ABSTRACT

The concern for environmental protection in India can be traced back to the period 320 and 300 BC. Our Constitutional commitment towards environmental protection and management of resources is very much enshrined in different Articles and Schedules of the Constitution. In the last three decades several legislations exclusively for pollution control and resources conservation and management have been enacted and special statutory bodies have been created for the effective implementation of these enactments. Eventhough there is a plethora of environmental legislations, many of these provisions remained on paper without much action taken by statutory authorities at the expected level due to obvious reasons.

In a developing country like India which is confronted with a host of problems when it took off to newer heights of industrial development especially in the eighties and nineties, the legal regime had to adjust itself to different kinds of demands of a socio-economic nature without damaging the existing resources. Inevitably, the growth of environmental law had to strike a balance between ‘development’ and ‘sustainable development’. This is a phenomenon typical of a ‘rule of law’ society, where law becomes a dynamic instrument of change for a better environment.

Eventhough the traditional role of judiciary is to interpret the law, due to dilution in separation of powers and change in the concept of State the judiciary has many a time made in-roads into the other domains of the Government by way of Judicial Activism with the object of promoting social justice. Eventhough we have elected members of the Assembly and Parliament to enact laws which may be for major changes, the gradual and systematic development of law can be accomplished by innovative judicial interpretation of law by Judges. So Judges play a great role in filling the gap.
In the modern India Environmental Jurisprudence has gone a long way in acquiring a very seminal importance, leaving behind the engraved British juristic notions as out-dated and insufficient. In the last more than a decade the trend has changed and the judicial policing is matched by new Activists stance and positive role especially after the Bhopal gas leak tragedy.

The Court accepted in principle that environmental laws have succeeded in unshackling and setting free Man's right to life and personal liberty under Article 21 of the Constitution from the clutches of common law theory or individual ownership. The Indian Judiciary has recently acquired the distinction of being a revered, feared and paradoxically the most criticized wing of the State.

The judgements pronounced by the Hon. Supreme Court of India and Hon. High Courts of Indian States viz. Allahabad, Andhra Pradesh, Bombay, Calcutta, Delhi, Gujarat, Gauhati, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Madras, Orissa, Patna, Punjab and Haryana, Rajasthan and Sikkim in the environment related cases in the last 25 years have been collected and an attempt was made to analyze case by case to find out the active role played by the judiciary in the environmental protection, preservation and conservation of ecology. The judgements were scanned to find out how far the Judiciary innovatively interpreted the Constitution and evolved various principles and doctrines in the matter of environmental protection.

**An analysis of the judgements clearly reveal**

- The attitude and concern of the judiciary for protecting the environment has ensured a new kind of environmental justice and morality in the provisions of the Constitution and the declaration of the judiciary declaring the Right to a clean and healthy environment as a basic, fundamental and human right enforceable in the administration and management of environmental justice.
The Courts have expounded new principles and doctrines viz. principle of sustainable development, polluter pays principle, inter-generational equity, public trust doctrine, principle of absolute liability, precautionary principle etc. Also invented innovative remedies and carved out new strategies for resolving complex environment management issues and the matters of resource conservation.

At the beginning the Court was little bit hesitant and reluctant to interfere in the administrative domain. But after silent valley and Bhopal disaster the judiciary has evolved an indigenous juristic techniques i.e. expanding the locus standi in public interest litigation cases, epistolary jurisprudence of treating mere letters as writ petitions, appointing its own committees and commissions to find out the facts etc. and thus the Courts have an hard look at the environmental decisions. In fact Public Interest Litigation has been used as a convenient tool to create a new environmental jurisprudence in our country.

The Courts shed off the *laissez faire* approach in the judicial process particularly where it involves a question of enforcement of the fundamental rights and forged new tools, devised new methods and adopted new strategies for the purpose of making fundamental rights meaningful for the large masses of the people.

The Court expanded the definition of the 'State' for the purpose of fundamental rights and extended the same to the local authorities, bodies created by statutes and any entity acting as an instrumentality of the agency of the State.

Through judicial activism the Court made the non-enforceable Directive Principles of State Policy into an enforceable one.
The Courts through judicial activism energized the slumbering law of public nuisance into a powerful agency for environmental protection by expanding the ambit and scope of Article 21 of the Constitution, Right to life includes Right to a clean and healthy environment otherwise Right to a wholesome environment.

The Court expressed the cause of environmental protection by making sustainable development a legal obligation and constitutional mandate for Governments.

The Supreme Court in consonance with the development in the international arena in the field of environmental jurisprudence and the legal principles and decisions developed by Judges and Jurists in other parts of the world examined and applied in such a way suited to our socio-economic conditions.

The pre 1990 judicial trend clearly introduces Polluter Pays Principle (PPP) in Indian Environmental Jurisprudence thereby linking right to clean and unpolluted environment with right to life under Article 21 of the Constitution. The post 1990 judicial trend gives a much better scenario of the Indian development model and environment related issues for coming generations.

The Courts through judicial activism solved several complex eco-problems and made non-responsive and unaccountable administration and management into an accountable one especially to those affected by unchecked and unbridled developmental mania.

The Court invented innovative procedures for speedy trials leading to effective directions.
The Supreme Court not only resolved the conflicts between development and environment and settled disputes but also pronounced various guidelines to every authorities and avoided disputes altogether in future and advanced remedial objectives.

The Courts assumed an advisory role in pursuance of its own directions to the authorities to anticipate and eliminate the causes of environmental damage and degradation.

The Courts while resolving the conflicts between development and environment, never failed to protect the traditional values and ideas which have special values in the field of environment such as respect to all forms of life, trusteeship, community interests and common property resources.

The three goals of the law and justice namely prevention, punishment and compensation are very much followed in the environment related cases.

Whenever any environmental problems brought before the judiciary, the Court always kept in mind the Constitutional mandate contained in the Articles 21, 48-A, 51-A (g) of the Constitution and discharged its responsibility in a more responsible way. The judiciary emphasized the environmental concern as a human right.

The Supreme Court observed the function of bridging the gap and narrowing the gulf between what the law is and what the law is required to be.

The Courts never entertained any malicious and frivolous litigations.
The Courts being aware of the financial constraints and obstacles that environmentalists face in obtaining authentic and relevant information and documentation often relaxed the doctrine of *laches* in environmental actions brought in the public interest.

The Courts at the appropriate time intervened and stopped actions of the enforcing authorities, under the guise of action if they overstepped the limits of their jurisdiction in a spirit of environmental enthusiasm.

The Courts went to the extent of giving more importance to the substance ignoring the technical objections with a view to enforce corporate criminal liability. These decisions strengthened the hands of the enforcing agencies and increased the morale of the industrialists and enforcing agencies.

The activist judiciary has time and again applied many of the international principles to promote ecological integrity: conserve and protect rare species of flora and fauna; secure tribal interests from arbitrary exercise of administrative powers and infuse a sense of custodianship and trusteeship in resource management both in the policy makers and in the enforcers.

The judicial policing have viewed a new eco-friendly environment jurisprudence which amply reflect the goals of eco-justice, human dignity, human concern, human right, human health, right to live and maintain balance between Man and Nature.

The judiciary has shaped and molded the principles of tortuous liability to suit the peculiar socio-economic situations of a developing country.

The judiciary has gone to the extent of wearing the Ombudsman's mantle in their activism and filled the gaps in law by making for the lethargy of the legislature or the inefficiency of the executive to protect the environment.
The pragmatism and ingenuity with which the environmental laws implemented and environmental consciousness created by the Courts clearly show Judicial Activism.

The various judgements given by the Supreme Court and High Courts focuses on "Judicial Engineering" on such issues and problems concerning environment which is basically infused by the constitutional values and community needs.

Judicial Activism sometime became the forerunner to the legislations even in drafting policies and implementing the programmes.

From the Judgements it is very much evident that Supreme Court added new dimensions to the Rule of law by devising new techniques to prevent abuse of executive discretion and to reach socio-economic justice especially to the under-privileged, downtrodden and weaker sections of the society.

It is very much clear in the judgements that the Supreme Court developed five different types of commitments namely:

- Commitment to participative justice;
- Commitment against arbitrariness in State actions;
- Commitment as regards just standards of procedure;
- Commitment to immediate access to justice and
- Commitment to rights mobilization in the real sense.

The emerging judicial approach through Judicial Activism undoubtedly establishes the interconnection between environmental law and morality.
For a good institutional development of democracy Judicial Activism is very much essential. Judicial Activism characterized by moderation and self-restraint is bound to restore the faith of the people in the efficacy of the democratic institutions which alone, in turn, will activate and accelerate the executive and the legislature to function more effectively and efficiently under the vigilant eye of the judiciary as ordained by the Constitution. The judgements clearly reveal that judiciary has travelled from ‘Committed Judiciary’ to ‘Activist Judiciary’. Through Judicial Activism, Courts played an enormous role in the emergence of Environmental Jurisprudence.

Suitable suggestions have been given to strengthen the existing environmental legal regime and to improve the efficiency of the implementing agencies to control pollution violations and prevent further degradation of the environment.

Suggestions have been made to codify the enlarged fundamental right of ‘Right to clean and healthy environment’ under Article 21 of the Constitution, to draft a policy and law for the Resettlement and Rehabilitation of displaced persons, creation of special authorities for compensation of victims in industrial disasters, need for enacting separate legislation for the protection of ground water and wet lands, need for suitable standards setting, necessity of propagating Ecomark, necessity of drawing zoning atlas and carrying capacity of the areas, legislation to control non point source pollution, general suggestions to improve the policy and law and finally how environmental impact assessment can be made into a meaningful one for a viable environmental regime with balanced and sustainable growth of industries.

The limitations of the command and control regime and how far the economic tool and Alternate Dispute Resolution Methods can be employed in solving environmental problems is also discussed.