CHAPTER - 1

INTRODUCTION

The thesis presented under the title: 'Role of Judiciary in the Protection of Environment' is a study in the field of environmental law which is a developing branch of Public Law. It examines the nature of the problem of environmental pollution and the response to such problems. The focus is on the approach adopted by the Courts in India for dealing with the problem of environmental pollution. Environmental Law addresses itself to the problems arising from environmental pollution which are a threat to human health and natural resources. This particular law has encompassed tasks such as the management and control of pollution, toxic wastes and activities that are a nuisance or prejudicial to health. It has moved on to address more complex harms arising from the products of scientific and technological developments. The subject of Environmental Law claims the attention of everyone who is concerned with the institutions engaged in policy formulation. The development of law on Environment has been at the national, regional and international levels. There is the development of ordinary law as well as the special law on the subject of environment. The institutions formulating the policies of the State on this subject represent the response of the society to the problems of Pollution. Out of so many institutions performing various
functions in relation to the problem of Environmental Pollution, the judicial institutions are the ones who have a very important role to play in dealing with the problems.

In this research work the focus is on the role of the Courts in addressing the problems of environmental pollution. Before describing any of the situations in which the courts were called upon to decide the disputes and lay down principles of law. The researcher considers it necessary to offer a brief comment on the relationship of man with nature which technically is known as environment. A reference is made to the problems which environment has in the present set up and the problems in the wake of which a law known as the environmental law has arisen in the legal world.

I. BACKGROUND TO THE STUDY

Nature was created by one single creator. In this universe every single organism had its own identity, none other organism was in the situation to take place of another organism. Man has been interested in nature since time immemorial, but today he thinks himself to be the master of nature. On the other hand, nature tries to comprise with man and absorbs human onslaught in the form of waste material discharge, deforestation, intensive agriculture, desertification, urbanization etc. In the name of progress, forests are demanded, lakes poisoned with pesticide and air fouled with noxious gases. Our earliest ancestors lived in a rich and competitive world closely tied to
They knew the sources of water and use of plants and animals for food and indicative purposes. But the hunters and gatherers exploited the environment to fulfill their requirements, by cutting down trees resulting into great changes in grass and shrubs with the use of fire. However, they could not cause excessive damage to environment due to their low population, nomadic way of life and primitive technology. The domestication of plants and animals gave impetus to agricultural technology. Human population started increasing beyond the limits previously fixed by natural food supply.

The development in machinery, fertilizers, pesticides and high yielding varieties caused unprecedented increase in agricultural productivity. Overgrazing, widespread destruction of forests and intensive agricultural practices demanded the land and converted productive regions to barren areas. It is thus, quite amazing to recall the change from hunter-gathered economy to that of agriculture and industry that marked by the changed natural habitat. The shifting role of man in the environment placed heavy demand on air, water and natural resources. As man was trying to gain control over environment, the link between him and nature got weakened. It therefore became necessary to regulate human behavior and social transactions with new laws, designed to suit the changing conditions and values. In order to manage and face the myriad challenges of ever changing environment, the environmental laws emerged. But these laws are of no use if not implemented or accepted by the society properly. Though government of India introduced plethora of legislations in the field of environmental law which
directly or indirectly deals in environmental issues. Though there is bulk of legislations but this didn't had any impact on the condition of environment rather it deteriorated day by day. Therefore one would always think though there is plethora of legislations but why there is no improvement in the condition of environment? As these laws had some inherent defects in it and lacked proper implementation.

Our age old traditions teach us to live in peace and harmony with nature and to conserve it, as we all are creatures of one creator, and we don't have any right to harm, any of the living being in any manner as they are also one of the creations made by the almighty, this is taught to us since the very beginning of our civilization but as the civilization progressed we forgot everything and started thinking that we are the master of nature and everything in this world is made for us and we can utilize it, at any cost, as and when require, this is against our ethics and moral values.

Since Vedic times the main motto of social life was "to live in harmony with nature". Sages, saints and great teachers of India lived in forests, mediated and expressed themselves in the form of Vedas, Upanishads, Smritis and Dharma. Thus we can imply that all the divine thoughts and literature which served as ideal for living life and taught guidelines how to live life came up when these saints and great thinkers were in touch with the nature. This literature of Olden times preached in one form or the other a worshipful attitude towards plants, trees, mother earth, sky (akash), air (vayu),
water(jal) and animals and to keep benevolent attitude towards them. It was regarded a sacred of every person to protect them. The Hindu religion enshrines a respect for nature, environmental harmony and conservation. It instructed man to show reverence of divinity in nature. Therefore trees, animals, hills, mountains, rivers are worshiped as symbol of reverence to these representative sample of nature. A perusal of Hindu religious scriptures reveals that the principles to be followed by human beings were to respect nature and protect it; to observe non-violence in their behaviour towards animals, trees and other organisms. These were considered to be good conduct and a virtue.

It is a fundamental principle to be followed by us that purity of thought and expression, and cleanliness of the environment around us should be observed. All lives, human and non-human including trees are of equal value and all have same right to existence. It shows that the principle of sanctity of life is clearly ingrained in Hindu religion. As Hindu religion is the oldest religion and is of divine origin and we don't know from where it originated but we can derive inference that it would have developed slowly and slowly in due course of time as man progressed. Man since the time immemorial knew the importance of nature, the things which helped him in progressing and he knew if we want to progress further we would require these things, so he related them to God and then slowly it became a practice. Therefore different names were given to different forces and they constituted the environment. All elements of Nature were to be respected and regarded as gods and
goddesses. "Rig Veda, Manusmriti, Charak Samhitaha emphasize on purity of water and healing and medicinal values of water. Because of those injunctions of system of maryada developed in Indian Society to keep clean and wholesome".

The change that has come up is that in the current scenario people have forgotten their age old traditions of living in harmony with nature and conserving natural environment and natural resources. In the mad rush for industrialization and industrial development we are forgetting the importance of environment. Earlier man coexisted with nature like other creatures but slowly he started thinking that whole universe is meant for man and he is the master of whole universe. Previously he cared for the environment in which he lives in because he had place in his heart for everything and he was sensitive towards other organism but as civilization progressed the sensitive attitude of man towards nature started deteriorating and he had totally forgotten the importance of nature and he though is well aware of the fact that Industrialization brings with it problems of environmental pollution but doesn't at all wants to understand this simple fact.

In short, environment and life are interrelated. The existence of life on earth depends on the harmonious relationship between ecosystem and environment. Especially homo-sapiens have very close interaction with nature. Human beings are at the centre of concerns for sustainable
development and that they are entitled to a healthy and productive life in harmony with nature.

In the long evolution of the human race on this planet, a stage has been reached when, through the rapid acceleration of science and technology, we have acquired the power to transform our environment in countless ways and on an unprecedented scale. Humanity's capacity to transform its surroundings, if used wisely and with respect to the ways of nature, can bring to all communities the opportunity to enhance the quality of life. Wrongly or heedlessly applied, or applied in iniquitous ways, the same power can do incalculable harm to human beings and their environment. We see around us growing evidence of human-caused harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; destruction and depletion of irreplaceable life forms and natural resources; major and undesirable disturbances in the earth's climate and protective layers; gross deficiencies, harmful to physical, mental and social health, in the living and working environments of humans, especially in cities and industrial complexes.

It is important to recognize our dependence on the earth's natural resources. Natural resources such as air, water, and land are fundamental to all life forms: they are, much more than money and economic infrastructure, the base of our survival. To large numbers of humanity, especially communities that have been termed 'ecosystem people' (people depending
on the natural environments of their own locality to meet most of their material needs), natural resources are the base of survival and livelihoods. Their material and economic sustenance largely depends on these. In India alone, around 70% of the population directly depends on land-based occupations, forests, wetlands and marine habitats, for basic subsistence requirements with regard to water, food, fuel, housing, fodder and medicine as also for ecological livelihoods & cultural sustenance. Given this close interdependence of humans and their environment, it is not surprising that the culture of societies is so greatly influenced by their environment. They seek inspiration, knowledge, spirituality and aesthetics within their natural surroundings. But it is not only ‘ecosystem people’ who are dependent on the natural environment. It is all humans, even the rich urban resident in Paris or Washington who may be under the delusion that he/she is buffered by the props of modern technology. In the growing cities of the industrializing world, millions of residents of all classes are now prone to lung and skin diseases, water-borne illnesses, and congenital abnormalities from toxics in their food and water, some of which may have originated hundreds of kilometers away.

(i) Life and Environment: Life, livelihoods, culture and society, are fundamental aspects of human existence – hence their maintenance and enhancement is a fundamental human right. Destruction of environment and thereby of the natural resources, is therefore, a violation or leads to the violation of human rights – directly by undermining the above aspects of human existence, or indirectly by leading to other violations of human rights,
for example through social disruption, conflicts and even war. Conversely, human rights violations of other kinds can lead to environmental destruction, for instance, displacement by social strife/war can cause environmental damage in areas of relocation; or breakdown in sustainable common property management. The manifestations of such violations present themselves through a loss of access to clean air and water; loss of access to productive land; loss of energy sources and biomass; loss of food and health security; social and economic marginalization; and physical displacement. Several hundred million people have been increasingly forced to live far below the minimum levels required for a decent human existence, deprived of adequate water, food, clothing, shelter and education, health and sanitation. Development, which was supposed to alleviate such problems, has often increased them, especially by allowing the powerful sections of society to appropriate the natural resources of poor and resource-dependent people.

(ii) Law and Environment: A wide variety of definitions have been offered by modern textbook writers to give a clue to the vast potential scope of the study of environmental law. The environmental law has now evolved to such a stage that it has developed coherent basis of applicable theory and principles. The tackling of environmental harms through law has traditionally focused on the degradation of the quality of environmental media, particularly air, water and land, more especially where there are threats to human health.
Environmental law today encompasses the tasks such as the management and control of pollution, toxic wastes, and activities that are a nuisance or prejudicial to health. It has moved on to address more complex harms, often by — products of technological development such as the chemical impacts of lead ingestion on the neurological functions of organism; and of CFCs in producing ozone depletion in the upper atmosphere. Today, there are the more intractable problems that follow in the wake of the atmospheric build-up of greenhouse gases especially carbon dioxide and methane. Here, whilst doubts persist as to the rate of global temperature increase, the serious nature of resulting threats are now accepted near unanimously in scientific circles. Yet policy and law in this area have thus far made only limited contributions towards countering the grave risks involved.

We need from the outset a working definition for an “environment” that lies at the heart of our lives, and our cultural and physical survival on the planet Earth. A description is hard to pin down as there are many reasons for this. A vast range of problems faces humankind, arising from strains that we have placed upon the natural resources and processes on which we all depend. At the same time, our human knowledge of the environment is a peculiar mix of increasing understanding and continuing uncertainty. Indeed as we develop greater expertise and deeper understandings, there is a kind of Pandora's Box effect. The sum of human knowledge in other words is contingent, rather than fixed and immutable. Thus, despite progress in
ascertaining levels of risk, we struggle in particular with both the known and the unknown.

As succinct a definition of environment as any for our purposes is can be the one which is contained in the European Community Regulations, 1984, which says, Environment is a: “Combination of elements whose complex inter-relationships make up the settings, the surroundings and the conditions of life of the individual and of society as they are and as they are felt”.

As statute usually seeks to define its working terms, we can also find numerous illustrations from such provisions as the UK’s main anti-pollution legislation, the Environmental Protection Act 1990 (EPA). There, the environment is said to consist “of all, or any, of the following media, namely, the air, water and environmental pollution is a problem that arises due to the release (into any environmental medium) from any process of substances which are capable of causing harm to man or any other living organisms supported by the environment.

Environmental harm-notions are especially problematic as being harmful “to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property”.
"Ecology" is another term which merits an early introduction. Ecological perspectives lie at the centre of much of what follows. Ecology asserts the idea that "everything is connected to everything else". Its emphasis is upon the mutual relations and dependencies crucial to any consideration of the environment, and for charting the conditions for life of human beings and other species. The related idea of "ecosystem" traces the dynamics of existence, as organisms react with, and variously depend upon, one another.

In its applications environmental law draws from a range of private and public law principles, with much of its content concerned with human relationships and the interplay between relevant interests, rights, obligations, and remedies. In this background we will study the situations in which the rules of law at the national and international levels function in environmental contexts.

The subject of environmental law may further be described as a conceptual hybrid. Its doctrinal content appears largely to derive from principles enunciated in other legal contexts. The gradual evolution of environmental principles is becoming increasingly influential in law and policy settings. For the greater part it is distinctively public law, with widespread statutory regulation of activities, through substantive and procedural constraints; including process controls, emission limits, and environmental quality requirements and substantive benefit to national economics.
In such a changing situation which has thrown serious challenges to the survival of environment and for that reason the very survival of mankind it is necessary to have a look at all that is happening, which is affecting the environment and how environment needs the protection of men. Since men have lost their right of self-defence and accepted the theory of social defence, the only thing that needs to be looked at by them is to know how the law evolved by them in the name of social defence is found to be effective in dealing with the problems of environment and the problems of people owing to changes in environment. This research work is having the object of assessing the merits and demerits of the contemporary system of protection of environment against the growing menace of environmental pollution.

II. STATEMENT OF THE PROBLEM

The problem of Environmental Pollution is one of the most serious problems which nations all over the world are facing. It is not a problem of the type of a crime problem which arises from the violation of the law by a deliberate act. On the other hand, it is something which arises from the very use of things which is permitted by law. The problem however is that the problem of pollution is traceable to a certain thing which has its adverse consequences on the rights of others and in certain cases on the Nature itself which has provided various objects to mankind for enjoying the life.
The problems arising from Environmental Pollution are of various kinds affecting various interests of Society. The response of Society to these problems is a matter of great interest for it gives an insight into the approach of the State as to how it is tackling the problem and whether the steps envisaged in the legislation are adequate or not and whether the efforts of the State so far have met with any amount of success or not.

The problems of Environmental Pollution started arising from the 19th and 20th centuries when the Industrial Revolution began having its impact on human civilization. Since the time of Industrial Revolution there is very fast development in the field of industrial technology, transportation, communication, electronics, agriculture, and construction. By such development man has tried to be omnipotent, but the unfortunate results of the misuse of scientific and technological knowledge have created insurmountable difficulties for a sound, healthy and peaceful existence people around the world.

The problem of environmental pollution is of far reaching significance; it is a global problem and is not restricted to a particular region; in fact it is one of the most serious problems facing humanity today. The various forms in which the problem of pollution are noticed are that there is pollution of air, water and soil; there is destruction of the Ozone layer and other disasters causing the survival of the living things. Badly polluted air causes illness and even death. Polluted water kills fish and other marine life. Pollution of soil
reduces the amount of land available for growing food. Environmental pollution also brings ugliness to the naturally developing world.

Of course, there is response of society to this problem. Everyone wants to reduce pollution. But the difficulty is that pollution is of a complicated nature and calls for diverse steps to tackle the problem.

People have always polluted their surroundings. But throughout much of history pollution was not a major problem. People lived in uncrowded rural areas and the pollutants (waste products) they produced were widely scattered. People had no pollution causing machines. By the mid 1900's pollution had affected the water in every major lake and river in the area over every major city of the industrialized countries.

The development of crowded industrial cities in 1700's and 1800's made pollution a major problem. Peoples and factories in these cities put huge amount of pollutants into small areas of the environment. During the 1900's urban areas continued to develop and cars and other new inventions made pollution steadily worse. The problem still continues and is bothering all the nations of the world.

The difficulty in addressing the problem of pollution is originally the polluting activities were of a limited kind but now they are of a wide variety; likewise the courts originally were accustomed to function under a limited
number of principles providing limited number of remedies following the
prescribed procedures but today the problems arising from environment now
are of a new kind calling for new strategies and new mechanisms. The
various situations in which judicial action was necessitated and the remedies
provided by them by moulding the nature of legal process. Such an approach
on the part of Judiciary has ushered in new kinds of remedies, new kinds of
principles and new kinds of procedures. These are the matters which in
relation to the problems of environmental pollution constitute the subject
matter of this study.

III. SIGNIFICANCE OF THE TOPIC OF RESEARCH

The object of Environment Law is to protect and preserve the
environment and save it for the future generations and to ensure good quality
of life for the people. The laws enacted by the appropriate legislatures and the
rules framed by the Government prohibit and regulate certain activities with a
view, to protect and preserve the environment. When a law is enacted
prohibiting certain types of activities then it is of the utmost importance that
such legal provisions are effectively enforced. If a law is enacted by the State
but is not obeyed by the general public and enforced by the public authorities
then it will lead to lawlessness in society. Violation of anti-pollution laws not
only adversely affects the existing quality of life but the non-enforcement of
legal provisions often resulting in ecological imbalance and degradation of
environment the adverse effects of which will have to be borne by the future generations,

The significance of the topic of research is that it brings to light the role of the judiciary in regard to enforcement of anti-pollution laws. Since the judiciary has an important role to play in the enforcement of laws, the research work proposed to be undertaken here would show the kind of response our courts have towards the problem of environmental pollution. This study in short is a study of judicial response to the problem of environment pollution.

IV. RATIONALE FOR STUDY

In the backdrop of the legislation on environment and the peculiar nature of the problems involved, there is need for a detailed study of the kind of problem the people are facing on account of environmental pollution and the role played by various institutions, particularly the Judiciary which has a unique responsibility to protect the interests of the State and the interests of the individuals against pollution and hazardous activities affecting the life and liberty of the individuals. There is need for studying the legislative, executive and judicial response to the problem of environmental pollution and to note whether the response to this problem is deficient in any way. For these reasons the researcher has felt that there is justification for taking up a study
of matters falling within the area of 'judicial response' to the problem of pollution and protection of environment.

V. HYPOTHESIS

On a preliminary observation of the socio-legal scenario the hypothesis formulated for study has been that the Judiciary in India has played an important role in protecting the environment and in dealing with the problems of pollution. The judicial decisions contain principles of high legal importance. The most crucial role of the judiciary has been in dealing with the problems of environment where developmental activity is involved, and the Courts have taken a balanced view of priorities while deciding the environmental matters.

The above hypothesis has been tested by examining the cases that had come before the Courts in various contexts.

VI. METHODOLOGY

The study on the above aspects of Environmental Law and problems of pollution has been done by following the Historical and Analytical Methods of Research. These methods have been considered appropriate in view of the nature of problems involved and the hypothesis formulated for the purpose.
This research is basically a library research based on secondary data in the form of International Conventions, Statutes, Judicial Decisions and administrative reports. The relevant data for examining the issues involved in this research has been gathered from reliable sources such as the public libraries in the State of Maharashtra, the library of the Swamy Ramanand Teerth, Marathwada University, Nanded, and Swamy Ramanand Teerth Dr. Ambedkar University, Aurangabad, the Libray of the High Court of Nanded and the Library of the District Court of Nanded.

VII. AIMS AND OBJECTIVES OF STUDY

This research has been conducted with the following aims and objectives:

1. To expound the concept of 'Environment' and identify the problems arising from environmental pollution;

2. To study the national and international perspectives of the law on environmental protection;

3. To study the nature and scope of the principles embodied in the Constitutional Law and ordinary law of India;
4. To note the priorities set by the State in protecting the Environment through its action in various matters such as the growth and development of industry, housing, agriculture and forests;

5. To examine the role of judiciary in protecting the environment and formulating the necessary principles.

6. To note the kinds of remedies that are available now in India to the individuals from the Courts for the protection of environment, and

7. To note the nature of principles evolved by the Courts in the process of their decisions on matters of environmental protection.

VIII. AREA OF RESEARCH

This Research has been carried out with the object of studying the role of the courts in dealing with the problems of pollution as and when they have come before the courts in the form of cases and controversies involving the authorities of the state and the rights of the individuals. Since the judiciary in India functions at three different levels, namely, the union judiciary, the state judiciary and the subordinate judiciary, the study covers the role of all the three institutions which exercise the judicial power of the state in various contexts under the constitutional law, ordinary law and special laws. Apart from the judicial institution which deal with the problems of pollution the study
also covers the role of certain quasi judicial institutions, prominent among them are the environment tribunal, the pollution control boards etc. which exercise the powers of the state with regard to the problems of pollution.

The specific powers exercised by the judicial and quasi-judicial institutions come to them from the constitution, the statutes and the decisions of the higher judiciary which have a binding efficacy in relation to lower judiciary. Besides these sources there are the rules framed by the Government under principles of law on environment protection. The study proposed to be undertaken here covers these sources of law as far as their efficacy is concerned, and the role which the courts themselves have adopted in enforcing these laws.

IX. SCHEME OF PRESENTATION

The thesis has been presented by dividing its contents into the following seven chapters; a summary of each chapter is presented in this Abstract, after describing the scheme of presentation.

CHAPTER - I ‘INTRODUCTION’ gives an outline of the work that has been undertaken about the problem of environmental pollution and the response of the Judiciary to this problem. It describes the significance of the work, the reasons which prompted the research scholar to undertake the
work. The hypothesis that was formulated for study and the methodology adopted for the purpose have been stated in this chapter.

CHAPTER - II ‘CONCEPTUAL STUDY OF ENVIRONMENT PROTECTION AND THE RELATED MATTERS’ examines the meaning and definition of environment as it was understood earlier and how it is understood at present. It goes into the other aspects of Environment such as the concept of Development, Sustainable Growth and Bio-diversity. It highlights the harmful effects of environmental pollution on various interests of society.

CHAPTER - III ‘IMPACT OF INTERNATIONAL LAW ON THE REGIME OF ENVIRONMENT PROTECTION’ describes the salient features of the International Conventions which the International Organizations have adopted in regard to environment protection and the problem of environmental pollution. The focus on this chapter is to the advices which the international organizations have sent to the States to develop the law on environment by providing a new machinery to control the menace of environmental pollution. It also discusses the response which the Indian authorities have shown to international action.

CHAPTER - IV ‘LEGAL AND CONSTITUTIONAL FRAME WORK OF THE REGIME OF PROTECTION TO ENVIRONMENT’ examines the rules of Constitutional Law and ordinary law on the subject of environment protection. It also discusses the rules that were there earlier in the form of Common Law.
and Statues and which now are functioning under the regime of the Constitution of India, 1950. The discussion covers the rights and duties of the individuals as well as the powers and functions of authorities of the State.

CHAPTER - V 'ROLE OF THE JUDICIARY IN THE PROTECTION OF ENVIRONMENT' discusses the legal issues dealt with by the Courts in India, at the level of the Supreme Court, the High Courts and the Subordinate Courts. It discusses the principles which the Indian judiciaries have formulated in the course of dealing with the controversies relating to the environmental problems, such as the principle of Polluter Pays, the Precautionary Principle, the Principle of Sustainable Development, and the Principle of Public Trust etc. It examines the role which the Courts have played in granting remedies to the aggrieved persons in specific situations of environmental pollution.

CHAPTER - VI 'PROCEDURAL LAW FOLLOWED BY THE JUDICIARY FOR THE PROTECTION OF ENVIRONMENT' discusses the procedures which the Courts have followed in the matter of dealing with the cases of environment protection. It examines the scope of the rule regarding institution of suits, the filing of writs and the new procedure of public interest litigation.

CHAPTER - VII 'THE ROLE OF QUASI-JUDICIAL INSTITUTIONS IN THE PROTECTION OF ENVIRONMENT' examines the rules of law regarding the powers and functions of the quasi-judicial institutions. The purpose of
dealing with the role of these quasi-judicial institutions is to know how serious is the State in dealing with the problems of pollution and how the Courts are looking at the work of these institutions. The judicial institutions exercise review powers over the quasi-judicial institutions. Hence a study has been made of this aspect also.

CHAPTER - VIII 'CONCLUSION' gives a summary of the work done, the findings of the researcher and the suggestions to improve the position of law so that the problems of pollution are dealt with properly and there is adequate protection to Environment.