7.1 Conclusions

The Indian judiciary has been playing an important role as a steward of environmental protection. Judiciary’s endeavour for protecting environment is commendable. It has proved to be most effective instrumentality in protecting environment against pollution. In the presence of multitudinous environmental legislations and countless administrative efforts to protect environment, the Indian Judiciary occupies a unique place in the development of environmental laws in India. The right to pollution free environment has been sub-silentio recognized by the Supreme Court in a chain of cases. The judicial response to almost all environmental litigations has been very positive. The Supreme Court has not only played a leading role in the implementation of environmental laws but also interpreted the right to life under Article 21 to include a right to healthy and pollution free environment, as a fundamental right.

Since 1972, India has crafted an extensive body of environmental jurisprudence. Through the work of legislature, along with the judiciary, the importance of environment protection is being considered in all aspects of the law. The judiciary in particular has been active in developing this right. The efforts of the Apex court in environment pollution control using PIL as a platform is indeed laudable, particularly when the legislature is lagging behind in bridging the lacunae in the existing legal system and administration is not well equipped to meet the challenges. The Indian Judiciary has discarded its traditional garb of confining its role to limited interpretation of statutes and constitution. The Indian judiciary has touched upon all aspects of protecting the
environment from the clusters of pollution by means of various directions, guidelines and orders issued from time to time.\footnote{See Chapter 2, p.35.}

The starting point was the judgment in Municipal Council, Ratlam v. Vardhichand.\footnote{AIR 1980 SC 1622.} In this case the Court could not accept the plea of financial limitations of the municipal council for not performing its role to maintain public health. The judgment has shown the way that the provisions under Section 133 of Cr. P.C. can be used as potent weapon to compel the local bodies to maintain clean and healthy environment.\footnote{See Chapter 3, p.44}

The close analysis of the various decisions of the Supreme Court reveals that the Apex Court aspired to protect environment from clutches of pollution caused by industrial wastes and effluents, noise, smoke, dust, and heat. It wanted to protect the polluted agricultural land, water and air, coastal areas, seashores, towns and cities, public health and safety by means of protective justice.

In M.C.Mehtav.Union of India,\footnote{M.C.Mehtav.Union of India, (1998) 1SCC 471} the Supreme Court declared that the nuisance caused to the river Ganga is a public nuisance. This was affecting the community at large. The Court took \textit{suo moto} action and took the help of \textit{amicus curiae} to resolve the issue. Under the Water Prevention and Control of Pollution Act, 1974,\footnote{Act No. 6 of 1974.} State Boards were charged with enforcing the terms of the Act, including enforcing the treatment of effluent before discharging into the river Ganga. Because the State Board has not taken any steps to prevent discharge of untreated effluent, citizens, who were affected by the discharge, could enforce their right to a healthy environment implied from Article 21.\footnote{See Chapter 3, p.45.}
In the case of *M.C. Mehta v. Union of India*, the petitioner M.C. Mehta, alleged that the Taj, monument of international repute, is on its way to degradation due to atmospheric pollution and emission of sulphur dioxide by the foundries, chemical/hazardous industries and the refinery at Mathura and Naroa. The preventive steps were required urgently. The Court held that the industries situated near the Agra should change over natural gas as fuel. Those industries which were not in position to make this shift should stop functioning instead of using coal as fuel. The Court ordered to relocate 292 industries.

In the case of *Almitra H. Patel v. Union of India*, the Supreme Court emphasised the necessity for formulating an action plan for management of Municipal Solid Wastes (MSW) in respect of metro cities and state capitals by the Ministry of Urban Development in consultation with all concerned. The Court directed the Central Government to take immediate action under Section 3(3) of the *Environment Protection Act*, 1986, to control pollution and protect the environment.

In *S. Jagannath v. Union of India &Ors*, it was declared that the coastal stretches of seas, bays, estuaries, creeks, rivers and backwater which are influenced by the tidal action (in the landward side) up to 500 meters from the High Tide Line (HTL) and the lands between the Low Tide Line (LTL) and the HTL are Coastal Regulation Zone. The Court gave direction to the Central Government to direct all the respondent States not to permit the setting up of any industry or the

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7AIR 1997 SC 734.
8See Chapter 4, p.104.
10See Chapter 5, 4,p.182
12AIR 1997 SC 811.
13Clause (d) of Sub-rule (3) of Rule 5 of the *Environment (Protection) Rules, 1986*. 
construction of any type in the area at least up to 500 meters from the sea water at the maximum High Tide.\textsuperscript{14}

Using PIL as an opportunity, the Court has touched each and every problem of environment pollution ranging from air, water and land pollution to bringing awareness about clean environment in India. In \textit{Rural Litigation and Entitlement, Dehradun v. State of Uttar Pradesh,}\textsuperscript{15} the plaintiff wrote a letter to the Supreme Court alleging that illegal limestone mining was damaging the ecosystems in the Dehradun region. In response, the Court directed to treat the letter as a writ petition under Article 32 of the Constitution. Liberalization of the rule of Locus Standi by the Indian judiciary is a remarkable step taken to bring justice to the doorsteps of the poor.\textsuperscript{16}

In many cases Court has not waited for legislature or executive to take action but the judiciary itself has ventured to ameliorate the situation. The Court has issued various directions, appointed various committees to supervise implementation of measures taken for environmental protection. Wherever it was found required, the Court has taken help of committees of technical experts before deciding the matter.

The Court has declared the principles of sustainable development as part of the law of the land. In various judgments delivered by the Supreme Court and High Courts, efforts have been made to balance the need for development and need to protect the environment. Implementing the principles of polluters pay, precautionary principle, and doctrine of public trust, the Court has reduced the exploitation of natural resources and environment pollution. The Court has tried to fill the gap in law as well as in

\textsuperscript{14}See Chapter 6, p.216.
\textsuperscript{15}AIR 1985 SC652, AIR 1988 SC 2187.
\textsuperscript{16}See Chapter3, p.77
administration and tried to secure enviro-justice by applying various principles of international environmental law in India.\textsuperscript{17}

The Court has used the doctrine of absolute liability\textsuperscript{18} to curb the uncontrolled environmental hazards by the hazardous industries. The threats of exemplary damages coupled with other remedies have helped to alarm the hazardous industries to take precautionary measures and to implement the present environmental laws successfully in avoiding environmental pollution.\textsuperscript{19}

In \textit{M.C.Mehta v. Kamalnath},\textsuperscript{20} the Supreme Court explained the public trust doctrine. The court held that the state is the trustee of all natural resources which are by nature meant for public use and enjoyment. The state as a trustee is under a legal duty to protect natural resources. These resources are meant for public use and cannot be converted into private ownership.\textsuperscript{21}

The Supreme Court in \textit{Vellore Citizens Welfare Forum v. Union of India}\textsuperscript{22} analysed the precautionary principle and stated that this principle is part of the law of the land.\textsuperscript{23}

The Polluter Pays Principle was formulated and affirmed by the Supreme Court in \textit{Indian Council for Enviro-legal Action v. Union of India}\textsuperscript{24} and \textit{Vellore Citizens Welfare Forum v. Union of India}.\textsuperscript{25}

\begin{flushleft}
\textsuperscript{17}See Chapter 3, p.77.
\textsuperscript{19}See Chapter 4,p.103.
\textsuperscript{20}(1997) 1 SCC 388.
\textsuperscript{21}See Chapter3, p.67.
\textsuperscript{22}AIR 1996 SC 2715.
\textsuperscript{23}See Chapter3,.p.70.
\textsuperscript{24}AIR 1996 SC 1446.
\textsuperscript{25}AIR 1996 SC 2715.
\end{flushleft}
A as a consequence of the landmark judgments of the Apex Court of the country, the executive and legislative wings are activated effectively, and consequently many legislative measures and Executive Policies have come into force for the protection of environmental rights of people.

The above analysis proves the first hypothesis that the Indian judiciary has performed a creative role in the development of environmental jurisprudence in India and the Courts bring environmental justice to the doorstep of the common man by applying various principles of international environmental law.

A large number of enactments regarding water and water based resources have been passed concerning water supply for drinking purposes, irrigation, and rehabilitation of evacuees affected by the operations of schemes for water resources management. However, none of these laws enumerate an explicit ‘right to water’. The Supreme Court as well as several High Courts in India upheld the right to have access to clean drinking water as a fundamental right as per Article 21. In *Subhash Kumar v. State of Bihar*, the Supreme Court of India held that the right to live ‘includes the right of enjoyment of pollution-free water and air for full enjoyment of life’. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air, which may be detrimental to the quality of life. In *M.C. Mehta v. Kamalnath*, the Supreme Court categorically ruled that the State is not only bound to regulate water supply, but should also help realize the right to healthy water and prevent health hazards. The cases decided by Courts make it clear that there is a judicially evolved fundamental right to water; such a right is

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26 AIR 1991 SC420,
27 See Chapter 3, p.64.
28 (1997)1 SCC 388.
not explicitly incorporated under the Constitution of India. In India, where the right to water is not enshrined as a fundamental right in the national Constitution, the Courts at both state and federal level have interpreted Article 21 of the Constitution, the right to life, as encompassing the right to pollution free water. The lack of explicit reference to a right to water in the national legislation necessitates creativity in enforcing the right through the courts. In India, the Right to water has been protected as a fundamental human right by the Supreme Court as part of the Right to Life guaranteed under Article 21 of the Constitution. The right to life has been expanded significantly over the last three decades to include the right to health and the right to a clean environment which can include the right to clean drinking water.

In *Ratlam Municipality v. Vardhichand*, the Apex Court ordered the municipality and the Government of Madhya Pradesh to ensure drainage and sanitation facility for accessibility of pollution free water, despite the respondent conveying its disability due to budgetary constraints.\(^{30}\)

The concept of right to ‘healthy environment’ has been developed as part of the right to life under Article 21 of the Constitution of India. This concept was first articulated in the case of *Bandhua Mukti Morcha v. Union of India*, and then it was expanded. The Supreme Court protected the right to clean water as part of the right to a healthy environment in a spate of water pollution cases coming before it from the early nineties onwards.

\(^{29}\) AIR 1980 SC 1623.  
\(^{30}\) See Chapter3.,p.54.  
\(^{31}\) AIR 1984 SC 802.
In *Subhash Kumar v. State of Bihar,*\(^{32}\) the apex Court held that right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.

In *M.C. Mehta v. Union of India,*\(^{33}\) the Supreme Court issued directions to the tanneries discharged their trade effluents into river to set up effluent treatment plants within six months from the date of the order.\(^{34}\)

In the case of *M.C. Mehta v. Union of India* \(^{35}\) Apex Court directed the Kanpur Nagar Mahapalika to take action under the provisions of the *Uttar Pradesh Nagar Mahapalika Adhiniyam,* 1959, or the relevant bye-laws made there under, to prevent the pollution of the water in the river Ganga, on account of the waste accumulated at the large number of dairies in Kanpur, in which there were about 80,000 cattle. The Court further directed that the practice of throwing corpses and semi-burnt corpses into the river Ganga should be immediately brought to an end. It directed that steps should be taken by the Kanpur Nagar Mahapalika and the police authorities to ensure that the dead bodies or half-burnt bodies were not thrown into the river Ganga. The Court took support from common law and emphasized the duty of Municipal Corporations to remove the nuisance.

In *M.C. Mehta v. Union of India,*\(^{36}\) the Supreme Court appointed the National Environmental Engineering Research Institute (NEERI) to examine discharging of untreated effluent into the river Ganga and to make report on waste water treatment facilities available in tanneries. On the basis of NEERI report the Court directed the

\(^{32}\)AIR 1991 SC 420.

\(^{33}\)A.I.R 1988 SC 1037.

\(^{34}\)See Chapter3, p.55.

\(^{35}\)AIR 1988 SC 1115.

\(^{36}\)1997(2) SCC 411.
relocation of tanneries and also directed the Pollution Control Board to examine the possibility of setting up of common effluent treatment plants for the Calcutta tanneries.\(^{37}\)

The judgment of *Vellore Citizens' Welfare Forum v. Union of India*,\(^ {38}\) gave relief to the victims of water pollution caused by tanneries. After carefully examining the facts of the case, the Supreme Court, while recognizing the common law right of the people to a clean and healthy environment, awarded compensation to the victims of pollution on the basis of the ‘precautionary principle’ and the ‘polluter pays principle’.\(^ {39}\)

In *A.P. Pollution Control Board v. M.V. Nayudu*,\(^ {40}\) the Supreme Court did mention that all citizens have the fundamental right to have access to clean drinking water. Thus we can see that the right to clean drinking water, although not articulated as a separate right, has been considered as an inseparable part of the right to a clean environment and the right to life.\(^ {41}\)

The Supreme Court, in the case of *Narmada Bachao Andolan v. Union of India*,\(^ {42}\) observed that water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India.

In *Gautam Uzir & Anr. v. Gauhati Municipal Corp.*,\(^ {43}\) the Court made it clear that clean water is so essential for life, needless to observe the fact that it attracts the provision of Article 21. The Court directed the State Government and the Municipal

\(^{37}\) See Chapter 3, p. 57.

\(^{38}\) (1996) 5 SCC 647.

\(^{39}\) See Chapter 3, p. 70.


\(^{41}\) See Chapter 3, p. 70-71.

\(^{42}\) (2000) 10 SCC 664.

\(^{43}\) 2000 ALL. L.J. 3077.
Corporation to prepare schemes of affordable amounts which may improve the situation of water supply.  

The judicial creation of a fundamental right to water in India has been significant. The judiciary imposes an obligation on Governments and the rural and urban local bodies to supply water and manage the water supply in an efficient manner.

The foregoing discussion substantiates the second hypothesis that the lack of explicit reference to right to water in the national legislation impelled the Supreme Court of India to evolve new principles to protect the people against pollution of water and that the Courts have assumed the affirmative executive powers of issuing directions, appointing commissions, collecting and verifying information, monitoring and supervising the running of public institutions to discharge their Constitutional obligations for the protection of the right to clean water.

The analysis of case law shows the dynamic and people oriented approach of the judiciary. While evolving new remedies when the traditional statutory remedies failed, the Court has pro-actively and vigorously taken up the cause of environmental justice and has gone to the extent of articulating newer rights such as right to health. Clean and unpolluted air is a part of right to health. The human rights approach given by the Apex Court to Section 133 of the Cr.P.C. 1973, in Municipal Council, Ratlam v. Vardichand, shows how an activist court can transform a seemingly dull legislation into a powerful mandate to protect environment. The judiciary in India has interpreted the “right to life and personal liberty” in Article 21 as including within its ambit right to protection of

44See Chapter 3, p. 72.
45AIR 1980 SC 1622.
public health, right to live in healthy and clean environment and right to pollution-free air.\textsuperscript{47} Judicial intervention in environmental matters has changed the state of environment in our country in a significant and profound manner to protect people against air pollution. Article 21 has received liberal interpretation from time to time after the Stockholm Conference, 1972. Healthy environment is also one of the elements of welfare state. Article 47 of the Constitution of India provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health also includes the protection and improvement of environment without which public health cannot be assured. The leading environmental cases decided by the Supreme Court of India elevated right to environment to the level of a fundamental right. All the essentials to make the life meaningful are included in right to life by judiciary. So right to drink clean water, to breathe pure air, to live in pollution free, noise free atmosphere and the right to health are included in right to life.\textsuperscript{48}

The judiciary has managed to expand the ambit of Article 21 of the constitution of India, through various judicial pronouncements, to include the right to healthy and clean environment to be a fundamental right under right to life.

Through the case of \textit{Subhash Kumar v. State of Bihar}\textsuperscript{49} Court recognised the right to a wholesome environment as part of the fundamental right to life. The Court observed that ‘right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.’

\textsuperscript{47} \textit{Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.AIR 1985 SC 1259.}  
\textsuperscript{48} See Chapter 4, p.105.  
\textsuperscript{49} \textit{AIR 1991 SC 420.}
In the case of *Rural Litigation and Environment Kendra, Dehradun v. State of Uttar Pradesh*, the Rural Litigation and Entitlement Kendra, Dehradun wrote a letter to the Supreme Court alleging that illegal lime stone mining in the Mussorie - Dehradun region was causing damage to the fragile eco-systems in the area. The Court treated this letter as a public interest petition under Article 32 of the Constitution. And also several committees were appointed for the full inspection of illegal mining sites. All the committees came to the conclusion that the lime stone quarries which do adversely affect are very less, only those should be allowed to operate but that too after further inspection. The Court ordered the closure of a number of limestone quarries. Although the Court did not mention any violation of fundamental right explicitly but it impliedly admitted the adverse effects involved violation of Article 21 of the Constitution.

In *M.C. Mehta vs. Union of India*, it was held to be the duty of the Government to see that the air did not become contaminated due to vehicular pollution. The Apex court again confirming the right to healthy environment as a basic human right stated that the right to clean air also stemmed from right to life under Art 21.

In *Enkay Plastics Pvt. Ltd. v. Union of India and Others*, the High Court of Delhi upheld the order of the Delhi Pollution Control Board for closure of certain polluting industries which were causing air pollution in residential areas.

In *Dhammadal v. Chittar Singh*, the High Court of Madhya Pradesh observed that a man is entitled to the comfortable enjoyment of his dwelling house and to carry on

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50 AIR 1987 SC 2187.
51 See Chapter3,p.77.
52 Writ Petition (Civil) No.13029 of 1985.
53 See Chapter4,p.139.
54 2000(56) DRJ 828.
55 See Chapter4,p.109.
56 AIR 1959 MP 240.
ordinary conversation in that house without substantial interruption from any abnormal noise.\footnote{57}{See Chapter4.,p.122.}

In \textit{Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association},\footnote{58}{AIR 2000 SC 2773.} the Supreme Court issued directions in respect of controlling noise pollution even if such noise was a direct result of or was connected with religious activities.\footnote{59}{See Chapter4.,p.126.}

\textit{In Re Noise Pollution case, 2005},\footnote{60}{(2005) INSC 356.} the Supreme Court in its judgment of July, 2005 has given detailed directions regarding implementation of laws for controlling noise. Judiciary in India has been treating noise pollution as violation of the right to life and a form of abuse of freedom of speech and expression and thereby it has imposed solemn obligation on the State to protect the citizens from noise pollution.\footnote{61}{See Chapter4.,p.128.}

On the basis of above discussion the third hypothesis that the Supreme Court and High Courts have worked from case to case for elevating right to environment to the level of a fundamental right and then extending its meaning to right to clean air is proved. It further answers in the affirmative that the judiciary has compelled both the executive and legislative bodies perform their duties for safeguarding ambient air quality and also issued various directions to the Governments to frame regulations to maintain ambient air quality.

The analysis of the judgments of the Supreme Court in various public interest litigations clearly indicates that the judiciary has developed effective norms to protect people against hazardous substances in coastal zone, in India. The judiciary has tried to
reconcile the provisions of environmental laws and filling of the gaps in legislative and executive efforts for coastal environment protection. In coastal area, people are depending on the oceans and coasts, to secure resources for their survival, health and well-being, and that a significant number of people derive their food security and livelihood from the coastal and marine environment. The contamination of coastal waters with sewage-borne pathogens creates health problems. The relevant principles in national law are often contained in framework of environmental legislation and do not apply only to coastal areas. The decisions of the Supreme Court and High Courts have compelled the Government of India to strengthen the legal framework for effective management of the coastal zone.

In *S. Jagannath v. Union of India &Ors*, the Court ordered the Central Government to constitute an authority under Section 3(3) of the *Environment (Protection) Act*, 1986 and to confer on the said authority all the powers necessary to protect the ecologically fragile coastal areas, sea shores, water front and other coastal areas, and especially to deal with the situation created by the shrimp culture in the coastal States and Union Territories and the authority so constituted by the Central Government should implement the ‘Precautionary’ principle and the ‘Polluter Pays’ principle. The Apex Court expressed the view that a High Powered Authority under the *Environment Protection Act* was to be created. Accordingly the Central Government constituted the authority called *Coastal Zone Management Authority*.

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64 See Chapter 6, p. 216.
In the case of *Piedade Filomena Gonslves v. State of Goa and Ors*, the Supreme Court directed to demolish Construction of the building, which was constructed without securing permission from the competent authorities under the Coastal Regulation Zone notifications.

In *Trust for Restoration of Ecology v. The Member Secretary Tamil Nadu Coastal Zone Management Authority*, the Court issued the writ of mandamus and pointed out that it is the statutory duty of the respondent to take all measures including preventive measures for cessation of all illegal activities like clearing and levelling of land, extraction and removal of sand and raising unauthorized structures in the coastal regulated area.

In the case of *Indian Council for Enviro-Legal Action v. Union of India and Ors*, Supreme Court issued the order to all Coastal State Governments to prepare the management plans of their coastal areas based on CRZ Notification and to take necessary steps to implement the plans. Consequently, all the nine Coastal States prepared the plan and they were approved by the Ministry of Environment and Forest after putting forth certain conditions and queries as well as clarifications to many sections in the plans.

The decisions of the Courts have made a significant contribution to maintain clean environment in coastal area. Thus the fourth hypothesis that the judicial decisions have compelled the Government of India to strengthen the legal framework for effective management of the coastal zone; that the judicial decisions are responsible to constitute

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66 See Chapter 6, p. 217.
68 See Chapter 6, p.218.
69 AIR 1996 SC 1446.
70 See Chapter 6, p.218.
coastal zone authorities to protect the coastal area against pollution and that the courts have made a significant contribution to maintain clean environment in coastal area stands proved.

7.2 Suggestions

On the basis of the study the following suggestions are made for the further development of environmental jurisprudence in India.

1. The functional and financial independence should be given to the Pollution Control Boards in India and avoid commercial and political interference in discharging their duties.
2. The research in the field of environment should be promoted.
3. The Parliament of India should take steps to recognise and incorporate Environmental Rights as separate and independent Fundamental Rights in the Constitution of India.
4. The study makes out that the Supreme Court has resorted to strenuous interpretation of various legal provisions for environmental protection. The government should carefully enact proper legislations providing for environmental protection in the light of the judgments of Courts.
5. Along with the judiciary the other two pillars of democracy should also play an active and efficient role in protecting environmental rights.
6. There is a requirement for a standard review agency, which can inspect and examine every industrial premise which is threatening the environment and
make a report to proper authority periodically. This would be a successful step towards environment protection.

7. It is important to recognize our dependence on the earth’s natural resources. The Government should fix responsibility on administrative authorities through legislation to conserve natural resources.

8. There is a need of Understanding the diverse ecosystems and their importance in survival of mankind. And also there is a need to preserve them. The state should impose statutory obligation on Panchayats and Municipalities to protect the environment, including life supporting natural ecosystems such as rivers, lakes, marine, coastal area.

9. The Government should take steps to give financial and technical assistance to persons who file public interest petitions to protect environment in genuine cases.

10. The judicial vigil for environment protection exhibited at the Supreme Court and High Courts level should percolate to the lower judiciary. Only then the environmental justice would reach to the poor masses.