THE EVOLVING DIMENSIONS OF NATIONAL SECURITY IN INDIA

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ABSTRACT
The term “security”, according to Cambridge Dictionary, means “freedom from danger and threat”. The word security, prima facie, arouses the notions of military security, arms, defence forces, etc. in a reader’s mind. However, this word has wider notions. For humans to be secure and safe, it is essential to safeguard the environment as well.

In the twenty first century, the ruthless drive for economic and technological advancement and global climate change do pose a serious threat to the environment. Keeping the environment safe and intact is essential to prevent various natural disasters and to safeguard the mankind. These notions do find a place in various international conventions as well.

A substantive number of international conferences and summits have been organized on the agendas of environment security and sustainable development. The United Nations has also endorsed these principles.

In India, there are a number of laws and institutions entrusted with the responsibility of maintaining environment security. The notions and dimensions of environment security in India have varies across different spans of time. This article attempts to make a study of the evolving notions of environment security in India, from 1947-2020.

This article has been divided into five chapters. The first chapter analyzes the weak and disparate environmental statutes in India, immediately after independence. It also covers the Stockholm Conference and the lessons learnt from it. The second chapter makes a study of the Bhopal Gas Tragedy, how it exposed the weaknesses of existing environment laws in India and the approach of the government and the judiciary in the context. The third chapter covers a landmark event in the field of Indian environment jurisprudence, The Oleum Gas Leak. The fourth chapter analyzes the relation between the judicial activism and the development of environment jurisprudence in India. The last chapter makes a study of various events that took place in 2020, which do give rise to several concerns related to environment security.

INTRODUCTION
The word environment refers to the natural world in which humans, animals and plants live. Amongst humans, plants and animals, the most frequent intruders of the environment are humans. Humans, in their endeavour to development have altered the environment, often in a disproportionate manner. They have even pestered the flora and fauna.

The obstrusion by humans at times has a detrimental, even lethal impact on the environment. These ramifications are lucid in the form of environment pollution, environment accidents and impairment of environmental conditions.

abodes of wildlife. These activities, at times, do undermine the environment security. These facts make it requisite to have a legal framework to ensure the fortification of the environment. These legal regulations governing the impact of various human activities on the environment and striving to curtail the ramifications of human activities on the environment are labeled as environment law.

The environment law has evolved in an intriguing manner. It has witnessed international prominence. The maiden summit in which countries from all over the world convened to deliberate on environment related concerns was The 1972 United Nations Conference on the Environment in Stockholm. It laid out the docket related to environment conservation. The vital accomplishment of this conference was the inception of the United Nations Environment Programme. The United Nations Environment Programme (UNEP) is the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system, and serves as an authoritative advocate for the global environment.

The UN has manifested the significance of environment conservation by convening various mega scale summits. The UN has also given credence to the concept of sustainable development. Sustainable development is connected with environment conservation. The Brundtland Commission in its report (1987) defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. The concept of sustainable development promotes the balance between development and environment preservation.

India had closed its eyes to the cruciality of an environment law for some years following independence. There was an absence of an aegis for the preservation of environment. Following the Stockholm Conference, various measures were espoused which laid the rudiments of environment law in India. Certain amendments were made in the constitution to exhibit the burgeoning global accentuation of the vitality of striking a balance between progress and environment conservation. However, these measures did receive opprobrium for being inept and cumbersome. The lack of a compendious legislation did give rise to several apprehensions.

These apprehensions were manifested to be true when pernicious environment accidents took place in India. They not only blemished the environment, but also took a toll on the human life and health. These accidents stimulated the formation of comprehensive environment legislation and unfurled the avenues of progress of environment law in India.

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The Indian Judiciary, notably the apex court, was a pivotal medium in the evolution of environment law in India. It played its role by expanding the gamut of Article 21 of the Indian constitution. It passed various pro-environment judgments and endorsed the concept of sustainable development. However, in the recent times, there has been a reversal in the approach of the apex court.

In 2020, various such incidents took place which seemed like the harbinger of sabotage of environment for economic development. They gave rise to various trepidations. These trepidations, if proved true, can be ruinous for India.

CHAPTER 1: ENVIRONMENT LAW IN POST-INDEPENDENCE INDIA

NESCIENCE TOWARDS THE ENVIRONMENT

India became independent in 1947 as a country of continental size and proportions. A number of religions do have their existence in India. The holy texts of some of these religions endorse the veneration and reverence of environment. The sacrosanct Vedas, Upanishads and Puranas are teemed with hymns promoting the maintenance of environmental pristineness. The Mahabharat apprises of the possible ramifications of the ravaging of the environment. The Quran and the Guru Granth Sahib also underscore the venerability of the environment. However, these principles failed to find an explicit mention in the independent India.

In order to shape a stalwart constitution for India, a sovereign constituent assembly was set up. A drafting committee was instituted under the leadership of the proficient Indian jurist, DR. B.R. Ambedkar. However, these manoeuvres were nescient towards the notions of environment conservation and sustainable development. Consequently, the primordial Indian Constitution had no perspicuous stipulation for environment protection. India had inherited disperse environment statutes from the British rulers. However, these were musty and feeble.

STOCKHOLM CONFERENCE, 1972- A LANDMARK EVENT

The United Nations Conference on the Environment in Stockholm was a milestone in the field of environment law. It was the first time when the issues of environment and sustainable development received global contemplation. The phenomenal achievement of the conference was The Stockholm Declaration on the Human Environment. The integrants of the declaration opened the avenues of environmental legislations and sustainable development.

The Declaration encompassed a preamble, seven universal truths and twenty-six principles. It propped environmental issues at the vanguard of international concerns and delineated the commencement of a parley
between industrialized and developing countries on the link between economic growths, the pollution of the air, water, and oceans and the well-being of people around the world. The Action Plan contained three main categories: a) Global Environmental Assessment Program (watch plan); b) Environmental management activities; (c) International measures to support assessment and management activities carried out at the national and international levels. In addition, these categories were broken down into 109 recommendations.9

OVERHAUL OF ENVIRONMENT LAW IN INDIA

The Government of India learned various lessons from this conference and revamped its environment laws through a spurt in legislative action. Various constitutional amendments also gave espousal to the notions of environment conservation and sustainable development. The apex court, in a number of judgments, encompassed the mushrooming underscoring of environment jurisprudence.

From 1972-1981, India witnessed diverse legislations being sanctioned in order to tackle the archaism and deficiencies in the existing environment legislations inherited from the colonizers. The government undertook measures to encompass various elements of the environment within the gamut of these legislations. The Wildlife (Protection) Act was passed in 1972.10 As the name suggests, the act was established to harbor the Indian Wildlife from human atrocities and to curtail the hounding of wildlife for commercial gains in every possible manner. It also attempted to preserve the abodes of the wildlife by laying out framework for the establishment of wildlife sanctuaries and national parks. Even the states were given leverage under this act.11 Water (Prevention and Control of Pollution) Act, 197412 provides the mechanism to intercept water pollution and preserve the water resources in pristine form. Central Pollution Control Board and State Pollution Control Boards were established to achieve the stated goals.13

These rectifications by the government were incorporated in the Indian Constitution as well. The 42nd Amendment, 197614 to the Indian Constitution is often called the mini constitution of India. Amongst the crucial amendments it made to the Indian Constitution was the insertion of Article 48-A. This declared the State's responsibility “to protect and improve the environment and safeguard the forests and wildlife of the country.”15 The amendment introduced article 51-A. Article 51-A (g) decreed an obligation every citizen to “protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.” 16 Thus, this prominent amendment to the constitution conferred credence upon the doctrine of environment protection and was a crucial ingredient in the evolution of Indian environment law.

In the Stockholm Conference, 1972, it was resolved to adopt the requisite mechanism to prevent air pollution and preserve the air quality. The Air (Prevention and Control of

9 Ibid
10 Wildlife (Protection) Act 1972
11 Ibid
12 Water (Prevention and Control of Pollution) Act 1974
13 Ibid

15 Ibid
16 INDIA CONST. art. 51A (g).
Pollution) Act, 1981 was the step of Indian government in that direction. This act accentuated the influence of increasing industrialization on the air quality. It also recognized the ramifications of the diminishing air quality on human health.  

Apart from these legislations, the Union Government also established a committee in January, 1980, The Tiwari Committee. The goal of the same was to suggest legislative measures and administrative machinery to secure the fortification of environment. On the recommendation of this committee, the Department of Environment was established in November, 1980.

The apex court also played a crucial role during this period. Although there was no overt mention of environmental laws and rights, the same was an ancillary of various judgments during this period. It laid down the rudiments of environmental jurisprudence in India. In Maneka Gandhi v. Union of India, the apex court held that under Article 21 of the Indian Constitution, no person shall be deprived of his life or personal liberty except according to the procedure established by law. Thus, the fundamentals of environment jurisprudence were being established.

DEFICIENCIES IN THE ADOPTED MECHANISMS

In spite of the attempts made by various organs of the government, there were questions on the coherence and efficiency of the adopted framework. Various scholars censured the course of action for being high on lofty rhetoric and short on substantive action. Some admired the legislative dynamism but criticized the laxity in implementation. These suspicions were manifested in the biggest industrial accidents of India. These accidents also laid the foundations for further progress and augmentation in the field of Indian environment law.

CHAPTER 2: ABRUPT ADMONITION FOR INDIA

As mentioned above, the Union Government and the judiciary undertook various measures to bridge the gap between the existing and requisite calibre of environment law in India. There were trepidations about the Achilles Heel in the adopted procedures. The Achilles heel in Indian environment policy and the administration were revealed in when a large scale industrial accident took place in India.

BHOPAL GAS TRAGEDY

The final month of 1984 brought with it a debacle for India, the ramifications of which are lucid till date. It had a ravaging impact on the environment and its components. The health and lives of the residents of the adjoining areas were chronically impacted. The disaster aroused public mayhem. The approach adopted by the Indian government in managing the circumstances was deplorable. The Indian judiciary also squandered various chances to ensure justice to the victims and enlarge the gamut of environment law. The accident is the Bhopal Gas Tragedy, the world’s worst industrial disaster.

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17 The Air (Prevention and Control of Pollution) Act, 1981
19 AIR 1978 SC 597
20 Ibid
In 1970, the Union Carbide India Limited (UCIL) established a pesticide plant in a densely populated locality of Bhopal, Madhya Pradesh. Union Carbide Corporation (UCC) owned major shares of UCIL. 22 The grounds of granting license to the UCIL for setting up a pesticide plant in India are dubious. Argentinean agronomic engineer Eduardo Munoz, who had been assigned the task of setting up the plant in Bhopal by had objected to it being in a residential area.23 But his bosses in the US overruled, saying that the “plant would be as inoffensive as a chocolate factory.”24 UCC’s safety audit report prepared by senior executive RD Bradley, much before the company spread its tentacles in India, also makes startling revelations.25 The safety audit report clearly showed that the company did not have sufficient industrial intelligence.26

During the late hours of 2nd December, 1984, water permeated to a tank comprising tones of the toxic methyl isocyanate (MIC). This led to an exothermic 27 reaction which was manifested through the release of this poison into the atmosphere. It wreaked havoc in the nearby residential areas and soon, 28 Bhopal became a gas chamber29 30. Thousands of people lost their lives and thousands became impaired. There is an absence of official death count. The hospital records show 20,000 people died and almost 600,000 people were left with irreparable physical damage.31 The city ran out of cremation grounds.32 The dark consequences permeated to the lives of the next generations. As tones of the toxic MIC were discharged, the environment became polluted. The groundwater in the vicinity of the plant became laced with carcinogens.33 The air became lethal for the humans, flora and fauna.

Prior to this mishap, caveats were given about the safety emissions in the plant. This was not the first leak in the plant. Smaller scale leaks and accidents had taken place. The victims were the employees who were not provided with adequate safeguards.34 In September, 1982, journalist Raj Keswani through one of his works attempted to alert the readers of an approaching mishap in the plant. The story had a quote, "Wake up people of Bhopal, you are on the edge of a

22 Mody Z, 10 Judgements That Changed India (1st edn, Shobhaa De Books by Penguin Books India 2013)
24 Ibid
25 Ibid
26 Ibid
29 Mody Z, 10 Judgements That Changed India (1st edn, Shobhaa De Books by Penguin Books India 2013)
go to volcano!" But this caveat was not adequate for the Union government.

**APPROACH OF THE GOVERNMENT**

Soon after the disaster, legal proceedings commenced. The stance of the Indian government towards the issue became the centre of criticism. It promulgated the *Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.*

This act was contentious as it gave the Central Government the absolute right to represent, and act in place of (whether within or outside India) every person who has made, or is entitled to make, a claim for all purposes connected with such claim in the same manner and to the same effect as such person. This act was based on the principle of *parens patriae,* which originated in the United Kingdom.

27 per cent of the UCIL was owned by the Indian public. Hence, there was enormous opprobrium that the government attempted to circumvent its liability. Also, this act would give unbridled power to the government.

The legal legitimacy of the *Bhopal Act* was brought to a challenge before the apex court of the country. The court did uphold the act as constitutionally valid. It had ordered the Union Government to provide interim compensation to the victims.

Along with extensive power, the government was also entrusted with responsibility to ensure that the victims get adequate compensation. Even though the grounds of *parens patriae* in the case were dubious, it could have been an effective mechanism, only if the government had pursued it with tenacity. However, the government did not match its power with results or responsibility.

**LEGAL PROCEEDINGS IN THE U.S.A.**

The Union Government exercised the powers entrusted to it under the *Bhopal Act, 1985.* It believed that the Indian laws and courts were not adequate to address the matter. A complaint was filed by the government in the Southern District Court in New York, United States of America. At that juncture, over a hundred petitions related to the industrial disaster had already been filed in the U.S. courts. All of these petitions were clubbed and assigned to the court of *Judge John Keenan.* The issue whether the courts in India were competent to deal with the matter was raised in the U.S. court. *Judge John Keenan* dismissed the claims on the ground of *forum non conveniens.*

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36 *Bhopal Gas Leak Disaster (Processing of Claims) Act 1985*

37 Ibid


41 Charan Lal Sahu v. Union of India (AIR 1990 SC 1480)

42 Ibid


46 "In RE Union Carbide Corp. Gas Plant Disaster at Bhopal, India in December 1984" (1986) 80 American Journal of International Law 964.
based upon which a court of law can deny jurisdiction over a case where a more appropriate forum is available.\(47\)

**LEGAL ACTION IN INDIA**

In September, 1986, the Union Government filed a lawsuit in the Bhopal District Court. The court ordered the Union Carbide Company (UCC) to pay 3.5 billion as the interim compensation. The same was decreased to 2.5 billion by the Madhya Pradesh High Court following appeal by the UCC.\(48\) UCC then appealed to the apex court. The Indian law mandated the judgment debtor to deposit the disputed amount before approaching an appellate court, but the UCC violated the law.\(49\)

In *Union Carbide Corporation v. Union of India*, \(50\) the apex court exhibited flippancy towards the rights and entitlements of the victims. Under the garb of attempting to ensure speedy justice, the court ruled out any deliberation with the victims. It directed the UCC and the Union of India to file affidavits stipulating the terms of proposals for accommodation of claims regarding compensation to be paid to the victims of the disaster.\(51\) This order was dubious as in 1989; even the number of victims of the tragedy was not lucid. How could both the parties work out adequate compensation even without examining the magnitude of the damage suffered by the victims?

These apprehensions proved to be true when the court, the UCC and the Union of India reached a solution at compensation of 470 million dollars.\(52\) This order of the court was in absolute settlement of all claims. The court also ordered termination of all civil and criminal proceedings, related to the accident.\(53\) The apex court did not contemplate on the legal questions related to the principles of liability, the modus operandi of factories deploying hazardous technology.\(54\)

The apex court also quashed the orders of interim compensation by lower courts. This thwarted the aspirations of the victims as the interim compensation ordered was much higher than the settled amount. The court vaunted its own judgment by reiterating that the compensation exceeded the havoc wreaked.\(55\) However, it flunked to recognize the gravity of human injuries and environment contamination caused by the disaster. Various NGOs expressed dissatisfaction over the settlement.\(56\)

**REVIEW OF THE ORDER**

A few years after the settlement order of the Bhopal gas tragedy, the Supreme Court merged various review petitions against the 1989 order.\(57\) The three judge bench of the court rejected the contentions that the apex court had no jurisdiction to withdraw to itself the original suits pending in the Bhopal District Court and that it had no jurisdiction to withdraw the criminal proceedings. \(58\) The
court squandered the opportunity of revising the compensation to a more pragmatic figure.\textsuperscript{59} However, there was a positive outcome as well. The court ordered the revival of criminal proceedings against the UCC and UCIL.\textsuperscript{60}

**CRIMINAL PROCEEDINGS**

After the revival of the criminal proceedings, a number of criminal cases were filed in the Indian courts. Initially, the accused were charged of culpable homicide not amounting to murder. However, the court held that the evidence is not sufficient to charge the accused of culpable homicide.\textsuperscript{61} The charge was reduced to that of ‘causing death by negligence’. On 7 June, 2010, seven people were convicted for two years each.\textsuperscript{62} They were subsequently released on bail.\textsuperscript{63} Warren Anderson, the CEO of UCC at the time of the disaster, did not appear and was declared an absconder.\textsuperscript{64} There was a large scale criticism against the court. There was an outcry in India that this disaster was treated like a minor traffic accident.\textsuperscript{65}

**BREAKTHROUGH IN ENVIRONMENT LAW**

The Bhopal disaster galvanized the slack legislators of India. They realized the inadequacies in the existing environmental legislations. This accident highlighted the need for an umbrella environmental legislation. It also prompted the legislature to bestow legitimacy to the doctrine of sustainable development. All this stimulated the enactment of comprehensive environmental legislations. The legislators also realized that environment contamination creates perils for the human life and wildlife and sought to address these issues.

*The Environment Protection Act, 1986*\textsuperscript{66} was a legislation to validate co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health.\textsuperscript{67}

*The Public Liability Insurance Act, 1991*\textsuperscript{68} attempted to mitigate imperils accompanying the growth of hazardous industries in India. It provided for mandatory public liability insurance for installations handling hazardous substances to provide minimum relief to the victims.\textsuperscript{69}

**CHAPTER 3: OLEUM GAS LEAK**

This was an industrial accident similar to the Bhopal disaster, but of a smaller scale. The approach of the apex court in deciding this case was extensively distinct from the Bhopal

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\textsuperscript{59} Ibibd
\textsuperscript{60} Ibid
\textsuperscript{61} Keshub Mahindra v. State of M.P. ((1996) 6 SCC 129)
\textsuperscript{64} Zia Mody, 10 Judgements That Changed India (Shobhaa Dé Books 2013).
\textsuperscript{66} Environment (Protection) Act 1986
\textsuperscript{67} Ibid
\textsuperscript{68} The Public Liability Insurance Act 1991
\textsuperscript{69} Ibid
case. This was a redefining case in the Indian environment jurisprudence. It enlarged the gamut of environment law in India.

*Shriram’s Food and Fertilizer* factory was located in a densely inhabited area of Delhi. M.C. Mehta, an advocate filed a writ petition in the apex court soliciting a closing order for the factory and its subsequent relocation to an area where the factory would not be perilous to the environment and people.⁷⁰ During the pendency of the petition, Oleum gas leaked from one of the units.⁷¹ The District Magistrate of Delhi in response passed an order telling the Shriram Industries to stop manufacturing and processing toxic chemicals and gases.⁷²

A writ petition was filed in the apex court by M.C. Mehta.⁷³ The petition raised a number of issues including what should be the standards to decide the liability of the organizations engaged in manufacturing and selling hazardous materials.⁷⁴ Also, the petition contended whether the plant should be allowed to restart its operations just because it employed over 4000 people.⁷⁵ The three judge bench led by Justice P.N. Bhagwati allowed the plant to restart its operations, subject to eleven conditions.⁷⁶ There were seminal questions of constitutional importance which were referred to a five judge bench.⁷⁷

The five judge bench recognized the gravity of the issues and adopted a germane approach. This case became a landmark in the field of environment law. In *M.C. Mehta v. Union of India*⁷⁸ (1986), the ambit of Article 32 was expanded which opened up the avenues of judicial activism in the field of environment in India. Hitherto, the principle of strict liability laid down in *Rylands v. Fletcher*⁷⁹ was the doctrine used to regulate the industries. The court recognized the archaism of this 19th century rule.⁸⁰ It raised the threshold of liability of an enterprise engaging in an inherently hazardous activity by developing the doctrine of ‘absolute liability’. According to this doctrine, an enterprise engaging in such hazardous activities have an absolute and non-delegable duty to ensure that no one is harmed and to proportionately compensate for harm resulting from such activity.⁸¹

**CHAPTER 4: PIL AND ENVIRONMENT PIL IN INDIA**

The concept of Public Interest Litigation (PIL) has its origin in the famous case, *Hussainara Khatoon vs. Union of India*.⁸² Justice Bhagwati had said that right to legal services is a fundamental right under the Indian Constitution and if the undertrials are constrained by poverty, it is the duty of the State to provide free legal aid to them.⁸³ The doctrine of PIL ushered in a new era of

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⁷¹ Ibid
⁷³ Ibid
⁷⁴ AIR 1987 SC 965
⁷⁵ Ibid
⁷⁶ Ibid
⁷⁸ AIR 1987 SC 1086
⁷⁹ [1868] UKHL 1
⁸¹ Ibid
⁸² (1980) 1 SCC 98
⁸³ Ibid
judicial activism in India.\textsuperscript{84} It emerged as a tool to address the violations of human rights among the marginalized sections of the society.\textsuperscript{85} The judiciary made conscious efforts to improve access to the courts for those who were historically and traditionally excluded from the legal process with regard to the protection of their fundamental human rights.\textsuperscript{86}

In \textit{Municipal Council, Ratlam vs Shri Vardhichand}\textsuperscript{87}, the apex court recognized the need to shift from the traditional individualism of \textit{locus standi} to the community orientation of public interest litigation.\textsuperscript{88} Justice V.R. Krishna Iyer underscored the importance of PIL. In \textit{S.P. Gupta v. Union of India}\textsuperscript{89}, Justice P.N. Bhagwati said that, “the concept of judiciary is a noble concept of the Indian Constitution. Judiciary is the foundation upon which the edifice of our democratic polity rests. It is the judiciary which is entrusted with the task of keeping every organ of the state within the limits of the rule of law and making the rule of law effective.”\textsuperscript{90}

In \textit{PUDR v. Union of India}\textsuperscript{91}, Justice P.N. Bhagwati termed PIL as a “strategic arm of the legal aid movement”. The primary aim of PIL is to bring the justice within the reach of the vulnerable sections of the society.\textsuperscript{92} Any individual or body can move the court of law on behalf of the marginalized and vulnerable sections of the society.\textsuperscript{93} In \textit{Francis Coralie v. Union Territory of Delhi}\textsuperscript{94}, the Justice P.N. Bhagwati stated that “Right to Life under Article 21 of the Indian Constitution includes the right to live and all that goes along with it.”\textsuperscript{95}

The jurisdictional ambit of PIL has gone beyond human rights to cover ecological issues. In \textit{Virender Gaur v. State of Haryana},\textsuperscript{96} the apex court held that right to pollution free air and water and an ecologically balances environment does come within the ambit of Article 21.\textsuperscript{97}

**PUBLIC INTEREST ENVIRONMENTAL LITIGATION**

The importance of public interest environmental litigation in India is manifold. Prior to the emergence of the concept PIL, Criminal Law provisions as contained in the Indian Penal Code, Civil Law remedies under the law of Torts and provisions of the Criminal Procedure Code existed to provide remedies for public nuisance cases including air, water and noise pollution.\textsuperscript{98} However, due to lack of people’s awareness about the environmental problems and limited knowledge of environmental laws there were problems in drawing the attention of the Court towards environmental problems.\textsuperscript{99} Generally, in environmental litigation, the parties affected by pollution are a large, diffused and unidentified mass of people.\textsuperscript{100}

\textsuperscript{85} Upendra Baxi, ‘Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India’ (1985) 1985 Third World Legal Stud 107
\textsuperscript{86} Ibid
\textsuperscript{87} 1981 SCR (1) 97
\textsuperscript{88} Ibid
\textsuperscript{89} 1981 (1) SCC 608
\textsuperscript{90} Ibid
\textsuperscript{91} (1995) 2 SCC 577
\textsuperscript{92} Ibid
\textsuperscript{94} Ibid
\textsuperscript{95} Ibid
\textsuperscript{96} Ibid
\textsuperscript{97} Ibid
\textsuperscript{98} Kelly D Alley, ‘Legal Activism and River Pollution in India’ (2009) 21 Geo Int’l Envtl L Rev 793
There was no provision in the environmental legal framework for allowing the third party to seek the help of the Court if the party was not directly affected by environmental problems\textsuperscript{101}. Hence, the biggest hurdle in the path of litigation for environmental justice had been the traditional concept of \textit{locus standi}.\textsuperscript{102} But now the Court’s approach has changed and it has been ruled that any member of the public having sufficient interest, may be allowed to initiate the legal process in order to assert diffused and meta-individual rights.

\textbf{PRO-ENVIRONMENT JUDGMENTS}

The first case on environment in the apex court was \textit{The Rural Litigation \\& Entitlement Kendra (RLEK) v Union of India}.\textsuperscript{103} This was related to the quarrying being carried out in the Mussorie hill range of Himalayas. The petitioner contended that the quarrying was resulting in environmental pollution and imbalance. It was also having an adverse impact on the humans, flora and fauna.\textsuperscript{104} Hence, the petitioner pleaded for the cessation of the leases of such quarries. The respondents contended that the termination of quarrying would lead to unemployment and financial losses. The apex court granted legal validity upon the concept of \textit{sustainable development} through the judgment of this case. It held that the closure of certain quarries is a price proportionate to securing the right to a healthy and ecologically stable environment.\textsuperscript{105}

In \textit{Subhash Kumar v. State of Bihar},\textsuperscript{106} the court expanded the scope of article 21 and 32. The court held that Right to life is a fundamental right under article 21 of the constitution and it includes the right to enjoyment of pollution free air and pollution free water.\textsuperscript{107} A citizen has legal remedy under article 32 to solicit the elimination of such pollution. The court also held that a lawsuit under article 32 to obviate pollution can be filed even by social workers or journalists.\textsuperscript{108}

In the \textit{Delhi Vehicular Pollution Case},\textsuperscript{109} M.C. Mehta filed a PIL in the apex court against the Union of India.\textsuperscript{110} The petition alleged that the existing environment laws in India imposed a duty upon the Union Government to take adequate steps to control the pollution in Delhi.\textsuperscript{111} The Court again reiterated its guiding principle 'the Court is monitoring the case only to ensure strict protection of Article 21 - the right to life - and to make the authorities realize their obligations under various statutes so that the intention of the legislature is not frustrated'.\textsuperscript{112} The court considered the problem of air pollution being caused by the motor vehicles in Delhi.\textsuperscript{113} The court directed the Ministry of Environment and Forests to form a Committee for assessing the available technology for low cost alternatives for

\begin{footnotesize}
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  \item \textsuperscript{101} Sahu G (2008) 69 PUBLIC INTEREST ENVIRONMENTAL LITIGATIONS IN INDIA: Contributions and Complications
  \item \textsuperscript{102} Ibid
  \item \textsuperscript{103} (1985) 2 SCC 431
  \item \textsuperscript{104} Sahu G (2008) 69 PUBLIC INTEREST ENVIRONMENTAL LITIGATIONS IN INDIA: Contributions and Complications
  \item \textsuperscript{105} Ibid
  \item \textsuperscript{106} (1991) 1 SCC 598
  \item \textsuperscript{107} Ibid
  \item \textsuperscript{108} Ibid
  \item \textsuperscript{109} (1998) 8 SCC 648
  \item \textsuperscript{109} Sahu G (2008) 69 PUBLIC INTEREST ENVIRONMENTAL LITIGATIONS IN INDIA: Contributions and Complications, p. 749
  \item \textsuperscript{111} Ibid
  \item \textsuperscript{112} Gitanjali Nain Gill, 'Human Rights and the Environment in India: Access through Public Interest Litigation' (2012) 14 Envtl L Rev 200
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operating vehicles and making specific recommendations on pollution control regulations.\textsuperscript{114}

Another pro-environment judgment was passed by the apex court in \textit{M. C. Mehta v. Union of India}.\textsuperscript{115} The petitioner alleged that the emission of industrial effluents by the tanneries in the Jajmau area of Kanpur has resulted in pollution of river Ganga. It also alleged apathy on the part of statutory bodies formed for the purpose of environment protection.\textsuperscript{116} The court held that the tanneries won’t be allowed to operate unless they set up at least a primary treatment plant. The judgment gave priority to ecology and public health over financial gains.\textsuperscript{117} The court also directed the concerned authorities to take the requisite action.

In \textit{Indian Council for Enviro-Legal Action v. Union of India},\textsuperscript{118} the petitioners alleged that certain private industrial units located to the north of Bichhri, Rajasthan caused grave environmental pollution. This was harmful for the inhabitants of Bichhri as well. The petition alleged violation of rights granted under Article 21 of the inhabitants of the affected area.\textsuperscript{119} It also solicited issuance of directions to the state d government, State Pollution Control Board to necessitate the fulfillment of their duties.\textsuperscript{120} The apex court held the alleged units to be liable for causing ecological instability in the area and also directed the concerned authorities to perform their duties. The court also sanctioned the \textit{‘Polluter Pays Principle’} in this case. The Court ruled that “Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on”.\textsuperscript{121}

In \textit{TN Godavarman Thirumulpad vs Union of India},\textsuperscript{122} the Supreme Court re-defined the term “forest”. N. Godavarman Thirumulpad, a member of the princely Nilambur Kovilakam family in the Malabar region of Kerala, filed a writ petition in the Supreme Court, demanding the protection of pristine wooded areas in Gudalur in the Nilgiris, Tamil Nadu.\textsuperscript{123} These wooded areas, Janmam Lands (absolute proprietary lands), of the Nilambur Kovilakam, had been taken over by the State of Kerala following the enactment of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act of 1969.\textsuperscript{124} The two judge bench led by Justice J.S. Verma, through an interim order, directed any activity being carried on in any forest in any state of India to be stopped forthwith.\textsuperscript{125} The court expanded the ambit of the term “forest”\textsuperscript{126}. In its 1996 ruling, the court had asked states to identify, demarcate

\textsuperscript{114} ibid
\textsuperscript{115} 1992 (2) SCALE 637
\textsuperscript{116} ibid
\textsuperscript{118} (1996) 3 SCC 21
\textsuperscript{119} Sahu G (2008) 69 PUBLIC INTEREST ENVIRONMENTAL LITIGATIONS IN INDIA: Contributions and Complications
\textsuperscript{120} ibid
\textsuperscript{123} ibid
\textsuperscript{124} (1997) 2 SCC 267
\textsuperscript{125} ibid
\textsuperscript{126} ibid
and notify forest areas. One man’s efforts to stop forest destruction in Gudalur led to a watershed legal intervention, which has greatly contributed to conservation of forests.

Environment pollution and contamination can vitiate the heritage of the country. The court addressed this issue through its judgment in *M.C. Mehta v. Union of India*. The petition alleged the abasement of Taj Mahal, a heritage site of global eminence resulting from environment pollution. The court derived recommendations on the issue by various committees. According to these committees, the use of coke/coal by the industries operating within the Taj Trapezium Zone leads to pollution, harmful for the Taj Mahal, as well as inhabitants of the area. The court held that in addition to being a monument, the Taj Mahal is also an industry. It endorsed ‘Sustainable Development’ and ‘Precautionary Principle’. It mandated the substitution of coke/coal with natural gas.

In *M.C. Mehta v. Kamal Nath*, the apex court endorsed the doctrine of ‘Public Trust’. A news article in The Indian Express alleged that Spam Motels Pvt. Ltd., with which Kamal Nath, (former environment minister) had link had built a club at the bank of river Beas by encroaching land which included forest land which was subsequently regularized and leased out when Kamal Nath was a minister in the state government. It was alleged that earth-movers and bulldozers were used to turn the course of the river. The court held that the doctrine of public trust was breached by the state government. The prior approvals and lease granted to the company were rescinded. The court also mentioned the Polluter Pays principle in this judgment. The Court reviewed public trust cases from the United States and noted under English Common Law this doctrine extended only to traditional uses such as navigation, commerce and fishing, but how the doctrine is now being extended to all ecologically important lands, including freshwater, wetlands and riparian forests.

In *A.P. Pollution Control Board vs Prof. M.V.Nayudu*, the apex court held that environment related issues brought to the apex court under articles 32 or 136 of the Indian Constitution or under article 226 before the High Courts have importance equivalent to human right issues. While hearing such issues, the court is bound to render justice by taking all the aspects into consideration.

**PRO-DEVELOPMENT APPROACH**

From 1980-2000, the Supreme Court of India has in a plethora of cases, demonstrated a pro-environment approach. It has highlighted the importance of maintaining

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129 (1997) 2 SCC 353
130 Ibid
131 (1997) 1 SCC 388
132 Ibid
133 Ibid
134 Bijay Singh Sijapati, ‘Role of Judiciary in Promoting Environment and Sustainable Development in South Asian Region’ (2016) 10 NJA LJ 225
135 (1999) 2 SCC 718
136 Ibid
137 Ibid
the pristineness of environment for the mankind. It has struck a balance between development and environment conservation. However, in the past two decades, the stance of the apex court seems to have undergone a reversal.

While dealing with issues concerned with between corporate interests on one hand and the advocates of environmental and human protection rights protection on the other, the court seems to be favoring the former. Senior advocate Prashant Bhushan has also criticized the approach of the court in dealing with the environment litigation.

In *Narmada Bachao Andolan v. Union of India*[^138], the apex court, in a 2-1 decision, approved the construction of Sardar Sarovar Dam. It was explicit that there was an absence of a comprehensive environment appraisal and a proper environment impact assessment.[^141] Justice Bharucha strongly dissented to the judgement. The underlying reasons and ideology behind the subordination of the cause of the environment to the cause of ‘development’ are also evident from the judgment.[^142] The court even did not vacillate in labelling the Narmada Bachao Andolan as ‘anti development’.[^143]

In *N.D. Jayal v. Union of India*[^144], the apex court approved the construction of Tehri Dam. *Hanumant Rao Committee*, an expert committee constituted by the government had submitted an elaborate report pointing out towards a series of violations of the prescribed conditions on which clearance had been granted by the environment ministry.[^145] Despite the strong dissent by Justice Dharmadhikari, the majority judgment did not even bother to ensure compliance with the conditions of the environmental clearance of the project.[^146]

**Tata Housing Development v. Goa Foundation**[^147] was a case related to the construction of a housing colony on a forest land. The apex court went against the recommendations of its own expert committee by allowing the construction.[^148] The same was the consequence of a microscopic examination of the reports of its own expert committee.[^149]

**CHAPTER 5: 2020- AN EVENTFUL YEAR**

As mentioned above, several incidents in the 21st century India have led to several apprehensions regarding the environment. It seems that development has superseded environment. In 2020, various events took place in India which does manifest such concerns to be true.

**VIZAG GAS LEAK**

*LG POLYMERS AND THE ACCIDENT*

The company was established in 1961 as "Hindustan Polymers" for manufacturing Polystyrene and its Co-polymers at


[^139]: Ibid

[^140]: (2010) 10 SCC 664

[^141]: Ibid

[^142]: Prashant Bhushan, ‘Supreme Court And PIL: Changing Perspectives Under Liberalisation’ (2004) 39 EPW.

[^143]: Ibid

[^144]: (2004) 9 SCC 362


[^146]: Ibid

[^147]: (2003) 11 SCC 714

[^148]: Ibid

Visakhapatnam, India.150 Taken over by LG Chem (South Korea), Hindustan Polymers was renamed as LG Polymers India Private Limited (LGPI) in July, 1997.151 In the early morning hours of 7th May, 2020, styrene monomer gas leaked from a chemical plant belonging to LG Polymers at RR Venkatapuram in Visakhapatnam.

Styrene is a flammable liquid that is used in the manufacturing of polystyrene plastics, fiberglass, rubber, and latex.152 As per the US-based Environment Protection Agency (EPA), short-term exposure to the substance can result in respiratory problems, irritation in the eyes, irritation in the mucous membrane, and gastrointestinal issues.153 And long-term exposure could drastically affect the central nervous system and lead to other related problems like peripheral neuropathy. It could also lead to cancer and depression in some cases.154 The leakage of this styrene did wreak havoc in the vicinity of the chemical plant.

The leak led to the death of 13 people and made hundreds critically ill. The gas reportedly spread over a radius of about 3 km, affecting at least five villages — RR Venkatapuram, Padmapuram, BC Colony, Gopalapatnam and Kamparapalem.155 The people and animals, escaping from the pungent smell, fell unconscious on the roads.

CAUSES OF THE LEAK AND SAFETY LAPSES
National Green Tribunal is a statutory body constituted under the National Green Tribunal Act, 2010 for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.156 The National Green Tribunal took the case suo motu and constituted a five member joint monitoring committee to conduct an investigation of the Vizag case.157 The committee, comprising a former High Court judge, a principal of a college, a professor of chemical engineering, and two scientists, investigated the incident and found several glaring lapses at the plant.158 The NGT also directed the company to forthwith deposit a sum of Rs. 50 crore with the District Magistrate, Visakhapatnam.159 A bench headed by NGT lives-scores-hospitalised/article31523456.ece> accessed 12 February 2021.

Ibid
153 Ibid
154 Ibid
156 National Green Tribunal Act 2010
158 Ibid
Chairperson Justice Adarsh Kumar Goel also issued notice to the Andhra Pradesh Pollution Control Board, Central Pollution Control Board and the Union Environment Ministry.160

According to the interim report of the committee, there was insufficient Tertiary Butyl Catechol (an inhibitor to avoid polymerization) in the plant.161 There was no monitoring system for dissolved oxygen in the vapour space.162 The tank had no provisions for monitoring temperatures at the top layers of the storage.163 The refrigeration system was not being used for 24 hours.164 There was a gross failure and negligence on the part of the maintenance staff of the storage tanks in the plant.165

In an affidavit submitted to the State Level Environment Impact Assessment Authority (SEIAA), the company admitted that as of May 10, 2019, the unit did not have a “valid environmental clearance substantiating the produced quantity, issued by the competent authority for continuing operations”.166 It also acknowledged that it had expanded the production at the plant “beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance as mandated under the EIA notification, 2006”.167

Strict Liability vs Absolute Liability

Although smaller in gravity, The Vizag Leak did revive the stark memories of the Bhopal Gas Tragedy. But the NGT, in its interim order, applied the principle of ‘strict liability’ for damage to the environment and the people.168 This decision was heavily criticized.169

Following are certain differences between the principles of absolute liability and strict liability:

- Whereas strict liability allows exceptions if the liability has been accrued by an Act of God, act of third party etc., absolute liability offers no exception to industries involved in hazardous activities, which are liable for the damage so triggered notwithstanding adherence to the highest safety norms.170

- Under absolute liability, the extent of damages depends on the magnitude and financial capability of the organization. However, under strict liability, compensation is payable as

161 Ibid
162 Ibid
163 Ibid
164 Ibid
165 Ibid
167 Ibid
the nature and quantum of damages caused.\textsuperscript{171}

- Under the doctrine of \textit{absolute liability}, the element of escape is not essential. In other words, rule of absolute liability shall be applicable to those injured within the premise and persons outside the premise. However, the same is not the case under the doctrine of \textit{strict liability}.\textsuperscript{172}

The interim order passed by the NGT, by using the words “\textit{strict liability}”, not only presented an opportunity to the company to build its defence by showing that there was no negligence on its part, but also acted \textit{ultra vires} Section 17 of the National Green Tribunal Act, 2010 which directs the NGT to apply the principal of no-fault even in cases of accident.\textsuperscript{173}

However, the NGT, in its order dated 3-03-2020, held the LG Polymers strictly and absolutely liable for the damage caused by the styrene leak to the people and the environment\textsuperscript{174}.

\textbf{BAGHJAN GAS LEAK BLOWOUT AND FIRE}

Baghjan Oil Field is located in the district of Tinsukia, Assam.\textsuperscript{175} It is owned by Oil India Limited (OIL). The blowout occurred in the morning hours of 27\textsuperscript{th} May at Baghjan 5 Gas Well, a part of the Baghjan oilfield.\textsuperscript{176} Workers sensed an oncoming blast of highly pressurized natural gas and evacuated the site.\textsuperscript{177} Seconds later, around 10:30 am, people in Natun Rongagora village — about a kilometre away — heard a loud blast.\textsuperscript{178} For two hours, a 20-feet tall dark plume consisting of crude oil and gas moved along the wind under an overcast sky in Baghjan while flood waters from the Dibru and Lohit rivers inundated the area.\textsuperscript{179}

A crisis management team reached the well and began taking precautionary measures by pumping water continuously through a casing valve into the well head.\textsuperscript{180} Around 2,500 people were initially evacuated from nearby areas and shifted to relief camps.\textsuperscript{181} A 1.5 kilometre-radius area was declared a safety zone.\textsuperscript{182}

Baghjan 5 well caught fire 14 days after the blowout from the well.\textsuperscript{183} Images taken at the site of the blaze showed dark clouds of smoke

\begin{footnotes}
\item 171 Ibid
\item 172 Ibid
\item 173 Ibid
\item 174 2020 SCC OnLine NGT 129
\item 176 Ibid
\item 178 Ibid
\item 179 Ibid
\item 181 Ibid
\end{footnotes}
billowing from the plant and engulfing the premises.\textsuperscript{184} The incident triggered panic among the residents of the Baghjan village, where the gas-producing well is located.\textsuperscript{185} The fire led to the death of two firefighters.\textsuperscript{186} A large number of houses were ruined.\textsuperscript{187}

**LOSS OF BIODIVERSITY**

The oil field where the leak and the fire took place is in vicinity of the Dibru Saikhowa National Park and the Maguri-Motapung wetland.\textsuperscript{188} The Dibru Saikhowa national park is the world’s only riverine island wildlife reserve.\textsuperscript{189} It is home to a number of rare and endangered species.\textsuperscript{190} The Maguri-Motapung wetland attracts a number of endangered and migratory birds.\textsuperscript{191} The disaster did permeate to these biodiversity hotspots as well.

The forest officers working in the national park said that the condensate from the well fell into the national park too.\textsuperscript{192} Also, there were traces of the condensate in the water bodies of the wetland.\textsuperscript{193} The number of birds decreased.\textsuperscript{194} The carcasses of fishes and a dolphin were recovered from a lake adjacent to the national park.\textsuperscript{195} A Wildlife Institute of India (WII) report on the oil well blowout at Baghjan and the resultant oil spill on the surrounding landscape highlighted that pollutants were released into the ecosystem and would remain in the system for a long time.\textsuperscript{196} The PAH pollutants that were found in the ecosystem surrounding the site of incident would eventually percolate into the ground and even contaminate ground water.\textsuperscript{197}

**PROCEDURAL LAPSES IN THE OILFIELD**

A closure notice was sent by Pollution Control Board, Assam (PBCA) to the chief executive of OIL, ordering the shutdown of production and drilling at all installations in Upper Assam’s Baghjan oilfield.\textsuperscript{198} According to the notice, OIL had been operating the Baghjan oil field installation “without obtaining prior consent to establish/consent to operate from Pollution Control Board Assam, which is a serious


\textsuperscript{185} Ibid


\textsuperscript{187} Ibid


\textsuperscript{189} Ibid

\textsuperscript{190} Ibid

\textsuperscript{191} Ibid


\textsuperscript{193} Ibid

\textsuperscript{194} Ibid


\textsuperscript{197} Ibid


MD Madhusudan and Prerna Singh Bindra, earlier, the members of the standing committee for National Board of Wildlife (NBWL) had made a visit to the inspect oil pipelines near the Dibru National Park in 2013. The standing committee, in its report, did slam the government of India for ratifying the violation of wildlife protection norms by giving permission to the OIL.

NGT’s principal bench headed by AK Goel, constituted a committee led by former Judge BP Katakey to investigate the cause and the impact of the blowout. On November 3, Judge Katakey submitted a status report on the ongoing investigation into the cause and impact of the blowout. According to the report, “On the day of the blowout of well Baghjan-5 May 27 and explosion June 9, OIL did not have the mandatory consents including the Consent To Establish / No Objection Certificate and / or the Consent To Operate under the Water Act, Air Act and / or the Hazardous Waste [Management, Handling and Transboundary Movement] Rules, 2016”.

“OIL has been unable to carry out the Biodiversity Impact Assessment Study either through the Assam State Biodiversity Board, as was mandated by the Hon’ble Supreme Court, a fact that stands corroborated by the Assam State Biodiversity Board, or by any other agency,” the committee stated.

The report said oil spillage severely affected a radius of six kilometres from the Baghjan oil well. Within a two-km radius, phytoplankton and zooplankton were directly affected, while there were coatings of oil film on plant life, water bodies, agricultural fields, gardens and man-made structures. The explosion and subsequent fire which broke out led to immense damage to the local population and their homes, apart from small tea gardens that were completely burnt down.

These two incidents underscore the existing weaknesses in the environment policy and its enforcement in India. The Draft EIA, 2020 does seem to exacerbate the situation.

DRAFT ENVIRONMENT IMPACT ASSESSMENT ACT, 2020

Environment Impact Assessment (EIA) is a 20th century addition to the environment policy. In 1994, for the first time under the Environment Protection Act, 1986, the EIA notification was formulated in India. An amendment to the EIA took place in 2006. In 2020, the Indian government introduced the controversial draft EIA notification that aims to set aside several essential

199 Ibid
201 Ibid
203 Ibid
204 Ibid
206 Ibid
207 https://www.downtoearth.org.in/blog/environment/draft-eia-notification-2020-is-it-contra-legem-to-international-conventions-judicial-verdicts-73858
208 Ibid
provisions such as public consultation, and plans to introduce ex-post facto clearance for many projects.\textsuperscript{209}

An EIA makes a scientific estimate of the likely impacts of a project, such as a mine, irrigation dam, industrial unit or waste treatment plant.\textsuperscript{210} There is also a provision for public consultation in the rules, including a public hearing at which the local community and interested persons can give opinions and raise objections, based on the draft EIA report prepared by experts for the project.\textsuperscript{211}

The 2020 Draft EIA does several major amendments to the 2006 version. However, some of these provisions go against the parent law and are pro-development instead of pro-environment. Earlier, the projects relating to the defence and security would fall under the category of “strategic” projects.\textsuperscript{212} The 2020 draft gives the government wide powers to bring projects under this category.\textsuperscript{213} No information or details related to such projects will be brought to the public domain.\textsuperscript{214}

The 2020 Draft does exempt a long list of projects from public consultation.\textsuperscript{215} Linear projects such as roads and pipelines in border areas will not require any public hearing.\textsuperscript{216} The ‘border area’ is defined as “area falling within 100 kilometres aerial distance from the Line of Actual Control with bordering countries of India.”\textsuperscript{217} That would cover much of the Northeast, the repository of the country’s richest biodiversity.\textsuperscript{218}

Under the proposed changes, project proponents need to submit only one annual report on compliance with conditions, compared to the existing two.\textsuperscript{219} In 2016, the CAG found that the deficiency in semi-annual compliance reporting was between 43\% and 78\%, while failure to comply with conditions ranged from 5\% to 57\%.\textsuperscript{220} Non-compliance was encountered particularly in river valley and hydroelectric power projects and thermal power projects.\textsuperscript{221} Thus, this provision can aggravate the existing non-compliance and deficiency.

The new draft allows for post-facto approval for projects.\textsuperscript{222} It means that the clearances for projects can be awarded even if they have started construction or have been running phase without securing environmental

\textsuperscript{209} Ibid
\textsuperscript{211} Ibid
\textsuperscript{212} ‘Explained: Reading the Draft Environment Impact Assessment Norms, and Finding the Red Flags’ (The Indian Express, 10 August 2020)
\textsuperscript{213} Ibid
\textsuperscript{214} Ibid
\textsuperscript{215} Ibid
\textsuperscript{216} Ibid
\textsuperscript{217} Ibid
\textsuperscript{218} Ibid
\textsuperscript{219} G Ananthakrishnan, ‘The Hindu Explains | What Are the Key Changes in the Environment Impact Assessment Notification 2020?’ The Hindu (2 August 2020)
\textsuperscript{220} Ibid
\textsuperscript{221} Ibid
\textsuperscript{222} “Explained: What Is EIA 2020? How Does It Water down the Existing Policy?” (The Week)
clearances.\textsuperscript{223} This also means that any environmental damage caused by the project is likely to be waived off as the violations get legitimized.\textsuperscript{224}

The 2020 Draft does provide for a “minimum of 20 days” of notice period for people to raise objections to the threat posed by a project to the environment, a reduction from the existing “minimum of 30 days”.\textsuperscript{225} The reduction in the time frame can be disastrous as it is very difficult for a layman to analyze the environment impact of a project in a short time.

“Government ought to be all outside and no inside...Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it a fair presumption that secrecy means impropriety.”

— Woodrow Wilson, former US president, 1913

**BREACH OF LAW AND JUDGEMENTS**

The Environment Protection Act, 1986\textsuperscript{226}, formulated in the aftermath of the Bhopal Tragedy, is an umbrella law for environment security in India. Section 3 of the Act obliges the government “to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution”.\textsuperscript{227} The 2020 draft goes against the very spirit of this Act.

In *Alembic Pharmaceuticals Ltd vs Rohit Prajapati*\textsuperscript{228}, Justice D.Y. Chandrachud struck down the *ex-post facto* environmental clearance. The apex court stated— “The concept of an *ex-post facto* EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in *Common Cause* holds, detrimental to the environment and could lead to irreparable degradation.”\textsuperscript{229}

In *Association for Environmental Protection vs State of Kerala*\textsuperscript{230}, the apex court held that commencement of projects without obtaining prior EC (environmental clearance) is a violation of the fundamental right to life guaranteed under Article 21 of the Constitution.

In *Lafarge Umiam Mining (P) Ltd. v. Union of India*\textsuperscript{231}, the apex court held that public consultation was a mandatory requirement of the environmental clearance process for an effective forum for a person aggrieved by any aspect of any project to register and seek redressal of their grievances. In *Majdoor Kisan Ekta Sangthan vs Union of India*\textsuperscript{232}, the apex court held faulty public hearings to be nullity in the eyes of law.

**CONCLUSION**

The evolution of environment security in India has gone hand in hand with the development of environment law and jurisprudence. From inheriting a weak
environment law from its colonizers, India has witnessed the development of robust environment legislations. The judiciary has also contributed significantly to the development environment jurisprudence in India.

However, the implementation of the environment statutes has been faulty. On several occasion, the joy of witnessing an MNC set up its unit in India has superseded the implementation of various environment clearance procedures. The current stance of the government and judiciary also seems to be pro-development. India must understand the cruciality of environment security. A comprehensive analysis of the weakness in the existing statutes should be done. Efforts should be made to rectify these shortcomings, instead of adding to these shortcomings.

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