

THE ROLE OF JUDICIARY IN THE DEVELOPMENT OF ENVIRONMENTAL JURISPRUDENCE IN INDIA

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ABSTRACT

The judiciary shoulders the responsibility of ensuring the proper growth and fuller development of the posterity by allowing them to live and breathe in a sound environment. The courts have gone a long way for achieving this end by making significant contributions to the development of environmental jurisprudence. The traditional role of courts as arbiters of individual rights becomes exceedingly complex in environment oriented decision-making process. The courts have made considerable reduction in the rigor of *locus standi* to entertain Public Interest Litigation (PIL) cases. Persistent incoherence in environment compliance and enforcement mechanisms has triggered judicial interventions in the recent years. The focus has now shifted on the judiciary for addressing the alarming concerns of pollution, protection of wildlife, conservation of forests, improvement of environment through constant monitoring and designing effective devices to shield against “developmental terrorism”. This article discusses the central role played by the judiciary in the contemporary picture for attaining the objectives of environment protection and also studies the approach undertaken by the judiciary while deciding disputes pertaining to environment. It also analyses the recent developments in environment protection status in the country taking place through judicial activism.

Keywords: environment protection, PIL, judicial activism, Supreme Court, recent developments, sustainable development, right to wholesome environment, constitutional safeguards.

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INTRODUCTION

The period after independence was largely devoted to the upliftment of the industrial sector which germinated the entire problem of pollution. The thrust on economic development led to the adoption of laws favorable to the development projects and the race for exploitation of natural resources to meet the demands of growing industries reached its zenith. The judiciary was helpless to address the worsening situation for lack of legislation for environment protection and prevention of pollution. However, the period post 1972 bears testimony to remarkable growth in judicial activism as well as legislative and executive efforts that acted as a catalyst for the evolution of entirely new green jurisprudence with a revolutionary outlook for preservation and protection of the ecosystem over and above economic development.

The inadequacy of environmental laws and lack of effective measures to combat ecological devastation constrained the judiciary to evaluate the constitutional provisions and existing laws by enhancing the scope of interpretative technique and taking pro-active stand with respect to environmental crisis. The judiciary has always adopted a welcoming attitude for new norms and principles while dealing with various environmental concerns so as to adequately tackle the increasing environmental issues in a highly industrialized economy. The revolutionary judgments of some of the green judges of the nation have made immense contributions to the task of developing the machinery instrumental in protecting the environment from further spoilage and improving the already destroyed ones, mainly through judicial activism.

During the past few decades the country has witnessed an inventive and active role played by the judiciary and most of its decisions have transcended the judicial boundaries and have culminated into effecting the adoption of innovative principles and doctrines, most of them successfully making their way into the field of legislations and execution. In order to meet new challenges the judiciary has extricated itself from the requirements of *locus standi* and made outstanding contributions for arresting the factors disrupting ecological equilibrium within a broader constitutional and jurisprudential framework.

EVOLUTION OF ENVIRONMENTAL PRINCIPLES AND DOCTRINES PROPOUNDED BY INDIAN JUDICIARY

The judiciary, in its attempt to fill in the existing vacuum in the Constitution and environmental laws for the control and prevention of pollution, has evolved various principles and doctrines that are generally recognized in international conventions and has incorporated them into the Indian legal system. Although the principles are by themselves not comprehensive enough to deal with the glaring and dreadful levels of environmental degradation prevalent in the country but together they afford effective remedies by means of preventive and compensatory mechanism to address the present environmental situation. Realizing the seriousness and urgency of the problem posed by environmental pollution, having the potential for irreversible damage, the judiciary has time and again resorted to the application of these principles.

Absolute Liability Principle

Following the Bhopal Gas Leak tragedy³ that stirred the judiciary to evolve new jurisprudence of liability, the Supreme Court in *Shriram Food and Fertilizer Industries and another v. Union of India and others*⁴ articulated for the first time the principle of absolute liability of an enterprise which is engaged in a hazardous or inherently dangerous industry posing potential threat to the health and safety of the public.

The principle of absolute liability is a clear departure from the traditional tort law notion of 'strict liability' in that it is devoid of the exceptions to the strict liability rule. It stresses on obligating industries undertaking hazardous activities to owe a non-delegable duty to the community for making good the harm caused by such activities and the enterprise cannot do away with its liability by answering that it had taken all reasonable care and the harm did not result from negligence on its part. Simply put, this principle is based on the idea of 'no fault', putting a check on the growth of hazardous industries since it deters potential delinquent industries to pattern their conduct in line with the existing laws of the land by imposing large financial burden upon it for disobedience.

³ *Union Carbide Corporation v. Union of India*, AIR 1992 SC 248.

⁴ AIR 1987 SC 965.

The bindingness and utility of this principle has been reiterated by the Supreme Court in a number of cases like *Indian Council for Enviro-Legal Action v. Union of India*,⁵ *Vellore Citizens Welfare Forum v. Union of India*,⁶ *Klaus Mittelbachert v. East India Hotels Ltd.*⁷ Subsequently, the Parliament conferred it with statutory recognition in Hazardous Substances Rules 1989, Public Liability Insurance Act 1991, and National Environment Tribunal Act, 1995.⁸

Polluter Pays Principle

India has been witness to a snail paced evolution of compensation machinery in its environmental jurisprudence. Strict liability principle was gradually taken over by the principle of absolute liability followed by polluter pays principle. Haunted by unprecedented pollution the government and its institution, including the judiciary, was pushed to the brink of a quagmire. The courts in India have shown their inclination towards the application of the polluter pays principle in most environment cases wherein the absolute liability of the polluter extends not only to compensate the victims of pollution but also to bear all the remedial or clean up costs for restoring the environmental degradation.

This remedial methodology gained popularity after the judiciary reaffirmed its decision of *Oleum Gas Leak case*⁹ in *Indian Council for Enviro-Legal Action v. Union of India*¹⁰ and *Vellore Citizens Welfare Forum v. Union of India*.¹¹ A special burden of proof requiring the developer/ industrialist to bear the onus of showing that his action is environmentally benign has been introduced by the judiciary.¹²

⁵ AIR 1996 SC 1446.

⁶ AIR 1996 SC 2715.

⁷ A.I.R 1997 Delhi 201.

⁸ **Public Liability Insurance Act, 1991:** The Parliament of India enacted this Act with the object to provide immediate relief to the persons affected by accident occurring while handling any hazardous substance. This Act provides relief to the claimant without pleading that death or injury was caused due to negligence of the owner. Under this Act, it is mandatory on the part of the owner to buy insurance policies to protect his employees and also liable to the surrounding residents and their property.

National Environment Tribunal Act, 1995: The Parliament of India enacted this Act with the object to provide for absolute liability for damages arising out of any accident occurring while handling any hazardous substances along with effective and expeditious disposal of such cases.

⁹ *M.C Mehta v. Union of India*, AIR 1987 SC 965.

¹⁰ AIR 1996 SC 1446.

¹¹ AIR 1996 SC 2715; *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388; *Jolly George Verghese & Anr v. The Bank Of Cochin*, 1980 SCR (2) 913; *Gramophone Company Of India Ltd v. Birendra Bahadur Pandey & Ors*, 1984 SCR (2) 664.

¹² *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715.

However, there is a need to upgrade the principle by directing major focus on affording immediate compensation to the victims of environmental calamities. This can be achieved by shifting the burden of paying direct and prompt compensation to the victims upon the government instrumentalities. This means that the judiciary must oblige the States and local governments to act in subrogation against private polluters and recover the disbursement from the responsible parties at a later time. This approach would take the principle to a new level of relevance today.

Doctrine of sustainable development

The judiciary is often faced with the challenge to devise effective ways for striking a balance between conflicting interests. Often while addressing various environmental problems the complexities involved is much more, especially so in developing countries like India. Such complex situations demand more care and caution on the part of the judiciary while weighing the right to development on one hand and the right to a clean environment on the other. Today, the formidable scale of environmental pollution and degradation has become a crucial problem in our country.¹³ An increasing level of pollution results in declining environment both quantitatively and qualitatively that threatens the lives of present and future generations. Therefore, preservation of environment needs utmost attention of this hour. However, the progress of the society that lies in industrialization, urbanization and financial stability cannot be sidelined since otherwise it would hinder the nation's prosperity. Therefore, there has to be harmonization between these conflicting interests since progress cannot be achieved at the cost of the environment.

The judiciary has time and again sought to redress this problem through various judicial pronouncements by pointing out that although polluting industries impend the stability of the environment, they cannot be shut down altogether since the country would then be swept by unemployment and poverty adversely affecting its social and economic conditions. Therefore, the judiciary opined that the pollution limit should be within the sustainable capacity of the environment. It can very well be said that the judiciary has carved out the solution for such a problem in the concept of sustainable development.

¹³ Ayesh Dias, 'Judicial Activism in the Development and Enforcement of Environmental Law: Some Comparative Insights from the Indian Experience', (1994) 6 JEL.

In *Vellore Citizens Welfare Forum v. Union of India*,¹⁴ the Supreme Court accepted the definition of sustainable development given by the World Commission on Environment and Development 1987 (Known as the Brundtland Report) which reads as, ‘Sustainable Development that meets the needs of the present without compromising the ability of the future generation to meet their own needs’. The court also acknowledged that ‘Precautionary Principle’ and ‘Polluter Pays Principle’ are the two most essential elements of sustainable development.

In *Rural litigation and Entitlement Kendra v. State of UP*,¹⁵ *M.C Mehta v. Union of India*¹⁶ and *Banwasi Seva Ashram v. State of UP*,¹⁷ the court sought the rehabilitation of displaced people caused due to the execution of the development project, thereby striving to maintain equilibrium between the right to a pollution free environment with the contrary right to economic development.

Development projects involve exploiting the rivers and forests which adversely affects the local habitants. The Supreme Court in *Pradeep Kishan v. Union of India*¹⁸ came forward and protected the traditional rights of tribals and fishermen in such area.

In *Soman v. Geologist*¹⁹ and in *Thilakan v. Circle Inspector of Police and Other*,²⁰ Kerala High Court made a direct link with Article 21 of the Constitution of India and the concept of Sustainable Development and held that “the right to have a pollution free environment, flowing from the rights under Article 21 of the Constitution of India relating to the principle of customary international law concerning Sustainable Development, is now part of the municipal law.” Thus, today the concept of sustainable development stands as a universally accepted phenomenon.²¹

Public Trust Doctrine

The public trust doctrine, which is a figment of ancient Roman jurisprudence, primarily revolves around the idea that natural resources like air, water, sea and the forests meant for

¹⁴ AIR 1996 SC 2715.

¹⁵ AIR 1987 SC 2187.

¹⁶ AIR 1995 SC922 4SCC 750.

¹⁷ AIR 1987 SC 374.

¹⁸ AIR 1996 SC 2140.

¹⁹ 2004 (3) KLT 577; *Ashwani Chobisa v. Union of India and Ors*, RLW (2005) 1 Raj 389.

²⁰ AIR 2008 Ker. 48.

²¹ *T.N. Godavarman Thirumulpad, v. Union of India and others*, AIR 1997 SC 1228.

use and enjoyment by the community as a whole, are of immense importance to the people and the society at large, and that it would be quite improper and unfair to convert them into subjects of private ownership. The onus is, therefore, placed on the State and its legal system to protect such communal goods since individuals are less inclined to make diligent efforts in securing them.

Indian legal system has adopted this doctrine as a part of its jurisprudence wherein the State has been enjoined with the responsibility of preserving such common properties as the trustee and the public at large is the beneficiary. This philosophy of 'Public Trust' also finds place in our Constitution²² and our judiciary is committed to upholding the same.

The Supreme Court in *M.C. Mehta v. Kamal Nath*²³ had applied this doctrine for the first time and discussed its facets as well as its scope and applicability in India's legal system. It recognized the State and its instrumentalities as the trustees of natural resources who are under the legal obligation to preserve and protect the same. The court, therefore, directed the State Government to restore the area to its original natural conditions.

In *MP Rambabu v. Divisional Forest Officer*,²⁴ the court extended the doctrine of public trust to recognize the State's ownership over deep underground soil and water which is subject to the State regulation even in the absence of a specific law.

Precautionary Principle

The Precautionary Principle has been accepted as a part of the Indian legal system as the foundation for the contemporary sustainability.²⁵ It involves anticipation of potential environment harm and adopting measures to avoid the same.²⁶ The Supreme Court explained this principle as encompassing three aspects:-²⁷

- Environmental measures by the State Government and Statutory authorities. They must anticipate, prevent and attack the causes of environmental degradation.

²² See Articles 21, 47, 48A and 51A (g) of the Constitution of India, 1950.

²³ (1997) 1 SCC 388; *Intellectual Forum v. State of AP*, (2006) 3 SCC 549; *Fomento Resorts and Hotels Ltd v. Minguel Martins*, (2009) 3 SCC 571; *K.M Chinapa v. Union of India*, AIR 2003 SC 724; *MI Builders v. Radheshayam Sahu*, AIR 1999 SC 2468.

²⁴ AIR 2002 AP 256; *State of West Bengal v. Kesoram Industries Ltd*, (2004) 10 SCC 201.

²⁵ *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446.

²⁶ *A.P Pollution Control Board v. M.V Nayudu*, AIR 1999 SC 912.

²⁷ *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715.

- Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- The onus of proof is on the actor or developer/industrialist to show that his action is environmentally benign.

In *Vellore Citizens Welfare Forum v. Union of India*,²⁸ relying on the principle 15 of Rio Declaration, the Supreme Court adopted this principle as an essential feature of sustainable development and successfully brought it under the purview of Articles 21, 48A and 51A (g) of the Constitution. The Courts have directly applied this principle to the facts of cases like *M.C Mehta v. Union of India*,²⁹ *A.P Pollution Control Board v. M.V Nayudu*,³⁰ *Narmada Bachao Andolan v. Union of India*,³¹ *Godavarman Thirumal Pad v. Union of India*,³² *K.M. Chinnappa v. Union of India*,³³ *S. Jagannath v. Union of India*,³⁴ *Noyyal River Ayacutdars Associations case*.³⁵

In *M.C Mehta v. Union of India*³⁶ the court directed the industries, identified as potential polluters by the PCB, to change over to natural gas as an industrial fuel and those not in a position to obtain gas connections to stop functioning in Taj Trapezium Zone.

The precautionary principle entails that the burden of proof must necessarily be on the industry or the unit wanting to change the status quo where the extent of damage likely to be inflicted is unknown.³⁷

JUDICIAL ACTIVISM IN ENVIRONMENTAL LITIGATION

The judiciary plays a crucial role in striking a balance between the environment and development by expanding the confines of environmental jurisprudence to include not only the environmental instruments, but also encompassing aspects of social, political, economic,

²⁸ AIR 1996 SC 2715.

²⁹ AIR 1997 SC 734.

³⁰ AIR 1999 SC 912.

³¹ (2000) 10 SCC 664.

³² AIR 2000 SC 1636.

³³ AIR 2002 SC 724.

³⁴ AIR 1997 SC 811.

³⁵ *Tirupur Dyeing Factory Owners Association v. Noyyal River Ayacutdars Protection Association and Others*, (2009) 9 SCC 737.

³⁶ AIR 1997 SC 734.

³⁷ *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

and developmental instruments. It has adopted the judge-driven policy of environmental administration by relaxing the rule of *locus standi* through PIL.

Plethora of environment cases has been filed through PILs addressing each and every environmental problems ranging from the leakage of hazardous gases,³⁸ highly toxic discharge from tanneries into river Ganga,³⁹ issue of harmful drugs,⁴⁰ welfare of the children suffering with congenital defects as consequence of leakage of MIC gas from the Union Carbide Plant at Bhopal,⁴¹ awareness about the environment protection,⁴² discharge of untreated effluents making the land unfit for cultivation,⁴³ noise pollution in residential areas,⁴⁴ protection of environment & the construction of Narmada dam,⁴⁵ etc. which has given the judiciary enormous scope for intervening in environmental matters. The increasing intervention of Court in environmental governance by way of forming successful strategies to enforce fundamental rights of the citizens and uphold the rule of law and constitutional propriety can be seen as a part of the dynamic role of the judiciary in protecting and improving the environment. In fact, due to its active role in implementing environmental law, the judiciary in the country has emerged as the exclusive dispenser of environmental justice.

In the backdrop of industrialization, the judiciary attempted to take a drastic step by broadening the scope of Article 21 of the Constitution to include the right to a wholesome environment⁴⁶ as well as the right to enjoyment of pollution free water and air.⁴⁷ It also recognized the right of a citizen to have recourse to Article 32 of the Constitution if his right to wholesome environment is undermined.⁴⁸ Such a petition under Article 32 is maintainable either at the instance of the affected person or even by a group of social workers.⁴⁹ The court has also recognized the right to issue a mandamus against a purely private body having no

³⁸ *M.C.Mehta v. Union of India and Ors.*, (1987) 4 SCC 463.

³⁹ *M.C. Mehta v. Union of India and Ors.*, AIR 1988 SC1037.

⁴⁰ *Vincent Panikulangara v. Union of India*, (1987)2 SCC 165.

⁴¹ *Union Carbide Corporation v. Union of India*, AIR 1992 SC 248.

⁴² *M.C. Mehta v. Union of India and Ors.* AIR 1992 SC 382.

⁴³ *Vellore Citizens Welfare Forum v. Union of India and others*, AIR1996 SC 2751.

⁴⁴ *Church of God (Full Gospel) in India v. K.K .R. Majestic Colony Welfare Association and Others*, AIR 2000 SC 2773.

⁴⁵ *Narmada Bachao Andolan etc. v. Union of India and others*, AIR 2000 SC 3751.

⁴⁶ SS Prakash and PVN Sarma, 'Environment Protection vis-à-vis judicial activism' (1998) 2 SCJ 56, P-58; *RLE Kendra Dehradun v. State of Uttar Pradesh*, AIR 1985 SC 652; *T Damodar Rao v. S.O. Municipal Corporation, Hyderabad*, AIR 1987 AP 171.

⁴⁷ *Subash Kumar v. State of Bihar*, AIR 1991 SC 420; *Ratlam Municipality v. Vardhichand*, AIR 1980 SC 1622.

⁴⁸ *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446.

⁴⁹ *Subash Kumar v. State of Bihar*, AIR 1991 SC 420.

public duty by allowing an adjacent owner of agricultural land to challenge the extensive use of his neighboring land for prawn culture that made his land saline and thus unfit for agriculture.⁵⁰ The judicial spectrum of interpretation has encompassed within its fold the right to live in a healthy environment as an important aspect of human rights.⁵¹

Often the judiciary has undertaken firm steps to protect the environment by reading atmospheric and other forms of pollution within the broad spectrum of private nuisance and has also awarded special damages under tortious liability.⁵² Thus, the courts have conveniently used common law principles as effective tools for the redressal of wrongs concerning environmental pollution by enumerating that any polluting act creating public hazards and injuring the health of individuals would constitute an actionable nuisance.⁵³ The judiciary has, through its judicial interpretation, designed diverse remedies such as ordering the closure of industries violating the provisions of law⁵⁴ or operating in thickly populated areas,⁵⁵ ordering for the change of technologies for strict compliance with safety standards,⁵⁶ emphasizing director's personal liability if any accident occurs due to the hazardous nature of the industrial corporation⁵⁷ and has also gone to the extent of imposing statutory liability upon directors under provisions of the anti-pollution laws,⁵⁸ extended the notion of compensation to the area of environmental law for countless people who have become victims of industrial disasters,⁵⁹ and even expressed its view for the creation of separate 'environment funds' from which compensation may be paid to the victims of environmental calamities. The courts have also made fragmented efforts for imposition of criminal liability in the form of fines and/or imprisonments upon the violators of the environment. Over the years the courts have shown an increased willingness to resort to prosecution in cases of violation of environmental

⁵⁰ *M.P Ram Babu v. District Forest Officer*, AIR 2002 AP 256; *Rohtas Industries Ltd. v. Rohtas Industries Staff Union*, AIR 1976 SC 425.

⁵¹ *Andra Pradesh Pollution Control Board v. MV Naydu*, AIR 1999 SC 812.

⁵² *Ram Baj Singh v. Babulal*, AIR 1982 All 285; *Ratlam Municipality v. Vardhichand*, AIR 1980 SC 1622.

⁵³ *B Venketappa v. B Lowis*, AIR 1996 Andh Pra 239.

⁵⁴ *Ambuja Petrochemical Ltd. v. A.P. Pollution Control Board*, AIR 1997 A.P. 41.

⁵⁵ *Ambica Quarry Works v. State of Gujarat*, AIR 1987 SC 1073; *M.C. Mehta v. Union of India and Ors*, AIR 1988 SC 1037; *Vellore Citizens Welfare Forum v. Union of India and others*, AIR 1996 SC 2751.

⁵⁶ *People Health and Development Council v. State of Tamil Nadu*, (2005) 2 MLJ 44 (2).

⁵⁷ *M.C.Mehta v. Union of India and Ors*, (1987) 4 SCC 463; *U.P. Pollution Control Board v. Mohan Meakins Ltd.*, (2000) 3 SCC 755.

⁵⁸ *Uttar Pradesh Pollution Control Board v. Mohan Meakins Limited*, (2000) Cr LJ 1791.

⁵⁹ *Union Carbide Corporation v. Union of India*, AIR 1992 SC 248.

codes.⁶⁰ However, in addition to prosecuting the polluters the judiciary should also emphasize upon imposing punitive liability upon the abettors of pollution as well so as to deter the polluters from engaging in polluting activities.

Moreover, there has been a frequent trend of sleeping over the orders of the court imposing environmental standards. Hence, the judiciary has rightly stepped in and seized the dire need to punish the constant violators of environment using the weapon of contempt power.⁶¹

Besides these cases, the Apex Court has entertained umpteen numbers of PILs such as *Centre for Social Justice v. Union of India*,⁶² *R. A. Goel v. Union of India*,⁶³ *All India Mobile Zoo Owners and Animal Welfare Association v. Union of India*,⁶⁴ *Comdr. Sureshwar D. Sinha v. Union of India*,⁶⁵ *C. Kenchappa v. State of Karnataka*,⁶⁶ *Chandmari Tea Co. v. State of Assam*,⁶⁷ *D.K. Joshi v. Chief Secretary, State of UP*,⁶⁸ *Suo Motu v. Vatva Industries Association, Ahmadabad*,⁶⁹ for securing environmental justice in public interest.

The need for an alternative forum to deliver expeditious justice to victims of environmental harm led to the creation of an Environment Court named National Green Tribunal (NGT). Since its inception, the NGT has been actively engaged in securing the enforcement of legal rights for environment and providing appropriate relief to the victims. Recently, the NGT has been instrumental in addressing various environmental concerns by imposing ban on the plying of 10 years old diesel vehicles in Delhi NCR,⁷⁰ prohibiting waste incineration in open places and imposing a fine of rupees 25,000 for each incidence of such burning,⁷¹ cancelled

⁶⁰ *Centre for Environmental Law World Wide Fund for Nature (WWF), India v. State of Orissa and ors*, AIR 1999 Ori 15; *Medwin Hospital v. State of Andhra Pradesh*, (1999) Cr LJ 782; *Sujatha v. Prema*, (2005) Cr LJ 3262.

⁶¹ *Niyamavedi v. Union of India*, AIR 2004 Ker 81; *M.C. Mehta v. Union of India*, (2003) 5 SCC 385.

⁶² Spl. C. A, GJLR Vol. XLI (3) 2000, 1997.

⁶³ AIR 2000 P H 320.

⁶⁴ AIR 2000 Delhi 449.

⁶⁵ (2000) 6 SCALE 146.

⁶⁶ AIR 2000 SC 2579.

⁶⁷ AIR 2000 Gauhati 13.

⁶⁸ AIR 2000 SC 324.

⁶⁹ AIR 2000 SC 384.

⁷⁰ 'In Delhi, immediate ban on diesel vehicles over 10-years-old: NGT' *The Times of India* (New Delhi, 18 July 2016) < <http://timesofindia.indiatimes.com/auto/miscellaneous/In-Delhi-immediate-ban-on-diesel-vehicles-over-10-years-old-NGT/articleshow/53262500.cms>>.

⁷¹ 'NGT bans waste burning in open areas across the country' *The Times of India* (New Delhi, 23 December 2016) <<http://timesofindia.indiatimes.com/city/delhi/ngt-bans-waste-burning-in-open-areas-across-the-country/articleshow/56130982.cms>>.

forest clearance for Chhattisgarh coal blocks.⁷² Currently the NGT is working on its proposed plan to revive river Yamuna in Delhi and UP regions.⁷³ However, to achieve its desired goals and ensure effective implementation of its decisions, the central and State governments should join hands and work in collaboration with the NGT. Besides this, the scope of its restrictive capacity should be broadened by conferring *suo-moto* powers on NGT. Further, the current format for the seat of NGT which is in Delhi does not serve the purpose of its creation since persons aggrieved by environmental wrongs residing in different parts of the country have to travel all the way to the capital city for redressal of their grievances. This entails the denial of justice to the potential victims. Therefore, the government should reconsider this aspect and arrange for the NGT to sit in each district of the country.

CONCLUSION

The judiciary has, thus, through its decisions in a plethora of cases established the mandate for achieving environmental sustainability. After realizing the environmental crisis situation in the country, the judiciary has quite boldly shouldered the responsibility of awakening the environmental jurisprudence from its state of deep slumber. The environment scenario has undergone tremendous change, mostly in the positive, owing to the vigorous efforts of the judiciary in importing environmental consciousness. The consequent legislative endeavors that followed led to the recognition of the right to clean environment as a fundamental right and imposition on the State of the obligation to carry out its duties guided by the Directive Principles of State Policy [Articles 48A and 51A(g)]. The principles/doctrines that had evolved subsequently are remarkable milestones in the judicial endeavor for environment protection which made the public alert about their rights as well as duties towards their surroundings. This consciousness coupled with the judiciary's outstanding move to liberalize *locus standi* had led to substantial growth in PIL cases pertaining to the concerns of pollution thereby pressurizing the polluting units for adopting anti-pollution measures.

The Indian judiciary has no doubt formed a strong foundation for the corpus of environmental jurisprudence by regulating the environmental governance process including the

⁷² Nitin Sethi 'Green tribunal cancels forest clearance for Chhattisgarh coal blocks' *The Hindu* (New Delhi, 18 August 2016) <<http://www.thehindu.com/news/national/green-tribunal-cancels-forest-clearance-for-chhattisgarh-coal-blocks/article5826314.ece>>.

⁷³ Risha Chitlangal, 'Yamuna revival a sinkhole of big ideas' *The Times of India* (New Delhi, 20 November 2016) <<http://timesofindia.indiatimes.com/city/delhi/Yamuna-revival-a-sinkhole-of-big-ideas/articleshow/55520127.cms>>.

reinterpretation of Environment Acts, creation of new institutions and structures to deal with issues pertaining to environment and conferring additional powers on the existing ones. Nevertheless, achievement of satisfactory outcomes is still not accomplished owing to the fact that the effective implementation of any law or policy depends upon the subjects on which they are impressed. Unless the concerned citizens themselves realize their importance and oblige them from their heart, the effectiveness of enviro-friendly judicial dictums and pronouncements is questionable. Incompetency on part of the judiciary is felt when its orders and decisions, although facilitate legal discourse, remains poorly implemented at the ground level, often due to lack of political or administrative will. Often criticisms of overstepping its functional boundaries and transgressing into legislative and administrative spheres keep knocking the doors of the judiciary.

The judiciary, nevertheless, plays a phenomenal role in acting as watchdogs and the public instills its last hope in the judiciary. However, the harsh reality remains that it is indispensable for the judiciary to get the support from the other organs of government and obedience of its orders by the people, the absence of which would severely weaken its efforts in regulating environmental governance in India.

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