CHAPTER - VIII

CONCLUSION

After making a detailed study of the law on environment protection with a focus on the role of the judiciary in India in protecting the environment and preventing the environmental pollution the researcher gives in this final chapter of his work a summary of the research work, the findings and the suggestions in this regard to improve the status of the law in our country on the subject of environment protection.

(i) Summary of the Research Work

The discussion in this work began with a description of the fundamental aspects of the law on environment and proceeded to examine the policies behind the legislation enacted at the international and national levels, the aims and objects of the legislation, the method designed to enforce the legislation as well as the interpretation of the courts on the rules and regulations relating to Environment. The researcher covered first the work of the international organizations and then covered the influence of the work of international organizations on the legal framework of our own country.
The study started with the assumption that Environment plays a pivotal role in human life as well as in the development of society. With growing technological advancement and industrialization, the purity of the environment has been threatened to an appalling extent. The need to protect and improve the environment is so compelling for the peaceful survival of mankind and other life forms on planet Earth that right to environment has emerged as a human right.

Proceeding further the research noted the diverse ingredients of environment as it is understood in various legal systems and made a special mention of what is understood by environment in the Indian context and what are the elements of environment in Indian environmental jurisprudence.

Note was taken by the researcher of the historical perspective of environment in Indian context. An appraisal of the historical background to environmental protection in India has shown that forests and wildlife were considered as vital ingredients of the social system. Here, the entire scheme of environmental preservation was essentially duty-based. In this sense, the ancient Indian society accepted the protection of the environment as its duty to do so.

In the Hindu Era, the Vedas, Puranas, Upanishads and other ancient scriptures of the Hindu religion had given a detailed description of trees, plants, wildlife and their importance to people. The Hindu society was
conscious of the adverse environmental effects caused by deforestation and extinction of animal species. In the subsequent periods of the Mughals and other foreign rulers there was close harmony between man and nature. Most of the rulers were great lovers of nature and took delight in spending their spare time in the lap of natural environment and made whatever effort was possible to conserve the resources. In the British era, there was legislation enacted to protect environment; punishments were prescribed in the Indian Penal Code to those who defiled the environment. Not only at the central level, at the local level also was legislation enacted to preserve the culture of people and protect the environment. Of course these laws had a narrow purpose and had a limited reach. For example, the Bombay and Kolaba Act to deal with Shore Nuisance; the Oriental Gas Company Act the Bengal Smoke Nuisance Act of 1905, the Bombay Smoke Nuisance Act, 1912 etc. In the field of wild life protection also legislation had been enacted but that also had a limited application. Most of the legislative measures in the pre-Independence era were limited to specific areas and particular aspects of social life.

Some legislative measures were adopted by the British Government for prevention of pollution and for conservation of natural resources. But the critics have pointed out that the British enacted these legislations, not with the object of protecting the environment but with the aim of earning revenue for themselves, it should be regarded as the first step towards the scientific conservation of natural resources. Despite the fact that these measures were
made with ulterior motives, British-enacted legislations have contributed significantly to the growth of environmental jurisprudence in India.

Towards the end of Nineteenth century effect was felt on a large scale of industrialization; the advent of factories, refineries and various companies concerned with scientific and technological work created the problem of enacting more and more legislative enactments for dealing with the new problems. In view of the fact that such developments were of a global nature almost all countries of the world felt the necessity of adopting necessary regulations at the international level. This is how environmental matters entered the area of international legislation.

Rapid economic, scientific and technological advancements had massive repercussions in the form of degradation of ecological balances. Due to large scale occurrence of environmental crises, the global community had expressed major concern over environmental protection and environmental development. Amidst some serious endeavors, significant developments took place in the international scenario.

In the backdrop of some sincere efforts of tackling pollution control, for the first time, the attention of the world was drawn towards environment in the United Nations Conference on Human Environment was held at Stockholm in June 1972. The Declaration on Human Environment was passed containing twenty-six principles, with the main object of overcoming environmental
problems related to the development of States and to provide clean & healthy living conditions.

An important aspect of the Stockholm Declaration was a strategy to draft an action plan for the development of human environment. Moreover, the declaration stated that economic and social development were necessary for ensuring a healthy environment for man. This, in turn, has been called the Magna Carta on environment from which two important conclusions can be reached:

-Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well-being; and Man bears a solemn responsibility to protect and improve the environment for present and future generation.

United Nations Conference on Environment and Development In the last decade, the most revolutionary step towards the preservation of the environment was the Earth Summit convened by the UN General Assembly at Rio de Janeiro from 3rd to 14th June, 1992. The Conference saw the largest gathering of world leaders ever in the history - deliberating and chalking out a blue print for the survival of the planet. It added a new dimension on the issues of environment and development in international negotiations.
The main objective of the Summit was to find an equitable balance between the economic, social and environmental needs of present and future generations and to lay down a foundation for global partnership between developed & developing countries, on one hand, as well as governmental agencies & private organisations. Amongst the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change.

The World Summit on Sustainable Development was held at Johannesburg, where after 10 years of the Rio Conference, the Summit reaffirmed sustainable development as a central element of the international agenda and gave new impetus to global action to fight poverty and protect environment. The Summit's plan of implementation is a seventy-one page document that is intended to set the world’s environmental agenda for the next ten years and is expected to be a model for future international agreements. The plan of implementation aims at building further on the achievements made at UNCED and make commitment to undertake actions and measures at all levels to implement Rio principles and Agenda 21.

The researcher has highlighted in a specific chapter of his work the International efforts in combating environment and related problems. Then he has turned to the Indian experience of environmental law and its resultant tool of the human right to live in a clean and healthy environment.
The national perspective of environment law has been covered from the following four points of view; first the legal framework on environment protection has been covered in a specific chapter; then the role of the courts in the matter of protecting the environment has been covered; and then the procedural aspects of the judicial system in so far as protective mechanism is concerned has been studied; and then at the end of the study concerning the Indian perspective the new machinery for the enforcement of environmental law has been covered.

II. FINDINGS OF THE RESEARCHER

In the early years of Indian independence, there was no precise environmental policy. Government tried to make attempts only from time to time as per the growing needs of the society. The period of 1970s witnessed a lot of changes in policies and attitudes of the Indian Government when its attitude changed from environmental indifference to greater and subsequently, manifold steps were taken to improve environmental conditions.

National Committee on Environmental Planning and Coordination The year 1972 marks a watershed in the history of environmental management in India. This is because prior to 1972, environmental concerns such as sewage disposal, sanitation and public health were dealt with by different federal ministries and each pursued these objectives in the absence of a proper
coordination system at the federal or the intergovernmental level. When the twenty-fourth UN General Assembly decided to convene a conference on the human environment in 1972, and requested a report from each member country on the state of environment, a Committee on human environment under the chairmanship of Pitambar Pant, member of the Planning Commission, was set up to prepare India's report. With the help of the reports, the impact of the population explosion on the natural environment and the existing state of environmental problems were examined. From that time the spate of legislation intensified and quite a good number of legislative enactments have come on the subject of environment protection. These enactments contain the substantive law as well as the procedural law. Moreover, a new mechanism of control boards, authorities and tribunals has been introduced to make the system of environment protection more efficient and more strong.

With regard to the nature and scope of Environmental Law the researcher found that although environmental law existed in several forms before 1970 it began to be identified as such with the adoption of the Stockholm Declaration at the instance of the United Nations Organizations. Subsequently, the United Nations adopted various other Conventions including the latest one at Denmark on the problem of Climate Change. The impact of these developments on the national laws was in the form of the amendment introduced to the Constitution of India, and the special laws
enacted by the Parliament such as the Water (Prevention & Control) Act, the Air (Prevention & Control) Act, and the Environment Protect Act etc.

Earlier, the rules of Common Law dealt with the problems of pollution by treating the wrong as one of 'nuisance'; the Common Law addressed itself to the problems arising from the wrong of nuisance; it was not concerned so much with several other matters which were related to Environment. But the Environmental Law of the present days has undergone considerable development. It covers matters relating to conservation, preservation, protection, management, restoration and enhancement of the environment. It also includes preventive measures, measures to remedy the harm or the risk of harm to human health and welfare, and the environment restorative measures, and measures of assigning liability.

It has been observed by the researcher that though there are provisions of the constitution and the Statutes on the subject of Protection to Environment, Environmental Jurisprudence in India is developing through judicial decisions.

The crucial problem with which the Judiciary had to deal was the one relating to matters of development and environmental protection. The approach of the court in examining the problem of development and its impact on environment could be seen from the words of Mr. Justice V.P. Gopalan Nambiar, who once said,
"... in this region we cannot substitute our judgment for that of the Government, on the question as to whether a national asset is to be more conveniently utilized as a hydroelectric project with prospects of greater power generation, or retainer in its pristine glory for preservation of forests and wildlife, prevention of soil erosion, and avoidance of other deleterious effects on the community.¹

In 1980's however, there was a change in the court's view as could be seen by its entertaining writ petitions involving environmental issues. Judicial Activism helped to promote public interest litigation to be filed. The traditional thinking in the past was that the proper role of the judiciary is to merely declare the law and not to make law. It is accepted that certain degree of legislative activity is inherent in the process of judicial interpretation.²

While deciding proceedings in which environment or pollution issues are involved the Supreme Court and High Courts have adopted the principle of beneficial interpretation for the protection of the environment. The Supreme Court has deduced various other fundamental rights, which are not expressly mentioned in the Constitution.³

It may be the interpretation and application of Art.14, 19 (1)(g), 21, 32, 226, or the provisions of the Indian Penal Code, Civil Procedure Code,

¹ Extract from the judgment delivered by Hon'ble Justice V.P. Gopalan Nambiar in the Society for Protection of Silent Valley v Union of India
² Soli J. sorabjee, in his lecture in Fifth Nani A. Palkhivala Memorial Lecture, p.17
³ Ibid 4
Criminal Procedure Code, etc. the courts have shown their inclination towards the protection of environment. Whenever the authorities failed to discharge their duties, judiciary intervened and gave appropriate directions.⁴

The view taken by the Judiciary is that the Judiciary may step in where it finds that action on the part of the legislature or the executive branches are illegal or unconstitutional; ⁵ If law is not enforced and the orders of the court to enforce and implement the laws are ignored, the result can be total lawlessness; the Supreme Court can not remain a mute spectator when the violation of the laws affects the environment and the healthy living of the law-abiders.⁶

Among the principles followed by the Courts which are of the innovative nature may be mentioned the Polluter Pays Principle, the Principle of Sustainable Development; the principle of Public Trust etc.

As far as the volume of legislation on environment protection is concerned it may be stated that quite a good number of legislative enactments have been enacted. While some of them are based on expediency and are meant for dealing with the local problems; certain others are based on the advices coming from the foreign institutions. The

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⁵ M.C. Mehta v Union of India (Tai corridor case) 2007AIR SCW 6459
⁶ M.C. Mehta v Union of India 2006 SCC.
international organizations have urged upon the sovereign nations to enact suitable legislation to give effect to the decisions arrived at at the international level; therefore legislation has been enacted.

But in certain respects even the international organizations have not been able to deliver the goods; for example, nothing has been done till now to implement the decisions which were once taken by them with regard to the Climate Change; no mechanism has yet been introduced to give effect to the idea of Climate Change.

Certain decisions are such that it is difficult for the national governments to implement; the technical deficiencies are a big problem because of which no progress could be made in our country also to implement such types of legislation.

As far as the role of the courts in our country which was the main aspect to be covered in this research work it is found that the High Courts and the Supreme Court have given a very wide interpretations to Article 21 of the Constitution.

Because of the decisions of the High Courts and the Supreme Court the provisions of Personal Liberty have over the years become the bedrock of environmental jurisprudence, and have served the cause of protection of
India's environment (and to a lesser extent, of livelihoods based on the natural environment).

A number of groups have pointed out that the Constitution is deficient in that it does not explicitly provide for the citizen's right to a clean and safe environment. In a recent submission to the committee set up to review the Constitution, these groups have proposed a number of amendments to the Constitution, for ensuring environment protection and nature conservation. These include: Recognition and incorporation of Environmental Rights as separate and independent Fundamental Rights in the Constitution of India. These follow from the above-mentioned interpretation to the term ‘Right to Life’, as given by the Supreme Court.

On the whole, the Indian judiciary has, over the last three decades, fostered an extensive and innovative approach to environmental rights in the country. Complex matters of environmental management have been resolved and consequently a series of innovative procedural remedies have evolved to accompany this new substantive right. The new environmental right is therefore championed as a legal gateway to speedy and inexpensive legal remedy.

The notional expansion of right to life was recognized even in the absence of a specific reference to direct violations of the fundamental right. Placed in a nutshell, the human right culture has percolated down to Indian
human right regime within a short period of time. An interdisciplinary approach to environmental protection may be another reason for the operation of the right to healthy environment. This has been undertaken through international environmental treaties & conventions, national legislative measures and in judicial responses.

On undertaking a comprehensive study of environmental law, it has been found that the Indian scenario is replete with examples of preserving the environment from degradation.

There has been a paradigm shift over the concept of right to environment since the last three decades, primarily after a series of global cooperative initiatives. Among these, the Stockholm Conference played a significant role in throwing light on environmental degradation that has been caused worldwide. As a result, the international stature of environmental & ecological balance has been enhanced to such a level which the countries of the world had never imagined in history.

The Supreme Court of India and the High Courts of various States have rendered very important judgments with regard to environmental matters and developed a new jurisprudence in our country. Apart from the ordinary litigation brought before the courts by the aggrieved individuals there were also cases brought before the court in public interest under various provisions of the Constitution. In dealing with both the types of cases the courts have
issued orders, writs or directions for the purpose of enforcing the rules embodied in the Constitution and the Statutes on environment and also for the enforcement of principles which were part of principles originally formulated by the international organizations but have since become part of our legal system. The importance of the cases decided by the courts is that by rendering their judgments on various problems of environment the courts have extended the meaning of the constitutional provisions and helped the individuals in regard to their interests in the protection of environment and prevention of environmental pollution.

The Courts in India have played a distinguishing role in gradually enlarging the scope of a qualitative living by applying various issues of environmental protection. Consequently, activities posing a major threat to the environment were curtailed so as to protect the individual's inherent right to wholesome environment. Art 21 has been relied in the plethora of cases, although certain cases have incorporated a wider perspective of the Constitution.

Hence, the Supreme Court of India, apart from being environmental friendly, has given birth to a wide range of doctrines and principles have in turn been adopted and implemented throughout the country.
(iii) Suggestions of The Researcher

On the basis of the study made and the conclusions arrived at the researcher has offered his suggestions to improve the status of the law, a few of the important suggestions thus offered include the following:

1. The authorities should take cognizance of the environmental offences without allowing things to worsen;

2. People of India have seen the worst sufferings of the Bhopal Gas Leakage victims who could not get relief even after twenty five years of the unfortunate accident which had occurred due to the negligence of the staff of Union Carbide factory. There should be speedy disposal of cases relating to environmental pollution and causing a mass destruction and also there should be a timely review of the compliance made by the parties;

3. In order to secure quick disposal of cases the State should establish special courts at the State, District and Taluqa levels;

4. The State should also establish Environmental Tribunals to enforce the system of justice by administrative agencies;
5. The courts should modify the rigorous rule as far as burden of proof is concerned and try to soften their approach in favour of the victims of pollution. It is provided in the Environmental Laws that persons polluting the environment would be liable for penal action. Like other criminal offences the accused in environmental cases is presumed to be innocent until charges against him is not proved beyond doubt, the onus of proving the case is always on the prosecution. It is difficult for an ordinary citizen be able to prosecute and prove the case beyond doubt, taking into account the complex nature of environmental laws.

6. It is necessary to adopt a single compendious legislation instead of having so many different Statutes on the same subject of pollution.

7. In execution of orders and decisions of the higher judiciary a limitation be imposed for the effectiveness of the decisions.

8. At the present higher judiciary has promoted public interest litigation (PIL); due to which higher judiciary is flooded with PIL. Many of these PIL are 'personal interest litigation' or 'profit interest litigation' or 'publicity interest litigation' rather than 'public interest litigation'. Such vexatious PIL should be stopped at the stage of institution only.

9. 'Epistoler' jurisdiction of judiciary be properly developed. Instead of the common law process there should be 'rules' for entertaining epistoler petitions so as to bring certainty to such proceedings.
10. Judiciary is already burdened by pendency of heavy litigations of various types. Environmental litigations can be reduced by effective functioning of quasi judicial authorities established under the Environmental Laws. The decisions of the higher judiciary can be the guiding principles for them.

11. Generally judiciary will not interfere in the capacity of the State to make different policies. In the matter of sustainable development State should adopt effective policy so that future intervention by the judiciary may not be invited.

12. Cases related to the problems of environmental pollution, protection, and conservation of ecology, sustainable development should not be decided technically or merely by following the procedural laws like any other litigations. Special attention be paid to environmental litigations by considering social, economical, legal and ecological aspect of the matter in issue.

13. Due to flaws, lacunas in the environmental legislations, the object of these laws could not be achieved as intended. The judicial work is increase in such situation. The environmental laws should be amend so as to remove defects in it and the standard prescribed for quality of environment should be upgraded periodically.