

ROLE OF DISTRICT JUDICIARY IN IMPLEMENTATION OF ENVIRONMENTAL LAW

ENVIRONMENTAL & NATURAL RESOURCES PROTECTION:
ROLE OF DISTRICT JUDICIARY
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(Enhancing a Pro-Active Judicial Role in Environmental Protection)

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Introduction:-

1. The earth's atmosphere is a common heritage. The environmental issues, take into account the human being, and not the State as a unit. It is a global issue. The Stockholm declaration recognized that man is the part of nature and life depends on it. U. Thant, the Secretary General, United Nations, in Stockholm Conference appealed: *"Like or not we are traveling together on a common planet and we have no national alternative but to work together, to make an environment in which we and our children can live a full and peaceful life"*.

2. The declaration in the United Nations conference, on human environment from 5th to 16th June, 1972, considered the need for a common outlook for common principles to inspire and guide the people of the world in the preservation and enhancement of human environment. The long and tortuous evolution of the human race was not possible without rapid acceleration of science and technology. The man has achieved the ability to transform his environment in countless ways and on an unprecedented scale. This power if used wisely can bring benefits of development and opportunity to enhance the quality of life. The wrong application on the other hand can do incalculable harm to human beings and human environment. The members to the declaration felt that millions continue to live far below the minimum level required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. The industrialist countries pose gigantic environmental problems. The natural

growth of population on preservation of environment. With the people as the most precious commodity in the world and their progress, social wealth, with development and science and technology continue to transform human environment. The members felt that a point has reached when we must shape our actions with a more prudent care for environmental consequences for achieving for ourselves and our posterity, a better life in an environment, more in keeping with human needs. What is needed is an enthusiastic but calm state of mind. The freedom should not be misused for manipulating environment.

3. The declaration proceeded to declare the principle: State of common conviction that the man has fundamental right to freedom, equity and adequate conditions on life permitting life of dignity and well being and bears solemn responsibility to protect and improve the environment for present and future generations. The natural resources are common to all and must be safeguarded for the benefit of present and future generations. The capacity of the earth to produce vital renewable resources must be maintained and wherever practicable restored and improved. The discharge of toxic substances and the release of heat in the quantities and the concentration should not exceed the capacity of the environment to render them harmless. The states should take positive steps to prevent pollution of the seas by substance hazardous of human health, living resources and marine life. The economic and social development is essential. It should however be such that would not adversely affect the present or future development potential nor should hamper attainment of better living condition for all. The resources must be made available to preserve and improve the environment. A rationale management of resources should be ensured to make development compatible with a need to protect and improve the human environment for the benefit of the population. The planning should be rationale, to avoid adverse effect on environment and obtaining maximum social economic and environmental benefits. Science, technology and education should be applied for identification, avoidance and control of environmental risks.

4. The club of Rome and the historic Rio Declaration in the Earth Summit in 1992 on 6th June, which is celebrated as 'World Environment Day' every year, recognized that the States should cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of earth's eco system. The summits recognized the principles of '**Sustainable Development**', as a **balancing concept of development and ecology**. It

was found that human desire to progress cannot be restricted, but has to be controlled by preserving the biosphere. The '**Precautionary Principle**', reversing the burden of proof; the '**Polluter Pays**', putting the burden of cost of compensation as well as restore the injury to environment, on the polluter, and the '**Public Trust Doctrine**', declaring that nature's resources are common to all, are the essential features of sustainable development.

Environmental justice:-

5. Kautilya, the Prime Minister of Magadh, during the regime of Chandra Gupta Maurya, 300 B.C. in his 'Arthshastra' exhaustibly dealt with the question of environment protection. He laid down the rules for protection and upgradation of environment minutely, meticulously and with great details. Mauryan King Ashoka depicted exemplary compassion for wild life and prohibited killing of certain species of creatures.

6. We find preaching of compassion towards nature in all religions. "Don't make mischief in the earth" says holy Quran. Gautam Buddha's religion was based on experience and logic. He believed on evolution of man. In the contemporary period Sikhism teaches that the life is made of five basic elements i.e. earth, air, water, fire and sky. The colonial rule, however, disregarded ancient prudence, cultivated ruthless intelligence to exploit environment for their material gain. The legacy of imperialism and colonialism, concealing a sense of ownership over environment, propagated its consumption for wealth. Growth of industrialization, and lack of awareness to handle the fast pace of development, has brought into focus many environmental issues and in its response environmental legislations.

7. The Wild Life (Protection) Act, 1972, the Water (Prevention and Control of Pollution) Act, 1974, the Forest (Conservation) Act, 1980, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the National Environment Tribunals Act, 1995, the National Environmental Appellate Authority Act, 1997, the Biodiversity Act, 2002 etc. along with the Rules, Regulations and Notifications under these acts have provided regulatory measures, 'the Hard Law' mostly in response to the treaties and conventions, 'the Soft Law', signed by India. These special acts have supplemented the provisions of Indian Penal Code, 1860 in Chapter XIV of offences affecting the public health, safety, convenience, decency and morals; the Criminal Procedure Code, 1973; the Easements Act; the Civil Procedure Code and other such antiquated legislations.

8. **‘Public nuisance’**, though difficult to be defined, is provided in Section 268 IPC to be any act of a person guilty of illegal action, 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 causes injury, obstruction, danger or annoyance to persons, who may have occasion to use any public right. The Food Adulteration Act has supplemented Sections 272 and 273 IPC providing for punishment for adulteration of food and drink intended for sale, the Drugs and Cosmetics Act has supplemented Sections 274 and 275 providing punishment for adulteration of drugs and sale and misbranding of adulterated drugs. The Water (Prevention and Control of Pollution) Act, 1974, extends the provisions of Section 277 IPC providing for punishment for fouling water of public spring or reservoir and the Air (Prevention and Control of Pollution) Act, 1981 expands Section 278 IPC providing for punishment for making atmosphere noxious to health and enhance the punishment. The Motor Vehicle Act, makes special provisions dealing with compensation in respect of death and injury arising out of rash driving or riding on public way, made an offence under Section 279 IPC. The Poison Act and the Explosives Act are special acts extending offence under Section 284 and 285 IPC and the Factories Act, defines and provides for enhanced punishment for offences, which were till then punishable under Section 287 IPC. Section 290, stands apart for all such public nuisance in cases not otherwise provided for:-

“290. Punishment for public nuisance in cases not otherwise provided for:- Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

291. Continuance of nuisance after injunction to discontinue:- Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.”

9. The growth of environmental jurisprudence in India was slow but steady. First of these cases, which is still the Magnacarta of the environmental jurisprudence for recognition of public right to decent living was treated in **Municipal Council, Ratlam Vs. Vardhichand, AIR 1980 SC 1622**. Justice V.R. Krishna Iyer in his inimitable style, affirmed the Trial Court’s order upheld by the High Court, directing under Section 133 CrPC to abate the nuisance of a foul drain flowing in between the city with the filth and stink and discharge from the alcohol plant. He justified the exercise of

powers by the Magistrate under Section 133 to go and take action wherever there is public nuisance, invoking the duties of the Municipal Council and held:-

“Public nuisance, because of pollutants being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law. Likewise, the grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature’s pressure, bashfulness becomes a luxury and dignity a difficult art. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self governing bodies. Similarly, providing drainage systems- not pompous and attractive, but in working condition and sufficient to meet the needs of the people- cannot be evaded if the municipality is to justify its existence. A bare study of the statutory provisions makes this position clear.

This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by S. 188 I.P.C. Therefore the Municipal Commissioner or other executive authority bound by the order under S.133 Cr.P.C. shall obey the directions because disobedience, if it causes obstruction or annoyance or injury to any persons, lawfully pursuing their employment, shall be punished with simple imprisonment or as prescribed in the section.”

10. The recognition and growth of Public Interest Litigation has become a catalyst for environmental justice. In **Rural Litigation and Entitlement Kendra, Dehradun, AIR 1985 SC 652**, the Supreme Court recognized imbalance of ecology and hazard to healthy environment due to working of lime-stone quarries. In **Sachidanand Pandey, AIR 1987 SC 1109**, the Court recognized society’s interaction with nature and the environmental question affecting the humanity. The Supreme Court observed:-

“Industrialisation, urbanization, explosion of population, overexploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of multitude of animal and plant species for economic reasons and sometimes for no good reasons at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oases, he is also leaving behind deserts in the place of oases. In India, as elsewhere in the world, uncontrolled growth and consequent environmental deterioration are fast

assuming menacing proportions and all Indian cities are afflicted with this problem.”

11. In **Shriram Foods and Fertilizer Industries and another, AIR 1987 SC 965**, the leak of olium gas from one of the units of the company affecting several persons including one Advocate practicing in Court, who had died, the Supreme Court awarded costs and directed remedial measures.

12. In **M.C. Mehta Vs. Union of India, AIR 1988 SC 1115**, the reckless discharge of untreated sewage in river Ganga by a riparian owner was sought to be checked with several directions issued to clean the river. **The Bhopal gas leak disaster case** woke up the entire country to the threats of environmental degradation and loss of life. The right of compensation to the victims, invoking “*parens patriae*” doctrine was invoked. The State was directed to assume the role of a parent protecting the rights of the victims and then claiming compensation from the negligent corporation.

13. In **Tarun Bharat Singh, Alwar, AIR 1992 SC 514** the right of the government and private persons over forest land were curtailed to protect wild life, and mining operations were stopped.

14. The **Vellore Citizens Welfare Forum, AIR 1996 SC 2715** is landmark decision recognizing ‘Sustainable Development’ as answer to balance development with ecology. The Supreme Court accepted the concept, which came down for the first time in Stockholm Declaration of 1972 and then in 1987 by the World Commission on environment and development in its report called “Our Common Future”. The Commission chaired by the then Prime Minister of Norway Ms. G.H. Brundtland, came out with a document called “Caring for the Earth” a strategy for sustainable living and the earth summit in June, 1992, deliberating and chalking out a blue print for survival of the planet signed by 153 nations. In Vellore Citizens case, monitored by the Supreme Court for five years, the pollution caused by Tanneries in the State of Tamil Nadu discharging untreated effluent into agricultural fields, roadsides, water-ways and open lands was confirmed through various reports and National Environment Engineering Research Institute, Nagpur (NEERI). Accepting the principles the Supreme Court held:-

“The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48A and 51A(g) of the Constitution are as under:-

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health- the State shall regard the raising

of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48A. Protection and improvement of environment and safeguarding of forests and wild life- the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

51A(g). To protect and improve the natural environment including forests, lakes rivers and wild life, and to have compassion for living creatures.”

15. The Court directed the Central Government to constitute an authority under Section 3 (3) of Environment (Protection) Act, 1986, to monitor the implementation of the treatment plants, close the industries, which did not take any steps for installation of treatment plants, impose fine on the tanneries for delay in installations of treatment plants and set up ‘Environment Protection Fund’ for compensating the affected persons identified by the authority. It also approved the standards for ‘total dissolve of solids’ recommended by NEERI.

16. The long line of cases, thereafter, regulating shrimp culture industry in the ecologically fragile costal areas in **Gopi Aqua Farms, AIR 1997 SC 3519**, and **S. Jagannath Vs. Union of India, AIR 1997 SC 811**; protecting Taj Mahal from pollution by the foundries in Agra in **M.C. Mehta Vs. Union of India, AIR 1999 SC 734**; directing the Pollution Control Board regarding proper search of effluents in Lagoons in Re: **Bhavani River-Sakthi Sugars Ltd., AIR 1998 SC 2059**, controlling vehicular pollution in Delhi by use of CNG and phasing of old vehicles in **M.C. Mehta Vs. Union of India, AIR 1999 SC 291**, protecting Yamuna river in News Item ‘Hindustan Times’ A.Q.F.M. Yamuna, **AIR 2000 SC 3510**; regulating solid waste disposal and cleaning of metropolitan cities in **Almitra H. Patel, AIR 2000 SC 1256**; imposing exemplary damage for restoration of environment and ecology on construction of Span Hotels Private Ltd. on Beas river in **M.C. Mehta Vs. Kamal Nath, AIR 2002 SC 1515**; banning smoking in public places in **Murli S. Deora, AIR 2002 SC 40**, protecting cubban park at Bangalore in **Bimal L. Desai, AIR 2003 SC 2246** and enforcing the Forest (Conservation) Act, 1980 in **T.N. Godavarman Thirumulpad** in a series of orders, and many such matters have firmly established the environmental jurisprudence in India.

17. More recently the Supreme Court invoked the ‘public trust doctrine’ evolving methods for arriving at ‘Net Present Value’ to be paid by the State

of the diversion of forest land to non-forest use to be paid to Compensatory Afforestation Fund Management and Planning Agency (CAMPA) in **T.N. Godavarman (87) 2006 (1) SCC 1**; issued directions for disposal of imported contaminated waste oil in **Research Foundation For Science (21) 2005 (13) SCC 675**; rationalized the meat export promotion policy and regulation of abattoirs in **Akhil Bharat Goseva Sangh (3) 2006 (4) SCC 162**; and intervened in town planning (DCR 58) providing for conversion of large open lands of cotton mills in Mumbai for public housing, balancing ecological factors on the principles; of 'Sustainable Development' in **Bombay Dyeing Mfg. Co. Ltd. (3) Vs. Bombay Environmental Action Group (2006) 3 SCC 434**.

18. In the State of U.P., the unchecked, unplanned urbanization, almost total lack of sanitary conditions, over flowing drains, obstruction to public pathways, public lands, encroachment of parks and playgrounds, lack of public conveniences, lack of organized and scientific removal of waste, lack of sewage management, lack of facilities of disposal of hospital, bio-medical and chemical waste, contamination of food articles, lowering water tables, vanishing green belt and other such Eco violations, call for an urgent legal action and judicial response. These are Socio environmental issues, which must be addressed to by the judiciary at District level. The competent authorities, Law Enforcement Agencies and the Members of Subordinate Judiciary responsible for administration of law cannot sit back and be unresponsive to the public duty reposed on them by Constitution of India. There is an urgent need to address issues of environmental justice at local levels.

19. There is a common feeling in legal fraternity that the laws do not provide for sufficient measures to deal with these issues at local units and they look forward to the response from High Court and Supreme Court. This feeling is not justified. They have ample powers under the existing provisions of law, both substantive and procedural, to deal with these issues. Sections 133 to 144 in Chapter X of the Code of Criminal Procedure, provide for procedure to deal with public nuisances and urgent cases of nuisances and apprehended danger. Section 133 deals with issuing conditional orders in case of injuries to the health or physical comfort of the community by any trade and occupation or by regulations of any goods or merchandize. Section 144 has a potential of providing immediate prevention and speedy remedy in response of danger to human life, health or safety. This Section is utilized mostly in cases of disturbances of public peace and tranquility. Its full

potential has not been realized in environmental matters. The Ratlam Municipality case arose out of an order under Section 133 of Code of Criminal Procedure. The Supreme Court emphasized that the powers are public duties to the members of public, who are victims of nuisance.

20. A misgiving in the judiciary that the special legislations like the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 have impliedly repealed, Section 133 of the CrPC was cleared by the Supreme Court in **State of M.P. Vs. Kedia Leather and Liquor Ltd., AIR 2003 SC 3236**. It was held:

*“While as noted above the provisions of Section 133 of the Code are in the nature of preventive measures, the provisions contained in the two Acts are not only **curative** but also **preventive and penal**. The provisions appear to be mutually exclusive and the question of one replacing the other does not arise. Above being the position, the High Court was not justified in holding that there was any implied repeal of Section 133 of the code. The appeals deserve to be allowed to the extent indicated above, which we direct.”*

21. The Panchayats, Municipalities and Municipal Corporations, owe a duty to its citizens, to provide clean environment for human development. U.P. Panchayat Raj Act, 1947 provide for land development, minor irrigation, water and water-shed management, social and farm forestry, drinking water, medical sanitation, planned economic development, preservation and maintenance of community assets. A yearly development plan has to be submitted by every Gram Panchayat to Kshhetria Panchayats. These Panchayats have powers in respect of maintenance of public streets, waterways and to prevent pollution of water resources and to improve sanitation. The U.P. Municipalities Act, 1916 provides in Chapter VII for construction, alterations of public drains, enforcement for drainage connection, removal of projection and obstructions over streets and drains, cleaning – cesspools, dust bins, filthy buildings and lands and saving water resources from bathing and washing, disposal of dead bodies etc. By 73rd Amendment Act, 1992, amending Constitution of India, the Panchayats and Municipalities have become part of the Constitution of India. The powers, authorities and responsibilities of Panchayats and Municipalities have been expanded to propose plan of economic development and social justice and to implement schemes given in XI Schedule and XII Schedule respectively. These Schedules enumerate subject which are closely related to Environmental issues. These powers subject to legislation, authorize the local authorities to maintain ecological balance along with development.

22. The District Courts can also address to these issues while enforcing individual rights and duties. The environmental matters are often mixed up in deciding the individual or collective rights. One such example can be found in the case of **Hinch Lal Tiwari Vs. Kamla Devi (2001) 6 SCC 496**. The Gaon Sabha allotted a part of land including village pond, which was filled up with silt by passage of time. In hearing an application for cancellation of allotment the Additional Collector found that the plot was recorded as 'Pond', and thus the allotment was cancelled. The Commissioner dismissed the revision. The High Court partly cancelled the allotment. Relying upon Section 117 (1) (vi) of the U.P. Zamindari Abolition and Land Reforms Act, 1951, which vests tanks, ponds, private ferries, water canals, pathways and abadi sites in Gaon Sabha, the Supreme Court held that material resources of community like the above, maintain delicate ecological balance. They need to be protected for proper and healthy environment, to enable people to enjoy a quality life, which is the essence of the rights guaranteed under Article 21 of the Constitution of India. The Revenue Authorities after taking notice, that the pond is falling in disuse should have bestowed their attention to develop the same to prevent ecological disaster, and to provide better environmental for the benefit of public at large.

23. In the suits for injunction, representative suits under C.P.C. to protect local environment, the trial courts can insist upon maintenance of balance in environmental issues. Before granting injunction in property matter, the courts can insist on the development plan of the house or locality. In the matters of drainage the courts can ensure that the ultimate course of effluent is connected to proper drainage. The Courts can also ensure that the regulatory measures provided under the environmental legislation are complied with by the plaintiffs and defendants before granting any relief. In property disputes, relating to urban and rural properties, while granting injunctions, the courts must issue directions to safe-guard green belt, preserving trees and plantations and for strict compliance of Municipal Laws. Directions can be issued to Panchayats, Municipalities and Local Bodies to comply with environmental obligations. Public nuisance to human life, and health can be prevented by the procedures under Code of Criminal Procedure, and its violation punished under Sections 188, 268, 277 and 278 of Indian Penal Code. Courts have to be careful and cautious in Food Adulteration Cases for recurrence of offences. A vigilant and responsive judiciary can create a great

impact on the local environment. These issues cannot be left to be taken care only by High Court or Supreme Court.

24. The subordinate courts, given the judicial activism and dynamism can take special advantage in dealing environmental matter. Public Interest Litigation, social action and pro-bono process can be entertained under Section 91 of the Code of Civil Procedure, 1908. The Section is quoted as below:-

91. Public nuisances and other wrongful acts affecting the public-

- (1) In the case of public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief, as may be appropriate in the circumstances of the case, may be instituted,-
 - (a) by the Advocate-General, or
 - (b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.
- (2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

25. The subordinate courts, have sufficient power and jurisdiction, which should be used with comprehensive knowledge of law, relating to environmental matter and the motivation to use the jurisdiction for public good. A trial Judge can better appreciate the local environmental matters and can ascertain the environmental damage, effectively through local commissions. Witnesses can be examined and questions of fact can be determined and adjudicated at local levels. There is no dearth of legislation and the case law, relating to environmental issues. What we require is a proper understanding of the legal system and the remedies, which can deliver environmental justice.

26. In attempting any mater touching environment the courts should be cautious. Their approach should be to create a balance between development and environment. An objective criteria must be adopted to be the basis of the decision. Such a criteria can be fixed only by understanding, the cause of pollution, the effect which it is likely to cause on environment, the legislation which deals with such issue and a careful manner of reducing the impact of such pollution.

27. Every Judge has an opportunity to enforce environmental laws. Even if the environmental cases do not directly come to his Court, his concern for environment can bring a tremendous change.

Access to Environmental justice:-

28. The right of access to justice is characterized as the most fundamental of all the fundamental rights. The Universal Declaration of Human Rights mandates in Article 10 that, “everyone is entitled in full equity to a fair and public hearing by an independent and impartial Tribunal, in the determination of his rights and obligations and any criminal charge against him.”

29. Our society is founded upon rule of law. If the people without using force or trying to obtain extra legal remedies, approach the Court of law for redressal of their grievance, the Courts must ensure that they have real and effective access to the remedies. At present our Courts are overburdened with pending cases called 'arrears'. There is acute shortage of Judges in the country. At present there are 3.5 million cases pending in different High Courts and 25 million cases pending before subordinate Courts. With only 26 Judges in the Supreme Court, 719 in High Courts with 198 vacancies and 13204 Judges in subordinate Courts with 2101 vacancies, and with ratio of 10.5 Judges per ten lacs people as against 50 in developed countries, the judiciary is extremely hard pressed, to respond to the people of the country. With the expansion of rights, with little emphasis on duties there is increase in legal actions making it increasingly difficult for the Courts to deliver timely justice. The Courts have, however, evolved methods like class action suits, representative suits and public interest litigation to overcome the problem of accessibility. The strict requirement of locus has been relaxed. The Apex Court has also ventured to create new rights for the citizens through progressive interpretation of constitutional provisions. Right to travel, right to privacy, right to fair trial, right against torture and custodial violence, right to free legal aid, right to health care, right to safe drinking water, right to quality life, women's right against sexual harassment, right to work, and right to environmental protection (M.C. Mehta Vs. Union of India, AIR 1997 SC 734), amongst others have been recognized and have flooded the Courts. The achievement of environmental justice through the existing judicial system has become a mirage.

30. For the common man faced with might of industries and multinationals on violations of environmental rights, the access to environmental justice through local Courts has become more relevant. The strict regulation of environmental legislation mostly borrowed from west, and the end product of treaties and conventions, without local concerns has

simultaneously raised many human rights issues. The same brave women in Uttranchal, who saved their forests by 'Chipko Movement', are not allowed to use forest on the declaration of Nanda Devi Biosphere Reserve in Uttranchal. The air and water legislations are more concerned about resource degradation and resource access, soil erosion, declining water tables, toxics and pesticides than the local concerns. The public good and public concerns have often driven away more people from homes to be 'environmental refugees'. Gadgil M. Guha, R. 1995, 'Ecology and Equity' have appealed for more pragmatic approach to these issues calling "think Globally-act locally". The concern of tribals, local communities, and traditional trade is forgotten by the enforcement authorities. Many trades employing lacs of artisans have died, to save rivers, forests and wild life. The dyers of cotton sarees at Vrindavan; tanners in Tamil Nadu and Jajman at Kanpur; stone crushers around Delhi; weavers at Bhadohi, tribal fishermen in Madhya Pradesh, the displaced persons of the catchment areas of large dams like Narbada and Tehri, are knocking at the doors of the Courts to reverse actions on environmental law enforcement, seriously interlinking human right concerns with environmental issues. The Courts have a greater role to play in these areas.

31. The superior Courts may have, led the path by adoption of techniques of investigation, enquiries and remedial actions through Public Interest Litigation, the local Courts still feel helpless in providing remedies to the common citizens.

32. A close look on various legislations would go to show that in each case the complaint has to be filed for violation of environmental rights created under these special acts by competent authorities, who many at times are violators of these rights. The common man does not have access to the records and reports, and is mostly left alone in the fight for causes, which trouble him the most. The financial power of the violators of environmental rights, is frightening. Their reach extends to even stalling the legislation, like in the case of the Central Government dilly-dallying with the 'central food standards'. In the scenario, the local Courts have doubts in giving orders and their implementation even for small violations like pollution of drains and *nalas*, noise pollution, removal of bio-medical waste or dumping of toxic wastes by industries and slaughter houses.

33. It is surprising as to why the power under Section 133 is still left with Executive Magistrates, when most of them, are on many occasions administrators of the municipal bodies. Are they required to issue orders

against themselves? These powers should be entrusted to Judicial Magistrates, with greater sense of responsibility, judicial temperament, independence and accountability.

34. It took more than 10 years for the Central Government to constitute authorities under the Environmental (Protection) Act, 1986 and that too only after the reminders given by the Supreme Court in Vellore Citizens Welfare Forum case. It took 16 years for a petition filed in Supreme Court to complete the investigation, surveys to protect Taj Mahal and to establish a Taj Trapezium. The directions to install cupolas on iron foundries has not been realized so far. The Apex Court had taken up the issue of cleaning Ganga in 1988 with little success. The air pollution caused by increasing automobiles in Delhi took about six years of persuasion with threats to the Delhi Government to convert all the public transport to CNG.

35. The subordinate Courts not only require knowledge and expertise, to deal with environmental issues but also sensitivity and courage to pass the orders and to get them executed. The access to environmental justice, is an issue, which requires serious thought.

Conclusion:-

36. The environmental justice, is part of socio-economic development of the society. The superior judiciary has made tremendous progress in distributing environmental justice. The orders passed by the Supreme Court have provided healing touch to many and even those, who are residing in remote places in hills, coastal areas and forests. The Courts, however, are not the forum to solve all environmental related challenges in the country. Judiciary has to be equipped with creation of additional capacities to deal with the whole gamut of environment related issues. Only the trained and motivated judges can take correctional measures and help in distributing environmental justice with human element, fairness and compassion. To that extent every court in the country should be turned into environmental court, for environmental actions.
