CHAPTER 2

SIGNIFICANCE OF THE RESEARCH

2.1 PURPOSE OF THE STUDY

The study of the research includes the Indian environmental policy analysis with the constitutional, legislative provisions and judgements delivered by the Hon'ble Supreme Court and High Courts. To what extent the judiciary played an active both proactive and reactive role in protecting and preserving our environment together maintaining the rate of development without compromising the one for the other has been analyzed. Though judicial activism is not a new concept or phenomenon in India still it is of very recent in the emerging area of environmental jurisprudence. Most of the time it forms an integral part of the solution for protecting and preserving the environment and preventing and controlling the environmental pollution.

2.2 SCOPE OF THE STUDY

The study is restricted to the environmental legislations pertaining to India. Eventhough emphasis was given to the Indian environmental legal regime, international agreements, covenants, declarations, protocols in which India is a signatory, was also studied and quoted wherever appropriate and the role played by India in the international and global level for environmental protection have been appreciated. The various landmark judgements pronounced by the higher judiciary have been studied in detail, as these judgements become part and parcel of the environmental legislations in the form of case laws or decisional laws.
2.3 HYPOTHESIS

To find out the lacunae in the existing pollution control legislations, suggest suitable measures to fill up the same and improve the efficiency of the law implementing agencies to control pollution violations and prevent further degradation of the environment.

To analyze the attitude of the judiciary case by case together with various legislative provisions connected with the environmental pollution control.

2.4 OBJECTIVES OF THE STUDY

- To trace the origin and development of Indian environmental legal regime in the International context.

- To examine the different environmental laws and how far the environmental policy has been articulated in the same.

- To examine the policy and legislative provisions pertaining to environmental protection, preservation and conservation of ecology within the existing parameters of the Indian Judicial System.

- To examine the efficiency and effectiveness of the environmental legislation within the ambit and scope of Indian judiciary.

- To trace how the higher judiciary viewed the environmental problems and interpreted the Constitution innovatively - from a simple public nuisance under s. 133 of the Cr.P.C. to 'Right to Clean and Healthy Environment' - an integral part of the 'Right to life' under Article 21 of the Constitution.
To examine whether the legal regime created for the protection of environment is self sufficient.

To examine how the higher judiciary played key role and interpreted the non enforceable Directive Principles of State Policy contained in the Chapter IV of the Constitution into an enforceable one with special reference to Articles 48-A and 51-A (g).

Analyze the judgements - how far they are active both proactive and reactive, positive, negative, prohibitive, punitive and compensatory.

Analyze the different innovative 'principles' and 'doctrines' pertaining to environmental justice pronounced by the Higher Judiciary and their relevance to Indian condition.

To examine how far the Supreme Court evolved and injected different public moralities namely doctrinal, procedural, and remedial into environmental justice.

To examine how far the Court enunciated the principle of 'Good governance' through directive and suggestive techniques.

To study the feasibility of judicial activism in the present socio-economic and political conditions of our country.

To study how far the judiciary accelerated the process of constitutional dynamics through its innovative interpretation of the Constitution in the process of upholding the credibility of democracy.
To probe the role played by judiciary in performing educative functions by infusing environmental awareness to the people through its illuminating judgements, evolving new jurisprudential techniques of 'environmental jurisprudence' and bridging the gap between law and enforcement.

To evaluate how far these judgements integrate the promises and problems of human rights approaches to environmental protection.

2.5 OBJECT OF THE STUDY

The problem of environmental pollution in India is gaining momentum and various strategies are being adapted to prevent and control the pollution. Apart from educating the masses about the impact and importance of environmental pollution and introducing effective engineering methods to control and prevent pollution, the enforcement strategy play a significant role in both preventing and controlling the environmental pollution.

The legal strategy by means of constitutional, legislative and judicial action particularly by Courts through Judicial Activism had assumed a significant place and serious dimension at present in India. The 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, the downtrodden and weaker sections of the society.

The major object of the researcher is to highlight the significance of judicial activism with reference to environmental legislations in the Indian context. Secondly to enlighten the significance, pragmatism and ingenuity with which the environmental legislations have been implemented
and the environmental consciousness created by the Court through Judicial Activism. Eventhough there is a wild allegation by a section, that judiciary is stepping into the domains of legislative and executive, otherwise overshooting its limitations, however from the judgements it pronounced, principles and doctrines it evolved, it is very much clear that it rendered yeomen service in the process of evolving environmental jurisprudence and made sustainable development a constitutional mandate and legal obligation.

The main object is to analyze how far the judiciary through its illuminating and revolutionary judgements developed a good and stable environment

- by drawing programmes for environmental protection, conservation and restoration of ecological heritage and development and propagation of eco-friendly technologies for sustainable development
- by involving the Non Governmental Organizations, women and various sections of the society in the environment related programmes and activities.
- by taking the functions of the executive whenever there is a failure in the implementation by the executives.
- by introducing transparency on the issue of clearance to projects by government.
- by identifying the strength and weakness and filling the gaps in the laws.
- by opening the gate way for a speedy and inexpensive legal remedy
2.6 RESEARCH METHODOLOGY

The research is of conceptual analysis. Doctrinal methodology has been adopted. For the purpose of study original texts, documents, legislations and judgements were collected and studied in detail. An attempt has been made to analyze these documents with special emphasis to the judgements pronounced by the higher judiciary in the environment related cases. After due analysis with reference to the objectives of the study theoretical generalizations, legal rationality and value judgements have been made with due reasoning.

Cases have been chosen so as to represent judicial observation in favor and against the known interpretation. Inferences have been drawn from arguments and counter arguments and presented with researcher’s comments wherever possible.

Cases from the year 1972 to 2000 as reported in the leading Indian law journals viz.

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have been collected for study.
Further news items and reports from leading national dailies and leading news magazines with reference to the Research have been collected, studied and utilized for the purpose of research work.

2.7 LIMITATIONS OF THE STUDY

Since the topic chosen was very vast and wide with broad scope, the researcher limited his study to constitutional, legislative provisions and judicial decisions only.