

## Chapter-1 Introduction

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The word “environment” relates to surroundings. It is everything. Once Einstein remarked; “The environment is everything that is not me.”<sup>1</sup> In other words we can say covering the physical surroundings that are common to all us, including air, space, water, land, plants and wild life. Environment is an integral part of human society. It cannot be ruled out that exploitation of natural resources have brought development in human society and its consequences such as global warming, loss of biodiversity, rise in sea levels, climate change and so on. The protection of the environment is a global issue in recent time. It is not only the problem of an area or a country. The problem is increasing all over the world. “Notwithstanding political division of the world into national units, the oceanic world is interconnected whole, and winds that blow over the countries are also one.”<sup>2</sup> It means any incident that happens in one corner of the world, its impact can be seen on the other corner of the world.

The problem of environment protection and its management has become a serious issue of concern. People’s interaction with nature has created several environmental problems. “Industrialization, urbanization, population explosion, poverty, over-exploitation of resources, depletion of traditional resources of energy and raw materials are some of the factors which have contributed to environmental deterioration the world over.”<sup>3</sup> It means that all these factors are responsible for environmental problems. The development of science and technology has resulted in the unthinking use of the power by man, encroaching endlessly on nature.<sup>4</sup> To live in healthy environment is the fundamental right of all. Clean and healthy environment is not only the need of present generation but also the future generation. The future of earth is entirely linked with the sustainable development that may take place in the various countries.<sup>5</sup> It is the need of hour. They

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<sup>1</sup>Leela Krishnan P, *Environmental Law Case Book*, Lexis Nexis Butterworth, New Delhi, 2004, p. 3

<sup>2</sup>*M. C. Mehta v. Union of India* (1991) 2 SCC 354

<sup>3</sup>Jaswal, S. Paramjit&NisthaJaswal, *Environmental Law: Environment Protection Sustainable Development and the Law*, Allahabad Law Agency, Faridabad, 1999, p.1

<sup>4</sup>*ShriSachidanandPandey v. State of Bengal* AIR 1987 SC 1109

<sup>5</sup><http://indialawyers.wordpress.com/2009/05/24/judicial-activism-and-the-role-of-green-benches-in-india/>.17.3.2011.

have to adopt a visionary approach in consonance with the need of the man and the earth. Sustainable development means the development which meets the need of the present without compromising the ability of the future.

### **1.1 Origin of the Problem**

The environment problem is not new in its origin. It is as old as the origin of human species. But during the last two centuries it emerged as a serious problem. The process of population explosion, heavy industrialization, and growing urbanization has resulted in several environmental problems such as water pollution, air pollution, noise pollution, land degradation, water depletion, soil erosion and degradation of forest and problems related to the development and human settlements. In India illiteracy, poverty and lack of advanced technology are the main causes of environmental degradation and in the process the poor and the disadvantaged sections of the society are the most affected. They have been the first victim of poor sanitation, bad air, contaminated water, scarce food, fuel and fodder. For millions of Indians their only wealth is common property resources. The post-independence India was concerned to equity and growth and the environmental concern was added only as third dimension: sustainability.<sup>6</sup> In fact, in the short run, development (including eradication of poverty and creating employment opportunities) and environment protection seem to be contradictory goals. And the debate goes back to 1972, when addressing the UN Convention on Human Environment, former Prime Minister, Mrs. Indira Gandhi at the United Nations Conference on the Human Environment held at Stockholm on June 14, 1972, said:

“On the one hand the rich looks at our continuing poverty-on the other, they warn us against their own methods of living. We do not wish to impoverish the environment any further and yet we cannot for a moment forget the grim poverty of large numbers of people. For instance, unless we are in a position to provide employment and purchasing power for the daily necessities of the tribal people and those who live in or around our jungles, we cannot prevent them from coming the forest for food and livelihood; from poaching and from despoiling the vegetation. When they themselves feel deprived, how can we urge preservation of animals? How can we speak to those

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<sup>6</sup>Agrawal, Anil, “Politics of Environment” in Shyam& Armin, *Environmental Law and Policy in India*, Oxford University Press, New Delhi, 2001, p. 13

who live in villages and in slums about keeping the oceans, the rivers and the air clean when their own lives are contaminated at the source? The environment cannot be improved in conditions of poverty. Nor can poverty be eradicated without the use of science and technology.”<sup>7</sup> It means the rich nations by adopting new technology or policies should not impose burden of environmental crises on the weaker nations.

The Stockholm Conference marked a watershed in the history of the environment management in India. After 1972, many laws and policies were enacted and implemented by the government for protection of environment.

## **1.2 Environment Protection & Sustainable Development – International Efforts**

At international level many agreement were made for protection of environment and sustainable development. U. N. Conference on Human Environment and Development (1972) at Stockholm was the first time when world community got together to deliberate important issue of environment protection and sustainable development. India is a signatory to a number of Multilateral Environmental Agreements (MEA) and conventions.<sup>8</sup> The major one include\*-

1. Stockholm Declaration 1972
2. Brundtland Report 1987
3. Rio Declaration 1992
4. Kyoto Protocol 1997
5. Johannesburg Summit 2002
6. Cancun Climate Change Conference 2010.

## **1.3 Constitutional Provisions**

Even before 1972, when the world community gathered to address the issue of environment pollution and its protection, India exhibited its concern to the issue and the inclusion of certain provisions related therewith in our Constitution is a testimony to this concern. Some of the

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<sup>7</sup><http://indialawyers.wordpress.com/2009/05/24/judicial-activism-and-the-roleof-green-benches-in-india/>.17.3.2011

<sup>8</sup>Kurian, Joseph, and R. Nagendram, *Essential Environmental Studies*, Pearson Education, Pvt. Ltd. Patparganj, Delhi, 2004, p. 319

\*All these Declarations, Reports, Conferences etc. are explained in Chapter-2 of this research report.

important ones are related in this section:-Article 21 of the Constitution guarantees the fundamental right to live in a healthy environment. Article 48-A states that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Part IV-A was added to the Constitution by the Constitution (42<sup>nd</sup> Amendment) Act, 1976 and Article 51-A(g) thereof specifically says that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

Articles 32 and 226, of the Constitution give power to the Supreme Court and High Courts to issue directions, orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. Writs could be issued against an administrative, judicial or quasi-judicial authority and may be issued inter alia on matters relating to environment.

#### **1.4 Statutory Provisions**

The issue of environment protection is also addressed through certain statutory provisions also and some of these were created even before independence. For instance Chapter XIV of Indian Penal Code 1860, contain some sections relates to offences affecting the public health, safety, convenience decay or morals. Section 268 of Indian Penal Code provides that “a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyances to persons who may have occasion to use any public right.”<sup>9</sup> Section 290 of Indian Penal Code provides punishment in case of public nuisance. Similarly, Chapter X of Criminal Procedure Code 1973, also have some provisions to prevent the pollution of all kinds. Section 133 of Cr. P.C. gives the power to District Magistrate or Sub-Divisional Magistrate or Executive Magistrate to make conditional order to remove the public nuisance causing pollution. ‘Nuisance’ includes construction of structures, disposal of substances conduct of trade or occupation. If concerned person fails to carry out the conditional order, under section 188 of Indian Penal Code the court can impose penalties of imprisonment with a maximum period of six months and with a fine which

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<sup>9</sup>Shastri, Satish, *Pollution and the Environmental Law*, Printwell Publishers, Jaipur, 1989, p.7-8

\*Main provisions of this Act are explained in chapter-3 of this research report.

may extend to one thousand rupees. The Indian Fisheries Act passed in 1897 penalizes the killing of fish by poisoning water and by using explosives.

After independence a series of enactments were also passed to protect the purity of air and water and degradation of forests. The Water Act 1974\* or Air Act 1981 were enacted to prevention and control of water and air pollution. Thereafter Water Cess Act, 1977 was enacted which provides for the cess on water consumed by industries and local authorities.

But prior to 1986, there was no comprehensive legislation on environment. In December 1984, the Bhopal Gas Tragedy happened in Madhya Pradesh from a factory. In this tragedy Methyl Isocyanate, a highly poisonous gas leaked out and it resulted in the death of more than two thousand persons who were mostly affected the hutment-dwellers in the near vicinity of the factory. The air carried the leaked deadly poisonous gas in water bodies and to the thickly populated areas and about two lakhs people suffered various bodily injuries. Thus, Bhopal Gas Tragedy was an eye opener and the protection of environment was taken as a serious matter. Indian Parliament passed the Environment Act, 1986.<sup>10</sup> The Act gives the power to Central Government to take measures to protect and improve the environment. Rules were also framed for implementation of the provisions of the Act.

## **1.5 Judicial Activism**

In our parliamentary democracy, government comprises of legislature, executive and judiciary; the legislature makes laws and policies, executive implements them and the judiciary ensures implementation of the laws and policies are implemented the way they have been framed and also sees that the laws and policies have not been framed in contravention with the supreme law of the land viz. Constitution. It also ensures that laws and policies do not contravene some international treaty, convention or law, or human rights or law of natural justice etc. This means judiciary has to review the work of other two branches viz. the legislature and the executive and this scheme of relationship has been designed and devised by our Constitution. Under Article 50 the State to take step to separate the judiciary from the executive in the public services of the State. To promote the rule of law it is very essential. Article 77 has conferred all executive powers to the President. Under Article 85 he has the power to summon the parliament and can dissolve the Lok

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<sup>10</sup> Main provisions of this Act are explained in Chapter-3 of this research report.

Sabha. Under Article 123 he has the power of ordinance making. In order to ensure that judiciary performs this function fairly, several provisions have been incorporated in the Constitution to ensure independence of judiciary. A judge shall not be removed by the President except a joint address by both houses of Parliament under Article 124(4).<sup>11</sup> Article 129, 215 and 142 gives the power to the judiciary. The power of the Supreme Court under Article 129 and 142 cannot be limited. The jurisdiction of the Supreme Court under Article 129 is independent of the statutory law. The power to do complete justice under Article 142 is a corrective power which gives preference to equity over law.<sup>12</sup> Article 142 (2) provides that subject to the provision of any law made in this behalf by Parliament, the Supreme Court shall as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents or the investigation or punishment of any contempt of itself. There exist some in-built mechanism of grievance of redressed and in case some wrong has been done to an individual or some of the rights damaged, the individual can take recourse to exhaust these channels and a normal individual is supposed to exhaust these channels of redressed of grievances before approaching the judiciary. However, it is being increasingly realized that these mechanism are not effective and the grievances of the citizens remained largely underdressed. The void thus created has been filled by judiciary as people have been increasingly approaching it to get justice. However, sometimes it has been alleged that judiciary is involved in ‘activism’ and has been usurping the powers of other two branches.

Judicial activism has no specific definition. In a simple manner we can say that the role of judiciary in promoting justice is called judicial activism. Judicial activism is as old as judiciary itself. The business of judicial activism is to explore as to how justice is to be provided through the active participation of the judiciary, particularly as against public agencies. As, the judiciary is the protector and guardian of the supremacy of the constitution, judicial activism strengthens the judiciary to keep all authorities- legislature, executive, administration and quasi-judicial within legal bound.

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<sup>11</sup> 124(4), Basu, Durga Das, *Introduction to the Constitution of India*, Lexis Nexis Butterworth, Wadhwa Nagpur, 2010, p. 304

<sup>12</sup>Pandey, J. N. *Constitutional Law of India*, Allahabad Law Agency, Faridabad, 2005, pp. 458-460.

According to Merriam Dictionary of Law judicial activism is “the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent or are independent of or in opposition to supposed constitutional or legislative intent.”

Black’s Law Dictionary defines judicial activism as a “philosophy of judicial decision making whereby judges allow their personal views about public policy, among other factors to guide their decisions usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent.”<sup>13</sup>

An eminent jurist Prof. Upendra Baxi defines judicial activism in the following words; “judicial activism is that way of exercising judicial power which seeks fundamental re-codification of power relations among the dominant institutions of State manned by members of the ruling classes.”<sup>14</sup> Justice Krishna Iyer remarked that “every judge was an activist either forward gear or on the reverse gear.”<sup>15</sup> According to former Chief Justice of India, J. S. Verma, “The role of the judiciary in interpreting existing laws according to the needs of the times and filling the gaps appears to be the true meaning of judicial activism.”<sup>16</sup> In other words, it is a continuous process that helps to advance the cause of law in the wider interest of the public.

In India judicial activism was made possible by PIL (Public Interest Litigation). Judicial activism has to be born in India in 1986. Its credit goes to Justice P. N. Bhagwati who introduced the tradition of hearing PIL even on a postcard. Justice Bhagwati has clearly stated, “The Supreme Court has adopted a pro-active approach for the last two years particularly, having regards to the peculiar socio-economic conditions prevailing in the country.” Thus judicial activism was born out of a public litigation appeal.

### **1.5.1 Public Interest Litigation**

The word ‘Public Interest’ means an act beneficial to general public and the word ‘Litigation’ means “a legal action including all proceedings therein, initiated in a Court of law with

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<sup>13</sup>Diwadi, S.P, and Prakash Shardebu ,*Jurisprudence and Legal Theory*, Central Law Agency, Allahabad, 2007, p. 402

<sup>14</sup>Baxi, Upendra, *Courage, Craft and Contents- The Indian Supreme Court in the Eighties*, Tripathi Publication, Bombay, 1985, p. 10

<sup>15</sup>Iyer, Krishna, ‘Challenges and Opportunities- A Case for Judicial Activism’ Speech Delivered At The Conference of Young Lawyers Association, in 1986

<sup>16</sup>[www.shareyouressays.com](http://www.shareyouressays.com) 20.04 2011

the purpose of enforcing a right or seeking a remedy.”<sup>17</sup> Thus, the expression ‘Public Interest Litigation’ means “a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities were affected.”<sup>18</sup>

According to Stroud’s Judicial Dictionary “public interest :A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”<sup>19</sup>

Black’s Law Dictionary defines that “public interest: something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights and liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interest of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national government.”

In other words ‘Public Interest Litigation’ means the “mass participation of common citizen in the judiciary.” It means “any public spirited citizen or organization acting bonafide for the enforcement of fundamental rights of a person or class of persons who, on account of poverty or disability or socially or economically disadvantaged position, cannot approach the court for relief, such a member of the public may move the court even by just writing a letter.”<sup>20</sup> Thus, it has put the concept of *locus-standi* before the court on a very broad basis. The concept of PIL was initially sown in India by Krishna Iyer, J. in 1976, in *Mumbai Kamgar Sabha v. Abdul Bhai*.<sup>21</sup> The petitioner can file a writ under Article 32 in Supreme Court and under Article 226 in High Courts. The judiciary has given many important decisions to make “*socio-economic political* justice as enshrined in the Preamble of the Constitution, a reality.”<sup>22</sup>

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<sup>17</sup> Oxford English Dictionary, 2nd edn. Vol. XII

<sup>18</sup> Sarkar, S. K, *Public Interest Litigation and Public Nuisances*, Orient Publishing Company, New Delhi, 2003, p. 10

<sup>19</sup> Ibid p. 10

<sup>20</sup> Diwedi, S. P. and Prakash Shardebu, *Jurisprudence and Legal Theory*, Central Law Agency Allahabad, 2007, p. 408

<sup>21</sup> AIR 1976 SC 1455

<sup>22</sup> Diwedi, S. P. and Prakash Shardebu, *Jurisprudence and Legal Theory*, Central Law Agency Allahabad, 2007, p. 408



### ***1.5.2 Judicial Activism Whither***

Judicial activism has become a subject of debate. Some critics say that it is bane for society while others argue that judicial activism is boon for society. Different people expressed their human rights. Justice is not the far dream for the poor and vulnerable strata of society. Judicial activism has made many contributions to Indian democracy. During the past two decades the judiciary is not only safeguarding the rights and freedom of individuals but also addressing several social, cultural, economic, political and environmental issues. Judicial activism has covered every aspect of life with a human touch-from checking child labour to illegal detentions, tortures, custodial deaths to rehabilitating slum dwellers, payment of minimum wages and better deal for the bonded labour. Judiciary is playing an important role in improving the quality of the country's governance. An independent judiciary has become an essential feature of democratic set-up like India.

In the opinion of Bendict Lobo, “the common people have faith and hope to obtain justice by the judiciary. The judiciary can bring the change in the country.”<sup>23</sup> Judges and lawyers think that judicial activism is an extension of judicial review and not an extra ordinary power conferred on the court. However, it has been regarded by some particularly the executive and the legislature as encroachment of the court in the field of legislature and executive powers. Somnath Chatterjee says that “the judiciary is crossing the Lakshman Rekha. The judiciary is encroaching upon the power of executive and the legislature.”<sup>24</sup> Prime Minister Manmohan Singh says that judiciary should not exercise its power of judicial review to undermine the legitimate role assigned to other branches of the government. The role of courts and judges in making law an instrument of social stability and progressive change cannot be over emphasized. The Supreme Court delivered several landmark decisions in PILs cases. The judicial process has a dynamic role to play, both as the guarantor of justice to litigants and as upholder of the constitutional conscience. But at the same time, it has to be ensured that the Basic Structure of our Constitution is not subordinated to political impulses of the moment or to the will of transient majorities.<sup>25</sup>

### **1.6 Judicial Activism and Environment Protection in India**

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<sup>23</sup> Senior advocate Bombay High Court “Is Judiciary Crossing Its limits” The Tribune, 12.3.2011

<sup>24</sup> Former Speaker of Lok Sabha, “Judicial Activism-Boon or Bane” The Tribune, 11.3.2011

<sup>25</sup> Prime Minister Manmohan Singh at the Commonwealth Law Conference in Hyderabad on Feb 6, 2011

Judiciary with tool of judicial activism has also been playing an important role for the protection of environment. In striking the balance between environment and development, the courts have played crucial role under Articles 32 and 226 of the Constitution. The writ procedure is preferred over the conventional suit because it is speedy, inexpensive and offers direct access to the highest court of the land. The power of the Supreme Court is to issue direction under Article 32 and that of high courts under Article 226 have attained greater significance in environment matters. Courts have made use of these powers to remedy the assaults on the environment. In this section some examples of judicial activism on environmental protection have been related.

In *Subhash Kumar v. State of Bihar*,<sup>26</sup> it has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in the right of life under Article 21 of the Constitution.

In *M.C. Mehta v Union of India*<sup>27</sup> it was held that public interest litigation against pollution in Delhi caused by increasing number of petrol and diesel driven vehicles is maintainable. The Court directed the Delhi administration to make the Central Motor Vehicle Act 1989 effective from April 1991 and to implement it seriously and effectively.

In *Rural litigation and entitlement Kendra v. State of U. P.*<sup>28</sup> the Supreme Court ordered the closure of certain lime stones quarries on the ground that there were serious deficiencies regarding safety and hazards in them.

In *Shriram Food and Fertilizers*<sup>29</sup> case the Supreme Court directed the Company manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighborhood, and to take all necessary safety measures before reopening the plant.

In *M.C. Mehta v. Union of India*<sup>30</sup> the Supreme Court ordered the closure of tanneries at Jajmu near Kanpur, polluting the sacred river Ganga.

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<sup>26</sup> AIR 1991 SC 420

<sup>27</sup> 1991(2) SCC 137

<sup>28</sup> AIR 1985 SC 652

<sup>29</sup> AIR 1987 SC 965

<sup>30</sup> AIR 1988 SC 1037

In *M.C. Mehta v. Union of India*<sup>31</sup> the court directed the Kanpur Nagar Mahapalika to submit its proposals for effective prevention and control of water pollution within 6 months to the Board constituted under the Water Act. It also directed the Mahapalika to get dairies shifted to a place outside the city and arrange for removal of wastes accumulated at the dairies so that they may not reach the river Ganga to lay sewerage line wherever it is not constructed, to construct public latrines and urinals, for the use of poor people free of charge, to ensure that dead bodies and half burnt bodies are not thrown into the river Ganga and to take action against the industries responsible for pollution. It was also directed that licences to establish new industries should be granted only to those who make adequate provisions for the treatment of trade effluent flowing out of the factories.

In *M.C. Mehta v. Union of India*<sup>32</sup> the Supreme Court had ordered the shifting of 168, hazardous industries operating in Delhi as they were causing danger to the ecology and directed that they be reallocated on the lands in the National Capital Regions as provided in Master Plan For Delhi.

Thus, it is clear from the cases that judiciary not only achieving the principle of 'sustainable development' but also safeguarding the fundamental rights of the common masses. The judiciary has at times applied many of the international principles of environmental management, like polluter pays principle, absolute liability principle and precautionary principle. In many orders it tries to create awareness among the masses on environmental protection.

## 1.7 Survey of Literature

Shastri (1989)<sup>33</sup> in his book writes that environment has become so polluted that creating a problem to the survival of human race on this planet. The risks associated with new technologies are increasing by leaps and bounds and the scale, frequency and impact of naturally caused and

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<sup>31</sup> AIR 1988 SC 1115

<sup>32</sup> AIR 1996(4) SCC 750

<sup>33</sup> Shastri, Satish, *Pollution and the Environmental Law*, Printwell Publishers, Jaipur 1989

humanly created disasters are mounting up day by day. The damage to natural systems through desertification, acidification and climate change are becoming significant.

He further writes that to combat the problem many laws have been passed by many countries. The Stockholm Declaration of 1972, Nairobi Declaration 1982 and many other conferences and convention are the steps taken at international level. To follow the Stockholm Declaration Indian government also passed many laws for the protection and improvement of environment. Indian Constitution also has some provisions relating to environmental pollution. Article 48-A makes it a constitutional obligation on the state and Article 51-A (g) casts a fundamental duty on the citizens of India to improve and protect the environment.

The author also says that courts are also playing important role to protect the environment. Indian courts, particularly the Supreme Court, have assumed the role of protector and guardian against environmental pollution. Through Public Interest Litigations courts have done away the strict legal procedural formalities.

Diwan & Diwan (1996)<sup>34</sup> say that man's ambition for limitless enjoyment and comfort has led him towards the exploitation of nature's wealth so indiscriminately that has created numerous environmental problems. In the cities, pollution is a multidimensional problem. The factories, automobiles, solid and liquid waste disposal, high rise buildings fast moving traffic, ever increasing pressure of population are causing air, water and noise pollution to an extent that we are heading towards disaster.

He further says that main task before our contemporary society is the solution of environment crises. In democratic set-up the clean environment is the fundamental right of citizen. Unlimited growth of human population, industry and unlimited consumptions of material and energy is impossible to sustain. At last he says that for keeping environment pollution free and for sustainable development at international level Stockholm Conference, World Water Conference and Earth Summit were held and at national level many laws and policies have made by the government but all these have failed to control pollution.

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<sup>34</sup>Diwan, Paras, & Piyushi Diwan, *Environment Administration, Law and Judicial Attitude*, Deep & Deep Publications, New Delhi, 1996

Jaswal & Jaswal (1999)<sup>35</sup> in their book write that protection of environment has become a global issue. Environmental destruction has threatened the human life, health and livelihood. So for the life of future generations, preservation and conservation of environment is necessary. The environment can be saved only by sustainable development. For, sustainable development at national or at international level, many laws and policies made by the government. To follow the Stockholm Declaration principles, Indian government passed Water Act 1974 and Environment Act 1986 and many other laws. The object of environmental law is to preserve and protect the nature's gift to man and woman such as water, air, earth and atmosphere from pollution.

Desai (1990)<sup>36</sup> in his book says that our Earth is like a little spaceship on which we travel together and dependent on its vulnerable supplies of air, soil and water. Man not only survives and functions in his environment but also shapes it and is in turn shaped by it. The environmental quality depends on development. The link age between environment and development is inseparable, as development goals are achievable on the price of environmental quality. The human activities are disturbing the environment. The problem of environment pollution in general and water pollution in particular, has become a serious problem. Growing industrialization and urbanization is responsible for the pollution of rivers, streams, lakes and other surface water resources. The polluted water is very harmful for human life and threat to animal life and vegetation. Water gets contaminated through various ways like industrial effluents or passage of domestic sewage into streams or wells etc. and other such human activities.

He further says that in Stockholm Declaration the concept of 'eco development' came into existence. A great emphasis laid on the prevention and control of the water pollution. In the concluding paragraph he says that India also have taken some steps to control the problem of water pollution. The Water Act 1974 is a major step in the field. The Act provides machinery for both at the central as well as state levels. The Central Ganga Authority was created in 1985 with an action plan to combat pollution in the river Ganga. Thereafter, Environmental Protection Act, 1986 came into existence. All these steps are mechanism to control the problem of water pollution.

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<sup>35</sup>Jaswal, S. Paramjit, & Nistha, Jaswal, *Environmental Law: Environment Protection Sustainable Development and the Law*, Allahabad Law Agency, Faridabad, 1999

<sup>36</sup> Desai, Bharat, *Water Pollution in India Law and Enforcement*, Lancer Bppks, New Delhi, 1990

Balakrishnan (24.5.2009)<sup>37</sup> says that the word environment has a broad meaning and it includes earth, air, natural resources, atmosphere and ecological balance. The world is witnessing a global crisis of environment degradation. He further explains that poverty, illiteracy, and high population growth, all these factors are contributing in environmental degradation. Bhopal Gas Tragedy is an eye opener incident and Parliament adopted and enacted Environment Protection Act in 1986. M. C. Mehta, lawyer practicing in Supreme Court, filed series of PILs concerning vehicular pollution, illegal mining, pollution of Ganga water, air pollution and protection of Taj Mahal. On these PILs Supreme Court under Article 32 and High Courts under Article 226 gave many directions for the protection of the environment.

Lal and Jha (1999)<sup>38</sup> in their paper explain that during last three decades (1969-1990s) many voluntary organizations and NGOs have played an important role than public institution to solve social and environment problems. Writers further explain that judicial intervention and activism by NGOs have together made industries more aware on environment concern. Despite the awareness and effort by government agencies, the emergence of NGOs and community based organizations made industries vigilant about their environmental performance. Today concerned individuals and NGOs can seek information on policies and projects.

Leelakrishnan (2004)<sup>39</sup> says that environmental law is a developing branch of law in India. This growth is the result of the activism of the judiciary and the legislation, because many problems of socio-economic life are discussed in the courts. Old laws are sharpened to use them as weapons to fight environment degradation. Laws relating to control of water and air, protection of wild life and conservation of forest were enacted during the seventies and eighties.

He further says that Environment Protection Act, 1986 is a watermark development in the direction of environment protection. It generated plethora of rule and regulations and facilitates delegation of powers from the central government to the state agencies. The judiciary and the legislature look forward to implementing the decisions and resolutions made in the international arena.

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<sup>37</sup><http://indialawyers.wordpress.com/2005/05/24/judicial-activism-and-the-role-of-green-benches-in-india,17.3.2011>

<sup>38</sup>Lal Pranay and Veena Jha, in their paper "Judicial activism and the environment in India : Implications for transitional corporations (1999)" <http://openarchive.cbs.dk/bistream/handle/10398/6956/lal-judicialpdf?21.11.2010>

<sup>39</sup>Leela Krishnan, P. *Environmental Law Case Book*, Lexis Nexis Butterworth, New Delhi, 2004

He further writes that environmental law refers the principle of sustainable development which is the key element between the environment and the development. In the end the writer says that environmental law in India developed through judicial decisions, statutory law with regulations, orders and bylaws are another main source. International Conventions make decision after decision and recommendation after recommendation for the protection and improvement of the environment. Being a member of international community, India is committed to carry out the international norms.

Shyam & Armin (2001)<sup>40</sup> says that in India for the preservation and protection of national resources there are many regulatory instruments. There are many laws relating to industrial and development activity. There are many governmental agencies have the powers to regulate industry, mines and other polluters but these agencies do not use their powers in right direction. When, all the laws, and administrative authority become fail to control the environmental deterioration then judiciary being a spectator to environmental despoliation, assumed a proactive role of public educator, policy maker, and super-administrator. Judiciary is responding to its citizens against environmental degradation and administrative sloth.

### **1.8 Statement of the problem**

The research problem may be stated as below:

“Judicial Activism in India with Special Reference to Environment”

### **1.9 Objectives**

1. To examines the causes and effects of environmental pollution.
2. To examines the role of laws and policies to control water pollution.
3. To examines the role of judiciary for the control of water pollution and sustainable development.

### **1.10 Research Question**

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<sup>40</sup>Shyam and Armin, *Environmental Law and Policy in India*, Oxford University Press, New Delhi, 2001

The central question in the study is ‘whether judiciary plays an important role for the protection of water pollution?’ Also, the research tries to find an answer whether the judicial pronouncements cause awareness among the people about water pollution and the need to preserve the sanctity of water?’

### **1.11 Research methodology and methods of writing**

The study is both analytical as well as descriptive. It is descriptive in so far as it states the decisions of the court that have been considered over the years. This also presents the attitude of the Supreme Court towards judicial activism and environmental protection. It is analytical when it attempts a critique that all laws and efforts have been failed to control degradation of environment. The present research is based on secondary sources viz. reports, research articles, books, newspapers, All India Reporter, internet and others.

### **1.12 Delimitation**

Environment pollution is a very wide and complex phenomenon encompassing various dimensions. Accordingly, several issues have cropped up before the judiciary relating to environment pollution and keeping in view the limitations of time and monetary resources, it would have been difficult to study all the issues involved therein. The researcher, therefore, proposes to delimit the present study to water pollution vis-à-vis judicial activism.