CHAPTER - VI

CONCLUSION

In the judicial process of adjudicating cases related to industrial relations and environmental protection, the Apex Court has to resolve three sets of conflicting interests. They are the fundamental rights of the mighty industrialists, who are negligible minorities but whose hazardous industrial activities pollute the environment and thereby are in conflict with the majority interest of the community. Secondly, the statutory right of workers’ right to work in such industries which is affected due to relocation or closure of industries. Thirdly, the overriding interests of the community over environment against the statutory rights of workers and fundamental rights of the employers. The rights of industrialists even though fundamental, have been subjected to restrictions, which are reasonable. The emerging environmental laws started imposing additional liabilities under reasonable restrictions. The industrialists are liable to the workers and the environment at large. Industrial jurisprudence enumerates employers’ liability to workers. Environmental jurisprudence imposes industrialists’ liability to the community.

In consonance with the preamble of the Constitution and the directive principles of state policy, the Supreme Court right from inception is labour friendly. In the early decades of the Republic it was more lenient towards property rights. Later on its balance tilted towards workers welfare in case of conflict of interest between the workers and employers. It reached its pinnacle in the Bangalore Water Supply case.

There is obviously no uniformity in the Apex Court’s approach in dealing with the rights of affected workers. It adopts different standards, one standard for workers working in hazardous industries, one for those in non-hazardous industries and yet another for those in rogue industries. The finding of this research throws light on many social security verdicts of the judiciary. It is noticed that there is a noticeable tilt in the approach of the Supreme Court from a pro-labour to a pro-employer and pro-environment.
This leaning of the Apex Court was revealed in *Tharun Bharat Sangh* case. While discussing the prioritisation of interests, the Supreme Court in this case, incorporated the views of an American Judge on this issue, whereby the judiciary, “placed Government above big business, individual liberty above Government and environment above all.” Its stand on giving importance to environment is obvious.

Regarding the differing approach on worker’s rights, scholars opinion on the ‘tilt’ can be accepted only as far as workers rights in non-hazardous industries are concerned. But regarding the rights of workers in hazardous industries, the Supreme Court’s pro-labour stand is unmistakable, in spite of misgivings. These are the facts to substantiate the findings of this research work in this regard.

When industries face closure due to environmental reasons beyond the control of employer, as per the existing statutory provisions, workers are entitled to get three months wages as retrenchment compensation. But the Court orders the employers to pay such workers, ‘six years wages’ as additional compensation along with the regular retrenchment compensation. The employers are compelled to give willing workers one year additional wage as ‘shifting bonus’ to enable them to re-settle in the new premises. For those workers unwilling to shift along with the industries, the employers are ordered to pay ‘one year wage’ as additional compensation along with regular retrenchment compensation. What ought to be treated as ‘lay off’, is converted by the Supreme Court into ‘active employment’ and full wage is provided during that period.

Interests of worker’s working in industries facing closure due to reasons of environmental consideration are protected by the Court. The Supreme Court in *Rural Litigation Kendra* case, directed the Government to employ the terminated workers in the afforestation activities of the forest. In *T.N.Godavarman* case the Court directed the employers not to terminate the services of workers in the timber industry and to pay them full emoluments and that they shall not be retrenched. The Apex Court’s soft attitude towards the workers is unmistakable here. If this is not pro-labour, nothing else is.
The powerful Articles 21 and 32 which are used for community’s welfare are the means by which the Supreme Court decides the rights of workers working in hazardous industries, whereas for those workers in non-hazardous industry it decides under Article 136 of the Constitution only by way of appeal. The seemingly paradoxical view of the Supreme Court has its own rhythm which beats to anthropocentric tunes.

In jurisprudence, rights and liabilities are correlative concepts and employers are liable to the workers and to the community. In industrial relations, rights of workers are liabilities of employers. In environmental laws, community’s interest in turn become employer’s liability. To provide indigenous judicial solution to environmental problems by adding the global inputs, is the aim of the judiciary. This trend commenced even prior to the introduction of Environment Act, 1986. The existing environmental laws are mainly penal in character and prescribe penalties and punishments which are not commensurate to the crime. Money power, muscle power, judicial delay etc., effectively act as speed breakers at various stages. Major threats to environment like climate change, depletion of natural resources, entropication of water resources, global warming and population explosion were some of the major factors which necessitated the Supreme Court to look deeply into the liabilities of eco-ciders. To overcome all such problems, it innovated new measures and techniques for speedy justice and to send strong warning signals to eco-ciders. Some such measures taken by the Court in its war against environmental pollution and eco-ciders, are admitting public interest litigation under Article 32, allowing evidence of amicus curiae, appointing expert scientific and technical committee to give accurate facts, appoint monitory committees to supervise the implementation of its orders, invoking writ of ‘continuous mandamus’ etc.

Orders and judgements were made applicable not only to parties but to similarly situated persons, who are all deemed to have been given notice by wide publicity to the environmental issues through mass media. Creeping jurisdiction was frequently invoked. Article 21 was interpreted to accord community overriding rights above everything. Though fundamental right to carry on industrial activities was accepted by the Court, it included more liabilities to the existing ones. It insisted that without
adequate safeguards, no polluting industry has the right to exist. Thus it insisted on duty first before the employers can claim their right. For effective enforcement, the Supreme Court constituted ‘Green Benches’ in the High Courts and polluters were put under scanner.

Supreme Court brought even legal entities like companies and private industries under the ambit of Article 12, so that their infringement of individual’s fundamental rights could be questioned through writ jurisdictions under Article 32 and 136. In the Rattlam case, the Apex Court upheld the orders of the magistrate and directed the municipal council to provide sewage facilities to the suffering people under the then available Indian Penal Code and Criminal Procedure Code. Two dimensions are revealed in this case. One is interpreting the substantive law to be in tune with the changing times. Secondly, the procedural aspects are interpreted to give wide scope for the protection of environment. The Supreme Court prophesied that one day environmental matters would also be considered under torts. True to it’s prophecy in Shriram Fertiliser case, Oleum gas leak and its damage was brought under tortious liability.

This case set another precedent by admitting environmental cases under Article 32 by way of public interest litigation. The substantive and procedural aspects of law were discussed in this case. In substantive aspect, the common law principle of strict liability was improvised and an indianised version called ‘absolute liability’ was laid down. Remedies to tortious liability were brought directly under fundamental rights and enforced under Article 32, hitherto not known in the writ jurisdiction of common law tradition. In procedural aspects many novel features like dilution of locus standi were added.

Two Constitution benches – Shriram Fertiliser case and Charan Lal Sahu’s case, considered the question of treating a private concern as a state under Article 12 in order to make them liable to pay damages under the concept absolute liability under Article 32. This moot question that was left undecided by two Constitution benches was decided by a division bench in the Enviro-Legal Action case, where the question of punishing rogue industries cropped up. The Apex Court also thought seriously about
evolving norms and principles for determining the liability of large scale enterprises, especially those manufacturing hazardous products. The true scope and ambit of Article 21 and the jurisdictional basis of Article 32 of the Constitution were also discussed in this case. Regarding the closure of hazardous industries, it wanted the Government to evolve a national policy for the location of such industries and prevent pollution.

As the judiciary has been adopting ‘the contemporaneous theory’ of interpretation, it invents and discovers innovative doctrines and applies them to the Indian factual situations. International doctrines and principles found reflection in the interpretation of Article 21 by the Supreme Court. Of all the concepts, ‘sustainable development’ caught the eye of the Indian judiciary, as in it they could see the cure for many environmental ills. The Court adopted this concept, inducted and combined it with indigenous ideas and higher thoughts to create extra-ordinary pan-Indian medicines to stall environmental degradation, halt the progress of the eco-ciders and also take them to task. Sustainable development implies that while giving importance to environment, other development should not be marginalized. Developing countries including India fought for it in the international summits so as to retain the anthropocentric nature of international declarations. To developed countries, sustainable development insists on an eco-centric approach since they have already polluted the earth through development. To developing countries, it allows an anthropocentric approach since they have to balance environment and development.

Sustainable development and its core doctrines, which are just evolving principles, are to be analysed in the context of eco-centric and anthropocentric approaches. Their meanings are still vague and uncertain. Even the International Court of Justice has recognised them as principles only now. The environmental declarations are considered as ‘soft law’. In application of these laws and imposing obligations ‘the common but differentiated responsibilities’ principle prescribes varying standards of responsibilities on developed and developing countries. Accordingly, developed countries have enhanced responsibilities when compared with developing countries. International environmental declarations prescribe principles and provide guidance to nation states. States may, according to their ‘capabilities’ and ‘needs’, incorporate such principles in their domestic laws by making legislations and developing countries may
incorporate lenient stipulations in their environmental legislations on the basis of the concept of ‘common but differentiated responsibilities’ Therefore, sustainable development emphasises eco-centric approach to developed countries and permits developing countries to adopt an anthropocentric approach. India, a pioneer, in environmental protection has been enacting necessary environmental Acts from time to time. The Constitution was immediately amended after the Stockholm Declaration. India is one of the very few countries in the world that has given constitutional status to environment by adding Articles 48A and 51A(g). Parliament has been introducing legislations in accordance with international declarations. There is a plethora of environmental laws now.

Enabled by the Constitution, the Parliament enacted laws. The executive including the Pollution Control Boards ought to implement the spirit of the laws. But these laws adorn only the statute books of India. The objectives of these laws are still only on paper and not in practice and laws are observed more in breach than in observance. Therefore, the burden of implementing these laws fell on the Judiciary to conserve resources and prevent pollution.

All environmental pollutions are pollutions, but all pollutions cannot be considered as environmental pollutions. Environmental laws, both at the international and at the national levels aim at regulating artificial pollution. But prohibiting all artificial pollutions would be feasible only if all industrial activities are stopped. This would arrest the growth of all civilizations and the entire human race will be in poverty. This would bring ‘a state of war of all against all’.

Indian environmental laws permit the discharge of effluents, emission of gases and disposal of hazardous wastes either into the hydrosphere or lithosphere or atmosphere. They have prescribed the standards of pollutants that can be discharged. These laws prohibit pollutions beyond the standards. It is made as an offence when the pollution exceeds the standards prescribed. However, the standards prescribed in the legislations are highly technical and scientific. Ordinary human beings or even ordinary learned and prudent persons cannot understand them.
Wisdom wedded with experience finds a serene dwelling place in the Supreme Court. This Court precisely grasps the technical and scientific nuances of environment and its inherent nature, and the necessity to have sustainable development for the sustenance of the human race and a whole host of living beings. A careful perusal of environmental cases enabled this researcher to formulate the views of the Apex Court on environment and sustainable development which are given below.

Man is both a creator and also a moulder of his environment. Primitive man lived one with nature, but civilized man is moving away from nature in the name of civilization. Advancement of science and technology helped civilization’s development tremendously. On the flip side, needless application of science and technology caused incalculable harm to all the living beings including man and the environment.

Pained and alarmed at this large scale harm to environment, the Supreme Court held that man is for and a part of the environment and the environment is not for man alone. Along with environmental degradation, consciousness of environmental protection was always present. Environmental protection in India dates back to the dim recesses of the past. Nature worship exists and trees and plants are considered as sacred, rivers, mountains and air are deified. Holy forests are a plenty in India, to this day. The Bishnois in India have done their best to protect trees and forests and have understood the value of environment for centuries. The Rock Edicts of the Mauryan Emperor Asoka, have preserved for posterity, the orders of the king passed for the preservation and protection of the environment. Coming to the recent past, the British Government in India passed the Forest Act, mainly to regulate the use of forest produce for their benefit. Prior to that, the Indian Penal Code and Criminal Procedure Code dealt with pollution of the environment under the heading ‘public nuisance’.

The Stockholm Declaration of 1972 proved to be a milestone as far as environmental legislations in India are concerned. It triggered a spate of environment legislations which created administrative authorities to prevent and protect environment from pollution. The subordinate judiciary is empowered to cognize violation of these laws and to penalize polluters. Appeals are provided to the High Court and the final say in all environmental matters is vested with the Supreme Court.
Environmental protection envisages the prevention of water and air pollution and conservation of forests. These three are important elements in nature. Environmental pollution implies, water pollution, air pollution, and denudation of the forest cover besides other things. The environment is composed of innumerable biotic beings which include plants and animals. These biotic beings are surrounded by abiotic things. For the sustenance of the biotic beings, abiotic things are essential. Water and air are vital for the sustenance of biotic beings. Forests play a pivotal role in the water and air cycles. It completes the reversal process in the environment by taking the noxious carbon-di-oxide and giving the life saving oxygen back into the environment.

Water, the elixir of life is one of the most important elements of nature. Water sustains living beings if it is pure, whereas contaminated water hurts their well being terribly. Water borne diseases like typhoid, cholera etc at times assume epidemic proportions and causes mass scale deaths. The introduction of sewerage system aggravated the problem even further as the untreated sewerage is continuously discharged into water bodies. Holy Ganga, the most venerated river in India is unfortunately the most polluted river today.

Along with water, air is another indispensable gift of nature. Oxygen in air is a vital element and man can survive without food and water for several days or weeks, but survival is not possible without air beyond few minutes. Air cycle implies the sucking out of the extra noxious gases in air and supply of pure oxygen. Industries emit carbon-di-oxide in large quantities, which in turn reduces oxygen. Water cycle is completed with the help of sun’s rays and trees in the forests. Water cycle and air cycle should go on without any hindrance for a conducive environment. Thus, trees in the forests, the biotic and renewable resources of nature help the completion of air cycle as well as water cycle.

The Supreme Court was able to gauge the multiple vital roles played by forests in environmental protection, vital for the survival of all living creatures and for the effective functioning of the eco-system. By conserving forests, air can be purified, water can be conserved by minimizing the unnecessary discharge into the sea. With the forests playing such a huge positive role in environment protection, it is no wonder that
the Supreme Court goes the whole hog to protect and conserve forests. At times, in cases relating to air and water pollution, the Apex Court might have taken a soft approach, leaning in favour of development. But when it relates to forest conservation, the iron hand of the judiciary comes across very forcefully as what are lungs to human beings, forests are to the nation. A surprising difference in the approach of the Court can be gleaned in its handling of environmental cases, raising a doubt as to whether the Supreme Court is eco-centric or anthropocentric.

In Delhi Airport case, though laying the runway in the Indira Gandhi International Airport led to air pollution, yet the Supreme Court allowed that to continue in larger interest as it was for a short period. Similarly, in certain cases related to water pollution, like the Ganga Water Pollution case, and Vellore Citizens Welfare Forum, the soft approach of the Apex Court on the violators is visible. In the earlier case, it advocates the shifting of the tanneries away from the Gangetic belt and in the latter case, despite the demand for complete closure of the tanneries, the Apex Court ordered the tanneries to have Common Effluent Treatment Plants (CETP) and recycle the polluted water, failing which to close the polluting industries.

When the question of conservation of water over environmental concern and displacement of people cropped up in cases related to construction of dams like Narmada and Tehri dam, the Supreme Court’s stand was quite contrary to that of the environmentalists. The Court very pragmatically stood above the immediate factors and surveyed the whole picture holistically and invoked concepts like inter-generational equity to substantiate its view.

In the course of dealing with environment cases, the Supreme Court began to analyse the nature of judicial functions. It realised that it was neither purely adjudicatory, nor to act as a mere umpire. The Court strongly felt that unless it passed affirmative actions to remedy and restore the environment, environmental rights would slowly fade into the pages of history and become supine and lifeless.

A critical analysis of various environmental cases dealing with conservation of forests and trees, reveals the emergence of the Apex Court as a vociferous champion of
forest conservation. In a Parliamentary democracy, legislators have to toe people’s wishes and the executive has to abide by the legislature’s wishes. The Indian judiciary need not bend to anybody in the process of rendering justice, except perhaps the Constitution. But experts aver that through interpretation of the Constitution, the judiciary is able to wriggle out of that hold also. This is especially true in environmental jurisprudence.

The now powerful Supreme Court had a humble beginning in 1950. It was the weakest of the three organs of the Indian Republic, neither having financial power nor the power to implement its views. It was mainly overshadowed by the legislative wing. The freedom fighters in the new legislature strode like colossus, devouring all power.

As time passed, the trend changed. Freedom fighters ceased to be in power. Single dominant political party began to disintegrate. New regional and rival parties with different ideologies started occupying seats of power, first in the states and later at the centre. Hung Lok Sabhas and Assemblies became a part of the political scenario. In this political vacuum, the Supreme Court gradually ascertained its authority. For a billion plus population, there are just a handful of creative minority to deliver justice. There are four cardinal principles which bind these 26 judges. Their highest virtue is wisdom, followed by wide experience, then insulation from pressures and finally the freedom to render the much needed justice.

There are quite a handful of laws dealing with environmental cases in India. The Indian legislature can be credited with passing laws almost immediately after they are accepted in the international environmental summits. Environmental damage was speedy and pollution continued unabated inspite of having innumerable laws. Pollution increased with the increase in population. There were many other reasons for this sad state of affairs. Many of the provisions remained on paper. The administrative machineries were hardly functional. Pollution Control Boards, both central and state, charged with the delegation of implementing the laws of the land failed to do the assigned duty. The main reason was bureaucratic red-tapism and corruption. Polluters who were mostly rich industrialists were willing to shell out huge amounts to bribe the officials and continued exploiting and polluting the environment for their pecuniary
benefits. Noticing this treacherous trend, the Supreme Court lamented that faced with the might of money, respect for law is dissolved into respect for mammon.

The combination of lethargic machineries, passive lower courts and an apathetic Government was so potent that it had a devastating effect on the environment. This woke up the consciousness of a majority of Indians from their supine slumber and riveted the Apex Court’s attention to the problem. A pro-environment Supreme Court completely frustrated at the state of affairs in India, realized that any number of laws to protect the environment will not help the cause in these circumstances.

The Supreme Court’s righteous indignation comes to the fore in various environmental cases where it pulls up the Central Government for turning a nelson’s eye to environmental problems. The Court expressed pain at the failure of the subordinate judiciary to cognize the offences and render environmental justice on many an occasion. It also warned the High Courts to refrain from granting orders of stay of criminal proceedings in pollution cases ordinarily, and said that they should be done only in extraordinary circumstances. It directed the High Courts to dispose off such an order of stay if given, within a period of two months from the institution of such cases under Section 482 of CrPC. In this piquant situation, Supreme Court had to don the mantle of leadership to protect the environment. Left with no choice, it had to initially go the extra mile to safeguard the environment. Slowly but steadily, it became a vociferous champion of environmental protection, which catapulted Indian judiciary to Himalayan heights.

A strong Indian judiciary started emerging parallel to the emergence of international laws on environment at the global level. The Supreme Court very wisely inducted those evolving hazy and fresh international norms and doctrines into the Indian setting. They became well-entrenched in Indian judiciary through the Supreme Court’s interpretation of Article 21. The Court forged new remedies and fashioned new strategies. It adopted various innovative procedural techniques as discussed earlier. With reference to interpretation of substantial laws, it invokes Article 21 of the Constitution effectively. From this Article the Court has discovered and invented various fundamental rights. One set of fundamental rights are related to human rights.
The other set of fundamental rights are related to environment. Such environmental rights that have been discovered and invented are collective rights, popularly known as ‘the third generation human rights’. In the judicial process of interpreting Article 21 along with other constitutional provisions, the Court derives sources directly from international declarations as well as from the judicial precedents of developed countries which are based on the concept of sustainable development. Relating those new doctrines to Article 21, imbued this Article with a buoyant spirit. This proved to be a blessing in disguise for the Apex Court to render effective environmental justice. Thus terms of far-reaching importance like sustainable development and its components, public trust doctrine, precautionary principle, polluter pays principle, inter-generational equity etc., all concepts sans a firm footing even in the developed parts of the world, were introduced and beautifully entrenched in Indian legal system by way of judicial verdicts. Thus in the judicial process of adjudging environmental cases, the Apex Court assumed the mantle of leadership in its endeavour to protect the environment.

The Supreme Court deals with a multitude of cases year in, and year out. The findings of the research based on the exploration of the judgements of the Supreme Court in environmental cases are formulated hereunder. Indian legal system is committed to common law tradition. In the traditional common law jurisprudence there are three important sources of law. In the judicial process, Indian judiciary can legitimately derive sources from legislations, judicial precedents and customs. In relation to the functions of the judiciary, there are two contradicting theories. One theory advocates that the judiciary merely declares the enacted laws. The other theory asserts that it can very well make laws when statutes are silent in relation to a given fact situation. As the higher Indian judiciary has been adopting the path of judicial activism, it openly declared that its functions are not confined merely to declare laws but also to make laws. The authority of the Supreme Court increased tremendously with its handling of environmental cases.

In environmental litigations it is very difficult to collect evidences to establish the offences committed by the eco-ciders. As these cases require highly technical and scientific data to prove the offences, the conventional method of admitting the admissible evidence let in by parties to the case is inadequate to render environmental
justice. The paradox in environmental cases is that the offending parties are industrialists and entrepreneurs, who are rich, resourceful, knowledgeable and powerful and pitted against them, are innocent masses without any strong federations to protect their interests. Further, the victims are divided and isolated and hardly come together to protect the interests of the community. Hence, collection of valid and reliable data related to pollution is very difficult. Therefore, the Court appoints expert committees to inspect and collect such data and admit them in the Court as admissible evidence. NEERI is often directed to inspect and collect data related to environmental protection. Similarly, the evidences submitted by amicus curiae are also admitted by the Court directly. Mandamus finds its offspring ‘continuous mandamus’ and the latter is cloned by the Court to monitor the orders of the former with vigilance. Breisdon brief concept, imported from the west is used by the Court to keep it constantly informed.

Thus from the above analysis, the approach of the Supreme Court in environmental jurisprudence is objective, systematic, scientific and above all anthropocentric. It is not a mere visionary, but also a missionary as it understands the importance of protecting the eco-system. Nature is endowed with two types of resources renewable and non-renewable. In Rural Litigation Kendra case, Kamalnath case and T.N.Godavarman case Supreme Court insisted that the present generation ought to use these renewable resources prudently keeping in view the expectations and needs of the future generations. It unleashed weapons like ‘public trust doctrine’ and ‘inter-generational equity’ to render effective justice. The same is the case in dam construction matters, where the larger interests of the present and future generation are upheld.

The Supreme Court, in the Dehradhun Quarry case, one of the earliest cases, rightly said that “there is a balance on earth between air, water, soil and plant. Forests hold up the mountains, cushions the rains and they discipline the rivers and control the floods. They sustain the springs, they break the winds;...they keep the air cool and clean. Forests also prevent erosion by wind and water and preserve the carpet of the soil.” Like water, forest and forest products are renewable resources. There is an inalienable triangular link between water, forest and air.
In the case of non-renewable resources the Supreme Court ordered their closure. In the **Dehradhun** case, miners were warned not to affect nature and asked the Government to seek alternatives to the exhaustible mines. In the **Ganesh Wood Industries** case, it made a sweeping order bringing all forests – Government or private under the Forest Act. In this area, the Supreme Court put a check on the searing winds of liberalisation, privatisation and globalization.

The Supreme Court’s intelligible differentiation and prioritisation of interest is also evident in its approach to conservation of forest, another natural renewable resource. It is keen and sensitive in conserving forest. It elaborately vents its mind on the necessity to have adequate forest coverage. The **Godavarman** case has no parallel even in the annals of judicial activism. It assumed the role of a super administrator and regulated the felling, use and movement of timber across the country. ‘Net Present Value’ concept evolved in this judgement, strangles the eco-ciders and supports the environmentalists. It directed that the present generation have to keep nature’s gift as trustees and pass it on to the next generation.

Right to property was deleted from fundamental right and was made a mere constitutional right under Article 300A. Consequently, property of any kind including properties related to trusts, are mere constitutional and statutory rights. But by adopting innovative procedural and interpretative techniques, ‘the public trust doctrine’ was brought under fundamental right and enforced under Article 32. At the global level, this public trust doctrine has been adopted only by a few developed countries. Even there, the properties that come under public trust are ‘seashore, highways and running waters’ only. ‘Lakes’ have been added under ‘the public trust’ in the USA. In India, the Supreme Court further extended the domains of ‘public trust properties’ to ‘forests’ and even to ‘parks’. The Indian Parliament by exercising its ‘constituent power’, modified the fundamental right of ‘right to property’ of persons into a mere constitutional right in 1979. But in 1997, the Supreme Court in the name of ‘public trust doctrine’ restored the status of ‘public trust properties’ under fundamental right and enforced it under Article 32. The authority of the Supreme Court seems to be increasing with each environmental case.
The power of the Supreme Court enhanced greatly as it is empowered to review even Constitutional Amendments. In this context, S.P. Sathe commented that this power to review Constitution and Constitutional amendments makes the Supreme Court very powerful, which power even the highest Courts of USA, England, Canada, Australia and other countries do not possess.

Apart from this, the increasing power of the Supreme Court stems from its intelligent and judicious use of certain Articles especially Article 21. Article 21 is a blank cheque book with plenty of signed leaves left by the framers of the Constitution. The Supreme Court has been encashing them whenever required to meet the needs of the time. There are reasonable restrictions in Article 19 and the legislatures are bound to follow them while making legislations. But there are no such restrictions in Article 21. The Supreme Court has been discovering and inventing fundamental rights from Article 21 without any restriction. However, in the approach of the Supreme Court in exercising Article 21, for the purpose of protecting the interest of various sections of the society, there is an intelligible differentiation between individuals, group, and the community as a whole. When there are conflicting interests between the community and a group, the Apex Court prefers to stand for the collective interests of the community. In case, if the conflict of interest is between a group and an individual, it is for the collective interest of the group.

Many a time, the Supreme Court went way beyond the theory of separation of powers in environmental jurisprudence. Using Articles 21 and 32 deftly like a mariner’s compass, the Supreme Court treads the untrodden path over rough waters and unchartered grounds to protect environment. The heart of Article 21 throbs for the people of India. It is people-centric. Neither the legislature nor the executive can stop it. It beats ceaselessly even during emergency and is beyond the scope of reasonable restrictions.

Unlike the individualistic nature of other fundamental rights, Article 21 is a collective right. Whether the Supreme Court chanced to stumble luckily on Article 21’s varying dimensions or whether it was a calculated move to interpret it, knowing its inherent power is immaterial at this stage. The fact is that in Article 21, the Supreme
Court could find a veritable diamond mine. The more it dug into this mine the more diamonds it could unearth, each no less brilliant than the other. By cutting the rough edges and chiselling them, diamonds like sustainable development, public trust doctrine, inter-generational equity, intra-generational equity, precautionary principle, polluter pays principle etc., were churned out whenever and wherever needed. By so doing, it thus showcased to the world the dazzling glitter and sheen of Indian environmental jurisprudence. The Supreme Court has fashioned a beautiful crown encrusted with these eco-friendly diamonds, through sheer efforts and concerted action for more than two decades.

In interpreting environmental laws, the Apex Court also “drew heavily from the provisions of various directive principles in assigning meaning to ‘life’ and in the process created newer rights and thus indirectly introduced an element of justifiability, which was denied to directive principles.” These directive principles which are elevated to the status of fundamental rights under Article 21 are enforceable under Article 32. Further, for the enabling power of doing complete justice under Article 142, the Supreme Court made several wide ranging orders for the protection of environment.

Not stopping at that “the judiciary read the fundamental rights and the directive principles of state policies to synchronize with the tunes of the emerging world legal order. The Supreme Court of India very meaningfully interpreted, read and applied to Indian litigations, areas where the policy makers and the legislators hesitated to tread. Case after case, the Indian Judiciary attempted to shape the socio-economic policy of the nation and its people over a plethora of cases.” The Apex Court has been transforming the ‘soft laws’ into ‘hard laws’ and crystalising the evolving global laws into settled Indian laws. Some of the vital principles of international environment, which are still evolving, have been incorporated in the corpus juris of India by the Supreme Court, by adopting innovative procedural and interpretative techniques. By incorporating international customary laws in its judgment, the Supreme Court makes them ‘binding on all courts within the territory of India’. The judgment delivered by a

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1 Mool Chand Sharma, op.cit.p.16
2 G.S.Karkara,op.cit.pp.56-57
3 Bhavani Prasad Panda,op.cit.p.113
constitutional bench binds lesser benches. The Supreme Court’s environmental jurisprudence reveals fascinating facets of its legislative and executive acumen along with its judicial prowess.

In exploring the methodology adopted by the Supreme Court in environmental jurisprudence, this research throws up interesting nuggets of information, which present divergent views on the surface. But when the surface is scratched, golden threads and strands of judicial wisdom coupled with noble thoughts are visible, whose existence only the interested few can unravel. A deeper analysis reveals that these threads and strands have anthropocentric bases, which are strongly woven to form a grand ‘eco-web’. The Supreme Court uses this ‘eco-web’ to throttle the eco-ciders neck, wrap the protective blanket over the affected worker’s rights and to spread out as a silken carpet to cushion and protect the community’s interest – both the present and that which is yet to come. This ‘eco-web’ has enwrapped the whole nation in a protective and serene glow.

Thus, this epic journey traces the transformation of the ‘Supreme Court of India’ into the ‘Supreme Court for Indians’. Through hyper-active environmental judgements, the ripened wisdom of the Supreme Court is attempting to bless this beloved living world with nature’s bounties, so as to make it a veritable paradise on earth, so that man can live in a lovely spirit.