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Role of Judiciary in Protecting and Preserving the Environment

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ABSTRACT

The present dynamic environment is evolving at a rapid rate with change in technology, industrialisation, urbanisation, population growth and many other factors. But these changes are not only developing but also degrading the environment as with the growth the natural resources are exploited, the natural energy forces are depleted and other types of pollution of water, air, sound, nature takes place. All these changes are in turn degrading the quality of life or human lives. According to article 21 of the Indian Constitution a person has a Right To Live Life In A Healthy Environment but because of these rapid changes this Fundamental Right gets violated. In order to control and put checks and balances on the degradation of the environment and the use of natural resources and energy the judiciary various steps by various legislations and procedures along with establishment of specified judicial bodies such as national Green Tribunal for dealing with the environmental issues. The honourable court had also ruled various landmark judgements in this regard. Through this paper is an attempt is made to highlight and discuss the role judiciary plays in protecting the environment and preserving its sustainability.

Keywords: Environment laws, National Green Tribunal, Judiciary, Sustainability.

I. INTRODUCTION

“Twenty five years ago people could be excused for not knowing much about, or doing much, about climate change. Today we have no excuse.”

-Desmond Tutu

With the growth of mankind the world is changing and development is taking place but with this development industrialization, urbanization, population explosion, deforestation, exploitation of natural resources, depletion of natural energy and other environment deteriorating problems have also emerged in the world. Due to this the nature is becoming inhabitable for all the species. The whole world depends on the environment for its existence but due to this “idea of progress” for development, the environment is getting polluted and

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degraded day by day and a global crisis is happening. Though these issues are as old as the appearance of Homo Sapiens on the earth². It is important to remember that development and economic growth of any country must not only be focused on socio-economic justice but also harness environment in a sustainable way.³

The Indian constitution is among one of the few constitutions in the world which gives every human being a right to live in a healthy environment⁴ but for this right to be fulfilled sustainable development needs to take place. The concept of sustainable development had originally originated in the early 1972 during the Stockholm declaration where 113 nations had gathered to establish an international legislation and obligation on the signing countries for protection of environment. It had been stated in the declaration that:

“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generation”.

The term “sustainable development” was coined by the International Union for the Conservation of Nature (IUCN) in the year 1980 in “World Conservation Strategy” but its definition was given by Brundtland Report “Our Common Future” published in 1987 by defining it as a development that meets the need of the present without compromising the capability of future generations to meet their own needs⁵. It contains within it two concepts:

- the concept of needs in particular the essential needs of the world’s poor, to which overriding priority should be given; and
- The idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs⁶.

The concept of sustainable development establishes the world as a system that connects space and time as any harm done in any part of the world affects the whole system i.e. world and has effects over time i.e. future impact. Thus for preserving the environment sustainable development is of utmost importance and for this the 1972 Stockholm Conference came as a turning point in the history of environment management in India as prior to 1972 in India, the environmental concerns such as sewerage disposal, sanitation and public health were dealt with

² E.Hambro, “The Human Environment -Stockholm and after” Year Book Of World Affairs , 20 (1974)

³ G.S Tiwari “Sustainable Development as a Socio-Economic Growth Strategy, Expanding Horizons of Environmental Law in India”52 JILI 435 (2010).

⁴ Article 21 Constitution Of India

⁵ Our Common Future- The World Commission on Environment and Development, 43 (1987)

⁶ www.sustainabledevelopmentinfo.com accessed on 3 Oct. 2017

by federal ministries and each pursued their own objectives in the absence of a proper coordination system. But with the 1972 Stockholm Conference it became binding on the signatory countries to provide for environment laws, policies, resource persons, admiration along with environmental institutions at all levels to combat the issue of environment degradation along with sustainable growth.

After this convention came into force the legislative and executive were made responsible for the environments protection, preservation and sustainability but though these bodies embraced the principles for the environment's benefit but there was still a lack of practical application of the principles along with the shortcomings of the executive and hence the judiciary took charge for the application and implementation of laws for sustainable development of our environment. The judiciary at all levels of hierarchy promotes the protection, preservation and sustainable growth through the Rule of Law through its judgments and declarations. The Supreme Court and High Court have worked from case to case for making environment as a fundamental right and then extending its meaning to right for compensation, clean water and air along with sustainable use of resources.

This paper is an attempt made to share the information about the role of judiciary in protecting and preserving the environment sustainability with special focus on the role of environment courts and National Green Tribunal.

(A) Aim of the Study

The aim of the paper is to identify the various courts dealing with environment issues and their role in the protection of environment along with focusing on the need for specialized green courts and tribunals.

(B) Research Questions

This study will find answers to the following central research questions:

- Which are the various level of judicial and quasi-judicial bodies involved in environment protection and preservation?
- What role judiciary plays in environment sustainability?
- What is the benefit of special green courts such as National Green Tribunal?

(C) Hypothesis

The legislative body though enacted laws and established state bodies for environment protection and sustainability but it is the judiciary which has actually done the most work towards environment protection, preservation and sustainability.

II. JUDICIAL BODIES INVOLVED IN ENVIRONMENT PROTECTION

It is a well-established fact that post-independence the Indian government was focused only on development and industrialization and the environments preservation was the least of its priority as they believed that being a developing nation and just in the starting phase of the development with lack of monetary resources it was neither possible nor feasible to focus on environment as even setting up a waste treatment plant costed much more than the liability connected with it so as a result the focus was only on development. Though in the British era a few laws were enacted for the environment but environment protection was the least motive of the Britishers and the laws were only another way of monetary resource, still these laws helped to maintain check and balances on pollution activities post-independence. Some of these were the Indian Fisheries Act, 1897⁷, the Orient Gas Company Act, 1857⁸, the Wild Birds Protection Act, 1887, The Bombay Smoke Nuisance Act, 1912, the Indian Forests Act 1927, Wild Birds and Animals protection Act, 1912.

But a change in the mindset of people was seen after the year of 1972 when a Conference on Environment was held in Stockholm where a convention was signed and the signatories had to establish environment protection management in their countries and it acted as a catalyst in environment jurisprudence. After this the Indian parliament amended the constitution and added Environment protection as a directive principle of state by the 42nd Constitution Amendment along with addition to article 48A and 51A making state and the citizens obligated to protect, preserve and sustain the environment. Apart from this other comprehensive laws were also enacted like

- The Wildlife Protection Act, 1972
- Water (Prevention and Control of pollution) Act, 1974,
- Forest Conservation Act, 1980 and the Air (Prevention and Control of Pollution) Act, 1981,
- Environment (Protection) Act, 1986,
- Public Liability Insurance Act, 1991,
- the National Environmental Tribunals Act, 1995,
- the National Environment Appellate Authority Act, 1997,
- Protection of Plant Variety and Farmers Right Act, 2001,
- Biological Diversity Act, 2002, Wild Life (Protection) Amendment Act, 2002.

⁷ Act 4 of 1897

⁸ Act 5 of 1857

Along with these various rules were also established under the Environment (Protection) Act, 1986 which acts as guidelines and directions for environment issues, some of them are :

- The Manufacture, Use, Import, Export and Storage of Hazardous Microorganism Genetically Engineered or Cells Rules, 1989
- The Hazardous Wastes (Management and Handling) Rules, 1989
- The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989
- The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996
- The Bio-Medical Waste (Management and Handling) Rules, 1998
- The Recycled Plastics Manufacture and Usage Rules, 1999
- The Municipal Solid Wastes (Management and Handling) Rules, 2000
- The Noise Pollution (Regulation and Control) Rules, 2000

But even after the legislature being set up, the government authorities had not done satisfactory work and were reluctant to take action against the environment degraders which resulted in an accelerated degradation of the environment. Also there was too much hierarchy involved in these issues along with complicated management with lack of powers and only administered with administrative set up. This became more apparent in the Bhopal Gas Tragedy when the administrative deficiency caused the incident to take place in the first place⁹.

Hence the judiciary took the lead to enforce the laws and fulfil the failure of government administration and played a key role in protecting and preserving the environment sustainability through its judicial decisions and developed environmental jurisprudence in India. The various judicial and Quasi-Judicial Bodies for Environmental Protection established under various environmental Protection Legislations for interpretation and effective implementation of the various statutes are¹⁰ :

- Supreme Court of India
- High Courts
- District Courts and Subordinate Courts
- National Green Tribunal
- National Environmental Appellate Authority
- Central Pollution Control Board
- State Pollution Control Boards

⁹ Judicial Activism for Environment Protection in India ISSN 2319–3565 Vol. 4(4), 7-14, April (2015)

¹⁰ <http://www.legalservicesindia.com/article/833/Role-of-Indian-Judiciary-in-Environmental-Protection.html>

- State Biodiversity Board

III. ROLE PLAYED BY JUDICIARY IN ENVIRONMENT PROTECTION

The judiciary plays a crucial role in promoting environmental protection, preservation and governance along with upholding the rule of law and in ensuring a fair balance between Environmental, social and developmental issues through its judgments and declarations and interprets the enacted laws and rules with consideration to the doctrine of sustainable development. The judiciary also shows judicial activism which means going beyond its normal work to create a positive effect on the society and environment. Honourable Justice Krishna Iyer and Honourable Justice Chinappa Reddy said that the industries cannot be allowed to run at the expense of public health in the era of interconnection between social and economic development.

The whole credit for sustainable development and environment protection goes to the Indian judiciary as it is through the efforts of our judicial system that pollution free environment was declared as fundamental right under Article 21 of the Constitution ¹¹. The courts have passed various landmark judgments in cases brought by environmentalists like M.C.Mehta and thereby forcing the public bodies to take corrective action regarding the environment's issues.

One of the most important device used by the judiciary was the PIL i.e. *Public Interest Litigation* for the "public interest" under which the doors of the court is knocked in regards to Article 32 or 226 of the constitution which was started by the Honourable Supreme as a result of judicial activism court to improve access to justice for everyone and ensue locus standi and provide justice to victims , persons or voluntary organizations who act in public interest by suing cases on behalf of other affected people at large like Several local Non-Governmental Organizations (NGO) and public welfare individuals who have approached the courts to seek relief against numerous problems such as industrial pollution, bas solid waste management, deforestation, unsustainable use of natural resources, harming natural land and livelihood by the process of development and pollution of water bodies. The cases relate to human rights violation, fundamental rights violation , conduct of government policy or violation of religious rights at large. The citizens can file cases for issues even if they are not suffering from it directly or indirectly. PIL's have acted as a ray of hope in the dark tunnel of injustice. It confronts everyone person equally regardless of it being the government. The Black's Law Dictionary defines PIL as: "Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the

¹¹ Ratlam Municipality v. Vardhichand,AIR 1980 SC 1622

community have pecuniary interest or some interest by which their legal rights or liabilities are affected.”

It is worthy to note that Justice P. N. Bhagwati and Justice V. R. Krishna Iyer were among the first judges to admit PIL's in the court. The process of filing PIL's was not at all confusing and lengthy and even a simple letter addressed to the judges are treated as a PIL.

Various cases relating to environment protection, preservation and sustainability have been dealt through PIL's which in turn have made environment protection a constitutional duty and obligation, few famous cases are :

1. The Shriram Fertilizer Industries case¹² in which the court had temporarily stopped the production of the factory by giving injunction orders because of the leakage of hazardous gases and chemicals like chlorine from the factory which were dangerous to the life of the workforce in the factory and other people living in the surrounding areas. An interesting thing to note was that as soon as the case was filed few days after a gas leakage took place at the factory which caused serious medical harm to many people. But soon the plant was restarted because of other pressing problem relating to the 4000 employees and the need of chlorine for treatment of water at large but only after a fine and compensation to the victims were paid which amounted to 20 lakhs.

2. Ratlam Municipality v. Vardhichand¹³, in which the alcohol plant released untreated wastes which released harmful odour and increased mosquito breeding was closed down and fined and ordered to clean open drains and close them. The honourable court in this case had also declared that pollution free environment was declared as fundamental right under Article 21 of the Constitution. The Hon'ble Judge Krishna Iyer said that there was need for environmental conscious feelings and the production factories should also focus on public welfare and the mere saying of lack of funds does not relieve them from their duty and liability for the environment.

3. M.C.Mehta v. Union of India and Ors, (1987)¹⁴ was the landmark judgement relating to the Ganga river pollution due to tanneries. Justice Venkatramiah used common law and said and focused that it is the duty of Municipal Corporation to remove the pollutants from the river. Also the court had directed that about 5000 industries which were located near the Ganga River has to install waste treatment plants and pollution control devices as the major contributor the pollution of water of Ganga was the waste and sewage released without proper treatments.

¹² M.C.Mehta v. Union of India and Ors, (1987) 4 SCC 463, see also AIR 1988 SC1037),

¹³ Ratlam Municipality v. Vardhichand, AIR 1980 SC 1622),

¹⁴ M.C.Mehta v. Union of India and Ors, (1987) 4 SCC 463, see also AIR 1988 SC1037),

4. Vincent Panikulangara v. Union of India, (1987),¹⁵ in this case the issue related to banning of harmful drugs which were used by the government hospitals which were harmful to the people consuming it as well as the production process harmed the environment.

5. Union Carbide of India v. Union of India, AIR 1992 ¹⁶, this case was in relation to the Bhopal Gas Tragedy where the issue raised was of the welfare of the children suffering with congenital defects as consequence of leakage of MIC gas from the Union Carbide Plant at Bhopal. The principle of Absolute Liability was evolved from this case which meant that when an enterprise is carrying out a hazardous or dangerous work and due to this any harm is caused to leakage of hazardous chemical, or mishandling of work, the enterprise is to be held responsible to each and every individual affected from it and has to repay in whatever manner as said by the courts to compensate the same.

6. Vellore Citizens Welfare Forum v. Union of India and others,¹⁷ where the issue was of discharge of untreated effluents which was making the land unfit for cultivation. In this landmark judgement the Supreme court used the doctrine of Absolute Liability and also laid down a new principle of 'Polluter Pays'. The Polluter Pays Principle lays down the responsibility of the pollution and the cost of pollution has to be borne by the person or group of persons responsible for the pollution. The polluter pays not only for damages caused by the pollution but also bear future expenses in prevention of more pollution or damage to the environment so that the environment is restored from further degradation. This principle was adopted from the RIO Declaration.

7. M.C.Mehta v. Union of India (1997)¹⁸ 2 SCC 353 where in this case a PIL was filed for protecting the Taj Mahal from turning into yellow marble from white due to acid rain and other air pollutants due to industries being established too close to the monuments. During this case the Supreme court laid down the principle of 'Precautionary Principle' which means that the industries engaged in production should not only take the measures for environmental protection but also anticipate and prevent causes of environmental pollution & degradation for future. It too was adopted from the Rio Declaration principle 15 which stated that all threat of degradation and damage to environment should be treated as early advantage and be treated with all seriousness to prevent future harm. In this case the court had also declared that all brick manufacturing units have to be shifted from within 20 kilometres of the monument to any other place, the roads near the Taj Mahal and its surrounding monuments to prevent pollution caused

¹⁵ Vincent Panikulangara v. Union of India, (1987)2 SCC 165),

¹⁶ Union Carbide of India v. Union of India, AIR 1992 SC 248),

¹⁷ Vellore Citizens Welfare Forum v. Union of India and others, AIR1996 SC 2751),

¹⁸ M.C.Mehta v. Union of India (1997) 2 SCC 353

by vehicles, unlicensed brick mills have to be closed and no new license should be issued thereby slowing the pollution process step by step.

8. Church of God (Full Gospel) in India v. K.K .R. Majestic Colony Welfare Association and Others,¹⁹ in which the issue related to noise pollution in residential areas due to use of microphones for religious proceedings. The court held that any religious practice which causes disturbance to children , aged people , students and sick is not permitted at all. Noise pollution affects everyone at the same rate be it humans, animals or birds. The fundamental right to life also involves the right to live in peace and quiet environment and noise of reasonable manner has to be considered in the case.

The court has also adopted various other principles of sustainable environment like :

- Inter-Generational Equity Principle – this principle too is an outcome from the Rio Conference 1992, and it states that the use of resources should be in a sustainable way so that it meets the need of present generation and also keep sufficient resources for the future generations and hence it is the duty for the present generation to protect and preserve the environment in a sustainable way. The judiciary uses this principal in most of the environment cases for decision. The application of this principal was seen in the landmark case of A.P. Pollution Control Board v. M.V. Nayudu²⁰ where the rights of those who are even in the womb of mothers were also protected and the court observed that the rights of future generations cannot be ignored and it is the pious duty of every human being to care the environment and nature in a sincere way.²¹

- Public Trust Doctrine – the principle was propounded by Professor Sax²² and redeveloped by the Indian judiciary. This principle is inter connected with the inter-generational equity principle and states that the natural resources like lakes, rivers, seashore, forests, mines of ores and air are held by the State as a trustee of the public, and can be disposed of only in manner that is consistent with the nature's benefit and preservation. The court had also said that the environment and nature are of equal importance to every individual and hence privatizing them is unconstitutional.²³

¹⁹ Church of God (Full Gospel) in India v. K.K .R. Majestic Colony Welfare Association and Others, AIR 2000 SC 2773),

²⁰ (1999) 2 SCC 718.

²¹ T.N. Godavaraman v. Union of India, (2000) 1 SCC 42

²² Joseph L. Sax, The Search of Environmental Right ,6 J. Land Use & Env. L. 93 (1990) as cited in Annual Survey of Indian Law, Volume XL, 2004, p. 597.

²³ M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388.

- Doctrine of Proportionality of risk - This principle was evolved by the supreme court in the case of *G. Sundarrajan v. Union of India*²⁴ and it states that public interest is more important than individual interest and it is a necessity if a wrong is committed to prevent a grater harm and for reasonable reason to get indemnity under this principle.

- Doctrine of Sustainable Development - This is the most important as well as the most used doctrine in deciding cases. This doctrine emphasis on sustainable growth with the use of resources optimally to meet the needs of present generation and also preserve enough for the future. This doctrine has been used in famous landmark cases like *Rural Litigation and Entitlement Kendra v. State of UP*²⁵ and *Vellore Citizen's Welfare Forum case*²⁶. The court has also established that sustainable growth is the key for removing poverty and improving human life quality in long run.

These above cases , principles and doctrines are the precedents and rules which are been followed rigorously for the protection of the environment by the judiciary of our country. The Hon'ble Judiciary thus though deciding these cases and evolving the above mentioned principles have played a key role in preservation, protection and sustainment of the environment. There are still a wide range of more landmark cases like *Narmada Bachao Andolan v. Union of India*²⁷ which too applied the doctrine of sustainable environment or the case of Professor Naidu in which the right to safe drinking water was declared as a part of right to life or the case of *T.N. Godavarman Thirumulpad v. Union of India and Others* in which mining operations in the Aravalli hills were stopped by the court even after its strategic and economic importance for the protection of environment.

Other than PIL, there are other ways to approach the courts for environment issues like a person can file for injunction i.e. stopping of a process if he or she is facing any issue like noise pollution from a neighbour or locality or air pollution due to any factory close by or water pollution due to release of untreated sewage of industries in the city or locality.

The judiciary also uses the writ of "continuing mandamus" for the protection, preservation and sustainability of the environment by monitoring the work of government agencies and its orders and directions though regular audits with the help of special commissions and expert committees. Sometimes the judiciary also uses amicus curiae who is a friend of the court to know about the ground reality.

²⁴ Civil Appeal No. 4440 of 2013 (Arising out of S.L.P. (C) No. 27335 of 2012), Para. 228. (See; <http://www.google.co.in/search?q=s.l.p.+no.+27335+of+2012>, accessed on 29-12-2014.

²⁵ AIR 1987 SC 1037

²⁶ AIR 1996 5 SCC 647

²⁷ 2000 (10) SCC 664

Thus the above mentioned points prove that the judiciary plays important part in environment protection and sustainability at a much larger level than the legislative which after making laws didn't do any follow up to implement those laws. But even after the judiciary's role in environment protection there was still a delay in deciding cases due to the large number of cases heard by the apex courts and therefore a need for special green courts was felt.

IV. ROLE OF SPECIALIZED ENVIRONMENT COURTS

The judiciary has been playing the role of great importance in environment protection and sustainable development but with time the cases and issues regarding the environment are increasing and affecting the nature in every sphere of life. This rise is because of growth of population and demand for products, lack of political support and stability along with huge load of the cases on the Supreme courts and High courts of all aspects of crime be it criminal in nature or civil or fundamental rights. At present the Supreme Court has more than 63,000 cases²⁸ pending before it and the high courts have around 4 Crore cases pending before it and accordingly the time we finish this sentence around 100 new cases would have been files in the courts.²⁹ Among these cases environmental violative cases are equally important for the society and hence the need for specialized environment courts was felt so that the environment issues are dealt promptly along with the guidance of experts in environmental issues and scientists for more detailed discussions on the cases and issues.

This need had led to the enactment of the National Environment Tribunal Act, 1995 and National Environment Appellate Act, 1997 by the Parliament of India but they were not well implemented and were repealed after the Law Commission's 186th report and finally a revised and re-enacted law was formulated by the Forest and Environment minister Jairam Ramesh i.e. the National Green Tribunal Act 2010 which established the National Green Tribunal on October 18, 2010 as a court of original jurisdiction to take a bold step towards environment protection, preservation and sustainment. After this India became the third country to establish special green court in the world following Australia and New Zealand.³⁰

National Green Tribunal (NGT) focuses on implementation of environment law, hear cases regarding environment issues, attach liability to the polluters and violators and as well as provide compensations to the victims to environmental harm and degradation. Since its

²⁸ <https://main.sci.gov.in/statistics>

²⁹ The Role of Judiciary in Promoting Sustainable Development: Need of Specialized Environment Court in India Km. Saroj Gupta Research scholar, Nehru gram Bharati University Kotwa-jamunipur, Allahabad, Uttar Pradesh, India

³⁰ National Green Tribunal: A Road to Environmental Justice MS. RUCHI SINGH Vol. 4, Issue: 5, July:2016 ISSN:(P) 2347-5404 ISSN:(O)2320 771X

establishment the NGT has disposed off more than 10,000 cases relating to the nature and environment and it very fast in dealing with cases to ensure that environment is not harmed at all. The court works on the principle of Natural Justice and the main policy of the NGT is to provide quick disposal of environment violation cases as well as immediate action for conservation of natural resources and enforce the fundamental rights related to environmental rights as well as reduce the burden of high courts and Supreme Courts. The NGT Tribunal hears all civil cases related to legal issues regarding the environmental laws like The Water (Prevention and Control of Pollution) Act, 1974;The Forest (Conservation) Act, 1980;The Air (Prevention and Control of Pollution) Act, 1981;The Environment (Protection) Act, 1991; The Public Liability Insurance Act, 1991;The Biological Diversity Act, 2002 though an important thing to note that the Wildlife Protection Act and Forest Act's jurisdiction falls under the preview of the states and not under the NGT.

The NGT was established at five major cities at Bhopal, Pune, Kolkata, Chennai and New Delhi and New Delhi was the main headquarters and these tribunals covered the jurisdiction of the neighbouring states. The composition of the tribunal is made up of a chairperson, judicial members who are qualified to be the judge of Supreme court or High court and most importantly expert members having a Ph.D. degrees in environment related things like climate change, pollution, waste management , forest conservation and sustainable development. The tribunal also uses international conventions as a persuasive force for deciding cases and solving disputes like Agenda 21, various doctrines and principles of Rio Declaration³¹

The National Green Tribunal since its establishment on 4th July 2011 has also taken important decisions and solved many landmark cases along with interpretation of laws. Few important decisions by the National Green Tribunal are:

1. *Vimal Bhai v. Union of India*³² is the case regarding the issue of deciding between forest and wildlife conservation or development of society. The case was filed regarding the Hydral Power Plants being set up in State of Uttarakhand which would cause large wildlife and forests loss. The NGT ordered a audit to be conducted by forming a committee with members consisting from Indian Institute of Technology, Rurkee (IITR) and Wildlife Institute of India (WII) for special expertise and measure the actual loss that might happen due to this project on the environment along with providing suggestions and conclusions within a reasonable time so that the Ministry of Environment and Forests can give final review with consultation of the

³¹ Supra note 5 at 112

³² 9 (Appeal No. 5/2011), decided on 14th December, 2011.

Tribunal using the cost benefit analysis so that it is seen whether the forest conservation is of importance or not.

This case shoed the country that all decisions regarding the environment and society development are taken after due consideration and process.

2. *Krishi Vigyan Arogya Sanstha & Ors v. Ministry of Environment & Forests & Ors*³³ was another landmark cases in which an appeal was made by the villagers of Koradi in Nagpur District in Maharashtra against the state's order for "Environment Clearance" for expanding the Coal based Thermal Power Plant. The Tribunal ordered for a scientific research to be conducted to measure long term effects of nuclear radiation emitted from the Thermal Plants by the Ministry of Environment and Forests and Department of Atomic Energy within a year of this order so that a limit of nuclear radiation can be set up so that development of plants can be done accordingly and in a sustainable way.

3. *Gram Panchayat, Totu (Majthali) & others v. State of Himachal Pradesh and others*³⁴ was a case relating seeking prevention of the construction of Solid Bio-Waste Management Plant at Himachal Pradesh by the order of the State Government on the argument that the State was violating the Municipal Solid Waste (Management and Handling) Rules, 2000 (MSW). The Tribunal directed the Ministry of Environment & Forest to critically assess the plant plan and make them in consideration with the Municipal Solid Waste (Management and Handling) Rules, 2000 (MSW).

4. *Vimal Bhai and Others v. Union of India and Others*³⁵ was a landmark case in which the bench consisting of Justice C V Ramalu and Dr. D K Agrawal interpreted the meaning of "person aggrieved" and established that protection and preservation of the nature and environment is the fundamental duty of a citizen under the Constitution and hence any person can approach the Tribunal for his grievance as to protection and improvement of the natural environment even if the person is not directly suffering from the harm being caused to the environment.

5. In another situation where The Art of Living Foundation had organized an event which had caused harm to the environment and nature. The Tribunal took *Suo motto* decision and fined the foundation a lump sum of 5 Crore Rupees.

6. In another case the Airplane Companies were fined Rupees 50,000 on every aircraft it owned for disposing toilet tanks in mid air which had caused nuisance to the people living near the airports.

³³ Appeal No. 7/2011(T), decided on 20th September, 2011

³⁴ Appeal No 2/2011), decided on 11th October, 2011.

³⁵ Appeal No 7/2012), decided on 7th November, 2012.

7. The Tribunal had also imposed a fine of 100 Crore Rupees on a Qatar based Company for the oil spillage in the Juhu Beach at Mumbai in August 2011.

8. The Tribunal had also directed and highlighted the issue of air pollution in Delhi and stopped the use of 10 year old diesel vehicle's in Delhi and neighbouring cities for controlling the release of pollutants in the area in and about Delhi so as to reduce the carbon index in the air.

Therefore as observed from the above case decisions of the Tribunal have provided compensation and relief to the aggrieved people³⁶ but also implemented legal and procedural reforms and developed the sustainment of environment and has played an active role in maintaining balance between industrialization and development of the country and environment, preservation and sustainment of the environment. The NGT has taken big steps for the environment and acted as a helping hand to the earlier judicial system for quick and effective disposal of environmental issues and cases.

V. CONCLUSION AND SUGGESTIONS

Sustainable development of the environment is the need for the present so that the future is guaranteed and the basic steps have been taken by our country. Sustainable development requires that growth must be there but in an optimal way so that the non-renewable resources are left for the future too. The establishment of environmental laws for the protection, preservation and sustainment of environment and nature was a great first step by the Parliament but there was a lack³⁷ in proper implementation of these laws and hence the Judiciary took charge and from then the environments protection has been the top priority of judiciary. As observed from the above mentioned points the judiciary has used various initiatives like Public Interest Litigations (PIL) , recognizing clean and healthy environment as a fundamental right, establishing various doctrines, principles of environment protection and sustainability. The Judiciary has established a strong jurisprudence³⁸ base for environmental concerns. The introduction of Absolute Liability Principle in the Bhopal Gas Tragedy was a major step in environmental protection. The court has also held the administrative and political concerns was their fault and degradation of the environment and acts as a watchdog of all other

³⁶ Role Of National Green Tribunal In Environmental Protection Dr Manoj Kumar Assistant Professor, Dr Ram Manohar Lohiya National Law University, Lucknow (U.P.) (2018) NUSRL Jour. Law & Pol.

³⁷ ROLE OF THE JUDICIARY IN ENVIRONMENTAL PROTECTION Dubey Amit* and Tiwari B.K. Department of Law, Barkatullah University, Bhopal (INDIA) *J. Environ. Res. Develop.* Journal of Environmental Research And Development Vol. 7 No. 1, July-September 2012

³⁸ Judicial Activism for Environment Protection in India Mahajan Niyati Graduate School of Social Sciences, Waseda University, Tokyo, JAPAN *International Research Journal of Social Sciences* ISSN 2319-3565 Vol. 4(4), 7-14, April (2015)

government bodies too so that to prevent any violation of the environment by the organs of the government. At present the establishment of National Green Tribunal is even covering the gaps which were not being able to be fulfilled by the government and also supporting NGO's for doing ground level work and creating awareness about the environments importance. Even the international laws have been used³⁹ by the courts which shows that the courts have done a great work and moved forward towards the goal of environment protection.

However after a detailed analysis of the role of judiciary in protecting and preserving the environment sustainability there are a few gaps which still needs to be fulfilled for greater achievements of environmental goals. Some of these gaps are :

1. **Flaws in PIL system:** Even if the PIL has proved to be a boon for protection of rights but still a large number of PIL's filed are not heard by the courts due to lack of advocates faced by the people filing the PIL's as no one helps the poor or aggrieved as they are not able to pay the advocates fee.
2. **Conflicting Interests:** The judiciary in some cases due to social obligation for development ignores the environments interest. India being a developing country, the judiciary faces this issue at a much more larger level. For example in a case the court decided to not close down the factory which was polluting and harming the environment because of the fact that the closure of it would have led to loss of job foe more than 4000 people and as well as lack of an important product required for cleaning water.
3. **Lack of awareness for environment sustainability:** Even after the efforts of the judiciary , the people at local levels are still in dark about their duty towards the environment and because of such a large population of the country even if 10% of people harm the environment through their daily un protective behaviour could cause a large harm to the society.
4. **Lack of follow up action:** The judiciary due to the large number of cases it deals in, is not able to follow up that their decisions are being properly implemented or not. This gives the polluters free regime to get free from their obligation.

On the basis of the above analysis, research and discussion the judiciary can improve the quality of its work and fulfil its gaps in the following ways as suggested:

1. **Developing NGO's** focusing on taking PIL cases of the needy free of cost and on a pro bono basis.

³⁹ Role Of Judiciary In Sustainable Development & Environment *Manoj Kumar *Research Scholar, Department of Law, MDU Rohtak (India) Volume-02 ISSN: 2455-3085 (Online) Issue-10 RESEARCH REVIEW International Journal of Multidisciplinary October-2017

2. Giving equal importance to the environment as well as development in cases of conflict of issue.
3. Take action for creating awareness about the environment sustainability by carrying out seminars or local development programs, setting NGO's for more guidance of people etc.
4. The other branches of the government, must also help the judiciary by following and implementing its orders and rules properly.
5. The judiciary can also set up extra benches whose focus should only be on the implementation of the directions of the court so that no one escapes the liability for his/her violation of crimes.
6. Strengthening the Administration's accountability in environmental violations cases and lack of fulfilment of duty should be dealt more seriously.

Hence, it is thus observed that the judiciary even after its gaps and limitations has played a very important role in the environments protection and sustainability and will continue doing so by more regressive implantation of the existing rules as well as evolvment of more sustainable principles for the environment.

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