CHAPTER-I

INTRODUCTION

1.1 Introduction

In the quest for rapid industrial development over the years, the environmental quality has come to be subordinated to developmental goals. We are now leading towards irreversible environmental damage, due to widespread land degradation, water pollution, air pollution, mushrooming growth of slums and population explosion. The existing administrative and institutional framework is too feeble and ineffective to handle the challenge of environmental protection, which threatens our very survival. Hence there is a need to have a new environmental ethos to meet these challenges.

Environmental ethics had always been an inherent part of Indian philosophy. Man, Nature relationship is at the centre of Vedic vision and they proclaim man’s duty to preserve his environment. The Vedic polity knew that plenary existence of human beings on earth mandates a balance of water, vegetation and human life. Therefore it was a deliberate attempt to enunciate this ultimate truth through sacred incantations. Further it was articulated as rituals for repeated reminding of the need to sustain and foster ecological balance.¹

The Vedic lifestyle was environmentally ethical. Igniting sacred fire was a religiously recognized mode of worship. It intended to keep the environment healthy. The Yajurveda stipulates that the creator ordained the sun and fire to penetrate deep into the substances to segregate their aqueous and soporific contents. The substance then became pure and clean and bestowed happiness on men. Besides this, when firewood and butter are offered to the fire, the flames and smoke remove bad odour from the atmosphere. In Samaveda, the sacrificial fire is compared to a stallion that can stave off the insects²

¹ See, Prabha Kumar, Shashi; Facets of Indian Philosophical Thought, 1999, Vidyanidhi Prakashan
The eternal wisdom contained in the ancient text was not practiced with the required sincerity in the later years. Deterioration of values was a slow process, initially. However, technological advancement accelerated not only development of human settlement, but also, the destruction of environment. Moreover, Colonial years ransacked India’s agricultural base by commercialization of crops. Rural Indian who lived close to nature was compelled to leave their villages and migrate to cities in search of livelihood. The factory system introduced in 1884, almost liquidated cottage industries. The Little village republics were shattered and scattered into different places. Karl Max says, ‘human projects that ignore great laws of nature bring only disaster” Growing industrialization started consuming natural resources on a large scale. Cities and towns started flourishing at the cost agriculture and environment.

Society is shocked over a single case of homicide but when millions of people are suffering from various types of environmental problems and face the dangers of collective genocide, reactions are very lukewarm. Pre independence, in British India, several laws were enacted which had environmental provisions. These are the Indian Penal Code³ and the Code of Criminal Procedure⁴ to deal with the fouling of air and water under the title “Public Nuisance”, the Police Act⁵ for prevention of noise, the Poison Act⁶ for pesticide control and the Indian Forest Act⁷ for forest and wildlife management. Laws on forests, mines and minerals, water and other common natural resources of mankind were enacted more for their appropriation, privatization and utilization rather than for their protection. These laws remained unresponsive to fulfill the needs and to solve the problems of the society. Urbanization, industrialization and population have enhanced the problem of environment degradation. Ultimately it was the call of hour in post independence era to enact certain laws to meet the drastic problems endangering the human life.

Unfortunately, the trend continued in India even after independence. As a result, vast sections of the Indian population, particularly in the rural areas, were deprived of their legitimate rights of the free and common local resources which nature had provided for their livelihood.

³ 1860
⁴ 1898
⁵ 1861
⁶ 1919
⁷ 1927
In pursuance of United Nations Conference on Human Environment convened at Stockholm in 1972, the nations of the world decided to take appropriate steps to protect and improve human environment. The sequel to this, in India 42\textsuperscript{nd} Amendment to the Indian constitution inserted articles 48-A directing the state to protect and improve the environment and to safeguard the forests and wildlife of the country and Article 51-A (g) mentioning fundamental duties of the citizens to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

The 42\textsuperscript{nd} Amendment to the Indian Constitution also made certain changes in the seventh Schedule to the Constitution. Originally forest was a subject included in list II, entry 19. Since no uniform policy was being followed by the State in respect of protection of forests, now this subject has been transferred to List III and hence, now the parliament and state Legislature both may pass legislations.

Protection of wild animals and birds has also been transferred from List II, Entry 20 to List III, Entry 17-B. 42\textsuperscript{nd} Amendment Act for the first time inserted Entry 20-A in the List III which deals with population control and family planning because enormous increase in population is main cause for environmental problems.

Under Article 253 of the Indian Constitution, the parliament is empowered to make any law for implementing any treaty, agreement or convention with any other country or countries or even any decision made at international conference, association or other body, this power is limited to implantation of decision and that too for a limited period.

The broad language of Article 253 suggests that in the wake of Stockholm Conference in 1972, Parliament has the power to legislate on all matters linked to the preservation of natural resources.

This 42\textsuperscript{nd} Amendment to Indian Constitution and insertion of Article 48-A and 51-A (g) marked the beginning of Environmental jurisprudence in India.

Environmental Jurisprudence includes the laws, both statutory and judicial, concerning varied aspects of environmental protection and sustainable development. In India various laws have been enacted for the protection of environment. But the movement to protect environment got momentum with the judicial vigil in 1980s and 90s.
Armed with the power of judicial review and constitutional scheme of independence of judiciary the Indian judiciary has performed a stellar role in protecting the environment and spreading environmental awareness among the Indian people.

1.2 Need for Study

India has not only enacted various specific laws to control the environmental pollution but has also incorporated significant provisions for the protection of the environment into its constitution. Within the last three decades, the development of environmental jurisprudence in India, following these constitutional law changes, has been remarkable in the sense that it has led to the virtual creation of a fundamental right to a clean environment in Indian law. This forms part of the public law regime established by the constitution and appears to be based not only on modern concepts of fundamental human rights but also on indigenous notions of social justice, constituting a unique human rights approach adopted through affirmative action.

The main aim of this research is to analyze the distinct nature of the outstanding contribution of Indian judiciary into development of environmental jurisprudence and its development within a broader constitutional and jurisprudential framework. In fact, the emerging Indian environmental jurisprudence had relied on three interconnected elements. First, it manifests the new Indian Constitutional law rationale which now clearly accords importance to public concerns rather than to protecting private interests. Secondly, it reflects certain aspects of Indian legal culture through implicit and explicit reliance on autochthonous values based on ancient, pre-colonial indigenous notions and concepts of law. Thirdly, it bears testimony to the uniquely activist role of the higher Indian Judiciary in promoting this new rationale. These three interconnected elements characterizes role of higher judiciary in the recent development of Indian environmental jurisprudence.

Judicial awakening and activism for protection of the environment in India began formally after the 1972 Stockholm Conference on Human Environment. The term judicial activism denotes a process where at one end there are the logically principled rules in the hands of court and at other end there are demands, desires for expectations of society pressing it to the

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42nd amendment, 1976
See, Pathak R.S; Human rights and the development of the environmental law in India, 1988
accommodate with the framework of law. This process of accommodation by court is called the civilization of law and in term is known as activism. Environmental provisions are introduced in the Constitution of India by its 42nd amendment in 1974 under Article 48 (A) and 51-A (g) as a “fundamental duty” for every state and citizen of India to protect and improve the natural environment. Several laws pertaining to the protection of the environment were enacted in India prior to it. There were a number of public laws existed which had environmental overtones. The Indian Penal Code, 1860 and the Code of Criminal Procedure, 1898\(^{11}\) dealing with “public nuisance” assume special significance in this regard. The Environmental Protection Act, (EPA) of 1986 against industrial pollution and the Conservation of Forest and Natural Ecosystems Act of 1994 to stop deforestation and habitat destruction are, among others, good pieces of legislation for the protection of the environment in India. Public Interest Litigation (PIL) to prevent environmental degradation has been increasing in India and the judiciary has come to rescue the people on a number of occasions. There are several historic judicial decisions serving both man and environment in India.

It can be seen that the Supreme Court of India has moulded a far-reaching and innovative environmental jurisprudence which no other constitutional court anywhere in the world has ever given shape to. The High Courts have also contributed their bit in developing this jurisprudence. In fact due to its proactive role in administering environmental law, the higher judiciary in the country has emerged as the exclusive dispenser of environmental justice. By doing so, they have succeeded to a great extent in altering the common man’s perception of law courts as being mere fora for dispute adjudication thereby carving out a niche for itself as a unique human right friendly institution in justice dispensation. The ever increasing number of PILs being filed in the Supreme Court and in the High Courts over every conceivable environmental problem by public interest groups and individuals, bear testimony to this unshaken faith which the public has reposed in the system and in this context, the role essayed by the superior judiciary can be gauged at two levels, one as facilitator seeking to ensure better enforcement of the laws and secondly as pathfinder trying to wriggle its way out of the redundant obstacles thereby providing a panacea to the environmental ills plaguing the country.

\(^{11}\) amended in 1973
The increasing intervention of Court in environmental governance, however, is being seen as a part of the pro-active role of the Supreme Court in the form of continual creation of successive strategies to uphold rule of law, enforce fundamental rights of the citizens and constitutional propriety aimed at the protection and improvement of environment. Unlike other litigations, the frequency and different types of orders/directions passed periodically by the Supreme Court in environmental litigation and its continuous engagement with environmental issues has evolved a series of innovative methods in environmental jurisprudence. A number of distinctive innovative methods are identifiable, each of which is novel and in some cases contrary to the traditional legalistic understanding of the judicial function. These innovative methods, for instance, include entertaining petitions on behalf of the affected party and inanimate objects, taking *suo motu* action against the polluter, expanding the sphere of litigation, expanding the meaning of existing Constitutional provisions, applying international environmental principles to domestic environmental problems, appointing expert committee to give inputs and monitoring implementation of judicial decisions, making spot visit to assess the environmental problem at the ground level, appointing amicus curiae to speak on behalf of the environment, and encouraging petitioners and lawyers to draw the attention of Court about environmental problems through cash award. It is important to note that these judicial innovations have become part of the larger Indian jurisprudence ever since the Court has started intervening in the affairs of executive in the post emergency period. The innovative methods initiated in resolving environmental litigation, however, have been almost entirely dominating the environmental jurisprudence process for more than the last thirty years.

The expansion of judicial activism through environmental cases, in particular, is widely debated and discussed in India. On the one hand, critics of the theory of separation of power view this kind of judicial activism as a sign of hope to correct shortcomings on environmental issue.

On the other hand, the advocates of theory of separation of power argue that the intervention of Court in the affairs of implementing agency to protect the environment and enforce fundamental rights is violating the principle of separation of powers as the theory of

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separation of power suggests that each organ of the government has to perform within the prescribed limits as designed by the Constitution of India. In a number of cases, the Court has gone beyond its adjudication function to protect the environment thereby violating the principle of separation of powers and creating problems for other organs of the State. Its continuous intervention in the affairs of executive, questioning the validity of government policy and resuming administrative powers to protect the environment aggressively has invited steadfast resistance from administrative branches.

The examination of the implications of Supreme Court’s innovations for environmental jurisprudence reveals that the application of innovative methods to resolve environmental disputes and implement Court orders is certainly a deviation from the usual adjudication function of the Court. While the procedural innovations have widened the scope for environmental justice through recognition of citizens’ right to healthy environment, entertaining petitions on behalf of affected people and inanimate objects and creative thinking of judges to arrive at a decision by making spot visit, substantive innovations have redefined the role of Court in the decision-making process through application of environmental principles and expanding the scope of environmental jurisprudence.

The judicial activism in environmental issues has increased people’s faith in the judiciary of the country. Though there are number of laws dealing with various environmental issues, the judiciary has to perform the role of executive by issuing orders for enforcement of environmental laws and judicial orders for the protection of rights of people. The credit goes to the Supreme Court for implementation of principles of sustainable development in India. The words of laws were mere letters but the judicial interpretation of these laws has given life and blood to them. We also cannot deny the criticism leveled against this activism that the judiciary has forgotten its role of adjudicator and taken the responsibility of executive and legislature as a law maker and law enforcer in India. These questions compel us to assess the critical role of Indian judiciary in development of environmental jurisprudence in India and legitimacy of judicial activism in environmental jurisprudence.

1.3 Scope of the Study

The researcher intends to confine the scope of the research to –development of environmental jurisprudence in India with critical role of Indian Judiciary, specifically the
role of the Supreme Court. The focus of study is on the factors that have given rise to the judicial activism in developing environmental jurisprudence in India. In a democratic country of India the Constitutional scheme of separation of powers nicely balances the role of three organs of the governments i.e. Legislature, Executive and Judiciary. But in recent years it seems that the judiciary has taken responsibility to perform the role of legislature and executive in the field of environmental law. Sometimes the Courts issue directions to legislature as to how a law is to be made, or laying down rules in advance, in the absence of a law and not permitting the legislatures to make a law in contravention of these rules. It has also taken over the functions which legitimately belong to the executive for the implementation of the directions to protect the environment. This is attitude of the judiciary has expanded the scope of judicial involvement in the field of environmental law in India. The focus of study is to check the legitimacy of the judicial activism and the special contribution of the Indian Judiciary in the development of environmental law in India. The study also focuses on the method adopted by the Indian judiciary in the development of environmental law in India.

An attempt is made to study the judicial pronouncements on environmental law by Indian judiciary, the impact assessment of this judicial rhetoric in the development of environmental law.

The researcher will also refer to special role of Indian judiciary in interpretation of various laws related to environmental protection in India, with special focus on the inquiry whether it is a judicial interpretation or judicial creativity.

1.4 Review of the Literature

The book Environmental Law (2008) by S.C.Shastri\(^{14}\) is concerned with the development of environmental law in India. It analyses significant pronouncements and judgments of the Hon’ble Supreme court and the respective High Courts and discussed the changing facets of law to keep pace with new knowledge in the field of environmental law. The development of environmental jurisprudence in Indian context has been explained with the analytical and

in depth discussion on the environmental ethos in Vedas, Puranas and then in modern India with the help of legal prudence and judicial pronouncements.

Judicial Activism in India (2003) by S.P. Sathe\textsuperscript{15} deals with the different facets of judicial activism in India. The book focuses on the following issues:

- Arrangement of Constitutional power, especially in the structuring of a relatively autonomous judiciary,
- Social constructions of judicial role and function and the rather in-different potential for social learning by justices,
- The histories of formation of Bar and its location in the grids of power/ resistance
- The flow of political events, which determine the times of judicial acquiescence with regimes of power, and the moments of seizure, when judicial voice acquires the capability to confront structures of abuse of public power and governmental lawlessness..
- The power of social movements to judicialize governance that is the power to assert people’s rights against the executive/legislature combine through activist judicial doings
- The modes and patterns of partnership of learned professions, in which the mass media, techno science professionals, educationalists, the literati and the glitterati (for example Arundhati Roy’s sudden irretrievable intrusion in people’s movement against Narmada Dam) learn ways of collaboration with grassroots activists
- The capability of suffering masses without rights to name and shame the constitutional classes

Judicial activism is not just a matter of serial affirmation of judicial power over other domains and instrumentalities of state power; it is much a narrative of evolution of new constitutional culture of power.

It traces the evolution of the Supreme Court of India from a passive, positivist court into an activist institution, articulating counter-majoritarian checks on democracy. It critically

\textsuperscript{15} Sathe, S.P.; Judicial Activism in India, Ed. 2nd,2003, Oxford University Press.
analyses judgments of the Supreme Court on a variety of issues related to Indian society since independence. It also studies the potentiality of Public Interest Litigation in vindicating the constitutional rights of people of India and the legitimacy of the Judicial Activism through PIL.

The book ‘Text Book of Environmental Law’ (2002) by I.A.Khan\textsuperscript{16} vividly discusses the problems of environmental pollution, its causes in India. It also converses on the legal provisions for the environmental protection in India.

The book ‘Environmental Law’ (2001) by H.N.Tiwari\textsuperscript{17} tries to define the complex subject of environment. It addresses the important issues related to protection of environment such as need for environment protection, effects of pollution, international issues of global warming and domestic and international legal provisions to protect the environment in India. It also discusses the active role of Indian judiciary in protecting the environment.

Environmental Law in India (2008) by P.Leelakrishnan\textsuperscript{18} is concerned with the contour of development of environmental law in India. It talks about law and practices in ancient India and explores the origin of environmental law and its relation with other laws and also with other disciplines. It refers to one of the big challenges that the nation has to face in the process of development namely, conservation of forests and protection of wild life. The courts energized and developed the slumbering law of public nuisance into a powerful agency for environmental protection. It enumerates and the legal controls on coastal zones management and other pollution related laws and its implementation in India. It also focuses on the role of judiciary in developing environmental law and implementation of international conventions in India. The right to clean and healthy environment is a significant contribution by the courts to the evolving environmental law in India. It traced the role of Indian judiciary in cushioning the impact of mass disasters like that of Bhopal. It also explored the parameters for PIL and the importance of PIL in the development of Environmental jurisprudence in India. It also emphasizes the need for the Environment Impact assessment and public participation in environmental decision making in India.

\textsuperscript{16}Khan, I.A.; Text Book of Environmental Law, ed. 2nd 2002, Central Law Agency

\textsuperscript{17}Tiwari, H.N.; Environmental Law, ed. 2nd, 2001, Allahabad Law Agency

\textsuperscript{18}P.Leelakrishnan; Environmental Law in India, ed.3rd, 2008, Lexis Nexis Butterworths Wadhva Nagpur
Inspired by the global concern for protection and improvement of the environment, India had devised many strategies for the executive and legislative agencies to follow. In this scenario, the judiciary could not afford to remain resigned and cloistered. Acting in tune with the changing mores of the day, the judiciary took up the challenge and made significant contributions to the growth of environmental law.

The book ‘Environmental Law Case Book’ (2004) by P. Leelakrishnan^19 is mainly concerned with the judicial activism in the field of environmental law in India. The courts rendered new interpretations to old laws, scrutinized and explained grey areas in statutory provisions, decided constitutional issues and implemented international principles of environmental law in India, examined environmental process and demarcated the limits of judicial review. It critically analyses the effects of international conventions on environmental law on the judicial pronouncement in India.

Constitutional Policy and Environmental Jurisprudence in India, (2006) by Nimushakavi, Vasanthi^20 focuses on important theoretical contributions to the field of environmental law and policy with particular reference to the Indian Constitution, in order to understand and chalk out a future for this branch of law using public instruments. The book seeks to explore the links between various branches of law like international law, international human rights law, the law on sustainable development along with constitutionalism and environmentalism so that a holistic view may be taken of the subject.

This involves examining the basic structure of India’s Constitution, its dominant features as articulated by the supreme court of India in several cases and the growing realm on international law and its impact on constitutional law.

The Compendium- Lal’s Encyclopedia on Environment Protection and Pollution Laws (2009) ^21 contains various legislations regulating environmental pollution as also a compilation of the relevant rules and allied statutory instruments. Rules made by various States afford a comparable study of the regulatory environment in those States afford a comparable study of the regulatory environment in those States which is a useful to

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^19 P. Leelakrishnan; Environmental Law Case Book, 2004, Lexis Nexis Butterworths
^20 Nimushakavi, Vasanthi; Constitutional Policy and Environmental Jurisprudence in India, 2006, Macmillan India Ltd.
^21 Lal’s Encyclopedia on Environment Protection and Pollution Laws, ed. 5th 2009, Delhi Law House (two volumes)
researcher. Included in the appendices to the compendium are the international declarations, mandates, conventions, protocol and statements of principle which provide the context within which legislations and statutory instruments could be understood. It also provides a bird’s eye view of the available literature and various judicial decisions of the subject of environmental law.

Manuel of Environment and Pollution Laws, (2010) by H.K. Bharti and B.K.Dubey\(^22\), has taken a lot of effort and research to present the law in a simplified way, bringing out High Court and Supreme Court judgments, decisions, directions and guidelines in respect of Environment Pollution law-most of the historical and landmark judgments reported in leading law journal-AIR, SCC, Cr.LJ, Kar. LJ, All. LJ- have been included in the book to bring into clear relief the problem of environment pollution and protection. The book provides an integrated approach to environmental law.

The book ‘Environment and Justice’ (2004) by C.M.Jariwala\(^23\) deals with legislative yatra, environmental litigations and Judicial Activism in the area of environmental law in India. It goes deeper inside the important cases to find out what were the stages adopted from activating the court down to its judgments/ orders. A critical study is undertaken to find out avenues to lap judicial discourse.

The focal point of the book is on the following issues:

- To find out the correct techniques and tools to handle the envirojustice scale
- To highlight the actions, misactions and inactions in the administration of envirojustice
- To evaluate whether the courts moved in the wave length of wishes of the legislature and
- To examine whether the mode of redressal settlement is working satisfactorily and to assess what has been the net result.

\(^{22}\) Bharti, H.K. and Dubey, B.K.; Manuel of Environment and Pollution Laws, ed. 1\(^{st}\), 2010, Wadhwa and Company, Indore

\(^{23}\) Jariwala, C.M.; Environment and Justice, 2004, A. P.H. Publishing House
It highlights the new challenges and opportunities before judiciary and suggestions for the better administration of envirojustice and the output thereto.

The main aim of the book written by C.M. Abraham on Environmental Jurisprudence in India (1999)²⁴ is to bring out the distinct nature of new Indian environmental jurisprudence by analyzing its development within a broader constitutional and jurisprudential framework.

The major purpose of the book is to analyze this recent development and to show how Indian environmental jurisprudence functions not as an adjunct to the common law system but as an independent and yet interconnected mechanism for the legal protection of environment. The analysis of Indian environmental jurisprudence also shows that it proceeds closely in the line with legal ideologies towards creating a human right for a clean environment, which has been frequently voiced in international fora. While this work cannot focus on the international legal dimension, it however, shows the current Indian experience which strengthens the augments against the development of environmental law within a regulatory law paradigm adopting economic rationalization, as found particularly in the Anglo American law jurisdictions.

Environmental Protection and Policy in India, (2007) by Kailash Thakur²⁵ highlights the sources and effects of environmental pollution as well as the legal mechanism for its control. It also focuses on the environmental policy of India. The judicial approach to the environmental law and emergence of public interest litigation finds and elaborated treatment in the book. It suggests for setting environmental courts and other strategies for environment management including access to information.

Environmental Law and Policy in India: Cases, Materials and Statutes, (2002) by Shyam Divan and Armin Rosencranz²⁶ compiles all the leading cases in environmental law in India with concise extracts of landmark judgments and documents. It focuses on environmental law, policy, problems and needs with the comprehensiveness of an American law case book.

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²⁵ Thakur, Kailash; Environmental Protection and Policy in India, 2007, Deep and Deep publications Pvt. Ltd.
²⁶ Divan, Shyam and Rosencranz, Armin; Environmental Law and Policy in India: Cases, Materials and Statutes, 2002, Oxford University Press
1.5 Objectives of the Study

The researcher proposes to do research having the following objectives:

I. To examine how far the Indian judiciary has contributed in the development of environmental jurisprudence in India

II. To trace the development of environmental jurisprudence in India and to examine the present trend in the environmental jurisprudence in India with the special role of Indian judiciary

III. To study the reasons for the growth of judicial activism, in the field of environmental law in India

IV. To analyze the growth of judicial vigil in environmental issues

V. To understand the approach of the judiciary in the interpretation of constitutional provision for the protection of environment and its method of adapting itself to the changing need of the society in protecting environmental rights of people.

VI. To inquire into the legitimacy of the judicial activism in environmental law in India even in the presence of surfeit of laws dealing with environment protection

VII. To suggest further to make environmental justice more efficient in India

1.6 Hypothesis

The researcher after making survey of literature on the subject has framed following hypothesis:

i. The Indian judiciary has performed a stellar role in the development of environmental jurisprudence in India.

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.

iii. The provisions of environmental laws were mere letters but the judicial interpretation of these laws has given life and blood to them.
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.

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.

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.

1.7 Research Methodology

This is basically a doctrinal study where the researcher is trying to analyzing the critical role of Indian judiciary in the development of environmental jurisprudence in India. The study requires in depth study of provisions relating environment in Indian constitution, Specific laws related to environments and laws other laws indirectly dealing with environment protection and various judicial pronouncements on this subject.

The research is based on the secondary data as it is a doctrinal research. The secondary sources of data are books on the subject, articles from various national and international journals, judicial pronouncements, law journals, All India reporters, Supreme Court cases and reports of committees etc. The data collected from these sources have helped in testing the hypothesis.

1.8 Chapterisation

The study is divided into eleven chapters.

Chapter I – ‘INTRODUCTION’, deals with introduction, the need for study, scope of the study, review of literature, objectives of the study, hypothesis, and research methodology, chapterisation and scope of further study. The problem of environmental law is as old as the evolution of Homo sapiens on this planet. With the development of science and technology
and with the ever-increasing world population, came tremendous change in the human environment. These changes upset the eco-laws, shook the balance between human life and the environment and brought along innumerable problems affecting the environment. It became necessary to regulate human behavior and social transactions with new laws designed to suit the changing conditions and values. A new branch of law, called environmental law, grew at this stage in order to manage and face the myriad challenges of such system.

The legislature, executive and judiciary, the three organs of the Indian democracy have taken remarkable steps to control the problem of increasing environmental pollution in India. Among them all the judiciary has performed lead role in taking action to curb the problem of environment pollution. The judicial interpretation of various statutory provisions considering environment protection an important task has given a new curve to the development of environmental jurisprudence in India.

Chapter II-‘ENVIRONMENTAL JURISPRUDENCE’, deals with the explanation of Environmental jurisprudence. Environmental law is a synthesis of principles, concepts and norms generated by statutory laws which are specifically enacted for the environment protection and other laws related to it. It also includes the judge made law on the subject.

The concept of environmental jurisprudence has been introduced with the brief discussion on explanation of ecosystem, environment, and environment pollution, factors responsible for environment pollution and need for the environment protection laws in India. It also discusses the importance and the need for development of environmental jurisprudence in India the present age of industrialization and globalization.

Chapter III-‘DEVELOPMENT OF ENVIRONMENTAL JURISPRUDENCE IN INDIA’ focuses on the development of environmental jurisprudence in India from historical point of view. The central focus of the chapter is on the environmental ethics and Indian ethos. It encompasses the discussion of environmental ethics in Harappa culture, in ancient Indian Vedic culture, in Mauryan Empire, the environmental policy of Muslim rulers in India and the legal policy during British Raj for the protection of Environment.
Environmental jurisprudence is not a recent development in India. It is imbibed in the Indian culture. The daily rituals and routine and life styles of ancient people as gathered from Shrutis, Smrities, Puranas and Nibandhas clearly indicate their reverence for nature. This reverence is reflected in the daily worship of natural forces in routine life of Indian people even today. As a prologue to the development of environmental jurisprudence in India

The rule of law was supreme in ancient society. The concept of dharma clearly says that nobody is above the Dharma. The Raj dharma and Vyavahar dharma had been elaborately mentioned in different texts of Vedas and Smritis which had helped in development of legal order in ancient India. The concept of dharma and the principles of reverence for nature had evolved the environmental jurisprudence in ancient India. The sense of sanitation of Harappa people is appreciable.

During the time of Chandragupta Maurya, the legal system of state was well developed. The strict adherence to legal provisions in that society is reflected in the Arthashasthra written by Kautilya. The strict adherence to legal provisions and rules for maintaining cleanliness in the State and the forest policy of the Maurayas had further added to the development of environmental jurisprudence in India.

During the time of Muslim rule in India the main focus of the rulers was on hunting and enjoying luxurious life. Hunting was the main penchant of all Muslim rulers, particularly Mughal rulers. But from environment conservation point of view, a remarkable contribution has been made by the Mogul Emperors. They established royal gardens, monuments like Taj Mahal and surrounding gardens and water fountains, fruit orchards, green lawns, central and provincial headquarters, public places like hamams, on the river banks and dales which they used as holidays resorts during summer seasons. The religious policy of Akbar bases on principle of complete tolerance also reflects concern for protection for birds and beasts. He had also taken measures to stop unnecessary killings of birds and animals.

Hunting was also a favorable pastime for the Britishers in India. But we cannot deny that the invasion by the British and the establishment of their rule in India began a new era in India. No doubt, it was an era of plunder of natural resources but it also contributed remarkably in the growth and development of environmental jurisprudence in India. An East India company established factories in India for trade purposes which later on converted into
edifice of British Empire in India. An analysis of the early days of the British Empire in India reveals that environment protection was not important at that time. The actual need was felt only after the raising of Industrial Revolution, in which exploitation of natural resources is started taking place. As a consequence to that various laws were enacted as and when need was felt. Various legislative efforts were made to for the management of forests, to regulate water pollution, to protect wild life and land use by British government.

It also discusses the administrative and legislative measures taken to protect environment in after independence in India.

The chapter deals with the various stages in the development of environmental jurisprudence in India.

Chapter IV-‘ENVIRONMENTAL TORT AND JUDICIAL RESPONSE’, focuses on environmental tort and judicial response in providing legal remedies to tort in Post independence era in India. The root of modern environmental law is found in the Common law principles. In India the law of tort was introduced by the British rulers. In suits for damages for torts (civil wrongs) the Indian courts followed the English common law. By eighteenth century, Indian courts had evolved a blend of tort law adapted to Indian conditions.

There are various torts which provide relief for environmental pollution under various headings such as torts of nuisance, negligence, trespass, strict liability. In the absence of any specific law for environment protection in 1960s to 70s the tortuous remedies were frequently resorted to by people for environmental harms. The Supreme Court of India has given new shape to the judicial remedies available for the tortuous liability in India according to Indian condition.

In M.C.Mehta v. Union of India27 popularly known as Shriram food and Fertilizer case , the supreme court has evolved a new doctrine of absolute liability interpreting the doctrine of strict liability to check environmental pollution effectively. It assigns no-delegable duty of the polluters for causing pollution.

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27 1987 I SCC 395
The chapter IV tries to analyses critically approach of the Indian Judiciary in interpretation and adjudicating the cases related to environmental tort in India.

The focal point of discussion in Chapter V is on the contours of judicial decisions in cases of public nuisance in environment protection in India. The title of the chapter is ‘CONTOURS OF JUDICAL DECEISONS IN CASES OF PUBLIC NUISANCE IN ENVIRONEMNT’, there are various provisions in Criminal Procedure Code, 1973 and Indian Penal Code, 1860 for public nuisance.

The Indian Penal Code, 1980 provides punishment for the offence of committing a public nuisance:

“…a person guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to person who may have occasion to use any public right”.28

Under s. 133 of Cr. P.C. Executive magistrate can interfere and remove a public nuisance in the first instance with a conditional order, and then with a permanent one. The provision has been utilized in the cases of nuisance of an environmental nature.

In 1979, the Supreme Court of India has captured the potential parameters of the law of nuisance in Cr. P.C.As remedy for environmental assaults in Govind Singh v. Shanti Swaroop.29 Again the verdict in Municipal Council, Ratlam v. Vardhichand 30 is a landmark. It is a significant judicial pronouncement which has widened the scope and amplitude of the jurisdiction of the magistrate under s. 133 of Cr. P.C. The influence of the judgment in Ratlam case in later judicial pronouncement is remarkable. The judicial pronouncement in Ratlam case has opened new vistas for development of environmental law in India. It recognized public involvement in judicial process.

The Chapter VI- ‘INTERPRETATION OF CONSTITUTIONAL PROVISIONS FOR ENVIRONMENT PROTECTION: A TALE OF JUDICIAL CRAFT AND
CREATIVITY’, explores the interface between the environmental law and constitutional law in the backdrop of judicial activism and implementation of principles of international law on environment. The Constitutional interpretation has been the foundation for environmental law in India. This constitutional interpretation by the Indian judiciary has been influenced by international law and policy. The chapter also discusses the 42nd amendment to the Indian Constitution, inserting articles 48-A and 51 –A(g) in the constitution, judicial interpretation of article 21, widening the doctrine of locus standi and the increase of public interest litigation through Article 32 and 226, various directive principles and other provisions in the constitution dealing with the environmental law. It also discusses the various constitutional provisions which have been used by Indian judiciary in fashioning environmental law in India. The judicial vigil has tried to articulate the aim of providing socio-economic justice as envisaged in the preamble of the Constitution. The judicial interpretation of the provisions of the constitution becomes especially relevant in the context of integrating two areas of international law, namely, the international human rights and environmental rights.

Chapter VII- ‘A QUEST FOR ENVIROJUSTICE AND JUDICIAL ACTIVISM’ examines the legitimacy of the judicial activism in development of environmental jurisprudence in India. Armed with the power of judicial review and independence of judiciary, the Indian judiciary has performed a stellar role in the development of environmental law and spreading awareness among people for the need of environment protection in India.

The role of 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.

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. A doctrinal hedge that could safeguard the deteriorating condition of the environment was soon erected. 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.

It also discusses the role of NGOs in giving momentum to judicial vigil working as catalyst in developing environmental jurisprudence.

One of the fountain source of environmental law jurisprudence in India has been article 21 of the constitution and its creative interpretation by the Supreme Court in a number of cases that gave a new dimension and meaning to the understanding of the article. The ever-expanding expanse of article 21 has been a boon to the cause of protecting the environment so that the lives of the people and their other cherished rights are protected. Judiciary has
used the expanse of article 21 rights as a protective umbrella against the efforts that tend to
threaten the environment and its existence.

Again the present chapter also examines the legitimacy of judicial activism in development
of environmental jurisprudence in India. It critically analyses the different facets of judicial
activism in the area environmental law in India.

Chapter VIII- ‘JUDICIAL RHETORIC ON LEGISLATIVE AND EXECUTIVE
EFFORTS FOR ENVIRONMENTAL PROTECTION’ is based on analysis of the judicial
wisdom in interpreting different environment related laws in India. A surfeit of legislations
has been enacted to deal with the problem of environment protection in India. Time and
again newer forms of safeguards have been adopted to see that the menacing march of
environmental pollution is kept at bay. However, it has been seen that legislations alone
have had a hard time to deal with environmental degradation caused mainly by the man-
generated pollution without the judicial prudence and prop up.

The main focus is on the various laws for control of pollution in India and their
interpretation by Indian judiciary. It tries to analyze the critical approach of Indian judiciary
in enforcing the pollution control laws in India. In doing so sometimes the judiciary has
appreciated the object and provisions of the acts and sometimes it has harshly directed the
pollution control boards to perform their duties. It deals with laws on water pollution, air
pollution and forest laws, wild life acts etc.

It also focuses on the judicial efforts to balance the twin goal of development and protecting
environment of Indian democracy.

Chapter IX- ‘THE ROLE OF THE JUDICIARY IN ENVIRONMENTAL
GOVERNANCE: A COMPARATIVE STUDY’

It focuses on the judiciary as an important component of developing environmental law in
the broader quest for sustainability. It distils comparative trends, new developments, and
best practices in adjudication endeavors; highlighting the benefits and shortcomings of the
various approaches followed by courts in the selected countries to understand the manner in
which sustainable environmental governance may be achieved by way of judicial intervention.
Chapter X—‘CONCLUSIONS AND SUGGESTIONS’ is concerned with conclusions and suggestions. It deals with discourse on the role of judiciary as a law maker and the need to widen the scope of powers of judiciary particularly to strengthen the development of environmental jurisprudence in India. The entire hypotheses framed at the commencement of study are discussed at length drawing certain conclusions. Various suggestions are given for the development of environmental jurisprudence in India and to remove the limitations on the part of Indian judiciary for effective involvement in the environmental law making process.

Chapter XI—‘SCOPE FOR FURTHER STUDIES’ reveals the scope for further study on this subject.

In the present age of technological advancement, industrialization, rapid growth of means of transportation the need has been felt to curb the ever increasing problem of environmental pollution. To meet with the new challenges of diverse problems of environmental pollution there is an urgent need to innovate new methods to control this problem. The study at national and international level has shown that till date judiciary has contributed a lot in the development of environmental law to meet new global as well as domestic challenges of environment pollution. But again there is a doubt whether the present judicial approach will be sufficient to meet the new challenges or a new mechanism should be evolved to solve the environmental disputes. Looking to the Indian situation, a new constitutional body like CBI (Central Bureau of Investigation) should be established which will reduce the burden of judiciary and will help in speedy disposal of environmental problems. But it is a subject of further research to investigate how far it is practically viable or if it is not what can be done to make environmental justice a reality and not dream in future.