CHAPTER 1

INTRODUCTION

1.1 LAW - GENERAL

The law is predominantly a mechanism for social control and the preservation of value over a period of time. Relationship among human beings in social, political and economic activities are ordered by custom, tradition and more formal rules which constitute the law. Prof. Edgar Bodenheimer says "Law being the cement which holds the social structure together must intelligently link the past with the present without ignoring the pressing claims of the future."\(^1\)

1.1.1 Role of law in changing the society

Law is not merely a prescription or authorized guidance or the directions to human conduct by virtue of a coercive mechanism at the command of the State. It is also a means of social engineering and a part of progressive civilization and conservation of culture. The concept of law is directed towards social change and strengthening the national unity. All over the world it is recognized that it is not a mean of enforcing static authority but an expression of man's wisdom and self discipline through which societies can resolve their internal anomalies and improve their capacity to the challenge of time and change in world order. The functional jurisprudence looks upon law as an instrument of social change and considers not merely a litigation tool but a management tool.
In a fast changing social and economic order, law cannot remain immutable. It must change with changing needs of the time to subserve the national interest. The world social change acquires an extension of its meaning. It is not merely a replacement or change of old by new. It becomes a reconstruction of life, change in man's attitudes and values of existence in a wider context. If man has meddled with natural environment, causing damage and injury to human life, by changing his methods and techniques of organization, due to inadvertent callous disregard to natural environment, then the social change means a reversion, a restitution and a restoration in order to repair the damage done to human life and loss caused to human comfort. Then social change means a therapy for re-establishment of health and sanity of human life.

In this regard judges as law makers and law interpreters play very important role. Liberal judicial interpretation, according to the spirit and not according to the letter of the law, has an important function in giving expression to the "felt necessities of the time". Effectiveness of social legislation depends upon the judicial attitude, its sensitivity and its promptitude with which law is made serviceable to the needs of contemporary society.

1.2 ENVIRONMENTAL LAW

Rodgers defines environmental law as "the law of planetary housekeeping, protecting the planet and its people from activities that upset the earth and its life-sustaining capacities". Environmental law therefore, relates to the management of the environment and strategies for tackling the problems affecting the environment. The preventive and remedial measures to meet the hazards of pollution are the major concerns of environmental law. This includes the natural environment, namely physical conditions of land, water and air and the human environment namely health, social and other man-made conditions affecting human beings on earth.
Environmental Law involves conservation of natural resources for their better use by the present day society as well as by future generations. It also governs the interrelationship between natural resources, human beings and other living creatures.

1.2.1 Need for the Environmental Law

Environmental law is very much required not only to balance the human interests for fruitful purposes but also to work for the maintenance of natural and physical environment by preserving ecological balance in its natural form and functions, without which survival of human being is impossible. Environmental law is an instrument to protect and improve the environment and to control and prevent any act of pollution or an act likely to cause pollution.

1.2.2 Goals of the Environmental Law

The Rule of Law in the present day context not only establishes the principles and prohibitions but also include the use of other forms of interventions such as incentives, disincentives and the creation of management tool. Thus to provide effective protection of the environment, the approach to be adapted should not only be on scientific findings and technological means but also on the basis of economic, social and cultural realities. Environmental law should cope with the necessities and articulate the environmental policies and programmes. Environmental Law

* must preserve, protect and conserve the natural environment

* must provide institutional mechanism for the allocation of natural resources and their use in developmental processes.

* must set up environmental standards.
★ must provide sanction and prescribe punishments for the violation of the same.

★ should device an institutional anticipatory Environmental Impact Assessment method and mechanism for the developmental projects and industries that are likely to affect the environment.

★ must make mandate people’s participation in the decision making processes in environment related matters.

★ must provide adequate compensation to the pollution victims on the basis of polluter pays principle.

### 1.3 ECONOMIC DEVELOPMENT VIS-A-VIS ENVIRONMENTAL DEGRADATION

Economic development through industrial development is an imperative need of the day. The strive for a better standard of life and multiplication of needs have accelerated the pace of development to the extent of depletion of natural environment and finite natural resources, surpassing its regenerating capacity. In the name of development man has gone to the extent of threatening the life support system of human biology and Nature's ecology. The scientific development has gone to the extent of even moulding the Nature in its own way. These developmental processes have their appalling arrogance both towards nature and on our traditional culture. The need for the development is so fast due to population explosion and economic pressure. The over exploitation of finite natural resources, industrialization, urbanization, change in the pattern of life style due to socio-economic and political development, sharp shift from the traditional culture to consumerist culture are some of the major factors contributing to the environmental degradation all over the world. The limited resources and unlimited wants have upset the equilibrium between the environment and development.
Environmental problems during the last two decades have become a matter of not only national concern but of international and global importance. Protection and preservation of environment is absolutely essential for the survival of mankind is an established truth. Degradation of environmental quality is very much widened due to increase in the pollution, loss of vegetation cover and biodiversity, accumulation of excessive chemicals released from the industries into the biotic and abiotic components of the ecosystem and food chain, growing risks of environmental accidents and finally posing a great threat to the life support system itself.

1.4 GLOBAL CONCERN FOR ENVIRONMENTAL PROTECTION

Environmental degradation has drawn the attention of the world community and the realization started that maintaining ecological and environmental equilibrium is very much essential for the very basic survival of the mankind in the planet. The international efforts to protect the natural environment date back to 1870 when Switzerland tried to establish a regional agreement to protect the nesting sites of migratory birds. But the move to internationalize environmental law making for the protection of environment did not gain serious momentum until the 1970s. Since then, Governments have adapted more than 180 treaties covering environmental subjects of shared concern viz., acid rain, climate change, ocean pollution, protection of endangered species, hazardous waste management, ozone depletion, conservation of biodiversity etc.

The Stockholm Conference (1972)\(^3\) made the world community environmentally more sensitive. It provided an action oriented approach for the protection, preservation and conservation of the environment. Subsequently the Rio Conference (1992)\(^4\) has added a new dimension and pace to the environmental protection at the global level.
1.5 INDIAN ENVIRONMENTAL SCENARIO

The concern for environmental protection can be traced back to the period between 321 and 300 B.C. The ancient Indian law on environment protection is found in Kaudilya's Arthasasthra. It was the Dharma of each individual in the society to protect the Nature. The cultural and religious heritage of India show a deep concern for the protection and preservation of environment.

A survey of early legislations enacted during British period indicate the nature and levels of governmental awareness towards environmental issues.

In the Independent India the Constitutional commitment towards environment protection and management of resources have been enshrined in various Articles and Schedules of the Constitution. Article 48-A imposes an obligation to the State to protect the environment and Article 51-A (g) imposes a fundamental duty on every citizen to protect the environment.

In the last three decades a plethora of legislations exclusively for the protection of environment and management of resources have been enacted by the Parliament. A separate Ministry, Ministry of Environment and Forests and statutory bodies like Central and State Pollution Control Boards have been created to implement these laws effectively.

Inspite of so many enactments made to protect the environment, they have not been proved to be as much effective tool as expected to solve the environmental crisis efficiently and effectively. The Indian political system also contribute to environmental degradation. Generally democratic polity is more responsive to environmental problems than the authoritarian regime. The popularly elected governments mostly adopt short term populist measures without minding of their long term impacts on the environment.
With the result short term stability is prime than long term stability and welfare. In such a system it is very difficult to persuade the Government to take unpopular measures that would benefit future generations and strengthen the long term stability.

Now it is felt, a social change is very much necessary to revert, repair, restore the injured ecosystem on one hand and prevent further degradation on the other. Actually it casts three fold obligations to the State to control pollution and preserve the environment. First and foremost, the State being a welfare state is under heavy obligation to enact adequate legislations to control pollution and maintain ecological balance. Secondly the judiciary as an umpire and guard of society and custodian of the Constitution is obliged to maintain balance between social justice and justice to Nature. Finally people are under pregnant obligation to have environmental education to make practical and effectual contribution for preventing and controlling the environmental pollution.

1.6 ROLE OF INDIAN JUDICIARY

India confronts severe environmental constraints due to limited natural resources combined with high population pressure. The country has 2% of the world's land maps with 16% of the world's population. The decision of Indian Courts are very important as the jurisdiction of the Indian Supreme Court wield 1/6 of the world's population. The Indian law is for more than casual interest to the international community.

In spite of several State and Central enactments and wide powers to the enforcing agencies conferred by the law to effectively enforce, the apathy and inactivism of the executives some time make these enactments toothless tigers. The industrialists and entrepreneurs for their own self
interest started exploiting the nature to enhance their profits which ultimately led to the irreparable damage to the environment and ecology.

The Constitution of India has been regarded as less of a constitutional document and more of a unique charter of human emancipation through economic and social justice. The Constitution aims at the realization of social and economic justice in a framework of Liberty. It is a character of change not an apologia for status quo. A living constitution cannot bind down future generations. No human institution can survive if it resists the future. While upholding the basic values the law must enable political institutions to be resilient and responsive to a new situation.

It would be totally wrong to suggest that the Constitution was originally devised to perpetuate bondage from which the nation had just emerged. Refashioned over the years, the single minded intention has been to perfect it into a true instrument and vehicle of liberty and progress for the masses of the Indian people and not for a small elitist and predatory minority.

The role of the judge in reflecting this motivation and impulse was manifest, regardless of who was the ruling power and what its ruling ideology.

Eventhough the traditional role of judiciary is to interpret the laws, due to dilution in separation of powers and change in the concept of State, the judiciary has many a time made in-roads by way of judicial activism into the other domains of the government with an object to promote social justice. 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 finite natural 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. The judiciary play a key role in balancing functions between ‘development’ and ‘sustainability’ as well as between ‘economic exploitation’ and overall ‘intergeneration equity’.

Environmental degradation is a social problem and it has tremendous impact on the society. Considering its importance in the society the law courts risen to deal with the situation as it demands in the present day to day situation. It is a well settled principle that socio-economic development and its condition can not be ignored by law courts. Ecological imbalance is a social problem ought to be decided by the law courts since benefit of the society is the prime consideration of law Courts.6

The Indian judiciary especially the higher judiciary namely Supreme Court and High Courts through their expounded ingenious principles interpreted the Constitution innovatively and propounded new remedies to counter the issues of ecology and its preservation and conservation. It spread new light on the Constitution providing great constitutional protection to the general public from the vagaries of bureaucratic culture. Court took up its basic tenets of Environmental jurisprudence from the Constitution to enforce and implement environmental enactments.

The Courts played an enormous role in bridging the gap and filling the lacunae in the existing laws and lapses in the implementation by way of introducing several principles and doctrines like Polluter Pays Principle, Principle of Absolute Liability, Public Trust Doctrine, Sustainable Development etc. The Courts invented innovative remedies and carved out new strategies for resolving complex environment management issues and the matters of resource conservation.
The Indian judiciary have shown dynamism in evolving 'Right to a wholesome Environment' is a fundamental right by expanding the scope of Article 21 'Right to Life'.

The pre 1990 judicial trend introduced polluter pays principle in the Indian Environmental Jurisprudence thereby linking right to clean and unpolluted environment with right to life under Article 21 of the Constitution. Whereas the post 1990 judicial trend gave a much better scenario of the Indian development model and environment related issues for coming generations.

Whenever any environmental problems brought before the judiciary, the Court always kept in mind the constitutional mandate enshrined in the Articles 21, 48-A and 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.

A survey of the decisional laws or the case laws of the Supreme Court and the High Courts in the environmental cases unequivocally reveal and establish that the 'Rule of Law' has become the Constitutional norm and the Court always insisted fairness in every aspect of the exercise of the State power; as the Rule of Law is the effective standard for judging any administrative standards.