

CHAPTER - 1

INTRODUCTION

The environment furnishes all the essentials for life and so there has been a close link between the environment and human beings. Without a natural and congenial environment human existence is not possible on the earth. Since time immemorial the man had made conscious and determined efforts to make use of the natural resources and to modify his surroundings so that the adverse impact caused by extremes of temperature rainfall and predators may be reduced. In the quest of making life more comfortable the man has always exploited the nature. Agriculture, industrialization and infrastructural developments are the causes of exploitation of nature and the natural resources.

Human activities create a large variety of wastes and bye-products which accumulate over a period of time and may become toxic to the naturally growing plants, animals and the mankind. All components of natural environment including the air, water and soil are exposed to the accumulated toxic pollutants. The rapid and unplanned industrialisation has given birth to factories, emitting noxious gaseous fumes and toxic effluents, making life more difficult on the earth. Indiscriminate use of chemical fertilizers and pesticides has added to the problem. Many of the chemicals used for the proper growth of plants and animals have turned out to be harmful as their concentration rises, they contaminate soil, water and air resulting into the elimination of many species. The modern life style has given rise to the problem of green-house gases which are responsible for global-warming, causing melting of snow at poles and thereby rising the level of sea endangering the terrestrial life.

The healthy living and survival of man depends on how judiciously he manages the natural resources and thus maintains the quality of overall environment around him. One should not forget that ever increasing toxic substances in our air, water and soil have got access to our body through the air we breathe, the water we drink and food we eat. We are reaching, perhaps, to the optimum level of tolerance on most fronts and further degradation in quality of environment might result in out break of

diseases, disablement and slow poisoning. Man is really left with no choice than to fight seriously for the cause of betterment of existing environment and natural resources. It is high time to look into and examine the plans, schemes and projects having adverse effects on the environment so that a better, balanced and eco-friendly development ensuring poison free air, potable water and other elements of environment, free from defilements, could be a reality.

Environment and society are inseparable and interdependent. The natural environment has helped in development of various civilizations in the past. Since time immemorial the main motto of social life in India has been to live in harmony with the nature. It is a country of diverse religious faith, but one thing is common amongst the teachings of all the religions, i.e. respect to the mother earth and its environment. In the modern era of globalisation no one wants to be lagged behind and therefore, tendency of one-up-manship amongst the developed and developing nations has added fuel to the fire. The developmental process throughout the world has been accelerated very fast resulting into the problem of environmental degradation. India is not an exception in this regard.

Though, intensity and range of environmental movements in independent India is continuously increasing they have failed to stop the predatory exploitation of natural resources in the name of development. Like most of the developing countries, India too is facing environmental problems owing to the massive expansion of energy and resource-intensive industrial activities, urbanisation, exploitation of forests, mining, energy-intensive agriculture and mega developmental projects. India, being a country having large population, is facing some typical environmental problems because of population load and requires special attention on issues like town planning and vehicular pollution. India is among the few countries, which have a resource surplus, but by assuming the ecological burden of global commerce we are rapidly losing the ecological advantage of our resource prudent culture and our productive ecosystems.

The consistent assault and its impact on the natural environment does not know political boundaries, pollution may spread to very wide areas from the place of its source. Smoke produced in one country may cause acid rains in another at far away

place, depletion of forest cover, global warming and extinction of bio-diversity are bound to affect the whole world. It is therefore, necessary to take steps for protection of environment at international level. Realizing their responsibilities in this regard the key international organizations like the United Nations Organisation have already taken initiatives and are working towards a better and greener world. The Stockholm conference on Human Environment and the 'Earth Summit' held at Rio de Janeiro may be mentioned here as serious attempts to make the global community aware about the environmental issues and make them responsible towards the cause of environmental protection.

In response to the international efforts, Indian Parliament has passed some very important environmental legislation, if implemented properly these enactment are capable of solving most of the environmental problems. The past experience shows however, that the implementation of environmental legislation are not up to the mark particularly because of the existing administrative and institutional framework, which is too feeble and ineffective to handle the challenge of environmental protection. Hence there was a need to have a new environmental ethics and ethos to meet the challenge. This is precisely where the role of an activist and informed judiciary comes in.

When assaults on environment pose threat to life and create adverse socio-economic repercussions, courts cannot sit idle with closed eyes. In 'rule of law' societies, courts ought to examine the problems with greater consciousness and commitment to remedying the environmental maladies. It is expected from the Apex Court of the country to provide leadership in finding the solution of such an important and grave problem, which will decide the fate of present and future generations. It is absolutely essential that the Court uses its innovative and creative powers to overcome the challenge being posed from different quarters to the congenial natural environment. The Court, for the last two decades has been increasingly adopting, using and developing international principles. Certain Constitutional provisions, which were under used so far, have now being assigned new meanings for serving the cause of environmental protection.

The present study has been undertaken to examine the merits and weaknesses of the Indian legal system pertaining to environmental justice. In view of the legislative and executive indifference, inefficiency and failures, the role of the judiciary becomes important in shaping the environmental laws and policies. The present study concentrates on the contribution of the Supreme Court of India in the administration of environmental justice. The methodology adopted in the present research work is doctrinaire and focuses on analytical and critical appraisals of relevant laws and judicial decisions.

In order to study the system of environmental justice and the contribution of the Supreme Court of India, the present work has been divided into ten chapters. Chapter-1, the current chapter, introduces the areas of the study and lays down the methodology and plan of work.

Under chapter-2 constitutional provisions relating to environment have been discussed. The Constitution of India is one of the few Constitutions of the world, which contains provisions dealing with environmental issues. This was however, not the case at the time of the commencement of the Constitution. The Constitution of India, in order to keep pace with the changing scenario world over, adopted environmental concerns as part and parcel of its body in due course of time. Now it is the duty of the state as well as its citizens, not only to protect but also to improve the natural environment. The duty being in the form of 'Directive Principles' and 'Fundamental Duties' are not enforceable by the Court of law. In such situation it becomes pertinent to examine what purpose, if any, these Constitutional provisions are serving? The present study has examined how the Apex Court has utilized these provisions to save the nature.

Right to life, the most fundamental right cannot be enjoyed without a healthy and wholesome environment. The evolutionary process of recognition of right to environment as fundamental right under Article 21 of the Constitution has been traced here in. The impact of other fundamental rights like the right to livelihood, the freedom of trade and the right to equality on the right to wholesome environment is another area that has been explored. Since most of the fundamental rights are enforceable against 'State', understanding the meaning of the term 'State' becomes very important. While

discussing the right to move the Court, scope and ambit of Article 32 of the Constitution has been examined so that it may be ascertained what type of remedy the Court may address to the aggrieved persons.

The Constitution provides a scheme of distribution of legislative powers but the absence of a direct entry 'environment' in any of the three lists of the seventh schedule and presence of certain entries having some bearing on environment in the 'State list' are bound to create confusion as to who has got the powers to legislate on environmental matters. How the law makers have over come this difficulty becomes an obvious query to be responded. The role of local bodies like 'Panchayats' and 'Municipalities' has assumed importance after their Constitutional recognition; their potential to protect and improve the natural environment has also been explored under the chapter.

The study of environmental legislation is relevant for the present work in order to trace down the interpretation given by the Courts in implementation of the laws. Chapter-3 focuses on the laws for prevention and control of pollution. Salient features of the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981; and the Environment (Protection) Act, 1986 have been studied with the view to get a clear picture as to what are powers and functions of the pollution prevention and control agencies. The study also tries to ascertain what action or commission will amount to an offence under aforesaid enactments and the punishment for such offence. The Environment (Protection) Act, 1986 intends to achieve the place of umbrella legislation by providing solution to virtually every kind of environmental problems through appointment of 'authorities' and rule making mechanism. How far it has the capacity to achieve its objective is another quest.

Chapter-4 deals with the laws relating to protection of forests, wild life and biological diversity. The Indian Forest Act, 1927 was enacted way back in 1927, the main objective of this enactment seems to be commercialised forest management. There are certain provisions under the Act, however, which may be utilized for the protection and conservation of forests. Such provisions of the Act has been identified and explained. In order to stop the commercial exploitation of forests and its resources

by the States for their economic benefits, the Parliament enacted the Forest (Conservation) Act, 1980. This law introduces the formula of prior approval by the Central Government as necessary requirement in cases of dereservation of forests and utilization of forest land for non-forest purposes. The wholesome natural environment cannot be imagined without wildlife, therefore, their protection has been ensured by the Parliament through the Wildlife (Protection) Act, 1972. The Act, overhauled through an amendment in 2002, provides for constitution of various bodies to look after the interest of wildlife. The Act attempts to save wild life by creating protected areas for wild life and by restricting their trade. India is a rich country in terms of biological diversity. The Biological Diversity Act, 2002 focuses on conservation, sustainable utilization and equitable sharing of the benefits arising out of utilization of genetic resources. The Act provides for regulation of access to Biological Diversity and establishes the National Biodiversity Authority, State Biodiversity Board and Biodiversity Management Committees. It enumerates the duties of the Central and the State Governments for conservation of biological diversity. The present study explains and examines important features of laws relating to forest, wildlife and biological diversity.

Chapter-5 covers the study of laws relating to specialized redressal agencies. The Public Liability Insurance Act, 1991 envisages mandatory insurance for the purpose of giving immediate relief to the victim of an accident because of hazardous process and operation. The Act introduces the principle of "no fault liability" for the owners, in case of death or injury to any person or damage to any property because of an accident; the owner is liable to give relief. It is responsibility of the collector of the place, where the accident occurs, to make inquiry into the claim and make an award determining the amount of relief. The Act does not restrict the options of victims to seek redressal for a larger quantum of benefits available under any other law. The National Environment Tribunal Act, 1995 is another legislation that provides for strict liability for damages arising out of any accident occurring while handling any hazardous substance. The Act provides for establishment of a National Environment Tribunal to dispose off the cases arising from such accidents but, at the same time declares that no appeal can lie against an award on order made by the tribunal with the consent of the

parties. The National Environment Appellate Authority has been established by the National Environment Appellate Authority Act, 1997 to hear appeals with respect to restriction of areas in which any industry, operations or processes shall not be carried out or shall be carried subject to certain safeguards. Thus, jurisdiction of the Authority is restricted to cases where environmental clearance is granted and does not extend to cases where clearance is refused. The features of all these enactments have been critically evaluated to test their usefulness in administration of environmental justice.

Chapter-6 attempts to explore the innovation shown by the Supreme Court while ensuring environmental justice. By relaxing the rule of 'standing' the Court has allowed Public Interest Litigation and thereby ensured every environmentalist his right to fight for the protection and betterment of the environment. It is interesting to note that the Court is now trying to stop the misuse and abuse of this form of litigation. The concept, origin and usefulness of public interest litigation has been traced under this chapter.

The principle of sustainable development seems to be the solution to the conflict of environment versus development. This concept has been accepted at various international fora and succeeded in getting recognition from the Supreme Court of India as part of the 'law of the land'. The Court has identified various components of the concept viz; the precautionary principle, polluter pays principle, principle of intergenerational equity etc. An attempt has been made under chapter 7 to explain the nature and scope of these principles and assess their impact on environmental justice system in India.

Laws in India should be suitable to its peculiar socio-economic conditions, was the motto responsible for replacement of 'strict liability' principle by the 'absolute liability' principle. The evolution and validity of this principle of far reaching consequences have always been in controversies. Chapter 8 explores the nature and scope of 'strict liability' principle and tries to find out how the 'absolute liability' principle is more suitable for country like India.

Chapter-9 of the present research study examines the approach of the Supreme

Court in dealing with the environmental issues. For the want of convenience certain important environmental issues have been chosen viz; conservation of forests; protection of wildlife; pollution of rivers and lakes; town planning; closure and relocation of industries; regulation of hazardous substance; sanitation and waste management; traffic management and control of vehicular pollution; protection of coastal regions; and large infra-structural projects. The relevant decisions of the Supreme Court, reported in All India Reporter (AIR) and Supreme Court Cases (SCC), till December 2003 have been taken into account and analysed critically to find out the direction of environmental justice in India.

The work ends with conclusion and suggestions based on the analysis and interpretations of facts, laws and judicial decisions there upon as discussed in the preceding chapters of the thesis.