CHAPTER - I
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1 INTRODUCTION

IN Its slow and steady growth, the case law relating to environmental law in India goes deeper into the problems of ecology, and pollution. The landmarks reached in the field of environmental jurisprudence in past are many which include recognition of the rights to clean environment, interpretation of forest laws in consonance with the needs of environmental protection.

The main focus of this thesis is to show how the Courts, especially the higher Courts (the Supreme Court and the High Courts) did not let go opportunities to safeguard the environment. This study attempts to show that the Higher Courts with the help of legislations have devised new strategies to halt environmental degradation/pollution. The Supreme Court and the High Courts with the aid of parliamentary sanctions have embarked upon the path of judicial activism, so as to redress environmental problems faced by public. This thesis argues that judiciary with the assistance of legislation has vindicated, the Governmental commitments for environmental concerns, it also reveals that the judiciary along with legislative mandate has directed the administrative wing to perform its functions entrusted by the legislature.

The discussion in this thesis revolves around diminishing pollution by judicial intervention, by interpreting legislative commitment of Indian Government. Another facet of this study is to bring to the fore the legislative and judicial strategies for improving the environment in India.
Both the pre-independence and current legislations under environmental jurisprudence are meant for protection of the environment. Substantive law defines the rights and liabilities whereas the adjective law is more of procedural nature. Environmental Laws are a mix blend of substantive and adjective laws as they enjoin rights, liabilities and duties of citizens, coupled with the regulatory measures for saving environment.

Before adverting to present day environmental laws in India, it would be necessary to go to the olden days in brief. In India in pre-Vedic, post-Vedic (the Vedanta), the Upanishad periods and during the period of the 'Brahmans' and the 'Aranyakas' the spiritual metaphysical thinking, and the religious precepts, practices and philosophy revolved around nature-worship. The (Indian ancient scripture) Chandogya Upanishad explored:

"The ether is the fire; the air its fuel; the cloud its ember, the electric its blaze, the thunder its ignition; the roar its sparks; within this fire, the oblation given is the Soma which begets the rain".1

While discussing environmental concerns, it would be necessary to go into the meaning and concept of environment and causes of pollution.

'Environment', 'Environmentalist', 'Environmentalism' are the words often spoken in every society. Moreover, all are very much concerned about keeping environment clean and checking environmental degradation.

The term environment has been derived from the term 'environ', which means 'to surround', French term 'environer', Latin 'in-viron'. 
Thus, etymologically environment means 'surrounding conditions, circumstances affecting people’s life.'

According to Gilpin, environment means, "from a scientific point of view is taken to mean everything that is physically external to the organism; organisms of course include human beings".

Justice P.N. Bhagwati, has defined the term environment to mean “the term refers to the conditions within and around the organism, which affects the behaviour, growth and development, or life processes, directly or indirectly. It includes the conditions with which the organism interacts”.

Biogeographically Biosphere, Lithosphere, Eco system, consists of Food chain and Ecological Pyramids. The Earth is the most unique planet of the solar system. Geographical information goes to show that it is the system of earth alone, which favours evolution. Geographical and scientific studies go to show that the biosphere permits life on earth due to high and low temperature. It is scientifically proved that layer of atmosphere surrounding the earth, which is full of air, is very vital for the sustenance of human beings. Life bearing layer is termed as biosphere.

The concept of ecology and environment would mean all physical things like water, air and land, 2nd set of living things include flora, and living organisms fauna, 3rd set is inter-linking the components of the same set as well as within those of other sets both vertically and horizontally. This is graphically explained below in
The aforesaid explanation is now defined by legislation, Section 2(a) of the Environment Protection Act, 1986 defines environment to mean:

Environment includes Water, Air and Land and the Inter-relationship which exist amongst and between water, air and land and human beings, other living creatures, plants, micro-organisms and property. The definition of environment according to Section 2(a) of the Act would include animate and inanimate objects and their inter relationship.

Thus, the ecological system mentioned above consists of both living and non-living components. The abiotic or non-living components of ecology, which are found in the soil, water and atmosphere, may be oxygen, carbon dioxide, water and minerals and organic materials, like fats, proteins etc. The biotic or living components of the ecosystem mean human beings and living organisms. The living organisms form food chain and food webs, as there is constant competition for food.
Pollution, its causes and effects:

Environmental pollutant is defined in Section 2(b) of the Environment Protection Act, as ‘any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment’. The definition includes solid particulate material whose presence in environment affects adversely the health of organisms.\(^6\)

The brief outline and figurative description of pollution, its causes and effects are shown below in Figure 1.1.
The decision of P.J. Patel\textsuperscript{7} and the above figure when visualised together go to depict that the causes and effect of pollution are such that if pollution remains unabated the entire State would face a very difficult situation.

Hazardous industries and non-hazardous industries have caused all around pollution, and thereby, have caused several health hazards. Co-existence with minimal damage is the call of the day. A host of such developments have ruined the world of the sweetness and charm of lives in this beautiful country. Mango orchards, gardens, pristine beachfronts have all been fouled. Pictures of dead birds and sea oysters, poisoned prawns, withered flowers and infants and the tender aged as well as the old and the young expectant mothers exposed to carcinogenic environment haunt the world. These factors made legislature enact new laws to check pollution and improve environment since last two decades, the High Courts have halted pollution by devising new and novel methods.

**Constitutional Mandates for betterment of Environment:**

The ball which was set rolling in the Ratlam Municipality case, thereafter in Rural Litigation and Entitlement Kendra case moved forward in the Bhopal Mass Disaster\textsuperscript{8} and the *Oleum Leak*\textsuperscript{9}. In 1988, the Supreme Court interpreted Article 21 of the Constitution to include the meaning of life, health, ecology and environmental safety\textsuperscript{10}.

The Indian Legislature started legislating for protection of environment after the Stockholm Conference, 1972. These legislations came to be interpreted by the Supreme Court and the High Courts under their powers. The legislature as well as higher courts made the International Environmental Law applicable to the Indian Scenario as per Constitutional Mandate. The
Government of India has consented to Judicial Legislation that is clear from the judgment of the Supreme Court in *Vishakha vs. Rajasthan*. On the basis of such directions the Legislature enacted laws for environmental safety. The Supreme Court and the High Courts have interpreted these legislations in letter and spirit by interpreting them so as to sub serve, the purpose with which the Acts were brought on the Statute books.

The fountainhead of all legal documents is the Constitution of India, which protects life and liberty of Indians. The Supreme Court after 1970 has broad based the concept of life coupled with liberty and living conditions, and interpreted Article 21 to fill the void where human liberty was at stake.

**PROTECTION OF LIFE AND PERSONAL LIBERTY** is embodied in Article 21. It states, "*No person shall be deprived of his life or personal liberty except according to procedure established by law.*" The Supreme Court reflecting the national and global concern for saving and protecting environment has observed:

> Enjoyment of life and its attainments including the right of life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can not be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc. should be regarded as amounting to violation of the Constitution."

In *A.P. Pollution Control Board vs. M.V. Nayudu*; (2001) 2 SCC 62 at 69, the court opined that the statutes add to the rights guaranteed in the
Constitution. The Supreme Court in the above, as well as in a number of other Public Interest Litigation matters evolved standards of protecting right to life\textsuperscript{15}. These pronouncements of the Supreme Court after 1980’s express a very deep anguish and concern for stopping environmental degradation. It can be observed in the study that the majority of decisions echo the spirit of the Indian Constitution. The Supreme Court has tried to maintain a very fragile and delicate ecological balance, which is highly endangered by human greed. The principle of basic Fundamental Duty embodied in \textit{Art. 51 A (g)},\textsuperscript{16} reads as follows: -

\begin{quote}
\textit{"to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures"}
\end{quote}

The Gujarat High Court in \textit{Narula Dyeing & Printing Works v. Union of India; AIR 1995 Guj 185}\textsuperscript{17} and \textit{P.J. Patel vs. State of Gujarat; 1995 (2) GLR 1210}\textsuperscript{18} has laid standards for environmental protection and sustainable development along with compensation for the victims of environmental degradation.

Constitutional Mandates have to be read in light of the Preamble of Indian Constitution. Social as well as economic democracy, apart from political democracy has been considered to be essential part of Indian democracy. It is the State, which has to make effective provisions for maintaining social and economic democracy. The Supreme Court has explained the concept of social democracy in \textit{Valsama Paul vs. Cochin University}.\textsuperscript{19}
It would be worthwhile to note the following observations of the Supreme Court in the case of *Kirloskar Brothers Ltd. vs. ESI Corporation*; (1996) 2 SCC 682. 20

"The Preamble of the Constitution of India, the Fundamental Rights and Directive Principles constituting trinity, assure to every person in a Welfare State social and economic democracy with equality of status and dignity of person. Political democracy without social and economic democracy would always remain unstable. Social democracy must become a way of life in an egalitarian social order. Economic democracy aids consolidation of social stability and smooth working of political democracy. Economic security and social welfare of the citizens are required to be recorded under rule of law. It should, therefore, be the duty of the State to consider that the welfare measures are implemented effectively and efficaciously."

In this background the study revolves around the actions taken by the Supreme Court and the High Courts more particularly the High Court of Gujarat with the aid of legislations for the protection of the natural habitat, so that we may bequeath to our children the earth in the form we have inherited from our ancestors.

The hypothesis set up and focused for research is: This thesis argues that Higher Judiciary (High Courts and Supreme Court) with the aid of legislative mandates, have become largely instrumental in protecting environment and in decreasing the environmental Degradation / Pollution.

In short the study argues that with aid of legislative mandates the Higher Courts have halted environmental pollution and improved environment. The
main objective of the present research is to focus on the cases raising issues of environmental degradation and safeguarding the environment decided by the Supreme & High Courts (more particularly the High Court of Gujarat). In a developing society like that of India, Courts have discharged the following functions: -

(i) Balancing competing claims of environment protection as well as unhampered development;
(ii) Undertaking where necessary the exercise of judicial-review of administrative actions;
(iii) Ensuring proper and adequate observation of Article 51A (g) of the Constitution with aid of Article 21 so as to prevent violation of Right to Life, by the Government as well as the Corporations and industrial houses.

How far the Supreme Court, State High Courts, (especially the High Court of Gujarat) have succeeded in their task in saving the environment? Are there loopholes in the present legislations? or Is the law enforcement weak? Are the enormous crises noticed in various areas like water pollution, air-pollution, noise pollution, and dangerous ecological imbalance due to developmental activities only? Can environmental degradation be stopped or prevented only through legislations and the Court intervention? These are some of the questions which have been attempted to be answered in this dissertation.

The dissertation consists of 10 Chapters.
Chapter - I gives general review of the study comprising of meaning of environment, Hypothesis, work plan, and the relevance of the study, along with the methodology.

Chapter II deals with the problem of environmental degradation, which was becoming grave both at the International and National levels. The legal aspects and United Nations Charter on which the later development of environmental jurisprudence in India is based are discussed in 12 sub-topics, starting from the genesis of United Nations. The major Declarations/Conventions having global impact in administration of Justice Delivery System in India are discussed in detail. The Secretary General's Millennium report on environmental substantial development issued in 2000 is discussed in this revised thesis. Adopting and implementing of principles evolved at the Declarations/Conventions by Indian judiciary and the legislature are discussed. The links between International law and national law as applied in Indian Courts are revised and are specifically drawn to show their authoritative applicability.

Having considered the importance of Conventions and the Principles adopted at the International Conferences, it is necessary to discuss the legislations pertaining to environment in the Indian scenario, till 2004. These are divided into 5 eras and dealt with in chapter III. This chapter also deals with the environmental ethics as prevalent in the ancient Indian society. Constitutional provisions embodied in Article 21, Article 48 A and 51 A (g) of the Constitution are discussed. Constitutional provisions under the law of Writs and the development of Public Interest Litigation are considered in detail. The chapter deals with comparison of major pollution control laws in India. The ancient monuments being of prime importance and the
legislations for safeguarding them so as to protect ancient heritage including the Taj heritage have been considered in this Chapter (Revised).

The legal framework for controlling water pollution is contained in 11 sub-topics in Chapter IV. This covers from Vedic period to the recent decisions of the Hon’ble Gujarat High Court and the Supreme Court. It also deals with incidental provisions under other enactments for curbing water pollution.

While discussing the judgments of the Supreme Court and High Court of Gujarat, the choice of cases analysed is made and linked to the argument that the Courts with the aid of legislations have tried to halt water pollution and have tried to see that the water quality is improved. The Supreme Court and the High Court of Gujarat have tried to save water bodies. The Courts have tried to restrain people from carrying on hazardous industries polluting water bodies / rivers in Gujarat. The analysis of various decisions of the Supreme Court and the Gujarat High Court under criminal sanctions and Writ jurisdiction of the Constitution have been attempted to show that the courts have exercised supervisory role in curbing water pollution.

Legal regime for curbing air pollution and concept of atmosphere are discussed in Chapter – V, along with reverence for air in ancient times, kinds of pollutions, and monitoring and controlling methods to halt air degradation. The effect of air pollutants and their change in the atmosphere are considered in this chapter as well as the kinds of air pollutants, their sources and effects. The factors influencing atmospheric deterioration are analysed. The Gujarat scenario is considered in detail along with the action plan launched on 5th of June, 2004 for the city of Ahmedabad. The alternative legislations and judicial approach are analytically discussed.
Chapter - VI (Revised) deals with (a) Forests and (b) wildlife. Therefore, legislations for protecting wildlife and forests are considered in this Chapter. Forest and wildlife are connected with each other but they have been differently discussed, so that decisions under Central & State legislations can be discussed at length.

All these legislations were pre-Bhopal tragedy enactments. (The Environment Protection Act) Umbrella Legislation along with Constitutional Mandate to safeguard environment are considered in Chapter –VII. The rules framed under the Coastal Zone Regulation and provisions for Impact Assessment are considered. Gujarat suffered one of the worst of disasters in the year 2001, so the enactment of Disaster Management Act was brought on the statute book by the State of Gujarat in 2003, by following the decision of Gujarat High Court in *B.J. Diwan vs. State of Gujarat*, 2001 (2) GLR 1394\(^2\) which, highlighted the directions for appointment of Ombudsman.

The next chapter i.e. Chapter-VIII deals with enforcement agencies and their role in checking environmental degradation. The legislations for constitution of Boards, delegating powers of Boards and the functions of the Boards are dealt at length. The management of the Pollution Control Laws is analysed. The interpretation by the Courts, of various provisions and functions of the boards and Managerial Authorities, their working, and management have been critically analysed. A comparative study of all the major Acts dealing with enforcement agencies under environmental laws is discussed.

Chapter – IX deals with legislative and judicial approach for safeguarding health of humans and the living organisms, as well as Health hazards. The development of consumer environmentalism, Supreme Court and Gujarat High Court decisions are analysed.
Chapter - X deals with findings, concluding observations and suggestions. It gives exhaustive, comparative and critical analyses of the environment pollution control laws, judicial trends and institutional infirmities and suggestions for future studies to be undertaken for stopping degradation of pollution.

2. METHODOLOGY

The method used for carrying out this research is based on a systematic desk review of all the relevant literature available related to environmental jurisprudence. The data used has been collected from all available materials. In carrying out the study and research, all available literature on the topic under focus based on case - law material, legislations, legislative norms evolved through various Declarations and Conventions are considered. The writings of the jurists have been perused. The study and analysis of case law developed by the Supreme Court and the High Courts have been analysed. It has been a research approach combined with limited empirical study.

The basic material for research is drawn from the reported and unreported judgments delivered by the Supreme Court and the High Courts with emphasis on judgments of the Gujarat High Court in selected cases concerning environmental matters. The topics have been divided into various Chapters. The Constitutional Law, substantive legislations and procedural rules and the remedies have been examined to answer the hypothesis. Various websites were visited to access various materials. The development of the environmental jurisprudence in Indian Legal system has been analysed from various angles.
The committee reports, and the data collected from such reports and their observations are utilized to arrive at the findings. The method used is mainly experimental research, which includes the following:

a) Recognise the problem.
b) Identify and define the problem.
c) Formulate a problem hypothesis, deduce consequences and define basic terms and variables.

The method is systematic study of emergence of environmental jurisprudence in India. The referencing is based on the guidelines issued by the University of Bath, England\textsuperscript{22} based on the numerical system.

Books, Journals, Reports, Newspapers and the web sites are referred and perused during this study. While revising the thesis an extensive study of Legal Research and Methodology has been undertaken\textsuperscript{23} It would be worthwhile to note that the decisions are analysed from the angle of fundamental rights and the directive principles assured to every person by the Indian Constitution.

The dissertation examines how the Higher Judiciary is dealing with environmental problems under its extra ordinary jurisdiction and other powers conferred on it. The method of study comprises of broadly consideration of the aspects of environmental legislation as well as the role of the Court and the combined effort of both to halt environmental degradation / pollution.

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References:

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