CHAPTER-1

Introduction

The environmental problem is one, which no nation, no continent, no hemisphere, no system can handle alone. Ideologically opposite camps like U.S.A. and U.S.S.R. have also concluded on agreement to collaborate in devising ways and means to check pollution.

Literally, the expression “Environment” connotes surrounding. The environment contains air, water, food and sunlight etc. environment affects all the living creatures including the plants and trees. A number of necessities of life are fulfilled rather derived from the environment. Thus, it can be said that the environment is the life support system.

According to section 2(a) of the Indian Environment (Protection) Act, 1986 the term “Environment” includes water, air and land and human beings, other living creatures, plants, micro-organism and property.

However, under section 1(2) of the Environmental Protection Act, 1990 of the United Kingdom, the term “Environment” consist of all or any of the following media, namely, air, water and land and the medium of air includes the air within the buildings and the air within other natural or man made structures above or below ground.
According to the Encyclopaedia Britannica, the term "Environment" means the entire range of external influence acting on an organism, both the physical and biological and other organism i.e. forces of nature surrounding an individual.

The last four decades (1960-2000s) have seen an unprecedented rise in the number of Voluntary Organisations and Non-governmental organisations (NGOs) in India, particularly in some states. The growth in the NGO movement is attributed to the failure of public institutions to address social and environmental problems. NGOs and grassroots institutions in India do not exclusively deal with environmental issues, but they follow an integrated approach by linking poverty, social justice, inequality, and rural development and health issues. NGOs differ from each other in their diversity of role, ideology, approach, management style and organisation.

Judicial intervention and activism by NGOs have together made industries more aware of environmental concerns. For example, in the State of Maharashtra such activism has been decisive in enforcing environmental regulation.

NGOs and peoples organisations have, through careful analysis of procedures, organisational factors, functioning style and policies achieved some
breakthrough in the erstwhile secretive and non-cooperative government institutions and agencies. Governments have responded to NGO pressure by simplifying unenforceable laws and cumbersome procedures.

A combination of variables, both internal (domestic environmental and social variables) and external (international trade factors) has brought about a positive change in the attitude towards environmental protection in India. Internally, new legal opportunities, restructuring of government institutions to enforce legislation, the emergence of NGOs and community-based organisations that watch over government agencies and industries, and the threat of litigation that could bring a stay-order, closure or project delay; have all made industries vigilant about their environmental performance. NGOs and concerned individuals today can seek information on projects and policies. Externally, sector and industry-wide demands for cleaner production, international standards (especially those who conform to the parent company standards), certifications, and increasing awareness among consumers world-wide have exerted pressure on industries to opt for cleaner technologies.

Today the problem of pollution has assured global dimension, The Stockholm conference of the United Nations in 1972 which was attended by our late
Prime minister Mrs Indira Gandhi.

The object of this study is to probe into the multidimensional problem of environmental pollution with regard to its legal control and judicial attitudes with special reference to the condition in the India. The problem of pollution has posed an ugly threats to human existence today as never before the present generation is leaving in unfortunate age in which the threat of nuclear war is looming large an the head of the mankind and another equally dangerous threat of ecological imbalance has caused unprecedented global concern.

Indian judiciary are playing vital roal for the preservation of environment. Menka Gandhi case was beginning of judicial activism towards the right to life. So for it is most significant aspect of “right to life”.

According to Mr. Justice Kuldeep Singh “sustainable development” is a balancing concept between ecology and development.1 Further he says that some of the salient features of “sustainable development” as called out from Bruntland Report and other International Documents are Inter Generational Equity use and conservation of natural resources and Environmental protection. He is however, of the view that “The Precautionary Principle” and “Polluter Pay” principle are essential features of sustainable development.2 In his view the “Precautionary Principle”

2. Ibid 2720-21
in the context of municipal law means Environmental measures as follows:

(a) state Government and statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

(b) where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(c) the “onus of proof” on the actor or the developer, industrialist to show that his action is environmentally being.

As regards the ‘Polluter Pays’ principle, the Supreme Court in the case of Indian Council for Envirolegal Action v. Union of India³ has said:

“We are of the opinion that any principle evolved in this that behalf should be simple, practical and suited to the conditions obtaining in this country. Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity cared on. Consequently the polluting industries are absolutely

³ A.I.R. 1996 SCW 1069.
liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sluge and other pollutants lying in the affected areas."

Sustainable development indicates the way in which development planning should be designed. The concept of sustainable development signifies a policy approach or goal rather than a substantive prescription of norms. It seeks to modify the prevailing unqualified development concept.

The Supreme Court of India has emphases the environmental education should be imparted from primary school to college/university level. The Court expressed the view that it would be proper to lay-down the necessary educational programmes.

In *M.C. Mehta v. Union of India & others,*⁴ (three member Bench decision) the Supreme Court directed the Union of India and the University Grant Commission to take appropriate steps immediately to give effect to the guidelines laid down by the Court *i.e.*, requiring the universities to prescribes the course on environment. They would consider the feasibility of making this a compulsory subject at every level in college education. So far as education upto college level is concerned, the

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Supreme Court would require every state Government and every Education Board connected with education upto the matriculation stage or even intermediate colleges to immediately take steps to enforce compulsory education on environment in a graded way.

Supreme Court of India has pronounced several historical judgment for the preservation and protection of environment, which are milestone in the way of judicial activism. This written work is based on analytical evaluation of role of judiciary and environment, which we can say ENVIRONMENT AND JUDICIAL ACTIVISM IN INDIA.

**Introduction** - As usually called, introduction which provide brief picture of whole work this chapter deals about summaries picture of whole thesis.

**Historical concept of environment** - It is significant chapter, which explained journey of environmental law and ethics from ancient to modern era.

(A) Environmental ethics in olden time-
Specially, during ancient time religion and protection of environment were closely related. In absence of systematic and specialised administration of justice the religion was regarded as an uncoded law of conduct to follow and violation of it was considered as a devil act.
Not only in ancient time but even today the religion preachings insist upon conservation and preservation of the natural environment.

1. Environment protection under Hindu mythology- Hindu religion is one of the oldest and renowned religions of the universe. Even, during vedic time men were aware about the importance of environment in social human life. In fact ancient man treated the natural resources like rivers (Ganga, Yamuna, Godawari etc.) trees (Tulsi, Peepal, Banyan etc.) and mountain etc. as a divine powers. These were worshipped and were sources of religious faiths and beliefs.

Even Vedas, Upanishads and Smritis described the necessity of environment protection. By one form or other the Hindu society adopted worshipping attitude towards the earth, water, air, trees, plants, rivers, mountain, animals and other natural resources. The existence of these things were believed to be different forms and features of the God and Goddess who created the whole world of living and non-livings, animal and things respectively.

Under the Hindu mythology, the religion and environment protection have harmonious relation and Hindu mythology reflects the respect for environment protection. this mythology has a firm belief that various components of environment i.e. earth, air, water, fire and
ether are residential places of divine bodies. Hence they are to be respected, worshipped and thus to be protected ultimately.

2. Jainism and environmental protection- The Jainism emphasised a greater stress on the destruction of natural resources. This religion preaches that for satisfaction of human need the natural resources should be exploited with thoughtful restriction. The Jainism provides absolute prohibition on the eating of any kinds of meat. Thus, the cruelty and killing of animal are not permitted under the Jain religion. There are some vows in the Jainism which exclusively deals with the environmental protection. These vows are known as Karmdan. The Karmdan like Asotipashan karm, Van Karm, Sphotrk karm, Nirlanchan karm are related to the environment protection and protection of natural resources.

(B) Control of Environmental Pollution during British Raj- During the British raj though there was no exclusive enactment to deal with the offence concerning environmental pollution but in 1860 for the first time to control environmental pollution certain punitive measures were incorporated into the Indian Penal Code, 1860.

(C) Environmental protection after British Raj- It also deal first U.N. conference on human environment was held in june 1972 (from 5 to 16 june)
in Stockholm called “Magna Carta” on human environment in this conference and leading primeminstor “smt. Gandhi” voiced her concern about the ecoimbalanced environmental degradation and pollution problem. The Supreme Court of India has also pointed out time and again that the U.N. conference on human environment created an awareness for environmental protection.

**Environmental provisions in the Indian Laws** - In the context of India, the provisions for environmental protection is of the following laws:

**(A) Environment under the Constitution of India** - Though there is no specific constitutional provision to protect the environment in general, but the new Part IV-A which consists of only one Article 51-A was incorporated by the constitution (42nd Amendment) 1976. Article 51-A (g) states that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creature.

Thus, it can be said that our constitution puts emphasis on environment protection. It is one of the fundamental duties of every citizen to protect the natural assets concerning not only human being but also all living creatures including the wild life.
The Apex Court in *M.C. Mehta (2) v. Union of India.*\(^5\)
Has held that Under Article 51-A (g) it is the duty of the
central Government to introduce compulsory teaching
of lessons at least for one hour in a week on protection
and improvement of natural environment in all the educational institution of the country.

Right to life includes right to decent
environment keeping Article 21 in view, The Supreme Court while dealing with environmental matters under
Article 32 and 136 and the High Courts under Article 226 can refer scientific and technical aspects for
investigation and opinion to the statutory expert bodies
having combination of Judicial and technical expertise
in such matters. The Court can impose exemplary
damages against the polluter.

The doctrine of strict liability- a liability
without fault on the part of the defendant is very
significant in relation to cases arising from
environmental pollution because it has been applied to a
remarkable variety of things.

(B) The Environment (Protection) Act 1986-

It is umbrella legislation for the protection
of environment. This Act was passed with a foreign
background and to fulfil Constitutional obligation as
provided under Article 48 (A) this Act is most effective

measure for the protection of environment and sustain to environmental surrounding at today's scenario. Our judiciary decided various leading cases and applied this act regularly.

(C) Environment Protection Under The Code of Criminal Procedure, 1973- The Code of Criminal Procedure, 1973 (Section 133 to section 143) deals with the subject concerning environment protection. Since, the code of criminal procedure is not a substantive law but it deals with the procedural aspect, thus it does not provide definition and meaning of the term public nuisance or private nuisance.

The Code of Criminal Procedure, 1973 does not deal with the cases of private nuisance. Such cases are to be referred to civil court for adjudication or order. However, Section 133 of the code of Criminal Procedure 1973 deals with cases of public nuisance, where in the Magistrate is empowered to pass conditional order for removal of public nuisance.

(D) Environment Protection Under The Indian Penal Code, 1860- The Indian Penal Code, 1860 consisting Section 268 to Section 294 (A) deals with the environment protection. Before taking up the said Section wise it would be desirable to give brief description of this chapter. The provisions of the Indian Penal Code do not exclusively deal with the environment however certain sections of this chapter...
define and concern with the environment protection. The matter like public nuisance, negligent act likely to spread infection of disease dangerous to life, adulteration of drugs/food, fouling of water of public spring or reservoir, making atmosphere noxious to health and punishment for public nuisance are embodied in this chapter.

It is an offence, however, according to Section 268 of the Indian Penal Code, 1860- “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 people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.”

**Role of Public interest litigation in judicial activism** - This chapter is soul of this thesis because public interest litigation is catalyst which accelerate the judicial activism.

(A) **Public interest litigation and Environment protection** - In view of Article 32 of the Constitution whenever there is a violation of a fundamental right, any person can approach the Court for an appropriate remedy. It is settled rule that the right to move the Supreme Court is only available to those whose
fundamental rights are infringed. This power can only be exercised by the Supreme Court for fringed. This power can only be exercised by the Supreme Court for the enforcement of the fundamental rights contained in part III of the Constitution. However, the Supreme Court in its recent judgments shows broader approach and now relaxed the traditional rule of "locus standi"- that a petition under Article 32 of the Constitution can only be filed by a person whose fundamental right is violated. The Supreme Court now permits the Public interest litigations at the instance of 'public spirited citizens' for the enforcement of constitutional and other legal rights of any person or group of persons who, because of their poverty or socially or economically disadvantaged position, are unable to approach the Court for relief.

According to Justice Krishna Iyer, "Public interest litigation" and "representative proceedings is present Constitutional Jurisprudence" as he observed in A.B.S.K. Sangh (Rly.) v. Union of India.

In M.C. Mehta v. Union of India, the victims of gas leak were heard and successful in claiming damages by the means of Public interest litigation. Where the gas leaked from the plant of Shriram Food and Fertilizer Industries caused injuries to several persons. In this case a writ petition was filed claiming damages which were allowed. The Supreme Court has held that the liability
of the Industry is absolute. If it is proved that gas leaked from the unit, the owner of the unit shall be liable to pay compensation without any exception.

(B) Judicial Activism and Environment - The judiciary has been assigned the role as a guardian of the Constitution. They are not expected to sit as a mute spectator and close their eyes and be uncaring for the problems faced by the society. The powers of the Supreme Court for the protection of the Constitutional right, human right and environmental rights of the people/citizen are of the widest amplitude and there is no reason why the Court should not adopt activist approach, like in America and issue directions to State to implement environmental measures against the pollution and check the activities causing ecological disturbances.

It is to be noted that the judicial activism relating to protection of environment is laudable. Several pronouncements have been made by the Supreme Court for this purpose. In view of several judicial decisions of the Supreme Court, now the right to get free air, water etc. have been included in the guarantee ensued in Article 21 of the Constitution.

The Supreme Court in Re, Bhavani River v. Sakthi Sugars Ltd., took the serious view in respect of the discharge of objection able effluents from distillery in river adjoining areas.
The Supreme Court has held that the High Court erred to dispose of the writ petition merely on the consent of the Pollution Control Board. The Supreme Court remanded the writ petition to the High Court for desposal as afresh in accordance with law.

It is to be noted that way back in 1980 the Supreme Court in Municipal Council, Ratlam v. Vardhichand, has held that the human rights calling for unpolluted environment must be followed and implemented irrespective of financial constraints. The public nuisance must be checked at war footing as the public nuisance because of pollutants is a challenge to the social justice component of the rule of law.

The field of environmental litigation in India shows the concern of the Courts in Finding out effective and proper remedies for environmental pollution. The Supreme Court in our country showed considerable anxiety on the environmental matters whenever public spirited citizens drew their attention on this problem. In T. Damodar Rao & other v. The Special Officer, Municipal Corporation, Hyderabad, the Andhra Pradesh High Court observed that “Prorection of environments is not only the duty of the citizens but is also the obligation of the State and all other State organs including the Courts. In that extent environmental law has succeeded in unshackling man, right to life and personal
liberty from the clutches of common law theory of individuals ownership."

Undoubtedly, it is a result of judicial activism that now the right to pollution free environment has been included under Article 21 of the Constitution i.e. right to personal liberty and life, and this right to environment has been given the status of fundamental right by The Supreme Court of India which is binding under Article 141 of the Constitution. However, at grass root level the power of the Magistrate under the provisions of the Code of Criminal Procedure, 1973 to move against the public nuisance has been developed by the judiciary as significant instument of environmental protection. The Supreme Court in Municipal Council, Ratlam v. Vardhichand, while rejecting the plea of local council as to financial inability for providing basic amenities to the people, the Court has held that the law of public nuisance is a social justice component of the rule of law and consider it as viable mechanism of environmental protection in the third world countries.

In this case The Supreme Court observed that the law operates against statutory bodies and others regardless of the their financial ability as the human rights are to be guarded by the State irrespective of budgetary provisions. Thus, the financial crisis of State or local
bodies cannot be permitted to come in the way of environmental protection because the human life is much more precious and it involves the constitutional obligation/duty on the part of States and their agencies.

**Conclusion and suggestion** last but not least it concludes whole thesis. This chapter deal important aspect of various chapter and result of analytical analysis of this thesis.

Indian Constitution is playing vital role for preservation of environment, because it is basic law of land, from which all other laws derives their sanctity and validity, although India was the first country in the world to have provision on the environment in the constitution.

The evolution of public interest litigation has liberalized the doctrine of locus standi in India. It allow a public conscious individual to file a suit under extraordinary writ jurisdiction of the High Court and Supreme Court. PIL has played a important role in majority Environmental Pollution cases and it has significantly contributed to the development of the law relating to Environmental compensation. This has activised the Indian judiciary.

The Indian judiciary has concretized the right to live in clean Environment, through bold and innovative interpretation of Article 21.
The apex court first introduced the polluter pays principle in the Bichari village (H acid) case. The apex court read the principle into provision of Environmental statutes, thus requiring the central government to issue order against factories producing highly acidic waste.

In the subsequent "Vellore citizen welfare forum" the court affirmed this principle as an incorporated rule of customary international law.

In M.C. Mehta case the court evolved an Indianized principle of "Strict liability" and termed its as principle of "Absolute liability. The court laid down that the measure of compensation must be correlated to magnitude and capacity of the enterprise so that compensation could have deterrent effect.

In Tamilnadu tanneries case the apex court directed the apex court directed the central government to constitute loss of ecology "prevention and payment of compensation" authority to assess the damage and estimated the compensation. Persuant to the aforesaid directive authority asked the tennaries to pay a compensation of Rs. 26.82 crore, to 29193 people as pollution damage.

Indian judiciary has applied customary international law principles to supplement the domestic provision in deciding the claim for compensation and it draws its strength through such international convention or treaty, to which India is not party.
In the judgement chief justice Bhagwati stressed on the need to develop a law recognizing the rule of strict and absolute liability in cases of hazardous or dangerous industried operating at the cost of Environment and the human life.

It is important to note that Indian judiciary has tried to simplify the procedural formulation and advocated for the establishment of an authority or commission to assess and determine the loss caused by Environmental pollution. It has been suggested the state activate itself to recover damage from polluters, who have damaged the Environment. It is submitted community based scheme will take into consideration the need of community and measures required to restore the natural Environment the money should be used to compensate to the community as a whole and to provide all infrastructure which are necessary for clean and healthy Environment.

This Thesis is concluded "how our judiciary have adopted various effective measure for preservation and protection of Environment. This phenomenon of judicial activity which our courts are doing called judicial activism towards protection of Environment, due to which Environment can sustain for present and future generation."