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IMPLEMENTATION OF ENVIRONMENTAL JUDGMENTS IN CONTEXT: A COMPARATIVE  
ANALYSIS OF DAHANU THERMAL POWER PLANT POLLUTION CASE IN  
MAHARASHTRA AND VELLORE LEATHER INDUSTRIAL  
POLLUTION CASE IN TAMIL NADU

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ARTICLE



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## ARTICLE

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# 1

## BACKGROUND

The role of Indian Supreme Court in resolving environmental disputes has contributed immensely to the evolution of environmental jurisprudence principles in India. These include: recognising right to healthy environment as a part of fundamental rights, directing polluters to follow the environmental norms and regulations, ordering the implementing agency to discharge their constitutional duties to protect and improve the environment, determining compensation for the affected people, taking *suo moto* action against the polluter, entertaining petitions on behalf of the affected party and inanimate objects, expanding the sphere of litigation, introducing environmental principles such as polluters pay principle, precautionary principle, absolute liability and public trust doctrine for environmental safety and protection as well as well-being of people.<sup>1</sup>

While in a series of cases the Court<sup>2</sup> directions have been implemented, there are a large number of cases where judicial directions have not been implemented or partially implemented. For instance, in the *Oleum Gas Leak case*,<sup>3</sup> the Court has evolved the doctrine of absolute liability, clarifying the principle of strict liability which was developed in *Rylands v. Fletcher*.<sup>4</sup> It has also developed the principle of claiming compensation under the writ jurisdiction by evolving the public remedy. But ultimately, the victims of gas leak have been left to the ordinary relief of filing suits for damages. In the *Bichhri village industrial pollution case*,<sup>5</sup> regarding the contamination of ground water, the Court, after analysing all the provisions of law rightly found that compensation can be recovered

under the provisions of Environment Protection Act. However, the assessment of compensation, its payment and the remedial measures have still not been complied with.<sup>6</sup> The Court directions in the *Ganga river pollution case*<sup>7</sup> have also not been implemented in its strict sense. The tanneries continue to operate even though strict action has been ordered by the Court against the polluted industries of Kanpur. It is found that both the sewage treatment plants (STPs) and Common Effluent Treatment Plant (CETP) have failed to treat waste adequately.<sup>8</sup> In the case of *S. Jagannath v. Union of India*,<sup>9</sup> concerning destruction of coastal ecology by intensive and extensive shrimp farming, the Court has directed closure of shrimp firms and payment of compensation on polluter pays principle as well as cost of remedial measures to be borne by the industries. But after the judgment, firstly the Court itself stayed its own directions in review and thereafter, the Parliament has brought a legislation overruling the directions given in the said judgment. Therefore, neither any compensation has been paid to the farmers and the people who lost their livelihood nor the damage done to the environment has been remedied. In the *M.C. Mehta v. Kamal Nath case*,<sup>10</sup> fine was imposed by the Supreme Court on Span Motel for affecting ecology of the river Beas. The Court held that the Motel shall pay compensation by way of restitution of the environment and ecology of the area. It was later clarified by the Court that no fine can be imposed under writ jurisdiction and it requires adjudication under the provisions of Environment Protection Act of 1986. An attempt to recover compensation for the loss caused to the environment in the case of dumping waste oil by various importers also failed.<sup>11</sup>

Referring to the non-implementation of Supreme Court directions Justice S.P. Bharucha pointed out that,

1 For more details, see Geetanjoy Sahu, 'Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence', 4/1 *Law, Environment and Development Journal* (2008), available at <http://www.lead-journal.org/content/08001.pdf>.

2 All instances of the term 'the Court' refer to the Supreme Court of India.

3 *M. C. Mehta and Others v. Union of India*, AIR 1987 SC 965.

4 *Rylands v. Fletcher* is a landmark English case in which the Court of the Exchequer Chamber first applied the doctrine of strict liability for inherently dangerous activities.

5 *Indian Council for Enviro-Legal Action v. Union of India (Bichhri village industrial pollution case)*, AIR 1996 (3) SCC 212.

6 See Sanjay Parikh, Development of Environmental Law: A Critical Appraisal (Paper presented at the National Consultation on Critiquing Judicial Trends on Environmental Law organised by the *Human Rights Law Network* in New Delhi, from 23 to 24 February 2008).

7 *M. C. Mehta v. Union of India*, AIR 1988 SC 1115.

8 Praveen Singh, 'Bridging the Ganga Action Plan: Monitoring failure at Kanpur', *XLI/7 Economic and Political Weekly* 590, 592 (2006).

9 *S. Jagannath v. Union of India and Others*, AIR 1997 (2) SCC 87.

10 *M.C. Mehta v. Union of India*, AIR 1997 (1) SCC 388.

11 See Parikh, note 6 above.

*'This Court must refrain from passing orders that cannot be enforced, whatever the fundamental right may be and however good the cause. It serves no purpose to issue some high profile mandamus or declaration that can remain only on paper. It is counter-productive to have people say, the Supreme Court has not been able to do anything or worse. It is of cardinal importance to the confidence that people have in the Court that its orders are implicitly and promptly obeyed and it is, therefore, of cardinal importance that orders that are incapable of obedience and enforcement are not made'.<sup>12</sup>*

Theoretically speaking, however, in any given case once the judgment is passed it is left to the administration to implement the judgment so as to give effect to it. In the judgment, though the Court issues directions to the agencies of the state as to how its decision has to be implemented, it will not be there to oversee its actual implementation. Nor would the Court examine the extent of its implementation and the nature of its impact. The enforcement agencies, in a number of instances that involve serious environmental problems and public interest, are found to have taken advantage by postponing or not implementing decisions, under one excuse or another, notwithstanding great environmental judgments.<sup>13</sup> This promoted the Court in recent times, to come up with an innovative method: *continuing mandamus*.<sup>14</sup> The application of this tool suggests that instead of passing a judgment and closing the case, the Court would issue a series of directions to the administration or appoints a monitoring committee, to implement within a time-frame, and report back to Court from time to time about the progress in implementation.

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12 Justice S.P. Bharucha's Inaugural lecture at Supreme Court Bar Association's Golden Jubilee's Lecture Series (2001) on Supreme Court on Public Interest Litigation.

13 See M. K. Ramesh, 'Environmental Justice: Courts and Beyond', 3/1 *Indian Journal of Environmental Law* 20, 37 (2002).

14 In *Vineet Narain v. Union of India and Others*, Supreme Court of India, Judgment of 18 December 1997, 1997 (7) SCALE 656, popularly known as the Hawala case, the Supreme Court adopted this technique which enabled it to closely monitor investigations by Government agencies, in respect of serious accusation made against prominent personalities. According to the Court, the innovation was a procedure within the Constitutional scheme of judicial review to permit intervention by the Court on the complaint of interia by the Central Bureau of Investigation and to find solution to the problems.

This, in a way, is an attempt to ensure the implementation of Court orders.

Current debates on the role of judiciary in the implementation of its environmental judgments point to the dangers of judiciary replacing the environmental regulation authority as the nodal agency of implementing environmental rules and regulations. Given the failure of implementing agencies in discharging its duties for various reasons, judiciary is stepping in to respond to the needs and demands of the pollution affected people, especially the poor and marginalised sections of society.<sup>15</sup> Pointing to this emergent trend, social science analysts caution that unlike MoEF and implementing agencies, there are no mechanisms by which judiciary can be made accountable to the people it serves, and suggest that a need for strengthening the existing environmental governance mechanism is necessary to best protect and improve the environment.<sup>16</sup> The debate on the role of judiciary in governance in general and environmental governance in particular remains trapped within an atheoretical framework of policy adjudication versus policy implementation and policy making, in which the believer of separation of powers warn of the increasing intervention of judiciary, and civil society groups herald the same as a step toward ensuring rights of the people against the democratic majoritarianism.

Though scholarly attention has focused on the increasing role of judiciary in implementing its direction as a governance issue, systematic exploration of the factors that determine the variation in the enforcement of environmental judgments has not been area of primary emphasis. In this paper, I have examined the implementation of environmental judgments at the grassroots level. In doing so, I have attempted to explore the factors that determine the variation in the enforcement of environmental judgments and have suggested the strategies required to ensure the effective implementation of environmental judgments at the grassroots level.

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15 See P. Leelakrishna, *Environmental Law in India* (New Delhi: LexisNexis, 2005).

16 For more details, see O.P. Dwivedi, *India's Environmental Policies, Programmes and Stewardship* (Great Britain: Macmillan Press Ltd., 1997). See also Kuldeep Mathur, *Battling for Clean Environment: Supreme Court, Technocrats and Popular Politics in India* (New Delhi: Working Paper, Doc. No. JNU/CSLG/WP/03-01, 2001).



## 2 THEORETICAL PERSPECTIVES

The factors determining the successful enforcement of environmental judgments at the grassroots level are explained in many ways. However, three of them are quite prominent in the literature on jurisprudence and environmental governance. Broadly, they could be classified as (a) the nature and level of judicial activism (b) resource capacity of the petitioner, and (c) the effectiveness of environmental regulatory authority.

### 2.1 Nature and Level of Judicial Activism

At the theoretical level, the advocates of the theory of separation of power between legislature, executive and judiciary argue that the Court should not have any role in the implementation of its own decisions. Its function is confined only to the adjudication of laws and policies. The implementation of its judgments solely depends upon the implementing agencies of the state. The Court's intervention in the implementation of its judgments would violate the principle of separation of power and go against the spirit of democracy.<sup>17</sup> The question then arises as to how the orders made by the Court in environmental litigation can be enforced. The orders made by the Court are obviously not self-executing. They have to be enforced through state agencies, and if the state agencies are not enthusiastic in enforcing the court orders and do not actively cooperate in that task, the object and purpose of the environmental litigation would remain unfulfilled. The consequence of the failure of the State machinery to secure enforcement of court orders in environmental litigation would not only be to deny effective justice to the affected people of pollution on whose behalf the litigation is brought, but it would also have a demoralising effect and people would lose faith in the capacity of environmental litigation to deliver

<sup>17</sup> For more details on the role of judiciary in Indian democracy, see S. P. Sathe, *Judicial Activism in India* (New Delhi: Oxford University Press, 2001). See also Upendra Baxi, 'The Avatars of Indian Judicial Activism: Explorations in the Geographies of [In] Justice', in S.K. Verma ed., *Fifty years of Supreme Court of India: Its Grasp and Reach* (New Delhi: Oxford University Press, 2000).

environmental justice. The success or failure of environmental litigation would necessarily depend to the extent to which it is able to provide actual relief to the pollution affected people and restore the damage done to environment at the grassroots level. If Court orders passed in environmental litigation are to remain merely paper documents, then the innovative method of allowing Public Interest Litigations (PILs) for resolving environmental problems by the Supreme Court would be robbed of all its meaning and purpose. It is, therefore, absolutely essential to the success of the PIL that a methodology should be found for securing enforcement of Court orders in environmental litigation. It is in this situation that the Court has introduced another innovative method to ensure the implementation of its directions through Court-Appointed Monitoring Committee.

The case on point is the one concerning forest conservation in the *T.N. Godavarman v. Union of India*. It started in 1996 as a case seeking directions from the Apex Court for stopping felling of trees in Nilgiris forest and to regulate indiscriminate cutting of timbers in the Nilgiris Forest. The case is yet to be finally decided. Instead, a series of orders passed by the Supreme Court that concern protecting forest, wildlife, preserving biodiversity, National Parks, evicting encroachers including tribal, is still in different stages of implementation.<sup>18</sup> The Court adopted a novel method in making the administration work. It made the government create a think tank like Central Empowered Committee, make preparations for implementation of directions and report at every stage the progress made in achieving the objective. It was indeed an effort by the Court to assist, partner and guide the administration in protecting the forest across the country and present a model for the rest of the county to emulate. In this

<sup>18</sup> Some of the significant orders issued by the Court are the followings: the Order of 12 December 1996 clarified certain provisions of the Forest (Conservation) Act, 1980 and also extended the scope of the Act. The Court held that the word 'forest' must be understood according to the dictionary meaning; all ongoing activity within any forest in any state throughout the country, without the prior approval of the Central Government, must cease forthwith; the Court order of 9 May 2002 constituted an Authority at the national level called the Central Empowered Committee and assigned it the task to monitor the implementation of the Court orders, removal of encroachment, implementations of working plan, compensatory afforestation plantations and other conservation issues.

process of implementation and in its enthusiasm to present such a model, however, the Court has got itself mired in the complexities of a problem that was at once managed by the bureaucracy, local institutions and through traditional form of forest management.<sup>19</sup>

Few would argue today that court should not intervene in the implementation process. Instead, today's debates focus on how legitimate is court's intervention? Why today's court is engaged in implementing its own directions to such an extent is also in heated debate. Yet generally there is an agreement that court is not singularly responsible for the alleged intervention in the implementation process. Other governmental institutions and society in general, share responsibility for the marked increase in judicial activity.

## 2.2 Resource Capacity of the Parties Involved in Litigation

The theory of resource capacity is based on the premise that those who don't have access to resources (knowledge, power, capacity to negotiate) fail in every forms of activity, especially when different types of power structures are involved in the litigation process. 'Powerful players', or those possessing greater resources in terms of wealth, experience and rapport with the political groups on account of powerful players, are more likely to influence the judicial direction than 'powerless groups,' or those possessing lesser amounts of these resources.<sup>20</sup> For instance, Songer and Sheehan found that 'upperdogs' (e.g., state, federal government and business groups) fare better than 'underdogs' (e.g., individuals and community) in the U.S. Courts of Appeals.<sup>21</sup> Since environmental problems caused by the industry and state are powerful actors, the people get affected by the pollution have not enough resources to make the polluter follow the prescribed standards for

the protection of environment. While the resource capacity theory is more concerned about the judicial decision-making process, it can also be applicable to the implementation of judicial directions, especially on environmental cases in Indian context. Generally, environmental cases involve complex scientific and technical issues which require expertise to deal with. In most of the cases, the polluter is a private party or state itself which has access to all resources to justify its activity as subscribing to the established environmental norms and regulations. On the other hand, the affected people or the environmental groups have to mobilise resources to prove that the activity of the industrial units is violating the existing environmental laws and affecting their livelihood. There has been a common understanding that the state is more powerful as far as access to resource is concerned than have businesses or other organisations and that businesses have been more powerful than community or affected party. It is understandable that superior resources allow the 'haves' to put pressure on the implementing agencies, interfere in the implementation of judicial decisions, and so forth, which may delay the chances of implementation of judicial decisions or justify their activity as environmental friendly.

In addition to the resource capacity of the state to influence the implementation of court judgments, research has also demonstrated that implementation of court judgments is often contingent upon the role played by the convincing capacity of the petitioners and their continuous involvement in the litigation.<sup>22</sup> It is argued that the role of petitioner does not end with filing the petitions and getting the decision in his/her favour rather he/she has some responsibility to keep monitoring the implementation of judicial decisions. The environmental group which has initiated the environmental litigation and secured the order of the Court providing a wide-ranging remedy to the pollution affected people should take the necessary follow-up action and maintain constant pressure on the state authorities or agencies to enforce the court order. If it is found that the Court order is not being implemented effectively, it must immediately bring this fact to the notice of the Court so that the Court can call upon the state authorities or agencies to render an explanation. It is said to be believed

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19 For a more detailed analysis of the case, see Armin Rosencranz, Edward Boenig and Brinda Dutta, *The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests* (Washington DC: Environmental Law Institute, 2007).

20 See Marc Galanter, 'Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change', 9/1 *Law and Society Review* 95, 160 (1974).

21 See D.R. Songer and R.S. Sheehan, 'Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals', 36/1 *American Journal of Political Science* 235, 258 (1992).

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22 This inference is made based on the discussion with environmental lawyers of Supreme Court of India namely, Ritwick Dutta, Sanjay Parikh, and Raj Panjwani.



that the consistent engagement of the petitioners and their resource capacity to draw the attention of judiciary and other implementing agencies in the post-judgment scenario is crucial to ensure the implementation of court directions.

### 2.3 Effectiveness of Environmental Regulatory Authority

India has employed a range of regulatory instruments to protect and improve its environment. Across the country, government agencies wield vast power to regulate industry, mines and other polluters to ensure the effective implementation of environmental laws and regulations. The process of environmental regulation which started effectively in the early 1970s has subsequently become comprehensive and stronger, in part, by the spate of fresh legislation passed after the Bhopal gas leak disaster of December, 1984.<sup>23</sup> They cover hitherto unregulated fields, such as noise, vehicular emissions, hazardous waste, hazardous micro-organisms, the transportation of toxic chemicals, coastal development and environmental impact assessment. Equally significant, in the environmental regulation process is the creation of a number of regulatory structures to implement these laws effectively. The enactment of the Water (Prevention and Control of Pollution) Act, 1974 provided for the institutionalisation of pollution control machinery by establishing Boards for prevention and control of pollution of water. These Boards were entitled to initiate proceedings against infringement of environmental law, without waiting for the affected people to launch legal action. The Water Cess Act, 1977, supplemented the Water Act by requiring specified industries to pay cess on their water consumption. With the passing of the Air (Prevention and Control of Pollution) Act, 1981, the need was felt for an integrated approach to pollution control. The Water Pollution Control Boards were authorised to deal with air pollution as well, and became the Central Pollution Control Board (CPCB) and the State Pollution Control Boards (SPCBs).

The Bhopal Gas leak disaster of December 1984 precipitated the tightening of environmental regulation. In 1985, the Department of Environment was changed to the Ministry of Environment and Forests (MoEF)

and given greater powers. The Environment (Protection) Act, 1986 (EPA), was passed, to act as an umbrella legislation. The Act also vested powers with the central government to take all measures to control pollution and protect the environment. The Environment (Protection) Rules, 1986 were subsequently notified to facilitate exercise of the powers conferred on the Boards by the Act. The EPA identifies the MoEF as the apex policy making body in the field of environment protection. The MoEF acts through the CPCB and the SPCBs. The CPCB is a statutory organisation and the nodal agency for pollution control. The EPA in 1986 and the amendments to the Air and Water Acts in 1987 and 1988 furthered the ambit of the Boards' functions.<sup>24</sup> However, an analysis of the environmental regulatory authority in India suggests that Central and state governments and the CPCB and SPCBs have adopted a soft attitude towards polluting industries and have done little more than issuing warnings. The result is that environmental laws are practised more in violation than conformity and a large number of industries operate without proper safety and pollution control measures. There are many factors that explain the failure of implementing agencies in environmental pollution control and prevention. These include: enforcement measures are found to be inadequate; monitoring conducted by the PCBs is also far from effective and not consistent; the PCBs are very poorly staffed and predominance of non-technical members in most of the Boards, the lack of professionals in the composition of the Boards, the tendency to not fill vacancies of PCBs, lack of funds to discharge its duties, inadequate infrastructure in terms of laboratories, monitoring equipment, and regional offices, and increasing political interference in the powers and functions of PCBs.<sup>25</sup> Thus, both motivationally and in ability, the PCBs are ill-structured to ensure the effective implementation of environmental laws and policies.

In this way, I will try to demonstrate that how the failure of environmental regulatory authority in implementing environmental judgments can be seen as an important reason for increasing judicial intervention triggered by

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<sup>23</sup> See Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India* (New Delhi: Oxford University Press, 2001).

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<sup>24</sup> For more details, see Sanjay Upadhyay and Videh Upadhyay, *Handbook on Environmental Law: Forest Laws, Wild Life Laws and the Environment* (New Delhi: LexisNexis, Volume 1, 2002).

<sup>25</sup> See Atiyah Curmally, 'Environmental Governance and Regulation in India', in Sebastian Morris ed., *India Infrastructure Report-2002: Governance Issues for Commercialisation* 96 (New Delhi: Oxford University Press, 2002).

the environmental spirited groups and how the active and consistent involvement of environmental groups and the process of interaction between Court-Appointed Committees and environmental groups is one of the crucial factors in determining the effective enforcement of environmental judgments at the grassroots level.

## 3

### METHODOLOGY

#### 3.1 The Case Selection: Dahanu Thermal Power Plant Pollution (Maharashtra) and Vellore Leather Industrial Pollution (Tamil Nadu)

I selected these two cases as it was important to have some variation in the implementation of environmental judgments at the grassroots level. Variation in the implementation of environmental judgments at the grassroots level allows us to examine the factors that determine the successful enforcement of court orders in one case than the other case. I have considered these two cases both in terms of similarity in the implementing agency and nature of environmental problems (both are industrial pollution cases). I have also chosen these cases because they are filed by two different NGOs such as Dahanu Environmental Protection Group and Vellore Citizens' Welfare Forum as PILs and also the nature and level of activism of these NGOs vary. The approach adopted in this paper is more concerned with processes of implementation, and how these are context dependent and politically conditioned. I conducted my field research during 2008-2010 in Dahanu and Vellore, and some time in Mumbai, Chennai, and Delhi. Given the heterogeneity of actors involved in the implementation of environmental judgments at the grassroots level and part of environmental litigation process, I included a broad spectrum of people at local, state and national levels in my interviews to examine why the implementation of environmental judgments vary from case to case and what factors determine this. My interviews included pollution affected people (farmers, fishermen, adivasi, women and other people from different class, caste and religion background), polluters (industrial owners), state functionaries

(members from Pollution Control Board, Court-Appointed Monitoring committee members), activists, lawyers, judges and academicians. In addition to interviewing the actors involved in the implementation process, I used information from Court judgments, draft petitions filed by NGOs and reports submitted by the Court Appointed Monitoring Committees. A combination of personal interviews and analysis of various legal and official documents helped to examine the factors that determine the implementation of environmental judgments at the grassroots level.

## 4

### SELECTED ENVIRONMENTAL JUDGMENTS: AN OVERVIEW

#### 4.1 Dahanu Thermal Power Plant Case

Dahanu is situated 120 km. north of Mumbai, in the Thane district of Maharashtra, and is one of the last green belts along the country's rapidly industrialising western coast. In 1989 the State Government of Maharashtra approved a proposal of the Bombay Suburban Electricity Supply Company (BSESC), to set up a coal-based thermal power plant in the Dahanu Taluka<sup>26</sup> of Thane District. On 29 March 1989, two local environmental activists: Nergis Irani and Kityam Rustom (Members of the Dahanu Taluka Environment Protection Group) along with Bombay Environmental Action Group filed writ petitions first in the Bombay High Court and then in the Supreme Court challenging the decision of the Central Government to build the power plant.<sup>27</sup> They lost the case, with the Court citing the necessity of energy to power the city of Mumbai as strong grounds to sanction the project. To allay petitioners' apprehensions of environmental damage, the Court directed that the condition requiring the

<sup>26</sup> In the Indian governance structure, Taluka refers an administrative division at the district level.

<sup>27</sup> *Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd. with Bombay Environmental Action Group v. State of Maharashtra and Others*, Supreme Court of India, 1991 (2) SCC 539.

installation of a Flue Gas Desulphurisation (FGD)<sup>28</sup> plant should not be relaxed without a full consideration of the consequences.

It is also important to mention that Dahanu was 'notified', or classified, under the Indian Coastal Regulation Zone (CRZ) by the MoEF on 19 February, 1991.<sup>29</sup> The CRZ bans any new construction and development activities within 500 metres of the high tide line. Dahanu was also declared 'eco-fragile' by a government notification of 21 June 1991<sup>30</sup> (Notification under the Environment Protection Act, 1986, restricts the development of industries, mining operations and other development in the region). Even though Dahanu had been declared an ecologically fragile area, political and industrial interests continued to bring forward development projects in Dahanu Taluka, sidelining both the eco-fragile notification and the CRZ notification of the Government of India. This led environmentalist Bittu Sehgal to file a writ petition in the Supreme Court in 1994, asking the Court to implement the notifications in Dahanu Taluka.<sup>31</sup> The Supreme Court then appointed the National Environmental Engineering Research Institute (NEERI) to investigate the issues set forth in the petition. Based on the NEERI report, the Supreme Court upheld the Dahanu Notification prohibiting any change of land-use in the region and ordered that a committee of experts be formed under Section 3 of the Environmental Protection Act of 1986 to ensure implementation of the environmental laws protecting Dahanu's eco-fragility. The MoEF appointed the Dahanu Taluka Environmental Protection Authority in 1996 under the chairmanship of retired Mumbai High Court judge Justice C. S. Dharmadhikari and supported by a team of eleven expert members.<sup>32</sup> The Authority is empowered to ensure the implementation of Court directions as well as the eco-fragile notification of 1991.

## 4.2 Vellore Leather Industrial Pollution Case

The **Vellore Citizens Welfare Forum** filed a public interest petition under Article 32 of the Constitution of India against large-scale pollution of the soil and water caused by a number of tanneries and other industries in the State of Tamil Nadu. According to the petitioner, the entire surface and sub-soil water of the river Palar has been polluted resulting in non-availability of potable water to the residents of the area. Considering the vital importance of the leather industry to generate revenue for the state and employing thousands of workers, the tanneries and other polluting industries in the State of Tamil Nadu were persuaded for many years to control the pollution generated by them. They were given option either to construct common effluent treatment plants (CETP) for a cluster of industries or to set up individual pollution control devices. The Tamil Nadu Pollution Control Board had prescribed standards for the discharge of effluents and the Central Government had offered substantial subsidy for the construction of CETPs. But the progress was slow, forcing the Court eventually to pass closure orders on several industries. The Supreme Court noted that although the leather industry is a major foreign exchange earner for India and provided employment, it does not mean that this industry has the right to destroy the ecology, degrade the environment or create health hazards.<sup>33</sup>

The Court directed the Central Government to take immediate action under Section 3(3) of India's Environment Protection Act, 1986 to control pollution and protect the environment. The Court ordered the Central Government to establish an authority to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. This authority shall implement the precautionary principle and the polluter pays principle and identifies the loss to the ecology/environment; and individuals/families those who have suffered because of the pollution, and then determine the compensation to reverse this environmental damage and compensate those who have suffered from the pollution. The Collector/District Magistrates shall collect and disburse this money. The

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28 A Flue gas de-sulphurisation unit performs the important role of reducing the sulphur di-oxide emissions from the thermal power plant.

29 For more details, see Government of India, Ministry of Environment and Forests, Notification dated 19 February 1991.

30 See Government of India, Ministry of Environment and Forests, Notification dated 20 June 1991.

31 See *Bittu Sehgal v. Union of India*, Supreme Court of India, W.P. (Civil) No. 231 of 1994.

32 For more details, see Government of India, note 29 above.

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33 *Vellore Citizens' Welfare Forum vs. Union of India*, AIR 1996 SC 2715.

Court also directed the Special Bench- 'Green Bench'- of the Madras High Court to monitor the implementation of its judgments.

The authority so constituted would invoke the *precautionary principle* and the *polluter pays principle*. The Authority should determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The Authority should direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him. A fine of Rs.10,000/- each on all the tanneries in the districts of North Arcot, Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. was imposed. The said fine was directed to be paid before 31 October, 1996. The Chief Justice of the Madras High Court was requested to constitute a special bench 'Green Bench' to further monitor this case. The Ministry of Environment & Forests, Government of India constituted the Loss of Ecology (Prevention and Payments of Compensation) Authority in the year 1996 and appointed Justice P. Bhaskaran, as its Chairman. The Authority after detailed studies and deliberations delivered its award on 12 March, 2002. Accordingly, 547 tanneries in the District of Vellore to pay a compensation amounting to Rs.26.82 crores to 29,193 families as pollution damages and three crores to restore the environment.

## 5 GROUND REALITIES

A survey of the above two selected industrial pollution areas and collection of data from different sources reveals that the implementation of environmental judgments varies from case to case. While the Supreme Court orders in the Dahanu Power Plant case has been effectively implemented, the implementation of its orders in the Vellore leather industrial pollution case has not been carried out effectively. In the Dahanu Power Plant case, the Supreme Court allowed the BSESC to set up the power plant on certain conditions including to install FGD. Therefore, it was mandatory for the company to install FGD as directed by the Authority. The thermal power plant was taken over from BSESC by Reliance Energy Ltd (REL) in 2002. As per the

DTEPA order and REL's own schedule FGD was supposed to be installed in February 2005 but was finally installed in October 2007. When contacted about the delay, the Dahanu Power Plant Manager<sup>34</sup> said that '*the company has been keeping all the emission parameters well below the most stringent standards without the installation of FGD. So why is there a need for FGD?*' It is also confirmed by the Chairperson<sup>35</sup> of the DTEPA that the FGD has been installed and the Dahanu power plant is operating as per the orders of the Indian Supreme Court.

The Court orders in the Vellore leather industrial pollution case have, however, not been effectively implemented. No doubt, as per the Court orders all the industries in the Vellore District are either part of CETP or have effluent treatment plant to treat the waste waters and also many polluted industries were closed down for not setting up effluent treatment plants. However, a survey of industrial units and information gathered from Common Effluent Treatment Plants, it is found that industries with treatment plants are not following the standards as prescribed under the Water Pollution (Prevention & Control) Act of 1974.<sup>36</sup> It is also found that untreated effluents continue to be discharged to nearby water bodies in many places in the Vaniyambadi and Ambur Taluks, thousands of hectares of farmland remained unfit for cultivation, farm yields were at their lowest, people suffered from ailments and potable groundwater was irreversibly lost. As far as distribution and collection of compensation amount from polluted industries is concerned, there has not been any serious attempt to follow the orders of the Court. It is found that compensation amount is distributed fully in few Talukas like Arcot, Tirputtur of Vellore district and not in all affected villages of other Talukas and also compensation amount is not given as per the Court orders.<sup>37</sup> Only 347 industries out of 547 paid the

34 Interview with Prasad Rao, Dahanu Thermal Power Station Head by Geetanjoy Sahu on 23 September 2008.

35 Interview with Justice C.S. Dharmadhikari, Chairperson of DTEPA, by Geetanjoy Sahu on 28 September 2008.

36 Information collected from the Vellore unit of the Tamil Nadu Pollution Control Board (TNPCB).

37 Interview with members of Vellore Environmental Monitoring Committee in January 2009.

compensation amount and a total amount of Rs. 22, 97, 41787 was collected till October 2008.<sup>38</sup>

## 6 FACTORS DETERMINING THE IMPLEMENTATION OF ENVIRON- MENTAL JUDGMENTS

A comparative analysis of the implementation of environmental judgment in both the Dahanu Power Plant Case and Vellore leather industrial pollution case, it is found that there are three crucial factors that determined the variation in the effective implementation of Supreme Court orders between the Dahanu Power Plant Case and Vellore leather industrial pollution case.

### 6.1 Judicial Activism in the Implementation Process

In recent years, the Indian Supreme Court has not only resolved environmental disputes through invoking various statutes and constitutional provisions but has also made serious attempts to ensure the implementation of its orders. One such attempt involves the appointment of monitoring committee consisting of multi-disciplinary background experts to implement the court orders. In a series of environmental judgments, the Indian Supreme Court has directed the Ministry of Environment and Forests to appoint monitoring

committee to implement its directions.<sup>39</sup> While the Court Appointed Monitoring Committees have succeeded in selected cases, the outcomes in a number of cases have not made any significant differences in the effective implementation of Court orders through such monitoring committees rather created problems for environmental regulation.<sup>40</sup> This section highlights how the post-judgment judicial activism through Court appointed monitoring committee in the Dahanu Power Plant Case has ensured the effective implementation of Court orders and failed in Vellore Leather Industrial Pollution Case.

Analysing the role of Court Appointed Monitoring Committee in both the Dahanu Power Plant Case and Vellore Leather Industrial Pollution Case, it is found that the Dahanu Taluka Environmental Protection Authority has been quite open to ideas and viewpoints of different stakeholders in dealing with various environmental issues. The Dahanu Taluka Environmental Protection Authority has conducted regular meetings and public hearings giving sufficient notice to each and every party to the dispute. In this way, the local communities from different sections have found their voice with regard to any development issues in Dahanu through their participation in the DTEPA meeting and public hearing. The Authority has responded to all public appeals within a stipulated time-frame. There is no discrimination in this regard.

In comparison with this democratic way of functioning of DTEPA, the functioning of Loss of Ecology Authority in the Vellore Leather Industrial Pollution case provides a contrast picture. The Loss of Ecology Authority was set up in 1996 on Supreme Court orders to assess the damage caused by industrial pollution in the districts of Vellore, Dindigul, Kancheepuram, Tiruvallur, Erode and Tiruchi. Assessing damage to ecology and loss of livelihood is a task which needs

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<sup>38</sup> Information collected from Vellore District Collectorate Office in January 2009. As per the Loss of Ecology Authority Report, tannery pollution has affected 17,170 hectares of farmland in Vellore and Dindigul districts impacting 36,056 farmers; and 621 tanners in the two districts have to pay a compensation of Rs.30.75 crores to the affected farmers and Rs.3.98 crores to reverse the damage caused to the ecology. However, the polluted industries of Vellore District to pay a compensation amounting to Rs. 26.82 crores to 29,193 families as pollution damages and 3 crores to restore the environment. This information is confined to leather industries of Vellore district as the paper focuses only on leather industrial pollution in Vellore and compensation collected from these industries and distributed to people of Vellore district.

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<sup>39</sup> There are several monitoring committees in different environmental cases to ensure the implementation of Court directions, such as Loss of Ecology Authority in the Vellore Industrial Pollution Case, Central Empowered Committee in the *T.N. Godavarman vs Union of India & Ors.*, W. P. (C) 202/1995 before the Supreme Court of India, and Bhurelal Committee in the Delhi Vehicular Pollution Case and Dahanu Taluka Environmental Protection Authority in the Dahanu Power Plant Case.

<sup>40</sup> For more details, see Rosencranz, Boenig and Dutta, note 19 above.



careful balancing of various interests. Local farmers and leaders feel that the assessment was done arbitrarily and haphazardly, as it leaves the affected people worse off.<sup>41</sup> This is what has happened in Tamil Nadu's Vellore district, where lakhs of people are bitterly disappointed with the award given by the Loss of Ecology Authority. The award leaves out two districts (Erode and Tiruchi), several badly hit villages in Vellore district and large tracts of farmland rendered barren, soaked as they were for decades in tannery effluents. The people affected by pollution caused by tannery units in six districts in Tamil Nadu are left disappointed by an award that they see as having failed to assess the damage to the ecology and to determine ameliorative measures in a fair and sensitive manner.<sup>42</sup>

According to Mr. Gajapathy, Member of the Vellore Environment Monitoring Committee, none of the three major issues - providing compensation, reversing the damage to the ecology, and preventing further damage to the environment - has been addressed by the Authority. The Authority, according to Gajapathy, relied solely on the data obtained from the Revenue department and the TNPCB. Says Gajapathy: 'The members, in the 42 months of the study, did not interact with even one farmer in the district'.<sup>43</sup> The Authority, according to Gajapathy, has left many affected villages in the study and also used its discretionary power to include or exclude the names of the farmers for the benefit of compensation. Like Mr. Gajapathy, there are many other affected farmers also complained that there was no interaction between the members of the Loss of Ecology Authority and affected farmers and the decision-making process in assessing the damage to ecology and loss of livelihood by the Authority was not democratic and transparent.

In this way, while the DTEPA demonstrates how the Environment Protection Act can be used to give decentralised powers to a monitoring committee and ensures the implementation of court orders through dialogue and discussion with various stakeholders, whereas the Loss of Ecology Authority has failed to create space for discussion and centralised the decision-

making process. What has allowed the independent functioning of the DTEPA, despite various problems created by the MoEF and state agencies, was its ability to provide hope and a mode of expression to the local community. The fact that the Court decisions in a majority of cases have not been implemented has not discouraged the local community in having faith in the justice system. Thus, the work of the Dahanu Taluka Environment Protection Authority was of value, not necessarily because of its instrumental success in protecting Dahanu but also because its multi-disciplinary structure and highly independent mode of operation created a new deliberative space, which was open to the arguments of the local community. Rather than being vilified as interfering in the affairs of the executive, the DTEPA has shown how useful a multi-disciplinary environmental monitoring committee can be to implement court directions on environmental issues and to empower local people.<sup>44</sup>

The very idea of a Court Appointed Monitoring Authority is to evolve a more decentralised approach to ensure the effective implementation of the law. The DTEPA has proved this and Loss of Ecology Authority failed to do so. In this connection, it is also important to mention that the MoEF has made many attempts to scrap the DTEPA by not providing adequate financial and other resources for the effective functioning of the authority but the DTEPA has continued to function without these resources and ensured the effective implementation of environmental laws in a democratic and transparent manner.<sup>45</sup> It is, therefore, important to make the process of judicial activism through Court appointed monitoring committee in the post-judgment period more democratic and transparent to translate the orders of the Court into action.

## 6.2 Resource Capacity of the Petitioner

Theoretically it has been argued that the resource capacity of the parties involved in the litigation is not

41 Information collected from interaction with farmers of Ambur and Vaniyambadi Talukas and members of Vellore Environmental Monitoring Committee in June, 2010.

42 For more details, see Asha Krishnakumar, 'An Award and Despair', 19/16 *Frontline* (2002).

43 Interview with Mr. Gajapathy on 19 June 2010.

44 For more details, see Geetanjoy Sahu and Armin Rosencranz, 'Court-Appointed Monitoring Committee: The Case of the Dahanu Taluka Environment Protection Authority', 5/2 *Law, Environment and Development Journal* (2009), available at <http://www.lead-journal.org/content/09185.pdf>.

45 Information gathered from Interview with Justice S. Dharmadhikari, Chairperson of DTEPA, by Geetanjoy Sahu on 28 September 2008.



only crucial in the decision-making process of court orders but also an important factor both in the non-implementation and effective implementation of Court orders. A comparative analysis of post-environmental judgment in both the Dahanu Power Plant and Vellore Leather Industrial Pollution cases justifies this theoretical argument, however in a different way. As mentioned earlier that the 'Powerful players like State actors and industrial owners,' or those possessing greater resources in terms of wealth, experience and rapport with the political groups on account of powerful players, are more likely to influence the implementation of judicial direction than 'powerless groups like farmer, poor people, women and people belonging to disadvantaged sections of the society,' or those possessing lesser amounts of these resources. The comparative analysis of the resource capacity of the parties involved in both the selected cases gives a contrast picture. No doubt, in both the cases the resource capacity of the polluters is quite stronger than the pollution affected people. However, unlike the theoretical argument that the upperdogs with greater resources like access to power structure, capacity to convince the Court, hiring a lawyer for representation can influence the implementation process, the study finds that how the underdogs' consistent approach and resource capacity has made a difference in the effective implementation of Court orders.

In the Dahanu Power Plant Case, the petition was filed by Dahanu Taluka Environmental Protection Group, a local environmental NGO consisting of lawyers, academicians, social and environmental activists. The petition was filed against the Bombay Suburban Electricity Supply Company (BSESC) and later on against the Reliance Energy Limited (REI) as BSESC was taken over by REI in 2002. As mentioned earlier that the Court allowed the BSESC to set up the plant with certain conditions and later directed the DTEPA to monitor its orders. However, even though the Supreme Court allowed the BSESC to set up the power plant on certain conditions including to install FGD, no attempt was made by the BSESC to install FGD. The Dahanu Taluka Environmental Protection Group took up the issue with the specially constituted quasi-judicial Authority, the DTEPA, that passed an order on 12 May 1999 directing the company to initiate the process of 'setting up of the FGD unit within a period of six

months and complete the same within a reasonable time period'.<sup>46</sup>

Over the years, the company tried to escape this mandatory environmental clearance by challenging the order of the Dahanu Authority in the High Court of Mumbai as well in the Supreme Court of India. However, in March 2005, the environmentalists filed an application with the Dahanu Authority seeking redressal in the form of a 300 crore rupees bank guarantee from the company demonstrating its commitment to installing a pollution control device in an ecologically fragile zone. After several hearings, the Dahanu Authority passed an order holding Reliance Energy responsible for the unnecessary delay in abiding by environmental clearance conditions as well as Court orders that demanded the setting up of the FGD unit. The Dahanu Authority directed Reliance Energy to put down a bank guarantee of Rupees 300 crores to prove its commitment to protecting Dahanu's environment as demanded by the Dahanu Taluka Environmental Protection Group.<sup>47</sup> Reliance Energy appealed against this order in the Mumbai High Court in April 2005. In June 2005, the Mumbai High Court upheld the Authority's verdict regarding installation of the FGD unit, but lowered the amount of the bank guarantee from Rs.300 to Rs.100 crores.<sup>48</sup> A deadline of October 2007 was accepted by all as being the final time schedule for the installation of the FGD unit. When contacted about the status of implementation, the Chairperson of the Authority as well as the members of Dahanu Taluka Environmental Protection Group acknowledged that the deadline had been met.

One of the important factors contributing to the effective implementation of court orders in the Dahanu

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46 Dahanu Taluka Environmental Protection Authority, Supreme Court Monitoring Committee Report dated 12 May 1999 for the Implementation of Dahanu Eco-fragile Notification of 1991, Maharashtra Pollution Control Board, Mumbai.

47 Dahanu Taluka Environmental Protection Authority, Supreme Court Monitoring Committee Report dated 19 March 2005 for the Implementation of Dahanu Eco-fragile Notification of 1991, Maharashtra Pollution Control Board, Mumbai.

48 For more details, see Michelle Chawla, Dahanu: The Environmentalists versus The People, available at <http://infochangeindia.org/200504055755/Environment/Features/Dahanu-The-Environmentalists-versus-The-People.html>.

Power Plant case has been the consistent engagement of the environmental group in drawing the attention of judiciary in general and the Court Appointed Monitoring Committee in particular. Ever since its formation in 1989, the DTEPG has been actively involved and engaged in convincing the Court and other environmental law implementing agencies about the negative implication of Dahanu Thermal Power Plant. It started its campaigning under the leadership of Nergis Irani in challenging the selection of Dahanu for thermal power plant location and mobilised people of different sections against the power plant. Initially, the environmental movement led by DTEPG was consisting people mainly from middle class society but in due course of time students, local tribal people, fisherman, and other sections of the society joined the movement. Also, it could able to gain the support of middle class society of Bombay and mainstream media to highlight the negative implication of the Dahanu Power Plant. As a result, while the middle class members of the DTEPG were active in litigation and knowledge based activism like preparing research reports on the negative impact of development projects on Dahanu's environment, the local members of DTEPG were active in mobilising people against the plant and creating awareness about the negative social-economic and environmental implications of development projects in Dahanu. It is also observed that the DTEPG didn't find it difficult to voice its concern in the Court of Law as people volunteered to work on different aspects of the case including representing the case in the Bombay High Court and later on in the Supreme Court.<sup>49</sup> The consistent approach and representing the environmental interest of Dahanu Taluka at various decision-making levels through different strategies by the DTEPG has also inspired other groups in Dahanu to work towards environmental protection and improvement in the local area.<sup>50</sup> Even though different environmental groups in Dahanu have different environmental agendas and strategies, their consistent engagement with state actors have not allowed upperdogs like REI to violate the orders of the Court in protecting and improving the environment of Dahanu Taluka.

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49 Interaction with Nergis Irani, Founding Member of Dahanu Taluka Environment Protection Group.

50 The other environmental groups in Dahanu include: Dahanu Parisar Bachano Andolan and People's Alliance for Effective Implementation of Environmental Laws.

In contrast with the resource capacity of the environmental group and its consistent engagement with various state actors in ensuring the effective implementation of environmental laws, the Vellore Citizens' Welfare Forum and other environmental groups in Vellore have failed to continue their activism in the post-judgment period. The Vellore Citizens' Welfare Forum, an association of people from different sections of society was formed in the late 1980s to work on various community development issues in Vellore District of Tamil Nadu. It filed a PIL in the Supreme Court of India in 1991 against the polluted leather industries in different parts of Tamil Nadu and got a landmark judgment in its favour in 1996. The Supreme Court judgment in the Vellore leather industrial pollution case has become a precedent for many industrial pollution cases in India as it had for the first time emphasised on environmental principles like polluters pay principle, public trust doctrine, sustainable development, and inter-generational equity in the management of natural resources in India. As mentioned earlier, the Court has ordered the Madras High Court to constitute a Green Bench to monitor its directions and also ordered the setting up of the Loss of Ecology Authority to assess the damage, identifying the affected individuals, farmers, families and farms. While the litigation filed by Vellore Citizens' Welfare Forum got progressive orders and innovative methods introduced by the Court to restore the damage done to environment and people's livelihood, the Court orders after more than a decade have not been complied with.

The Vellore Citizens' Welfare Forum has not been able to sustain its activism in the post-judgment period for many reasons. One of the important reasons for its in-activism has been lack of resources and its capacity to mobilise people in a consistent manner. According to Mr. Mohan, Member of Vellore Citizens' Welfare Forum "The organisation finds it difficult today to hire a lawyer to represent the case and in preparing the implementation status report to convince the Court about the failure of implementing agencies as it lacks both financial and human resources".<sup>51</sup> The Vellore Citizens' Welfare Forum is nowhere in picture today in the litigation process. In the post-judgment period since 1996, hundreds of writ petitions have been filed in the Green Bench of Madras High Court and many new

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51 Interaction with Mr. Mohan Kumar, Member of Vellore Citizens' Welfare Forum in March 2009.

environmental groups like Vellore Environmental Monitoring Committee<sup>52</sup> and Palar Future Group have been working to ensure the effective implementation of court orders. The Vellore Environmental Monitoring Committee has been fighting the legal battle in the Green Bench of Madras High Court for the last two years to get adequate compensation for the farmers and to restore the damage done to environment. However, its petition was dismissed by the Green Bench of Madras High Court in May 2010 and the organisation finds it difficult now to appeal in the Supreme Court of India as it lacks financial resources to hire a lawyer and other supports like preparing a report on the status of compensation paid to farmers so far and why the Court should consider to pay compensation also for the post-1996 period.<sup>53</sup> The other environmental group claims to be active in Vellore District is Palar Future Group, an association of academicians, social and environmental activists. A close analysis of its role in Vellore environmental activism, however, shows that it has not been consistent and remains a symbolic group.

In this way, unlike the consistent and active involvement of environmental groups in the Dahanu environmental protection, the environmental groups in the post-judgment period in Vellore have failed to continue their activism as they lack both financial and human resources to draw the attention of Court and implementing agencies for the effective implementation of environmental laws. However, the failure of Vellore Citizens' Welfare Forum and other environmental groups in Vellore in their activism in the post-judgment period is not a unique case. Like Vellore Citizens' Welfare Forum, there are many other environmental groups and activists who have filed litigation and have been able to get favourable environmental judgments. The petitions filed by Indian Council for Enviro-Legal Action against the polluted industries in the Bichhri Village of Rajasthan and polluted industries in Patancheru of Andhra Pradesh; petitions filed by M.C. Mehta for protection of river Ganga from tanneries in Kanpur and Calcutta; petition filed by S. Jaganath for the enforcement

of Coastal Zone Regulation Notification and many other petitions filed by different environmental groups have witnessed many landmark environmental judgments in their favour but failed to continue their activism in the post-judgment period and thereby there is hardly any significant impact of environmental judgment at the implementation level.

Given the apathy of environmental law implementing agency and ignorance of pollution affected people about the legal system, the environmental groups and activists need to play an important role not only in drawing the attention of judiciary by filing PILs but also in continuing their engagement in the post-judgment period. No doubt, India has a well-established regulatory framework to enforce environmental laws and policies but the history of last three decades has witnessed how the failure of these institutions have compelled environmental groups to seek the intervention of Judiciary in environmental protection. Although judicial intervention has been required to change the behavior of these environmental law implementing agencies, there have not been significant changes without monitoring by the Court either through independent monitoring committee or by setting up Green Bench at the High Court level to implement its directions. However, it is also found that the Court appointed monitoring committee needs to be activated by environmental groups. Therefore, the role of petitioner does not end with filing the petitions and getting the decision in his/her favour rather he/she has some responsibility to keep monitoring the implementation of judicial decisions. The environmental group which has initiated the environmental litigation and secured the order of the Court providing a wide-ranging remedy to the pollution affected people should take the necessary follow-up action and maintain constant pressure on the State authorities or agencies to enforce the Court order. If it is found that the Court order is not being implemented effectively, it must immediately bring this fact to the notice of the Court so that the Court can call upon the State authorities or agencies to render an explanation. The above comparative analysis of Dahanu Environmental Groups and Environmental Groups in Vellore in the post-judgment period, however, suggests that their role in ensuring the implementation of Court judgments is often contingent upon the resource capacity of the petitioners and their continuous involvement in the litigation.

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52 Vellore Environmental Monitoring Committee was formed in 2007 to work for the environmental protection of Vellore District. It is an association of farmers and middle class people from different Talukas of Vellore District but it is very active in Ambur Taluka only.

53 Information shared by Mr. Gajapathy, Member of Vellore Environmental Monitoring Committee.

### 6.3 Political Economy Factor

The political economy of environmental protection in India turns on the debate over whether effective implementation of environmental laws hampers growth. In developing countries like India, growth is frequently seen as the major development goals than to environmental protection. Over the past two decades, India's annual economic growth rate has averaged between six to eight per cent, led by the industrial and the manufacturing sectors. Hundreds of thousands of new jobs have been created in these sectors, and the domestic marketplace now offers an array of goods that middle-class consumers would not have imagined only ten years ago. Such rapid economic gains, however, come at a cost: industrial pollution and its ramifications are features of that progress.<sup>54</sup> Implementing agencies who oversee enforcement of environmental laws face two challenges: they do not have the resources required to monitor an industrial economy dominated by small firms, and their political superiors often give them contradictory directives. A close analysis of both the Dahanu Power Plant and Vellore Leather Industrial Pollution case reflects the inherent and explicit tensions between development project and economic growth on the one hand and environmental protection on the other hand and how attempts have been made to accommodate political and market forces at the cost of environment.

In the Dahanu Thermal Power Plant Case, the Bombay Suburban Electric Supply Company Limited (BSES) was allowed to set up a thermal power plant in Dahanu based on the condition to install a Flue Gas Desulphurisation (FGD) plant for its thermal power plant at Dahanu for environmental safety and protection as well as well-being of the local residents. Even the Ministry of Environment also insisted on installation of FGD plant in view of the good horticultural and agricultural potential of the area. Subsequently, the Nagpur-based National Environmental Engineering Research Institute (NEERI) recommended that a FGD plant should be installed forthwith to protect the environment. The company was also ordered to make efforts for obtaining gas and use it if available in preference to coal. It was further mentioned that the company shall obtain washed coal,

if possible from coal fields, in case coal is to be used. However, the company had made all attempts to not follow the orders of the Court till October 2007. In its submissions before the DTEPA, BSES stated that the recommendations of NEERI were not binding on it, secondly, it has resorted to use of coal instead of gas since gas was not available for running the thermal power plant, thirdly, the expert member of the State Pollution Control Board, Dr B. B. Shrivaiakar, has stated that FGD system may not be rated compulsory, if the total emissions remain within the prescribed limits and that the World Bank has also observed that emission standards could be met without a FGD plant. In addition, the BSES submitted a list of 14 projects where the environment department has given the clearance for establishment of thermal power plant without the establishment of FGD plant. The BSES also pointed out that installation of FGD plant would need additional expenditure of Rs 300 crore and these costs will indirectly be loaded on the consumers.<sup>55</sup> Notwithstanding all these submissions made by BSESC, the DTEPA emphasised that the Supreme Court order has to be observed scrupulously and it forced the company to install FGD in October 2007.

While the DTEPA was active in forcing the company to install FGD for environmental safety and also playing an important role in the implementation of eco-fragile notification of 1991 for Dahanu region, different political parties and proponents of development projects opposed its requirement for Dahanu's environmental protection. Ever since Dahanu was declared an eco-fragile area in 1991 and the Court's direction to implement the notification in 1996 through the DTEPA, the political parties across their ideological differences have not only defaulted on implementing the notification but have been actively lobbying to rewrite the laws of the land to benefit developers and builders. Environmentalists accuse industry and vested interests of subverting various laws that were formulated to preserve the ecological fragility of the tribal-dominated

<sup>54</sup> For more details, see David Stuligross, 'The Political Economy of Environmental Regulation in India, Pacific Affairs', 72/3 *Pacific Affairs, University of British Columbia* 392, 406 (1999).

<sup>55</sup> See Meena Menon, 'Environmentalists vs. BSES: Eco-fragile Dahanu Battles on', 2003, available at <http://infochangeindia.org/200306035754/Environment/Features/Environmentalists-vs-BSES-Eco-fragile-Dahanu-battles-on.html>. See also Prafulla Marpakwar, 'Dahanu Plant: BSES Submissions Rejected', *Indian Express*, May 16 (1999) available at <http://www.expressindia.com/ie/daily/19990516/ibu16009p.html>.

Dahanu Taluka.<sup>56</sup> Proponents of development, on the other hand, feel cheated by the notification and have challenged it in the Mumbai High Court. In fact, there have been several serious attempts to de-notify Dahanu as well as disband the Dahanu Authority, by a section of powerful industrialists, builders and local politicians. In 2003, a special committee was constituted to ascertain if Dahanu could be considered eco-fragile.<sup>57</sup> This Committee held a large public hearing in Dahanu with the aim of determining the views of the people. However, the meeting was conducted by local commercial interests and politicians, who asserted that the Dahanu notification was a major stumbling block to development in the region, and that it should be withdrawn. Misrepresenting the notification to claim that even a flour mill was not permitted in the area, the Committee created an atmosphere that projected a collective opposition to the Notification and the function of the Authority.

Since its very inception, the Maharashtra Government has been hostile to the notification, allege environmentalists.<sup>58</sup> The state government seems insincere about implementing the eco-fragile notification. Most surprisingly, in January 2002, the Ministry of Environment and Forests, an agency which should be protecting Dahanu and other eco-fragile areas, filed an application in the Supreme Court demanding an end to DTEPA on the grounds that it had already completed its work. The ministry claimed that it needs a single authority to monitor all eco-fragile areas.<sup>59</sup> The environmentalists fought this application at the Supreme Court and in January 2004, the application was dismissed. The ministry's move to scrap the DTEPA seems to lack any credible reason. It said that the continuance of the Authority was not necessary as its only remaining activity was the finalisation of the development plan for Dahanu.

The MoEF argued that Dahanu is too small an area to have a separate Authority of its own. Both the MoEF and the State Government of Maharashtra have showed little willingness to engage in constructive discussions with the local community, and seemed prepared to ignore the deep environmental and social problems of the development projects. The ministry has starved the Authority of operating funds, although the Authority has continued to function without these resources. Notwithstanding all these efforts of MoEF and State Government of Maharashtra to scrap the Authority, the Authority has survived over these years and has been effective under the leadership of Justice S. Dharmadhikari. The democratic and transparent nature of the Authority in the implementation process has enabled it to gain mass public support and has made it difficult for the political and market forces to violate environmental laws and the special environmental notification for Dahanu declaring it as one of eco-fragile areas of the Country. Furthermore, the DTEPA, in its strong standing against the local political and industrial establishment, has effectively reflected the hopes and aspirations of environmentalists and local community members.

While the court orders have been implemented in the Dahanu Thermal Power Plant case, the political and market forces have hampered the effective implementation of Court orders in the Vellore Leather Industrial Pollution case in Vellore. Pollution from leather industry in Tamil Nadu in general and in Vellore District in particular is increasing day by day. Virtually every leather industry in Tamil Nadu - large and small-scale industry- exhibits a trend toward greater economic production<sup>60</sup> and more pollution. For example, the study carried out by Tamil Nadu Pollution Control Board found that effluents discharged by the leather industries exceed the permissible standards as prescribed by the Central Pollution Control Board. The discharge of untreated effluents harms not only nearby water bodies like Palar river and the predominantly poor rural farmers near the industrial units, but also the agricultural

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56 Interview with local environmental activist Nergis Irani of Dahanu by Geetanjoy Sahu on 22.09.08.

57 See Mohan Rao Committee Report of 2003.

58 Interview with Michelle Chawla, Coordinator of Save Dahanu and also member of DTEPG of Dahanu, by Geetanjoy Sahu on 22 September 08.

59 In addition to Dahanu, more recently, the hill stations of Matheran and Mahabaleshwar-Panchgani have been notified eco-sensitive zones in Maharashtra after a lot of pressure from environmentalists. There are other regions in the country that are similarly notified, such as the Doon Valley (the first), the Aravalli range, Pachmarhi in Madhya Pradesh and Numaligarh in Assam.

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60 Of the 1,083 tanneries in India, more than half, i.e. 577 are in Tamil Nadu and of the 577, Vellore district account for as many as 547 tanneries. The production in Tamil Nadu is 44 percent of the total all-India production. For more details, see Case Study of the Leather Industry in Tamil Nadu, available at <http://www.tntdpc.com/technoblaze/may/casestudy.pdf>.



economy in nearby fields. The river is dry with overexploitation, the groundwater is colored, saline and contaminated with the leather industry's effluents and the air is thick with the stench from the tanning process.<sup>61</sup> The leather tanning industry in Tamil Nadu is also one of the most caustic, both to factory workers and to those who drink and bathe in river water downstream.<sup>62</sup>

The advocates of ecological modernisation theory argue that economic progress can lead to lower pollution levels.<sup>63</sup> Economies of scale like those in developed countries would make introduction of clean technologies more feasible economically. From an ecological modernisation perspective, India's environmental degradation could be reduced as the economy progresses toward a concentration of larger firms. Optimism based on applying such a logic to tanneries in Tamil Nadu, however, would misread both the structure of Tamil Nadu's economy and the administrative and political constraints facing its government.<sup>64</sup> Pollution abatement is a business expense. This cost can be substantial for the 80 per cent of leather industrial units in Vellore district that employ twenty-five or fewer workers. Moreover, abatement is a cost that does not substantially improve the quality of the product or its marketability. Finally, the distributional effects of an effective pollution control regime are ambiguous. If leather industrial units were forced to make an additional investment in new technologies, some would be forced out of business. This would lead to greater unemployment for all and, since most leather industrial workers are low-wage earners, the hardest hit would be the poor. Small-scale leather industries have attributes worth preserving: they tend to be relatively labor-intensive and thus employment-generating, and they tend to be located relatively close to the homes of potential employees,

thus reducing the transportation costs faced by workers in countries with a more large-scale industrial landscape.

For these reasons, Tamil Nadu government for decades has fostered a policy that encourages and in some sectors requires - small-scale leather industries, despite the well-known pollution ramifications. An economy based to a great extent on small-scale production yields not only a relatively high pollution-to-production ratio, but also a political environment in which government monitoring and enforcement are challenges. No doubt, the Pollution Control Board of Tamil Nadu claims that all the leather industries in Tamil Nadu are either part of Common Effluent Treatment Plant or have individual treatment plant treat waste materials and water. However, majority of these industries are not following the prescribed standards as the operational cost of the treatment plant is expensive for small-scale leather industrial units. The government tends to be considerably more tolerant with the small-scale leather industrial units in matters concerning environmental law enforcement. Even if the Ministry of Environment and Forests at the Central level chose to pursue an aggressive anti-pollution policy, the government at the state level would be hard-pressed to devote the resources required for effective monitoring of an economy based on small-scale production. Also, the lack of active interest of Green Bench of Madras High Court in ensuring the implementation of Supreme Court orders and absence of effective leadership in the Pollution Control Board and coordination among different implementing agencies like Pollution Control Board, Loss of Ecology Authority, Revenue Department and District Collectorate Office has witnessed implementation failure in Vellore leather industrial pollution case.

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61 *Id* at 87.

62 See J. Wiemann, 'Exports of Environmental Standards through International Trade: the Case of Indian Leather Exports Adjusting to German Eco-standards', 84/3-4 *Geographische Zeitschrift* 179, 86 (1996).

63 For more details, see Dana R. Fisher and William R. Freudenburg, 'Ecological Modernization and its Critics: Assessing the Past and Looking Toward the Future', 14 *Society and Natural Resources* 701, 709 (2001).

64 Political parties in Tamil Nadu irrespective of their ideological differences have been supporting the leather industries as these industries are major funding agencies for the political parties.

## 7 CONCLUSION

This paper has argued and illustrated how the nature of judicial activism in the post-judgment period produced effective results through a democratic, transparent, and participatory process. From the positive judicial activism perspective emerges a diversity of methods which defy the standard judicial role in governance process. This innovative method of judiciary in appointing committee



to implementing its directions, far from its traditional/conventional role in a democratic set up, becomes a common phenomena in environmental governance in India, and this in turn necessarily introduces new method of environmental regulation through court appointed monitoring committee and also involving public in the monitoring process of judicial directions on environmental judgments. However, this process of judicial intervention doesn't take place in isolation. It needs to be triggered by the active and consistent participation of people or NGOs who represent the affected people.

No doubt, in both the case studies, it is observed that the State Government of Maharashtra and Tamil Nadu have made all attempts to accommodate political and market forces sidelining environmental laws. But from the two environmental judgments' implementation status at the grassroots level, it is found that the role of judiciary has become an integral part of the implementation process: implementation of Court orders in Vellore through Court-appointed committee and Green Bench produced hardly any significant result, whilst in Dahanu power plant case the Court-appointed committee played a predominant role in the successful enforcement of environmental judgment, notwithstanding the obstacles created by the MoEF and State Government of Maharashtra. Similarly, the role of public spirited groups is crucial to the implementation process as it is their active and consistent engagement with convincing capacity makes a difference in the successful enforcement of environmental judgments. What the two cases demonstrate is the way in which the Court-appointed committee and the public spirited groups and other organisations representing public interest interact with each other. This unifying tendency of Court-appointed committee to ensure the implementation of its directions seems to sideline the importance of environmental regulation authority, though it is not clear how far this trend will continue in the future.

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