CHAPTER – II

BACKGROUND

Environmental protection is a much-hyped term now, a topic leading to endless debates and discussions. Originally, man, like other species, was living in harmony with nature and did not tamper with it. The problem for man and nature probably started when he attempted to exploit nature indiscriminately for his own inherent greediness. Ultimately, greediness came to the fore leading to the disturbance of the serene eco-system. Jean Jacques Rousseau in his magnum opus, *On Social Contract*, laments that “man was born free but is everywhere in chains”, and suggests that through civilization man has affected much that is good in nature. His observation is applicable absolutely to environment and issues related to it. Civilization is assessed in terms of development in science and technology. The products of science and technology are factories and industries, which produce commodities and devices that facilitate a sophisticated living for man. This so called advancement or sophistication through the establishment of factories and industries cause pollution of air, water and land. This has seriously disturbed the natural cycles of the eco-system and positive energy flow.

Industrial revolution, which started in Europe, expanded from there to the Western hemisphere and later to other parts of the globe. From then on, factories and industries grew like mushrooms to cater to the escalating needs of the people. The First World War boosted industrialization to dizzy heights. Urbanization is the natural corollary of industrialization. Though urbanization was there since the dawn of Indus Valley Civilization, the pace of growth was markedly vibrant after the First World War. This combination of industrialization and urbanization wrought havoc on the eco-systems and hurt the eco-equilibrium. This research deals with the Supreme Court’s approach to industrial relations and environmental protection. Hence a detailed analysis of the natural eco system and the enviro – system is required so that the judicial process of the Supreme Court can be properly understood for the purpose of exploring and formulating its approach to industrial relations and environmental protection.
ECO SYSTEM

There is a rhythm in the Universe. Planetary movements are rhythmic and the entire nature is also rhythmic. Rhythm indicates being orderly or systematic. Being systematic is the basic characteristic of nature. It is based on a system. A system means a group of units or parts, which are integrated together and are interdependent. One unit’s dynamism depends on the other unit, which in turn depends upon some other unit of the system for its dynamism. Within a system, there may be several integrated sub-systems, which are also interdependent. Some systems may be complex and some may be simple. Whether it is simple or complex, all are essential for the smooth functioning of the larger system. A small change in a sub-system may affect the other parts of the system. However, the primary function of the larger system is to maintain equilibrium and status quo. This equilibrium is maintained by enabling the sub-systems to coordinate among themselves. This in-turn smoothens the functioning of the main system. Change is universal and inevitable. But small changes in parts and units of sub-systems would be assimilated and it may not hurt the status quo. A radical change in any sub-system destabilises the whole system and hurts the equilibrium.

The green planet earth is a part of the solar system. This Universe is a sub-system of the Galaxy, which in turn is the sub-system of the Milky Way. The Earth, which is composed of many systems at the macro, meso and micro levels, is the master system as far as human beings are concerned. The broader system of the Earth consists of lithosphere, hydrosphere and atmosphere – and in all the three spheres there survives the biosphere. All these three spheres are inter-connected and based on this the sustenance of the biosphere exists.

Eco-system is one such sub-system of the earth. This eco-system relies on many other sub-systems. ‘Ecology’ is the study of eco-system. The term ‘ecology’ is derived from the Greek term ‘Oikos’ which means ‘habitation’ and ‘logos’ – means ‘discourse’ or ‘study’. Therefore ecology is a study of the habitation of organisms and deals with the mutual interactions of organism with their physical environment. The German Zoologist, Ernest Haeckel, who invented the word ‘Oeckologie’ used it to mean for ‘the relation of the animal to its organic as well as its inorganic environment, particularly its
friendly or hostile relations to those animals or plants with which it comes into contact.”

The environment consists of living organisms (biotic) and physical (abiotic) components. In modern ecology, an eco-system is considered as a group of biotic communities of species interacting with one another and with their non-living environment exchanging energy and matter. Accordingly an eco-system is an integrated unit consisting of interacting plants, animals and micro-organisms whose survival depends upon the maintenance and regulation of their biotic and abiotic structures and functions. Evidently, an eco-system is a unit or a system which is composed of a number of sub-units, which are linked together directly or indirectly. Some may be freely exchanging energy and matter from outside and some other may be isolated from outside. The former is called an open eco-system and the latter a closed eco-system.

Eco-systems have certain basic structural and functional features. In structural aspects, it has biotic and abiotic structures. In functional attributes, food chain, energy flow, cycle of nutrients, primary and secondary production and the sustenance of eco-system are important. In biotic component, plants, animals and micro organisms are present. They have different nutritional behaviour and status in the eco system. They are known as producers or consumers based on how they get their food. Producers are those green plants, which can synthesis its own food by making use of carbon-di-oxide present in the air and water in the presence of sunlight by involving the green pigment chlorophyll, present in the leaves. This process is known as photosynthesis. It is also called as photoautotrophs i.e., producing their own food. Besides green plants, there are also some micro organisms, which can produce organic matter through oxidation of certain chemicals in the absence of sunlight and they are known as chemo-synthetic organisms or chemoautotrophs. All other organisms which get their organic food by feeding upon other organisms are called consumers. Those organisms which eat plants are known as herbivorous or primary consumers.

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3 Ibid
Those that feed on herbivores are known as carnivorous or secondary consumers. Besides these, omnivorous are those that feed on both plants and animals. Various bacteria and fungi are known as decomposers since they derive their nutrition by breaking down complex organic molecules into simple organic compounds and ultimately into inorganic nutrients. It is obvious that in all eco-systems, all the components of this biotic structure prevail. Of course, there may be variation from eco-system to eco-system.\(^4\)

Abiotic structure deals with physical and chemical components of an eco-system which includes climatic factors edaphic (soil) factors, geographical factors, energy, nutrients and toxic substances. In physical features, the sunlight and shade, intensity of solar flux, duration of sun hours, average temperature, annual rainfall, wind, latitude and altitude, soil type, availability of water, water currents are some of the important features, which have strong influence on the eco-system. In chemical factors, availability of essential nutrients like carbon, nitrogen, phosphorous, potassium, hydrogen, oxygen and sulphur level of toxic substances, besides other salts that cause salinity are important. All these abiotic components influence the biotic components and they are linked together through energy flow and matter cycling. Here comprehensive understandings of various nutrient cycles like nitrogen cycle, carbon cycle, phosphorous cycle etc. are to be understood. It is also essential to know food chains in the ecosystem. Energy flow in ecosystem takes place through the food chain and it is this energy flow, which keeps the ecosystem going. The most important feature of this energy flow is that it is unidirectional, whereas nutrients flow is cyclical in nature. However, the flow of energy is based on two laws of thermodynamics. The first law states that energy can neither be created nor destroyed. The second law states that energy dissipates as it is used. It also suggests that energy gets converted from a more concentrated to a dispersed form. As energy flows through the food chain, there occurs dissipation of energy at every trophic level. The loss of energy takes place through respiration, locomotion, running, hunting and other activities. At every level there is about 90% loss of energy and the energy transferred from one trophic level to the other is only about 10%.\(^5\)

\(^4\) Ibid
\(^5\) Ibid
The other important functional attribute of an ecosystem is nutrient cycling. Nutrients like carbon, nitrogen, sulphur, oxygen, hydrogen, phosphorous, etc move in circular paths through biotic and abiotic components and are therefore known as biogeochemical cycles. Water also moves in a cycle, known as hydrological cycle. Few important cycles, like nitrogen, carbon, phosphorous, sulphur and hydrological are discussed.

Nitrogen is present in the atmosphere in large amounts (78%) and it is fixed either by the physical process of lighting or biologically by some bacteria. The nitrogen is taken up by plants and used in metabolism for biosynthesis of amino acids, proteins, vitamins etc and passes through the food chain. After the death of plants and animals, the organic nitrogen in dead tissues is decomposed by several groups of ammonifying and nitrifying bacteria, convert them into ammonia, nitrites and nitrates, which are again used by plants. Some bacteria convert nitrates into molecular nitrogen which is released back in the atmosphere and the cycle goes on.

Carbon in the form of carbon-di-oxide is taken up by green plants as a raw material for photosynthesis, through which a variety of carbohydrates and other organic substances are produced. It moves through the food chain and ultimately organic carbon present in the dead matter is returned to the atmosphere as carbon-di-oxide by micro organism. Respiration by all organisms produces carbon-di-oxide, which is used up by the plants.

A good portion of phosphates moving on the surface soil run off reaching the ocean and are lost in the deep sediments. Sea birds play an important role in phosphorus cycling. Sea birds eat sea fishes, which are phosphorus rich, and their droppings or excreta are dropped on land. Moreover, organic phosphorus present within dead and living cells through excretion and decomposition contribute to the dissolved inorganic phosphorus in the water. During oxidizing process in summer, phosphorus sticks binds to sediments. But during winter when there is low oxygen, it is released from the sediments. Therefore the amount of phosphorus in water varies according to the season. Since it is a limiting nutrient, the growth of vegetation in the water also varies according to the availability of phosphorus.
Sulphur is another nutrient that is in circulation. Most of Sulphur found in Earth exists in the form of minerals or rocks. Gypsum (Calcium Sulphate) and Iron Di Sulfide (Pyrate) are good sources of Sulphur. It enters the atmosphere in the gaseous form as H₂S (Hydrogen Sulphide) which comes from decaying organic matter. Volcanoes also produce SO₂ (Sulphur dioxide) gas particles of Sulphate solves (SO₄) such as Ammonium Sulphate enter the atmosphere with sea spray. The atmospheric SO₂ reacts with oxygen to form SO₃ which in turn reacts with H₂O to form Sulphuric Acid. It also reacts with other chemicals in the atmosphere to produce Sulphate salts. Both these fall on the earth. Droplets of H₂SO₄ are also produced by Di Methy Sulfide (DMS), emitted into the atmosphere by certain species of plants like ocean Planktons. However, a large quantity of Sulphur enters the atmosphere through human activities of burning coal, oil etc.

Another very important cycle is the hydrological cycle. Though more than 97% of the world’s water is found in the oceans, they do not meet the municipal, agricultural or industrial needs as they have a high salt content. Financial constraints make desalinization an unattractive option. However, almost 50% of the sun’s energy absorbed on the earth’s surface causes evaporation of water, from wet surfaces and from leaves by transpiration. This combined water removal process is called evapo-transpiration. When water evaporates, it is moved about by the wind and finally condensed and returns to the earth’s surface. This is known as precipitation. There is more precipitation than evapo-transpiration and over oceans, there is more evaporation than precipitation. On land, the precipitation exceeds evapo-transpiration and hence water will be returned to the oceans by run off ground water and through overflowing streams. However, the hydrologic cycle is influenced by various factors. This cycle always supplies fresh water to the biosphere as it is its life force.

The above analysis of cycles and food chain reveals that the entire ecosystem is interdependent and systematic and rests on abiotic and biotic activities. The abiotic activity comprises of three components namely atmosphere (air), hydrosphere (water) and lithosphere (land or soil). Thus the entire global ecosystem comprises these three ecological components along with the biotic component of biosphere. This biosphere

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⁶ Ibid
represents that part of the earth in which life exists and is capable of capturing, converting, storing and utilizing solar energy.

Thus environment consists of all the surrounding physical and biological factors with which organisms closely interact. There is a close interlinking and interdependency between these biotic and abiotic components. The atmosphere consists of several layers like troposphere, stratosphere, mesosphere, thermosphere, exosphere, etc. These spheres serve very important functions such as filtration of radiant energy from the sun, insulation to prevent loss of heat and stabilization of climate and weather factors. These functions are very essential for the sustenance of the biosphere.

The troposphere is the lowest stratum of the atmosphere where most of the biotic activities of the atmosphere happen. In this part air is prevalent and hence living organisms survive. The air is composed of 78% of Nitrogen (N₂), 20.9% of Oxygen (O₂), 0.03% of Carbon-di-oxide (CO₂) and 0.93% of argon, besides other noble gases. These properties of the air undergo constant cyclic process between living organisms and are known as biogeochemical cycles. This atmospheric air produces direct influence both on plants and animals. Reduced supply of atmospheric air and its components cause various morphological and bio-chemical changes in the plant tissues. Higher concentration of carbon-di-oxide results in the production of toxic substances that are lethal for the growth of plants and soil microbes.

Hydrosphere is also an important ecological factor. Theories of evolution have confirmed that origin of life happened in water. 99% of surface water is found in oceans only. The rest is found in lakes, ponds, and in running water sources such as rivers and streams. Water exerts a direct influence on the pattern of aquatic and terrestrial life. Water thus constitutes an important medium for different ecosystems. Specific heat, thermal conductivity, viscosity, salinity and surface tension are the important physical features of water. The chemical properties of water include solubility of gases in water, pH (hydrogen ion concentration) and hydrological cycle. As water is a universal solvent, it constitutes about 70 – 85% of photosynthesis, respiration and process of growth in plants. Growth, respiratory mechanism and reproduction are the vital processes that are affected due to non-availability of water. Aquatic plants,
hydrophytes, require more water, whereas xerophytes, plants living in dry environment could survive even in acute scarcity of water, whereas mesophytes can survive with moderate amount of water.

Soil edaphic is another important ecological factor. It represents topmost layer of earth’s crust and is composed of weathered rock materials containing minerals and organic detritus. The mineral components of soil are formed from the soil forming rocks by the process of fragmentation and the organic constituents are formed by decomposition of dead plants and animals and by the activity of soil microorganisms. Density, porosity, permeability and temperature are some of the important physical properties of soil. Its chemical properties include organic and inorganic matters, colloidal properties and pH.

Humus is the black coloured component of soil containing amino acids, hexoses, fats and various pigments. Soil, water forms an important habitat for various plants and animals and is mainly derived from precipitated water. There is a constant and continuous exchange of essential elements between the biotic organisms and environment. The essential chemical elements like Nitrogen (N₂), Oxygen (O₂), Carbon (C), Phosphorous (P) and Sulphur form the basic constituents of protoplasm of all biotic organisms derived from the external environment. This inter-relationship happens through biogeochemical cycles and photosynthetic mechanism. The chemical elements tend to circulate in the biosphere from environment to organisms and back to the environment through these cyclical processes.

In this serene environment the biogeochemical cycles and photosynthetic mechanism are smooth, stable and balanced. The artificial intervention of human ingenuity disturbs these cycles, which in turn destabilizes other aspects of biotic and abiotic organisms. However, when the changes are normal and moderate the major systems and sub-systems of the eco-systems are capable of restoring the status quo by adjusting its components. But, radical change due to erratic and imprudent industrial activities makes restoration very difficult. Hence human beings must use their intelligence to keep the cycles in rhythm and allow the systems to sustain and stabilise itself.
India is a country known for its environmental protection. Vedic Aryans worshipped nature. In Hindu mythology, animals including certain wild animals are deified as divine creatures, and hence not to be killed arbitrarily. Emperor Ashoka was the first monarch in the world who advocated environmental protection. This tradition of according importance to nature has been continued. The British imperialists exploited India and its resources. They exploited the Indian forest resources to the maximum. Consequently, industrialization of Britain required large quantities of raw materials. India was converted into a colonial economy to fulfill the needs of the industrial and imperialistic British economy.

The dawn of Crown’s rule in India after the end of British East India Company’s rule led to the introduction of industries and its corollary the factory system in India. The first Factory Act was introduced in the year 1881, wherein British Common Law System came to be followed here. Accordingly in Torts, the concept ‘Strict Liability’ after the rule in Ryland v Fletcher was equally applicable to India. This principle has a wide application in relation to environmental pollution. This principle enunciates that whoever keeps any dangerous objects in his premises and if it escapes and causes injury, except in certain conditions are liable for the damage caused by the object. Accordingly, the occupier of factories or industries, which emit fumes or discharge industrial effluents or dispose hazardous wastes either in air or water or in land, are said to be liable for the injury caused by such unnatural objects that escaped from the premises.

The Indian Penal Code of 1860 is a penal legislation, which also deals with offences affecting the public health, safety, convenience etc. Chapter XIV of the Indian Penal Code deals with them in detail. Of these, public nuisance is a concept, which is directly related to environment. Section 268 of the Penal Code provides, “A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which necessarily causes
injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.\textsuperscript{7}

In this Section, the term ‘person’ is used. Section 11 of the Indian Penal Code defines ‘person’ to include “any company or association or body of persons, whether incorporation or not.”\textsuperscript{8} A combined reading of both sections imply that if any public nuisance is caused by way of emitting noxious fumes in the air, discharging industrial effluents in water course, disposing of hazardous wastes in the land is caused by a living person or a legal person which would cause any nuisance within the definition of section 268 that person including the legal entity is liable. \textit{Mens rea} of course constitutes an essential element according to Indian Penal Code. Even it is a company or a legal entity, though it does not have a mind to intend to commit an offence, it is deemed to have committed an offence because statutes prescribe presumptions. Similarly, The Indian Easement Act, 1882, also provides such prescriptions and presumptions of \textit{mens–rea} regarding commissions of those and omissions who are living in the upper stream of the river.

India inherited from the British colonial rule, not only the political ideologies and legal system but also the colonial economy. Coming out of the colonial clutches, the young republic strived hard to accelerate the industrialization process in order to cater to the needs of an ever-growing population. The main objective of the Constitution is to convert India from a dependent economy to a self-sufficient economy, then from self-sufficiency to welfare – orientation. But too much of stress on industrialization hurt the environment grievously. Factories through the manufacturing process and industries through their industrial activities emit, discharge and dispose factory and industrial wastes in the form of noxious fumes in air, industrial effluents in water and hazardous wastes in soil. Thus factories and industries pollute all the three natural spheres namely atmosphere, hydrosphere and lithosphere. Biosphere, which derives its energy and sustenance from these three spheres, is also hurt and its sustenance is threatened directly and at times indirectly. This led to the framing of industrial as well as penal laws. Initially these laws attempted to restrain and regulate

\textsuperscript{7} Section 268 of Indian Penal Code, 1960
\textsuperscript{8} Section 11 of the Indian Penal Code, 1860
pollutants, so as to enable the labourers to work in a tolerable and congenial atmosphere both in the factories and industries. But with increasing global environmental movement gaining ground, nation states are now forced to introduce environmental laws in their domestic legal system to protect the environment. In this part, legislative provisions relating to environmental pollution and its prevention are discussed.

Environmental law is a new domain in jurisprudence at the global level. At the national level, even three years ahead of Stockholm summit, India made a note in the IV Five Year Plan (1969 – 74) on integrating environmental factors into the planning. The IV plan document for harmonious development “recognised the unity of nature and man. Such planning is possible only on the basis of a comprehensive appraisal of environmental issue. There are instances in which timely, specialized advice on environmental aspects could have helped in project design and in converting subsequent adverse effect on the environment leading to loss of invested resources. It is necessary, therefore to introduce the environmental aspect into the planning and development.”9 A national committee on Environment Planning and Co-ordination was set up as a high advisory body to the Government. This Committee looked after issues related to environment.

At the global level the United Nations Conference on the Human Environment was held at Stockholm in June 1972. It laid down the principles and action plan for controlling and regulating human environment. It also envisaged institutional and financial arrangements for achieving this purpose. Subsequently, the General Assembly of the U.N. passed a resolution on 15 December 1972 emphasizing the need of active co-operation among the states in the field on human environment. This resolution also declared June 5th as World Environment Day, in order to sensitise the global community and to stress the relevance of environment.

In 1974, the Charter of Economic Rights and Duties of States were evolved. This Charter states that, “the protection, preservation and the enhancement of the

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environment for the present and future generations is the responsibility of all states. All states have the responsibility to ensure that the activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction. All states should co-operate in evolving international laws and regulations in the field of environment.”

CONSTITUTIONAL PROVISIONS

Mrs. Indira Gandhi, the then Indian Prime Minister, who attended the Stockholm Conference in 1972, successfully initiated the 42nd Constitutional Amendment after coming back to India. It inserted several provisions in the Constitution dealing with environment, making India a pioneer in incorporating environmental protection measures in the Constitution. Article 48A, a directive principle of state policy, has been incorporated, which provides, “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.” It also makes the citizens to be liable for certain fundamental duties. Article 51A, inter alia provides: “It shall be the duty of every citizen of India—(g) to protect and improve the natural environment including the forests, lakes, rivers and wild life and to have compassion for living creatures.”

Indian Constitution implicitly speaks about environmental protection, even before the amendment. Article 47 directs the State as follows: “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties”. Raising the standard of living and the improvement of public health are possible only in a good and protected environment.

The 73rd Constitutional Amendment introduced the Panchayat Raj institutions in India. Accordingly, the three tier system at the district level has been added, which attempts to decentralize power at the grass root level, popularly known as ‘democratic decentralization.’ The 11th Schedule was added through this Amendment. In this

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10 Quoted in Ibid, p.13
11 Article 41A of the Indian Constitution
12 Article 51A of the Indian Constitution
13 Article 47 of the Indian Constitution
Schedule, 29 items have been classified for the purpose of administration at the district level in which several items deal with environment implicitly. For instance, item 2 deals with land improvement, implementation of land reforms, land consolidation and soil conservation. Item 3 is related to minor irrigation, water management and watershed development. Item 6 deals with social forestry, and farm forestry. Drinking water, fuel and fodder are correspondingly dealt in the 11th and 12th items. Item 15 is related to non-conventional energy sources. Item 23 deals with health and sanitation.

The Panchayat Raj institutions are empowered and authorized to administer the people at the district level. They can plan for the economic development and social justice and also to implement various schemes for the same through administering the items enumerated in the 11th Schedule. Similarly at the municipal level, corresponding provisions have been made in the 12th Schedule. The following are some of the important items enumerated in the 12th Schedule. Item 6 speaks about public health, sanitation, conservancy and solid waste management. Item 8 deals with urban forestry, protection of the environment and promotion of ecological aspects. Item 13 is related to provision of urban amenities and facilities such as parks, gardens, playgrounds. Item 18 is related to regulation of slaughter houses and tanneries. These are some of the constitutional mandates explicitly incorporated in the Constitution relating to environment.

Article 253 of the Indian Constitution states that “Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”14 Right from 1972 onwards, India has been periodically attending international conferences relating to environment and often becomes a willing signatory to the outcome of such conferences. It has become an obligation on the part of the Indian state to make laws by way of enactments. The Water (Prevention and Control) Act of 1974, hereinafter called the Water Act 1974 was enacted by the Indian Parliament by using Article 252 of the Constitution in order to comply with the outcome of the Stockholm Declaration of 1972. In fact, water is a legislative subject within the legislative competence of the

14 See Article 253 of the Constitution of India
states. Entry 17 of List II of the 7th Schedule of the Indian Constitution runs as follows, “Water, that is to say water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I.”\(^\text{15}\) Entry 56 of List I reads thus, “Regulation and development of inter-state rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.”\(^\text{16}\)

The preamble of the Air (Prevention & Control of Pollution Act, 1981 hereinafter called the Air Act 1981 runs as follows: “Whereas decisions were taken at the United Nations Conference on the Human Environment, held in Stockholm in June 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the Earth. It includes the preservation of quality of air and control of air pollution and it is considered necessary to implement the decisions.”\(^\text{17}\) Similarly, the Environment (Protection) Act, 1986, hereinafter called the Environment Act 1986 opens with an all inclusive preamble which also provides: “for the protection and improvement of the Environment and for matters connected therewith. It further provides that decisions were taken at Stockholm Conference to take appropriate steps for the protection and improvement of human environment and to implement the decisions related to the protection and improvement of environment and prevention of hazards to human beings, other living creatures, plant and property.”\(^\text{18}\) These preambles substantiate the fact that India by using Article 253, enacted laws to give effect to the International agreements in which India happens to be a signatory. The Supreme Court of India being the Apex Court is vested with the power of doing complete justice under Article 142, which runs as follows:

“\(^{(1)}\) The Supreme Court in the exercise of its jurisdiction may pass such a decree or makes such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such a manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe”.

\(^{15}\) See Entry 17 of List II
\(^{16}\) See Entry 56 of List II
\(^{17}\) For further details see the preamble of the Air (Prevention & Control of Pollution) Act, 1981
\(^{18}\) For further details, see the preamble of the Environment (Protection) Act, 1986
Article 32 of the Indian Constitution provides remedies for enforcement of rights conferred by part III of the constitution. Accordingly,

“(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”  

This Article empowers the Supreme Court to provide right to constitutional remedies, but this itself is a fundamental right available in Part III of the Constitution. Therefore, it comes under the original jurisdiction of the Supreme Court and persons whose fundamental rights are infringed can approach the Supreme Court directly under this Article for remedies.

In Articles 133 and 134, the Supreme Court is vested with the power of appellate jurisdiction. Appeals may be preferred from High Courts in regard to civil and criminal matters. Under Part III, various fundamental rights are enumerated. It includes right to freedom, which in turn has the rights “to practice any profession or to carry on any occupation, trade or business, subject to reasonable restrictions. Citizens can approach the Supreme Court when their rights to do any profession, carry any occupation, trade or business is violated. They can also approach the Supreme Court by way of appeal, if their rights are violated. Article 133 provides that “(1) an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134A –

“(a) that the case involves a substantial question of law of general importance; and
(b) that in the opinion of the High Court, the said question needs to be decided by the Supreme Court (2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under Clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this constitution has been wrongly decided.”

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19 See Article 32 of The Constitution of India
20 See Article 133 of The Constitution of India
The Water Act, 1974, the Air Act, 1982, the Environmental Act, 1986 and other major environmental laws are structured on the basis of adversarial system of litigation wherein, infringement of environmental laws are deemed to be offences and punishable by laws according to the criminal justice system. As discussed earlier, the Magistrate is vested with the power of cognizance of environmental offences. Accordingly, as per the Criminal Justice System, the final appeal shall be to the Supreme Court only under certain circumstances as provided in Article 134 of the Indian Constitution. It provides that,

“(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India, if the High Court

a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

b) has withdrawn for trial before itself, any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

c) certified under Article 134A that the case is a big one for appeal to the Supreme Court.

Provided that an appeal under Sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of Article 145 and to such conditions as the High Court may establish or require.”

In this Article, Sub-Clause (a) and (b) may not have any relevance pertaining to environmental protection law since the offence cognized under the environmental laws do not result in death sentence and therefore possibly Article 134(1)(c) has jurisdiction under criminal matters. Article 134 A provides that, “every High Court, passing or making a judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of Article 132 or clause (1) of Article 133 or, as the case may be sub-clause(c) of clause (1) of Article 134, may be given in respect of that case. Besides, these provisions for appeal, special leave to appeal by the Supreme Court is provided in Article 136 which runs as follows:

“(1) notwithstanding anything in this chapter, the Supreme Court may in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.”

21 See Article 134 of The Constitution of India
22 See Article 136 of The Constitution of India
From the above discussion, based on the black law tradition or Wednesbury approach it is evident that the Supreme Court has two probable types of jurisdictions relating to environmental matter. Firstly, from the angle of capitalist, industrialist, developers, occupiers of industrial or factory premises - as citizens, they have the fundamental right to pursue any trade or business or a profession under Article 19, and they can approach the Supreme Court in case of violation of their rights directly under Article 32. Secondly, the victims of environmental pollution may also approach the Supreme Court by way of appeals against the orders of the High Courts. Regarding appellate jurisdiction, there is very limited scope of appeal available to the victims.

STATUTORY PROVISIONS

Indian environmental laws have all along been a segmented one, since it attempted to satisfy and honour India’s commitment to the international treaties, by enacting legislation from time to time. International environmental laws are still in the process of evolution and as such it has not resulted in any codified form and therefore Indian environmental enactments are also piecemeal in nature. The Environmental Act 1986, attempts to provide comprehensive machinery. In this part, an analysis is made to understand the legislative vision of environment, environmental protection, techniques adopted in preventing and controlling environmental protection, besides analysing the adjudicative machinery’s role contemplated in such environmental Acts for rendering environmental justice whenever the norms are violated. For this purpose, The Water Act, 1974, The Air Act, 1981, The Environmental Act, 1986, The Hazardous Waste (Management & Handling) Rules, 1981, hereinafter called the Hazardous Waste Rules, 1981, the Public Liability Insurance Act 1991 and the National Environment Tribunal Act 1995 are taken up for analysis.

MACHINERY FOR ENVIRONMENTAL PROTECTION

The aim of the Water Act, 1974 is to provide for the prevention and control of water pollution and restoring the wholesomeness of water. For this purpose, it created Central Pollution Control Board, herein after known as Central Board and State Pollution Control Boards, herein after called State Boards. These Central and State
Boards are vested with powers and function in order to achieve the objectives of the Act. This Parliamentary Act was enacted under Article 252 based on the consent of certain states. Some of the State Boards did not concede to this one and hence the state boards created under the Act, does not mean and include all the States.

The Water Act introduced elaborate provisions and imposes penalties to those who do not comply with the provisions of this Act. This Act basically adopts a deterrent theory of criminal justice and hence the procedure and evidences adopted and adduced should be the criminal procedures. The Act empowers the magistrates for the purpose of cognizance of offences. Magistrate Court is the lowest Criminal Court in the hierarchy of Criminal justice and hence appeal shall lie to the higher criminal courts as provided in the Criminal Procedure Code of 1973.

POLLUTION CONTROL BOARDS

The pollution control boards whether Central or State are vested with wider powers for the purpose of realising the objectives of the environmental laws. Structurally, India being a federal state, the Central Board functions under the Central Government and the State Boards under its corresponding States. The Water Act was the first major enactment and hence the Boards constituted under the Act are made applicable not only to water pollution, but also to air and land pollution due to solid wastes. However, the Water Act, as discussed earlier was enacted by the Parliament on the basis of the consent of the states on a subject included in the state list. Some states have not given consent to this. Therefore, State Boards have been created under the Air Act, which is another Parliamentary enactment, but come under the Union list. Hence it is applicable to all the States. In the Environment Act, 1986, references have been made to the Air Act as well as the Water Act, besides other legislations. Therefore the powers and functions of the Pollution Control Boards derive their sources predominantly from the Water Act and is supplemented by the Air Act, Environmental Act, 1986 and other Acts.

The powers and functions of the Pollution Control Boards are broadly divided into general functions, particular functions and other functions that may be prescribed from time to time. The general functions of the Central Board as provided in the Water
Act, is “to promote cleanliness of streams and wells in different areas of the states”.  

The following are the particular functions of the Central Board as per Section 16(2) of the Water Act:

a. advise the Central Government on any matter concerning the prevention and control of water pollution

b. co-ordinate the activities of the State Boards and resolve disputes among them;

c. provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

d. plan and organize the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms and conditions as the Central Board may specify;

e. organize through mass media a comprehensive programme regarding the prevention and control of water pollution;

[[ee) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of section 18]

f. collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;

g. lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or well:

Provided that different standards may be laid down for the same stream or well or for different streams or well having regard to the quality of water, flow characteristics of the stream or well and the nature of the use of the water in such stream or well or streams or wells;

h. plan and cause to be executed a nation wide programme for the prevention, control or abatement of water pollution;

i. perform such other functions as may be prescribed”

Section 16(2) (i) empowers the Central Board to “perform such other functions as may be prescribed.” From the powers enumerated above, it is evident that the Central Board inter alia may lay down or modify or annul the standards of pollution for a stream as well. There may be different standards for the same stream at different or for different streams at different places. The standard varies on grounds of quality of

23  Section 16(1) of The Water Act, 1974
24  Section 16(2)(i) of The Water Act, 1974
water flow of the stream or well and the nature of the use of water from such stream or well. The Air Act empowers the Central Boards to improve the quality of air and to prevent control or abate air pollution in the country” as its main function. Section 16(2) of the Air Act enumerates the following functions as particular functions of the Central Board, besides to “perform such other functions as may be prescribed.” The main functions are-

a) advice the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution;

b) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution;

c) co-ordinate the activities of the State Boards and resolve disputes among them;

d) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution [(dd) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of section 18]

e) plan and organize the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify;

f) organize through mass media a comprehensive programme regarding the prevention and control of air pollution;

g) collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;

h) lay down standards for the quality of air;

i) collect and disseminate information in respect of matters relating to air pollution

j) perform such other functions as may be prescribed

The Environment Act, 1986 is an attempt to deal with environmental protection holistically, irrespective of the fragmented approach of water pollution or air pollution or pollution due to hazardous waste. Hence the Central Government is vested with the power 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, controlling

25  Section 16(1) of The Air Act, 1981
26  Section 16(2) of The Air Act, 1981
and abating environmental pollution.”27 Besides, the following measures may also be taken by the Central Government.28 “In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely,

i) Co-ordination of actions by the State Governments, officers and other authorities:
   a. Under this Act, or the rules made thereunder; or
   b. Under any other law for the time being in force which is relatable to the objects of this Act;

ii) Planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution

iii) laying down standards for the quality of environment in its various aspects;

iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:
   Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents.

vii) laying down procedures and safeguards for the handling of hazardous substances;

viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or person as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution.

xi) Establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act.

27 Section 3(1) of The Environment Act, 1986
28 Section 3(2) of the Environment Act, 1986
xii) Collection and dissemination of information in respect of matters relating to environmental pollution

xiii) Preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

xiv) Such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act”.

The Central Government as per the Environmental Protection Rules of 1986, made under the Act is empowered to direct the Central Board to discharge all such powers. A comprehensive reading of all the above provisions reveals that the Central Board is the competent authority both for Water and Air Acts, besides other pollutions that happen due to discharge of any pollutant either in the air, water or land.

Geographically, India is said to be a sub-continent. It is more or less cut off from the rest of the Asian continent by the mighty Himalayas and Karakorram range of mountains. It is also known for its bio-diversity, rich flora and fauna and varying climatic conditions. India occupies 2.4% of the lithosphere and has nearly 11,000 kilometres of coast line, besides innumerable islands in the archipelago in the Bay of Bengal and Arabian Sea. In such a vast country, which is known for its diversity, a uniform standard of quality of air, water or soil is not possible. This diversity necessitates the creation of State Pollution Control Boards to each and every State to cater to its needs.

The Water Act of 1974 constituted State Boards for the purpose of fulfilling the objectives of the Water Act at the State level in co-ordination with the Central Board. Section 17(1) of the Water Act enumerates the functions of the State Board. The Air Act has analogous provisions and empowers the State Boards for the purpose of prevention and control of air pollution. Section 17 of the Air Act, 1981, lists out the following as the functions of the State Board. They are –

a) To plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;

b) To advise the State Government on any matter concerning the prevention, control or abatement of air pollution;
c) To collect and disseminate information relating to air pollution;

d) To collaborate with the Central Board in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto;

e) To inspect, at all reasonable times any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;

f) To inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;

g) To lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft.

Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants.

h) To advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollutions;

i) To perform such other functions as may be prescribed or as may, from time to time be entrusted to it by the Central Board or the State Government;

j) To do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

The Hazardous Waste Rules, 1989 recognise the State Pollution Control Board as the authority for controlling hazardous waste that pollutes land, water and air. The Environment Act, 1986 empowers the Central Government to make rules for the purpose of taking measures to protect and improve environment in total, whether air, water or land. It is specifically vested with the powers to make rules in Section 6(2) of the Environment Act, 1986 as follows: in particular, and without prejudice to the
generality of the foregoing power, such rules may provide for all or any of the following matters, namely

a) the standards of quality of air, water or soil for various areas and purposes;
b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;
c) the procedures and safeguards for the handling of hazardous substances;
d) the prohibition and restrictions on the handling of hazardous substances in different areas;
e) the prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas;
f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

The above analysis lists out the powers of the Central and State Boards and the prescription of the standards for the quality of environment in its various aspects. Enforcement of the rules necessitates dealing with the offenders, who violate such norms and standards that pollute the environment unauthorizedly beyond the permissible limits.

The Water Act, 1974 provides the penalties and procedures from Section 41 to 50. It is provided that whoever fails to comply with any direction given shall be punishable with imprisonment for a term which may extend to 3 months or with fine or with both.\(^{29}\) In case the failure continues, he shall be punishable with an additional fine which may extend to Rs.5,000/- for every day during which such failure continues, after the conviction for the first such failure.\(^{30}\) This section also stipulates punishment for violation of certain emergency measures which are related to polluting any stream or well by discharge of poisonous or noxious matter as provided in Section 32 of the Water Act. In such case, the offender will be punishable with imprisonment, which shall not be less than 1 year and 6 months, but which may extend to 6 years and with fine. Further, in case such failure continues, he is liable with an additional fine, which

\(^{29}\) Section 41 of the Water Act, 1974

\(^{30}\) Ibid
may extend to Rs.5000/- for every day during which such failure continues after the conviction of the first such failure.\textsuperscript{31}

It is further provided that if the failure continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term, which shall not be less than 2 years, but may extend to 7 years and with fine. In case if such an offence is committed by a company, it shall be deemed to be guilty of offence and punished accordingly. As the company is a corporate body, the person, director, manager or other officer who is in charge of that concern, is liable to be punished. Analogous provisions have been incorporated in the Air Act, 1981 for combating air pollution.\textsuperscript{32}

The Environmental Act, 1986 prescribes that “(1) whoever fails to comply with or contravenes any of the provisions of this Act or the rules made or orders or directions issued thereunder, shall in respect of each such failure or contravention be punished with imprisonment for a term which may extend to 5 years or with fine which may extend to 1 lakh rupees, or with both, or in case the failure or contravention continues with additional fine which may extend to Rs.5000/- for everyday during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to 7 years”\textsuperscript{33}

Punishments are stipulated similar to the Water & Air Acts, the Environment Act, 1986 for offences committed by a company and Government departments. A critical reading of these sections dealing with penalty for contravention of the provisions of environmental pollution, would infer that punishment is relatively less for

\textsuperscript{31} Section 41(2) of The Water Act, see also Sections 32 & 33 of The Water Act
\textsuperscript{32} Sections 37(2)-42 of The Air Act, 1981
\textsuperscript{33} Section 15 of the Environment Act, 1986
the first time offender and in case of repeated offences by the same person, the punishment is severe.

**COGNIZANCE OF OFFENCES BY THE COURT:** Section 49 of the Water Act, Section 43 of the Air Act and Section 19 of the Environment Act deal with the cognizance of offences. They prescribe that the magistrate court is vested with the power, subject to certain conditions. Accordingly, Section 49 of the Water Act, 1974 provides that

“(1) No court shall take cognizance of any offence under this Act except on a complaint made by:
   a) a board or any officer authorized in this behalf by it; or
   b) any person who has given notice of not less than 60 days in the manner prescribed of the alleged offence and of his intention to make a complaint to the board or officer authorized as aforesaid, and no court inferior to that of a metropolitan magistrate or a judicial magistrate of the first class shall try any offence punishable under this Act

(2) Where a complaint has been made under Clause (b) of Sub-Section 1, the Board shall on demand by such person make available the relevant reports in its possession to that person;
   Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.

(3) Notwithstanding anything contained in (Section 29 of the code of Criminal Procedure, 1973) (2 of 1974), it shall be lawful for any judicial magistrate of the first class or for any metropolitan magistrate to pass a sentence for a term exceeding 2 years or a fine exceeding Rs.2000/- on any person convicted of an offence, punishable under this Act.”

Analogous to Section 49 of the Water Act, Section 43 of the Air Act has been structured. Sub-Section 3 of Section 43 alone is deliberately omitted in this Act. The Environment (Protection) Act has provisions similar to Section 49 of the Water Act and Section 43 of the Air Act, 1981. Accordingly, Section 19 of the Environment Act, 1986 stipulates that, “No court shall take cognizance of any offence under this Act, except on a complaint made by:

   a. the Central Government or any authority or officer authorized in this behalf by that Government; or
   b. any person who has given notice of not less than 60 days, in the manner prescribed of the alleged offence and of his intention to make a

34 Section 49 of The Water Act, 1974
complaint to the Central Government or the authority or officer authorized as aforesaid. 35

Section 22 of the Environment Act, 1986 prohibits the civil court to take cognizance of the offence committed under this Act. Accordingly, it provides that “no civil court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government or any other authority or officer, in pursuance of any power conferred by or in relation to its or his functions under this Act.”36

The Public Liability Insurance Act 1991 introduced provisions whereby the ‘No fault’ liability concept has been recognized, wherein, in case of accident, the victims are entitled to claim compensation upto Rs.25,000/- even without proving the liability of the owner of the hazardous industry. The preamble of the Act runs as follows: “An Act to provide for public liability insurance for the purpose of providing immediate relief to persons affected by accident occurring while handling any hazardous substance and for matters connected therewith and incidental thereto”37

Section 3 of this Act makes the owner liable to compensate and it provides,

“(1) Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the schedule for such death, injury or damage.

(2) In any claim for relief under Sub-Section (1) … the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person in respect of which the claim has been made was due to any wrongful act, neglect or default of any person”38

For the purpose of providing fund to give relief to the victims, Environment Relief Fund has been established under Section 7A of the Act to which owners of hazardous industries must contribute by way of insurance premium of insurance policies.39 Section 18 of the Act makes provisions for the cognizance of offences under this Act. This provision is analogous to the provision of Section 19 of the Environment Act, 1986.40

35 Section 19 of The Environment Act, 1986
36 Section 22 of The Environment Act, 1986
37 The Public Liability Insurance Act, 1991
38 Section 3 of The Public Liability Insurance Act, 1991
40 Section 18, The Public Liability Insurance Act, 1991
From a critical analysis of the above Act, it is evident that this Act compensates the damages caused to a person or his property. However, this Act does not deal with prevention or protection of the environment.

Shyam Divan and Armin Rosencranz made the following observation regarding the remedies available. “Generally modern environmental law provides for a system of regulation by statute. Administrative agencies created under environmental statutes are required to implement legislative mandates. Frequently, for lack of staff, money or will, these agencies fail to implement the laws under which they operate and ecological degradation continues unabated. In this event, the citizen has a choice of three civil remedies to obtain redress:

1) A common law tort action against the polluter;
2) A writ petition to compel the agency to enforce the law and to recover clean up or remedial costs from the violator, or
3) In the event of damage from a hazardous industrial accident, an application for compensation under the Public Liability Insurance Act of 1991 or the National Environmental Tribunal Act of 1995.”41

The preamble of the National Environmental Tribunal Act, 1995 stipulates that it is “an Act to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto.”42

It is also evident from the preamble that this Act is an outcome of the United Nations Conference on Environment and Development, held at Rio de Janeiro in June 1992. In this Conference, it was decided “to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages.”

41 Shyam Divan and Armin Rosencranz, op.cit, p.87
42 See the Preamble of The National Environmental Tribunal Act, 1995
Therefore this Act is clearly an outcome of India’s commitment to international convention.

The establishment of National Environmental Tribunal is provided in Section 8 of the Act. It also deals with the composition, jurisdiction, powers and authority of the National Environmental Tribunal. Section 19 of the Act prohibits the jurisdiction from the commencement of this Act. “No court or other authority, except the Tribunal shall have, or be entitled to exercise, any jurisdiction powers or authority to entertain any application or action for any claim for compensation which may be entertained or dealt with by the Tribunal”.\(^{43}\) Section 24 provides for appeals against an award given by a Tribunal. Accordingly,

“(1) Save as provided in Sub-Section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1909 or in any other law, an appeal shall be against any award or other order, not being an interlocutory order, of the Tribunal to the Supreme Court on one or more of the grounds specified in Section 100 of that Code.
(2) No appeal shall lie against an award or other order made by the Tribunal with the consent of the parties.
(3) Every appeal under this Section shall be preferred within a period of 90 days from the date of the award or other order appealed against.

Provided that no appeal by the person who is required to pay an amount in terms of such award shall be entertained by the Supreme Court unless he has deposited with it the amount so awarded in the manner directed by the Supreme Court.

Provided further that the Supreme Court may entertain the appeal after the expiry of the said period of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.”\(^{44}\)

The Indian Parliament enacted the National Environment Appellate Authority Act, 1997. This Act was introduced “to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restrictions of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards

\(^{43}\) Section 19 of the National Tribunal Act
\(^{44}\) Section 24 of The National Tribunal Act
under the Environment Act, 1986 and for matters connected therewith, or incidental thereto.\textsuperscript{45}

This authority forms the appellate body, in case, persons are aggrieved by any order granting environmental clearance in an area where industrial activity is restricted under Section 3(1) and 3(2)(v) of the Environment Act, 1986. This includes project clearance granted by the Impact Assessment Agency. However this appellate authority does not have jurisdiction to directly hear appeals by project authorities who are denied environmental clearance.\textsuperscript{46}

Section 12 deals with procedure and powers of the authority of the Appellate Authority. Section 11 of the Act deals with the jurisdiction of the appellate authority, as follows:

\textquotedblleft(i) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes shall not be carried out or processes shall not be carried out or shall be carried out subject to certain safeguards, may within 30 days from the date of such order, prefer an appeal to the authority in such form as may be prescribed.

Provided that the authority may entertain any appeal after the expiry of the said period of 30 days if not after 90 days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.\textsuperscript{47} Sub-Section (2) of Section 11 enumerates the ‘persons’ entitled to appeal against the orders of the authority. Accordingly five types of persons are entitled.\textsuperscript{48} It includes the Central Government, local authority and association of persons who are likely to be affected. It is evident that this Act facilitates only persons who are aggrieved by the order passed by the authority under the Impact Assessment Agency and thereby provides transparency in the process and ensure smooth implementation of the development schemes and projects.

From the foregoing discussion, it is obvious that environmental protection has been contemplated from a three dimensional approach namely, (1) criminal liability of nuisance under the penal laws (2) common law liability of negligence under strict liability, (3) Statutory liability under the various environment laws.

\textsuperscript{45} See Preamble of The National Environment Appellate Authority Act, 1997
\textsuperscript{46} Shyam Divan and Armin Rosencranz, op.cit
\textsuperscript{47} Section 11(1) of The National Environment Appellate Authority Act
\textsuperscript{48} Section 11(2) of The National Environment Appellate Authority Act
JUDICIALSETTING

Approach of the Supreme Court to industrial relations and environmental protection, the core analysis of this research, is based on the judicial setting of the Supreme Court. This judicial setting in turn rests on the bedrock of the Constitution of India. The Indian Constitution being a vibrant document, the interpretation of its provisions is equally vibrant and dynamic. The judicial interpretations of the Constitution as well as the statutory provisions of law in general and the industrial laws and environmental laws, in particular rely on the Supreme Court’s perception to such basic law and the statutory provisions. Discussing about the techniques of the judicial process, Bodenheimer holds the view that there are two cardinal problems in the realm of interpreting Constitutional precepts, which cannot be solved without some reflection on the ultimate ends of legal ordering.49 On the question of interpretation, Bodenheimer raises a query as to whether “uncertainties regarding the meaning of a constitutional provision should be resolved by recourse to the understanding of the provision which was prevalent at the time of its adoption or whether a constitutional provision should be interpreted in the light of the knowledge, needs, and experience existing at that time, when the interpretative decision is rendered.”50

In this context, he classified the theories of interpretation into two categories, namely, the theory of historical interpretation and the theory of contemporaneous interpretation. With reference to historical interpretation of constitutional provisions, Bodenheimer quoted the opinion of Chief Justice Taney, the Chief Justice of the Supreme Court of USA, which runs as follows: “No one…should induce the court to give to the words of the constitution a more liberal construction in their favour than they were intended to bear when the instrument was framed and adopted. Such an argument would be altogether inadmissible in any tribunal called on to interpret it. If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended; but still it remains unattended, it must be construed now as it was understood at the time of its adoption. It is not only the same words, but the same in meaning….; and as long as it continues to exist in its present form, it speaks

50 Ibid
not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers.”

This theory of historical interpretation was also advanced by Justice Sutherland, another noted Judge of the Supreme Court of the USA thus: “The meaning of the constitution does not change with the ebb and flow of economic events.” The constitution, according to him ought to be construed in the light of the present, as it is made up of living words that apply to every new condition. But to say that the constitution written at one point of time will not apply to a new situation later on would be to rob that instrument of the essential element, which continues as a force among the people.

Chief Justice Marshall, of the US Supreme Court, advocated the theory of contemporaneous interpretation. He was of the view that the constitution was intended to serve for ages to come and hence has to adapt itself to solve various problems of human affairs. Several jurists, including Justice Hughes, held the view that constitutional provisions should be interpreted to meet and cover changing conditions of social and economic life.

It is evident from the above analysis of contradictory theories of interpretation, that the role which the judge plays in the process of adjudication is a subject of disagreement and debate. Summing up such contradictions, Bodenheimer says, “many famous figures in the history of English Law such as Coke, Hale, Bacon and Blackstone, were convinced that the office of the judge was to declare and interpret the law, but not to make it. Justice Cardozo said, ‘the theory of the older writers was that judges did not legislate at all. A pre-existing rule was there, embedded, if concealed, in the body of the customary law. All that the judges did, was to throw off the wrappings and expose the statue to our view.’ The newer theory, initiated by Bentham and carried on to a radical conclusion by John Chipman Gray, asserted that judges produce law as much as legislators do; in the view of Gray, they even make it more decisively and authoritatively than legislators since statutes are construed by the courts and such

51 Quoted in Ibid, p.406
52 Quoted in Ibid, p.407
constructions determine the true meaning of the enactment more significantly than its original text. In our own day, the creative theory of law must be regarded as the most widely accepted view of the judicial process, although disagreement may exist with respect to the volume and scope of judicial law making. A similar view was expressed by Justice Holmes who said that judges do and must legislate, but interstitially, from molar to molecular motions.

The Judicial process of declaring laws or making laws depends upon so many factors. Henry J. Abraham considers the Supreme Court of USA to be very powerful as far as judicial review is concerned. He observed that, “experience has demonstrated that countries which have exhibited stable or moderately stable traditions of judicial review are generally characterised by (i) regime stability, (ii) a competitive political party system, (iii) significant horizontal power distribution, (iv) a strong tradition of judicial independence, and (v) a high degree of political freedom.”

When judges have to make laws they do the role of legislators and this process of law making by judges is explained by Benjamin Cardozo thus, “We do not pick our rules of law full-blossomed from the trees. Every judge consulting his own experience must be conscious of times in a free exercise of will, directed of set purpose to the furtherance of the common good, determined the form and tendency of a rule which at that moment took its origin in one creative act.” He considers certain factors as influencing this law-making process and says, “My analysis of the judicial process comes then to this, and little more: logic, and history, and custom, and utility and the accepted standards of right conduct are the forces which singly or in combination shape the progress of the law.” In a broad perspective, Judges are just filling the gaps in law, so they are legislating within the limits of their competence and not exceeding their limits. Commenting on this aspect, Cardozo says, “no doubt the limits of the judge are narrower. He legislates only between gaps. He fills the open spaces in the law. How far he may go without travelling beyond the walls of intertices cannot be staked out for

53 Ibid, p.439
54 Quoted in Ibid, p.442
57 Ibid, p.112
him upon a chart. He must learn it for himself as he gains the sense of fitness and proposition that comes with years of habitude in the practice of an act.... The law which is the resulting product is not found but made. The process being legislative demands the legislative wisdom. “

The judicial process of making laws by judges is an outcome of several objective socio-politico-economic factors coupled with the peculiar psychological aspects of individual judges. So each judge made law is stamped with that judge’s individuality. Cardozo in this connection observes that “the judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errand roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by anology, disciplined by system, and subordinated to ‘the primordial necessity of order in the social life’ wide enough in all conscience is the field of discretion that remains.”

In India, the judicial process rests on several factors apart from the individual personality of the judges. They are factors like constitutional provisions, political stability of the regime, prevalence of party system and the changing national and global trends. These propositions are substantiated by many scholars and a few of those are mentioned below. Glanville Austin in his book, Working of a Democratic Constitution, The Indian Experience, made an indepth study about political stability and its impact on judicial process. S.B. Sathe’s Judicial Activism in India, is about judicial creativity as an outcome of activist judges.

K.K. Venugopal made a succinct assessment of half a century of the functioning of the Supreme Court of India in his article, “Supreme Court of India: The most

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58 Ibid, pp.113-115
59 Ibid, p.141
61 S.B. Sathe, Judicial Activism in India, (Oxford: Oxford University Press, 2002)
K.N. Chandrasekharan Pillai and Jyoti Dogra Sood made a brief study about the functioning of the Supreme Court in their article, “Supreme Court – In Retrospect and Prospect”. Upendra Baxi’s article, “The Avatars of Indian Judicial Activism: Explorations in the geographies of [In] Justice” is a critical assessment of the functioning of the Supreme Court over 50 years.

V.R. Krishna Iyer’s article, “The Noble Preamble: We have promises to keep” made an incisive critical study of the enduring relevance of the concepts Justice liberty and equality as enunciated in the preamble. Another recent article of V.R. Krishna Iyer, “The Patchy Indian Judicial Record”, critically assessed the achievements of the Indian Judiciary on the occasion of the 60 years of Indian Independence.

Exploring and formulating the approach of the Indian Supreme Court in relation to industrial relations and environmental protection is the core analysis of this work. For this purpose, it is relevant to trace the judicial setting of the Supreme Court in its constitutional and international background. The formation of the Indian Constitution was parallel to the formation of Universal Declaration of Human Rights. The Constitution has provided substantial protection to the civil and political rights of its people, the so called first generation rights, in the form of Fundamental Rights, which are enforceable. The second generation human rights namely, the economic, social and cultural rights was fitted into part IV of the Constitution, in the form of directive principles of state policy. Indian Constitution recognized such rights even prior to the international conventions. In the year 1966, the comity of nations agreed to certain important human rights like civil and political rights and economic, social and cultural rights. India, a signatory to these conventions, ratified it in the year 1976.

A critical and a holistic reading of the Constitution of India and the so called first generation rights, incorporated under part III of the Constitution, the second

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66 V.R. Krishna Iyer, “The Patchy Indian Judicial Record,” The Hindu, dt. 06.09.2007, p.9
generation human rights, included in part IV of the Constitution and the third
generation human rights which are declared by the Supreme Court based on its
construction of Article 21, along with other provisions of the Constitution, would
enable one to infer that the Constitution is a smooth blend of both idealism and
liberalism. The constitutional values of liberty and equality found in the preamble are
effectively realised by means of justice – social and economic in the backdrop of
democratic socialistic system of political governance. The Supreme Court being the
sub-system of the Indian political system accomplishes its role as envisaged by the
provisions of the Constitution. Articles 32, 133, 134 and 136 empower the Supreme
Court with such power to review the actions of the other two co-ordinate organs of the
state. Besides, Articles 141 and 142 strengthen the authority of the Supreme Court.
Article 142 stipulates that “the Supreme Court in the exercise of its jurisdiction may
pass such decree or make such order as is necessary for doing complete justice in any
cause or matter pending before it and any decree so caused or order so made shall be
enforceable throughout the territory of India in such manner as may be prescribed by
or under any law made by Parliament and until provisions in that behalf is so made, in
such manner as the President may by order prescribe.” Article 141 declares, “The law
declared by the Supreme Court shall be binding on all courts within the territory of
India.”

In the process of interpreting and construing the constitutional provisions, the
Supreme Court decides the cases either from an idealistic or a liberalistic view point. At
times such decisions are against the wishes of the prevailing ruling party, which enjoys
the majority in the Parliament at that time. If the ruling party has two-thirds majority in
the Parliament, it may go for constitutional amendment using Article 368, to realise its
wish. This part of the work analyses the trend, that is the metamorphosis of the
Supreme Court from the Supreme Court of India to Supreme Court for Indians.

This changing trend was keenly observed by many analysts. K.K. Venugopal,
sum up this trend thus: “The early years were years of conflict. Judgement after
Judgement of the Supreme Court mainly in the area of land reforms were reversed by
Parliament by exercising its power under Article 368 of the constitution of amending

67  See Article 142, The Constitution of India
68  See Article 141, Ibid
the constitution. As Justice Hidayatullah pointed out in I.C. Golaknath’s case: ‘In our country, amendments so far have been made only with the object of negativing Supreme Court’s decisions’.

It is relevant to make a perusal of some of the cases relating to fundamental rights and constitutional amendments like Sankari Prasad, Sajjan Singh, Golaknath, Keshavananda Bharathi among others, which clearly shows the changing trend in the attitude of the Supreme Court.

In 1951, the Supreme Court in Sankari Prasad v Union of India held that the constitutional amendment made under Article 368 was not law and the judgement made it clear that fundamental rights could be amended through constitutional amendments. In 1965, the same view was reiterated in Sajjan Singh v State of Rajasthan. It was the year when the Indian border was transgressed by the Chinese invaders. The nation was in a state of emergency. At that critical juncture, the Supreme Court in order to keep the nation intact, adopted a holistic approach rather than a liberal approach of protecting the rights and liberties of individuals.

Thus, in 1950, when the Supreme Court came into being, the political system including the party system was vibrant and committed to the ideals and values of freedom struggle. Jawaharlal Nehru, the first Prime Minister of India, a very charismatic leader had the solid support of the Indian National Congress. The opposition was very weak. He administered the country according to the spirit of the Constitution and attempted to realise the goals enshrined in the Constitution. Satisfied with the smooth and value based administration of the infant nation, the Supreme Court did not intervene in the process of legislation and administration and confined itself to its work. Despite being committed to socialistic ideals, Nehru and the ruling party were committed to the spirit of the Constitution. Hence during Nehruvian period, the apex court predominantly struck on to the British tradition of ‘Black Law Tradition’ or ‘Positivist Tradition’ i.e. of applying or declaring laws. Thus during the Nehrurian era, the judiciary consistently adopted a self-restraint approach.

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69 K.K. Venugopal, op. cit., p.357
70 Sankari Prasad v. Union of India AIR 1951 SC 458
71 Sajjan Singh v State of Rajasthan AIR 1965 SC 845
Nehru’s death marked the end of an era of leaders drawn from Indian National Movement. The political scenario changed rapidly after Nehru’s death and Sashtri’s brief tenure. The Parliament witnessed changes in the party composition after the fourth general election in 1967, when regional parties began to make their presencefelt in the Parliament. The power of the Congress party was eroding and Parliament had new entrants with new ideologies.

The changing political winds had an effect on the Supreme Court. The Golaknath case decided by the Apex Court in 1967 ushered the winds of change. From a positivist and traditional approach it took to an activist approach. The Supreme Court declared that the Constitutional Amendment Act amounts to law as per Article 13. Therefore it implied that fundamental rights could not be amended even by constitutional amendments. However, to give effect to the already introduced constitutional amendments, the Supreme Court of India, propounded the doctrine of ‘prospective overruling’ and thereby validated all the earlier amendments. “Indira Gandhi assumed leadership of the country as Prime Minister of India after the 1971 elections. Her election manifesto promised economic reforms appealing to the people, resulting in a thunderous victory for her. With the backing of two-thirds majority in the Lok Sabha, Mrs. Indira Gandhi, who was committed to socialism and development of the people of the lower rungs of the society began to introduce various amendments in the constitution for effective realisation of her party’s manifesto. In 1971, the 24th and 25th Constitutional Amendments were introduced, inter se, Article 13 (4) and Article 368 (3). The newly introduced Article 13 (4) provides that, “nothing in this Article shall apply to any amendment of this Constitution made under Article 368.” Article 368 (3) provides that “nothing in Article 13 shall apply to any amendment made under this Article.”

It is relevant to point out the observation of S.P. Sathe regarding the style of functioning of the Supreme Court during the 1950’s and 1960’s. He says that the activism of the Supreme Court during 1950’s and 1960’s was confined to a few cases on right to property. On personal liberty, the Court was extremely positivist. In the 70’s, Judicial activism was not found on right to property because it was removed from the list of fundamental rights. However, the Court slowly started perceiving the larger
dimension of its constitutional role but, “this movement from a positivist court to an activist court was slow and imperceptible and came to be noticed only during the late 1970’s.”

Sathe observed that during the 1950’s, the judiciary did not question the legislative enactments. During the first two decades of the republican Constitution, judicial activism rarely took up cudgels against the legislature except on the question of right to property. The courts deferred to the will of the legislature on matters concerning economic regulation. The Supreme Court was activist in expanding the rights of labour and the entire labour jurisprudence developed by the court was complementary to the welfare state philosophy.” This period synchronised with Nehru’s administration. The political party, the Indian National Congress and its leaders who fought for independence were largely committed to social and cultural values of the Constitution. Their sincerity in promoting the values of the Constitution was evident and hence, “the court did not cross swords with the executive but on the contrary legitimised state intervention for regulating the economy and enacting social justice, barring a few cases on right to property.” During that period the Court played a secondary role in Indian politics and the courts were projected as conservative and status quoist branch of the State. That was a period of great harmony between the Court and the Parliament.

In 1973, the constitutional validity of the 24th and 25th Amendments was tested by a larger bench consisting of 13 judges in *Keshavananda Bharathi v State of Kerala*. After prolonged deliberations and a meticulous judicial process, the Supreme Court affirmed the power of the Parliament to amend the Constitution and the validity of the 24th and 25th Amendments were upheld. The Apex Court also introduced a very radical concept called the 'basic structure doctrine’, wherein it propounds the constitutionality of constituent amending power of the Parliament. But at the same time, it held that the Parliament by using its temporary majority shall not be vested with the power to amend the basic structure of the Constitution which is the will of the entire population.

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72 S.P. Sathe, *Judicial Activism in India*, op.cit., p.53
73 Ibid, pp.60-61
74 Ibid
75 Keshavananda Bharathi Vs State of Kerala AIR 1973 SC p.1461
nation at the time of framing the Constitution. The decision of the Supreme Court by a majority of 7 judges against 6 in this case, holding that Parliament could not use its constituent power under Article 368 to destroy or tamper with the basic structure of the Constitution, was seen as a judicial manoeuvre to give finality to its decisions against those of the Parliament.\(^7\) As the Supreme Court did not clearly enumerate what constitute the basic structure of the Constitution, time and again the Court has to find out and interpret the meaning of basic structure of the Constitution.

Mrs. Indira Gandhi made futile attempts to nullify the effects of Keshavananda Bharati rule relating to basic structure of the Constitution. She also brought in the 42\(^\text{nd}\) constitutional amendment wherein several aspects of the Constitution including Article 368 clauses (4) and (5) were introduced. These two provisions attempted to remove the doctrine of basic structure of the Constitution. By doing that, the unlimited power of the Parliament was sought to be restored. These provisions run as follows:

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(4) \text{ No amendment of this Constitution (including the provisions of part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution] [42nd Amendment Act, 1976] shall be called in question in any court on any ground.}
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(5) \text{ For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition or variation or repeal the provisions of the Constitution under this article.”}
\]

Mrs. Indira Gandhi’s attempt to undo the effects of Keshavananda Bharati by using her Parliamentary majority was clearly evident, but her effort did not yield the desired fruit. Following that botched up attempt, a Judicial Review Committee was constituted to water down the spirit of Keshavananda Bharati, which too failed.

For the Indian democracy, it was a testing time. As Granville Austin rightly observed that, the judiciary proved its worth and withstood the onslaught of legislative as well as executive system’s dominance over the regulative power of the judiciary. In the annals of the young democracy, this period proved to be crisis ridden as internal emergency was proclaimed under the heading ‘internal disturbances’. Rights and liberties of the people in India were in limbo. Excesses of authoritarian Government

\(^7\) Ibid, p.259
resulted in the total defeat of Indira Gandhi and her party after the emergency. The post-emergency era witnessed a change in the approach of the Supreme Court. It began to interpret and bring out implicit fundamental rights, broadly clubbed under second and third generation human rights.

Events at the international level also had a bearing on the changing attitude of the Supreme Court. The decimal international environmental summits from 1972 onwards and other such periodical summits, strengthened the Supreme Court of India. The Supreme Court often began to derive its sources directly from international conventions and interpreted and construed the provisions of law. In this backdrop, it is relevant to understand the constitutional provisions that facilitate the Supreme Court to become the most powerful court in the world and its metamorphosis from Supreme Court of India to the Supreme Court for Indians.

The post-emergency period witnessed further changes in the attitude of both the executive as well as the judiciary. The Supreme Court started its activism in 1978 and by the time Indira Gandhi’s government came back to power, the Court had struck roots among the people. Emergency created an anti-Indira wave and she had to face humiliating defeat in 1977. Till then the Parliament had witnessed only a strong and single ruling party, but things changed and the country began to be ruled by a multi-party government.

On the political front, these grand alliances included political parties of divergent interest and ideologies, which came together mainly to oust Indira Gandhi. The combined Janata Party which came to power after her was not in a position to fulfill its election manifestoes, as it did not have two-thirds majority in the Rajya Sabha and there were checks and counter checks within the ruling party. By 1979, the Janatha Party government faced fissures from within and collapsed prematurely. In 1980, the mid-term polls took place and the Janata Party suffered a defeat and Indira Gandhi once again returned to power.

On the judicial front, this period witnessed the acceptance of the doctrine of ‘basic structure of the Constitution’ by the people. The judicial process, which was vacillating between positivist and activist approach slowly began to nudge towards
activism. Observing this changing trend, K.K. Venugopal says, “the post-1980 Court embarked upon a part of judicial activism unparalleled in the history of any modern democracy. It became a centre of political power. Activist lawyers and public interest groups invoked its jurisdiction which was exercised, untramelled by the limitations which applied to the High Courts. The Supreme Court identified Article 142 of the Constitution as an unlimited source of power, a veritable Kamadhenu, on which it could draw for whatever the judges felt were the demands of justice.”

After the lull of *ADM Jabalpur v Shivkanth Shukla* case, the Supreme Court emerged like a phoenix and assumed wider powers by availing the political vacuum that occurred due to fractured verdicts of elections and political instability due to hung Lok Sabha. “As a result, there was no area of social action into which the Supreme Court did not delve. With its newly developed craftsmanship, it was able to achieve goals which the Government was unable to or unwilling to achieve. The Supreme Court did in a year what the Government could not do in a span of a decade. The credibility of the Court was raising rapidly. The political wing of the state was degenerating with equal rapidity.”

Indian judiciary’s tryst with international law began on a positive note. But it has to be accepted that in jurisprudence, till the dawn of UNO, international law was only for namesake and existing on paper. This fact made jurists to declare that international law was the vanishing point of jurisprudence. This establishment of UNO and its functioning right from 1945 till date proved that despite its failure in the collective security aspect, it is still a successful story. The Universal Declaration of Human Rights in 1948 and the consequential International Convention on Civil and Political Rights and International Convention on Economic, Social and Cultural Rights have enabled the state systems to adopt these provisions of international law with its domestic law. Thus began the process of harmonization of international law with domestic law and in 1976 India ratified these Human Rights conventions.

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77 K.K. Venugopal, op.cit., p.376
78 *ADM Jabalpur v Shivkanth Shukla* AIR 1976 SC p.1207
79 Ibid, p.377
The Indian Judiciary in the process of harmonization over the years began to derive its sources from international conventions for the purpose of constructing or interpreting conflicting provisions of law. Parallel to this, new and positive developments were taking place in the international arena, in the form of environmental summits and conventions. The Stockholm Declaration of 1972 set the ball rolling on international environmental protection movements. Being dicennial summits, it was held in 1982 at Nairobi and in 1992 at Rio De Janerio and at Johannesburg in 2002. These summits drew the attention of the globe and consequent to this development, several multi-lateral conventions were signed and signatories were normally forced to accept the treaty obligations.

The world witnessed another sweeping change from 1990’s consequent to the decline of communism. The entire globe was thrown open into the arms of the sweeping neo-liberal outlook. Political ideologies differed considerably, not only at the national, but at the international level. This changed environment invariably rubbed onto the Indian Judiciary. Socialistic ideology began to be interpreted in a new dimension and rights and liberty of the workers were also looked at from a different perspective. Issues related to environment and environmental protection were also seen in a different light. In this background, the approach of the Supreme Court to industrial relations and environmental protection is analysed.