CHAPTER-X

CONCLUSIONS AND SUGGESTIONS

10.1 Introduction

Any discussion on the development of environmental jurisprudence in India is incomplete without the mentioning the herculean role of the Indian judiciary in this regard. In the presence of multitudinous environmental laws and countless administrative efforts to protect environment, the Indian Judiciary occupied a unique place in the development of environmental laws in India. The commitment of the Indian judiciary to the constitutionalism has led it to secure enviro-justie in India. In the present research, a critical analysis of the role of Indian judiciary in the development of environmental jurisprudence in India has been made.

The first chapter introduces the subject and objective of the study and scope of the study.

The second chapter explains the meaning of environmental jurisprudence in India and the need for the development of the environmental jurisprudence in India. In the age of globalization and scientific and industrial development economic development is a means to gauge the development of the country. This economic development has its side products injuring the environment and public health of the people of nation. To curb this stringent laws and public awareness is required.

The third chapter discusses the development of environmental jurisprudence in India from the pre-Vedic period to the present day. It discusses the environmental ethos of Indian people. The Indian culture has passed through many phases, invaded by many rulers but it has retained its love for nature which is imbibed in its culture. In pre-vedic period, Vedic period and late Vedic period people were much more concerned about the preservation and conservation of nature. The forest policy of Mauryan Empire had made remarkable contribution to development of environmental jurisprudence in India. First time legal provisions were made to maintain sanitation, conservation of forest, and protecting water resources in this period. The forest policy of Mauryan Empire is appreciable. The rule of law
was prevailing during that period. Ashoka’s compassion for animals and birds had led to the conservation of biodiversity in that period. The boundaries of Mauryan Empire were extended on a major part of present India, Afghanistan, and Bangladesh etc. As a result of this the environmental policy was implemented effectively throughout India.

Gupta period, i.e. the rule of Gupta dynasty was the next remarkable period after Mauryan Empire. After Gupta age, Harshvardhana and other kings ruled India but at that time India was divided into small kingdoms. But all of them had retained the environmental policy of Mauryan.

The history of India took a sharp turn with the invasion of Muslim Kings in India. Ghors, Khilji, Lodi, Mughal dynasties ruled India from tenth century to eighteenth century. Among all these, the Mughal dynasty ruled for the longest period. They had not contributed much except the development of gardens, orchards etc. Hunting was the favourite past time for them.

Next to Mughal, was the period of British Raj. It was an era of plundering the forest resources of India. The British were much more interested in earning revenue and plundering forest resources this policy had adversely affected the Indian environment. But their remarkable contribution was in the field of development of different laws to manage ecological resources in India. Though these laws were reactive, formulated to meet requirement of specific situation or emergency, they contributed positively in setting a new trend in India. Forest officer was appointed first time during the British period.

In 1947, India became independent. In 1950 the Indian Constitution came into force and it marked a new beginning in India. In the first two decade after independence, the major area of focus was the economic development of the country. The forest policy was framed to support the development of industries, forest as a resource to supply raw materials to forest dependent industries. No remarkable contribution was made during this period.

The Year of 1972 marked a commencement of a new era in the field of environmental development in India. The Stockholm conference in 1972 has worked like a catalyst in development of environmental jurisprudence in India. Immediately after this conference the Water Act was enacted in India in 1974. The enactment to Air Act, 1981 and the
Environmental (Protection) Act, 1986 further added to this development. Many legislative and executive efforts have been made in the field of environmental law from the period of 1972 to 2011.

This chapter prepares the background for the study of role of judiciary in the development of environmental jurisprudence in India.

In the backdrop of legislative and administrative efforts to protect environment discussed in chapter three the forth chapter onwards the focus of study was on the role of judiciary in this regard. The forth chapter analyses the judicial response to the environmental tort. The remedy in tort is an old remedy and the chapter concentrates on the judicial trend in interpreting this old remedy to meet the new situations and new types of torts in the field of environment.

The fifth chapter, ‘Contours of Judicial Decisions in Cases of Public Nuisance in Environment’ analyzed the judicial verdict in various cases of public nuisance under section 133 of Cr. P.C and remedies for environmental harm in Criminal law. The analysis of the case laws in this chapter shows the dynamic and people oriented approach of the judiciary. The judicial verdict in a famous Ratlam decision has been proved a trend setter in the development of environmental jurisprudence. The judgment In KrisnaGopal case, further added to this development. The remarkable thing is not only Supreme Court but the high courts show equal judicial vigil in interpretation of criminal remedies to meet the new wrongs of environmental harm. It marked the beginning of the period of judicial creativity and craft in the field of interpretation of legal provisions for environment protection.

The judicial creativity and craft reached its zenith in interpretation of Constitutional provisions for environmental protection. The period of 1980s onwards a new phase began in the history of development of environmental jurisprudence in India. The sixth chapter discusses the judicial craft and creativity in the interpretation of constitutional provisions for cause of protecting the environment. The forty second constitutional amendment has inserted Article 48 A (directive principle of state policy) and 51 A (g) (fundamental duty of citizens) in the constitution in the year 1976. The judiciary has resorted to fundamental
rights, directive principle of state policy and the fundamental duties of citizens in the constitution for the development of environmental jurisprudence. The new interpretation of these provisions has developed a judge made law in the field of environmental law in India. The expansive interpretation of Article 21 is the remarkable development in the human rights to clean and whole some environment in India. The Article 21 has been used by judiciary to implement the principles of sustainable development, protecting the right to clean air, water and environment; right to livelihood etc. the analysis of the case laws shows that the judiciary has widened the scope of article 21 and implemented an international law in a domestic law. Article 48 A and 51 A (g) have been interpreted to substantiate this development.

The liberal interpretation of Article 32 and 226 have further added to this development.

The Chapter seven focuses on the quest of judiciary for securing enviro-justice in India. the analysis of the various case laws shows the judicial commitment to the constitutionalism. The judiciary has performed a tremendous role to secure enviro-justice in India. The quest of judiciary to secure enviro-justice has led it to play active role in India. From the phase of creativity and craft it led the judiciary to judicial activism, rather social activism. The new method was fooled by the judiciary for this purpose. The widening of the *locus standi* and entertaining public Interest Litigation under Article 32 and 226 of the Constitution has provided a proper canvas to the judiciary to draw a new pattern of environmental protection in India. The analysis of the judgments of the Supreme Court in various public interest litigation filed clearly indicates that the judiciary has developed an environmental law through the tool of PIL. From traditional role of adjudication, it went a step further and declared law and also ordered the execution of such law. The power conferred on the Supreme Court under Article 141 and 142 have added further to this. Article 141 clearly says that the judgment of the Supreme Court will be a law and followed and the Article 142 has given power to the judiciary to give any order to do compete justice. This has led to the judicial intervention in legislative and executive functions. The legislative and executive inaction has been severely criticized by the judiciary. This culmination of judicial activism has accelerated the growth of environmental jurisprudence in India.
The focal point of chapter eight is the judicial interpretation of various environmental laws. The focus of the discussion was on important topics where the new development has been made by the judicial interpretation and where the judiciary has tried to reconcile the provisions of environmental laws and filling of the gaps in legislative and executive efforts for environment protection.

Discussion of the role of Indian judiciary in development of environmental jurisprudence would be incomplete without comparing it with the judiciary of other important federal nations like Canada and USA. The comparative analysis has been made in the ninth chapter of this research.

On the basis of the analytical study made in the first to nine chapters, the hypothesis made at the commencement of the study have been tested in the present chapters. On the basis of the study some further suggestions are also given.

The present chapter discusses the conclusions and suggestions on the basis of this analysis.

10.2 Testing of Hypothesis

Six hypotheses have been made at the commencement of the study. A discussion of the hypothesis is done below.

The first hypothesis framed is (i) The Indian judiciary has performed a stellar role in the development of environmental jurisprudence in India.

Since 1972, India has carefully crafted an extensive body of environmental jurisprudence. Through the work of legislature, along with the judiciary, the importance of environmental protection is being considered in all aspects of the law. The judiciary in particular has been extremely active in developing this ideal.

The Indian judiciary needs special reference in the development environmental jurisprudence in India. Though there are surfeit of laws dealing with the environmental issues, the successful development of environmental law and awareness in India is due to Indian Judiciary. 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

695 See, Abraham, C.M. Environmental Jurisprudence in India, 1999
all aspects of protecting the environment from the clusters of pollution by means of various directions, guidelines and orders issued from time to time.

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, forests and wildlife and to prohibit cruelty to animals, environment degradation and what not, inter alia by means of protective justice.

In India, pollution free environment is declared by the Apex Court as fundamental right falling under Article 21 of the Constitution. The right to development and right to environment both are facets of right to live under article 21. The judicial interpretation, bringing harmony of both these facets needs appreciation. The judiciary has interpreted the development as sustainable development and balanced the two different requirements of development and right to development. The expansive interpretation of right to live under Article 21 has contributed a lot in development of environmental jurisprudence in India. All the essentials to make the life meaningful are included in right to live by judiciary. So right to drink clean water, to breathe pure air, to live in pollution free, noise free atmosphere, right to health are included in right to life. Again, the remedy of compensation in cases of violation of human rights is a innovative technique adopted by the Supreme Court in India.

The Court has put greater barriers on the vigor of the freedom of trade guaranteed under Article 19(1) (g) and religious freedom under Article 25 and 26 of the constitution by expanding horizons of the Right to life and personal liberty assured under Article 21.

A special bondage has been webbed around the Fundamental Rights, directive principles of State Policy and the fundamental Duties for achieving the objective of protecting the environment from pollution. in order to enforce fundamental right pertaining to pollution free environment included under public law domain, The supreme Court of India, in exercise of its powers under Article 32 of the Constitution, as also the High Courts of States under Article 226, have awarded damages against those who have been responsible for polluting the environment and disturbing the ecological balance by human activities.
Indian Courts have further expanded the protection for the environment through Public Interest Litigation. In India PIL is purely a matter of constitutional law in which the writ jurisdiction of High Courts is invoked to enforce fundamental rights. PIL first emerged through jurisprudence built by the Supreme Court of India and has been primarily judge-led and even to some extent judge-induced. The Supreme Court has worked diligently to achieve distributive social justice. As a result of the court having taken the activist role the centre of…justice has shifted from the traditional individual locus standi to the community orientation of public interest litigation.

Even though one may not be an aggrieved party, the liberalization of standing rules enables public-minded individuals or groups to bring environmental suits to India’s highest courts. Specifically, constitutional questions were being brought under the guise of public interest litigation in order to keep them in the court system. Furthermore, PIL offers additional advantages to litigants, such as non-adversarial proceedings and court assistance with certain types of discovery.

The PIL has been used by the Indian Judiciary to secure enviro-justice in India. Through PIL the Court has touched each and every problem of environmental pollution ranging from air, water and environmental pollution to bringing awareness about environment in India. The liberal approach of the Court in entertaining PIL has accelerated the development of environmental jurisprudence in India. Giving response to the PIL The highest court had exercised its writ jurisdiction when there was leakage of hazardous gases like chlorine from the Shri ram Fertilizer Industries, waste material of alcohol plant was thrown into the adjoining nala resulting in spreading of obnoxious smells being released apart from mosquito breeding, highly toxic effluents were discharged into river Ganga by tanneries, safety and insurance for the benefit of workers was required at the cost of employer, harmful drugs were required to be banned, welfare of the children born with congenital defects as consequence of leakage of MIC gas from the Union Carbide Plant at Bhopal, was at stake, awareness about the environment protection was felt essential,
The Judiciary has taken up the task of protecting the environment as a constitutional duty. The Supreme Court has indicated through its approach in various decisions that it is the duty of the Supreme Court to render justice by taking up all aspects into consideration. Where on account of human agencies, the quality of air and environment are threatened or affected, the Supreme Court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life and to promote public interest.

The Judiciary has also resorted to common law remedies for torts of nuisance, negligence and strict liability in environmental cases. Showing the dynamism the court has awarded this remedies keeping in mind Indian Situation. For the negligence of industry dealing with hazardous substance or gas the Court has applied the principle of absolute liability rejecting the limitations of strict liability. The court is aware that the law evolved in foreign country may not be best suited to Indian situation. The court has also applied the remedies under the criminal law (Cr.P.C and I.P.C.) for environment protection.

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 and depletion of natural resources and environmental pollution. Not only that the Court has time and again reminded the people of

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703 Vellore Citizens Welfare Forum v. Union of India and others, AIR1996 SC 2751
704 M.C.Mehra v. Union of India (1997) 2 SCC 353
705 Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association and Others, AIR 2000 SC 2773
706 Narmada Bachao Andolan etc. v. Union of India and others, AIR 2000 SC 3751
707 A.P.Pollution Control Board v. Prof. M.V.Naydu (Retd.) and others etc. AIR 1999 SC 812
708 V.Lakshmipathy and others. State of Karnataka and others, AIR 1992 Ker. 57
India about the principles of various international conventions on environment. In a number of cases the Court has referred to Stockholm Conference 1972, Rio declaration etc.

In many cases Court has not waited for legislature or executive to take action but the judiciary itself has performed the role of legislature and executive. The Court has passed various notifications, appointed various committees to supervise implementation of measures taken for environmental protection. Wherever it is found required the court has taken help of committees of technical experts before deciding the matter.

The Court has brought cohesion between various law related to environment, affected persons, environment activist groups, State authorities and citizens for environmental justice in India. The Court has also gone to the extent of declaring need for imparting environmental education in India.

The Court has tried to fill the gap in law as well as in administration and tried to secure enviro-justice in India.

The forgoing discussion speaks volumes about the contribution of the Indian Judiciary for the environment protection along with socio-economic development of the country in various ways. In fact, as a consequence of the landmark judgments of the highest 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 achieving the above aspirations.

The second hypothesis is (ii) The judiciary has contributed to the development of environmental law in India by widening the scope of locus standi and entertaining Public interest litigation in India, enunciating a web of doctrines and interpreting constitutional law from environmental perspectives.

The role of the PIL in developing an environmental jurisprudence in India has been phenomenal. Public interest litigation is a cooperative or collaborative effort by the petitioner, the State of public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society. The public interest litigation is the product of realization of the constitutional obligation of the court. “The development of PIL was spearheaded in
the late 1970s and 1980s through a series of decisions issued by Indian Supreme Court Justices, whose goal was to “promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed.”

The Court derives its jurisdiction over PIL actions from Article 32 of the Constitution of India, which guarantees the right to move the Supreme Court by “appropriate proceedings” for the enforcement of fundamental rights that have been provided under part III of the constitution. If any person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ seeking judicial redressal for the legal wrong or injury.

PIL now dominates the public perception of the Supreme Court that sometimes ventures “into formulating policy that the state must follow.”

The beginning of the judiciary-initiated doctrinal march to mar the harmful activities has resulted in stellar results, though ‘there are miles to go’ before we purge the environment of hazardous elements and do away with harmful activities. At a time when pollution because of various reasons was touching its zenith and the quality of the environment its nadir, it was being felt that some steps that could be used as stepping stone to a healthy environment, should be adopted and implementation thereof had to be effectuated to bring about the much needed result. The horribly degrading condition of environment made the judiciary, notably the Supreme Court, sit and take notice of the predicament. The task facing the court was daunting, and still it is. It required innovation coupled with judicial “courage and craft” to develop a new jurisprudence that could show the guiding light to the environment protection movement. It also required going beyond the settled and looking for newer doctrinal pasture, and possibilities. With the passage of time, a surfeit of doctrines and principles were innovated and/or adopted by the Supreme Court of India through the tool of PIL. A doctrinal hedge that could safeguard the deteriorating condition of the environment was soon erected.

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711 See, Kripal, BN Supreme but Not Infallible: Essays in Honor of the Supreme Court of India, 159(2000)
Some of these doctrines and principles need to be delineated upon to see the majesty of judicial “craft and courage” as regards the core issue of environmental pollution and steps taken to deal with the same.

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

The adoption and implementation of sustainable development has given a new shape to the development goals of Indian democracy. The sustainable development has been incorporated as law of the land. The development must meet the environmental standards. This judicial warning has brought awareness to the government and industries.

The Court has further given momentum to the environment protection movement by implementing precautionary and polluter pays principles. Precautionary Principle has been explained in the context of municipal law as under:

(i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environment degradation.

(iii) The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign.

The implementation of this duty is that developers must assume from the fact of development activity that harm to the environment may occur, and that they should take the necessary action to prevent that harm; the onus of proof is thus placed on developers to show that their actions are environmentally benign.

Further to implementing this principle the Supreme Court issued following directions in this case:

713 Vellore Citizens Welfare Forum v Union of India AIR 1996 SC 2718
The Central Government shall constitute an authority under section: 3(3) of the Environmental (Protection) Act 1986 within one month and shall confer on it all the necessary powers including the power to issue direction under section 5 of the Act. The Authority so constituted shall apply and implement the ‘Precautionary Principle’ and ‘Polluter pays principle’. The Authority shall, with the help of expert opinion and after giving opportunity to the concerned, assess the loss to ecology in the affected areas and shall also identify the individuals or families who have suffered because of pollution. The Authority shall compute the compensation under two heads, namely, for reversing the ecology and for payment of individuals. The said amount could be recovered from the polluter, if necessary as arrears of land revenue. The Authority shall direct the closure of the industry in case it evades or refuses to pay compensation awarded against it.

A pollution fine of Rs. 10,000 each on certain industries was imposed. The money along with the amount of compensation recovered from the polluters was to be deposited under a separate head, called Environment Protection Fund. This fund was to be utilized for compensating the affected persons and for restoring the damaged environment. The Authority in consultation with NEER and the Central Board shall frame the schemes for reversing the damage caused to the ecology & environment. To close all those tanneries which fail to take consent from the board. No new industry to be setup within the prohibited area.\textsuperscript{714}

The same principle was reiterated in the case of \textit{M.C. Mehta v. Union of India}.\textsuperscript{715}

Again in \textit{A.P.Pollution case}\textsuperscript{716} the Court made following observations:

It is to be noticed that while the inadequacies of science have led to the ‘precautionary principle’, the said ‘precautionary principle’ in its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed, is placed on those who want to change the status quo. This is often

\begin{flushright}
\textsuperscript{713} Ibid \\
\textsuperscript{714} Ibid \\
\textsuperscript{715} (1997) 2 SCC 353 \\
\textsuperscript{716} AIR 1999 SC 812
\end{flushright}
termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the changes would be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less-polluted state should not carry the burden of proof and the party, who wants to alter it, must bear this burden.

The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment.

The Court in the said judgment, on the basis of the provisions of Articles 47, 48A and 51A(g) of the Constitution, observed that we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental laws of the country.

The Polluter Pays principle *Indian Council forEnviro - Legal Action v. Union of India.*

The Court in the said judgment observed as under:

The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'Polluter Pays' principle was promoted by the Organisation for Economic Cooperation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialized society. Since then there has been considerable discussion of the nature of the Polluter Pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed.

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717 (1996) 3 SCC 212
Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle.”

In the case of *M.C. Mehta v. Kamal Nath*, the Court dealt with the Public Trust Doctrine in great detail. The Court observed as under:

“We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities, who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.”

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718 (1997)1SCC388
719 *Ibid*
The Godavarman case has contributed a lot in conservation and preservation of forest resources and making environmental clearance mandatory before undertaking any development activity in forest areas.

The Public Trust doctrine has given a clear mandate that the State is the trustee of the natural resources and it is the duty of the state to protect these resources for people of India.

The principles would not have been implemented by the legislature or the executive in India without delay in absence of judicial activism through PIL.

So PIL has worked like catalyst in giving momentum to judicial activism to secure envirojustice in India.

The Judicial achievements in the developing environmental jurisprudence can be mentioned as follows on the basis of the judgments of the court in PIL cases:

1) Evolution of Doctrine in Environmental Jurisprudence

The formulation of certain principles to develop a better regime for protecting the environment is a remarkable achievement of Indian Judiciary through the tool of PIL. Formulation of doctrine is absolute liability for harm caused by hazardous & inherently dangerous industry in *M.C.Mehta v. Union of India.*\(^{720}\) This new doctrine was also resorted to by the Supreme Court in *Indian Council for Enviro-Legal Action V. Union of India.*\(^{721}\)

Polluter Pays Principle: According this principle the responsibility for repairing the damage is that of the offending industry. The principle was formulated & resorted by the Supreme Court in *Indian Council for Enviro-legal Action V. Union of India*\(^{722}\) & *Vellore Citizens Welfare Forum V. Union of India*\(^{723}\)

Precautionary Principle: The doctrine was applied in *M.C.Mehta V. Union of India*\(^{724}\) for protecting Taj Mahal from Air Pollution. In this case explaining the precautionary principle

\(^{720}\) AIR 1986 SC 1086
\(^{721}\) AIR 1996 SC 1446
\(^{722}\) Ibid
\(^{723}\) AIR 1996 SC 2715
\(^{724}\) AIR 1997 SC 734
the Supreme Court held that the environmental measures must anticipate, prevent & attack the cause of environmental pollution & degradation.

Public Trust Doctrine: In *M.C.Mehta V. Kamalnath*, 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 & enjoyment. The state is as a trustee is under a legal duty to protect natural resources. These resources are meant for public used & cannot be converted into private ownership.

So these doctrines are of international importance as they are important for sustainable development. The application of such doctrines becomes possible through PIL cases.

(2) Balance the Conflicting Values

The capacity of judiciary to balance the conflicting values such as right to development & rights to environment is come forward in many PIL cases eg. *Rural Litigation and Entitlement Kendra v. State of UP* in the case, *Banwasi Seva Ashram v. State of U P* rehabilitation of people has been ordered who had been displaced due to the implementation of development project.

(3) Protection of Social Environment

Through many PIL cases judiciary has bring protection to socially disadvantaged people & protection of social rights of laborers eg. Laborers engaged in the asbestos industry were declared to be entitled to medical benefits and compensation for health hazard, which were detected after retirements. Whenever industries are closed or relocated, laborers losing their jobs and people who are thereby dislocated were directed to be properly rehabilitated, the protection of traditional rights of tribals & fishermen.

(4) Help in filling gaps in Law & Lacunae in Administration.

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725 1997 1 SCC 388
726 AIR 1987 SC 2187
727 AIR 1987 Sc 374
728 CERC V. Union of India AIR 1995 SC 922 at P. 942
729 M.C. Mehta V Union of India AIR 1995 SC 922 4SCC 750
730 Pradeep Kishan V. Union of India AIR 1996 SC 2140 at 2047
In some PIL cases, courts issue direction to fill yawning gaps in existing law\textsuperscript{731}, in others they may go to the extent of asking the government to constitute national and state regulatory authorities or environment courts\textsuperscript{732}.

In most cases, court has issued direction to remind statutory authorities of their responsibility to protect the environment. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns\textsuperscript{733}. In the \textbf{Vellore Citizens Welfare Forum V. Union of India}\textsuperscript{734} the Supreme Court made notable request to the Chief Justice of the Madras High Court to constitute a special bench – ‘A green bench’ – to deal with the case and other environmental matters, as is done in Calcutta, Madhya Pradesh and in some other High Courts.

(5) Environmental Awareness and Education through PIL

In different PIL cases, the directions of the Supreme Court went to the extent of spreading environmental awareness and literacy as well as the launching of environmental education not only at school level, but also at the college level. In \textbf{M.C.Mehta v. Union of India}\textsuperscript{735} the Supreme Court stressed the need for introducing such scheme, “In order for the human conduct to be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires. This should be possible only when steps are taken in the adequate measures to make people aware of the indispensable necessity of their conduct being oriented in accordance with the requirements of law.”\textsuperscript{736}

We can see the result of such approach of the Supreme Court eg. The Bar council of India has introduced Environmental Law as a compulsory paper for legal education at the graduate level.

The third hypothesis is (iii) \textbf{the provisions of environmental laws were mere letters but the judicial interpretation of these laws has given life and blood to them.}

\textsuperscript{731} \textit{CERC V. Union of India AIR 1995 SC 922}
\textsuperscript{732} \textit{Indian Council for Enviro-Legal Action V. Union of India (1996) SSCC 281 at P. 302, AIR 1996 SC 1426 at P.1489}
\textsuperscript{733} \textit{L K Koolwal V. State AIR 1997 SC3297}
\textsuperscript{734} \textit{AIR 1996 SC 2715 at P.2727}
\textsuperscript{735} \textit{AIR 1992 SC 362}
\textsuperscript{736} \textit{Id P. 384}
It is true that there are number of laws dealing with different issues of environment but they are cohesively implemented by the Indian Judiciary. The broad interpretation and effective implementation of environmental laws in India is due to active role of Indian Judiciary.

On the basis of the cases discussed in the present work it can be concluded that the judiciary has widen the scope of the present statues to embrace the issue of environment protection.

There are two ways in which the judiciary has attained environment protection through interpretation of the laws. (1) By interpreting the specific laws dealing with environment in effective manner keeping in view the international development for environmental protection. (2) The interpretation of the Indian Constitution and other laws wherever appropriate, for environment protection.

The interpretation of specific laws dealing with environment protection has ascribed a true meaning to them and with this the mandate of the Supreme Court has helped in effective implementation of them. So the interpretation of this laws made by the Supreme Court has made its implementation effective and filled the gap between the law and execution of law. Wherever it is found urgent, the court has given direction to implement specific provision of the acts.

One such example is the laws related to forest, wildlife and environmental clearance. Despite a very close organic link between the subject of forests, wildlife and environment, India’s regulatory system teats them as largely independent form each other. Thus non-forest use of forest land mandatorily requires prior approval from the Ministry of Environment and Forests under the provisions of the Forest (Conservation) Act, 1980. This in turn is dependent on the recommendation of the forest Advisory Committee. Use of national Parks and Sanctuaries for non-wildlife/forest purposes requires the approval of the National Board for Wildlife under the provisions of the Wildlife (Protection) Act, 1972. If project falls under any of the categories of the Environment Impact Assessment issued under the Environment Protection Act, 1986, prior approval from the Ministry of Environment and Forests or the concerned State Environment Impact Assessment authorities will be required. The appraisal in this case is done by Expert Appraisal Committees constituted by the Ministry of Environment and Forests. Supreme Court orders have led to additional level of approval being added to the existing statutory process viz., approval of the Supreme Court.
when any dereservation of National Parks, Sanctuaries and Forest involved. In addition
the Court has also passed orders prohibiting a range of activities in national Parks and
Sanctuaries without its approval. One would have imagined that clearance would follow a
logical sequence viz., if any mining activity involves forest land and an environmental
clearance is also required, the forest clearance could be pre-condition for consideration of
the environmental clearance. The judiciary has not forgotten its role of adjudicator but while
adjudicating it has broadened the meaning of adjudication and vindicating the socio-
economic justice to people.

The Court has held in various cases that contravention of the statutory provisions of Water,
Air and Environment Protection Act would amount to infringement of right under Articles
14, 21 and read with 47 and 48 A of the Constitution of India. The court has awarded
compensation as a remedy for harm suffered due to such violation.

While interpreting the specific acts dealing with environment (Air, Water and Environment)
the Court has reminded on many occasion to the State Pollution Control Boards and State
Governments their duties to implement specific provision of the act and to protect the
environment.

On many occasion the Court has issued direction and thus during interpretation of a statute
the court has tried to fill the gap in law.

The Court has played remarkable role in giving true meaning to the statutory provision by
enforcing and implementing it. There is a wide gap between the legal provisions and the
enforcement of such provision. The Court has bridged this gap by its interpretation. The
Court has shown zero tolerance for the disobedience to the provision of Water, Air and
Environment Act. The Ganga Pollution case is a specific illustration where the Supreme
Court noticed the utter indifference of the tanneries to the orders to stop the discharge of
trade effluents in to the river Ganga. Noting that the immense adverse effect on the public at
large by the discharge of trade effluents would outweigh any inconvenience caused to the
management on account of the closure, the Court gave specific directions to the tanneries
either to set up at least Primary Treatment Plants (PTP) or to stop their functioning. It asked

379 M.C.Mehra v. Union of India, 1988 SC 1037
the Central government, State pollution control Board and the District Magistrate to monitor the enforcement of its orders. (Id. pp 1045. 1046) Assignment of such a watch dog function to the authorities was unprecedented. It gave them more awareness and strength for taking up anti-pollution measures. The Court has strictly implemented the CRZ notification in India.

The judiciary played an important role in protecting forest and wildlife, by leaving the core areas uncovered by law as fields appropriate for legislative action than for judicial formulation. Besides, emphasizing the significance of forests, the courts endeavoured to protect the rights of persons affected by the development projects and tribal people, who form part of the forest environment. Relying on the ‘public trust doctrine’ to protect and preserve forest and natural resources they tried to enforce the concept of sustainable development to solve the environmental-development dilemma and upheld the controls on exploitation of wildlife. The decision bears ample testimony to the increasing judicial concern for creative interpretation of the law, with a view to protecting the forest and wildlife environment.

(2) The interpretation of traditional remedies under law of torts and Criminal Law has been interpreted with new zeal to encompass the increasing hazards to the environment of the country. The remedies in tort for negligence, nuisance have been used widely to abet environmental pollution. The principle of strict liability is replaced by the principle of absolute liability to combat the new hazard to the environment and people created by the hazardous industries of developing economy. Awarding exemplary damages in such cases is again a new trend in area of environment protection.

Section 133 and 144 of Cr. P.C. have been effectively used to control public nuisance of pollution. Ratlam case340 is the best case. It affirms the faith of the people in the remedy under Cr. P.C. to protect the collective right of the people against public nuisance and the negligence of municipal authorities.

The provisions of the Constitutional law have been widely resorted to implement environmental law in India. The Fundamental Rights, Fundamental Duties and Directive Principles of State policy have been interpreted giving priority to the environmental

340 AIR 1980 SCC1622
The expansive interpretation of article 21 i.e. right to life and liberty has included all right related to environment. The right to clean and healthy environment, to drink clean water, to breathe pure air, to livelihood, to development are different facets of article 21 interpreted by the Supreme Court. The right to compensation for the violation of fundamental right is again a novel interpretation by the Court.

The right to sustainable development is considered as part of the law of the land. The court has declared In Vellore tanneries case\textsuperscript{741} and Sludge case\textsuperscript{742} that the principles of sustainable development are part of the law of the land due to constitutional mandate under Article 48 A, 51 A and 47 of the Constitution.

The article 142 has been widely resorted to by the court in environment cases and played an active role “to do complete justice”.

The Court has interpreted the provisions of the Constitution giving priority to environmental issues in cases of conflict of rights. In many cases the questions were raised before the court for Freedom of Trade under Article 19(1) (g) and the right to clean environment.\textsuperscript{743} The Court has always given preference to the right to clean environment. Again in the conflicting situations between right to religious freedom and right to pollution free environment, the court has rationally resolved the conflict giving priority to the right to environment with logical reasoning.\textsuperscript{744}

The writ jurisdiction has been liberally used by the Indian judiciary in cases related to environmental issues. The writ of mandamus has been excessively employed to control the environmental pollution by forcing State to take action against the polluter. Liberalization of the rule of \textit{locus standi} by the Indian judiciary is a remarkable step taken to bring justice to the doorsteps of the poor.

Through judicial interpretation the environment protection laws have received new interpretation.

\textsuperscript{741} AIR 1996 SC 2718
\textsuperscript{742} Indian Council for Enviro-Legal Action \textit{v} Union of India AIR 1996 SC 1446
\textsuperscript{743} Abhilash Textiles \textit{v}. Rajkot Municipal Corporation AIR 1988 Gujarat 57
\textsuperscript{744} Church of God (Full Gospel) in India \textit{v} KKRMC Welfare Association AIR 2000 SC 2773
In India, there is a web of laws but this web is not properly weaved. The credit goes to the Indian Judiciary for filling the gap in this web and making it a functional one for environmental protection.

The Forth Hypothesis is (iv) The Judiciary has not forgotten its role of adjudicator but while adjudicating it has broadened the meaning of adjudication and vindicating the socio-economic justice to people.

Generally, a criticism made against the Indian judiciary that it is overstepping in legislative and executive field while deciding environmental issues. But it is not an absolute truth. The judiciary understands its limitation. On many occasions the judiciary has accepted these limitations. The judicial interpretation of various statutes related to environment clearly shows that he judiciary knows its role in democracy.

In the case of Ahmedabad Municipal Corporation and anr. v. Nilaybhai R. Thakore and anr745. The Supreme Court, relying upon the oft-quoted principle recorded by Lord Denning in the case of Seaford Court Estates Ltd. v. Asher,746 quoted the following passage from the said report in the case of Seaford Court Estates Ltd.:

"When a defect appears a judge cannot simply fold his hand and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this rick in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."747

In Halar Utkarsh Samiti Through Prakash H. Doshi v. State of Gujarat, Through Chief Secretary748 the Court discussed in details the method of interpretation of statues adopted by the judiciary.

745 AIR 2000 SC 114
746 reported in (1949) 2 All ER 155,
747 Ibid
748 MANU/GJ/0702/2000
(i) In the case of administration of justice, the adaptability and flexibility is to be taken as the virtue of the law and apply the law accordingly depending upon situation.

(ii) The law is made for the society and whichever is beneficial for the society, the endeavour of the Law Court would be to administer justice having due regard in that direction.

(iii) When a defect appears in a Statute, it should be the constructive task of the Court so as to find the intention of the Parliament and then supplement the written words so as to give force and life to the intention of the legislature, but a Judge must not alter the material on which the Act is woven, but he can and should iron out the creases.

(iv) To give effect to the legislative intent, the Court can look into and some times may even go behind the words and enactment, by ascertaining the purposeful meaning of the language deployed, the spirit and sense which the legislature has aimed and intended to convey and the conclusions to be drawn which are in the tenor of the law though not within the letter of the law.

(v) The ascertainment of legislative intent is a basic rule of the statutory construction and a Rule of construction should be preferred which advances the purpose and object of the legislation, though a construction, according to plain language, should ordinarily be adopted, but such a construction should not be adopted where it leads to anomalies, injustice or absurdities.

(vi) Where the words are clear and unambiguous, no question of construction may arise and the real basis for this golden rule of construction that where the words of statutes are plain and unambiguous, effect must be given to them because plain words may be expected to convey plainly the intention of the legislature.

(vii) The legislative intent is to be gathered from the statute itself for the first instance, then from the preamble, next from the Statement of Objects and Reasons, then from parliamentary debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where there may be light including the legislative history.
(viii) Every word, phrase or sentence in the statute and all the provisions read together is to be given full force and effect. The legislature does not waste the words and therefore, no provision is to be rendered as surplus age or nugatory.

(ix) Even if the result may be unjust, the Court cannot refuse to give effect to such a statute, but in case two reasonable interpretations are possible, the Court should adopt the construction which is just, reasonable or sensible.

(x) When two interpretations are possible, the task of the Court would be to find which one or the other interpretation would promote the object of the statute, serve its purpose, preserve its smooth working and prefer the one which subserves or promotes the object to the other which introduces inconvenience or uncertainty in the working of its system.

(xi) The purpose of interpretation is to ascertain the intention of the legislature so as to make effective and that if the statute is plain, certain and free from ambiguity, a bare reading of it is sufficient.

(xii) Unless the meaning of the statute is obscure, the plea of inconvenience and hardship is dangerous to follow.

(xiii) In construing the words in an enactment, the Court is neither concerned with the policy involved nor with the results, injurious or otherwise, which may follow from giving effect to the language used.

(xiv) The Court’s duty is to find out the intention of the legislature through the words used by the legislature and even in cases where the words are ambiguous, the scope to travel outside them for the Courts is strictly limited.

(xv) The duty of the Court is to carry out the intention of the legislature even if it is found that there are any gaps, such gaps can be filled in only for the purpose of giving effect to the legislative intent and for no other purpose.

(xvi) The principle of purposeful and meaningful interpretation so as to give life to the statute and also to iron out the creases and to fill up gaps is also to be applied only for the
purpose of advancing the object of the enactment sought to be achieved by the Act in conformity with the legislative intent and not otherwise and in doing so, the consequences to follow are not relevant.\textsuperscript{749}

It clearly reveals the judicial commitment to its work of adjudication.

In the area of environmental law, the judiciary has reminded the legislature and the executive about the amendments in law and implementation of law respectively. But it does not mean that the judiciary has forgotten its task. It is because of the indolence of the executive, the judiciary has to play an active role. While interpreting the environmental law, the Supreme Court has reminded the Central and State Governments and the Pollution Control Boards to perform their duties. For example in various cases the Supreme Court reminded the Central Government to constitute an authority as per the direction given under section 3(3) of the Environment (Protection) Act, 1986.

In this modern time when the function of government has increased thousand times, people now expect from government to take care of it from cradle to grave. The function of judiciary is also bound to increase. Law cannot afford to be static and so the judiciary. The purpose of giving justice cannot be solved by simply interpreting law in modern times. The Indian judiciary has transgressed its border many times and interfered in the legislative and executive task. But it is justified/ it is legitimate and it is required to do complete justice to the people of India. The Power of judicial review has empowered the judiciary to keep check on the administrative and legislative actions. Thus, it cannot be said that the judiciary has forgotten its main task of adjudication but it can be accepted that to perform the task of adjudication, the judiciary has to invent new methods and techniques to keep pace with the changing situations and values in the society. To face the new kind of environmental challenges the judiciary cannot afford to confine itself to traditional role of interpreting the law as written in the book. The Indian judiciary has shown the flexibility in interpreting the same laws to meet new environmental challenges with a dynamic approach. The directions given by the judiciary in environmental issues to the central and state governments, pollution control boards, municipal authorities, directions for controlling noise pollution, direction to make the people aware of importance of environment protection all these have

\textsuperscript{749} Ibid
been done to do complete justice to Indian people. The Court is has performed this task with creativity and craftsmanship. The Court has interpreted the present law to implement the principles of international environmental law, the dynamic interpretation of remedies in tort law, constitutional provision and the remedy of public nuisance in criminal law has achieved the desired goal of securing environmental justice to Indian people. The Court has not created new rights but the present rights have been interpreted to encompass the new development in environmental law and environmental rights. Thus the court has successfully performed the role of an adjudicator.

The fifth hypothesis is (v) **The judicial activism is not an aberration. It is an essential aspect of the dynamics of a constitutional court. It is a counter majoritarian check on democracy in India in the field of environmental law.**

The Indian Environmental Laws i.e. Water Act, 1974, Air Act, 1981, Environment (Protection) Act, 1986, and the different rules framed under the Environment (Protection) Act, 1986 have not secured the desired goal of securing complete environmental justice in India. The Indian legislature’s use of law in maintaining environmental standards has been a failure primarily for three reasons. It used law reactively, created powerless administrative authorities, and refused to recognize public participation.

The legislature’s approach to pollution laws has been principally reactive. The Water Act and the Air Act came in the background of the Stockholm; the Environment Protection Act, the National Environment Tribunal Act and the Public Liability Insurance Act were enacted in the aftermath of the Bhopal Disaster, while the rules and notifications were seen as compliance with international obligations. Rather than being preventive, legislatures have emphasized on mitigative laws. They came as succor to harm that, on most occasions, was irreparable. The environmental amnesia of the legislature is due, in a large part, to the absence of adequate scientific studies documenting the threats to health and environment and future challenges.

An independent body is important for effective environmental statutes. It cannot be promoted unless agencies function efficiently. While the Water Act established the Central Pollution Control Board (CPCB) and similar state boards for controlling and prohibiting
pollution, their constitution is remarkable for the inadequacy of powers granted to them. The structure reflects an obvious desire on the part of the legislature to create authorities that would remain subservient to the executive, nullifying the possibility of an independent course of action. The tenure of members of the board is of three years but it is subject to the right of the Central Government or the State Government to disqualify a member if the same is of the opinion that the member has so abused his position to render his continuance on the Board detrimental to the interest of general public.\textsuperscript{750} Again the boards are financially dependent on the government.\textsuperscript{751} An institutionalized process of systematic interference is ensured within the law as itself that make independent performance of the function a literal impossibility.

The provisions of law relating to citizen participation are no less dubious. Participation of the citizenry under the pollution laws is critical for its successful implementation. The provision requiring for sixty days notice for making complaint to the board by citizens has negativated public participation.

Inefficient implementation of these laws is another characteristic of environmental law in India. The Consent administration of pollution laws by the pollution control boards is another feature of pollution laws in India. [Prevention and control of water pollution is done through a ‘consent ‘or permit procedure. Under the Water Act consent has to be obtained from the State Pollution Control Board for a new or altered drain outlet or for new discharge of sewer effluents into a stream.\textsuperscript{752} Similar provisions are incorporated under the Air Act for new stationary sources specified in the schedule of the Air Act. Under the two acts, the Board may vary or alter these conditions at any time, and may also revoke its consent.\textsuperscript{753} These ostensibly broad powers have never been invoked, and bear little relation to the actual functioning of the Board.

If, for example, an industry violates any conditions of permit, the Board technically can revoke its consent, accompanied, perhaps, by the applicant’s appeal for political intervention on this behalf in the interest of employment and economic development. In the meantime,
the polluter is likely to continue its polluting activities in the absence of a permit and in violation of the Board’s order and authority. In practical terms, the Board’s only recourse is to institute a prosecution, the eventual outcome of which is likely to be the imposition of a modest fine. Such prosecutions are rarely effective against giant industries.

Furthermore there is loophole in the Water Act. Under s. 25 (7) a consent shall be deemed to have been given unconditionally on the expiration of a period of four months after initiating an application, unless the consent is actually given or refused before that date. In practice, if the Board does not dispose of all consent applications within this prescribed time, the effect is an unconditional consent for those applications not yet considered. In view of the inefficient staffing and slow functioning of the Boards, this provision could validate otherwise illegal polluting activities.]

In *M.C.Mehta v. Union of India* the Court observed that “notwithstanding the comprehensive provisions contained in the (Water Act) act no effective steps appear to have been taken by the State Board to prevent the discharge of effluents”

In *M.C.Mehta v Union of India* the Court observed that the “enactment of law, but it is a infringement is worse than not enacting a law at all,” noting that there was ‘complete laxity in the implementation of the Environment (Protection) Act and other relates statutes.

The continuing pollution of the Ganges from sewage and industrial effluent, especially from the leather tanneries also indicates the levels of inefficiency that boards suffer from. The laxity is evident from their attitude towards the arsenic problem in India. Nine districts in west Bengal have arsenic levels in groundwater above the World Health Organization maximum permissible limits of 0.05 mg/l.  

These instances reflect the large canvas of inefficiency that marks the workings of Boards and other agencies. On most occasions, authorities have been unaware of the perils of health and environment. If we compare the legislative and executive efforts to protect environment with the efforts of judiciary the conclusion is different. The judiciary has played an active

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754 AIR 1988 SC 1037
755 (1996) 5 SCC 281
756 Arsenic, Down To Earth, Apr. 15, 2003, at 30
role in environment protection. In matters of environment protection the Indian judiciary has been in limelight for different reasons.

An evaluation of this pioneering role of the judiciary reveals the first phase is remarkable for the creativity of the court exhibited in evolving new rights jurisprudence inspired by the social justice philosophy of the constitution. The Judiciary has made expansive interpretation of Article 21 covering all rights related to environment. Further the directive principle of state policy has given ample scope to Indian judiciary to be creative in implementing environment protection law in India. With the help of fundamental rights, Directive principles of State policy and fundamental duty of citizens, the Indian judiciary has created a broad canvass for securing envi-justice in India. The second phase was a period of judicial law-making when the court added to our body of environmental law either by developing new jurisprudence or importing principles into existing corpus. Particularly remarkable was the evolution of the absolute liability principle, the importance of polluter pays principle, the doctrine of public trust, the principle of sustainable development, the involvement of the court in the third phase is, however has been the most the most controversial. The court acted as super–executive, making policies and creating institutions for its implementation. This activism of the court has been questioned. It is highly criticized as judicial intervention in legislative and executive action. But the analysis of the various cases in the field of environment protection creates a different picture. There is legitimacy in judicial activism. There is a wide scope of judicial activism in India. The courts have the power of judicial review as the power of judicial review is not only confined to executive action but also over legislative action and over constitutional amendments. Thus there is a greater scope for Indian judiciary to keep counter majoritarian check in India.

Judicial activism-in words of Justice P.N.Bhagwati ‘social activism’ is a most complex and challenging task facing the modern judiciary today, particularly in the developing country like India. In the present age of globalization, the problems of environmental protection have not remained the problems confined to one or some countries; they have become the global problems. The modern judiciary cannot afford to hide behind notions of legal justice and

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757 M.C. Mehta v. Union of India, AIR 1987
758 Indian Council for Enviro-Legal Action v. Union of India ((1996) 3 SCC 212
759 M.C.Mehta v Kamal Nath (1997) 1 SCC 388
760 Vellore Citizens' Welfare Forum v Union of India. (AIR 1996 SC 3011
plead incapacity when social justice issues are addressed to it. This challenge is important because the judges owe duty to do justice with a view to creating and molding a just society, but because a modern judiciary can no longer obtain social and political legitimacy without make in a substantial contribution to issues of social justice.761

The experience of the first thirty years made the judiciary aware that the court has to become more active to secure enviro-justice in India. As a result of this the judiciary has started interpretation of different laws with view to securing enviro-justice in India. The court has resorted to fundamental rights, directive principles of state policies and fundamental duties guaranteed under the Indian Constitution. Even after that the Supreme Court found that the main obstacle which deprived the poor and the disadvantaged of effective access to justice was the traditional rule of locus standi. The traditional doctrine of locus standi was relaxed as a result of which, the judiciary was flooded with the public interest litigations. Many activist groups and public spirited persons approached the court through PIL for enviro justice in India. But the real problem for them was the production of evidences in environmental issues which was a costly affair and the poor litigants cannot afford that. It would be equally difficult for the social activist groups to gather relevant materials and to place it before the court on account of lack of resources. In such situation what is the role of the Court? Should the Court adopt a passive approach and refuse to intervene because the relevant material has not been produced before the Court? Would such an attitude not defeat the constitutional and legal rights of the poor and render them meaningless and futile?

The Court has three options before it. First the option of simply ignoring the problem and finding out convenient exist on pleading that the function of the judiciary to do justice and it is not concerned with social justice. The second option is the petitioner will bear all the expenses of the investigation and judiciary will not get involved in this matter. The third is the court can order its investigation.

To adhering to the Constitutional goal of socio-economic justice the Indian judiciary has followed the third option. In many cases of environmental issues the court has created committees and authorities to investigate into the matters and then on the bases of this the court has based its judgments. In many cases the court has set up several committees to

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investigate into the issue, or has taken support of the expert option, support of NEERI which shows the judicial activism. This marks a radical departure from traditional adversarial system.

After all these innovations made by the court, a question remains for the court to provide remedy and relief in the given case. What relief or remedy should be given in different cases of environmental issues? For new problems, new remedies should be evolved by the court. The Court has evolved the new remedy of compensation in case of violation of fundamental right. Through the implementation of polluter pays principle in violation of constitutional right to environmental, the court has set a new trend to recover damages for ecology destruction and environmental harm. the court has also give indirection to teach environment as a subject in school, make the people aware of the importance of environment protection etc. the preservation of natural resources by the State, implementing the public trust doctrine and principle of intergenerational equity is another example of judicial creativity. Award of damages in mass tort actions in Bhopal Gas leak case, order to make provision of safe drinking water for villages in sludge case are also examples of judicial activism.

The court has also confronted with the problem of execution of the judgments and such order of relief o the people in environmental issues. It is a problem related to execution of the judgment. The judiciary is aware of the weakness of the execution of judgments in India and that is why it many cases a commission or authority has been established to implement the order of the court. It is a new strategy evolved by the court.

The judiciary has played active role in environmental issues by creating new remedies, rights and interpreting the old remedies in new contexts, invented new strategies to execute the orders of the court and as result of this there is an impression in the mind of the people that judiciary has outweighed the legislature and executive. But it is not so, it is part of the judicial process and the judiciary has played active role to serve the constitutional goats and securing distributive justice to the people and protecting the environment in India. This task has been performed by the judiciary with the power of judicial review provided by the Indian Constitution.

The sixth hypothesis is (vi) The myth created by the black letter law tradition that judges do not make law but merely find it or interpret is not true in the field of environmental law in Indian context. They do make law.

On the basis of the analysis of the cases discussed in the present research it can be concluded that the judges do make law. The judicial law-making is the part of the judicial process. In various cases the Supreme Court itself accepted its role as a law maker. Supreme Court in the case of Union of India v. Raghubir Singh, held that it is used to be disputed that Judges make law. Today, it is no longer a matter of doubt that the substantial volumes of law governing the lives of citizens and regulating the functions of the State flows from the decisions of the Superior Court.

In M. C. Mehta v. Union of India, it was held that where a law of the past does not fit in the present context, the Court should evolve a new law and in National Workers’ Union v. P. R. Ramkrishnan, it was held, if the law fails to respond, to the needs of the changing society, then either stifle the growth of the society and choke its progress or if the society is vigorous enough it will cast away the law which stands in the way of its growth. Law must therefore, constantly be on the move adopting itself to the fast changing society and not lag behind. It must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the process of social transformation.

In Burrabazar Fireworks Dealers Association and Ors. v The Commissioner of Police and Ors., the court held the same view and it quoted a passage from "The Reform of Equity", in C. J. Hamson (ed.), Law Reform and Law-Making (1953), p. 31 as follows;

"The truth is that the law is uncertain. It does not cover all the situations that may arise. Time and again practitioners are faced with new situations, where the decision may go either way. No one can tell what the law is until the Courts decide it. The Judges do every day make law, though it is almost hearsay to say so. If the truth is recognized then we may hope to escape from the dead hand of the past and consciously mould new principles to meet the needs of the present."

763 [1989]178ITR548(SC)
764 [1987]1SCR819
765 [1983]ILLJ45SC
766 AIR 1998 CAL1210
According to Justice Bhagawati, “where the law and its application or the rule of law is certain and the application alone is doubtful, there will be no difficulty for the judge. But there are cases where a decision one way or other will count for the future, will advance or retard, sometimes much, sometimes little, the development of the law in the proper direction and it is in these types of cases where the judge has to leap into the heart of legal darkness, where the lamps of precedent and common law principles flicker and fade, that the judge gets an opportunity to mould the law and to give it shape and direction. It is there that the judiciary can play a highly meaningful and activist role by developing and molding the law so as to make it accord with the needs of the community and promote human rights.”

On the basis of the cases on environmental issues decided by the Supreme Court it can be said that the judge makes law. In *M.C.Mehta v. Union of India*, the Court while rejecting the application of principle settled in the *Raylands v. Fletcher*, held the “rule evolved in the nineteenth century at a time when developments of science and technology has not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure.”

Justifying the need for newer principles of liability, the court observed that “as new situations arise the law has to be evolved in order to meet the challenges of the new situations. Law cannot afford to remain static” evolving the principle of absolute liability the court declared:

An enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken.”

This principle of liability, earlier unknown to in our environmental jurisprudence, was explained on two grounds. First, if any enterprise is permitted to carry on inherently dangerous activity for its profit, the law must presume such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous activity.

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767 Ibid
768 (1987) 1 SCC 393
769 Ibid
770 Ibid
771 Ibid
And secondly, the enterprise alone has the resources to discover and guard against the dangers and to provide warning against potential hazards.

The law making adventure of the court is found new expression in Indian Council for Enviro-Legal Action v. Union of India\textsuperscript{772} and Vellore Citizens’ Welfare Forum v. Union of India.\textsuperscript{773} In the former case the court held that the polluter pays principle was part of the law of the land and in the later case the Court held precautionary principle as the part of the law of the land. The court surveyed the constitutional and statutory provisions of environmental law in India and concluded that the principle could be located in the same. It reasoned that the principle had acquired the status of customary international law and therefore, became part of domestic law.

In M.C.Mehta v. Kamal Nath\textsuperscript{774} the Court upheld the doctrine of public trust as being applicable to India. The doctrine imposed duty on the state to ensure that he environment is used not for purposes inimical to public health.

The Court has applied the principle of Inter-Generational Equity, Principle 3 of the Rio Declaration in various cases and made it a part of the law of the land. The principle states, “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.” The main object behind the principle is to ensure that the present generation should not abuse the non-renewable resources so as to deprive the future generation of its benefit. The Apex Court of India in Bombay Dyeing and Manufacturing Company Ltd. v. Bombay Environmental Action Group,\textsuperscript{775} observed that it is not possible to ignore inter-generational interest as well as the need of the development. Keeping in view, the needs for forthcoming generations the Court held that the rivers, forests, mineral and other natural resources are important constitutes of natural wealth and these are not to be frittered away or exhausted by one generation. Every generation has a duty to all succeeding generations to develop and conserve the natural resource of the nation in best policy way. It is pious obligation extending generation to generation for survival of human race on earth.\textsuperscript{776} The Supreme Court had shown its

\footnotesize{\textsuperscript{772} (1996)\textcopyright 3 SCC 212
\textsuperscript{773} (1996) 5 SCC 647
\textsuperscript{774} (1997) 1 SCC 388
\textsuperscript{775} AIR 2006 SC 1489 at 1492
\textsuperscript{776} M.C. Mehta v. U.O.I AIR 1988 SC 1037}
willingness to protect the right of those who were yet to be born.777 Recently the Supreme Court has shown it further belief in the theory of intergenerational justice in T.N. Godavaraman v. Union of India778 and observed that posterity shall not be treated like dirt. The Court attempted to make the people aware about their pious duty towards the coming generations.

The judges do make law and it is the part of the judicial process. The judges interpret law but while interpreting they do make law. To interpret means to decipher meaning this was intended by the constitution makers and law makers. Judicial function cannot be slot machine like. Words can never have fixed meanings. They can seldom be free from ambiguity or vagueness. Even the best possible drafting skill cannot avoid such lapses. Where words are capable of having multiple meanings, they have to be interpreted by looking to their context and the circumstances in which the law has been enacted. Not only this, the interpretation of the law changes with the changing social situation. There is a close relationship between the law and social transformation. The interpretation of constitutional provisions (fundamental rights, directive principles of state policy and the fundamental duties of the citizens) for the environmental protection and right to environmental after Stockholm declaration is the best example for this. The laws are made for people and to achieve social justice. The interpretation of statutes and laws which serves the purpose of enacting such laws is the best interpretation. In this back drop it is deducted that the judges have made law while interpreting the constitutional provisions and other laws in the field of environmental law and in this way they have shown the commitment to the constitutionalism.

10.3 Suggestions

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

Unless Boards are provided with functional and financial independence, commercial and political interests will continue to enjoy the protection of the law. The use of law by administrative agencies has clearly not been effective instrument in combating the menace

777 A.P. Pollution Control Board v. Prof. M.V. Naydu (1999) 2 SCC 718
778 (2006) 2 SCC 62
of pollution. Unless law creates independent agencies, health and environment may well remain the unfortunate casualty. The boards should be provided with technical experts.

The judiciary has reminded number of times the legislature for the required amendments in law and to executive for proper implementation of these laws. Now the time has ripened that the judicial interference should be reduced in legislation and execution of these laws. The judiciary should not take upon the work of a preacher giving guidelines to make people aware of environmental protection, teaching environment as a subject in the schools and giving notifications for noise pollutions, setting standards for controlling air pollution or giving direction to central and state government for implementation of environmental laws forgetting its main work of adjudication. It does not mean that above mentioned matters do not fall within the purview of adjudication of judiciary. But the wisdom lies in the fact that along with the judiciary the other two pillars of democracy should also play an active and efficient role. The judiciary has tried to fill the gaps in environmental laws and their execution and thus prepared the platform for the executive and legislature to play active role in implementation of environmental law. It seems that people, central as well as states have lost the confidence of enforcing any law and they need the prop of judicial decision. In public displays also we find the mention of the Supreme Court in support of an order. For example, at most of the air ports, a notice is found saying that smoking is prohibited inside the airport according to the order of the Supreme Court. But if judicial decisions prove to be paper tiger, even the will lose their potential. What next? Where do we go? Will the directions of the Court be implemented? More and more such litigation shows the weakness of not only the government but also of the judiciary. There is a fear that the Courts will get delegitimized if their decisions continue to be ignored or treated as mere academic exhortations.

In Nutshell it can be suggested:

The functional and financial independence should be given to the pollution control boards in India.

The research in the field of environment should be promoted.

The pollution control boards should be free from political influence and interferences.
The time has come when the legislature and executive have to take care of the proper implementation of environmental laws in India. When the laws are framed, it should be framed with a vision of future probable problems and consequences. The laws should not be reactive but anticipatory. The proper execution of laws should be made without any excuses.

The judiciary has performed its task. The scope should be given to legislature and executive to show their activism. The balance of powers of three pillars is required for the democracy to sustain for long time.

The judicial preaching and implementation of judicial order with the threat of punishment for contempt of court for the people reacting to judicial decisions should be controlled. When the order is necessary to implement, the threat of contempt of court can be resorted to but when the people are protesting against the big project, in the name of promoting development their voice should not be silenced by the court with the threat of contempt of court.

Let there be cohesive approach in implementing environmental law in India with increasing public participation in environmental decision making.

The judicial vigil for environment protection of Supreme Court and High Courts should be percolated through the lower judiciary. Only then the enviro-justice would reach to the common men of India.