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ENVIRONMENTAL JURISPRUDENCE AND JUDICIAL ACTIVISM AN APPRAISAL

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Introduction

The ecological problems in the last century have brought home the idea that every action carried out by a person or a state will have a profound effect on another, and this interconnectedness has provided the impetus for the development of environmental law. The pollution by an upstream riparian state has a major effect on downstream riparian states, just as the burning of forests in one state has a major effect on its neighbors. Environmental law has developed through the background of this interconnectedness, and it is subsequently embedded in various legislative and policy frameworks that were developed in the past century.

Global environmental problems have been growing in magnitude. From industrial accidents to climate change, this paper will analyze how environmental law has responded to these challenges and has evolved in scale, reach, and complexity in the last century as well as how judiciary helps in protecting the environment. In the early 20th century, environmental law consisted mostly of domestic legislation. In the middle of the 20th century, bilateral and regional legislation gained prominence. By the late 20th century, the emphasis on global cooperation became the dominant trend. The evolution of environmental law in the past century has been linked to the growing acceptance of the notion of collective global responsibility. Recently, the focus of environmental law has shifted from the creation of global frameworks to deal with environmental problems to compliance with those frameworks. As a result, the primary actors in environmental law have shifted from the state and the global community to corporations.

Environmental pollution as a subject-matter of legislation did not find place in the Indian Law books until as late as 1974 when the Water (Prevention and Control of Pollution) Act, 1974 was enacted followed by the Air (Prevention and Control of Pollution) Act, 1981. Finally, the Environment (Protection) Act, 1986 came up as the umbrella legislation for environmental laws in India.[1] These laws were aimed at preventing harms in the distant future, including harms even to people which do not yet exist. They seem to contradict claims of individuals and collective actions are dominated by shortsightedness and parochialism for pollution and waste related matters. Environmental law and policy related to waste and pollution is also changing as now-a-days the Govt. of India has passed Green Tribunal Act.

The necessity of protecting the environment can be once again seen in the recent incident of bursting of nuclear reactors in Japan due to tsunami which calls for immediate disaster management as well as balancing the environmental issues to control waste management and forward steps to protect environment.

1. State Action in Safeguarding Environment in India

The Post-colonial Indian State was a developmental State, wherein the State was on the driving seat of economy till the introduction of the Liberalization, Privatization and Globalization in early 1990s, which are popularly known as economic reforms. As a driver of the economy, the State conceived the idea as well as the model of development for the post-colonial Indian society that had done reasonably well to meet the challenge of food security and also did the massive industrialization of economy besides establishing the small scale industries, which were the need of the hour. The State driven process of economic development put the ailing economy on the path of economic development. It created more employment and attained self-sufficiency in food, notwithstanding, the rapid growth of population in the post-colonial India. These economic gains are worth-mentioning but the process of development also incurred the huge social and economic cost. Social cost because, it has resulted into increasing gap between the rich and poor and also excluded the large section of the society like peasants, poor and women from the process of development.

Besides this social cost, the process of economic development has incurred a huge loss to the environment. Between the years 1950 to 1990 the total forest cover in India was reduced from 39% to 17% due to indiscriminate destruction of the forests. One hundred and eighty nine rare species of vegetation have been eliminated and the wildlife has been mercilessly butchered

[1] *S.C. Shastri, Environmental Law, (2nd Edn.), Eastern Book Company, Lucknow, 2005*

or smuggled out of the country resulting in a decline of 42% over a 40 years period.[2] The depletion of the underground water and the health of the soil because of the over exploitation and overuse of pesticides, insecticides and fertilizers respectively are presenting the grim side of the reality. Pollution of water bodies and air are the other hard facts of Indian environmental scenario. The aforesaid development scenario emerged in post-colonial India has raised a series of questions regarding the pollution of environment in India. The fundamental question which emerges from the above-mentioned account is whether the environmental question was kept in mind while conceiving and pursuing the process of economic development in the post colonial period. When did the issue of environment figure in Indian design of economic development formally? What were the measures taken by the Indian State to safeguards the environment from the ill effects of economic development? Were those measures sufficient to protect the environment? What were the factors, which forced the higher judiciary in India to venture into the realm of environment protection? Did the activism of judiciary prove effective deterrent against the pollution of environment in India?

Although during the colonial period, when Mahatma Gandhi talked about the economic development of India, he always advocated the cause of small scale and environmental friendly industries. He was aware regarding this fact that the small scale industries are not only environmental friendly but also have the potential to provide more employment to the people and thereby to serve the social purpose. Immediately after independence, Indian State was pre-occupied with the agenda of economic development. The planned process of economic development was introduced to achieve the objective of economic development without much bothering about the issue of environment. In other words, the issue of environment did not figure in the process of development, which was set in motion in the early 1950s. Rather, it was argued that India has to make certain sacrifices for the sake of economic development and the environment was one of them. The priority was the economic development instead of safeguarding the environment. The issue of environment started taking shape, when the United Nations was planning to convene a special conference on Human Development in 1972 and requested a report from each member country on the state of environment, a committee on the human environment was set up to prepare India's report. Under the international pressure, India tried to look into a serious problem confronting the society, however, the approach was casual and the issue remained peripheral.

2. State Response: Neither Adequate nor Appropriate

It was in the mid 1970s, that the Indian State started showing interest in the protection of environment. After the Stockholm Conference, the Forty Second Amendment inserted provisions related to the protection of environment in the Constitution of India, firstly in the part dealing with the Directive Principles of the State Policy as Article 48-A and secondly in the Chapter dealing with Fundamental Duties as Article 51 –A (g). Article 48-A obligates the state and Article 51-A (g) imposes duty on citizens to protect and improve the environment. The first formal legislation related to the environment came in form of the Water (Prevention and Control of Pollution) Act, 1974, followed by the Air (Prevention and Control) of Pollution Act, 1981. This new sensitivity of the Indian State regarding the environment was further consolidated when the Parliament of India enacted the Environmental Protection Act of 1986. It brought a major shift in the Indian approach towards environment because until the enactment of this legislation, prosecution under Indian environmental laws could only be done by the government. Public interest groups or citizens had no statutory remedy against a polluter who discharged the pollutants beyond the permissible limit. But under Section 19, the Environment Protection Act 1986, the court can take cognizance of an offence on the complaint of any person provided he has given notice of not less then sixty days, of the alleged offence and his intention to make a complaint. Besides this law, similar provisions allowing citizens to participate in the enforcement of pollution laws are now found in Section 43(1) of the Air (Prevention and Control of Pollution)Act, 1981 as amended in 1987 and in Section 49(1) of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988. Both these amendments also require the Pollution Control Board to disclose internal reports to citizens seeking to prosecute a polluter.[3] The Right to Information Act, 2005 has further enabled the citizens to work for the protection of environment. Some recent judgments by the courts on providing information and involving NGOs in development planning have encouraged people to seek information on projects and policies.

The issue of establishing harmony between environment and economic development started becoming part of Indian thinking, when it was emphasized in the fifth five year plan (1974-79) that the pursuit of development goals is less likely to

[2] *Saldanha, Michael F., "Peoples' Initiatives and Judicial Activism as a Catalyst of Institutional Reform", Paper presented in the Fifth International Conference on Environmental Compliance and Enforcement*

[3] *Section 43(2) of the Air (Prevention and Control of Pollution) Act, 1981 and Section 49(2) of the Water (Prevention and Control of Pollution) Act, 1974.*

cause a reduction in the quality of life, if a link and balance between development, planning and environment management is maintained.[4] Major thrust of the seventh five year plan (1985-1990) was to emphasize sustainable development in which an attempt was made to reconcile the needs of development with the environmental concerns. That is why the seventh plan emphasized that the nation's planning for economic growth and social well-being in each sector must always take note of the need to protect environmental resources and where possible must work to secure improvement in environmental quality.[5]

These measures could not bring any substantive change at the ground level because in Indian society people are not only less conscious about their right to enjoy clean and healthy environment but also about their duty to protect and improve the environment. The failure of the state to implement the environmental protection laws effectively has further aggravated the problem. Such a state of affair had developed because of the corrupt and inefficient administrative machinery, which was supposed to implement the environmental laws. Rather, the corrupt state machinery found an opportunity in the environmental laws to do more corruption by using the threat of the same. The polluting industries are known for bribing the state officials and the agencies constituted under the environmental protection legislation to safeguard the environment and to punish those industries and people, which are responsible for the pollution of environment. Rather the postings in the national and state department of environment including Pollution Control Boards became more lucrative because the chances to do corruption here are more. In such a scenario, the pollution of environment continued unabated even after the enactment of legislation for the protection of the same.

3. Judicial Activism and Environment Protection

The failure of the state agencies to effectively enforce the environmental laws apart from non-compliance with statutory norms by the polluters resulted into further degradation of the environment. It has affected the health of the people which forced the environmentalists and the residents of polluted areas as well as the non-governmental organizations to approach the judiciary, particularly the higher judiciary, for the suitable remedies.[6] Of course the initiative for the protection of environment came from the legislature but the failure of the executive to implement the environmental laws in India created the ground for the intervention of the judiciary. The judiciary made several attempt to resolve the conflict between the development and environment. The environmental jurisprudence in India developed through the instrument of Public Interest Litigation (PIL). Under the PIL, the judiciary liberalized the concept of *locus standi* and thereby empowered the people to approach the judiciary when the public interest is harmed by either the action of the state, organization or individual. Unique feature of the Indian environmental jurisprudence is the important role played by the PIL. The activism of the higher judiciary regarding the cases related with violation of environment and human rights has acquired the name of judicial activism.

The lead provided by the higher judiciary regarding the implementation of environmental law is worth-mentioning here. Rather, the Supreme Court of India and the various High Courts took the *suo mottu* notices regarding those situations where the pollution of environment was taking place. Some judges of the Supreme Court and High Courts initially started rigorously enforcing environment preservation laws and followed this up by imposing exemplary punishments. The role played by the Justice Kuldip Singh is worth-mentioning here, while acting as the Judge of Supreme Court; he delivered the path breaking verdicts. The majority of the environment cases since 1985 have been brought before the court as writ petitions, normally by individuals acting on *pro bono* basis.[7] Public Interest Litigation has resulted into a departure from the *proof of injury* approach.[8] The Supreme Court has not only played a leading role in the implementation of environmental laws but also interpreted the right to life under Article 21 to include a right to healthy and pollution free environment, as a fundamental right. For instance in a famous case *Subhash Kumar v. State of Bihar*[9], it was observed that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution free water and air

[4] *Usha Tandon, "Population Growth and Sustainable Development", Journal of the Indian Law Institute, Vol. 50, No. 2, April-June 2008, p. 212.*
[5] *Ibid , p. 213.*
[6] *Justice B. N. Kirpal, "Environmental Justice in India", (2002) 7 SCC (Jour) 1 and A. Padmavathi, "Fixing Liability in Environmental Cases- Recent Trends",* ***http://www.nlsenlaw.org/envProtection/articles/GERART4/view*** *(viewed on 22/01/2006), also see S. C. Shastri, Environmental Law in India 2nd Edition, Eastern Book Company, Lucknow (2005).*
[7] *Soli J. Sorabjee, ed., Law and Justice- An Anthology, New Delhi: Universal Law Publishing Company, 2003, p. 345.*
[8] *Bangalore Medical Trust v B. S. Muddappa, (1991) 4 SCC, 54.*
[9] *Subhash Kumar v. State of Bihar, (1991) 1 Supreme Court Cases 598.*

for 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.[10]

The higher judiciary has also tried to reconcile the conflict between development and environment by clarifying that the development should not take place at the cost of environment. The judiciary took the position that as such there is no conflict between the development and the environment. It was articulated that the contradiction between the development and environmental pollution in India can be resolved through the sustainable development. The doctrine of sustainable development was first time applied by the apex court in a famous case *Vellore Citizen Welfare Forum v. Union of India*.[11] In this case Justice Kuldip Singh observed that the traditional concept that the development and ecology are opposed to each other is no longer acceptable.[12] He further observed that sustainable development as a balancing concept between ecology and development has been accepted as a part of the Customary International Law.[13] While applying the doctrine of sustainable development, the higher judiciary tried to apply all those principles of sustainable development like inter-generational equity as described in the Brundtland Report[14] and the Precautionary Principle (Principle 15), and Polluter Pays Principle (Principle 16) of Rio Declaration[15]. In *State of Himachal Pradesh v. Ganesh Wood Products*[16], the Supreme Court recognizing the principle of inter-generational equity, made the establishment of forest-based industry subject to the approval of the government, it held that there is no absolute or unrestricted right to establish industries notwithstanding the policy of liberalization announced by the government. The principle of intergenerational equity and precautionary principle were further deliberated and applied in series of case, where the court directed the polluting industries to mend their ways or close.[17] While accepting the doctrine of sustainable development as the part of the environmental law the logic given by the Justice Kuldip Singh shows great powers Supreme Court have to make the law rather than just to interpret the law.[18] Supreme Court did not hesitate from laying down the law where the legislature failed to fill the gap. Although, the environmental jurisprudence has progressed considerably in India during the last three decades and the contribution of the higher judiciary is tremendous, notwithstanding its criticism because the instrument of PIL used by the judiciary is subjected to the severe criticism. It was the PIL through, which judiciary demonstrated its judicial activism and thereby developed the environmental jurisprudence.

Even the Public Interest Litigation, which is unique feature of environmental jurisprudence, has also lost its momentum after the retirement of Justice Kuldip Singh, who is known as the green judge of India. The Supreme Court itself became less enthusiastic in entertaining the PIL especially related to environment, a cursory glance at the reported cases will show that only a few landmark judgments have come in the past decade. It appears that the judiciary is also avoiding from the role

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[10] *Ibid, p. 604.*
[11] *A. I.R 1996 S.C. 2715.*
[12] *Ibid.*
[13] *Ibid, p. 2720.*
[14] *The Brundtland Report is mainly concerned with securing a global equity, redistributing resources towards poorer nations, while encouraging their economic growth. The report also suggested that equity, growth and environmental maintenance are simultaneously possible and that each country is capable of achieving its full economic potential while at the same time enhancing its resource base. It was also recognized that achieving this equity and sustainable growth would require technological and social change. For more detail see http://www.ace,mmu.ac.uk/eae/ sustain ability/Older/Brundtland_Report.html.*
[15] *Principle 15 of Rio Declaration argues that in order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious irreversible damage, lack of full scientific certainty shall not to be used as a reason for postponing cost effective measures to prevent environmental degradation. Principle 16 of the same declaration says that national authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.*
[16] *AIR 1996 SC 149.*
[17] *Vellore Citizens Welfare Forum versus Union of India, A.I.R. 1996mS.S. 2715, M.C. Mehta versus Union of India, (1996) 4 SCC 750, M.C. Mehta verus Union of India,A.I.R. 1997 S.C. 734, A.P Pollution Control Board II versus Prof. M.V. Naydu and other, (2001) 2 SCC 62.*
[18] *Deva Prasad M., "Environmental Jurisprudence in India-The Role of Supreme Court", http://news.indlaw.com /publicdata /articles /article178.pdf*

which it had already played in the arena of environmental jurisprudence. The Supreme Court even reversed some of its earlier orders in which it took stringent action against the voilaters and the High Courts followed the suit. The case of *T. N. Godavarman v. Union of India*[19] is an example of it. The Supreme Court through its interim order imposed a blanket ban on the cutting of forest in the State of Arunachal Pradesh and movement of cut tress and timber from any of the Seven North-Eastern States to any other State. The court also banned the felling of trees in state of Jammu and Kashmir, Himachal Pradesh and Tamil Nadu. It also prohibited running of timber industry within the forest with a view to protect the forest. But in the name of sustainable development the Supreme Court in its subsequent directions relaxed its earlier directions.[20]

The over conscious judiciary also could not foresee the problems to crop up in the future and failed to adequately compensate the victims of environmental disasters like that of Union Carbide Corporation. In *Charan Lala Sahu v. Union of India*[21] popularly known as Bhopal Gas tragedy case the Supreme Court awarded compensation of a sum of $470 millions but the award only covered disaster related damage, it did not cover contamination Union Carbide left behind which has spread to the ground water. Neither does it cover future damage to health as a result of contamination. On average nearly 95 percent of victims received a meager sum of $ 500 as compensation for life. Over 20 years that works out to the equivalent of six US cents per day.[22]

Though the Supreme Court with its all good intentions has tried to strike balance between the development and protection of environment but many times in its decisions it has failed to deliver the ideals it conceived. Cases like *N.D. Jayal v. Union of India*[23] *and Narmada Bachao Andalon v. Union of India*[24] are the best examples of it. The Court considering displacement as an issue related to Fundamental Right to life under Article 21 of the Constitution clearly ruled that the displacement of the tribals and other persons would per se result in violation of their fundamental and other rights. The effect is to see that on their rehabilitation at new location they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their hamlets. Their gradual assimilation in the main stream of the society will lead to their betterment and progress. But the plight of Indira Sagar and Omkareshwar affected region clearly show that these Supreme Court orders have been bluntly flouted. Thousands of displaced people from both the projects are being forced to suffer like destitute due to the non-compliance of rehabilitation policy.[25.] Vimal Bhai an activist has rightly stated that the judgment has accepted the politics of dam building but it does not have a human face. The Judicial activism as well as PIL is not only subjected to criticism from the different quarters rather it is also held responsible for project delays which thereby result into increase in overall project cost. Keeping in mind the increasing criticism of judicial activism, the Supreme Court ruled that petitioner must provide for the reimbursement of costs to the public in case ultimately the litigation (though started in public interest) fails. He must compensate both for the delay in implementation of the project and the cost escalation resulting from such delay.[26] Although there is need to curb the abuse of Public Interest Litigation but adoption of such an attitude by the judiciary would discourage the genuine individuals from coming forward to the court for seeking relief. From the above given account it is clear that judicial activism has lost its momentum and enthusiasm in the recent past. This is not the healthy sign because the other organs of the state are insensitive towards the environmental problem and judiciary is the only hope.

4. Environment Protection by the NGOs

Besides the judiciary, the civil society is another stakeholder in the realm of environment protection in India. Although the Indian civil society is lacking the virtue of criticality and assertion on the real issues pertaining to society but it has been playing some role in the form of new social movements like the Chipko Movement[27] and the Narmada Bachao Andolan[28] and

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[19] *T. N. Godavarman versus Union of India (1997) 2 SCC 267.*
[20] *T.N.Godavarman versus Union of India, (1997)(5) SCC760 and T. N. Godavarman versus Union of India 1997(7) 440.*
[21] *A.I.R.1990 S.C.1480.*
[22] *http://delhi.aidindia.org/bethechange/contentview/908*
[23] *(2004) 9 SCC 362.*
[24] *(2005) 4 SCC 32.*
[25] ***http://www.narmada.org./nba-press-release/june-2007/june10.html***.
[26] *Raunaq International Ltd. Versus I.V.R. Construction ltd., AIR 1999. S.C. 393*
[27] *The name of Chipko Movement comes from a word meaning 'embrace': the villagers hug the trees, saving them by interposing their bodies between them and contractors' axes. The Chipko protests in Uttar Pradesh achieved a major victory in 1980 with a 15 years ban on green felling in the Himalayan forests of that state by order of India's then Prime Minister, Indira Gandhi. The Chipko Movement was the result of hundreds of decentralized and locally autonomous initiatives. See for detail http://www.iisd.org /50comm /commdb/desc/d07.htm*

Non-Governmental Organizations (NGOs). These movements and NGOs have tried to raise the issues pertaining to the environment and also attempted to seek the judicial remedy whenever and wherever it was required and desired. The initiative from the NGOs is always quick and prompt because their structures most of the time are free from the bureaucratic bottlenecks as compared to the organs of the state. Another advantage of the NGOs is that most of them are more aware regarding the ground reality than the state machinery as far as the problems confronting the environment are concerned. Activism by NGOs as well as judiciary has together made industries more aware of environmental concerns. For instance in the state of Maharashtra such activism has been decisive in enforcing environmental regulation. NGOs and peoples organizations through careful analysis of procedures, organizational factors, functioning style and policies have achieved some breakthrough in the erstwhile secretive and non-cooperative government institutions and agencies. Governments have responded to NGO pressure by simplifying unenforceable laws and cumbersome procedures.[29] Although, the new social movements have created awareness among the public regarding environment and also forced the state to respond the certain issues pertaining to the environment but most of the time their approach has remained adhoc and issue based. The problem with NGOs is that all the NGOs are not genuinely concerned with cause for which they have come into existence. Most of them have remained in search of publicity without bothering about the cause. Another limitation of the NGOs is that they lack scientific capacity and technical know-how to understand industrial ecology. Besides this, the new social movements and the NGOs are addressing the state as far as the problems confronting the environment are concerned they have not been able to devise the alternative mode to address the issues pertaining to the environment without the help of the state, which happens to be insensitive, corrupt and inefficient institution.

5. Beyond Judicial Activism

Judicial activism has forced the implementation of various laws related the protection of environment and control of pollution; though it may not always be either an efficient or an equitable mechanism for doing so. Hence judicial activism alone cannot ensure the protection of the environment in given gravity and magnitude of the problem. Such a complex and huge problem must be tackled at various levels besides the judicial intervention, because most of the time the judiciary is addressing the symptom, whereas the need of the hour is to address the causes and take the preventive measures. First, the increasing population pressure on the natural resources is root cause of many problems pertaining to the environment. India is not only the second most populous country in the world but the growth rate of its population is very high. However, the arrest of the population growth has remained one of policy objectives for achieving the social and economic development since the inception of first five year plan but the population is still growing at the fast rate. Indian approach to handle this serious problem has remained ad hoc and casual right from the beginning. In 2000, India adopted the National Population Policy[30] with an objective to stabilize the population growth till 2045. Apart from this, the government of India has postponed, the reorganization of the constituencies on the basis of population till 2026 through the ninety first amendment to the Constitution under the pressure of the South Indian states, which delivered reduction in the population growth. They argued that if the constituencies to be organized as they were due on the basis of 2001, it will be disincentive for those states which delivered on the population front but incentive for them who failed on this front and thereby it will further increase the population growth. But there are remote chances to achieve the objective of the stabilization of population growth, the way the National Population Policy is pursued. A lot of politics is involved as far as the population problem of India is concerned and no government has made genuine attempt to address such a problem of vast magnitude. All the political parties in India are together to prevent, if there is question to fix minimum qualifications for contesting elections again they put united front in favour of a proposal in the parliament to raise their salaries and emoluments. But when it comes to population problem, they put the divided house because of the vote bank politics. Whereas, the need of the hour is rise above the politics in general and vote bank politics in particular on such a critical issue which is concerned with the survival of the society. Because the growing human population affects the environment in two ways: first it consumes more resources like food,

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[28] *Narmada Bachao Andolan is the most powerful mass movement, started in 1985, against the construction of huge dam on the Narmada river. Narmada is India's largest west flowing river, which supports a large variety of people with distinguished culture and tradition ranging from indigenous people inhabited in the jungles here to the large number of rural population. The big fight was over the resettlement of the rehabilitation of the people displaced by the huge dam.*

[29] *Pranay Lal and Veena Jha, "Judicial Activism and the Environment in India: Implications for Transnational Corporations", Occasional Paper no. 6, pp 1-2.*

[30] *National population Policy of India was formulated in 2000 to achieve its immediate, medium term, and long term objectives. Its immediate objective is to address the unmet needs for contraception, health care infrastructure, and health personnel, and to provide integrated service delivery for basic reproductive and child health care. The medium-term objective is to bring the TFR to replacement levels by 2010 through vigorous implementation of inter-sectoral operational strategies. The long term objective is to achieve a stable population by 2045, at a level consistent with the requirements of sustainable economic growth, social development, and environmental protection.*

water, oxygen etc. and produce waste like excreta, garbage, effluents and exhaust from factories . Second, it puts pressure on natural resources and on the environment indirectly through increased need for employment and development.[31] The forest cover is decreasing due to increasing population because for huge population, the housing, food and many other things are required. The deforestation has been taking place due to the growing need of more housing and food. In order to construct houses, the land and the wood are required, which resulted into deforestation. Most of the time land is cleared from the forests to construct more houses and to produce more food. The growing population has resulted into increasing migration from rural to urban areas, which has created pressures on limited water, sewerage and other civic amenities available in the urban centres, however the process of urbanization is considered as one of significant parameters of development. Most disturbing trend is the discharge of sewerage waste in the nearby fresh water bodies and thereby made fresh water not only unfit for human consumption but also made it damaging for marine life. Increasing population is not only responsible for polluting water bodies but it also requires lot of water for consumption as the life is water based. Besides this, the water is also required for agriculture growth and manufacturing sector. In order to feed growing population, the more food production by the agriculture sector is the necessity which requires more land to be brought under the cultivation that has not only resulted into the decreasing forest cover but also consumption of more water for irrigation and thereby resulted into the depletion of underground water, which is precious natural resource and belongs to the generations.

Most of the time politics in India is known for the wrong reasons and has always remained less sensitive to the critical issues pertaining to the survival of society and environment is one of them. Notwithstanding with the gravity of environmental threats, the protection of environment has yet to become a priority for politics in India. The general elections for the fifteenth House of People indicate that the issue of environment has not been on the electoral agenda of political parties. It speaks volume about the insensitivity of Indian politics regarding an issue of critical importance for the people and society at large. Insensitivity of politics also reflects upon the insensitivity of the people because people have failed to understand the gravity of problem and thereby to articulate the issue of environment in the public domain by pressurizing political parties. People's sensitivity can do a great deal regarding the protection of environment from the probable damages, which can be incurred in the name of development. It has the potential to take preventive measures instead of the corrective ones.

In order to save environment from the threats of pollution, there is need to bring change in state approach from corrective to preventive i.e. successfully applying the Precautionary Principal as laid down in Rio Declaration 1992. Now the more emphasis is on the former rather than the latter, whereas, the need of the hour is to lay stress on the preventive rather than the corrective measures. The purpose here is not to understate the usefulness of the corrective measures but the preventive measures certainly serve the purpose better because in case of the former the damage has already occurred whereas, in case of latter the action is sought before the damage occurs. Another serious problem with corrective measures is that when problem comes for remedy, it is always argued that a lot of money has already been invested in the project and if the project is winded up because of the violation of environmental norms, it will be the wastage of public money. In such cases, if some relief is to be given, it is always given in the form of compensation. But the fact of the matter is that how can the damage, which has already occurred to the environment by such development projects, can be corrected by providing monetary compensation. In addition to it, as the Indian state is bureaucratic and its machinery is corrupt, lot of manipulation takes place, while dealing with such cases. This argument does not hold much of the water as far as the safety of environment is concerned. In this context the preventive action is always better provided it is taken keeping in mind the letter and spirit of the environmental laws. Although, India has witnessed a wave of legislation whereby the preventive action is required, but the success rate of such cases is very low (hardly 1%), which does speak well of the attitude of courts.

Another area that needs immediate attention is the Indian understanding about development because this understanding is translated into the various plans and policies for the development. Why it needs attention because in the past Indian idea of development has remained lopsided. That is why issue of environment was not addressed while formulating the policies and plans for the development of the country. If at all the issue of the environment was addressed, the treatment had remained cosmetic. The need of the hour is to rethink about the agenda of development and thereby to make the process of development pro-environment and pro people. The high economic growth does not carry much significance, if process of growth pollutes environment and increases social disparities, as it has happened in the past. What India has achieved so far is economic growth instead of development. Now the situation requires to think beyond growth and to ensure development, which is environmentally and socially sustainable in the foreseeable future.

[31] *Usha Tandon, "Population Growth and Sustainable Development", Journal of the Indian Law Institute, Vol. 50, No. 2, April-June 2008, p. 213.*

6. Conclusion

To sum-up, it can be argued that the issue of environment has remained misplaced priority in India and even it was not the priority for couple of years after independence. Of course, the priority of the newly liberated country was the development and it was prepared to make certain sacrifices including environment. The process of economic development resulted into the pollution of environment and thereby India developed the negative relationship between the environment and development. Instead of reconciling the development with environment, the former was promoted at the cost of latter. The alarming problem of environmental pollution was taken into cognizance much later. Although, Indian state started responding to problem of environment by inserting the provisions related to protection of environment in the chapter dealing with the Directive Principles of State Policy and as one of Fundamental Duties in the Article 51(A) of the Indian Constitution by the 42nd amendment, which was later followed by the enactment of statutory laws related to protection of environment, but the state response has remained neither adequate nor appropriate. The state approach has remained more cosmetic which led to the articulation of judicial activism in the domain of environment.

Public Interest Litigation has remained main vehicle through which the higher judiciary asserted in the arena of environment and thereby developed the new form of jurisprudence, which is known as environmental jurisprudence. The Supreme Court and different High Courts of states in India, delivered path breaking verdicts in the cases related with environment and raised the right to clean and healthy environment to the level of right to life and that of human rights. Besides this, the higher judiciary tried to establish positive relationship between the environment and development under the idea of sustainable development. While reconciling development with ecology, the higher judiciary argued that the development is possible while taking care of environment in India. However, the contribution of Judicial Activism has remained enormous in the subject under discussion but most of the time even the judicial activism has remained the judge driven phenomenon. Besides this, in most of the cases of environmental pollution, the legal action is taken as a damage control or a compensatory measure. In the last few years, the environmental jurisprudence has been characterized by a new form of litigation wherein the Precautionary Principle is applied but the success rate in such kind of cases is very low. Though, the environmental jurisprudence has traveled a long journey from compensatory approach to precautionary approach on the one hand and from the strict liability to absolute liability[32] principle but still the gravity of the problem demands the multi-faceted approach. As the problem of environment is huge and multifaceted, therefore the urgency of the situation requires to move beyond judicial activism because it is not sufficient to ensure the protection of the environment in the given crisis situation. Indian state has the mandate and obligation to protect environment, but its failure to perform its duty in the past has proved detrimental to the environment. The gravity of the situation requires state activism on the one hand and public activism on the other. The nature of problem requires state sensitivity which can be possible if the state switches over from reactive approach to proactive approach. The change in the approach of the state to deal with the environmental problem will not come automatically. For that the vigilant public to be more precise the public activism is required. It is only through the public activism, the issue of environmental protection can be brought to the priority agenda of the state. Both state activism and public activism are closely related with each other because the former has the potential to sensitize the public regarding the environmental pollution, whereas the later has potential to command the state to do needful in this regard.

[32] *M.C Mehta versus Union of India A.I.R.1987 S.C.1086*