

Ensuring Human Rights through Environmental Governance :Judicial Reflection

Dr. Onkar Nath Tiwari*

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

"Earth is our mother, The earth does not belong to man; Man belongs to earth. Hence whatever befalls the earth; befalls the sons of earth. If man spits upon ground, they spit upon themselves."

Atharva Veda.

INTRODUCTION

Man's very survival on this earth depends upon his harmony with nature. Rule of law must defend the rule of life and life can't have its existence in unsafe biosphere. Extremely close interaction between man and nature is well established.¹ Being very precious and peculiar creation of the nature one has to always keep in mind that the happiness will be manifold only when higher degree of respect is accorded to nature and misuse, overuse or abuses will imperil the very right to life².

Dr. Tiwari holds the Degree of M.A. (Psychology), LL.M., Ph.D. (Law) from Gorakhpur University, Gorakhpur, India. He is associate Professor in St. Andrew's College, Gorakhpur affiliated to D.D.U. Gorakhpur University, Gorakhpur and teaching International Law. His specialisation is International Law, Environmental Law. He has authored 2 books and more than dozens of scholarly articles in the legal journals. To his credit are participation in IUCN/UNEP/NUS sponsored capacity building programme for Asian Law Teachers in Singapore 1998. His association with NGO's working for Environmental conservation deserves special mention.

-
1. C.S.Mehta- *Environmental Protection and the Law*- Nangia Publishers, Delhi, 1991, P.1; J. Ashok A. Desai- *Environmental Jurisprudence*. Modern Law House, Allahabad, Second Edi., 2005. Stuart Bell and Donald McGillivray- *Environmental Law*-Universal Publishers, Delhi, 5th Edi. 2000, pp.-27-57.
 2. Ibid.

Our environment has now been exposed to serious threats meeting from developmental activities routed through different corners and we are forced to live in a highly polluted atmosphere. No one would obviate the fact that development and the environment are invariably related and interdependent.³ Testimony to the fact are the great concern of world community these says about the rapid and disastrous deterioration that is going on in our living and working environment. This concern is not unreal and notional but based on facts and figures which are irrefutable and unchallengeable. Environmental issues in a given society emerge directly from the manner in which the society has evolved itself to its development goals and models equally. The world as a whole is witnessing today a kind of development which is high-technology based, fully mechanized, production oriented and tempted with unethical consumerism. It completely ignores the traditional pattern of development characterized by eco-friendly pattern, large scale employment, malnutrition, poverty, ignorance and unhealthy working and living conditions of large mass. Present model of developmental activities have the lowest priority of nature and high priority to the pleasure and comfort. The positive relationship between development and natural resource obviously became fatal to the ecosystem as the corresponding threat generated to the environment happens to be great and this resulted into miseries of human life. Deteriorating environment has become serious global concern of not only a few but of all the groups of civil, political and other like societies. Environmental governance has now occupied a key place in the functioning of every society may be civil, political or otherwise. Galloping population,

-
3. O.N.Tiwari-*Environmental Pollution Vis-a-vis Developmental Pollution*-Paper presented in Law Teachers Capacity Building Workshop on Environment **organised** by Law School, B.H.U., India On 27.6.2003; R.P.Anand- *Development and Environment : Case of Developing country* Indian Journal of International Law (herinafter mentioned as IJIL) Vol. 20 (1980) p.-1` ; see also for discussion S.K. Kappor. *International law*-Central Law Agency, Allahabad, 6th Edi. 2007, p.- 406-408; C.G. Weeramantry- *The Right to Development*-IJIL, Vol.-25 (1985); Upendra Baxi- *The New International Economic Order Basic Needs and Rights*- I.J.I.L., Vol.-23 (1983) p.-225; General Assembly Resolution 41/128 dated 4th December, 1986 adopting a declaration on Right to Development.

growing urbanization, rapid industrialization, consumerism and unethical resource use pattern are largely contributing to the depleting scenario of environment. Environmental pollution irrespective of its kind, nature, dimension etc. is undoubtedly a matter of life and death. We live and breath, drink and eat, play and enjoy the bountiful gifts of nature, thus, must consider it our pious and prime duty not to pollute the natural properties and its component but leave this earth a cleaner and safer place to live in. Nature will care us only when we care for it.

Geographical division of the globe is followed by social and political bracketing. Each country has its own governance model and environmental issues have become a matter of serious concern, therefore, its regulation is extremely desired by legal, social and sometimes by religious mandates. Each one has to linearise its role performance in maintaining the properties of natural resource so that it may work for the social/individual favor. Legal system has greater burden on its shoulders and irrespective of the governance model Constitutional parameters of the country reign supreme. Undoubtedly environmental governance is part of each and every one but the ultimate responsibility goes to the different organs of the premier political body, i.e., State. In any governance model the Executive, Legislature and the Judiciary becomes the important player and in democracy the role performance of these institutions stands at comparatively higher footing. Judiciary being the watch dog of entire functioning of other state organs has pivotal role to play in the environmental governance. In this paper a modest approach has been made to discuss the creative role of judges especially referring to Indian model. India happens to be a democratic country and being run by the mandates of its Constitution, the supreme law of the land. Each organ has to function independently on the theory of separation of powers maintaining judicial supremacy and independence. The theme of this paper circles round the approach of Indian Judges in respect of monitoring, shaping, interpreting the laws of the country relating to environmental issues. Creativity, imaginative vision, multidimension role performance of Indian judiciary in guarding the environmental properties and translating the legal provisions (Constitutional

as well as sister legislation) trying to harmonize between two extremes, i.e., development and preservation of natural resource as both can never go hand in hand in its positive way will be the subject of enquiry. Perception of Indian Judges about the principles evolved by the world community through International Environmental Law principles aiming at protection of environment will also find place in discussion.

II

INDIAN CONSTITUTIONAL PROVISIONS AND THE ENVIRONMENT

Provisions relating to environment did not find place originally in the Indian Constitution. The only provision from where some inference can be drawn on the issue was Article 47⁴ under Directive Principles of State Policy which provides fundamental base of the functioning of the Government.

By virtue of Article 37 the provisions contained under Chapter IV are though fundamental in the governance of the country but are not enforceable before a court of law.⁵ The very objective of these principles is to embody the concept of a welfare State.⁶ However, Indian Supreme Court has attached equal value from time to time by harmoniously construing the provisions of both the Chapters III and IV. These principles have also been described as forerunner of UN Convention on Right to Development as an inalienable

4. The State shall regard the raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties. See for discussion Furqan Ahmad- *Origin and Growth of Environmental Law in India*-JILI, Delhi, Vo.-43:3, 2001 p.-358-387.

5. Article 37- Constitution of India :

The provisions contained in this part shall not be enforceable by any court but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

6. *Keshvanand Bharti Vs. State of Kerla* (1973) 4 SCC 225 paras 134, 139, 174. However, the Directives do not confer any enforceable rights and its alleged breach does not invalidate a law, nor does it entitle a citizen to complain of its violation by the state so as to seek mandatory relief against the state. See case laws : *Kerala Education Bill* (In re) AIR 1958 SC 956; *Deep Chand Vs. State of U.P.* AIR 1959 SC 648; *State of Madras Vs. Champkam Dorairajan* AIR 1951 SC 525; *U.P.S.E. Board Vs. Hari* AIR 1979 SC 65.

Human Right.⁷ Environmental issues were used to be addressed by the criminal laws⁸ and the Law of Torts in India. Thus, till seventies the legislative domain does not have sufficient satisfactory provisions to tackle with environmental problems. During this decade significant historical developments took place at international and national levels. UN Conference on the Human Environment 1972 (popularly known as Stockholm Conference) containing declaration of principles and truths⁹ was concluded in which Indian delegation led by Prime Minister Ms. Indira Gandhi played active role. The commitment of world leaders propelled their domestic legal and political machinery to concretize the ideals of conference into reality. Like other State signatories, Indian Government amended its basic legal document, i.e., Constitution of India with a view to keep its pledge living and burning. Thus, significant changes were introduced with specific mention of environment and its protection. Accordingly Constitution of India got amended by Constitution (42nd Amended) Act, 1976 which imposed duties on stakeholders to protect environment and its allied properties. It added two Articles under Chapter IV which under the Constitutional jurisprudence of India has been accepted as unenforceable and fundamental for the governance of the country. Article 51A(g) was added under new chapter IVA.¹⁰

Thus, individuals and the state alike have been enjoined with a duty to

-
7. *Grih Kalyan Kendra Workers Union Vs. Union of India* (1991)1SCC 611; *Literate Association Vs. State of Karnataka* (1990) 2SCC 396. *Air India Statutory Corporation Vs. United Labour Union* AIR 1997 SC 645.
 8. Criminal remedies were available in case of environmental damage under Secs. 133-143 Criminal Procedure Code 1973. Similarly Indian Penal code 1872 under chapter XIV consisting of Sec. 268-294-A deals with environmental protection. According to this criminal code environmental issues have not been directly addressed but the matters 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 are punishable offences.
 9. This declaration contains 26 Principles of action and 7 Truths of importance in relation to environment. It is popularly known as Declaration on Human Environment and Development.
 10. *"It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."*

protect and preserve environment to ensure its proactive role as a result of newly inserted provision on environment in the premier document of India.

This was followed by subordinate legislation¹¹ (protecting water) another historic development within legislative arena reflecting the sensitivity towards environment. The Water (Prevention and control of Pollution) Act 1974 was passed by the Parliament which provides for mechanism, institutions and rules for water management and prevention against pollution.¹² These efforts were further strengthened by the judgment of Indian Supreme Courts in *Ratlam Municipality Case*¹³ wherein the court recognized the tortious liability in case of environmental damage and did not permit the municipality to make escape from its responsibilities under any pretext. Earlier decisions of Indian Courts laid emphasis on the nuisance as the polluting effect on the environment.

Writ Jurisdiction vis-a-vis Era of Public Interest Litigation:

Founding fathers very carefully designed the provisions of the Indian Constitution in order to empower and maintain judicial supremacy to protect and safeguard the fundamental rights enshrined under the Constitution by enacting Articles 32 and 226. Consequently in case of violation of fundamental right any person can move before Supreme Court and the High Courts invoking writ jurisdiction. It is beyond doubt that Supreme Court of India is one of the few public institution which inspires confidence amongst ordinary citizen. The wide jurisdiction conferred by the Constitution on the Supreme Court has been viewed by some as tremendous power and by others

11. The Water (Prevention and Control of Pollution) Act 1974 was passed with the avowed objective to honor the commitments made by Govt. of India at international plank in the Stockholm Conference 1972. This was the historic moment when Parliament passed a law on a State subject exercising the powers under Article 249 and 252 of the Constitution of India.

12. The object and scope of the Act is as follows :
"Whereas it is expedient to provide for the prevention and control of water pollution and the maintaining or and control of water pollution and the maintaining or restoring of the wholesomeness of water for the establishment with a view to carry out the purposes aforesaid of Boards for the prevention and control of water pollution and for conferring on and assigning to such Boards powers and functions relating thereto".

13. *Ratlam Municipality Vs. Virdhi Chand*, AIR 1980 SC 1622,

as onerous duty. The power of judicial review has been, therefore, accepted as basic structure of Indian Constitution.¹⁴ Thus, any person complaining of infraction of any fundamental right guaranteed by the Indian Constitution is at liberty to move to the Supreme Court but the rights to be invoked under Article 32 must ordinarily be the rights of the person who complains of the infraction of such rights.¹⁵ Supreme Court has virtually enforced various categories of rights which includes fundamental rights given under the Indian Constitution, constitutional rights not having the status of fundamental rights, statutory rights, rights flowing from subordinate legislation, rights based on case law, customary rights and contractual rights.¹⁶ Such rights are being enforced by issuing writs in the nature of Habeous corpus, Mandamus, Certiorari, Prohibition and Quo warrants depending upon the nature of rights complained of and the remedy to be given. High courts of India do enjoy the same kind of authority under Article 226 of the Constitution. Jurisdiction being parallel, therefore, recourse to either fora may be taken by the aggrieved person. Thus, the writ jurisdiction has been a very strong weapon in the hands of judiciary to guard against any infringement of fundamental right. Undoubtedly this power tries to ensure the citizenry an ordered and peaceful life in a democratic set up.

In the post emergency period a new kind of litigation entered the landscape of Constitutional disposition of India.¹⁷ Known in the name of Public Interest Litigation (usually referred to as PIL) it was greeted with applause and given encouraging response in the judicial chambers. It introduced a completely new judicial dimension in the field of litigation and

14. *Kihota Vs. Zachilhu* AIR 1993 SC 412.

15. P.M. Bakshi,- *The constitution of India*- Universal Publishing Co. Delhi 5th edi 2004, p.78; *Narinderjit Singh Sahni Vs. Union of India* (2002) 2 SCC 210.

16. *Ibid* at p. 82.

17. Rajeev Dhawan- *Law as Struggle : Public Interest Law in India*- Journal of the Indian Law Institute No. 36:3 1994, pp. 302-338. Author has elaborately discussed Public Interest Litigation by citing case laws. Nearly all the dimensions have been threadbare dealt with in this article. See also A.K. Ganguli- *Public Interest Litigation-ASIL*, ILI, Delhi, 2007, pp. 567-585.

piercing the judicial curtain became each one's concern. It became "*peoples court*" which others termed "*new juristic horizon*", where the jurisprudence was developed to suit Indian conditions. Judicial socialism, promise of liberation, institution of delivery of socio-economic justice were names used for this new generation of disposition mechanism.¹⁸ Thus it became the weapon to cut the load shedding of over burdened Courts, minimising the litigation cost likely to be incurred before the apex courts of the country, sensitizing the citizenry who is right thinking on its social duties, allowing anybody to look into and question any issue by working as a watch-dog of democratic functioning. The very objective of PIL was/is to encourage social concern by allowing each one to work for the others. That was why the courts opened its doors to every public spirited citizenry who wrote even a litter to any Supreme Court, High Court judge complaining about an injustice requiring judicial intervention through Constitutional guarantees.¹⁹ This was bracketed as rewriting the Constitution at the score of jurisdictional component by coining a new terminology "epistolary".²⁰ In the early years of its introduction Indian Courts have exercised such jurisdiction in the matters of illegal detention, wage structure, encounter death and certain other matters involving person's life and civil rights. Environmental issues have never been scrutinized by courts under this new kind of jurisdiction. It did not draw the attention of civil society members may be because of the reason that situation was not so verse as demanding intervention. It gained momentum only during later years of eighties where Supreme Court intervened in a few cases.²¹ Thus,

-
18. Ibid at p. 303. Author has discussed various names which could be accorded to this branch of litigation.
 19. Ibid at p. 307. Long list has been given by the author to substantiate. Areas of Courts concern has also been delineated by citing relevant case laws.
 20. Ibid See U. Baxi- *Taking suffering seriously : social Action Litigation in Supreme Court* in Rajeev Dhawan et al. (edi). Judges and the Judicial Power 289-315 (1985).
 21. *Rural Legal Entitlement Kendra Vs. State of U.P.* AIR 1985 SC 632 (illegal mining) *M.C. Mehta Vs. Union of India* (1986) 2 SCC 176 (Gas leak); *Sachidanand Pandey Vs. State of W.B.* (1987) 2 SCC 2965 (Zoological Park); *M.C. Mehta Vs. Union of India* (1987) 4 SCC 46 (Ganga Pollution) :There are other cases where this Jurisdiction was invoked by the Supreme Court and the list is quite long.

during seventies an important dimension to the environmental issues were added to by litigating for the public at large as natural resources were subject of common concern.

RIGHT TO LIFE AND PERSONAL LIBERTY VIS-A-VIS RIGHT TO CLEAN AND HEALTHY ENVIRONMENT

Prior to 1976 (historic date of introduction of 42nd Amendment in the Indian Constitution) environmental issue were missing from the text and these matters were allowed to be covered under Article 21 by way of judicial interpretation. As mentioned earlier this Amendment Act brought two significant additions. Even Article 21²² was not invoked to protect environment before eighties.

It confers fundamental right to life and personal liberty on every person. Words life, personal liberty and procedure established by law got further clarification from time to time by Supreme Court of India and even High Courts. Word life and personal liberty was defined in a very narrow and technical manner²³. Supreme Court till eighties interpreted these words connoting simple human organ and skeleton with breathing.²⁴ In *Francis Coralie Mullin V. Union Territory of Delhi*²⁵ these words were defined in a different way by Justice Bhagwati as the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, shelter over the head and facilities for reading writing and expressing oneself in diverse forms freely moving about and mixing and commingling with fellow human being.

Right to life and personal liberty was further expanded by the Court²⁶ and a law affecting life and liberty of a person has to stand at the parameters of other Articles of the Indian Constitution, i.e., Article 14, and 19 and the procedure established must be reasonable, fair and just. Thus, Court in this

22. "No person shall be deprived of his life or personal liberty except according to procedure established by law."

23. *A.K. Gopalan Vs. State of Madras* AIR 1950 SC 27.

24. Ibid.

25. AIR 1981 SC 746.

26. *Maneka Gandhi Vs. Union of India* AIR 1978 SC 597.

case has widely interpreted right to life which included many things like clean air, water and healthy environment essential for and fundamental to human survival. Gradually the judicial interpretation of the word life opened pandora box and many other life supporting facets have been incorporated. Matchless judicial creativity transcended the corpus juris of life and introduced all that required for any civilized society and fortunately environment paved the way of scrutiny. The seedling sown by the judiciary in expanding the ambit of Article 21 gave way to include everything what originally Constitution makers might not have contemplated. Interpreting the Article judges have gone too far in translating the Constitutional morality into real action. It very well memorizes Just. B.N. Cardozo perception when he says :

*"The judge even when he is free is still not wholly free. He is not to annotate at pleasure. He is not a night errant roaming at will in pursuit to his own ideal of beauty or a goodness. He is to draw his inspirations from consecrated principles. He is not to yield to spasmodic sentiments, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity of order in the social life. Wide enough in all conscience is the filed of discretion that remains."*²⁷

Observations made by Justice Cardozo still holds its position and true to its spirit. Indian judges have always stood on the test. Expanding horizons of Article 21 and the corresponding word life engulfed the basic component in its arms. Resultantly many pronouncements in post seventies and eighties reflected this trend where courts have acted proactively ensuring better governance of the environment. Testimony to the fact primarily are the principles laid down by Indian Supreme Court in a few important decisions. In *Subhash Kumar V. State of Bihar*²⁸ the court propounded that 'Right to live is a fundamental right under Article 21 of the Constitution and it includes

27. Quoted in H.N. Tiwari- *Environmental Law*- Allahabad Law Agency, Delhi 3rd edi. 2005, p.82.

28. AIR 1991 SC 420.

the right of enjoyment of pollution free water and air for the full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws a citizen has the right to have recourse for removing the pollution of water or air which may be detrimental to the quality of life.'

Judicial attitude towards inculcating healthy environment as an important facets of life has been reflected in numerous cases and besides other Articles, where environment finds specific mention, word life happened to be another feather in the arms. There are numerous instances which support the proposition and Article 21 has now been frequently invoked to protect the environment. Thus, *Oleum Gas Leak*²⁹ case advocated that right to live in pollution free environment is a part of fundamental right to life under Article 21 of the Constitution. In *Bhopal Gas Leak Disaster Case*³⁰ Supreme Court held that in the context of our national dimensions of human rights, right to life and personal liberty, pollution free air and water is guaranteed under Article 21.³¹ Furthermore the observations of Justice. M.J. Rao favours the thesis- who advocated that "Environmental Concerns are in our view is of equal importance as human rights concerns. In fact both are to be traced to Article 21 which deals with fundamental right to life and liberty. While environmental aspects concern life, human rights aspect concern liberty."³²

29. *M.C. Mehta Vs. Union of India* AIR 1987 SC 1086.

30. *Charanlal Shahu Vs. Union of India* (1990) SCC 613.

31. See other cases in which pollution free air and pure water has been treated as a guarantee of Article 21 *B.L. Badhera Vs. Union of India* AIR 1996 SC 2969; *Dr. Ashok Vs. Union of India* (1997) 5SCC 10; *M.C. Mehta Vs. Union of India* (1992) 3 SCC 256.

32. *A.P. State Pollution Control Board Vs. Prof. M.V. Naidu* AIR 1999 SC 812.

Judicial governance still continued and smoking at public place was again held to be injurious for the environment vis-a-vis public health and thus violative of Article 21.³³ Voyage of protectionism still insinuated and in the beginning of this decade our courts have gone ahead in guaranteeing the protection to an unlimited extent with new zeal and giving more widened scope to Article 21 in reference to the environmental concern. This trend is visible in *N.D. Jayal V. Union of India*³⁴ where right to clean environment and right to development are integral parts of human right covered by Article 21. Sustainable development is a means to achieve the object and purpose of this Article. Court very clearly observed :

*"Right to clean environment is a guaranteed fundamental right. May be in a different context, the right to development is also declared as a component of Article 21. The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well being and includes within its definition the guarantee of fundamental human rights. The development is not related only to the growth of GNP. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process for the improvement of people's well being and realisation of their full potential. It is an integral part of human rights."*³⁵

-
33. *Murali Deora Vs. Union of India* AIR 2002 SC 40. Court in this case tried to find fine balance between personal liberty and enjoyment of pollution free air : Smokers and non smokers rights were the concern of interpretation and the court opined that those who smoke will naturally cause inconvenience to those who do not smoke therefore later has a right not to be exposed to unwanted polluted air.
34. (2004) 9 SCC 362.
35. Ibid at para 23 and 24; see also *Samantha Vs. State of A.P.* (1997) 8 SCC 191; *Madhu Kishwar Vs. State of Bihar* (1996) 5 SCC 125.

Supreme Court of India took a forward leap in safeguarding and ensuring better governance in matters of environmental concern. Interpreting the provisions of the Environmental Protection Act 1986 court was of the view that ensuring sustainable development is one of its goals and it is quite necessary to guarantee the right to life under Article 21.³⁶ Accordingly sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of life under Article 21.³⁷

High Courts were equally enthusiastically translated the spirit of Article 21 in relation to environmental matters. Thus, Andhra Pradesh High Court has shown sensitivity and held that the enjoyment of life embraces the protection and preservation of nature's gift without which life cannot be enjoyed.³⁸ It was followed by Rajasthan High Court³⁹ which also observed that *"maintenance of health, preservation of sanitation and environment falls within the preview of Article 21 as it adversely affects the right of the citizens and amounts to slow poisoning and reducing the life of the citizens because of the hazards created if not checked"*. Similar observations were made by High Courts of Allahabad⁴⁰, Kerala⁴¹ and Himachal Pradesh⁴² where environmental degradation was found to be violative of fundamental right to life guaranteed under Article 21. Calcutta High Court has also categorically favored the sustainability theory of environment⁴³. These are the instances of sensitivity shown by Indian judges under the provisions of Indian

36. Ibid at para 26.

37. Ibid.

38. *T. Damodar Rao Vs. Special Officer M.C. Hyderabad* AIR1981 AP 171.

39. *L.K. Koolwal Vs. State of Rajasthan* AIR 1988 Raj 2.

40. *S.K. Garg Vs. State of U.P.* AIR 1999 All. 41.

41. *F.K. Hussain Vs. Union of India* AIR 1990 Ker 321; See also *Attakoya Thangal Vs. Union of India* 1990 KLT 580 (Kerala High Court held that right to sweet water and the right to free air are the attributes of the right to life for these are the basic elements which sustain life itself.

42. *Kinkri Devi Vs. State of H.P.* AIR 1988 HP 4.

43. *Peoples United for better living in Kolkatta Vs. State of W.B.* AIR 1993 Cal. 215; *Bara Bazar Fire Works Dealers Association Vs. Commissioner of Police, Calcutta* AIR 1998 Cal. 121.

Constitution. Still evidences of judicial intervention are visible and our courts are battling hard for protecting environmental hazards. Such efforts needs to be discussed in various ways.

JUDICIAL ADVENTURES

There is no gainsaying the fact that until last years of seventies environmental protection laws were merely a matter of statute book and ornamental and hardly invoked in the real practice. Environmental protection, pollution, awareness and litigation were unknown during those days. Environmental quality started declining as a result of increasing pollution. Loss of vegetal coverage and biological diversity, excessive concentration of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support system have drawn attention of world community.⁴⁴ Multiplicity of behavior exchanges put forth mushrooming environmental litigation and the courts started warding off the arrow surrounding the environmental properties. The dynamics of such litigation have been very well categorized by Justice B.N. Kirpal and according to him, scaling of environmental disputes, problem of unrepresented interests and nature of conflict in the matters of environment engendered a new era of judicial creativity.⁴⁵ Indian courts can never be a silent spectator in these conditions and started actively working on the issue of environmental harm. Courts are duty bound to inspire confidence in people as a whole for whom it exists as rightly observed by Justice Lodha who says; Judiciary exists for the people and not vice-versa.⁴⁶ It must impart effective, prompt and ready justice in matters involving people's civil right (such as sanitation facilities, proper light, air and environment) and public interest

44 Mehta C.S. Supra note 1 at p. 77.

45. Justice B.N. Kirpal- *Role of the Judiciary in promoting the Rule of Law in the area of sustainable Development*; Regional symposium, Colombo, Sri Lanka 4-6 July, 197 at p. 74-75.

46. *Krishna Devi Vs. Vishnu Mitra* AIR 1982 Raj. 281; See the observations made by Just. S.S. Nijlar in *Lanka Venkateshwarlu Vs. State of A.P.* (2011) 4 SCC 363 para-31.

litigation.⁴⁷ Indian Courts have harnessed its positive energy in translating the environmental mandates into real action in various ways on different areas of the issue. It is worth discussing at this juncture that how our courts have responded on the varying facets of environmental governance. Instances and issues are numerous.

APPLYING INTERNATIONAL STANDARDS/PRINCIPLES IN THE INDIAN ENVIRONMENTAL REGIME

Global ecological concern reflected in famous arbitration proceedings of *Trail Smelter Arbitration Case*⁴⁸ between US and Canada. In early days international disposition entertained the matters of environmental damage in the name of transboundary marine pollution activities or material harm to the neighboring countries. Therefore, domestic courts were hardly concerned with implementing specific environmental laws as there was complete absence of such laws. States used to be held liable not for violation of laws relating to environment but under the general principles of State responsibility based on natural principles or compensation for damages especially when bilateral or multilateral treaties are not adhered to. Environment was furthermore a part of territorial division and liability for any intervention by other State in the peaceful use of one's own sovereign territorial units became common. Thus, sea, outer and air space, sub soil either of earth or water surface drew the attention of courts at global level. Before 1972, the provisions relating to

47. Ibid.

48. Efforts started to prevent marine pollution by discharge of Oil in the Sea. International Oil Convention 1954; Oil Tankers Standard adopted by world community from time to time between 1954-1962; Anti-Dumping Conventions- Oslo and London 1972; Convention on Prevention of Pollution by Radioactive Substance, Antarctic Treaty, 1959; Nuclear Test Ban Treaty 1963; Treaty on the Principles governing the activities of states in the exploration and use of outer space including the Moon and other celestial Bodies 1967; Tiatelco Treaty 1967 (Prohibiting Nuclear Weapons) : NPT 1968; General Assembly Resolutions of 1971 (suspending Nuclear and Thermonuclear Tests; Prohibiting emplacement of Nuclear weapons and other weapons of mass destruction on sea-Bed, Ocean Floor and sub soil) etc. See also P. Sands-*Principles of International Environmental Law*. Vol.-1, Manchester University Press, 1995,, pp. 181-230

environment were patchy, regional and local⁴⁹ and primarily a subject of research. Principles for its governance were not evolved and municipal system by and large regulate the environmental matters. Stockholm Declaration introduced a new era in the field of environmental governance by linking environment and development and propounded three basic principles, i.e., sovereign right of each State to exploit its own resources, responsibility towards other State for causing damage to environment and duty to cooperate to develop international law of liability and compensation.⁵⁰ Obviously domestic courts found limited scope to translate the ancillary laws of environmental concern into direct action. Indian Courts however, started enforcing remedial action for environmental damage by invoking criminal and tortious liabilities. World community in 1992 prepared a comprehensive document consisting of Declaration of Principles and plan of action. Other issues like bio-diversity, climate change and the forest also got priority. Popularly known as Rio Principles the Declaration accepts 27 Principles governing various aspects of environment of which sustainable development,⁵¹ precautionary approach⁵², polluter pay⁵³, environmental

49. Stockholm Declaration on Human Environment 1972 Principle 21 : States have in accordance with the Charter of the United Nations and the Principles of International law the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that 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.

Principle 22 :

States shall cooperate and develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such states to areas beyond their jurisdiction. For detailed discussion see J.G. Starke - Supra at pp. 403-417.

50. Rio Declaration on Environment and Development 1992 : Principle-1.

51. Ibid, Principle- 15.

52. Ibid, Principle 16.

53. Ibid, Principle 17.

impact assessment⁵⁴, intergenerational equity,⁵⁵ use and conservation of natural resources⁵⁶, environmental protection,⁵⁷ obligation on the part of States to assist and cooperate⁵⁸, eradication of poverty and financial assistance to developing countries⁵⁹ are important. Basically these principles were found to be an insignia of sustainable developments coined by Brundtland Commission⁶⁰. These commitments have become an integral part of the functioning of participating countries including India. Environmental protection and conservation of natural resource at the global level infused a new wind of environmental ethics to which each and every one including state agencies started to pay heed. Indian courts have already shown eco-sensitivity and have interpreted various provisions of the Constitution and other laws in the light thereof. The path accepted by the Executive in inking the Convention Indian Courts endorsed by interpreting international standards into real action by safeguarding natural resource in the light of direct international obligation. In a number of decisions these principles have found favor and gradually have become part of courts functioning. Indian Supreme Court in *Vellore Citizens Welfare Forum case*⁶¹ observed that absolute development be discouraged but sustainable development is to be promoted as it has been accepted as part of the law of the land. The judicial approach "concedes that sustainable development has become a balancing concept between ecology and development and has been accepted as part of the customary international law though its salient features have yet to be finalized by the international law jurists."

54. Ibid, Principle 3, 4.

55. Ibid, Principle 7.

56. Ibid, Principle

57. Ibid, Principle

58. Ibid, Principle 5, 27.

59. Commission submitted its report in the year 1989 in the name of International Covenant on Environment and Development.

60. Ibid.

61. AIR 1996 SC 2715.

RECOGNITION OF THE PRINCIPLES OF SUSTAINABLE DEVELOPMENT

Indian Courts did not lag behind in interpreting statutes incorporating the principles of sustainable development. The term has been defined in Brundtland Commission Report under the title, Our Common Future, in the following ways :

Sustainable development is that development which meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts :

- *the concept of needs in particular the essential needs of the world's poor to which overriding priority should be given; and*
- *the idea of limitation imposed by the state of technology and social organization on the environments ability to meet present and future needs.*

To Indian judges this concepts has varying meaning depending upon the capacity of a state. Thus, what is sustainable has to be tested on the basis of the socio-economic component of each sovereign nation as the inherent inequality should also be taken into consideration. However, being the fundamental concept in the theory of environmental governance it must be respected. It reflected in the judicial pronouncement of *Narmada Bachao Andolan case*.⁶² The Court observed that sustainable development means the type or extent of development which can be sustained by nature/ecology with or without mitigation of its quality. For any developing country progressive economic decisions are essential taking care of the environment. The Courts have tried to have balanced view of priorities while deciding environmental matters. India is a developing country and it is inevitable that due ecological compromises are made while keeping in mind the nature of environment of the area. This is in order that future generation may benefit from policies and

62. *Narmada Bachao Andolan Vs. Union of India* 2000 (10) SCC 644 at p. 727.

laws which environmental as well as developmental goals.⁶³ In *State of Himachal Pradesh V. Ganesh wood Products* court invalidated forest based industry recognizing the principle of intergenerational equity as being central to the conservation of forest resources and sustainable development.⁶⁴ Indian Supreme Court has went a step ahead when sustainable development was construed as a means to achieve the object and purpose of protection of life envisaged under Article 21 of the Constitution.⁶⁵ The Court found it an important part of human rights⁶⁶ by maintaining that "the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of sustainable development. This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generation to satisfy their needs. Strict observance of sustainable development means a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy."⁶⁷

Henceforth, judicial creativity started shaping future of environment by imbibing this concept in Indian jurisprudential arena.

PROMOTING ENVIRONMENTAL AWARENESS AND INFORMATION

-
63. *M.C. Mehta Vs. Union of India* AIR 1997 SC 734; see Justice Y.K. Sabharwal- *The Supreme Courts Contribution to Environmental Law- Nyaya Deep* Vol. VI : 3 July 2005 p. 46-47 (An official Journal of National Legal services Authority of India).
64. AIR 1996 SC 149; see also *Indian Council for Enviro- Legal Action Vs. Union of India (CRZ Notification case)* 1996) 5 SCC 281.
65. *N.D. Jayal & others Vs. Union of India* (2004) 9, SCC 362.
66. Ibid at para 22.
67. Ibid; see also *M.C. Mehta Vs. Union of India* (2002) 4 SCC 356; *Vellore Citizens' Forum Vs. Union of India* (1996) 5 SCC 647.

We are living in an info era where knowledge is power and well informed man is well empowered man. It is a matter of universal acceptance that ignorance of law is no excuse and this applies to any issue of human concern. Awareness and information are the two pillars of environmental conservation and unless we know about its significance individual contribution is a far cry. Article 19⁽ⁱ⁾ of the Indian Constitution admits that right to freedom of speech and expression has no meaning unless information is coupled with. On the same analogy it has been the priority of Indian courts to inculcate the awareness issue within the corpus juris of environment and litigant courts have tried to ensure that citizenry should be fully aware about the environmental components and his role in its preservation. In *M.C. Mehta V. Union of India*⁶⁸ an application was filed before Supreme Court seeking its intervention to issue direction; to cinema halls of the country for showing slides containing information on the environment; for spreading of information relating to environment through All India Radio and the study of the environment should become compulsory subject in schools and colleges. It was argued that Article 51(A)(g) of the Indian Constitution enjoins every citizen with a duty to protect and improve the natural environment⁶⁹ and these obligations can be fulfilled only when people are better educated about the environment. Taking note of the increasing human population during last 50 years, changes in the lifestyle and resultant adverse effect on the environment, the court upheld State liability to keep citizens informed about such matters. It directed State Governments and Union Territories in India prescribing condition precedent for granting license to all cinema halls, touring cinemas and video parlors to show at least two slides/messages provided by Ministry of Environment dealing with environmental issues free of cost in each show. Furthermore, Ministry of Information and Broadcasting, All India Radio and Doordarshan shall produce short films and interacting programs dealing with environmental pollution which will be shown daily by the cinema owners and

68. AIR 1992 SC 382.

69. Article 51 (A) (g) provides : *It is the duty of the citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.*

five to seven minutes may be devoted to such programs daily on the radio/TV stations. University Grants Commission, State Government, Educational State Boards should ask Universities, Schools and Colleges to introduce compulsorily course on environmental education. In another case⁷⁰ Supreme Court has took the view that citizens right to access and information about environmental issues is part of constitutional guarantee of right to freedom of speech and expression. Upholding the right to information and the rights of recognized social action groups to obtain such information court opined that the disclosure of information regarding functioning of the Government and right to know flows from this right. Peoples participation in the movement for the protection of the environment cannot be over emphasized.

TRANSLATING UNIVERSAL PRINCIPLES OF ENVIRONMENTAL PROTECTION

Global concern on environment

Undoubtedly Earth Summit will be known for its comprehensive documentation on environmental matters. It has recognized certain effective and important principles for environmental governance. Indian courts implemented these principles by evolving new environmental jurisprudence. In *Karnataka Industrial Area Development Board V. C. Kenchappa*⁷¹ court reiterated that the general principles of sustainable development is quite comprehensive and precautionary approach, polluter pays principle and doctrine of public trust are essential component of it. Its advisable to discuss briefly.

i. Precautionary Approach :

Standing on the heels of international community, Indian Courts have shown positive trend after 3 years as reflected in *Vellore Citizens's Forums case*⁷² by observing that :

70. *Bombay Environmental Action Group Vs. Pune Cantonment Board* unit petition no. 2733. 1986; see other cases AIR 1985 SC 652; 1982 AIR SC 149; 1975 AIR SC 865.

71. (2006) 6 SCC 371.

72. *Vellore Citizen Forum Vs. Union of India* AIR 1996 SC 2715; *M.C. Mehta Vs. Union of India* AIR 2004 SC 4016.

*the precautionary principle and the polluter pays principle have been accepted as part of the law of the land.*⁷³

Precautionary principle in the context of the municipal law means;

- A. Environmental measures should be adopted by the State Government and the statutory authorities must anticipate, prevent and attack the cause 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 is on the actor or the developer (industrialists) to show that his action is environmentally benign.

Court issued comprehensive directions to the tanneries discharging untreated effluents into agricultural fields, roadsides, waterways etc. in the state of Tamilnadu in order to prevent water pollution and maintain the sanctity of these principles. Constitution of **Green Bench** was a revolutionary step in dispositional mechanism against environmental damage.⁷⁴

ii. Polluter Pays Principle- This principle demands that the financial cost of preventing or remedying the damage caused by pollution should be compensated by the undertaking which cause pollution. Under the principle it is not the role of the Government to meet the cost involved in either prevention of such damage or in carrying out remedial action as the effect of this would be to shift the financial burden of the pollution incidence to the tax payers. Supreme court of India has been unhesitatingly invoking this principle to ward off any potential threat to the eco-system. In *Indian Council for Enviro Legal Action V. Union of India*⁷⁵ while interpreting the provisions of

73. Ibid at p. 2721.

74. Ibid at p. 2726 para 25; *Karnataka Industrial Area Development Board Vs. C. Kenchappa* (2006) 6 SCC 371. *A.P. Pollution Control Board Vs. M.V. Naidu* AIR 1999 SC 812; *S. Jagannath Vs. Union of India* AIR 1997 SC 811. *Narmada Bachao Andolan Vs. Union of India* AIR 2000 SC 3751; see also P.Leela Krishnan-*Environmental Law-* Annual Survey of Indian Law Delhi Vol. XXXVI 2000 pp. 252-257 q. in Just. Y.K. Sabharwal- Supra at p. 45.

75. AIR 1996 SC 1446.

Constitutional guarantee, specific ancillary laws in the context of polluting activities of various industrial establishment the court ruled that "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."⁷⁶ The polluter pays rule is premised on the very nature of activity carried on. It, as interpreted by the court, means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Reparation of the damaged environment is part of the process of sustainable development and as such polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged ecology.⁷⁷ Recognizing that this principle has become part of Indian Constitutional ethics under Article 21 court advocated for its due acceptance in the environmental management with certain limits. In *M.C. Mehta V. Kamalnath*⁷⁸ court held that the power under Article 32 of the Constitution to award damages or even exemplary damages to compensate environmental harm would not extend to the levy of a pollution fine.

iii. Intergenerational Equity : The principle enunciated an expectation from resource users and the development oriented citizenry and industry to bring a change in the mind that natural resources should not be used in a manner as to jeopardize the interest of future generations. Therefore, ancillary to this has been the theory of needs and limits which would further require sustainability

76. Ibid at p. 1462 para 58; see *Oleum Gas Leak case* AIR 1987 SC 1086 at pp. 1099-1100; *Vellore Citizens Forum Case* Supra at p. 2721. See *Krishnadevi M. Kamathia Vs. Bombay Action Group* (2001), 3 SCC 363.

77. *Vellore Citizen Forum Case* supra at p. 2721 para-11.

78. AIR 2000 SC 1997; see also "Policy Statement for abatement of Pollution: Ministry of Environment and Forests, Government of India, Delhi para 3.3, February 26, 1992. For reference on the principle see *T.N. Godaverman Thirumulpad Vs. Union of India* (2006) 5 SCC pp. 23-59; (2006) 10 SCC 482; *Godaverman Vs. Union of India* AIR 2003 SCC 724; *Intellectual Forum Tirupathi Vs. State of A.P.* AIR 2006 SC 1350 *Bombay Dyeing Mfg. Co. Vs. Bombay Environmental Action Group* (2006) AIR CSW 1392; *Praveenbhai J. Patel Vs. State of Gujrat* (1995) 2 GLR 1210.

of resource use pattern. Live and let live should be the motto because many generations have to live with limited natural resources as it can never be proportionally stretched too far. Indian courts have started honoring the principle since 1980 as reflected in the *Ratlam Municipality Case*⁷⁹. Courts have guarded and warned the concerned municipal corporation to take measures to maintain eco-friendly environment. In *State of H.P. Vs. Ganesh Wood Products*⁸⁰ Supreme Court invalidated forest based industry recognizing the principle of inter-generational equity as being central to the conservation of forest resources and sustainable development.⁸¹ However, germs of this principle may be found even before this pronouncement.

iv. Public Trust Doctrine and Environment : This doctrine was coined by Prof. Joseph Sax enjoining state with a duty to maintain the sanctum sanctorum of the environmental properties. Recognizing the principle Supreme Court of India in *M.C. Mehta V. Kamalnath*⁸² held that this doctrine has been part of the law of the land of Indian jurisprudence. The question in this PIL (Public Interest Litigation) was whether the public has right to natural flow of rivers and streams and to the natural configuration of land as the Government proposes to have a motel situated at the bank of river Beas. Holding that state has committed a breach of public trust, the court viewed that the doctrine of public trust be applied in respect of all the eco-systems operating in our natural resources.⁸³ Court observed that the doctrine of public trust rests primarily on the principle that certain resources like air, water, sea and the forests are very important for the people as a whole and it would be wholly unjustified to make them subject to private ownership. Thus, it operates as a limitation on the authority to work either callously or negligently

79. *Municipal Council Ratlam Vs. Viradhichand* AIR 1980 SC 1622.

80. AIR 1996 SC 149.

81. See Supra note 62.

82. See *Olga Tellis Vs. Bombay Municipal Corporation* AIR 1986 SC 180; *M.C. Mehta Vs. Union of India* (Vehicular Pollution Case (1998) 8 SCC 648. (1997) 1 SCC 388; see supra note - 75.

83. H.N. Tiwari- *Environmental Law*, All Law Agency, Haryana Reprint Edi. 2006 pp. 92-93. (for discussion on the doctrine).

causing loss to natural resources. This proposition has a far reaching implication and the court issued directions to this end in numerous cases.⁸⁴

Besides this, constructive approach of Indian Green Bench is worth mentioning in cautiously guarding against pollution by invoking the provisions of domestic environmental legislation. Neither it is possible nor reasonable to discuss all the judgments in detail at this juncture because of the limitation of the write-up. However important decisions balancing between developmental establishments and resultant ensuring loss to be discussed where courts have emphatically and clearly allied environmental preservation.

PROTECTING WATER AGAINST DISCHARGE OF WASTE

Judiciary further started interpreting domestic environmental legislation conducive to the environment. Positive relationship between the development and resource use is well established and maintenance of quality of resources is moot issue in the course of tyrannical development process. Rapid industrialization driven us in an era of artificial creation which is possible only when we exploit the resources to its unlimited extent. Courts have been emphatic on uncompromising trend in maintaining the qualities and chemical balances of environmental components. Therefore, the activities disturbing the whole someness of water has been discouraged and development process to hamper. In *Subhash Kumar V. State of Bihar*⁸⁵ taking stock of legal mandates Supreme Court viewed that the right to life enshrined in Article 21 of the Constitution includes the right to enjoyment of pollution free water and air for the full enjoyment of life. If any thing endangers or impairs the quality of life an affected person genuinely recourse to remedies. In this case Tata Iron and Steel Co. Bokaro, India has been directed to maintain the purity of Bokaro river and stony material discharged from the TISCO needs to be prevented or proper treatment be done. In *M.C.*

84. *S. Jagannath Vs. Union of India* (1997) 2 SCC 87; *Re Bhawani River Sakthi Sugar Ltd.* (1998) 6 SCC 335.

85. AIR 1991 SC 420.

*Mehta*⁸⁶ case Supreme Court has been requested to direct tanneries causing pollution to Ganga in Kanpur to install primary treatment plant. Conceding the request court directed the tanneries and Municipal Corporation to prevent and control pollution of the river Ganga. Significantly in the eyes of court

"Both aspects of man's environment, the natural and man made, are essential to his well being and the enjoyment of basic human rights-even the right to life itself. The protection and improvement of human environment is a major issue which effects the well being of peoples and economic development throughout the world, it is the urgent desire of the peoples of the whole world and the duty of all governments."⁸⁷

Court did not accept the financial constraints as a ground for not setting up treatment effluent plant as it is relevant for environmental protection measures. Even corresponding benefit generated by the operation of tanneries can never be allowed if it results irreparable environmental damage.⁸⁸ Balancing the economic and environmental interest the Supreme Court ruled that the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues, it has no right to destroy the ecology, degrade the environment and pose as a health hazard.⁸⁹

86. *M.C. Mehta Vs. Union of India* AIR 1988 SC 1037; (Three successive petitions were filed against tanneries to prevent discharge of effluent in river Ganga) Court ordered for keeping Ganga clean even at the cost of development.

87. Ibid; see also *Indian Council for Enviro- Legal Action Vs. Union of India* (1996) 3 SCC 212; *Rajasthan State Electricity Board Vs. Cess Appellate Committee* AIR 1990 SC 123 Court ordered for setting up of satisfactory treatment plant by the Board to safeguard against pollution of water in the stream); *U.P. Pollution Control Board Vs. Modi Distillery* AIR 1988 SC 1128 wherein the distillery was engaged in manufacture of industrial alcohol and was discharging highly noxious effluent in the river Kali (Ghaziabad) was held liable for offence under Sec. 47 of Water (Prevention and control of Pollution) Act 1974; *Member secretary Kerala Trivandrum Vs. Gwalior Rayon Silk Mfg. Co.* AIR 1986 Kerala 256. *Ambuja Petrochemicals Vs. A.P. Pollution Control Board* AIR 1997 A.P. 41; *Attakoya Thangal Vs. Union of India* 1990 K.L.T. 580.

88. *Vellor Citizens Forum Vs. Union of India* (1995) 5 SCC 647.

89. Ibid at p. 657. See *State of Gujrat Vs. Alok Pratap Singh* (2010) 12 SCC 515.

Thus, court did not permit either to expand or continue the tanneries to operate unless it takes by itself the problem of pollution created by the industrial operation. Developmental activities may go ahead only when it meet the parameters of environmental safeguards otherwise can never be allowed. What is important is the preservation of environment and the priority can never be tilted favoring unsafe development.

CONCERN FOR AIR POLLUTION

Its not that courts did not pay heed to air pollution and it is very well accepted by the apex court in *Shubhash Kumar case*⁹⁰ that pollution free air is part of right to life as guaranteed under Article 21. So much so even High courts have also taken note of degrading air quality and Kerala High Court⁹¹ has held that right to free air is the attribute of right to life which is the basic element to sustain life. In *Taj Trapezium Case*⁹² Supreme Court directed for elimination of emission generated by industries consuming coke and coal and reducing the chance of blackening the marbles of historical palace Taj. Industries were ordered either for closure or shifting from the area of Agra keeping in view the importance of the monument. Similar was the approach of the court where it ordered for the shifting of nearly 170 industries outside Delhi as these have caused great loss to the capital region. In *M.C. Mehta Case*⁹³ Court recorded that quality of ambient air is so hazardous that lung and respiratory diseases were on increase. The city of Delhi has become a vast and unmanageable conglomeration of commercial, industrial and unauthorized colonies. The community needs at present is the conservation of the environment and reversal of environmental degradation. Court ordered for creation of "*green belts*" and "*lung spaces*" in Delhi.⁹⁴ Indian judiciary tried to monitor activities which cause air pollution and ,thus, ordered for closure

90. Supta note 84; AIR 1991 SC 420.

91. *Attakoya Thangal Vs. Union of India* 1990 K.L.T. 580; see also *T. Damodar Rao Vs. S.O. Municipal Corporation Hyderabad* AIR 1987 A.P. 171.

92. *M.C. Mehta Vs. Union of India* AIR 1997 SC 734.

93. *M.C. Mehta Vs. Union of India* (1996) 4 SCC 351.

94. Ibid.

of a workshop causing noise unsuitable to the health of local residents⁹⁵, bleary and the smoke invited by its chimney⁹⁶, ban on smoking in public places⁹⁷, etc. However, *Ratlam Municipality Case*⁹⁸ was a beginning in this direction.

MINING OPERATIONS, QUARRYING, STONE CRUSHING

Commercialization of stone crushing is on increase causing great deal of environmental pollution and adversely affecting the citizen's right to fresh air and to live in a healthy atmosphere. Indian Courts did not allow such activities which result in degrading environment and closely monitored mining operations. In *Kinkri Devi V. State of H.P.*⁹⁹ petitioners requested the court for cancellation of mining lease and restraining respondent (Government of Himachal Pradesh) from operating the mines as it would cause danger to the lands, water resources, pastures, forest, wildlife, ecology etc. and for compensating the damage caused by uncontrolled quarrying of the limestone. Issuing interim directions court observed that *the attainment of the constitutional goal of the protection and improvement of the natural wealth and the environment and to protect people inhabitation the vulnerable areas from the hazardous consequences of the arbitrary exercise of the power of granting mining leases and of indiscriminate operations of mines on the strength of such leases without due regard to their life, liberty and property, the courts will be left with no option but to intervene effectively by issuing appropriate writs, orders and directions including the direction as to closure of the mines the operations whereof is proving to be hazardous and the total*

95. *Gotham Construction Co. Vs. A.K. Ghose* AIR 1968 Col 91.

96. *Om Govind Singh Vs. Shanti Swaroop* AIR 1979 SC 143; See also (2009) 17 SCC 181; (2009) 17 SCC 612.

97. *Murali S. Deora Vs. Union of India* AIR 2002 SC 40.

98. Supra note 77; other case to this effect are *Khestriya Pradushan Mukti Sangharsh Samiti Vs. State of U.P.* AIR 1990 SC 2060; *UCC Vs. Union of India* AIR 1990 SC 273; *M.C. Mehta Vs. Union of India (Oleum Gas leak case I)* AIR 1987 SC 965; AIR 1987 SC 982; AIR 1987 SC 1026; *Rubin Mukherjee Vs. State of W.B.* AIR 1985 Col. 222.

99. AIR 1988 H.P. 4. See *T.N. Godavarman Vs. Union of India*, (2010) 12 SCC 65.

prohibition of grant or renewal of mining leases till the Govt. evolves a long run plan based on a scientific study with a view to regulating the exploitation of minerals in the state without detriment to the environment.....¹⁰⁰.

Similar views have been expressed by Punjab and Haryana High Court.¹⁰¹ Supreme Court of India has taken precisely same stand and has approved the verdict of High Courts. On the same logic the stone crushing operation in the adjoining area of capital region in Ballabgarh, Faridabad and Delhi has been ordered to be closed.¹⁰² Cement factories in Doon Valley met the same fate to maintain the original character of the valley¹⁰³, denied the permission to continue the mining operation in forest cover¹⁰⁴ and the change of use of forest land for non forest purposes.¹⁰⁵

PROTECTION OF WILDLIFE, FOREST AND ENSURING FOREST COVER

Its matter of common admission that forest and wild life (flora and fauna) are crucial to the eco-balance and very much valuable for the human life. Therefore, trees, species of animals, plants, medicinal herbs etc. need protection and preservation. Courts have very carefully and enthusiastically propounded for its sustainability even at the cost of low development process.

-
100. Id. p.7; See also (2009) 17 SCC 181; (2009) 17 SCC 654.
 101. *Ishwar Singh Vs. State of Haryana* AIR 1996 P H 30 (High Court ordered for closure of stone crushing business).
 102. *M.C. Mehta Vs. Union of India* (1992) 3 SCC 256;
 103. *ARC Cement Ltd. Vs. State of U.P.* (1993) 1 SCC 5; Rural Litigation and Entitlement Kendra Vs. State of U.P. AIR 1988 SC 218).
 104. *Tarun Bharat Singh Vs. Union of India* (1992) Supp. 2 SCC 448.
 105. *Ambica Quarry Works Vs. State of Gujrat* AIR 1987 SC 1073; See (2009) 17 SCC 654, 17 SCC 776; 17 SCC 764; (2010) 13 SCC 316, 13 SCC 748; (2010) 12 SCC 376. see *Godrej Boyce Mfg. Co. Vs. State of Maharashtra* (2010) 12 SCC 492.

This was the reason that Supreme Court¹⁰⁶ did not permit running of saw mills, plywood mills or veneer within the forest area as it would facilitate chopping of trees etc. as quite adverse to environmental interest. Killing of an elephant and other species of animals have been dealt with severity by the courts.¹⁰⁷ Use of forest area has not been permitted to be used for non-forest purposes.¹⁰⁸

OTHER AREAS OF CONCERN

It is not that Indian judiciary has been unmindful of the recent developmental plans and projects and its wide ramifications on the environment. No one will deny the growing trend of consumerism and scientific advancements leading to economic exploitation of natural resources. March of civilization has reached to a point where every activities of human being is largely guided by the consideration of comfort and luxury. Obviously this generates pressure on the natural properties. Developmental activities are endless and exhaustive because of fast changing human need. Indian courts have always favored the protection of environment as it has been accepted as the basic element of Indian Jurisprudence. Thus, apart from what has been discussed earlier, trade of endangered species, sale and purchase of animal organs, laying of railway tracks, new road projects, laying of transmission lines, water supply lines, fiber optical cables, dams¹⁰⁹, shaft working, dumping of waste, solid waste disposal, disfigurement of lakes, ponds, water

-
106. *T.N. Godavarman Vs. Union of India* (1997) 2 SCC 267 : (1998) 2 SCC 59; (1998) 9 SCC 600. In these petitions Supreme Court has ordered setting up of Forest Academy at Dehradun and the Governments of J & K., H.P., Tamilnadu, A.P., Assam, Manipur, Meghalaya, Nagaland and Orissa to maintain forest cover and reserve forest areas; See *Centre for Environment Law Vs. Union of India*. (2010) 12 SCC 303; (2009) 17 SCC 471.
107. *State of Bihar Vs. Murad Ali Khan* AIR 1989 SC 1; *N.R. Nair V. Union of India* AIR 2001 SC 2337.
108. *Anupama Minerals Vs. Union of India* AIR 1989 A.P. 122; *B.V. Joshi Vs. State of A.P.* AIR 1986 A.P. 225 (D.B.); *G. Raghav Das Vs. State of A.P.* AIR 1987 A.P. 166 (F.B.).
109. *Narmada Bachao Andolan Vs. Union of India* AIR 2000 SC 3751 *Calcutta Youth Front Vs. State of W.B.* AIR 1988 SC 436; *Sachidanand Pandey Vs. State of W.B.* AIR 1987 SC 1109; See also (2009) 17 SCC 611.

channels, water bodies, water harvesting, coastal zone management¹¹⁰, (regulation), hydroelectric projects, nuclear testing, setting up of special Economic Zones, disproportionate urbanization etc. have also been the concern of Indian Judges. Courts have been watchful in maintaining a fine balance between environmental governance and the developmental projects. Impact assessment¹¹¹, public hearing¹¹², social auditing of the developmental projects are the novel approach of our judges and this will definitely go a long way in eco-prosperity and the human rights of the individual.

CONCLUSION : INFERENCES

The provisions of Indian Constitution and other laws as interpreted by the Indian judiciary suggest that the courts have swam very carefully and enthusiastically in ensuring human rights through healthy environmental governance by evolving the following measures :

- i. providing tools of epistolary remedy (Public Interest Litigation) to encourage public private partnership in environmental protection;
- ii. insulating NGO's with certain caution;
- iii. teaching/suggesting to create public awareness and mass education including environmental literacy amongst millions of population, young generation and the students at every level;
- iv. adopted innovative interpretation and creative environmental jurisprudence for providing solutions for effective management of eco-system;
- v. recognized new principles such as polluter pays, precautionary, absolute liability, public trust doctrine, exoneration of laches to provide effective control and prevention of environmental pollution;
- vi. made available an effective machinery to put a check on the violations of environment legislation;

110. *Goa Foundation Goa Vs. Diksha Holding* AIR 2001 SC 184.

111. *Tehri Bandh Virodhi Sangharsh Samiti Vs. State of U.P.* AIR 1985 SC; See also (2009) 17 SCC 611.

112. *Ravi and Unikrishnan Vs. State of Kerala* AIR 2001 Ker. 5.

vii. issued effective, innovative and strong guidelines from time to time for environmental conservation and protection.

Judicial creativity is undoubtedly a very congenial epithet to the legislative process. Translating the provisions of laws into a real working situation and correcting the existing gaps and anomalies is rather the most significant contribution of a promising judgementship. Environment issues, as no one would deny, have gained much importance these days because of everwidening developmental activities circumscribing every facet of human being and its natural operations. Keeping pace with dynamic changes and abreast with the legal regulatory mechanism is the sole responsibility of judicial activism no matter when and how. Indian judges have taken the task with all sincerity and stood to test the time and spirit of environmentalism. There is no denying the fact that all the stake holders are required to ensure its role performance in the matters of public concern and environmental components are being central to all. Environmental governance is not the responsibility of single institution or individual but all those who breath on this planet. Judicial function is one component which is undoubtedly delivering its best. Epitomizing the earlier fact the environment has become a matter of global concern requiring urgent and deep remedial measures. Indian Courts have ventured upon to play its part. To sum up; constitution guarantee of right to life or that way human rights can never be approved to sustain and survive in polluted atmospheric conditions. In order to realize this ultimate goal and the reality as well what is required is the discharge of certain obligations by the individual citizen and the state as given under Article 48(1)(A) and 51 (A) (g) of Indian Constitution. Assigning duties to all for environmental protection no doubt is a revolutionary step taken by political authorities. What is more important is the remedial action in case of environmental damage. Our Courts have further recognized the role of right thinking person, public spirited persons, social activists, formal Groups, NGO's to fight valiant battles against polluters and the jurisprudential barrier of *locus standi* (to have a standing before court for disposition) have been diluted by encouraging epistolary jurisdiction in the name of PIL (Public

Interest Litigation) for the novel cause of prevention of pollution and protection of environment. Equally courts mandated to remind the local authorities, i.e. Municipal corporation, Town Area Committees to discharge their duties towards environmental conservation and has to remove filth, rubbish, odor, noxious, offensive matters, bad smell, pits, unhygienic millers etc. and maintain proper drainage, sewage, sanitation, roads, paroles and other facilities conducive for human survival and the argument about financial resource crunch will not be accepted as a defense in non-compliance. Court further strictly monitored public private interest and in conflict always sided with former. Certain proactive steps taken by courts in India needs to be elaborated;

- No industrial unit engaged in hazardous activity or discharging its effluents in water streams, bodies etc. or in air should be allowed to continue without installing proper treatment plant. Pollution of water, air, soil or otherwise should and must-not-be tolerated and stopped immediately.
- Exploitation of forest, indiscriminate quarrying, excessive mining operations though possibly continuing still reparation of damage is possible and preventive cost should not be unlimited or excessively high.
- Fine balance between developmental activities and loss of natural properties should be established.
- Application for granting licenses with regard to new projects or establishments should be refused and be allowed only when adequate provision for treatment of affluent be made; highest standards of safty measures be adopted and workers welfare is ensured.
- Industrial units operating hazardous activities are strictly liable for the damage caused irrespective of the individual responsible for it.
- Conservation does not mean protection and preservation of existing forests but includes afforestation and reforestation. Forest land can never be used at all for non-forest purpose.

- Mining operations, excavations, quarrying etc. lead to ecological imbalance and harm and such land should not be left open but be reclaimed and restored to its earlier position.
- Persons/inhabitants dislocated as a result of big projects needs to be properly rehabilitated with all welfare facilities. Satisfactory impact study needs to be made and balance be struck between the benefit likely to be accrued and harm generated. Proper planning is required keeping in view the surrounding facts and the natural harm. Central to such schemes should be the environmental preservation.
- Environmental Courts, i.e. Green Courts, Green Benches needs to be set up for early and quick disposal of cases in order to avoid environmental damage.
- Ignorance of law is no excuse and this is very specific in terms of environmental laws. What is required is the state sponsored, individually motivated plan of environmental awareness. Therefore, educational institutions must come forward to achieve this goal and the viable measure is to start a course separately or to introduce environment as subject to be taught in the class at every level of institutionalized education system. Since early childhood awareness and knowledge about the environment is desired. Pollution is a problem which can be effectively solved only through public participation, awareness and political will. Judicial response is not a panacea. Judges can play only a role of catalyst and thereby speed up and gear up the process but it has to be initiated by and from the public.