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ROLE OF THE JUDICIARY IN ENVIRONMENTAL PROTECTION

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Abstract

The black ebony staves of the judiciary which has thumped time and again for the protection of man miniature against excruciating blows of evil is known for the aspiration for protecting the environment. Although numerous legislative steps have been taken to give effect to the significant right of man to live in a sound environment and the corresponding duty of state and individuals to ensure environment preservation and conservation, my endeavour, in this study, is to analyze the steps taken by judiciary to forward this goal. The main objective behind this research is to identify the present scenario and study the nature and extent of to-date developments in various environmental statuses through various statutes, laws and conventions and various issues regarding the court decisions and judicial process.

This paper commences with the meaning and need for environmental laws. It also analyzes the judicial remedies available for environmental protection and some remarkable principles and doctrine propounded by the Indian judiciary. It further views the constitutional aspects and the new trends in the judicial approach to environmental protection. The proposed study will lead to a more descriptive and comprehensive understanding of the environmental law and the policy along with the role of the Supreme in today's context to the new emerging threat which needs to be combat effective.

Keywords: *Environment, Judicial remedies, Citizens, Development, etc.*

Introduction

The protection of the environment was not important in the post-independence era of India, because of the of need for industrial development and political disturbances. Post-independence, the main concern was to set up markets, and industries, to make new jobs for the citizens. However, after the Bhopal Gas tragedy, Environment protection became a priority. After this incident, the area of Environmental law widens in the country and judicial activity also increases.

After 1986, when the first activity related to environmental protection was passed, people showed some concern about it. The main purpose of the act was to implement the decisions of the United Nations Conference on Human Environments. The Act is like a safeguard for nature from the newly emerged industries and urbanization. Before this act of 1986, a major enactment came out just after 2 years after the Stockholm Conference in 1974. The Indian Parliament makes an important change in the area of environmental management to implement the decisions that were taken at the conference. It was this time when environmental protection was granted a Constitutional status and the environment was included in DPSP by the 42nd Constitution Amendment. The constitution also provides obligations under Article 48 A and Article 51 A(g) to both the State and citizens to preserve and protect the environment. These provisions have been extensively used by courts to justify and develop a legally binding fundamental right to the environment as a part of the Right to life and personal liberty under Article 21. Parliament enacted nationwide comprehensive laws; like

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The Wildlife Protection Act, of 1972 and the Water (Prevention and Control of Pollution) Act, of 1974.

The Kerala High Court reiterated the position by holding that the Right to Sweet Water and the Right to Free Air are attributes of the Right to Life, for; these are the basic elements which sustain life itself. Following these pronouncements, the Supreme Court also recognized and asserted the Fundamental Right to Clean Environment under Art.21 of the Constitution in very categorical terms. At the same time, the judiciary in India has played a significant role in interpreting the laws in such a manner which not only helped in protecting the environment but also in promoting sustainable development[31]. The judiciary in India has created a new "environmental jurisprudence"[32]

Constitutional Laws and Environmental Protection

At present most environmental actions in India are brought under Articles 32 and 226 of the Constitution. The writ procedure is preferred over the conventional suit because it is speedy, relatively inexpensive and offers direct access to the highest courts of the land. Nevertheless, class action suits also have their advantages. The powers of the Supreme Court to issue directions under Article 32 and that of the high courts under Article 226 have attained greater significance in environmental litigation. The Supreme Court of India in numerous matters elaborated the scope of Article 21 of the constitution of India, which deals with the protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by Law. In the matter of ***Rural Litigation and Entitlement Kendra Vs State of U.P.*** - the Hon'ble Supreme Court held that the right to unpolluted environment and preservation and protection of nature's gifts has also been conceded under Article 21 of the Constitution of India. The Constitutional provisions provide the bedrock for the framing of environmental legislation in the country.

Article 48-A of the Constitution deals with the Protection and Improvement of the Environment and Safeguarding of Forests and Wildlife – The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Based on the said provisions, the Environment (Protection) Act, 1986 and the Wild Life (Protection) Act, 1972 (as amended in 1986) have been enacted by the Parliament. Under Part IV-A of the Directive Principles of State Policy, Fundamental Duties have been added under Article 51-A by the 42nd Amendment of the Constitution in 1976. Article 51-A(g) provides Fundamental Duties concerning the environment which include - To protect and improving the natural environment including forests, lakes, rivers and wildlife and having compassion for living creatures[33]. The emergence of a coherent policy framework to address environmental concerns in India can be traced back to the setting up of an advisory body, the National Committee on Environmental Planning and Coordination (NCEPC) in 1972 following the 24th UN General Assembly Meeting on Human Environment. The 42nd Amendment of the Constitution in 1976 led to the incorporation of environmental concerns through the addition of Article 48 A to the directive principles of state policy. The article declares: "The state shall endeavour to protect and improve the environment and to safeguard the forests and the wildlife of the country." Also, Article 51 A of the Constitution imposed a fundamental duty on every citizen "to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for all living creatures." Further, Article 253 of the Constitution granted the Central government overriding powers to legislate on environmental concerns and implement

[31] Paramjit S. Jaswal, Directive Principles Jurisprudence And Socio-Economic Justice in India, 543(1996). See also, Paramjit S. Jaswal and Nishtha Jaswal, Human Rights and The Law, 172-180 (1996).

[32] People United for Better Living in Calcutta v. State of W.B., AIR 1993 Cal.215 at 228.

[33] Dr. Upadhyay H Minal, P.I.L. and Environment Protection. International Journal of Research in all Subjects inMulti Languages, 2014.

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India's international obligations. the insertion of the article can be perceived as an attempt to introduce global concerns about the environment within the paradigm of Indian environmental law. This endeavour towards a coordinated approach towards environmental concerns is further manifested in the enactment of environmental statutes that employed "a system of licensing and criminal sanctions to preserve natural resources and regulate their use." These include the Water (Prevention and Control of Pollution) Act, of 1974, the Air (Prevention and Control of Pollution) Act of 1981, the Water (Prevention and Control of Pollution) Cess Act1977, and the Forest (Conservation) Act of 1980. In an attempt to bring together diverse environmental concerns under an 'umbrella' Actin the wake of the Bhopal gas tragedy, the Government of India enacted the Environmental Protection Act(1986) under Article 253 of the Constitution. This Act empowered the Centreto "delegate its powers or functions to any officer, state government or other authority." The provisions of this Act override any other law[34].

Right to Environment Protection

The emergence of the PIL as an innovative instrument of judicial interpretation and intervention in the 1980s led to increasing involvement of the judiciary in addressing environmental concerns in the backdrop of the failure of state enforcement agencies to adequately address problems of environmental pollution. identifies liberalization of locus standi for increasing access to justice, procedural flexibility, judicial supervision to ensure implementation of orders and creative interpretation of the Constitution as the defining characteristics of Public Interest Litigation in India. A creative interpretation of the Constitution to expand the scope of the fundamental right to life under Article 21 had a considerable impact on environmental jurisprudence in India. In the ***Dehradun quarrying case***, the Supreme Court expanded the scope of the right to life under Article 21 to include the right to a clean environment with minimum disturbance of ecological balance. However, even in the early phase of the application of Public Interest Litigation, the Court had to negotiate with complex political questions that are inextricably linked to environmental concerns. In ***M C Mehta v Union of India,*** the Supreme Court appointed expert committees to recommend adequate safety measures for the functioning of the Shriram chlorine plant from which harmful oleum gas had leaked affecting a large number of people. As the Court laid down the conditions for the operation and reopening of the plant, it noted that a "permanent closure of the plant" would have led to a loss of around 4000 jobs. The Court is therefore negotiating with the larger question of livelihood concerns inextricably linked to environmental problems in the present case. The appointment of a committee to monitor the operation and maintenance of the plant is an attempt to implement the recommendations of the Court. While this can be seen as a suitable mechanism of grievance redressal, it cannot be a long-term method for the successful implementation of a coherent environmental policy. Dam (2004) observes that judicial intervention has merely led to administrative agencies "preparing knee-jerk responses to judicial orders. In ***Chhetriya Pardushan Mukti Sangharsh Samiti vs State of U.P. & Ors***, the Supreme Court held that every citizen has a fundamental right to the enjoyment of quality of life. In ***Subhash Kumar vs State of Bihar***, the petitioner filed a writ petition in this court by way of public interest litigation alleging that the respondents, West Bokaro Collieries and Tata Iron and Steel Company (TISCO) were polluting the river Bokaro by discharging surplus waste in the form of sludge/slurry as effluent from their washeries into the river, making the river water unfit for drinking and

[34] http://www.academia.edu/1612400/Public_Interest_Litigation_and_environmental_law_in_India

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irrigation purposes thereby causing risk to the health of the people. The State of Bihar and the State Pollution Control Board had failed to take appropriate steps for the prevention of pollution. The Supreme Court held that the Right to life is a fundamental right under Article 21of the Constitution and it includes the right to 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 to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. In ***M.C. Mehta vs UOI & Ors***, the court held that every citizen has a right to fresh air and to live in pollution- free environment. In ***Indian Council for Enviro-Legal Action etc. vs UOI & Ors***,22 the Supreme Court held that this writ is directed against the Central Government, the State Government and the State Pollution Control Board to perform their statutory duties on the ground that their failure to carry out their statutory duties is seriously undermining the right to life. The court held that if an industry is established without obtaining the requisite permission and clearances and if the industry is continued to be run in blatant disregard of the law to the detriment of the life and liberty of the citizens living in the vicinity, this Court has the power to intervene and protect the fundamental right to life and liberty of the citizens of this country. In ***M.C. Mehta vs Union of India & Ors***, the Supreme Court has reiterated that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to the enjoyment of pollution-free water and air for full enjoyment of life.

Doctrine and Principles Evolved by the Court

The doctrines evolved by courts are a significant contribution to environmental jurisprudence in India. Article 253 of the Constitution of India indicates the procedure for how decisions made at international conventions and conferences are incorporated into the legal system. The formulation and application of the doctrines in the judicial process for environmental protection are remarkable milestones in the path of environmental law in India.

Public Trust Doctrine

Indian legal system is essentially based on common law and includes the public trust doctrine as part of its jurisprudence. The state is a guardian of natural resources, and natural resources are available for the public for their enjoyment by nature and they cannot be changed into private property. The state is under a legal duty to protect natural resources. In M.C. Mehta v. Kamal Nath, the Supreme Court applied this doctrine for the first time in India to an environmental problem. According to the Supreme Court, the public trust doctrine primarily rests on the principle that certain resources like air, sea waters and forests have such great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership.

Doctrine of Sustainable Development

Environmental pollution and degradation are serious problems nowadays. Judiciary being a social institution has a significant role to play in the redressal of this problem. The progress of a society lies in industrialization and financial stability. But, industrialization is contrary to the concept of preservation of the environment. These are two conflicting interests and their harmonization is a major challenge before the judicial system of a country. The judiciary, in different pronouncements[35], has pointed out that there will be adverse effects on the country's economic and social condition if industries are ordered to stop production. Unemployment and poverty may sweep the country and lead it towards degeneration and destruction. At

[35] Ayesh Dias, 'Judicial Activism in the Development and Enforcement of Environmental Law: Some Comparative Insights from the Indian Experience', Journal of Environmental Law, no 6, (1994).

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the same time, polluting industries impend the stability of the environment. The judiciary was, therefore, of the opinion that the pollution limit should be within the sustainable capacity of the environment.

In Vellore Citizens Welfare Forum v. Union of India, the Supreme Court opined, the traditional concept that development and ecology are opposed to each other, is no longer acceptable, sustainable development is the answer. Sustainable Development means fulfilling the need of the present generation without compromising the needs of the future generation. Sustainable development is a balancing concept between ecology and development.

Polluter Pays Principle:

The countries moving towards industrial development had to face the serious problems of giving adequate compensation to the victims of pollution and environmental hazards. That the polluter must pay for the damage caused by him is a salutary principle that evolved very early in Europe when that continent was haunted by a new spectre, that of unprecedented pollution. In M.C. Mehta v. Union of India, a petition was filed under Article 32 of the Constitution of India, seeking the closure of a factory engaged in the manufacturing of hazardous products. While the case was pending, oleum gas leaking out from the factory injured several persons. The significance of the case lies in its formulation of the general principle of liability of industries engaged in hazardous and inherently dangerous activity.

Precautionary Principle

The precautionary principle says that if any action or project has some possible risk which can cause harm to the public and environment and the person who is taking that action knows those risks, in the absence of scientific measures that action or project is harmful, then the burden of proof lies on those persons who are taking that action that it is not harmful. The Precautionary principle says that there is a social responsibility to protect the public from any kind of harm, in the case when scientific investigation point towards a risk. These protections can be relaxed in the case when the person taking action can prove with sound evidence that no harm will result.

In Vijayanagar Education Trust v. Karnataka State Pollution Control Board, Karnataka[36] the Karnataka High Court accepted that the precautionary doctrine is now part and parcel of the Constitutional mandate for the protection and improvement of the environment. The court referred to Nayudu cases[37] which laid down that the burden to prove the benign nature of the project is on the developer if it is found that there are uncertain and non-negligible risks.

Judiciary and Environmental Law: CASE STUDY(s)

From mining

R.L. & E. Kendra, Dehradun v. State of U.P[38]., (popularly known as Doon Valley Case) was the first case of its kind in the country involving issues relating to the environment and ecological balance which brought into sharp focus the conflict between development and conservation and the court emphasized the need for reconciling the two in the larger interest of the country, mining which denuded the Mussoorie Hills of trees and forests cover and accelerated soil erosion resulting in landslides and blockage of underground water which fed many rivers and springs in the river valley. The Court appointed an expert committee to advise the Bench on the technical issues and the basis of the report of the committee; the Court ordered the closure of several limestone quarries.

The Court was also conscious of the consequences of the order which rendered workers unemployed after the closure of the

[36] AIR 2002 Kant 123
[37] Andhra Pradesh Pollution Control Board v. MV Nayudu, AIR 1999 SC 812
[38] AIR 1985 SC 652

limestone quarries and caused hardship to the lessees. The Court observed that "this would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and their cattle, homes and agricultural land and undue affectation of air, water and environment.

In ***A.R.C. Cement Ltd. v, State of U.P***[39] the Supreme Court did not permit the cement factory to run in the Doon Valley area where the mining operation had been stopped and to restore the Doon Valley to its original character it was directed to be declared as non-industrial. However, the government was asked to provide an alternate site for shifting the cement factory of the petitioner.

In ***Tarun Bharat Sangh v. Union of India***[40], the petitioner through a public interest litigation (PIL) brought to the notice of the Court that the State Government of Rajasthan, though professing to protect the environment using the notifications and declarations, was itself permitting the degradation of the environment by authorising mining operations in the area declared as "reserve forest". To protect the environment and wildlife within the protected area, the Supreme Court issued directions that no mining operation of whatever nature shall be carried on within the protected area.

From Shifting Of Stone Crushers

Environmental pollution is also caused by stone-crushing activities and thus affects the right of the citizens to fresh air and to live in a pollution-free environment. In ***M.C. Mehta v. Union of India,***[41] the Supreme Court issued directions for stopping mechanical stone-crushing activities in and around Delhi, Faridabad, and Ballabhgarh complexes. However, keeping in view the sustainable development, directions were also issued for allotment of sites in the new "crushing zone" set up at village Pali in the State of Haryana to the stone crushers who were directed to stop their activities in Delhi, Faridabad and Ballabhgarh complexes.

This case was relied upon and followed by Punjab and Haryana High Court ***in Ishwar Singh v. State of Haryana***[42] The High Court issued the directions for closing down the stone-crushing business of those which were not situated within the identified zone. The Court further directed that those who wanted to carry on their business of stone-crushing should shift to the identified zones. One of the most important directions given by the High Court was regarding the claim of compensation for those persons who had suffered due to the pollution caused by stone-crusher owners.

Industrial Pollution

A monumental judgment was delivered by the Supreme Court in ***M.C Mehta v, Union of India***[43]. The Bhopal catastrophe is only a manifestation of the potential hazards of all chemical industries in India, none of which are amenable to effective regulation. Hardly had the people gotten out of the shock of the Bhopal disaster when a major leakage of oleum gas took place from one of the units of Shriram Chemicals in Delhi and this leakage affected a large number of persons both amongst the workmen and the public. In this case, the Court has evolved many principles which are new to the Indian "environmental jurisprudence". At the very outset, the Court disposed of the 'question as to whether the plant could be allowed to recommence the operation in the present state and condition and if not what measures were required to be adopted against the hazards of the possibility of leaks, explosion, pollution of air and water etc. for this purpose. The Court gave priority to this question because some other important

[39] 1993 Supp (1) SCC 57
[40] 1992 Supp (2) SCC 448
[41] (1992)3 SCC 256
[42] AIR 1996 P. & H 30
[43] AIR 1987 SC 965

consequences were related to it which required immediate attention. Firstly, about 4000 workmen were thrown out of employment because of the closure of the plant.52 Secondly, the short supply of chlorine which was being produced by the said plant could have affected many activities in Delhi. Thirdly, the production of downstream products would have also been seriously affected resulting to some extent in a short supply of these products. The Supreme Court appointed an expert committee to suggest certain measures to remove the existing defects in the plant. After the Court was satisfied that all the safety and control measures had been complied with by the management in a satisfactory manner, it was held that pending consideration of the issue of relocation or shifting of the plant to some other place, the plant should be allowed to be restarted subject to certain stringent conditions and the provisions of the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 981 should be strictly observed. It is submitted that the above approach of the Supreme Court is aligned with environmental protection and sustainable development.

In this case, the Supreme Court, though deliberated upon did not answer the question of whether private enterprises carrying inherently dangerous hazardous activities could be considered "State" within the meaning of article 12 of the Constitution of India to allow a public interest litigation under the writ jurisdiction. However, by allowing the writ petition under Article 32 of the Constitution, it impliedly treated private enterprises like Sriram Chemicals as the "State".

Indian Council for Enviro-Legal Action v, Union of India[44], is a monumental judgment on environmental protection and sustainable development. In this case, a PIL was filed alleging environmental pollution caused by private industrial units. The PIL was filed not for issuanceof writ, order or direction against such units but against the Union of India, State Government and State Pollution Board concerned to compel them to perform their statutory duties on the ground and that their failure to carry out their duties violated the right to life of citizens under article 21 of the Constitution.

In this case, the industrial units were located in Bichhri village in Udaipur (Rajasthan). They were producing certain chemicals like oleum (concentrated form of sulphuric acid) and H-Acid etc. They had not obtained the necessary clearances/consents/ licences nor did they' install any equipment for the treatment of highly toxic effluents discharged by them. The highly toxic effluent of these industries percolated deep into the bowels of the earth polluting the groundwater and making it unfit for drinking by human beings and cattle and for irrigating the land. The soil became unfit for cultivation. It spread diseases, death and disaster in the village and the surrounding areas. Some industries had closed or stopped manufacturing "H-Acid" yet the consequences of their action remained-the sludge, the long-lasting damage to the earth, underground water, human beings, cattle and the village economy.

The Supreme Court while affirming the earlier case of ***M.C. Mehta v. Union of India*** held that the contention that the respondents were private corporate bodies and not "State" within the meaning of Article 12, a writ under Article 32 would not lie against them, cannot be accepted. In if the Court finds that the government or authorities concerned have not the action required of them and their inaction has affected the right to life of the citizens, it is the duty of the Court to intervene and the Court can certainly issue the necessary directions to protect the life and liberty of the citizens. The Court has also considered the effect of Idgah Slaughter House on ecology. In

[44] (1996) 3 SCC 212

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Buffalo Traders' Welfare Association v, Maneka Gandhi[42], the court considered it as one of the hazardous industries operating in Delhi and it to stop functioning in the city of Delhi in the interest of environmental protection. It was allowed to operate only for a certain period provided certain conditions were fulfilled and that the slaughterhouses were kept clean till the alternate site was arranged.

Shifting/ Relocation Of Hazardous And Noxious/Heavy Industries.

Industries are necessary for development. At the same time, they are also a source of environmental pollution. To minimise the harm of environmental pollution to the people, the Courts have consistently taken the view that the industries must not be situated in the populated area or near the residential area. A study of the following cases will show that the Courts have issued the necessary directions for the shifting/relocation of the existing hazardous/noxious/heavy industries to a separate zone marked for this purpose. The Supreme Court ***in M.C. Mehta v, Union of India***[45], has held that to reduce the element of risk to the community from industrial hazards, the Government of India should evolve a national policy for the location of chemical and other hazardous industries in areas where the population is scarce and there is little hazard or risk to the community, and when hazardous industries are located in such areas, every care must be taken to see that large human habitation does not grow around them. There should preferably be a green belt of 1 to 5 Km. width around such hazardous industries.

In ***V. Lakshmipathy v, State***[44], the Karnataka High Court in a public interest litigation (PIL) directed the Municipal Corporation to stop the industries set up in the residential area. The Court also observed that the land which is earmarked for residential purposes should not be used. for setting up the industries.

Tanneries And Discharge of Effluents

Under the laws of the land, the responsibility for treatment of the industrial effluents is that of the industry. However, it has been noticed that various tanneries operating in different parts of the country have not been complying with the laws of the land. They have been discharging effluents without any treatment and thus becoming one of the major sources of pollution. The Courts in such cases have issued directions to such tanneries to either install primary treatment plants or stop working. The judiciary in India has followed the path of sustainable development in such cases as well.

In ***M.C. Mehta v. Union of India***[46] (popularly known as the Ganga Water Pollution case or Kanpur tanneries case), a public interest litigation was filed, inter alia, for the issuance of directions restraining the tanneries from discharging trade effluent into the river Ganga till such time they put up necessary treatment plants for treating the trade effluents to arrest the pollution of water in the said river. The tanneries discharging effluents in the river Ganga did not set up a primary treatment plant despite being asked to do so for several years. Nor did they care to put up an appearance in the Supreme Court expressing their willingness to set up a pre-treatment plant. Consequently, the Supreme Court directed them to stop working. The Supreme Court further observed: "The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from the

[45] AIR 1987 SC 965

[46] AIR 1988 SC 1037

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tannery to the river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure".

Vellore Citizens' Welfare Forum v. Union of India[47] (popularly known as the T.N. Tanneries case), is a landmark judgment of the Supreme Court where the principle of sustainable development has been adopted by the Court as a balancing concept. This case was also filed as public interest litigation (PIL) and was directed against the pollution which was being caused by the enormous discharge of untreated effluents by the tanneries and other industries in the State of Tamil Nadu. Due to untreated discharge of the effluents, the entire surface- and subsoil water of River Palar had been polluted resulting in the non-availability of potable water to the residents of the area. According to a survey, nearly 35/000 hectares of agricultural land in the tanneries belt had become either partially or unfit for cultivation. These effluents had spoiled the physio-chemical properties of the soil and had contaminated the groundwater by percolation. Nearly 350 wells out of a total of 467 used for drinking and irrigation purposes had been polluted. As per the affidavits filed, on behalf of the State of Tamil Nadu, in the Court, these tanneries and other industries were persuaded for about ten years to control pollution generated by them. They were given the option either to construct common treatment plants for a cluster of industries or to set up individual pollution 'control devices. The Central Government had agreed to give subsidies for the construction of Common Effluent Treatment Plants (CETPs). It was a pity that till the decision of the case, most of the tanneries operating in the State of Tamil Nadu had not taken any steps to control the pollution caused by the discharge of effluents. The Supreme Court had been monitoring this petition for almost five years but failed to control the pollution generated by these tanneries and other industries. The Supreme Court pointed out that the traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. The Supreme Court after explaining the salient principles of sustainable development expressed the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of sustainable development and that they have been accepted as part of the law of the land. The Supreme Court also held that given the constitutional provisions contained in Articles 21, 47, 48-A and 51-A (g) and other statutory provisions contained in the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986, it had hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.

In Urbanization Matters

The Indian judiciary has shown its concern for the problems of urbanisation and the need for protecting and preserving the environment. In ***M.L. Sud v. Union of India***[48], it was alleged that the Delhi Development Authority (DDA) was denuding the forest by cutting trees and putting up construction and laying roads in the city forest area which was shown in the Master Plan as "Green" and was to be maintained as city forest. The Supreme Court issued the necessary directions to the concerned authorities for maintaining the city forest. In ***People, United for Better Living in Calcutta v, State of West Bengal***,[49] the Calcutta High Court held that the Court must find a balance between the development programme and the environment. In this case, the High Court highlighted the importance of wetlands and the part played by it in the proper maintenance of environmental

[47] (1996) 5 SCC 647

[48] 1992 supp (2) SCC 123

[49] AIR 1993 Cal 215

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equilibrium in the city of Calcutta.Because of the facts and circumstances of the instant case, the High Court granted an injunction against the reclamation of the wetland. It was further held that wetland is important in the maintenance of environmental equilibrium and necessary to preserve the environment.

Rights of Tribals/ Adivasis and Ecological Stability.

Tribals or Adivasis are primitive communities or pre-literate societies in which kinship plays a very important role. In India, there is a .large population of tribes which is scattered in almost all parts of the country. They live in forests and use forest areas as their habitat. Tribes and forests are closely associated with each other. Forests are their home. Tribal people used to have many traditional rights over forests. They earn their livelihood from forests. They depended on forests for almost everything. They protected the forests and the forest protected them. Illegal felling, smuggling, grazing, forest fire and cutting of branches of trees for fuel are some examples of the activities of the tribal which have advean rse impact on the ecosystem. In the case of ***Banwasi Sewa Ashram v, State***[50] of U.P., the Adivasis and other backward people (tribal forest dwellers) were using forests as their habitat and means of livelihood. Part of the forest land was declared as "reserved forest" and in respect of other parts, acquisition proceedings were initiated as the government had decided that a superthermal plant of the National Thermal Power Corporation Ltd. (NTPC) was to be located there.

In ***M.C. Mehta vs Kamal Nath & Ors***[51], the Supreme Court held that Public Trust Doctrine isa part of the law of the land, in which certain resources like air, sea, water and forests area gift of nature. The State as a trustee is under a legal duty to protect these natural resources.

In ***A. P. Pollution Control Board vs Prof. M. V. Nayadu & Ors***[52], the Supreme Court held that we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.

Conclusion

Thus, after analysing the above-mentioned cases, we find that the Supreme Court currently extends the various legal provisions relating to the protection of the environment. In this way, the justice system tries to fill in the gaps when there is a lack of legislation. These innovations and developments in India through judicial activism open the many approaches to helping the country. In India, courts are extremely aware and cautious about the particular nature of environmental rights, as the loss of natural resources cannot be renewed. Some recommendations need to be considered. There is no way for a law unless it is effective and successful implementation, and for effective implementation, public awareness is a crucial condition. Therefore, there must be an appropriate awareness. This assertion is also upheld by the Apex Tribunal in the case of M.C. Mehta v. Union of India. In this case, the Court ordered the Union Government to issue instructions to all state and union governments to enforce the authorities as a condition of license on all cinemas, to display no less than two slides/messages on the environment in the middle of each show. In addition, the Indian Law Commission, in its 186th Report, submitted a proposal for the establishment of the Environmental Court. Hence, there is an urgent need to strengthen the hands of the judiciary by making separate environmental courts, with a professional judge to manage the environmental cases/criminal acts, so that the judiciary can perform its part more viably.

[50] AIR 1987 SC 374
[51] (1997) 2 SCC 87
[52] (1999) 2 SCC 718.