



Environment, Law and the Judiciary: Reflections on the Activist Court

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Abstract

The Judiciary in India has earned the reputation as an environmentalist due to the various decisions which have been credited with changing the whole environmental protection discourse in India. The Courts have not only been helpful in limiting the environmental degradation but they have also been instrumental in preventing the reversible damage to the ecology. However, the approach of the Court has been diminishing over the last few years and it has reached to a point where the initial gains made by the Courts activism are being eroded gradually. Apart from this there is the persistent issue of the fixation of the Court with taking up the matters which garner the maximum number of headlines in the news. There is some proof for the criticism of the Court for its manifest class bias while disposing off the environmental matters where the underprivileged sections of the society are left to fend for themselves while the concerns of the affluent sections of the society are passed off as the vision of the Court for conservation. In this paper the author has tried to analyse the growth and development along with the discontents in the environmental jurisprudence of the Court. Certain course correction measures are also suggested by the author which will help in restoring the strong role being played by the Court in environment protection.

(Key Words: Environmental conservation, Judiciary, Public Interest Litigation, Right to Life)

1.Introduction

The Indian Constitution has the unique distinction of being one of the few Constitutions of the world, which makes provision for the preservation and protection of the environment.¹ Even though the original Constitution did not contain any specific provision for the protection of environment, but the Stockholm declaration and the subsequent developments in the Environmental discourse led to inserting specific provisions in the Indian Constitution for the environmental protection through the 42nd Amendment Indian Constitution. This was a watershed movement in the annals of the environmental jurisprudence in India as it displayed the deep commitment and sincerity of India towards preserving the environment.

¹ Article 48-A and Article 51-A(g) of the Indian Constitution

Unfortunately, despite these provisions, practically the environmental protection program remained relatively primitive due to the variety of factors, including the critical issue of rampant poverty in the country. As it is very often the case in India, it took an accident of enormous proportion like Bhopal Gas leakage to bring real change in the attitude of the authorities. They finally realised the folly of turning a blind eye to the menace of environmental destruction which threatens the very existence of the future generations.²

The aftermath of the Bhopal gas leakage case led to the enactment of strict laws with the avowed aim of restricting the environmental pollution in India. Despite the stringent measures enforced by these laws, the overall situation concerning the environmental conservation remained grim, and it was the proverbial case of too little, too late.³

During this phase, the Judiciary in India was silently taking up the mantle of an activist, using its (limited) powers and goodwill to bring forth a positive change in the lives of the citizens. Through its innovative usage of the Social Action/Public Interest Litigation Jurisprudence which virtually altered the Indian jurisprudence in a matter which was unthinkable for even the most ardent optimist of the Judiciary and which was unprecedented development unheard of in any part of the civilised world.⁴

2. Environmental Protection under the Constitution: An innovative approach of the Court

The bulwark of the Judicial activism has been through the twin tools. The first was relaxing the concept of locus-standi for enforcement of the Fundamental Rights, second was expanding the meaning of the term 'Life' as used in Article 21 of the Constitution.⁵ Through the latter, a plethora of rights has been read into Article 21 of the Constitution which were hitherto unknown. In contrast, the latter tool has made it simple for moving to the Courts for the enforcement of the Fundamental Rights.

This approach of the Court through which it expanded the scope of the fundamental rights was initially limited only to the essential areas of human rights like the emancipation of the bonded labour, humane treatment to under trials, payment of minimum wages to the workers and similar other places.⁶ Yet, later on, its utility found application in the environmental conservation program, which was a logical corollary of the development of the human rights jurisprudence.⁷

² Upendra Baxi, "Writing about impunity and environment: The 'silver jubilee' of the Bhopal catastrophe" *Journl Human Rights and The Environment*, 45 (2010).

³ Elizabeth Fata, "Actions and Reactions: The Evolution of Environmnetal Common Law and Judicial Activism in India and the United States", 23, *U. Miami Int'l & Comp. L. Rev.* 215(2015)

⁴ Ibid

⁵S.P. Sathe, *Judicial Activism in India, Transgressing Borders and Enforcing Limits*, (OUP, New Delhi, 2nd edn., 2002)

⁶ *National Textiles Wokers v. P.R. Radhakrishnan* AIR 1983 SC 75

⁷ *Municipal Corporation Ratlam v. Vardichand* AIR 1980 SC 1622 is perhaps the first case of Environmnet related Public Interest Litigation being entertained by Court

The lackadaisical attitude of the authorities and the industrial accidents which were a frequent feature of the period acted as a catalyst for the courts to take upon it the mantle of environmental protection which was inconceivable as per the constitutional scheme of separation of powers.⁸

The Judiciary has widened the scope of "Life" by reading into it the provisions related to the Directive Principles of State Policy under Article 47, 48-A and Article 51A(g) of the Constitution. These provisions deal with the duty of the state to safeguard public health, duty of the state to protect and improve the environment and safeguarding the forests and wildlife in the country.⁹

As a result of this approach, the Article 21 of the Constitution has now become an omnipotent right which is present in all the matters concerning the various aspects of life. Through the various rulings of the Court it includes the Right to pollution-free Ganga River¹⁰, Right to clean air in Delhi¹¹, and the Right to conserve the Taj Mahal.¹² On the one hand the Judiciary has recognised the existence of these rights within the definition of the Right to Life. At the same time, it has also directed the authorities concerned to take steps for the actual enforcement of these rights.¹³

Thus, the Judiciary has taken up the unprecedented step of stipulating new emission standards for controlling the air pollution, setting up a committee to clean up the river Ganga. It has also used its extraordinary powers for banning the use of polluting vehicles in the National Capital Region(NCR) and taken over the executive functions by directing the construction of the Peripheral highways and relocation of the industries from the NCR.¹⁴

Undeterred by the constitutional provisions regarding state it has enforced the Fundamental Rights against a private corporation indulging in the polluting the air through its operations. It has rejected the traditional notion of the Judiciary.¹⁵ It has devised novel methods like the continuing mandamus, evolved principles like 'absolute liability' for addressing the environmental problems which could not be affected by the customary laws and procedure.¹⁶

Taking a cue from the firm stand taken by the Apex Court the High Courts have also progressively expanded the scope of Article 21 of the Constitution. As per the Constitutional scheme, the range of High Courts in issuing writs is broader; consequently, in a recent case, it has conferred the juridical status on the rivers Yamuna, Ganga and the Himalayan ecosystem including the glaciers, forests etc. This decision was a unique

⁸ Cited Supra at 3

⁹ The expansion of Right to Life happened after Maneka Gandhi v. Union of India

¹⁰ M.C. Mehta v. Union of India

¹¹ M.C. Mehta v. Union of India [(1998)1 SCC 471](Delhi Air Pollution case)

¹² M.C. Mehta v. Union of India [(1997)2 SCC 353]

¹³ Raghav Sharma, "Green Courts in India: Strengthening the Environmental Governance", 4 Law EnvLI and Dev. Joul. 50(2008)

¹⁴ M.C. Mehta v. Union of India Writ Petition (Civil) No(s). 13029 of 1985

¹⁵ M.C. Mehta v. Union of India AIR 1987 SC 1086, in this case the Court did not settle the matter finally yet it directed the polluting factory to pay the compensation for the death of an advocate due to Gas leakage.

¹⁶ Ibid

innovation of the Court whereby it used its position as *parens-patrie* jurisdiction to declare them as such. Similarly, it has also decided on a plethora of issues and has passed directions ranging from illegal mining, lake water pollution, wildlife conservation, Right of indigenous forest dwellers etc.

3. Balancing the Right to Livelihood viz a viz the Right to Environment:

While initially, the Courts were limiting their environmental protection program within the outlines set by Article 48-A and 51A(g) of the Constitution. They had an inherent limitation viz the fact they were not enforceable. They only made it a duty upon the state and citizens for working for protection and preservation of environment. The Doon valley¹⁷ the case was perhaps the first time that the Supreme Court referred to Right to life and a healthy environment under Article 21 of the Constitution. However, there was another dilemma facing the Court that while ordering the closure of the limestone quarries, it will take away the livelihood of workers of the quarry. But the Court justified its decision by accepting 'it is a price that has to be paid for protecting and safeguarding the right of people to live in a healthy environment'. Thus the Court set the tone for future decisions and has clearly stated that anything endangers or impairs that quality of life, in derogation of the laws, a citizen has a right to take recourse to Article 32 of the Constitution.¹⁸

Ironically, the Court has held the Right to life as including the Right to Livelihood as well. At the same time, there is no clear answer to the question of what happens when there is clear conflict between Right to Livelihood on the one hand and the Right to healthy environment.

While in another matter¹⁹ the Court held that the Right to carry on trade and business was subject to regulations under Article 19(6) which may sometimes include a total prohibition of the work or business, in another case²⁰ Gujarat High Court decided that the Right of textile industry to carry on business with the danger to public health by discharge of dirty water could be subjected to regulations in the interest of the general public under Article 19(6).

Similarly, the Court totally overlooked the relocation of the workers of the polluting factories which were ordered to be shifted²¹ where the factories were to be relocated for creating "green lung spaces" inside the National Capital Territory of Delhi. Workers residing and working in Delhi had to suddenly face a situation where the commuting time increased overnight to 6 to 8 hours which practically forced them either to leave their jobs or their home.

¹⁷ AIR1989 SC 594

¹⁸ J. Patrick Meagher, Environmental Protection and Industries in Developing Countries: The case of India since Bhopal, 3 Geo, Envtl. L. Rev. 1, 54(1994)

¹⁹ Sushila Saw Mills v. State of Orissa AIR1995SC2484

²⁰ Abhilash Textile Mills v. Rajkot Municipal corporation AIR1988 Guj 57

²¹ M.C. Mehta v. Union of India AIR2001SC1846

In yet another similar case²², the Apex Court had evicted the informal sector labourers from public land as they were held as urban encroachers. The observations of the Court in this case, however reveal a clear class bias. The Court perhaps overlooked the fact that it has itself held the Right to shelter²³ as coming within the purview of Article 21 of the Constitution. Labourers, Vendors, hawkers etc. belong to the vulnerable sections of the society and even though they are part of the informal economy²⁴. They are citizens and hence entitled to all the protections provided by the welfare state.

An essential point amongst these decisions has been the priority given to the group rights over individuals. Thus, the Courts have given more importance to the Directive Principles over fundamental rights in most of them. In an important decision²⁵, the Court ordered the closure of the mining units, and at the same time, it observed that the obligation to the society must take precedence over the commitment to the individuals.²⁶

These decisions of the Court along with many others have brought misery and mayhem to the poorest and most vulnerable sections of the society and in many cases to maintain the aesthetic grandeur of public places and to make them "liveable" has, in fact, denied a large chunk of population right to livelihood. Even in cases of mega projects like Sardar Sarovar, the victims have surpassed the beneficiaries.²⁷

4. The Paradox of Judicial “Inactivity” in cases involving Mega Infrastructure Projects

The Courts in India have been hailed for their activism and have been feted as the "eco-warriors" by stakeholders. A closer look at the same time a closer look at the decisions of the Court paints an odd picture. The usually strict Judiciary has displayed a surprising restraint when it comes to mega infrastructural projects. Indian Judiciary has earned the reputation as the most active Court has surprisingly adopted a pusillanimous approach towards mega projects has thereby deviated from well settled principles and precedents.²⁸

In the Tehri dam case²⁹, for example, despite the differences among the expert members regarding the safety aspect of the Tehri Dam, which is located in a susceptible seismic zone, was unfortunate to put it mildly. The Court, while relying upon the Government appointed committee allowed the Government to build the Dam, and ignored international covenant regarding the precautionary principle, which is an essential facet of environmental law. Also, the Courts should have taken the report of the expert committee, which was appointed by the Government itself and therefore could not be expected to act impartially.

²² Almitra Patel vs. Union of India 2000(1)SCALE568

²³ Chameli Singh v. State of U.P., (1996) 2 SCC 549

²⁴ Bombay Hawkers' Union v. Bombay Municipal Corpn., (1985) 3 SCC 528

²⁵ Ambica Quarry Works vs. Union of India AIR1987SC1073

²⁶ This Court has not been consistent on this issue and has in subsequent cases ignored this in many cases

²⁷ Deepa BadriNarayana, "The Right to Environmental Protection: What We Can Discern from the American and Indian Constitutional Experience", 43 Brook. J. Intl. 75 (2017)

²⁸ Supra note 18

²⁹ 1990Supp(1)SCC44

Similarly, the Court did not follow the recommendations of the Appraisal committee in the case against the construction of thermal power plant at Dahanu Taluka³⁰, the appraisal committee had categorically stated that Dahanu was not a suitable place for setting up a thermal power plant. The judgment has been criticised as it allowed the blatant violation of the guidelines issued by the Government of India.

The ruling of the Apex Court in case of Narmada Bachao Andolan case³¹ was perhaps the most disappointing moment in the history of Indian Environmental Jurisprudence. A particularly disturbing aspect of this case was that the Court despite being aware of the fact that one of the states in the dispute was extremely careless in this respect directed the completion of the project as per the tribunal's award. To make matters worse for the victims, the Court did not issue any time-bound direction to the state regarding the completion of its relief and rehabilitation program.

It is indeed quite strange that the Court, on the one hand, seeks to protect the environment with missionary zeal, however, on the other hand, the Court negates the agenda of environmental protection by giving a blank cheque to the development projects. It appears that the Court tends to favour the powerful at the cost of the environment and underprivileged sections.³²

It is indeed a matter of deep concern that Court has mechanically approved mega projects like Tehri and Sardar Sarovar Dam. These projects took away not only the home of thousands of people but also their culture, tradition and history without as elementary a thing as resettlement. In the opinion of the Court the Dam would lead to much more benefit for all, whereas anti Dam activists like Medha Patkar had estimated that over 200 villages would be submerged and over million people would be rendered homeless as the human cost of the Dam.³³

The Environmental Activism of the Supreme Court of India in mega projects is a classic case of display of class bias, whereas, the concerns of the upwardly mobile segments of the society has been propagated despite pressing evidence to the contrary. An unfortunate aspect of this approach is that it neglects the strong bond between environment protection and livelihood in India the Adivasi population being a testament to the success of this program. As a result it has sometimes given decisions to the effect that environment must be protected even at the cost of unemployment and loss of revenue for the state³⁴.

³⁰ Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Limited. Bombay and Environmental Action Group v. State of Maharashtra and Others 1991(2)SCC 539

³¹ Narmada Bachao Andolan v. Union of India and Others AIR2000SC3751

³² Geetanjoy Sahu, "Implication of Indian Supreme Court's Innovations for Environmental Jurisprudence", Law Env. and Dev. Jou. 7(2008)

³³ Narmada bachao Andolan v. Union of India AIR 2000 SC 3753

³⁴ Geetanjoy Sahu, *Environmental Jurisprudence and the Supreme Court*, (Orient Black Swan, New Delhi, 1st Edition, 2014)

The Court has failed to pay adequate attention to the multidimensional aspects of these developmental activities. In these cases, the Courts have, ironically, disregarded the guidelines, issued by itself in earlier cases on the ground that these development activities involve technical and policy matters.³⁵

5. Impact of the Activist Court on the Environment

While the firm stand taken by the Court while dealing with the environmental conservation program has evoked a great deal of interest, appreciation and criticism from various stakeholders. The fact remains that the impact of the decision of the Court has been very minimal when it comes to the actual implementation of these directions issued by the Court. It should be kept in mind that the Courts stepped in due to the ineffective environmental protection laws which were out of touch with the environmental matters and hence did not adequately deal with the environmental pollution.³⁶

To overcome this lack of legal framework the Court resorted to an expansive meaning of 'life' as used under Article 21. It recognised the hitherto unknown aspects of life into Article 21 which were much more and above the standard of life which was enjoyed by the ordinary Indian citizen.³⁷ Despite the well-intentioned efforts of the Court there is an elementary issue with this broad-based approach of the Court. Judiciary is the weakest and the least powerful of all the organs of the state. Even in the USA where it enjoys final say in constitutional matters, the Courts have been frustrated by the executive on certain contentious issues. In India where the Judiciary does not even have the final say on the issues, the Court undoubtedly faces a herculean task to set the list in the absence of a compliant executive and legislature.³⁸

While taking on the legislative functions of the legislature, the Courts have tried to protect the environment in some issues. Yet, the Court has failed to realise the dangerous precedent which it is setting through such extraordinary steps. The Courts are an unelected forum, for all their good intentions they are hardly in touch with the needs and aspirations of the people. In case of discontent with the Government, people can express their displeasure in a better manner which is not possible with the Judiciary.³⁹ Moreover, due to the lack of accountability, very often they take some steps which may have huge repercussions for the executive and legislature. However, since the courts are not executive's control, therefore the brickbats have to be carried by the executive in such cases.⁴⁰

Thus, the activism of the Court has been a classic case of displaying the class bias of the Judiciary in India wherein the intervention of the Court has been strictly limited to the matters concerning the urban matters and

³⁵ Ibid

³⁶ Videh Adhyay and Armin Rosencranz, "Judicial Review of Environmental Cases, Comparing the US and India", 35 *Envtl. Pol. & Law* 46(2005)

³⁷ Ibid

³⁸ Elizabeth Fata, "Actions and Reactions: The Evolution of Environmental Common Law and Judicial Activism in India and the United States", 23, *U. Miami Int'l & Comp. L. Rev.* 215(2015) cited Supra at 3

³⁹ J. Mijin Cha, "A Critical Examination Of The Environmental Jurisprudence of The Courts Of India" 10 *Albany Law & Env'tl. Out. J.* 197(2005)

⁴⁰ Ibid

middle-upper class sensibilities. The celebrated judgments of the Court relating to the shifting of polluting tanneries, shifting of polluting industries in Delhi, the introduction of Compressed Natural Gas and other related matters have although made a positive impact on the environmental matters.⁴¹ Yet, they have invariably affected the livelihoods of the vulnerable people with scant attention being paid to the catastrophic effect which the directions of the Court will have on the people. There have been cases where the Courts have displayed remarkable sensitivity towards the vulnerable sections of the society.⁴² Yet the bigger picture tells a different story where the Courts have displayed apathy towards the weaker sections which has often took the form of hostility.⁴³

Another aspect of the activism of the Court has been of increasing the friction between the different organs.⁴⁴ It is a fact that the Courts do not have the power to make formal laws, their role is limited to the interpretation of the statutes only and not drafting of the law.⁴⁵ Yet, in the course of its journey from a passive court to an activist court, it has undoubtedly overstepped the constitutional limits set up on its powers.⁴⁶ Emboldened by the positive response it received from the people to its decisions the Court progressively increased its interference in executive and legislative functions so much so that it has gone to appoint committees, issued detailed guidelines which have had the legislative impact. This attitude of the Court has been controversial and has had a detrimental effect on the judicial discipline and Constitutional institutions.⁴⁷ The primary justification for the intervention of the Court in administrative and legislative matters is that these organs are not working properly which may be correct. Still, the Judiciary also falls in the same bracket and what applies to other organs does equally apply to it too.⁴⁸

6. Environmental Courts: Boon or Bane

Although there has been a large scale intervention of the Courts in the matters related to environment, the fact remains that the actual positive impact of the intervention of the Court in the Environmental matters is not conclusive and has often been exaggerated due to the lack of empirical data.

Despite the well-intentioned stand taken by the Courts in the matters of environmental pollution, the available data on the subject shows a worrying trend of the overall decline in the critical parameters related to the

⁴¹ Geetanjoy Sahu, "Implication of Indian Supreme Court's Innovations for Environmental Jurisprudence", *Law Env. and Dev. J.* 7 (2008), cited *Supra* at note 31

⁴² *Ibid*

⁴³ The Observations of Justice Kuldip Singh in the *M.C. Mehta v. Union of India* is an example of this approach where the slum dwellers were blamed for the crimes in the metropolitan cities

⁴⁴ J. Patrick Meagher, "Environmental Protection and Industries in Developing Countries: The case of India since Bhopal", *3 Geo. Env'tl. L. Rev.* 1, 54(1994)

⁴⁵ Although there is no strict separation of powers in India, yet there is functional separation in their broad functioning

⁴⁶ Lavanya Rajmani, "The Right to Environmental Protection in India: Many, Slips between the Cup and the Lip", *16 RECIEL* ,274(2007)

⁴⁷ *Ibid*

⁴⁸ S.P. Sathe, *Judicial Activism in India, Transgressing Borders and Enforcing Limits*, (OUP, New Delhi, 2nd Edn. 2002)

environment.⁴⁹ Although it is not possible to determine the environmental parameters in case Judiciary had not intervened in the matter as there cannot be any comparative study with and without judicial intervention to precisely study the impact.

An example of this approach is the Ganga River cleaning case where the Court has used a unique technique of continuing mandamus,⁵⁰ constituted a high powered committee and has forced the Government to spend billions of rupees on the cleanup operation of Ganga and Yamuna. The water of these two historical rivers which are the lifeline of the northern plains is deteriorating by the day, which makes one wonder about the utility of the efforts made on the cleaning up.⁵¹

Another issue which is a stark reminder of the limitations of Judiciary in the preservation of environment is the Delhi Air pollution case. The Courts have been dealing with this issue for more than three decades and have taken unprecedented steps. Despite the limited success being achieved temporarily, the air quality in the NCT has deteriorated so much that across the year it remains hazardous.⁵² During the winter season, it reaches the threshold which is unfit for any human habitation.

There have been some instances of limited success where the Courts have been successful in limiting the threat to the environment despite the perpetrator having significant influence politically.⁵³ These 'successes' have been very few and punctuated by too many cases of failure.⁵⁴

Therefore, the assumption that judicial intervention in environmental matters has been mostly successful is not supported by the facts.⁵⁵ Undoubtedly, the Courts have tried to bring about a change in environmental protection. However, these efforts have been limited due to the lacklustre attitude of stakeholders in the implementation.⁵⁶

On the contrary, there is reason to believe that the rampant activism of the Court by entertaining PIL in environmental matters and passing elaborate orders on ecological issues has been counterproductive in more ways than one.⁵⁷ It led to the framework which was not practically possible for the enforcement agencies to

⁴⁹ Videh Adhyay and Armin Rosencranz, "Judicial Review of Environmental Cases, Comparing the US and India", 35 *Envtl. Policy and Law* 46(2005) cited supra at note 35

⁵⁰ Geetanjoy Sahu, "Implication of Indian Supreme Court's Innovations for Environmental Jurisprudence", *Law Env. and Dev.* J 7 (2008)

⁵¹ J. Mijin Cha, "A Critical Examination Of The Environmental Jurisprudence of The Courts Of India" 10 *Albany Law & Env'tl. Out. J.* 197(2005)

⁵² <https://in.reuters.com/article/us-india-pollution/new-delhi-is-worlds-most-polluted-capital-for-second-straight-year-study-idINKCN20K0UT> accessed on 25th November 2020

⁵³ *M.C. Mehta v. Kamal Nath* [(1997)2SCC87]

⁵⁴ Asha B. Chelani And Sukumar Devotta, "Air Quality Assessment in Delhi: Before and After CNG as Fuel. *Environ Monit Assess* 125, 257–263 (2007). <https://doi.org/10.1007/s10661-006-9517-x>

⁵⁵ B.N. Kirpal (ed.), *Supreme but Not Infallible*, 180 (Oxford University Press, New Delhi, 2001)

⁵⁶ *Ibid*

⁵⁷ J. Mijin Cha, "A Critical Examination Of The Environmental Jurisprudence of The Courts Of India" 10 *Albany Law & Env'tl. Out. J.* 197(2005)

implement due to the costs, logistics involved. In many instances, this led to the agencies accepting the recommendations of the Court only to go back on them at the implementation stage.⁵⁸

Another major problem which has often escaped scrutiny is the complacency induced by the Judiciary in environmental matters. As noted above, the courts often resorted to passing guidelines and orders without the support of statutory enactments to fill in the void left by the inadequate laws.⁵⁹ However, this well-meaning move has become a stumbling block as it requires every Court to pass similar orders in the absence of statutory provisions which is practically impossible. Consequently, the reduction in the Court's activism has hurt the environment.⁶⁰ The Legislative and executive which had become complacent, have been struggling to fill the void left by the Court. The result of all this being the catastrophic effect of the environmental pollution increasing exponentially in India.

7. Conclusion and suggestions

7.1 Need for an Integrated approach

The judicial activism in environmental matters which has been widely used for conservation of environment has been a failure at the protection of the environment, yet there is hardly any controversy that the Court has been at the forefront of the developments related to the environment. Thus it is the considered view of the author that the Judiciary must continue to play an essential role in the conservation of environment, however, there needs to be some course correction to be made by the stakeholders. As a starting point, there should be closer coordination and cooperation amongst the Judiciary and other branches for dealing with the issue of environmental pollution holistically. Presently, there have been many instances where the Court led efforts has jettisoned due to inadequate legislation and executive action. This has unfortunately led to lopsided development in the environmental jurisprudence.

The Judiciary in India has no fixed principles as far as the protection and preservation of the environment is concerned. As discussed above the rules made by the Judiciary are hardly uniform, and mostly, they are guided by the philosophy, ideology and temperament of the particular judge concerned. There is no clear precedent which is being followed uniformly by the Courts. Of particular concern is the fact that the Courts have often displayed shocking apathy while balancing the Right to livelihood with Right to a pollution-free environment. It has given the impression that the livelihood of underprivileged people is a price which has to be paid for the environment.

This is understandable as the issue of policymaking, looking at the broader picture etc. is a task which the Judiciary is unsuited for which partly explains the dichotomy between the actions and the policy. It can easily

⁵⁸ Ibid

⁵⁹ J. Patrick Meagher, "Environmental Protection and Industries in Developing Countries: The case of India since Bhopal", 3 Geo, Env'tl. L. Rev. 1, 54(1994)

⁶⁰ Ibid

be minimised if not eliminated with the closer co-ordination between the Judiciary and other branches of the Government.

7.2 Class bias of the Court needs to be rectified

The Judiciary in India has faced the criticism of showing a distinct class bias towards certain sections of the society. Sadly, this criticism is well-founded; the Courts have looked at the problems of environment from the viewpoint of the privileged class. Thus, there is a clear pattern visible to anyone interested in environmental issues. While the Courts tend to issue strict directions which often have a catastrophic effect on the lives of the underprivileged sections of the society, however, these decisions are perfectly aligned with the corporate interests.

The issue of mega projects by the Court is an area which is the clear manifestation of the class bias displayed by the Court whereby the Courts have always upheld the clearance given to the mega projects despite being strong evidence against the approval. There appears to be a self-imposed limit by the Judiciary that it will not venture into those areas where the infrastructure etc. is involved. Worryingly the Courts are inconsistent in applying these principles.

Nobody can deny that these projects have an essential place in a developing country like India. Yet, one fails to see the Judiciary even trying to be objective while dealing with the matters related to the environmental issues. The Court has consistently rejected the challenges to them; the zeal for protection and preservation of the environment never prevents the megaprojects. Another pattern which has emerged from the cases decided by the Court is that it has taken a pusillanimous approach towards environmental protection when the matter has involved the religious institutions and organisations.

One wishes that the Judiciary would do a course correction and would evolve a uniform policy to protect and preserve the environment. Presently, the environmental "activism" of the Courts, is reduced to being a lottery where the issue at hand is sure to be decided uncertainly.

7.3 Strengthening the National Green Tribunal

Finally, the role of the National Green Tribunals and the various High Courts needs a review in environmental matters. These august bodies, particularly the High Courts, are robust institutions with long-established traditions and Constitutional status which must be used for the better preservation of the environment. Unfortunately, due to a series of developments, these institutions have been playing a minimal role in environmental protection which is disappointing. The proper ecological management requires the effective and balanced disposal of environmental disputes. It is impossible to manage the ecological matters without the adequate support from the NGT and the High Courts if appropriately used these institutions can be the panacea for the environmental issues and can be a model for other developing countries to follow.

It is a sincere hope that all these steps can help in the improvement of the environment and conserving the common heritage of humanity, which we are duty-bound to preserve for the next generation of humans.

