CHAPTER-I
INTRODUCTION

The democratic state came into existence with an idea of the welfare of the people. The intellectual, social, political, moral and cultural development of individual and community is the responsibility of the state. According to modern democratic thought certain elementary rights such as right to life, liberty, freedom of speech, etc. should be regarded as inviolable under all conditions. Right to wholesome environment is a part of the right to life. It is the primary duty of the state to create and protect such basic conditions were in those rights may flourish. Therefore, there should be adequate legislative and administrative actions to ensure that the rights are not impaired and in case of such violation the errant officials should be made liable for such violation.

The developments at the global level for protection of the environment have made great impact in India. To discharge its international obligations and manifest its concern for the protection of the environment the Parliament enacted the 42nd Constitution Amendment Act, 1976. Art. 48-A in Part IV, i.e. Directive Principles of State Policy and Art.51-A (g) in Part IV-A, i.e., Fundamental Duties were incorporated in the Constitution through this Amendment Act. Art.48-A imposes an obligation on the State to protect and improve the environment. Executive and legislative wings of the state are implementing the Directive Principles by policy decisions and appropriate legislations. The judicial wing is also implementing them through judicial activism. Though Part III of the Constitution does not contain any specific provision to guarantee the right to a pollution free environment, in view of the liberal interpretation given to Art.21 coupled with
Art.48-A and Art.51-A(g), by the Supreme Court, the right to life and personal liberty has come to include the right to wholesome environment.\(^1\)

India employs a range of regulatory instruments to preserve and protect its natural resources.\(^2\) The important legislations enacted by the parliament to meet constitutional obligations are the *Environment Protection Act, 1986*\(^3\) the *Water Prevention and Control of Pollution Act, 1974*\(^4\) the *Air Prevention and Control of Pollution Act, 1981*\(^5\) and the *Forest Conservation Act, 1980*.\(^6\) There are several enactments which complement the provisions of these basic enactments. The development of environmental laws in India is largely the story of judiciary responding to complaints of its citizens against the environmental degradation and administrative sloth.\(^7\)

The recognition and growth of public interest litigation have become a catalyst for environmental justice.\(^8\) There were certain factors which led to and became the goading force to pass various laws relating to environment by the Indian Parliament.\(^9\) The *Silent Valley case*,\(^10\) *RLEK case*,\(^11\) *Bhopal Gas Disaster case*,\(^12\) *Shriram Food and Fertilizer*  

\(^{1}\) Aravind Jasrotia, “Environmental Protection and Sustainable Development: Exploring the Dynamics of Ethics and Law”, 49 *JIL*, 2007, p.47  
\(^{3}\) Act No. 29 of 1986  
\(^{4}\) Act No. 6 of 1974  
\(^{5}\) Act No. 14 of 1981  
\(^{6}\) Act No. 69 of 1980  
\(^{7}\) *Supra* note 2, p. 1  
\(^{11}\) *Rural Litigation And Entitlement Kendra Dehradun & Ors. vs. State of U.P. & Ors.* AIR 1985 SC 652.  
\(^{12}\) *Union Carbide Corporation v. Union of India*, 1991 SCC (4) 584,( AIR 1994 SC 101.)
Industry case\textsuperscript{13} became moving forces behind the passing of Environment (Protection) Act 1986.\textsuperscript{14}

By means of water we give life to everything.\textsuperscript{15} Supply of clean and drinkable water is globally a shared legacy, a public trust and a basic human requirement.\textsuperscript{16} Access to water as a right was almost neglected field in India. The evolution to right to clean water began in 1985,\textsuperscript{17} after the judgment in the case Bandhua Mukti Morcha vs. Union of India,\textsuperscript{18} where, the Apex Court derived the concept of right to ‘healthy environment’ as part of the ‘right to life’ under Article 21. The Supreme Court in Subhash Kumar v. State of Bihar\textsuperscript{19} held that the right to life includes the right of enjoyment of pollution free water and air for full enjoyment of life.

In M.C. Mehta v. Union of India (Motor Vehicles Case),\textsuperscript{20} it is highlighted very categorically that protection of the environment is a constitutional duty of the state. A healthy and clean environment is indispensable for human existence as well as for the existence of this planet.\textsuperscript{21}

There has been an inexplicable lack of political and bureaucratic will to protect and conserve the natural environment. When the executive fails in performing its

\textsuperscript{13} M. C Mehta vs. Union of India, AIR 1987 SC 965.
\textsuperscript{14} Act No. 29 of 1986.
\textsuperscript{16} Dr. Aravind Kumar, “Right to Water”, LawZ Vol-9, No.-5, Mar-2009, p.16
\textsuperscript{18} AIR 1984 SC 802.
\textsuperscript{19} AIR 1991 SC 420.
\textsuperscript{20} M.C. Mehta v. U.O.I., AIR 2002 SC 1696.
\textsuperscript{21} Tarun Arora, “The Right to a Safe, Clean and Healthy Environment”, Vol.21, Legal News and Views, Nov 2007, p.17
constitutional duties and is considered to be suffering from executive inactivism there is no other recourse to people but to turn to the judiciary.  

The Indian Judiciary, the custodian of the constitution, has been giving beacon light for environmental rights while interpreting the constitution in a positive manner. The Supreme Court considered pollution free environment as a basic need of the people. This approach led to the Supreme Court to derive, adopt and apply a range of principles to guide the development of environmental jurisprudence and protection of environmental rights. Supreme Court and High Courts worked from case to case for making clean environment as a fundamental right and extending its boundaries to formulate the right for compensation, clean water and air. In the process, the Court tried to fill the gap in the laws.  

The judgment of the Supreme Court in Ratlam Municipal Council v. Vardhichand, is a landmark in the history of judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance. Where, the Supreme Court directed a local body to make proper drainage provisions. Justice Krishna Iyer highlighted the need for environmental consciousness and has elaborated the scope of the criminal law concept of public nuisance.

The Polluter Pays Principle is a rule of international environmental law, where the polluting party pays for the harm or damage done to the natural environment. It was made part of constitutional ruling in case of Vellore Citizen’s Welfare Forum v. Union of

23 AIR. 1980 SC 1623.  
India. The fundamental right to water has evolved in India, not through legislative action but through judicial interpretation. In Narmada Bachao Andolan v. Union of India and Ors., the Supreme Court of India upheld that “Water is the basic need for the survival of human beings and is part of the right to life as enshrined in Article 21 of the Constitution of India. In the case of M. C. Mehta v. Union of India, the Court directed all municipal councils and authorities over the areas through which the river Ganga flows to discharge their statutory duties and prevent and control the pollution of river Ganga.

The Supreme Court involved in anti-air pollution policies started with PIL filed by M.C. Mehta over the concerns about rising levels of air pollution and the government’s failure in dealing with it. In 1986 the court directed Delhi administration to specify its attempts made to reduce air pollution. In response to the court’s intervention the government enacted several laws and policies such as shifting of hazardous industries from Delhi, Motor vehicle Act of 1988 and Vehicular Exhaust Emission Standards.

The Municipal Solid Waste Management Rules or MSW Rules which were formulated by MoEF on the Court’s direction given in Almitra H. Patel v. Union of India. The closure of limestone quarries in UP, the introduction of the principle of Absolute Liability for hazardous firms are some of the landmark decisions. The Central and State Governments have taken some proactive steps. As a response to Supreme Court

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25 AIR 1996 SC 2715
26 AIR 2000 SC 3751.
27 AIR 1988 SC 1037.( Kanpur tanners case)
29 M.C. Mehta v. Union of India, Writ Petition (Civil) No. 13029 of 1985.(Delhi pollution case)
31 Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), dated the 22nd December, 1998.
33 Rural Litigation & Entitlement Kendra v. State of Uttar Pradesh, AIR 1985 SC 656
34 M.C.Mehta v. Union of India (OleumGas Case), AIR 1987 SC1086.
direction in *M.C. Mehta Vs. Union of India*.

(Delhi pollution case) Delhi authority adopts CNG policy. The courts monitored implementation of existing laws and policies and issued directions in various types of cases to ensure a safe and clean environment.

1.1 The problem

Today, with the changing times of development and industrialization, it has become a necessity to protect and improve the natural environment. The decline in environmental quality has been evidenced by increasing pollution of water, air, excessive concentrations of hazardous substances and threat to life supporting systems. India has enacted various laws at almost regular intervals to deal with the problems of environmental degradation. India has not only incorporated significant provisions for the protection of the environment into its Constitution but also has enacted various specific laws to control the environmental pollution. The failure of the executive to implement the environmental laws in India created the ground for the intervention of the judiciary. The judiciary derives, adopts and applies a range of principles to guide the development of environmental jurisprudence and protection of environmental rights. A comprehensive analysis of the significant contribution of the higher judiciary in devising and monitoring the implementation of measures for pollution control and guaranteeing the right to clean water and pollution free air and land is to be undertaken to critically appreciate its contribution.

1.2 Objectives of the Study

This study is undertaken with the following objectives:

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1. The primary object of this study is to investigate into the contribution of the judiciary to the development of the environmental law in India.

2. To study the contribution of judiciary in creatively interpreting right to life to include the right to pollution free environment.

3. To appreciate the scope of environmental rights in India in the light of cases decided by the Courts.

4. To study the role of the Courts in the decision making process through the application of environmental principles and expanding the scope of environmental jurisprudence for the protection of environmental rights of the people.

5. To critically appreciate the contribution of the judiciary in protection of environmental rights.

6. To assess the impact of judicial decisions on growth of environmental jurisprudence in India.

1.3 Hypothesis

1. The Indian judiciary has performed the creative role in the development of environmental jurisprudence in India. The Court’s bring environmental justice to the doorstep of the common man by applying various principles of international environmental law.

2. 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. 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.

3 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. The judiciary compels both the executive and legislative bodies perform their duties to safeguarding ambient air quality. And also issued various directions to the Governments to frame regulations to maintain ambient air quality.

4 The judicial decisions have compelled the Government of India to strengthen the legal framework for effective management of the coastal zone. The Court decisions are responsible to constitute coastal zone authorities to protect the coastal area against pollution. The Courts have made a significant contribution to maintain clean environment in coastal area.

1.4 Methodology

The study is completely doctrinal and involves primarily the content analysis of judicial decisions. It employs historical method in some areas to trace the evolution of environment principle by the judiciary. It employs descriptive method with critical analysis and evaluation of judicial decisions and legislations. This study involves analysis of judicial decisions and impact of judicial decisions on the legislations designed to protect environmental rights. In the course of analysis, original sources such as decisions
of the Supreme Court of India and various High Courts are consulted along with the reports of high power commissions and juristic opinions.

1.5. Importance of the study

The importance of the study lies in the fact that it identifies and evaluates the strategies evolved by the judiciary for the protection of environmental rights in India. It further appreciates the effectiveness of these strategies. And it is believed that the study will be useful to the legislators, academicians, lawyers and social spirited persons. The study is expected to be of special use for the judges because it involves a critical evaluation of significant judgments of the Supreme Court of India. Lastly, the importance of the study lies in its purpose of making an original contribution to the discipline of law.

1.6. Scheme of the Study and its presentation:

This investigation into the problem relating to Judicial Contribution towards the Protection of Environmental Rights is planned in seven chapters as follows:

Chapter I. Introduction

This chapter begins with a brief introduction of the research topic and proceeds to present the importance of study, the problem, objectives, hypothesis, methodology adopted for research and the scheme of study and its presentation.

Chapter II. International Regime For Environmental Rights

The second Chapter deals with the international environmental governance systems and highlights important principles of international environmental law. Further, it is highlighted that India’s obligations under the major multilateral environmental
agreements (MEAs) and the application of principles of international environmental law in the municipal sphere by the Courts in its various decisions. A greater role is being played by the judiciary in developing environment rights jurisprudence in India based on international principles. India is implementing its international law obligations steadily and effectively. The chapter also brings out the efforts made by the Supreme Court of India to protect the environmental rights through the application of the principles of international environmental law in India.

**Chapter III. Right To Pollution Free Water**

This chapter briefly outlines the judicial contribution to the development of right to clean water in India. It discusses the importance of the water. The Judicial approach to the water rights regime in India clearly showcases the urge of the Supreme Court and various High Courts to shelter the right to water thereby providing basic amenities of life to people. There are a number of judgments by virtue of which the Judiciary in India has expressed their concern about the right to water, from time to time. The Supreme Court of India not only gave a declaration as to the justiciability of rules, but also through its orders directed the Governments to positively take actions to implement environmental regulations to protect water quality. Further, the chapter contains analysis of the leading cases on water pollution and will highlight the journey of Judiciary in making right to water a fundamental right hidden in Art.21 of the Indian Constitution.

**Chapter IV. Right To Clean Air**

This chapter focuses mainly on the role played by the higher judiciary in devising and monitoring the implementation of measures for air pollution control and the role played by the judiciary in protecting and enforcing the rights against air pollution while
dealing with cases relating to industrial pollution, noise pollution and vehicular pollution. This consists of recognizing and enforcing by reading certain environmental rights into the right to life and thereby protecting people against violations of their right to clean air.

The chapter discusses the issues with regard to the legal and regulatory regime governing air quality in the country and the judicial pronouncement of certain principles to develop a better regime for protection of the air quality.

The chapter explains the contribution of Supreme Court and High Courts towards the regulation of noise pollution and the role of judiciary in treating noise pollution as amounting to violation of right to life and a form of abuse of freedom of speech and expression, thereby signaling the State of its solemn obligation to protect the citizens from noise pollution.

Further, the chapter discusses the vehicular emissions and its impact on the environment. It examines in detail the dimensions of regulatory framework to check vehicular pollution and the contribution of Supreme Court and High Courts in adopting new regulations to check vehicular pollution. It focuses landmark judgments related to air pollution and the consequent development in the law.

**Chapter V. Protection Against Hazardous Substances**

The fifth chapter highlights the problems caused by the hazardous wastes and toxic materials on the environment and examines the legal framework governing the treatment and disposal of such hazardous wastes and obligation cast on the producer of such wastes. The chapter further deals with the analysis of the decided cases. And also discusses the role of judiciary in development of regulations on effective management of
the hazardous wastes and toxic materials. The chapter focuses the growth of environment-related public litigation cases that have led the courts to take major steps such as ordering the executive authorities to take proper step to protect right to clean environment. It critically examines the role of judiciary in the development of regulatory norms to protect people against hazardous substances.

**Chapter VI. Coastal Dwellers’ Right To Pollution Free Environment**

The sixth chapter highlights the pollution of coastal zone caused by industries engaged in hazardous and inherently dangerous activity and by other activity. And critically examines coastal dwellers right to fair access of coastal resources. Further the chapter deals with the coastal zone management regulations and development of coastal zone management regulations as a response to the decision of the Supreme Court of India. It critically examines the contribution of Supreme Court towards the protection of right to clean environment of coastal dwellers.

**Chapter VII. Conclusions and Suggestion**

The hypotheses set out at the beginning are proved through appropriate interpretation of data and conclusions in this chapter. Further the suggestions are logically presented based on the study undertaken by the researcher.