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Constitutional and judicial perspectives on environment protection

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Abstract
Public Interest litigation has played a vital role for protecting and preserving environment. According to the court, life, health and ecology have greater importance to the people than the loss of revenue and employment. The conservation of forests and wildlife and reduction of pollution levels are vital components of such consideration of social justice.

Keywords: public interest litigation, environment protection, judicial activism

1. Introduction
Judicial activism may be taken to mean the movements of the judiciary to probe into the inner functioning of the other organs of the government i.e,. The Executive and the Legislature. It is the function of the Legislature to make law and of the Executive to implement the law but both the organs have failed to discharge their functions satisfactorily. In such circumstances, it is not the power rather duty of the judiciary to uphold the Constitution and compel other organs of the government to discharge their functions effectively. The Supreme Court, being the guardian of the Constitution, cannot remain mute spectator [1]. More to say, the concept of judicial activism is based upon rule of law, which is based upon the principles of freedom, equality, non-discrimination, fraternity, accountability and non-arbitrariness [2]. It has rightly been said that to safeguard the rule of law, on the foundation of which the super-structure of democratic edifice rests, judicial intervention becomes need of the hour. Development of the Public Interest litigation (PIL) has also provided significant assistance in making the judicial activism meaningful. The Strategy of PIL was devised for increasing citizen's participation in the judicial process for making access to the judicial delivery system to one, who could not otherwise reach court for various reasons. Thus, any member of the Public having sufficient interest can maintain an action for public injuiry [3].

2. Growth of public interest litigation
Since more than Four decade, Public Interest Litigation (PIL) has played a vital role by which belonging to all walks of life and especially the down-trodden are getting social justice from the Supreme Court as well as the High courts. Introducing the PIL concept in the case of *Ratlam Municipal Council* v. *Vardhichand* [4] case, Justice Krishna Iyer observed that social justice is due to the people and therefore the people must be able to trigger off the jurisdiction vested for their benefit to any functioning. He recognized Public Interest Litigation as a constitutional obligation of the Courts. In the case *S.P. Gupta* v. *Union of India* case [5], Justice P.N. Bhagwati says: procedure being merely a handmaiden of justice it should not stand in the way of access to justice to the weaker section of Indian humanity and therefore, where the poor and the disadvantaged are concerned this court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or social action group acting pro bono public would suffice to invite the jurisdiction of this court. Thus, the courts through PIL, have recognized not only taxpayers' or consumers' standing economic or uneconomic interests but also standing in citizens' groups concerned with protection of natural environment, vehicular industrial pollution [6], negligence in management of solid waste, construction of large projects and increasing deforestation [7].

3. Environment protection under the constitution
From the *Vedas, Upanishads, Smrites* and other ancient literatures we find that man lived in complete harmony with nature. From the ancient scriptures of Hindu religion one learns that the people gave so much importance to trees, plants, wild lives and other things of the nature that they developed a long tradition of protecting and worshipping nature.
The earth has all along been considered as "Goddess Mother" in the ancient scriptures and revered for its immense potential of preserving, protecting sustaining all creatures including human being on it. It is a matter of great surprise that in spite of such a rich reverence shown to the earth and its environment, our constitution as enacted and adopted in 1949 hardly averred to natural environment.
Therefore, following the U.N. Conference on the Human Environment held at Stockholm, Sweden, in 1972, the Constitution of India was amended by the 42nd constitutional amendment and the subject of "ecology and environment" was incorporated for the first time through articles 48A and 51A(g). By incorporating article 48A in part IV of the Constitution, which contains the directive principles of state policy, the state has been given the constitutional mandate to protect and improve the environment and to safeguard the forest and wildlife of the country. Since the principles laid down in the part IV of the Constitution are fundamental in the governance of the country, therefore, it has been now the constitutional duty of the state to deal with the matters relating to environment, forest and wildlife of the country. The 42nd constitutional amendment did not confine the constitutional obligation to protect and improve environment only in the hands of the state but brought the obligation down to the level of the citizens also by incorporating article 51A

(g) in a newly introduced part, namely part IV-A of fundamental duties. This amendment is considered to be a revolution, as it was not only first of its kind in constitutional history expressing concern for environment and its protection, but it also accorded recognition to Buddhist and Gandhian environmental ethics, as article 51A(g) made it a fundamental duty for all the citizens of India not only to protect and improve the natural environment but also to have compassion for all living creatures. Another significant aspect of articles 48A and 51A (g) in spite of the non-enforceability in the court of law of the provisions of part IV of the Constitution, articles 48A and 51A (g) are being interpreted by the judiciary in such a way in the background of the public trust doctrine that the judiciary is striking down the governmental orders, decisions and legislations which are inconsistence with the provisions of these articles.

4. Right to environment and judicial action

Our Apex court after Maneka Gandhi [8] case, which deals with the human right relating to life and personal liberty, has given birth to new environmental jurisprudence through its judicial activism that right to life includes light to clean and healthy environment. The Supreme Court relying on the international concept of sustainable development i.e. inter-generational equity [9], which calls upon the state to bear solemn responsibility to conserve and use environment and natural resources for the benefit of the present and future generation.

Similarly, another principle that emanates from the concept of sustainable development is that economic and industrial developments must accommodate environmental protection. The Supreme Court relying on this principles ordered closure of certain mines that caused environmental damage in *Doon Valley* [10]. In *Ganga Pollution* [11] case also the apex court relying on the same principle ordered the closure of tanneries and held that though the leather industry brought much needed foreign exchange for the economic development of the country this should not be allowed at the cost of environment. According to the court the life, health and ecology have greater importance to the people than loss of revenue, employment etc.

The apex court has through judicial activism expanded the scope of article 32 and is utilizing it for fashioning new strategies for protection of environment. For example, the precautionary principle and polluter pays principle, which are offshoots of the concepts of sustainable developments, are being applied by the courts in the context of protection of environment by utilizing article 32 in appropriate proceedings.

Therefore, to prevent degradation effect on environment and ecology the court has applied the precautionary principle according to which the state and statutory authorities must foresee and prevent all the clauses of environmental degradation by taking appropriate measures. Further, according to this principle it is always the burden of the industrialist to show to the state authority that his industry will be environmentally safe and not harmful [12].

The polluter pays principle has already been utilized by the Supreme Court in several cases [13]. To do justice to both the environment and the victims of environmental pollution. According to this principle the remediation of the damaged environment is part of the process of sustainable development and as such the polluter is liable to bear the cost of reversing the damaged ecology as well as the cost of the sufferer. This philosophy of 'public trust' [14] finds place in our constitutional commitments and our judiciary is committed to upholding the same. This is precisely why judges are frequently called on to weigh individual interests on the scales of social justice. The conservation of forests and wildlife, as well as the reduction of pollution-levels are vital components of such considerations of social justice. It is on account of these considerations that the higher judiciary must continue to play a vigorous role in the domain of environmental protection.

Therefore, it will not be exaggeration of fact that the global movement on protection and improvement of environment has brought upon a profound effect on the constitution and the Judiciary in India. As we know that environmental degradation is not a national problem rather it is an international problem and environmental pollution is not confined to any territorial jurisdiction of a country rather it has trans-boundary effect causing environmental harm in other countries.

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