlatdars and Talathis and prepare reports on such lands which would indicate the areas where such land has been converted, whether there were proceedings by the landlord or tenant under the Tenancy Act and the crop production records of such lands.

All authorities under the Town & Country Planning Act were directed to issue orders to stop all ongoing constructions on such lands, and the Town & Country Planning Board was also directed not to consider any case for change of user of land in the Regional Plan or any other plan in respect of agricultural lands till further orders of the Court.

Mangor: Preservation of Open Spaces

The Down Mangor Valley Residents Association (DMVRA) in Vasco approached the Court with a PIL concerning the loss of open space earmarked for the housing colony due to encroachments of hutments in the area.

The original owner of the plot had demarcated the area to be left as open space as per the requirements of the law, when he subdivided the land in 1978 and sold individual plots to the present owners of the properties. However, on account of construction activities in the area and other factors, over the years hutments gradually began to unauthorisedly occupy the open space. DMVRA pursued the matter with the Mormugao Municipal Council and eventually show cause notice was issued by MMC to the hutment owners. This was followed by a Final Demolition

Notice from MMC, which as per law must be followed by appropriate action from the MMC on the conclusion of expiry period of 15 days.

Instead, MMC later withdrew the Final Demolition notice. Apparently this was done under political pressure.

The Court in its judgement came down heavily on the Chief Officer of MMC and ruled that once a final demolition notice has been issued and the party had neither appealed the order nor complied with it, the MMC had no option but to implement its own order and carry out the demolition.

The Court directed demolition of the illegal hutments, which was carried out immediately thereafter and the DMVRA have got back the open space for the colony.

Nagzor: Remedying Water Shortages

A resident of Nagzor village in Pernem Taluka wrote a letter to the High Court regarding the difficulties that the villagers in this area were facing to procure water for drinking and for other domestic uses. The Court treated the letter as a PIL.

The letter petition stated that in the years gone by, the villagers used to procure water from a stream which flowed through the area. However in recent times the stream had dried up and there was no source of water available in the village. Recognising, this the government was now supplying water to the villagers by tankers. However the tankers halted at a spot fairly distant from the homes of the villagers, who therefore had to carry the water from a long distance to their homes, resulting in additional hardship including spillage of the precious water.

While dealing with this PIL, the Court expanded its scope and decided to look into not only the problems of this village but to also examine the arrangements Government was making for other areas in Goa facing water shortage.

Government was therefore directed to file a detailed affidavit giving the arrangements for distribution of water all over the state of Goa as well as figures of wastage of water occurring in Goa.

The Government affidavit indicated that there were two major sources of wastage—one being the public taps, which though installed for supplying water for domestic use for underprivileged

persons in different localities, were in fact actually being misused by the public for non domestic uses e.g. washing of vehicles, fitting pipes and drawing water to run small businesses, etc. Public taps were also constantly left open by an uncaring public. Government had therefore now decided to discontinue the public tap system and instead supply water directly to homes, fixing water meters for use of the water. The other source of water wastage is the leakages caused due to breakage of pipes which in turn is due to Goa's uneven topography.

The State Government also filed figures of water wastage in other parts of the world and averred that in comparison water wastage in Goa is not so alarming. New schemes such as the Tillari project would ensure better supply of water to North Goa (especially Pernem) and other schemes were also in the pipeline for augmenting water supply to other parts of Goa.

On perusal of the affidavit, the Court disposed of the petition after ensuring that Government had increased the number of tankers to supply water to the villagers of Nagzor, Pernem.

Hill Cutting

Several hills in and around Ponda were being cut for purposes of development projects slated to come up on hill slopes and a letter petition was addressed by K.D. Sadhale of Nirmal Vishwa to the High Court praying that this destruction of the hills of Goa be halted by appropriate directions from the Court.

The petitioner said that the developers were using bulldozers to level the hillsides resulting in instability of the hills and removal of topsoil. This would affect the plains as loose mud from the hill slopes was likely to land in the fields and on the roads especially during the rains. The threat of landslides was very real, hence such activity was perilous not only for the hills but also for the people residing in and around Ponda.

Moreover, as the definition of development in the Town & Country Planning Act included the cutting of hills, such activity could not be undertaken without obtaining permission of the relevant authority. The petitioner therefore pleaded that if cutting of hills was allowed for development purposes, there ought to be guidelines specifying the manner in which such cutting may be done, as the use of bulldozers etc. would destroy the hills forever.

The Court converted the letter into a PIL. By way of interim relief, the Court restrained the parties from any further cutting on the hill slopes. Several government departments including the Forest

Department and Department of Mines were joined as respondents in the petition and in their affidavits they listed numerous cases when they have prosecuted persons for such activities.

The petition was filed in 1996. Since then the Town & Country Planning Act has been amended, prohibiting the cutting of hills. Penalty of Rs 1 lakh is imposed on persons who unauthorisedly cut hills. The petition is pending final hearing.

Searching for garbage management solutions

The garbage situation in Goa has deteriorated to such an alarming extent that the High Court was forced to take suo moto notice of the matter. The Division Bench of Justices R.K. Batta and R.M.S. Khandeparkar pulled up the concerned authorities and asked them to take necessary action.

A Committee headed by the Director of Municipal Administration prepared a detailed report on Solid Waste Management in Goa and submitted it to the Court. This report has become the basis for efforts by the authorities to tackle the problem of garbage in Goa. Major steps proposed include:

1. Committees for implementation of the recommendations to be formed within the Municipal Councils with the participation of NGOs.
2. Proper places are required to be demarcated for fixing dustbins for collection of biodegradable and non-biodegradable waste. The Councils should ensure timely collection of garbage from these dustbins, particularly market places and thickly populated areas wherein collection can be done twice a day.
3. Collection of garbage door-to-door is important and each household could be charged Rs 30 per month for meeting the expenditure on salaries of the person employed for this purpose.
4. For preventing littering, the power for imposition of penalty could be given to the Chief Officer of the Municipal Council.
5. **All Municipal Councils have been asked to identify proper garbage dump sites which should be away from the settlement zones. As far as collection of garbage is concerned, the area should be divided into zones, and long hard brooms introduced for collecting the garbage. Compact rickshaws or wheelbarrows should be introduced for transporting the garbage.**

6. Sanguem and Quepem Municipal Councils could tie up with Curchorem for dumping of garbage at Curchorem.
7. A mini garbage plant could be set up at Sanquelim, and Bicholim and Valpoi could tie up with Sanquelim for generating sufficient garbage for a mini plant.

Four environmental NGOs asked to be impleaded in the proceedings and were joined as intervenors. However, subsequently, the matter came up before another Division Bench, which disposed of the petition when it was informed by the government that new (MSW) rules dealing with garbage management had come into force under the provisions of the Environment Protection Act, 1986, and these would override all local rules and regulations dealing with garbage. There the matter ended.

We are now back to square one, since none of the authorities wish to implement the new MSW rules since they require intelligent action, commitment and a concern for public health. Try getting anything of this kind from the authorities!

(Taken from *Fish Curry and Rice*, The Goa Foundation, 2002)

Annexure 2

List of Public Interest Litigation Cases Filed by Goa Foundation (1987-2002)

(*See abbreviations at the end of text*)

1. *Extraction of Sand from Sand Dunes*

WP No.145/1987

GF vs. State of Goa & ors.

Status: WP allowed by judgement dated 10/15.11.1989. Sand extraction leases cancelled.

2. *Wrongful Constitution of the Goa SPCB*

WP No.218/1988

GF vs. State of Goa & ors

Status: Disposed of, as GOG agreed to change the Chairman of the Board.

3. *Violation of Environment conditions by Ramada Renaissance (Varca)*

WP. No.367/1988

Sergio Carvalho vs. State of Goa & ors

GF WP against Ramada (WP No.349/1988) was treated as heard by the Court since GF was actively involved in arguments placed by senior counsel in this WP.

Status: WP dismissed on 8.12.88 with directions. Court upheld UOI policy of ban on constructions within 200 m of HTL. Ramada gave undertaking to remove the constructions within 200 m of HTL within three days.

Judgement reported: 1989 (1) GLT 276.

4. *Violation of Environment conditions by Dalmia Resorts (Cavelossim)*

WP.No.349/1988

GF vs. State of Goa & ors.

Status: WP allowed by judgement dated 13.7.2000. MoEF permitted to pursue directions issued under S.5 of EPA. Costs of Rs 15,000 awarded to UOI & Rs 15,000 to GF.

WP filed by GTC Industries (No.72/91) also disposed of by the same order.

SLP filed by Dalmia admitted by SC. Status quo ordered. Pending final hearing.

5. *Violation of Environment conditions by Dona Sylvia Resorts (Cavelossim)*

WP.No.389/1988

GF vs. UOI & ors.

Status: Dismissed at admission stage.

6. *Air Pollution and Contamination of Dorvol Springs by Zuari Industries Ltd (Sancoale)*

WP.No.450/1988

GF vs. Zuari Industries Ltd., & ors.

Status: WP disposed of with directions by judgement dated 2.2.1998. ZIL directed to set up 4 air monitoring stations and file compliance reports. SPCB directed to monitor air pollution on regular basis. As a consequence of the judgement CPCB notifies the standards for ammonia in ambient air for the entire country, BARC investigates water pollution at Dorvol springs and GOG prepares Off-site Emergency Plan for South Goa.

7. *Construction of Taj Holiday Village within 200 m of HTL (Sinquerim)*

WP.No.25/1989

GF vs. State of Goa & ors.

Status: Pending final hearing. Interim Order restrains further constructions in 200 m zone.

8. *Land use changes in the Regional Plan for Goa permitting development upto 90 m of HTL*

WP.No.29/1989

GF vs. State of Goa

Status: WP dismissed.

9. *Construction of Majorda Beach Resort within 200 m of HTL (Majorda)*

WP.No.47/1989

GF vs. State of Goa & ors.

Status: WP allowed by judgement dated 13.7.2000. Phase II of the hotel building involving 46 rooms to be demolished. Hotel filed affidavit that Phase III would not be constructed. Directions of MoEF to cut off electricity to hotel till constructions are demolished to be enforced. Hotel ordered to pay Rs 15,000 as costs to UOI and Rs 15,000 as costs to the GF.

WP filed by Majorda (No.64/92) also disposed of by the same order.

SLP filed by Majorda admitted by SC. Status quo ordered. Pending final hearing.

10. *Chlorine Gas disaster (Cortalim)*

WP.No.72/1989

GF & residents of Cortalim vs. State of Goa & ors.

Status: Disposed of by judgement dated 8.2.2000 which directed the GOG to consider the claims of the victims for compensation. The Court took the view it could not consider compensation itself.

Judgement reported: 2000 (1) GLT 228.

11. *Construction of Hotel Goan Heritage within 200 m of HTL (Calangute)*

WP.No.309/1989

GF vs. P.P.D.A. & ors.

Status: WP allowed by judgement dated 13.7.2000. New wing of the hotel building directed to be demolished. Directions of MoEF to cut off electricity to hotel till constructions are demolished to be enforced. Hotel ordered to pay Rs 15,000 as costs to UOI and Rs 5,000 as costs to GF.

WP filed by Gulf Goans (No. 212/91) also disposed of by the same order.

SLP filed by the hotel admitted by SC. Status quo ordered. Pending final hearing.

Judgement reported: 2000 (2) GLT 187.

12. *Tourism department constructions within 200 m of htl (Calangute)*

WP.No.399/1989

GF vs. Dept. of Tourism & ors.

Status: WP dismissed by order dated 21.12.89. SLP dismissed.

13. *Land use changes in Regional Plan favouring Leela Beach Resort (Mobor)*

WP.No.400/1989

GF vs. Chief Town Planner & ors.

Status: WP dismissed.

14. *Violation of environment clearance by Leela Beach Resort (Mobor)*

WP.No.225/1990

GF vs. Leela Venture & ors.

Status: WP partly allowed by Judgement dated 6.10.2001. Leela directed to pay fine of Rs 1 lakh. Earlier in 1991, Leela Beach had been directed to demolish constructions within 200 m of HTL, close wells within 500 m of HTL and fill up the unauthorised lagoon.

15. *For directions to Planning Authorities on 'Right to Know' documents*

WP.No.214/1991

GF vs. SGPDA & ors.

Status: Disposed of by judgement dated 7.1.1998. Interim orders directed authorities to grant petitioner inspection of required documents. As GOG has brought the Goa Right to Information Act, 1997, into force, the reliefs sought by GF are already met.

16. *Violation of Environment norms by Hospitality Resorts (Utorda)*

WP.No.215/1991

GF vs. SGPDA & ors.

Status: GOG directed to take decision on alleged environment violations and communicate the same to petitioner. WP allowed to be withdrawn with liberty to file again if decision is not acceptable to the petitioner. Fresh WP No.473/97 filed by GF subsequently (see below).

17. *Construction of Salgaoncar residential house within 200 m of HTL (Candolim)*

WP.No.221/1991

GF vs. NPDA & ors.

Status: Dismissed by judgement dated 7.10.1991.

18. *CRZ Violations by Hotel Cidade de Goa (Dona Paula)*

WP.No.24/1992

GF vs. Fomento Resorts & ors.

Status: Pending final hearing. Interim Order restrains Cidade from making any additional constructions.

19. *Violation of Land Acquisition Agreement by Cidade de Goa (Dona Paula)*

WP.No.36/1992

GF vs. Fomento Resorts & ors.

Status: WP allowed by judgement dated 25.4.2000. Court directs public access through hotel property to be opened by hotel. Constructions on plot ordered to be demolished and proceedings for resumption of land to be initiated by GOG. Costs to be paid to petitioners.

SLP filed by Cidade admitted by SC. Status quo directed on demolitions and resumption of land. Pending final hearing.

Judgement reported: 2000 (2) Goa L.T. 49

20. *Privatisation of beach by Cidade de Goa (Dona Paula)*

WP.No.37/1992

GF vs. Fomento Resorts & ors.

Status: Disposed of with directions by judgement dated 25.4.2000. Cidade directed to maintain proper access for the public.

SLP filed by GF admitted by the SC. Pending final hearing.

21. *Violation of CRZ Notification by Beach Ark Hotel (Fatrade)*

WP.No.76/1992

Beach Ark Hotels vs. UOI & ors.

GF - Intervenor.

Status: Disposed of by judgement dated 22.4.1992. Beach Ark undertakes to demolish fencing within 15 days and close down basement permanently within one year.

22. *For Directions to the Statutory Authorities to take air and water samples on receipt of complaints from citizens under EPA.*

WP.No.94/1992

GF vs. Chief Inspector of Factories & ors.

Status: WP allowed by judgement dated 4.5.2000. Court held that it is incumbent on the authorities to monitor a matter once notice under EPA is received and to furnish relevant reports to citizens who have complained of pollution under the relevant pollution control Acts.

Judgement reported: 2000 (2) Goa L.T. 113

23. *Construction of beneficiation plant by Chowgule Co. in forest area (Sanguem)*

WP.No.113 /1992

GF and Peaceful Society vs. State of Goa & ors.

Status: WP allowed by judgement dated 21.7.2000. GOG directed to restore the land to original status. Court held that the lease granted to Chowgule Co. by GOG is 'stillborn, null and void.' Interim order had restrained further development on the plot.

Judgement reported: 2000 (2) GLT 386.

SLP filed by Chowgule Co. admitted by SC. Status quo ordered. Pending final hearing.

24. *Implementation of Goa Coastal Zone Management Plan*

WP.No.115/1992
GF vs. GSCE & ors.

Status: WP disposed of by judgement dated 15.7.98 after the Advocate General informed the Court that GOG is following the approved CZMP.

Judgement reported: 1998 (2) GLT 348.

25. *Konkan Railway Alignment in Goa*

GF vs. Konkan Railway Corporation and ors.

Status: WP dismissed on 29.4.1992. Court held that environment clearance under the EPA is not required in view of Section 11 of the Railways Act, 1989.

Judgement reported: AIR 1992 BOMBAY 471.

26. *Violation of CRZ Notification by Kenil Worth Resorts (Hospitality Resorts at Utorda)*

WP.No.473/1992
GF vs. SPDA & ors.

Status: Pending final hearing. Interim order directed Resort to open up public access, close the wells in 200 m zone and maintain status quo.

27. *Constructions of Garth de Souza within 200 m of the HTL (Cavelossim)*

WP.No.507/1992
GF vs. State of Goa & ors.

Status: Disposed of by Order dated 23-10-2001 directing the GCZMA to examine the violations and take necessary action. Interim order directing status quo and restraint on issue of bar license to continue.

28. *Felling of 219 trees by Marriott Resort (Miramar)*

WP.No.331/1993
GF vs. The Tree Officer & ors.

Status: Pending final hearing.

29. *Approval of nonexistent road by Town Planning Board to facilitate construction of Marriott Resort (Miramar)*

WP.No.332/1993

GF vs. Goa Town & Country Planning Board & ors.

Status: Pending final hearing.

30. *Construction of Marriott Resort in violation of CRZ Notification*

WP.No.333/1993

GF vs. N.G.P.D.A., & ors.

Status: Pending final hearing.

Interim order reported: 1995 (1) GLT 181.

31. *Construction of Marriott Resort in violation of Ports Act*

WP.No.391/1993

GF vs. Captain of Ports & ors.

Status: Pending final hearing.

32. *Fraud in preparation of EIA for Konkan Railway*

WP.No.633/1993

GF vs. Railway Board & ors.

Status: WP dismissed as withdrawn by order dated 24.7.1995. Court declined to examine the EIA at the instance of a stranger to the contract between KRC and RITES.

33. *Thapar Du Pont Project approval in violation of Panchayati Raj Act (Querim)*

WP. No. 16/1995

GF & residents of Querim vs. Panchayat of Querim, and ors

Status: Allowed to be withdrawn by order dated 28.2.1995 as the Panchayat passed Resolution against the project and TDL had to leave Querim.

34. *Land Acquisition for Thapar Du Pont Project (Querim)*

WP. No.18/1995

GF & residents of Querim vs. State of Goa & ors

Status: Allowed to be withdrawn by order dated 30.3.1995 as the Panchayat passed Resolution against the project and TDL had to leave Querim.

35. *Environment impact of Thapar Du Pont Project (Querim)*

WP. No. 19/1995

GF & residents of Querim vs. State of Goa, & ors.

Status: Allowed to be withdrawn by order dated 30.3.1995 as the Panchayat passed Resolution against the project and TDL had to leave Querim.

36. *Violation of Panchayati Raj Act by Binani Glass Fibre (Colvale)*

WP.No. 178/1995

GF & residents of Colvale vs. Panchayat of Colvale

Status: WP disposed of by judgement dated 10.7.1995. Director of Panchayats quashed the demolition order of the Panchayat of Colvale.

37. *Goa Housing Board Constructions in Pilerne Forest ((Pilerne)*

WP. No.368/1995

GF, Peaceful Society, Nirmal Vishwa, vs. Goa Housing Board & ors.

Status: WP allowed by Judgement dated 22.1.1996. Construction prohibited.

38. *HTL of Surveyor General of India in violation of CRZ Notification*

WP. No.102/1996

GF vs. State of Goa & ors.

Status: WP allowed by judgement dated 3/4.7.2000. GOG decision accepting the Surveyor General of India's High Tide Line from Velsao to Cavelossim is quashed.

SLP filed by GOG admitted by SC. Pending final hearing. Judgement reported: 2000 (2) GLT 174

39. *Illegal construction in 200m Zone (Calangute & Candolim)*

WP. No.126/1996

GF vs. State of Goa, & ors.

Status: WP allowed by judgement dated 29.6.2000. Court directed that scheme submitted by the GOG which includes weekly patrolling of CRZ areas be strictly adhered to in order to monitor

constructions within CRZ areas. Action on violations of CRZ to be taken by GCZMA. Panchayats of Candolim and Calangute directed to pay Rs 15,000 each to the GF as costs.

Judgement reported: 2000 (2) GLT 280.

40. *Destruction of Sand Dunes by Piva Resorts (Baga)*

WP. No.319/1996

GF vs. GSCE & ors.

Status: WP dismissed by judgement dated 20.12.2000. However, Interim stay of project to continue to enable GF to appeal the judgement.

SLP filed by GF admitted by SC. Status quo directed. Pending final hearing.

Interim order reported: 1998 (1) GLT 364;

Judgement reported: 2000 (1) GLT 6.

41. *Water Pollution by Penguin Alcohols (Shristal)*

WP. No.373/1996

GF & residents of Shristal vs. SPCB & ors.

Status: Disposed of by order dated 4.11.1996. SPCB shut down the Penguin Alcohols company.

42. *CRZ violation by Dolphin Adventure Sports (Dona Paula)*

WP. No.385/1996

GF & residents of Dona Paula vs. Dolphin Adventure Sports Ltd., & ors.

Status: Disposed off by judgement dated 21.7.97. All construction activities stayed until the project receives permissions from the authorities.

43. *Advertising of liquor despite statutory ban*

WP. No.49/1997

GF vs. Commissioner of Excise & ors.

Status: WP disposed of by order dated 28.2.2001. GOG informed the Court that it was withdrawing the controversial notification which permitted advertising of liquor on special occasions.

44. *Power Purchase Agreement of Reliance Salgaoncar Power Plant (Mormugao)*

WP. No.63/1997

Dr. J.C. Almeida vs. State of Goa & ors.

GF -Intervenor

Status: WP dismissed by judgement dated 12.2.1998.

45. *Environmental Impact of Mining by Dhempo Mining Corporation (Bicholim)*

WP. No.109/1997

GF & residents of Bicholim vs. State of Goa

Status: Pending final hearing.

46. *TATA housing project construction in forest land (Betim)*

WP. No.273/1997

GF & Nirmal Vishwa vs. Conservator of Forests & ors.

Status: WP allowed by judgement dated 16.10.98. All permissions quashed. Tatas directed to remove the constructions erected and restore the forest to its original condition.

SLP filed by Tata Company admitted by SC. Status quo directed. Judgement reported: 1999 (1) GLT 1.

47. *Environment problems created by Asiatic Resorts (Calangute)*

WP. No.349/1997

GF & residents of Calangute vs. Panchayat of Calangute & ors.

Status: Pending final hearing. Court has shut down the entire project by its Interim Order. SC has upheld Interim order.

Order reported: 1998 (1) GLT 28 (Interim order); 1998 (1) GLT 1 (SC order).

48. *Destruction of agriculture by Konkan Railway Corporation (Mayem)*

WP.No. 221/1997

Donxi Khazan Tenants Association Naroa vs. Konkan Railway Corporation

Status: WP disposed of. KRC filed a statement giving list of works that it would undertake to relieve villagers of difficulties encountered due to embankments constructed at Tikhazan, Mayem. WP drawn by the legal cell of GF.

49. *Construction of Railway siding for Zuari Industries (Sancoale)*

WP. No.124/1998

Anti Pollution Citizens Committee & GF vs. State of Goa & ors.

Status: Dismissed by order dated 15.6.1998.

50. *Illegal Constructions within 200m of HTL at Palolem Beach (Palolem)*

WP. No.150/1998

GF & residents of Palolem vs. Canacona Municipal Council & ors.

Status: WP allowed by judgement dated 18.7.1998. Court directed demolition of all constructions erected in violation of the CRZ notification. SLP filed by the respondents against order of demolition dismissed by SC.

Judgement reported: 1998(2) Goa L.T. 326

51. *Illegal Constructions within 200m of HTL at Colva Beach (Colva)*

Suo Moto WP No.418/98

vs. Village Panchayat of Colva & ors.

GF - Intervenor.

Status: Disposed of by order dated 7.2.2001. Order records that government authorities are seized of the matter.

52. *Construction of Diksha Resort on Sand Dunes (Canacona)*

WP No.427/98

GF vs. Diksha Holdings & ors.

Status: WP transferred to Mumbai for hearing and dismissed by the Bombay High Court by judgement dated 8.10.1999.

SLP filed by GF admitted and stay granted. Dismissed by the SC by its judgement dated 10.11.2000. Appellant (GF) has filed an application for recall of the judgement on the ground that the SC has erred seriously on facts that are part of its record.

Orders/judgements reported: 1999 (1) GLT 298 (Interim order); 2000 (1) GLT 186 (High Court judgement in WP. No.4594/99 renumbered); 2000 (1) GLT 224 (SC interim order in GF appeal); 2001 (1) GLT 303 (SC judgement dismissing GF appeal).

53. *United Breweries Guest House in violation of CRZ Notification (Candolim)*

WP No.414/98

GF vs. United Breweries & ors.

Status: WP dismissed by Judgement dated 11.7.2001. UB is permitted to carry out the construction subject to further orders of the Court. UB Company affidavit states that Guest House is the Chairman's personal residence.

Orders/Judgement reported: 1999(1) Goa L.T. 193 (Interim Order); 2001(2) GLT 162 (High Court judgement)

54. *Construction of Teksid Kalyani Foundry without Environment Clearance ((Bicholim)*

WP No.420/1998

GF vs. Teksid Kalyani Iron Foundry Ltd., & ors.

Status: WP disposed of by order dated 29.1.1999. Order records that Company will not make any constructions till it has obtained environment clearance under EIA Notification.

Judgement reported: 1999(1) Goa L.T. 321

55. *Constructions in Candolim in excess of quota permitted under CRZ Notification (Candolim)*

WP No.422/1998

GF vs. Panchayat of Candolim & ors.

Status: WP admitted on 6.5.1999. Interim order records that no further approvals will be granted in the CRZ of the entire state of Goa for residential purposes till WP is disposed. WP is pending final hearing.

Order reported: 1999(2) Goa L.T. 330.

56. *Noise Pollution by Brisa Resorts (Calangute)*

WP No.364/98

Little Flower of Jesus School & GF vs. Brisa Leisure Resorts & ors.

Status: Dismissed at admission stage on 13.10.98. SLP against order filed in the SC disposed of recording that all issues are still open.

57. *Protection of beaches from Food Festivals and maintenance of cleanliness*

WP No.55/99

People's Movement for Civic Action & GF vs. Dept of Tourism & ors.

Status: WP disposed of by order dated 14.2.2001. Order records Government policy not to permit food festivals on the beaches and GOG scheme for keeping the beaches clean.

58. *Construction in Candolim in excess of quota permitted under CRZ Notification (Calangute)*

WP No.99/1999

GF vs. Panchayat of Calangute and ors.

Status: Pending final hearing. Same order as WP 422/98. WPs tagged together.

Order reported: 1999(2) Goa L.T. 330

59. *Garbage Disposal arrangements by Municipalities and Panchayats in Goa*

Suo Moto WP.No.109/99

vs. Chief Officer, Margao and ors.

GF and three other NGOs – Intervenors.

Status: Disposed of by Order dated 7.1. 2001 as GOG informed the Court that it will take appropriate steps for disposal of garbage in accordance with the new Municipal Solid Waste Disposal Rules and Regulations of UOI.

60. *Dust Pollution from Mining Activities (Curchorem)*

WP No.123/99

GF & residents of Curchorem vs. Curchorem-Cacora Municipal Council & ors.

Status: Ad-interim relief directed truck owners to cover their trucks with tarpaulin and have the ore watered in the wagons prior to unloading. Chief Secretary submitted status report as directed by Court. South Central Railways directed to set up water sprinkling system as designed by RITES. WP pending final hearing.

61. *Challenge to Golden Peace Hotel in Forest Area (Penha de Franca)*

WP No.136/99

GF vs. Deputy Collector & ors.

Status: Disposed of by order dated 13.7.2000. Liberty given to petitioner to file appropriate petition regarding demarcation of forest lands.

62. *Construction of Maharani Guest House within 200m of HTL (Utorda)*

WP. No.265/99

GF vs. Maharani Guest House & ors.

Status: Pending final hearing. Interim order directing sealing of premises vacated by SC.

63. *Construction of Kamal Morarka within 200m of HTL (Calangute)*

WP No.204/99

GF vs. M.M. Caculo & ors.

Status: Construction stayed. WP disposed of by order dated 10.1.2000 as the 'issue is now squarely within the province of the National Coastal Zone Management Authority by virtue of their powers of review.' NCZMA directs demolition of portion of building falling within 200m zone.

Judgement reported: 2000 (1) Goa L.T. 130

64. *Unauthorised Aquaculture Farm violating CRZ Notification (Tuem)*

WP.No.302/99

Tuem Nagrik Samiti and GF vs. Village Panchayat of Tuem & ors.

Status: WP disposed of by Order dated 11.1.2000 directing that no fresh stocking of the aquafarm will be done till Aquaculture Authority issues appropriate orders.

Judgement reported: 2000 (1) Goa L.T. 127

65. *Noise Pollution in Goa*

WP.No.366/99

Goa Environment Federation vs. State of Goa and ors.

Status: Interim order dated 18.1.2000 stopped all open-air night functions using amplified sound systems, beyond 10 pm. Government filed Scheme for Implementation of Noise Pollution Rules. WP pending final hearing. WP drawn by legal cell of GF.

Interim Order reported: 2000 (1) GLT 225.

66. *Appointment of Arecio D'Souza as Chairman of the SPCB violates Pollution Control Acts*

WP.No.384/99

GF vs. Arecio D'Souza and ors

Status: Interim order dated 18.1.2000 restrains Arecio D'Souza from participating in meetings or taking decision with regard to any major subject which comes before the SPCB. WP pending final hearing.

67. *Consent orders of SPCB relating to Meta Strips Factory (Sancoale)*

WP.No.196/2000

GF vs. State of Goa and ors.

Status: Pending final hearing.

68. *Illegal Construction of Residential Bungalow Affecting Water Springs (Assagao)*

WP.No.228/2000

GF and Desmond Alvares vs. State of Goa & ors.

Status: Disposed of by judgement dated 26.2.2001. Construction stayed by authorities.

69. *Appointments of SPCB members violating Pollution Control Statutes*

WP.No.309/2000

GF vs. State of Goa and ors.

Status: WP pending final hearing.

70. *Mining Operations in Area Declared as Forest (Sanguem)*

WP. No.103/2001

GF & ors vs. State of Goa and ors.

Status: WP pending final hearing. GOG directed to decide on mining lease application within 3 months.

71. *Construction on Hill Slopes (Panjim)*

WP. No.257/2001

People's Movement for Civic Action & GF vs. NGPDA & ors.

Status: Interim stay on all construction activity on the plots. WP pending final hearing.

72. *Noise Pollution by Mining Companies at Digas-Panchwadi (Ponda)*

WP. No.76/2002

GF and Residents of Digas v/s District Magistrate & ors.

Status: Pending admission

IN THE SUPREME COURT

(The following WPs were filed directly in SC)

73. *For Implementation of CRZ Notification*

WP No 664/1993

Indian Council For Enviro-Legal Action vs.UOI

GF – Intervenor

Status: WP allowed on 18-4-1996. Judgement upholds validity of CRZ/Notification and directs full compliance with all its provisions. SC struck down amendments which sought to dilute the Notification. CZMPs of all coastal states finalized and approved.

Judgement reported: JT 1996(4) SC 263

74. *Aquaculture in violation of CRZ*

WP No.561/1994

S. Jagannathan vs. UOI

GF - Intervenor

Status: Review petition admitted. GF files criticism of EIA report of Aquaculture Authority of India.

75. *Private Forests in Goa*

WP No.181 of 2001

GF v/s Conservator of Forests & ors

Status: State Government restrained from interfering in any manner with the Sawant Committee Report on private forests in Goa.

Abbreviations:

EPA - Environment Protection Act, 1986

GOG - Government of Goa

GF - Goa Foundation

GSCE - Goa State Committee on Environment

GCZMA - Goa Coastal Zone Management Authority

HTL - High Tide Line

MoEF - Ministry of Environment and Forests

PDA - Planning and Devp. Authority

SC - Supreme Court

SLP - Special Leave Petition

SPCB - State Pollution Control Board

WP - Writ Petition

UOI - Union of India

(Taken from *Fish Curry and Rice*, The Goa Foundation, 2002)