CHAPTER – I

INTRODUCTION

“Man’s paradise is on earth;
This living world is the beloved place of all;
It has the blessings of Nature’s bounties;
Live in a lovely spirit.”

This verse of Atharva Veda was quoted by the Supreme Court in one of the earliest environmental case, Rural Litigation and Entitlement Kendra v. State of U.P.\(^1\) The Apex Court emphasised the necessity to protect this ‘man’s paradise’ in an earlier environmental case also i.e., in M.C. Mehta v. Union of India\(^2\), popularly known as Ganga Water Pollution case.

The Indian Government attended the United Nations Conference on the Human Environment held at Stockholm in 1972 and consequently amended its Constitution in 1976 and included, inter alia Articles 48A and 51A(g). Article 48A is a directive principle of state policy which provides that “the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.” Article 51 A(g) imposes a fundamental duty. Accordingly, “it shall be the duty of every citizen of India... to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

Highly sensitised by the Stockholm summit and enabled by the Constitutional provisions, Indian Parliament enacted various legislations like the Water (Prevention and Control of Pollution) Act, 1974, The Forest (Conservation) Act, 1980, The Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986, to mention a few. The Environment Act 1986 widely empowers the Central Government “to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing,

\(^1\) Rural Litigation and Entitlement Kendra v. State of U.P. in AIR 1988, SC, p. 2187
\(^2\) M.C. Mehta v. Union of India in AIR 1988, SC p.1037
controlling and abating environmental pollution.” 3 The Central Government is also vested with “the power to direct –

a) the closure, prohibition or regulation of any industry, operation or process;

b) stoppage or regulation of the supply of electricity or water or any other service.” 4

It is, therefore, evident that the genesis and growth of environmental jurisprudence expands the horizon of reasonable restrictions to the fundamental right of industrialists “to practice any profession, or to carry on any occupation, trade or business.” It also affects the worker’s statutory right to work due to closure or relocation of industries on grounds of environment. The 186th Reports of the Law Commission of India also finds that if an industry is closed on grounds of pollution,

“it may lead to unemployment of hundreds of employees. It may also result in loss of excise duty or sales tax to the Government. If the industry is to be shifted out, land elsewhere may have to be provided... In many cases, the plant itself may have to be shifted. Enormous costs will be involved. If the polluting industry is not shifted, there could be serious danger to the health and well being of citizens in the locality.” 5

A developing country like India is torn asunder between the necessity for development on the one hand and environmental protection on the other. One is essential for growth and advancement as a nation and the other for the survival of the race and mankind as such. India, the second most populous country in the world, was liberated some six decades back from a long history of imperialistic yoke and exploitation. It is now on the golden threshold of development hoping to satisfy the escalating aspirations of its teeming population. This felt need of development pressurizes the developers, industrialists, technologists, policy makers and administrators to accelerate the economic growth rate by adopting innovative means and modes of production. In the process of producing more goods and transporting and distributing them speedily to the consumers, the industrialists and service providers use, rather abuse nature and its resources in such a way that affect the ecology either by

3 See Section 3 of the Environment (Protection) Act, 1986
4 See Section 6 Ibid
depleting its resources, whether renewable or non-renewable, or by discharging effluents into water bodies, or by emitting fumes into air or by disposing waste materials into the soil. How to restore ‘this living world’ into the beloved place of all so that human beings can ‘live in a lovely spirit’, as envisaged in the Atharva Veda? Though a difficult task, it is divine in nature and hence it has to be done. The research question to be probed here is how does the Supreme Court of India do it for Indians?

**RESEARCH PROBLEMS**

I. Does the Supreme Court have any approach to protect the environment? If so --
   a) What are its views on environment?
   b) How does the Supreme Court view the functioning of the machineries that are established for the protection of the environment?
   c) What are the efforts taken by the Supreme Court to implement its views for the protection of the environment?
   d) What are the efforts taken by the Supreme Court to implement its views regarding conservation of the environment?

II. What are the views of the Supreme Court in protecting the rights of the workers when they are affected on the grounds of environment?
   a) What are the efforts taken by the Supreme Court in protecting the rights of the workers when they are affected due to the closure of the industrial establishment on the grounds of environmental protection?
   b) What are the efforts taken by the Supreme Court in protecting the rights of the workers when they are affected due to the relocation of the industrial establishment on the grounds of environmental protection?
   c) What are the efforts taken by the Supreme Court in protecting the rights of the workers when they are affected due to the closure of the industrial establishment on the grounds of environmental conservation?
   d) What are the efforts taken by the Supreme Court in protecting the rights of the workers when they are affected due to the relocation of the industrial establishment on the grounds of environmental conservation?
III What are the views of the Supreme Court about the statutory liabilities of employers?
   a) What are the efforts taken by the Supreme Court in enforcing the liabilities of employers in case of water pollution due to their industrial activities?
   b) What are the efforts taken by the Supreme Court in enforcing the liabilities of employers in case of air pollution due to their industrial activities?
   c) What are the efforts taken by the Supreme Court in enforcing the liabilities of employers in case of soil pollution due to their industrial activities?
   d) What are the efforts taken by the Supreme Court in enforcing the liabilities of employers in case of conservation of environment?

IV Does the Supreme Court give priority to the interest of any particular group in case of conflict of interests on grounds of protection of environment?
   a) Does the Supreme Court give priority to environmental protection over development in case of conflict of interests on grounds of protection of environment?
   b) Does the Supreme Court give priority to the community over the rights of workers in case of conflict of interests on grounds of protection of environment?
   c) Does the Supreme Court give priority to the community over the rights of employers in case of conflict of interests on grounds of protection of environment?
   d) Does the Supreme Court give priority to the workers over the rights of employers in case of conflict of interests on grounds of protection of environment?

V Are there differences in the views of the Supreme Court in relation to various aspects of environmental protection?
   a) Are there differences in the views of the Supreme Court in dealing with non-hazardous and hazardous industries on grounds of environmental protection?
b) Are there differences in the views of the Supreme Court in relation to industries that use renewable and non-renewable resources for the purposes of their industrial activities?

c) Are there differences in the views of the Supreme Court in relation to environmental protection and conservation?

d) Are there differences in the views of the Supreme Court in relation to rights of workers on account of closure and relocation of industries under the environmental laws and industrial laws?

VI Does the Supreme Court resort to innovative methods to protect the environment?

a) Does the Supreme Court adopt innovative procedures to protect the environment?

b) Is there any changing trend in the adoption of innovative measures to protect the environment?

c) Does the Supreme Court adopt innovative methods of interpretation to protect the environment?

d) Is there any changing trend in the adoption of innovative measures to conserve environment?

OBJECTIVES OF THE STUDY

The below listed objectives are deduced from the research questions in order to have comprehensive answers to them.

1. To explore and formulate the views of the Supreme Court on environment.

2. To diagnose and formulate the views of the Supreme Court on the effectiveness of the functioning of the machineries that are established for the implementation and enforcement of the objectives of the environmental laws.

3. To identify and formulate the methods adopted by the Supreme Court in implementing its views on environment protection.
4. To identify and formulate the methods adopted by the Supreme Court in conservation of the environment.

5. To explore and formulate the views of the Supreme Court regarding the interests of the workers when they are affected due to closure and relocation of industrial establishments on the grounds of environmental protection.

6. To identify and formulate the measures adopted by the Supreme Court in protecting the interests of the workers when they are affected due to closure and relocation of industrial establishments on the grounds of environmental protection.

7. To identify and formulate the measures adopted by the Supreme Court in protecting the interests of workers when they are affected due to closure and relocation of industrial establishments on the grounds of environmental conservation.

8. To compare the measures adopted by the Supreme Court in protecting the interests of workers when they are affected due to closure and relocation of hazardous industrial establishments with non-hazardous ones on the grounds of environmental protection and conservation.

9. To identify and formulate the efforts taken by the Supreme Court in enforcing the liabilities of the employers in case of water pollution due to their industrial activities.

10. To identify and formulate the efforts taken by the Supreme Court in enforcing the liabilities of the employers in case of air pollution due to their industrial activities.

11. To identify and formulate the efforts taken by the Supreme Court in enforcing the liabilities of the employers in case of disposal of the waste materials on land due to their industrial activities.

12. To identify and formulate the efforts taken by the Supreme Court in enforcing the liabilities of the employers in case of depletion of natural resources on grounds of conservation of environment.

13. To critically analyse the priority given by the Supreme Court to environmental protection over development in case of conflict of interest on grounds of protection of environment.
14. To critically analyse the priority given by the Supreme Court to the society over workers.
15. To critically analyse the priority given by the Supreme Court to the society over employers.
16. To critically analyse the priority given by the Supreme Court to the workers over employers.
17. To find out the differences in the views of the Supreme Court in dealing with non-hazardous and hazardous industries on grounds of environmental protection.
18. To find out the differences in the views of the Supreme Court in relation to industries that use renewable and non-renewable resources for the purposes of their industrial activities on grounds of environmental protection.
19. To find out the differences in the views of the Supreme Court in relation to environmental protection and conservation.
20. To find out the differences in the views of the Supreme Court in relation to rights of workers on account of closure and relocation of industries under the environmental laws and industrial laws.
21. To identify the innovative procedures adopted by the Supreme Court to protect the environment.
22. To trace the changing trend in the adoption of innovative procedures by the Supreme Court for the purpose of protecting the environment.
23. To identify the innovative methods adopted by the Supreme Court to interpret the laws relating to environment for the purpose of protecting the environment.
24. To trace the changing trend in the adoption of innovative method of interpretation for the purpose of protecting the environment.

**DEFINITIONS OF CONCEPTS**

In this research work, concepts like ‘approach’, ‘industrial relations’ and ‘environmental protection’ are involved. They require definitions for a systematic analysis. The term ‘approach’ refers to “the method used or steps taken in setting about
the task, a problem, etc”.\(^6\) In this work the term ‘approach’ is used to denote the method used or steps taken by the Supreme Court in maintaining the harmony of industrial relations while protecting the environment. The concept ‘industrial relations’ implies the existence of an inevitable and conflicting interest of partners of production viz. workers and employers on account of industry.

The Supreme Court interprets and construes concepts that involve in ‘industrial relations’ and ‘environment protection’ based on the statutory definitions. Hence conceptual discussion here is based on the definitions as found in Acts and Statutes.

**INDUSTRIAL RELATIONS**

Industrial relations rests on the concept ‘industry’. In industrial jurisprudence, one of the most dynamic concept, which has been subject to wide interpretation is ‘industry’. Section 2(j) of the ID Act defines industry to mean “any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.”

This definition has two parts. The first part has been analysed from the perspective of employers and the second part from the standpoint of the employees. In this definition, from environmental perspective it is possible to classify two categories of industries namely, hazardous and non-hazardous industries. In the first part, in the process of production and supply of goods, the environment may be polluted more, whereas in the second part, in the process of rendering service to the society, the quantum and quality of environmental pollution may be comparatively less and would be below the prescribed standards. However, for a detailed analysis of Section 2(j) of the Industrial Disputes Act, 1947, concepts like business, trade, undertaking, manufacturing, calling of employees, service, handicraft, industrial occupation and avocation are to be analysed.

In **Management of Safdarjung Hospital v Kuldip Singh Sethi**,\(^7\) Justice Hidyatullah interpreted the concept business. According to him, the term ‘business’ is

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\(^6\) The Random House Dictionary of the English Language, s.v. “approach”

\(^7\) Management of Safdarjung Hospital v. Kuldip Singh Sethi, 1970 II LLJ, 266 SC
wider than the term ‘trade’ and includes anything which is not occupation and distinguished from pleasure. The concept ‘trade’ has two connotations. ‘Exchange of goods for goods or goods for money’ is one connotation, which is a narrow one. The broader meaning is “any business carried on with a view to profiting whether manual or mercantile as distinguished from the liberal arts or learned profession or from agriculture.”8 From this definition, it is clear that trade refers to the occupation relating to buying and selling or barter or commerce. According to Malhotra, trade would also include only persons in a line business, in which persons are employed as workmen.9 The concept ‘undertaking’ means “anything undertaken or any business, work or project which one engages in or attempts as an enterprise. This concept means to include any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade.”10 Therefore it is evident that undertaking must have resemblance with that of business or trade.

The concept ‘manufacture’ refers to the productive activity in which the making of articles or materials either by physical labour or by mechanical process. Section 2(k) of the Factories Act, 1948 enumerates various processes under manufacturing process. Accordingly, “manufacturing process includes any process for –

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking-up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivering or disposal; or
(ii) Pumping Oil, Water, Sewage or any other substance; or
(iii) Generating, transforming or transmitting power; or
(iv) Composing types of printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
(v) Constructing, re-constructing, repairing or refitting, finishing or breaking up ships or vessels; or
(vi) Preserving or storing any article in cold storage.”

In the definition of industry, the concept ‘calling’ is used to mean one’s usual occupations, avocation, business or trade.11 According to this definition, ‘calling’, denotes a profession or a trade. In the Bangalore Water Supply and Sewage Board v

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9 O.P.Malhotra, op.cit, p.100
10 D.N.Banerjee v. P.R.Mukherjee 1953, I LLJ, p.195
A.Rajappa, Justice Krishna Iyer elaborately explained the concept industry.\(^{12}\) Accordingly, “an industry is a continuity, is an organized activity, is a purposeful pursuit – not only isolated adventure, desultory excursion or casual, fleeting engagement, motivelessly, undertaken. Such is the common feature of a ‘trade’, ‘business’, ‘calling’, ‘manufacturer’ – mechanical or handicraft – based – ‘service’, ‘employment’, ‘industrial occupation or avocation. The expression ‘undertaking’ cannot be torn off the words whose company it keeps. If birds of a feather flock together and *noscitern a sociis* is a common sense guide to construction. ‘Undertaking’ must be read down to conform to the restrictive characteristic shared by the society of words before and after wide meaning must fall in line and discordance must be excluded from a sound system.”\(^{13}\)

The second part of the definition which is incorporated in Section 2(j) requires an explanation. This definition is analysed from the angle of employees. In this definition, concepts like ‘calling’, ‘employment’ ‘handicraft’, ‘industrial occupation’ or ‘avocation’ of workmen are included. In this definition of industry, the component concept, ‘calling’ finds its place in both parts. Accordingly, it refers both to the calling of the employers and the workmen.

However, the concept ‘service’ has a wider connotation. The word ‘employment’ brings in the contract of service between the employer and the employee. The concept ‘handicraft’ means any manual labour exercised by way of trade or for purposes of gain in or incidental to making any article or part of an article. Similarly, the concept ‘avocation’ signifies the meaning in which a man passes his life or spends his time. In avocation, a person devotes his time to his pursuits or engagements. The concept ‘occupation’ has a wider connotation than even avocation. According to O.P. Malhotra, “what does not amount to avocation may amount to occupation.”\(^{14}\) However, this occupation or avocation must be associated with industrial activity in which the workmen are employed.

\(^{12}\) Bangalore Water Supply and Sewarage Board v. A.Rajappa, (1978), Lab. IC 467 SC
\(^{13}\) Ibid
\(^{14}\) O.P.Malhotra, op.cit, p.102
In the **Bangalore Water Supply case**, the term ‘industry’, has been elaborately reviewed by Justice Krishna Iyer. In the words of O.P. Malhotra, Justice Krishna Iyer with a crusader’s zeal and vehemence reviewed the earlier dicta on the interpretation of the wide words encompassed in the definition, “hopefully to abolish blurred edges, illumine penumbral areas” and overruled what the Court regards as wrong. Justice Krishna Iyer then proceeded to formulate positively and negatively, the decisive principles for identifying industry under this Act. Bangalore Water Supply Case was decided by a Seven Judges’ Bench of the Supreme Court. In this case, a triple test has been introduced to test whether a particular activity amounts to an industry. The three criteria which the triple test looked at to consider a workplace an industry are – where there is (1) Systematic Activity; (2) it is organized by co-operation between employer and employee, (3) it is established for the production and for distribution of goods and services, calculated to satisfy human wants and wishes.

Apart from the triple test, the following points were also emphasized in this case, namely, (1) industry does not include spiritual or religious services or services geared to celestial bliss, like preparation of food on a large scale. It includes material services and things. (2) Absence of profit motive or gainful objective is irrelevant irrespective of the fact whether it is public or joint or private sector. (3) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relationship. (4) If the organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking. This Supreme Court judgement was attempted to be incorporated in the corpus of the industrial jurisprudence by amending Section 2(j) of the ID Act, but till date it was not given effect.

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15 Sec 2(j) of the ID Act was amended in the year 1983. However it has not been given effect. A perusal of the amended section is necessary for a comprehensive undertaking of the concept industry. The amended section runs as follows: “industry means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or service, with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, - (1) any capital has been invested for the purpose of carrying on such activity; or (2) such activity is carried on with a motive to make any gain or profit.” This amended definition has two other components namely an inclusive and exclusive component. In the inclusive component, any activity of the Dock Labour Board and any activity relating to the promotion of sales or business or both carried on by an establishment, such activity amount to industry. The following are the exclusive components – agriculture occupation; hospitals or dispensaries, educational, scientific, research or training institutions, charitable institutions, Khadi or Village industries, any activity of the Government related to the sovereign functions any domestic service, any activity being a profession practice by an individual or body of individuals, any activity carried on by a co-operative society.
From the above analysis, it is evident that even after three decades, the triple test, which was laid down in the Bangalore Water Supply case continues to be valid with reference to the term industry. For the present purpose, it is relevant to differentiate industries, those which involve hazardous industrial activity and those which involve non-hazardous industrial activity, since pollution varies qualitatively and quantitatively. Non-hazardous industries that pollute the environment may further be differentiated based on renewable and restorable in nature and non-renewable and non-restorable in nature.

In the definition industry as discussed earlier, manufacture also forms part of the definition and the ‘manufacturing process’ as an integral component. In 1976, the concept ‘hazardous process’ was incorporated in the Factories Act, through a Parliamentary Amendment. This concept ‘hazardous process’ has to be understood. Section 2(b) defines ‘hazardous process’ to mean “any process or activity in relation to any industry specified in the First schedule, where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye products, waste or effluents thereof would – (1) cause material impairment to the health of the persons engaged in or connected therewith; or (2) result in the pollution of the general environment”16

Chapter IV A of the Factories Act, 1948 from Sections 41A to 41H deals with provisions relating to hazardous process. Section 41F particularly deals with permissible limits of exposure of chemical and toxic substance. This section runs as follows:

“(1) The maximum chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule.

(2) The Central Government may at any time, for the purpose of giving effect to any scientific proof obtained from specialized institutions or experts in the field by notification in the official gazette make suitable changes in the Schedule.”17

16 For further details see First Schedule of the Factories Act, 1948
17 For further details see Second Schedule of the Factories Act, 1948
Industrial relation is said to be cordial in an industrial establishment where there are less industrial disputes or such industrial disputes are effectively and quickly solved. Industrial dispute according to Section 2(k) of the Industrial Disputes Act, 1947, means “any dispute or difference between employers and employers, or between workmen and employers, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons.”

From the above definition, it is evident that industrial relations may be analysed from the point of view of (1) employers and employers, (2) employers and workmen and (3) workmen and workmen. Industrial relations may also be affected in relation to the above three sets of persons connected with (1) employment or non-employment, (2) the terms of employment and (3) conditions of labour. For the purpose of the study the concept ‘workmen’ refers to every workman who has been in continuous service for not less than one year in that undertaking and is entitled to claim retrenchment or deemed retrenchment compensation in case of retrenchment or closure of that industrial undertaking.

For the purpose of the present research the relationship between employers and workmen in industries are taken as ‘industrial relationship’. Industry is defined to mean and include any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. The industrial relationship is analysed only in the context of retrenchment or transfer or re-location or closure of industries or industrial undertaking.

ENVIRONMENT PROTECTION

The concept environmental protection requires to be defined. ‘Environment’ is defined by the Environment Protection Act, to include ‘water, air and land and the inter-relationship which exists among and between water, air and land and the human
beings, other living creatures, plants, micro-organism and property.” \(^{18}\) Environment pollution is defined to mean, “the presence in the environment of any environmental pollutant.\(^ {19}\) The term ‘environment pollutant’ means “any solid, liquid or gaseous substance present in such concentrations as may be or tend to be injurious to environment.” \(^ {20}\)

The Water Act, 1974, however, defines pollution to mean, “such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any other liquid, gaseous or solid substance into water, (whether directly or indirectly) as may, or is likely to create a nuisance or render such water harmful or injurious to public health or safety or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.” \(^ {21}\) In this definition, concepts like ‘sewage’, ‘trade effluents’, need an explanation. Sewage or trade effluents refers to “effluent from any sewage system or sewage disposal works and includes sullage from open drains” \(^ {22}\) and “trade effluent includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying of any industry, operation or process or treatment and disposal system other than domestic sewage.” \(^ {23}\) The above definitions and explanations confine to predominantly pollution related to water. But environmental pollution also includes air and land pollution and resulting inter-relationship among other things.

The Air Act 1981 defines air pollution to mean “the presence in the atmosphere of any air pollutant.” \(^ {24}\) The concept ‘air pollutant’ is defined to mean “any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.” \(^ {25}\)

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\(^ {18}\) For further details see Section 2(a) of the Environment (protection) Act, 1986
\(^ {19}\) Section 2(c) of the Environment (Protection) Act, 1986
\(^ {20}\) Section 2(b) of The Environment (protection) Act, 1986
\(^ {21}\) See Section 2(e) of The Water Act, 1974
\(^ {22}\) Section 2(g) of The Water Act, 1974
\(^ {23}\) Section 2(k) of The Water Act, 1974
\(^ {24}\) Section 2(b) of the Air Act 1981
\(^ {25}\) Section 2(a) of The Air Act, 1981
The definitions for ‘environment’, ‘environmental pollutant’ and ‘pollution on the land’ need explanation. The phrase ‘the solid or waste content in such concentration disposed on the land’ also requires explanation. Section 2(e) of the Environment (Protection) Act, 1986, defines ‘hazardous’ substance to mean “any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property, or the environment”.  

From the above analysis, it is evident that environmental pollution is a situation, in which solid, liquid or gaseous substance present in water, air and on land exceed the standard prescribed. Such standards are prescribed by the Pollution Control Boards from time to time, area to area, one medium to another medium. In the case of water, the standard is prescribed in the Schedule. In the case of air, Schedule I of the Environmental Protection Rules, 1986 and in the case of solid wastes, the Schedule appended to the Hazardous Waste (Management and Rules), 1986, prescribe the standards.

From the above analysis, it is evident that environment pollution refers to the presence of any solid, liquid or gaseous substance in such concentration as may be, or tend to be injurious to environment. But the terms “in such concentration” requires further explanation. The Environment (Protection) Rules 1986 prescribe the standards for emission or discharge of environment pollutants in its Rule 3. Accordingly, "for the purposes of protecting and improving the quality of the environment and preventing and abating environmental pollution, the standards for emission or discharge of environmental pollutants from the industries, operations or processes shall be as specified in Schedule I to IV." In Schedule I, 87 industries are listed out and the parameters and standards are prescribed in detail. Sub rule 2 of Rule 3 provides that the Central or State Board may also specify more stringent standards after giving reasons in writing from those provided in Schedule I to IV in respect of any specific industry depending upon the quality of the receipient system. Rule 3A provides

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26  Section 2(e) of The Environment Act, 1986
27  Schedule II was omitted by G.S.R. 80(E) dated 31st December 1993. Schedule III deals with Ambient Air Quality Standards in respect of Noise. Schedule IV deals with Standards for Emission of smoke, vapour etc. from Motor Vehicles.
standards as specified in Schedule VI for all other industries that are not covered in Schedules I to IV. This Rule further empowers the State Boards to specify more stringent standards. These Rules deal with the emission or discharge of pollutants by individual industries. Rule 3B, however provides that "the combined effect of emissions or discharge of environmental pollutants in an area from the industries, operations, processes, automobiles and domestic sources, shall not be permitted to exceed the relevant concentration in ambient air as indicated and set out against each pollutant in columns (3) to (5) of Schedule VII.

A critical perusal of all the standards that are prescribed in various schedules of the Rules reveal that the standards prescribed are highly technical, scientific and diverse, and varies from industry to industry, chemical to chemical, area to area and recipient system to recipient system. It is obvious from the discussion that the Indian legislatures in their endeavour to protect the environment prescribe permissable standards of pollutants that may be emitted or discharged from industries. The environmental laws also vest powers and functions on the Central and State Government and their corresponding authorities like Pollution Control Boards to enforce the laws.

As Montesquieu\'s separation of powers advocates, the legislature being a law making body is vested with the power to enact laws necessary for the protection of the environment, the executive, the law applying wing of the state is expected to administer laws and the judiciary the law adjudicating organ is vested with the power to find out the constitutionality of the legislative and administrative functions of the other co-ordinate organs of the state. Besides that, the judiciary is also vested with the power to adjudicate cases that come to the court through industries.

Based on the discussion, for the purpose of this study the concept ‘environment protection’ is defined to mean the efforts taken and the methods and techniques adopted by the Supreme Court to prevent industries from emitting or discharging environmental pollutants beyond the prescribed standard, and it also includes the measures taken by the Supreme Court in improving the quality of environment through conservation.
In this research, Supreme Court’s approach to industrial relations and environmental protection is to be explored and formulated only in the light of those facts that strain industrial relations and thereby affect the workers’ right to work, due to closure and transfer or relocation of industrial undertaking under the Industrial Disputes Act and environmental legislations.

Environment is defined by the Environmental Protection Act, 1986 to include ‘water, air and land and the inter-relationship which exists among and between water, air and land and the human beings, other living creatures, plants, micro-organism and property.’\textsuperscript{28} Environment pollution is defined to mean, “the presence in the environment of any environmental pollutant.”\textsuperscript{29} The term environment pollutant means “any solid, liquid or gaseous substance present in such concentrations as may be or tend to be injurious to environment.”\textsuperscript{30}

However, The Water Act, 1974 defines pollution to mean, “Such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any other liquid, gaseous or solid substance into water, (whether directly or indirectly) as may, or is likely to create a nuisance or render such water harmful or injurious to public health or safety or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.”\textsuperscript{31} In this definition, there are few concepts like ‘sewage’, ‘trade effluents’, which need explanations. Sewage or trade effluents refers to, “effluent from any sewage system or sewage disposal works and includes sullage from open drains”\textsuperscript{32} and “trade effluent includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying of any industry, operation or process or treatment and disposal system other than domestic sewage.”\textsuperscript{33} The above definitions and explanations confine to predominantly pollution related to water. But environmental pollution also includes air and land pollution and resulting inter-relationship among other things.

\textsuperscript{28} For further details see Section 2 (a) of the Environment (Protection ) Act, 1986
\textsuperscript{29} See Section 2 (c) of the Environment (Protection ) Act, 1986
\textsuperscript{30} See Section 2 (b) of the Environment (Protection ) Act, 1986
\textsuperscript{31} See Section 2 (e) of the Water Act, 1974
\textsuperscript{32} See Section 2 (g) of the Water Act, 1974
\textsuperscript{33} See Section 2 (k) of the Water Act, 1974
The Air Act, 1981 defines air pollution to mean, “the presence in the atmosphere of any air pollutant.”\(^{34}\) The concept ‘air pollutant’ is defined to mean “any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.”\(^{35}\)

The definitions for ‘environment’, ‘environmental pollutant’ and ‘pollution on the land’ “the solid or waste content in such concentration disposed on the land’ require further explanations. Section 2(e) of the Environment Act, 1986, defines ‘hazardous’ substance to mean “any substance or preparation which, by reason by its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property, or the environment.”\(^{36}\)

From the above conceptual analysis, it is evident that environmental pollution is a situation, in which solid, liquid or gaseous substance present in water, air and on land exceed the standards prescribed. Such standards are prescribed by rules from time to time, area to area and one medium to another medium.

**REVIEW OF LITERATURE**

The Indian Law Institute in its commemorative volume *Fifty Years of the Supreme Court of India*,\(^{37}\) to celebrate the Supreme Court’s 50 eventful years published various articles written by jurists and experts assessing the functions of the Supreme Court during those 50 years. In this volume, Supreme Court’s views and judgements relating to various branches of law are explored and analyzed critically. The then Chief Justice of the Supreme Court, Justice A.S. Anand has given a ‘foreword’\(^{38}\) in which he succinctly traced the approach of the Supreme Court from *A.K. Gopalan’s* case to *Visakha’s* case. M.P. Jain in his article, “The Supreme Court

\(^{34}\) See Section 2 (b) of the Air Act, 1981

\(^{35}\) See Section 2 (a) of the Air Act, 1981

\(^{36}\) See Section 2 (e) of the Environment (Protection) Act, 1986

\(^{37}\) S.K. Verma and Kusum (eds), *Fifty Years of Supreme Court of India: Its Grasp and Reach* (New Delhi: Oxford University Press, 2000)

and Fundamental Rights”, has analyzed elaborately various provisions of Fundamental Rights and its relevance. He also analyzed the judicial reviewability of various provisions, besides tracing the development of public interest litigation. I.P. Massey in his article, “Evolving Administrative Law Regime” made a critical study about the functioning of Supreme Court with particular reference to its access to administrative justice and transparency in public administration. Upendra Baxi in his article, “The Avatars of Indian Judicial Activism: Explorations in the Geographics of [In] Justice” made an in-depth jural analysis of judicial activism of the Supreme Court in its 50 years of functioning. In this article, Baxi differentiates an ‘active Judge’ from an ‘activist Judge’. S.C. Srivatsava in his article, ‘Industrial Jurisprudence’, briefly analyzed the judgements of the Supreme Court related to labour and the Constitution, service contracts, standing orders, disciplinary action, industrial adjudication, industrial disputes, workman, strike, bandh, retrenchment, trade union, standing orders, bonded labour, child labour, contract labour, liability in hazardous and dangerous industries, sexual harassment at work place, pension, equal pay for equal work, employees provident fund and wage. C.M. Jariwala in his article, “The Directions of Environmental Justice: an overview” explains the attitude of the Supreme Court towards environmental issues. In this article, he made a critical analysis of various cases that were decided by the Court during this period. He also enumerated various emerging rights relating to environment. The above two articles deal separately with cases related to industrial jurisprudence and environmental issues.

The following are the other articles in this commemorative volume, which deal with various other issues dealt by the Supreme Court. M. Rama Jois in “The Supreme Court on Service Law Governing Employees of State”, K.C. Sunny’s article, “Election Laws”, Kusum’s article, “Matrimonial Adjudication under Hindu Law”,

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**Off the Bench**, a book by V.R. Krishna Iyer is a collection of his views on various topics including environmental issues like ‘Environmental Tribunals’ and ‘Environmental Maladies and Judicial Remedies’. “Environment: Grassroots Movements”, an article of Bharat Dogra chronicles the grassroot level environmental movements.

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Indian Law Institute has been reviewing Supreme Court and High Courts decisions delivered by them relating to various topics for every year from the year 1965. Eminent Legal experts and jurists have been contributing articles, by critically reviewing judgements in different aspects of law. For the purpose of this research, articles contributed by experts in the field of labour law and environmental laws have been taken up for review. Two eminent scholars initially reviewed the Labour Law Cases; of these one reviewed labour management relations and the other analyzed the rest of the labour issues. Subsequently, a single scholar did it. Suresh C. Srivatsava reviewed cases of the Supreme Court and the High Court in his article, “Labour Law – I”.

In the same issue S.L. Agarwal reviewed other important labour related cases, like social legislations, in his article “Labour Law-II”. O.P. Malhotra reviewed cases for the years 1986 to 1988, relating to labour management relations and S.L. Agarwal reviewed the rest of the labour related cases, for the years 1986-1988. Bhushan Tilak Kaul in his articles “Industrial Relations Law”, reviewed the leading labour law cases for the years 1989 till 2001.


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The Indian Law Institute began to review leading environmental cases decided by the Supreme Court and the High Courts only from the year 1999. Before that, environmental issues were dealt either under the category ‘Tort Law’ or ‘Public Interest Litigation’. P.Leelakrishnan reviewed such environmental cases for the years from 1999 to 2003,\(^{70}\) B.C. Nirmal reviewed the cases for the year, 2004,\(^{71}\) S.Sivakumar reviewed the cases of the year 2005.\(^{72}\)

Paras Diwan and Peeyushi Diwan have compiled and edited most of the Acts and Regulations relating to environment in three volumes entitled, Environment, Administration Law and Judicial Attitude.\(^{73}\) In this work, they also compiled leading environmental cases decided by the Supreme Court and High Courts. In their first volume, they have edited 30 articles contributed by various eminent scholars in the field of environment. Paras Diwan himself contributed an article, “Environment Protection: Issues and Problems”.\(^{74}\) Along with Peeyushi Diwan, Paras Diwan also contributed two other articles namely, “International Efforts At Environmental Protection”\(^{75}\) and “Conservation of Forest: an imminent – danger and need for saving forests”.\(^{76}\) R.C. Paul in his article “Chemistry of Climatic Conditions” deals succinctly with the role of carbon-dioxide in affecting the climatic conditions besides other gases.\(^{77}\) V.K. Bansal and N.K. Gupta’s article “Environmental Protection: A Constitutional Obligation” deals with Constitutional provisions relating to environment, besides very briefly dealing with Environment Protection Act and Judicial Activism\(^{78}\).
Similarly, Dilbir Kaur, analyses the Constitutional provisions relating to environmental protection in his article, “Environmental Protection in India: Constitutional Conspectus”. Suhi K.Bhatnagar’s article, “Sanitary Environment: The Constitutional and Judicial Approaches”, deals with the Supreme Court’s attitude towards the prevalence of the sewerage system in India, more particularly the Ratlam’s case. Virendra Kumar’s “Environmental Protection and the Law” deals with the physical eco-system and pollution of the environment. Chhatrapatti Singh’s article “Legal Policy for the Control of Environmental Pollution” made a brief jural analysis relating to environmental legislation. V.S. Chitnis’s articles, “The Environment (Protection) Act, 1986: A critique” made an over all analysis of the Environmental Acts, more particularly, The Water Act of 1974.

Sumitra Sripada’s article, “The Multinational Corporations and Environmental Issues”, analyses multi-national companies’ role in affecting environmental pollution. I.P.S. Sidhu’s article, “Socio-Economic Aspects of Pollution: Case for Transfer of Technology to Rural Areas”, is a brief article in which he analyses industrialization and dynamics of law. V.S. Deshpande’s article, “Environment, Law and Public Interest Litigation” deals with the role of public interest litigation in enforcing the provisions relating to air pollution and water pollution, K.D. Gaur’s “Judicial Approach to Environmental Laws”, highlights the penal laws relating to environment.

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81 Virendra Kumar, “Environmental Protection And The Law”, Paras Diwan and Peeyushi Diwan (eds.) Ibid, pp.63-70
82 Chhatrapati Singh, “Legal Policy For The Control of Environmental Pollution”, Paras Diwan and Peeyushi Diwan (eds.) Ibid, pp.71-92
85 I.P.S. Sidhu, “Socio-Economic Aspects of Pollution: Case For Transfer of Technology To Rural Areas”, Paras Diwan and Peeyushi Diwan (eds.) Ibid, pp.119-125

“Law for Control of Air Pollution across the National Borders”, is an article of L.N.Mathur, who briefly describes international law on air pollution. Harpel Kaur Walia’s article, “Air Pollution: A study of the Indian Enactments”, deals with Indian laws on air pollution. Nomita Aggarwal’s article, “Noise Pollution” describes the sources of noise pollution and its effect. This article also deals with various laws relating to noise pollution. Similarly R.S.Gahlan’s article, “Noise Pollution And the Law”; D.C. Varshney’s, “Noise Pollution : S.O.S For A Legislation”; Vijay Swaghule’s, “Problem of Noise Pollution And Legal Measures”; and Gurpal Singh’s, “Noise As A Public Nuisance under the Indian Penal code” are articles that deal with various dimensions of noise pollution and legal provisions to prevent them.

K.P.S. Mahalwar’s article, “Deforestation and Environment – A Socio-Legal Conspectus” deals with the Forest (Conservation) Act, 1980 and its relevance to

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92 L.N. Mathur, “Law for Control of Air Pollution Across the National Borders”, Paras Diwan and Peeyushi Diwan (eds.) Ibid, pp.219-224
95 R.S.Gahlan’s, “Noise Pollution and the Law”, Paras Diwan and Peeyushi Diwan (eds.) Ibid, pp.254-266
97 Vijay S.Waghule, “Problem of Noise Pollution And Legal Measures”, Paras Diwan and Peeyushi Diwan (eds.) Ibid, pp.280-295,
98 Gurpal Singh, “Noise As A Public Nuisance under the Indian Penal code”, Paras Diwan and Peeyushi Diwan (eds.) Ibid, pp.296-303
prevention of deforestation. Likewise, S.K. Mitra’s article, “Conservation of Forest A losing Battle”, analyses various penal provisions relating to conservation of the forest.100

Environmental laws, for a pollution free environment is the need of the hour. This aspect is very important for the sustenance of human civilization. It is to be incorporated in the syllabus from the school level. This is the core concept of the articles of M.L. Upadhyaya, “A Plea for Teaching Environmental Law”,101 Trisha Sharma, “Environmental Education: The Why’s and How’s”102 and Sudhir K. Chopra, “Contents of paper of Environmental Law: Graduate Course”103

Shyam Divan and Armin Rosencranz in their work, Environmental Law and Policy in India, made a critical and comprehensive study about Indian Government’s policy relating to environmental issues. In this book, digests of various environmental legislations are discussed. It also highlights many judicial remedies available under the legal system pertaining to environmental laws. The authors presented facts of many leading environmental cases.104

P. Leelakrishnan’s work Environmental Law: Case Book, deals with the Constitutional and other statutory provisions of environmental law. It also made a detailed study about water pollution, air pollution and measures to control such pollution. The author critically analysed the concept sustainable development with reference to large projects. In this book, judicial review and its constraints are elaborately analysed besides explaining various doctrines like public trust doctrine, polluter pays principle, precautionary principle.105 In Environmental Law in India, Leelakrishnan deals with protection of forest habitat, resource management, public

participation in environmental decision making, besides other aspects of Environment.\textsuperscript{106}

Justice Ashok A Desai in his book, \textit{Environmental Jurispudence} traces the environmental awareness of India from the ancient past. It also highlights sources of environmental law, jurisprudential issues on environment, legislative environmentalism including legislative activism. It also highlights judicial contribution in the development of environmental jurisprudence, besides highlighting the advent of world environmental jurisprudence.\textsuperscript{107}

P.R. Trivedi in his \textit{Encyclopedia of World Environment} elaborately describes environmental issues like ecology, environmental management, wild life, pollution and basic environmental laws. This work comprising five volumes, attempts to analyse environment as a highly interrelated system.\textsuperscript{108} Sanjay Upadhyay and Videh Upadhyay’s work \textit{Environment Protection, Land and Energy Laws}, is a detailed and critical study of various issues relating to environment in 3 volumes.\textsuperscript{109} R.G. Chaturvedi and M.M. Chaturvedi, in their work, \textit{Law on Protection of Environment And Prevention of Pollution} is a commentary on various environmental related laws like Air Act, Water Act, Water Cess Act, the Environment Act, Forest Act and the Wild life Act. The authors deal with the philosophy relating to environment and pollution vis-a-vis nuisance. This book also highlights the concept of right to breath.\textsuperscript{110}

Justice Kuldeep Singh in his article, “Environment Protection – The Role of Judiciary”, very briefly highlights Supreme Court’s role in protecting environment.\textsuperscript{111} Arvind Jasrotia’s article “Environmental Protection and Sustainable Development: Exploring the Dynamics of Ethics and Law”, critically analyses environmental ethics and eastern mysticism. It also deals with sustainable development from eco-centric and

\textsuperscript{106} P. Leelakrishnan, \textit{Environmental Law In India}, (New Delhi: Butterworths, 2005).
\textsuperscript{108} P.R. Trivedi, \textit{Encyclopaedia of World Environment}, (New Delhi, APH Publishing Corporation, 1999).
anthropocentric perspectives besides taking the Indian perspective. S.Sivakumar’s article, “Environmental Protection: International and National Perspectives”, deals with international environmental laws as well as Indian environmental laws. V. Rajyalakshmi’s article, “Right to Environmental Protection”, highlights the ethical discussions of environmental issues. Her other article, “Precautionary Principle in Environmental Protection”, made a critical analysis of the precautionary principle in India. Rajyalakshmi made notes and comments in a write-up “Sustainable Development: Need for a proper perspective” in which she brings out inter-generation and intra-generation equity in relation to sustainable development.

N.R. Madhava Menon’s article, “Right to Development, Clean Environment and Work”, deals with development and its impact on environment. In this article, he highlights right to work and its concomitant issues and challenges. Justice S.Ravindra Bhat, in his article, “Climate Change-The new Paradigm” made a critical study about the climatic changes and the efforts taken by international organizations through protocols and conventions. In the same issue, Kuljit Kaur in her article, “Role of Non-Government Organizations in the protection of environment” highlighted the role of Non-Government Organizations in protecting the environment both at national and international level. R.A. Malviya’s, “Sustainable Development - As a principle of Environmental Protection: Some Reflection” explains the concept sustainable development and its implications on inter-generational equity and integration of environment and development.

Sathish C. Shastri edited a collection of articles under the title, *Human Rights, Development and Environmental Law-An Anthology*. In this book he himself contributed two articles, “Public Trust Doctrine and Environmental Jurisprudence” and “Law Relating to Preservation And Protection of the Rights of Tribal People In India”. In the former article, he has traced the evolution of the public trust doctrine concept from the past and includes the enunciation of this principle in USA and correspondingly in India. In the latter article, he made a critical study of the impact of law relating to environment on the tribals in India. A passing reference is also made on the effect of environment on tribals’ in America. A very interesting article, “Judicial Activism, Public Interest Litigation and Environmental hazard in India” was the contribution of N.D. Sharma. R.G. Chaturvedi, has written on “Bio-diversity and extinction of species”.123

Sharma’s, “Ecological Destruction And Environmental Jurisprudence in India”,\textsuperscript{131} A.P.Singh’s, “Environmental Rights as Human Rights or A Face Wash”\textsuperscript{132} Anjana Kakar’s, “Development, Environment Ethics and Human Rights: Role of Judiciary”,\textsuperscript{133} Vinod Dixit’s, “Impact of Evolution of Environmental Law on Scope of Public Interest Litigation and concept of Separation of Power”,\textsuperscript{134} analyse selected issues of environmental aspects.

Daljeet Singh and Sukhsimranjit Singh’s, “Human Right Initiatives through Public Interest Litigation by Indian Judiciary in Environmental Jurisprudence: An Evolution”,\textsuperscript{135} Manju Arora Relan’s, “People, Parks and Wildlife: Towards Co-existence”,\textsuperscript{136} Madhu Shastri and Rajesh Gaur’s, “Environmental Priorities in India”\textsuperscript{137} V. Tayal And Anjum Parvez’, “Right to Clean Water and Constitutional Mandate: Implications and Judicial Response”,\textsuperscript{138} Nandakumar Krishnachar’s, “Unleashing the destruction by dam projects in India”,\textsuperscript{139} S.K. Singh’s, “Marine Pollution, Human Health and the Law”,\textsuperscript{140} H.C. Dholakia’s, “Management of Bio-Medical Waste-Need for Legal Regulation”,\textsuperscript{141} B.M. Shukla and Abhijit Joshi’s, “The study of cases decided under The Water Act”\textsuperscript{142} and Dilip A. Mevada and Sonal Mevada’s “Eco-Friendly and Fuel Efficient Crematorium: An Experiment”\textsuperscript{143} are other important articles that cover

\begin{itemize}
\item \textsuperscript{132} A.P.Singh, “Environmental Rights as Human Rights or A Face Wash” in Satish C.Shastri (ed), Ibid, pp.203-206.
\item \textsuperscript{139} Nandakumar Krishnachar, “Unleashing the destruction by dam projects in India”’ in Satish C.Shastri (ed.), Ibid, pp.367-379.
\item \textsuperscript{140} S.K.Singh, Marine Pollution Human Health and the Law’’ in Satish C.Shastri (ed.), Ibid, pp.380-392
\item \textsuperscript{141} H.C. Dholakia, “Management of Bio Medical Waste-Need for Legal Regulation” in Satish C.Shastri, (ed.) Ibid, pp.393-399
\item \textsuperscript{142} B.M.Shukla and Abhijit Joshi, “The study of cases decided under The Water Act” in Satish C.Shastri, (ed.) Ibid, pp.400-408
\end{itemize}
a whole gamut of environmental issues including sporadic reference to the Supreme Court cases on these topics. These articles are segmental and view a wide range of environmental issues in a piecemeal manner.

Anupa V. Thapliyal’s article “Environment and the Law: Effectiveness of Legal Sanctions”144 made a survey of environmental legislations more particularly about the Water Act and The Environmental Protection Act, and highlighted the provisions relating to criminal liability. This article attempted to give an empirical data about cases pending before various courts in Maharashtra. It also explores the factors responsible for the delay in environmental cases and the approach of the Court in disposing them. C.M. Jariwala’s article, “The Changing Dimensions of the Right to Environment in India”145 is about the development of international law on environment and its corresponding impact on Indian legal judiciary. Sanjai Sangvai’s article, “The New Politics in Environmental Socialism”146 traces the emergence and development of environmental movements in India like Chipko and Narmada Bacho Andolan. Donald L. Burnett’s article “The Law and Economics Movement: Can it illuminate India’s environmental issues?”147 focuses on environment laws and its impact on economy. It briefly analyses selected decisions of the Supreme Court from 1994 – 1999. “Fundamental Rights vis-a-vis Noise Pollution”, an article written by Satish C. Shastri,148 critically analyses the relationship between Fundamental Rights and noise pollution, with reference to right to religion and right to freedom.

The book Social Environment for Sustainable Development is a collection of articles edited by Y.G. Joshi and D.K. Verma.149 Verma’s article, “Social Environment for Sustainable Development-Concept and dimensions,” traces the evolution of the

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P.K. Baby in her article, “Pollution Prevention in India: How for are Policies Successful?” analyses the role of market based instruments and various policy options available in India. Pavel Chakraborty and Nupur Chowdhury in their article, “Law and Policy Regime on Water Resources in India addressing questions of equity and efficiency” explore the competing regime formulation like rights or needs and the

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physical limits of legal rights. This article also analyses the efficient use of water, its impact on pricing and trade regimes.159

V. Gopala Krishna and K. Raj Reddy’s article, “Environmental Liability Risks for Lenders – A Critical Appraisal”, analyses the business risk that is involved in collaterals obtained as security in financing environmentally sensitive projects. It also analyses a symbiotic balance between economic development and sustainable use of environment.160 Rajiv Khare in his article, “The Journey of Water Resource Law and its management: Doom or Dawn” analyses the Constitutional provisions relating to water resources including inter-state water disputes and explore the approach of the Court to prevent water hostile activities in the name of development.161

Geetanjoy Sahu in her article, “Environmental Governance in India”, besides tracing the concept of environmental governance highlights the contributing factors and emerging issues in the process of environmental governance.162


162 Geetanjoy Sahu, “Environmental Governance in India”, Ibid, pp.33-42
The above review of literature reveals the fact that scholars have widely concentrated on various issues relating to environment. Occasionally they concentrated on Supreme Court’s views on environment. But no systematic approach has been explored and formulated in relation to environmental protection. Similarly, it is evident that scholars analysed various aspects of industrial jurisprudence including industrial relations. There are very few research works highlighting very briefly Supreme Court’s views on various legal doctrines. But there is no systematic research work on this topic. Therefore in this research work, a systematic attempt is made to explore and formulate Supreme Court’s approach to industrial relations and environmental protection in a comprehensive manner.

**RESEARCH METHODOLOGY**

Interpretation including construction of statutes is an on going judicial process of the Supreme Court. However, in this research work, the Courts approach to ‘industrial relations and environmental protection’ has been explored and formulated only through the cases already decided by the Court. Hence it is an *ex post facto* research. The term ‘approach’ involves ‘views’ and ‘methods’, that is, the Supreme Court’s ‘views on environment’ and ‘the methods adopted by the Supreme Court’ to implement such views and hence they are explored and formulated from the decided cases. Similarly, the concept ‘industrial relations’ is analysed only in the light of cases decided by the Supreme Court on matters related to environmental protection and closure and transfer/relocation of industrial undertakings. It is therefore a doctrinaire research.

Cases, related to industrial relations and environmental protection are first identified. Secondly, concepts like ‘environment’, ‘environmental protection’, ‘industrial relations’ and the components of these concepts like necessity to have pollution free water, air and land, closure and relocation of industrial establishments due to reasons of environment, the rights of workers that are affected because of closure and relocation of industries, and the views of the Supreme Court on such concepts which are scattered in various decided cases are mapped out. Thirdly, such mapped out views are arranged and formulated into an organised form. Fourthly, the
methods adopted by the Supreme Court to enforce its views that are scattered in
decided cases are found out. Fifthly, such methods that are found scattered in various
cases are systematically formulated. Sixthly, the views of the Supreme Court and its
methods are arranged in a chronological manner so as to find the changing trends in the
approach. For these purposes research methods like explorative, formulative, analytical,
evolutive, evaluative, comparative and critical methods are applied.

The Supreme Court of India is an important organ of the state, vested with the
sovereign function of rendering justice. Being an apex organ of adjudication in the
judicial hierarchy, its orders are binding on all Courts in India. There is a system of
binding nature of precedents and it prescribes that the larger bench decisions are
binding on the smaller benches. The judiciary is one of the three co-ordinate organs of
the state. The Constitution of India constitutes the judiciary distinctly and powers are
vested in such a way to allow the judiciary to function independently. In the judicial
hierarchy, the Supreme Court is the Apex Court. For the purpose of rendering justice,
benches are constituted as Division Bench, Full Bench and Constitutional Bench. Even
though judges are there in the benches, for the purpose of analysis, benches are taken as
units of analysis and not as individual judges. To be more precise, it is the approach of
the Supreme Court and not approaches of the judges of the Supreme Court, even
though the former is possible only through the latter and not vice-versa.

For the analysis of changing trends in the approach of the Supreme Court, it is
necessary to know the chronological sequence of cases decided by the Supreme Court.
Hence, at the end of the names of the environmental cases, year of the judgement
delivered is mentioned in brackets along with the abbreviations of DB, FB and CB to
mean Division Bench, Full Bench and Constitutional Bench, respectively.

**SOURCES OF DATA**

Judgements delivered by the Supreme Court, Constitutional provisions, Acts
and Statutes of the Environmental Laws and Labour Laws are the primary sources of
data. Articles, books, dissertations, write-ups of scholars on these subjects and review
of case laws constitute the secondary sources, besides deliberations of international
summits and Conventions. Supreme Court judgements are collected either from All India Reports (AIR), or Supreme Court Cases (SCC), or cases downloaded from Internet are used for the purpose.

**DELIMITATIONS**

The study is confined to Supreme Court’s approach to environmental protection only from the angle of water pollution, air pollution and soil pollution. It also deals with conservation of the environment with reference to conservation of forest. It is analyzed only through decided cases. It does not deal with the protection of wild life. Noise pollution is also excluded from the analysis. Because approach to any issue involves a systematic and comprehensive analysis, approach to wild life protection and noise pollution constitute two different and distinct entities, which are to be dealt separately.

This analysis is for a period of thirty years from the year 1976, (even though the Water Act was enacted in 1974, after the Stockholm declaration of 1972, landmark cases regarding environment had not reached the Supreme Court and decided by it before 1976) the year in which the 42nd Constitutional amendment was introduced where in the environmental provisions have been incorporated in the Constitution. Environment is a unique, universal, all-pervasive and all-inclusive one. Each and every aspect of environment and its manifestation cannot be completely studied. Therefore in the present study, Supreme Court’s approach to industrial relations and environmental protection is analyzed mainly from three dimensions viz. workers, industrialists and community. From the angle of workers, how the Supreme Court views the rights of workers when they are affected due to environmental protection. Secondly, how the Supreme Court views the liabilities of the industrialists when their industrial activities affect the environment. Thirdly, how the Supreme Court views the interests of the community at large when industrial activities pollute the environment and deplete the resources. The efforts taken by and the methods adopted by the Supreme Court in protecting the interests of the workers and the community and enforcing the liabilities of the industrialists when their industrial activities affect the environment are dealt with.
LIMITATIONS

The nature of the research is to explore and formulate the approach of the Supreme Court, which is found widely scattered in innumerable judgements over a period of 30 years. The views on environment and methods adopted by the Court to protect the environment are found in bits and pieces and it is necessary to collect, compile and edit them in an organized way. To maintain originality and reliability, the Supreme Court’s views and methods are quoted verbatim wherever required. Inevitably, too many citations of the Supreme Court are used in this work and at times such citations are also lengthy.

The Apex Court widely appraised and referred citations of scholars, scientists, experts and committees on their views on environment. It also quoted judgements of foreign courts and declaration of various international conventions and summits. Such views of the above-mentioned authorities, which are cited with appreciation by the Court in its judgements, are also taken as views of the Supreme Court.

Many of the environmental cases came to the Supreme Court by way of Public Interest Litigation (PIL), and at times the same public interested person filed various cases. In such cases the names of the parties are also same. To avoid confusion such cases are mentioned by their popular known case names. Further, the Supreme Court has issued several orders at different times in the same case to monitor the implementation of its orders. However, such orders are referred as one order irrespective of different orders at different dates.

PLAN OF THE STUDY

Judgements of the Supreme Court are the product of the judicial process. The outcome of the process depends on various factors. The legal system and eco system are important factors within which it functions. The former includes the relevant Constitutional provisions, industrial legal system and enviro-legal system, which are enabling the Supreme Court to resolve the conflicting industrial enviro-legal issues in its endeavour to protect the environment. All these aspects are discussed in the second chapter ‘Background’.
‘Rights’ forms the third chapter. Labour Laws attempt to provide social security to the workers. Workers’ right to work in industrial establishment is protected. However, the employees have the right to terminate their services by following the provisions of law. During such terminations the workers are provided with compensation. In this chapter, a critical analysis is made about the approach of the Supreme Court to protect the interests of workers, whenever they are affected on grounds of closure and transfer or relocation of industrial establishment under the Industrial Laws and Environmental Laws.

The fourth chapter is ‘Liabilities’. It describes various liabilities of the employers towards the workers and community. The tortious liability of the employer under the common law with particular reference to strict liability and the Indian improvised version of absolute liability is traced. It also deals with employers’ penal liability. There are a plethora of environmental Acts and Statutes, which impose diverse liabilities on the employers. These aspects are elaborately discussed in this chapter.

‘Sustainable Development’ is the fifth chapter. In this part, Supreme Courts’ views on environment, the necessity to protect it, the ineffectiveness of the statutory machinery and its failure in protecting the environment, form one part of the analysis. The methods adopted by the Supreme Court in protecting the environment form the other part of the analysis of this chapter. It also critically analyses the variance in approach between industries that are hazardous and non-hazardous and the industries that use non-renewable and renewable sources, and industries that affect conservation of the Forest and are polluting the environment. The changing trend in the Supreme Court’s approach is also critically analyzed.

The last chapter ‘Conclusion’ sums up the findings of this research. It also suggests further areas of research that can be pursued in this area.