

Judicial Reform and Development of Environmental Law

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ABSTRACT:

The world health organization (WHO) has observed that over 70 percent of all human ailments are influenced by environment deterioration. The industries are the sources of hazardous emissions and effluents. The use of chemicals insecticides and pesticides in agriculture also leaves dangerous residues. Transport, whether by land or water or air contaminate the environment. Public health infrastructure- sewage, garbage and drainage- has a detrimental impact on the environment. The food we eat, the water we drink, and the house we live in are not free from contaminants, affecting our health and causing a spectrum of ailments.

The judiciary to fulfill its constitutional obligations was and is always prepared to issue 'appropriate' orders, directions and writs against those people who cause environmental pollution and ecological imbalance. This is evident from a plethora of cases decided by it starting from the Ratlam municipality case¹. This paper aims to bring attention to the evolution of Environmental laws through judicial activism and precedents since then through various case laws which raised questions of laws pertaining to the same. When the duty of court has been invoked to uphold the resources of the state as part of their functioning, various interpretation and implementation of environmental laws have come into picture. This paper emphasizes on the Principles and Doctrine propounded by Indian Judiciary. Few of them are Principle of absolute liability evolves in the case of *M.C. Mehta v. Union of India*², Polluter pays principle in the case of Indian council for *enviro-Legal Action v. Union of India*³, and many more. The method of research is doctrinal in nature as it deals with pre-existing documents and from recent resources including various landmark judgments.

Keywords: Judicial activism, environmental protection, hazardous industries.

I. INTRODUCTION

Starting from Mid-Seventies, a hormone called "Judicial Activism" injected to the Judicial Stream through necessity, suddenly brought about a revolutionary change in the outlook of the Indian Judiciary. Till then a generally conservative tradition-bound institution became sensitive to the needs of the weaker sections, the downtrodden and the traditionally oppressed classes of India. It is the lack of legislative thinking and executive inaction coupled with exploitation of the masses by the privileged few, which made a section of the Judiciary come down almost in a revolt to extend its hand of help to at least some of the needy people.

¹Ratlam Municipality V. Vardhichand, AIR 1980 SC 1622.

²AIR 1996 SC 1466.

³(1996) 3 SCC 212.

From the recent happenings, it is very evident to note that environmental law is among the most vital and expeditiously growing branch of law in India. Through the various precedents propounded by the courts, this law has taken its shape through judgments rather than by legislation. From the enactment of environmental law in India, the courts have never remained stagnant but have covered the faraway boundaries in highlighting their concern and issues involved regarding the development of environmental law.

The Environment (Protection) Act 1986 is a watershed. The law created a glut of rules and regulations providing delegation of power from Central government to various agencies, both Central and State. Procedural strategies like environmental assessment, and public hearing were added. However, Constitutional amendment incorporating duties for improvement and protection of environment and empowering the local bodies to create people-friendly and eco-friendly decisions gave a fillip to the activities of the governmental and non-governmental institutions and organizations in the field.⁴

The laws were applied in a more pragmatic and prudent manner. It is evident that the laws relating to control of pollution and protection of environment provide specific remedies however the courts do not limit its scope when they find remedies in other law applicable.

This paper will highlight the role of judiciary in the development of environmental law as to how the judiciary has not limited its scope to the enacted laws by legislation and how judicial activism played its role by covering the aspects which were left out by taking help from already developed nations.

II. CONSTITUTIONAL INTERPRETATION BY JUDICIARY

In the 1980s, the Indian legal system, endure a tremendous change in terms of discarding its doomed approach and, instead delineating out new dimensions of social justice. This era was characterized by administrative, legislative and judicial activism. Although 'environmental' has not been expressly mentioned in the Constitution, however there are various expressions in the legislative lists, which enable the Centre and the states to make law in the field of environment. It took a long time for the apex court to pronounce explicitly that the right to life under Article 21 of the constitution⁵ includes right to live in a healthy environment. The court frequently had to resolve the conflict of rights between citizens. The constitutional obligation provided under directive principle and fundamental duty to protect and improve the environment has a major key role in reconciling these conflicts.

- **Right to live with human dignity**

The concepts, 'the right to life', 'personal liberty' and 'procedure established by law' provided in Article 21 of

⁴P Leelakrishnan, Environmental Law In India 223-225 (3d Ed.), 2010.

⁵ INDIA CONST. Art. 21.

the Constitution after an era of passivity found new dimensions through constitutional interpretation culminating in the landmark decision in *Maneka Gandhi v. Union of India*⁶ where the Supreme Court held that the right to life and personal liberty, guaranteed under art 21 can be infringed only by a 'just, fair and reasonable' procedure. Narrow interpretation of legal and constitutional provisions gradually provided way to a more liberal interpretation that continued keeping the purpose of constitutional guarantees. Holding initially as generating procedural justice, the highest court of the country later widened the scope, tailoring more substantive rights to life into art 21.⁷ The right to life is not restricted to mere animal existence, but extends to the right to live with basic human dignity.

- **Initial Reluctance**

The *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*⁸ being the first case where Supreme Court extended the dimensions of the right to life to the right to healthy and other hygienic conditions. The Supreme Court passed an order resulting in closure of certain mining operations. The court also observed that 'it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance to ecological balance.'⁹

- **Constitutional mandate: combined effect of eco provisions in the constitution**

The right to a healthy environment is the output of judicial interpretations adding new wings to right to life in Article 21 of the Constitution of India. Further, after the forty second amendment to the constitution had imposed a duty on the state and the citizens to protect and improve the environment by adding Article 48A and Article 51A(g). After the landmark judgement of *MC Mehta v Union of India*¹⁰ the apex court held that Article 39(e), 47 and 48-A collectively imposes a duty on the state to secure the healthy life of the citizens, improve public health and improve the environment.

- **Conflict**

The courts in India constantly widened the scope of quality of life and living. They mainly confide on the right to life under Article 21, admitting certain cases had wider perspective of the environmental protection. These

⁶ A.I.R. 1978 S.C. 597. Impounding The Passport Of The Petitioners Without Giving Reasons And The Opportunity Of Being Heard Was Against The Safeguards Provided In Art 21. Due Process Was Read Into The Constitutional Provision In Art 21.

⁷ Francis Corlie Mullin V. The Administrator, Union Territory Of Delhi, A.I.R. 1981 S.C. 746; People's Union Of Democratic Rights And Ors V. Union Of India, A.I.R. 1982 S.C. 1473.

⁸ A.I.R. 1985 S.C. 652. The Petitioners, A Voluntary Organization. Feared That Mining Activities Of The Lessees Caused Ecological Disturbance. The Lessees Had Rights Given By The Government And On Conditions Laid Down Under A Specific Law. According To A Few Expert Committees Appointed By The Court, Mining Of Limestone In The Areas Was Found Dangerous And Damaging Ecological Balance.

⁹ A.I.R. 1985 S.C. 652, 656, 657. For Rehabilitation Of The Lessees, It Was Suggested That Preference Must Be Given To Them When Mining Leases Were Granted In Other Areas Of The State. Workers Were To Be Rehabilitated By Employing Them In The Reclamation, Afforestation And Soil Conservation Programmes In The Areas.

¹⁰ A.I.R. 2002 S.C. 1696.

provisions provide for the fundamental right to environment under Article 21, it is likely that the right may not be restricted to human beings only. The court in *Sludge case*,¹¹ gave a verdict protecting the injuries to the animate and inanimate objects in consequence of the accumulated poisonous waste left in the village for long time after the industry stopped production. Judicial activism has reached at such peak that when the written provisions were found to be weak, court expressly relied on the right to quality of life for removing the gap between.

However, a question arises whether enforcement of specific individual right to humane environmental can be done while balancing environmental values as opposed to economics and other social, cultural interests. It is said that the legislature and executive offer greater protection than judiciary. It is here that constitutional obligations fill the gap. The Constitution imposes on all institutions- the legislature, executive and judiciary as well as citizens the obligation to protect the environment. Similar to Article 21 of the Indian Constitution, the Constitution of USA bars the state from depriving a person of life, liberty or property without due process of law. However, this due process clause does not concern over the quality of environment. The right to a decent environment has been interpreted from the judicial pronouncements on the civil liberties.¹²

III. ROLE OF JUDICIARY IN ENVIRONMENT PROTECTION

The judiciary to fulfill its constitutional obligations was and is always prepared to issue ‘appropriate’ orders, directions and writs against those people who cause environmental pollution and ecological imbalance¹³. This is evident from a plethora of cases decided by it starting from the Ratlam municipality case¹⁴. Vardhichand provoked the consciousness of the judiciary to a problem, which had not attracted that much attention. The Supreme Court responded with equal anxiety and raised the issue to come within the mandate of the constitution. Former Chief Justice BHAGWATI in *M.C. Mehta v. Union of India*¹⁵ declared in unambiguous terms that “we have to evolve new principles and lay down new norms, which could adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to constrict by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order.” Thereafter, the formulation of certain new principles and pronouncement of new doctrines ‘as part of the law of this country’ for protection of environment is a remarkable achievement of the Indian Judiciary.

- **Principles and Doctrine propounded by Indian Judiciary**

¹¹ Indian Council For Enviro-Legal Action V. Union Of India, A.I.R. 1996 S.C. 1446.

¹² EF Roberts, *The Rights To A Decent Environment: A Premature Construct*, Environment Policy And Law 185, (1d Ed. 1975).

¹³ Dr. Sukanta K. Nanda, *Environmental Law*, 2nd Edn, Central Law Publications 2009.

¹⁴ Ratlam Municipality V. Vardhichand, A.I.R. 1980 S.C. 1622.

¹⁵ A.I.R. 1996 S.C. 1466.

Principle of absolute liability- The Supreme court of India formulated the doctrine of absolute liability for harm caused by hazardous and inherently dangerous industry by interpreting the scope of the power under article 32 of the constitution of India to issue direction and orders, 'whichever may be appropriate' in appropriate proceedings. Absolute liability for the harm caused by industry engaged in hazardous and inherently dangerous activities is a newly formulated doctrine free from the exceptions to the strict liability rule of the common law principle of England. This rule was evolved in the case of *M.C. Mehta v. Union of India*¹⁶, which is popularly known as the 'oleum gas leak case'.

The court in the above case held that the principle of strict liability evolved in England more than a century ago in *Rylands v. Fletcher*¹⁷ was diluted to a large extent by adding exceptions to the principle such as act of god, default of the plaintiff, consent of the plaintiff, independent act of third party and statutory authority. The Supreme court held that the exceptions to the strict liability principle are not applicable in Indian cases of determining the liability of hazardous and inherently dangerous industries. The Supreme court in this case has observed that "where an enterprise is engaged on a hazardous and inherently dangerous activity, for example in escape of toxic gas. The enterprises strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability in *Rylands v Fletcher*"¹⁸.

The principle of absolute liability as laid down by the Supreme Court of India has, now to some extent attained the status of a statutory liability.

- **Polluter pays principle –**

Polluter pays principle (PPP) which was originally considered as an economic and administrative measure to restrain and control the pollution problem has recently been recognized as a powerful legal tool to combat environmental pollution and associated problems. The supreme court for the first time applied the polluter pays principle of explicitly in *Indian council for enviro-Legal Action v. Union of India*¹⁹. The court held that the polluting industries are 'absolutely liable to compensate for the harm caused by them to the villagers in the affected areas, to the soil and to the underground water and hence they are bind to take all necessary measures to remove sludge and other pollutants lying in the affected areas.

The Supreme court reiterated that 'Polluter pays principle' and reemphasized the need to apply it in *M.C. Mehta v. Union of India*²⁰. It was a case concerning the 'yellowing and decaying of the Taj Mahal'. The Supreme court

¹⁶ Ibid.

¹⁷ [1868] UKHL 1.

¹⁸ *Supra* Note 14.

¹⁹ (1996) 3 S.C.C. 212.

²⁰ *Supra* Note 13.

has also applied the polluter pays principle in *M.C. Mehta v. Kamalnath*²¹. In this case the Supreme Court held that the Span Motel interfered into the natural flow of the river Beas by trying to block the natural relief/spill channel of the river. Hence, the motel was directed to pay compensation by way of cost for the restitution of the environment and ecology of the area by applying of the above principle.

- **Precautionary Principle:**

The supreme court relying upon a report of the international law commission has observed that ‘the precautionary principle suggests that where there is an identifiable risk of serious and irreversible harm, including, for example, extinction of species, widespread toxic pollution, major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment²². The precautionary principle has been accepted as part of the law of the land. The court held that “even otherwise once these principles are accepted as part of the customary international law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of the law that the rules of customary International law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law”.²³

In *A.P. Pollution Control Board v. Prof. M.V. Nayadu*²⁴ the Supreme court referred to the formulation of the precautionary principle and the new burden of proof. The Court observed, “the principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (Justified) concern or risk potential.

- **Public Trust Doctrine:**

It primarily vests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than the permit to use for private ownership or commercial ownership²⁵.

²¹ (1997) 1 S.C.C. 388.

²² A.D.M. V Shiva Kant Shukla, A.I.R. 1976 S.C. 1207.

²³ Jolly George Varghese V. Bank Of Cochin, A.I.R. 1980 S.C. 470.

²⁴ A.I.R. 1999 S.C. 912.

²⁵ K.M. Chinnappa V. Union Of India, A.I.R. 2003 S.C. 724.

The Supreme Court in *M.C. Mehta v. Kamalnath*²⁶ observed, “Our legal system based on English common law includes the public trust doctrine as part of its jurisprudence. The state is the trustees of all-natural resources, which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The state as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

- **Doctrine of Sustainable Development:**

It means development that meets the needs of the present without compromising the ability of future generations to meet their own needs. In *Goa foundation v. Diksha holdings pvt. Ltd*²⁷ the Supreme court emphasized the importance of the doctrine of sustainable development. According to the Brundtland report, sustainable development means “Development that meets the need of the present without compromising the ability of the future generations to meet their own needs”.

*Rural litigation and Entitlement Kendra v. State of U.P.*²⁸ (Popularly known as Doon Valley Case) was the first case in India involving issues relating to environment and development. The court observed that “we are not oblivious of the fact that natural resources have got to be tapped to social development, but one cannot forget at the same time the tapping of resources have to be done with the requisite attention and care so that ecology and environment may not have affected in any serious way. It is always to be remembered that these are permanent assets of mankind and or not intended to be exhausted in one generation.”

- **Doctrine of Inter-Generational Equity:**

The idea behind this doctrine is that ‘every generation should leave, water, air and soil resources as pure and unpolluted as and when it came to earth. Each generation should leave undiminished all the species of minerals it found existing on earth. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. Opined by the Supreme Court in *State of Tamil Nadu v. Hind Stone*.²⁹ The idea behind this doctrine is that “every generation should leave water, air and soil resources as pure and unpolluted as and when it came to earth. Each generation should leave undiminished all the species of minerals it found existing on earth.”

IV. INTERNATIONAL PRINCIPLES OF ENVIRONMENT AND INDIAN JUDICIARY

- **The Inception of International Guidelines:**

A wave of environmental disasters around the globe brought to light the need and concern for environmental

²⁶ (1997) 1 S.C.C. 388.

²⁷ A.I.R 2001 S.C. 184.

²⁸ A.I.R. 1985 S.C. 652.

²⁹ A.I.R. 1981 S.C. 711.

protection and active action in its favor by authorities and conventions. This brought a sense of duty across nations that nature required more than just conservation.

1948, Donora, Pennsylvania smog incident killing thousands because of the air pollution; radioactive fallout from nuclear bomb testing in Marshall Islands; 1969 oil spill in Santa Barbara contaminating clean drinking water; global extinction rate of species heightening in few decades led to a rude wake up call to the world to function in a manner as not to exploit or deplete the remaining resources. The general principles of sovereignty had given nations an arbitrary right to do as they please with the resources bound in their territory. With the race to be superpowers the effect on these resources went unchecked and soon by 1960s the world gave a huge sigh of worry when global warming became an epidemic in unquantified numbers.

Thus, the problem of environmental issues became a trans-boundary problem, whether the nation was developing or developed, rich or poor, these were issues widely rampant and recognized by all³⁰. The one planet, one future police united and coordinated nations to commit to the cause before it became threatening to the brink of another wars between borders for resources and sustenance.

Now almost every member nation of the United Nations partakes in their duty to either allot ministries or departments with agendas to increase environmental responsibly in the state. Since 1992 the volume and quality of environmental legislation (international, national and local) has expanded hugely, and international agreements have not only raised the profile of environmental change but also begun to drive global policy change.³¹

- **Indian Compliance – Involvement and Extent**

Over the years domestic and international systems of law have evolved in parallel. In certain fields and regions of the world, international law has shaped and significantly contributed to the development of domestic environmental law.³² India is one of those countries. Two major international conferences on environment and development to have influenced India to accept the polluter pays principle, the precautionary principle and the concept of intergenerational equity as guidelines for designing environmental policies³³ along with other international agencies were at Stockholm in 1972 and at Rio de Janerio in 1992. For a developing and a newly independent country like India where the main concern was to establish itself as a developed nation this came a challenge. With India's geographical location and abundance of natural resources the environmental jurisprudence did not get a chance to evolve itself under the burden of self- sustained industrialization. It is for

³⁰Dr. Sukanta Nanda, Environmental Law, Central Law Publication, 2007.

³¹Arvind Jasrotia, Environmental Protection And Sustainable Development, Exploring The Dynamics Of Ethics And Law (Vol. 49, Jan-March 2007, No.1, P. 46).

³²Dr. P Ishwara Bhat, And Shri Bhat Sairam, International Environmental Law Principles: Defining the Terms, The Karnataka Law Journal, (2005(3), P.1).

³³ [Http://Www.Mse.Ac.In/Pub/Op_Sankar.Pdf](http://Www.Mse.Ac.In/Pub/Op_Sankar.Pdf) Accessed On 27th May 2014.

this reason that India has a huge stake in the multilateral climate change negotiations that are taking place under the purview of United Nations Framework Convention on Climate Change (UNFCCC). No single country causes the problem; no single country can cure it. Only by collective community action can that tragedy be avoided.³⁴ India is among one of the countries that will suffer the most serious impacts of global environmental issues in terms of both ecological and socio-economic tiers. The state's attention has now shifted from punitive to preventive too. To address and reform the application of environmental legal and institutional system within the overall framework India has developed agendas to adhere to the international principles and conventions, through interpretation by judiciary and implication.

The UN Conference on Human Environment held at Stockholm in 1972 set major influence on environmental legislation in India. A National Committee on Environmental Planning and Coordination (NCEPC) was set up in the Department of Science and Technology in 1972 to make necessary preparations for the Conference. India was represented by the Prime Minister Smt. Indira Gandhi who while addressing the Conference brought on the forefront the peculiar environmental problems of India. The views expressed at the Stockholm Conference forms a core part of the basic environmental philosophy of India that found expression in various governmental policy pronouncements in subsequent years.³⁵

- **Judicial Say in the Indian Application**

The role of judiciary in dispensing environmental justice is a recurring phenomenon. With various landmark judgments the perception of people towards Law and Court to bring justice to the environment has been established as an unequivocal institute. The increasing interest and a sense of inevitability in approaching the corridors of justice, over every conceivable environmental problem interest groups and individuals, bear witness to this unprecedented occurrence.³⁶

With the power of court to interpret and implement the laws to their strictest sense a wave of change in adherence to these laws has been brought about. While these conventions and conferences set the principles for the legislation to enact statutes upon. It was the burden of the judiciary to ensure that when the same have been violated there is strict interpretation to achieve the objective of the law. Not only did this create a sense of responsibility on the citizen but also a pathway to ensure that in violation of any such infringement they would have a clear forum to seek Redressal.

³⁴Fred L. Morrison And Rudiger Wolfrum, International, Regional And National Environmental Law, Netherland, Kluwer Law International, (2000.P.167).

³⁵Dr. J L. Aparajit And Miss. Adhara Badhe, Judicial Response Towards The Protection Of Environment, Journal Of Indian Legal Thought (Vol 1:97, 2003, P.122).

³⁶Mk. Ramesh, Environmental Justice Delivery In India: In Context, Indian Journal Of Environmental Law, (Vol.2, 2002, P.12).

One of the biggest senses of how judiciary interpreted these international principles to accommodate within the Indian Constitution is to change the traditional view of Article 21 and the use of the word 'deprived' in it, which had imposed upon the state negative duty not to interfere with the life and personal liberty sending it through a sea of change. Now, under the new environment jurisprudence and constitutional environmentalism the state is under a positive obligation to ensure clean and healthy environment for enjoyment of life of every individual.³⁷

Through the reading and understanding of these international principles which were absent in the functioning of independent India to bring cohesiveness between the natural resources and the society. India in its constitutional interpretation after inclusion of various Articles adhering to the Directive Principles of State Policy and laws under various Articles and schemes, has adopted a dualist approach to treaty obligation. Initially they adopted a cautious approach to read customary international law into domestic law, but since 1996 Indian Supreme Court has used the international environmental law in such a manner which not only blurred the distinction between monism and dualism but also redefined the role of international law in Indian courts.³⁸

- **Scope and Horizon of International Principles in India**

In terms of treaties, there are now many international organisations that commit parties to respecting or applying principles in relation to discrete environmental issues; which brings to light legal evolution of environment principles in public international law to examine their grouping, meaning, and legal status in the legal setting and how they translate from international ambit directly to regional and national legal systems.³⁹

The Supreme Court in *People's Union for Civil Liberties v Union of India*⁴⁰ referred to the International Covenant on Civil and Political Rights 1966 and UNHRD 1948; Justice Sikri the then Chief Justice of India in *Kesvananda Bharti v State of Kerela*⁴¹ also adhered to the international convention stating that whenever possible the interpretation of law must be done in light of the International Charters subscribed by India.

Therefor the Indian Judiciary has referred to, time and again, several international covenants while interpreting cases relating to environmental pollution and ecological imbalances.

In Centre for Environmental Law, *World wide Fund-India v Union of India*⁴² the court referred to the extent of five and more international instruments to meet with the global compliance and functioning to deliver justice.

In other known cases such as *MC Mehta v Union of India*⁴³, *Indian Council for Environment-legal Action v*

³⁷Bhaskar Kumar Chakravarty, Environmentalism: Indian Constitution And Judiciary, JIL (Vol.48, Jan-May 2006, P.99).

³⁸Shailendra Kumar Gupta, Principles of International Environmental Law And Judicial Response In India, 2013.

³⁹Mohan Prasaran, Environmental Principles in International Law, 2011.

⁴⁰A.I.R 1997 S.C. 568.

⁴¹A.I.R. 1973 S.C. 1461, 4 S.C.C. 225 (1973).

⁴²WRIT PETITION (CIVIL) NO. 337 OF 1995.

*UOI*⁴⁴, *Vellore Citizen's Welfare Forum v UOI*⁴⁵ the courts relied on the international principles signed for in the Rio Summit of 2016 to apply principles and arrive at the judgment.

- **Now and Next**

Thirty years ago, in Stockholm, India agreed to urgent need to respond to the increasing problem of environmental degradation and since then has set significant milestones in the way.⁴⁶

Despite many issues the Indian Judiciary with the help of the legislation has made great strides in mitigating the effects of the same and reduce the global disparities with the developed countries in terms of preserving and protecting natural resources, not just in terms of encasing it within the territorial jurisdiction to establish sovereignty but to bring to its citizen and the environment equal rights for a healthy and prosperous environment. Determined to ensure that our rich diversity and ecology which is our collective strength as a nation does not fall back behind other international standards or means, a constructive partnership through interpretation of environmental laws and the rights of the citizen has been established through efforts of the judiciary in various precedents.

V. CONCLUSION

The right to live in a clean and healthy environment is not a recent invention of the higher judiciary in India. This right has been recognized by the legal system and by the judiciary for over a century or so. The only difference in the enjoyment of the right to live in a clean and healthy environment today is that it has attained the status of fundamental right the violation of which, the Constitution as well as the Judiciary will not permit. The problem of environmental protection is as old as the evolution of *Homo Sapiens* on this planet. With the development of Science and technology and with the ever-increasing world population, came tremendous changes in the human environment. The Indian judiciary has shown considerable enthusiasm in the past in relaxing the rigor of locus standi, and evolving strategies to compel decision-making agencies to consider environmental criteria. Representations of the public before administrative proceedings should not be an empty formality but should work as a guarantee that appropriate agencies take them into account in the formulation of their decisions. Judicial review of environmental decisions examines whether this is done.

⁴³ A.I.R 1987 S.C. 1086.

⁴⁴ A.I.R. 1996 3 S.C.C. 212.

⁴⁵ A.I.R. 1996 5 S.C.C. 647.

⁴⁶ DR. SUKANTA ANAND, *Supra* Note 27.