AMENABILITY OF JUDICIARY TO ENVIRONMENTAL PROTECTION

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ABSTRACT

"Industrialize or perish" is the internationally accepted slogan which is the seed for the environmental pollution. Our constitution specifically pinpoints about the environmental protection. The framers of the constitution also through Fundamental Duties and Directive Principles of State Policy are attention-grabbing the people to protect and improve the environment.

The Constitution (Forty Second Amendment) Act 1976 explicitly incorporated environmental protection and improvement as part of State policy through the insertion of Article 48A. Article 51A (g) imposed a similar responsibility on every citizen "to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for all living creatures."

The main cause for the environmental degradation is due to industrialization, urbanisation, over exploitation of resources, depletion of traditional resources and also the population explosion.

India being fore-front took possible measures aiming at the sustainable development. Neither the law nor the environment static. The environment is changing at a faster pace and to balance the wave-length between the degradation and protection, the laws has to be amended frequently to meet the challenges or it has to be given new direction by the judicial interpretation.

Countries have created robust environmental agencies, negotiated multilateral agreements and undertaken new initiatives at the local, national and international levels to protect the human health, limit greenhouse gas emissions, conserve biodiversity and wildlife and manage natural resources.

Public Interest Litigation (PIL) plays a vital role in the judiciary in Environment protection. There are very many cases filed by the Non-Governmental Organisation (NGO), lawyers and public spirited individuals to seek remedies to the abundant problems such as unchecked

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vehicular and industrial pollution, negligence in management of solid waste, construction of large projects and increasing deforestation. The traditional rule of 'locus standi' has been relaxed so as to bring justice to the poor and disadvantaged people. As under Article 21 the Supreme Court is making and creating interpretation which leads to the creation of new rights.

OBJECTIVES:

1. To analyze the distinctive nature of the outstanding role of Indian judiciary to prevent and protect environment from pollution and the control of pollution within a broader constitutional and jurisprudential framework.
2. To observe the doctrines and principles that is applied by the Courts in delivering judgement to protect the environment.
3. To find the role of National Green Tribunals in preventing the environment from degradation.
4. To know about the enactments that is brought by the legislature after the direction given by Judiciary.

RESEARCH METHODOLOGY:

The researcher has performed the research mostly based on the data available through the Secondary sources. Many books related to Environmental laws and Constitutional Laws have been referred. Some articles written by eminent Judges, Jurists, Academicians, Lawyers and Journalists etc. published in leading Law Journals and Books and ample number of web sites has also been referred. The decisions rendered by the Supreme Court of India and other High Courts, reported in different Law Journals like the Supreme Court Cases, All India Reporter, SCALE and Judgment Today were referred to evaluate the paper.

CHAPTER – 1

PUBLIC INTEREST LITIGATION

Primarily, legislatures brought many Acts to protect the environment from degradation at habitual intervals. The judiciary by active interpretation of the provisions have substantially enriched the environmental jurisprudence in India. The judiciary as an effective system of administration brought the relaxation of locus standi[2] by the instrument of Public Interest Litigation, which is considered as the most essential characteristic features of the environmental litigation in India. The environmental degradation cases where considered as cases relating to violation of fundamental rights rather than earlier claiming under torts.

In the very first environment protection case which came before the Supreme Court, it has been held that municipality could put forward lack of finance as a ground for not discharging its primary duty of looking after the health and safety of its residents.[3] The High Court light the way by giving the direct and specific pronouncements on citizens "Fundamental Rights to Pollution Free Environment". The Andhra Pradesh High Court ruled that the life cannot be enjoyed fully without the nature's gift i.e., pure environment. The slow poisoning by the polluted atmosphere is caused mainly due to environmental pollution, degradation, and spoliation is also considered as a violation of Art. 21 of the Indian Constitution.[4] On the same point, the Karnataka High Court have also paved way that "Entitlement to clear environment is one of the recognised human rights" and further held that Right to Life that in inherent in Art. 21 does not fall short the requirement of quality of life which is possible only in an environment of quality.

The judiciary in India is taking many a step to instruct the state agencies in preventing the environment and in striking the man-made disaster. It was held in *M.C.Metha v. UOI and Others,*[5] that, the important feature of environmental protection is sustainable development. The two vital feature of sustainable development are precautionary principle and polluter say principle. It was also supplementary held that the principle requires development to take place that is ecologically sustainable.

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[2] Locus Standi means "A place of standing; standing in court. A right to appear in the court of law or even before a legislative body, on a given question."

[3] *Municipal Council Ratlam v. Vardhichand* AIR 1980 SC 1622.

[4] *Damodhar Rao v. SO Municipal Corporation*, Hyderabad, AIR 1987 AP 170.

[5] AIR 1987 SC 1086

The precautionary principle was annotated by the Supreme Court of India in *Vellore Citizen's Welfare Forum v. Union of India,*[6] and other states that the State government with its agencies, and NGO's should take all possible steps and measures to prevent from attack the environment and also bring to a halt the causes for it. It resembles that there is also lack of adequate funds allocated to the Ministry of Environmental and Forests, be short of qualified and well trained staff and its subordinate offices spread all over the country who through their plans and ideas bring awareness among people and prevent the environment from degradation, due to their lack of commitment and consciousness about the environment improvement, intricate procedures for approvals and authorizations of the Pollution Control Boards, are the main reasons for ineffective exertion of environmental laws. If appropriate reforms are made in appointing the officers of department of Ministry of Environmental and Forests, doubtless the environmental laws will be implemented effectively thereby ensuring problem free environment.

RIGHT TO WATER:

Right to clean and safe water is also an aspect of right to life according to Art.21 of the constitution is the interpretations given by various High Courts on protection of water. In *Narmada Bachao Andolan v. Union of India*[7]*,* Supreme Court held that water is the most basic essential feature for the existence of human life and also for the survival of the animals.

Pollution caused by tanning industry, existed in M.C.Mehta cases[8]. The Judiciary took it granted and held in its main judgement that Fundamental right is violated by the supposed pollution, even if there is no reference in the provisions of Art.21 of the Constitution that polluting the environment will affect the right to life of the citizens, and it entails the court to give directions for a remedy in spite of the mechanisms available in the Water Act.

The Supreme Court in *Subhash Kumar v. State of Bihar*[9], held that, “The right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life”.

In *State of Karnataka v. State of Andhra Pradesh*[10], the Supreme Court had pointed out in its judgement that, “There is no dispute that under the constitutional scheme of our country -

[6] AIR 1996 SC 2715.
[7] AIR 2000 SC 3751, pp3825, 3830.
[8] *MC.Mehta v. Union of India* AIR 1988 SC 1037. The tanning industries located on the banks of Ganga were alleged to be polluting the river. The court issued directions to them to set up effluent plants within six months from the date of the order. It was specified that failure to do so would entail closure of business.
[9] AIR 1991 SC 420

right to water is a right to life and thus a fundamental right and polluting the water is violating the fundamental right of the citizens."

MINING:

In *A.R.C. Cement Ltd. v, State of U.P*[11]., the Supreme Court did not authorize the cement factory to run in the Doon Valley area where the mining operation had been stopped up and in order to refurbish the Doon Valley to its original character it was directed to be confirmed as the non-industrial area. Nevertheless, alternate site for shifting the cement factory of the petitioner should be arranged by the government without affecting the environment.

In *Tarun Bharat Sangh v. Union of India*[12], the petitioner brought to the notice of the Court that the Rajasthan State Government, though were professing to protect the environment by means of passing of declarations and notifications, but was itself degrading and permitting to destroy the environment by sanctioning the mining operations in the area declared as "Reserve Area" through their Public Interest Litigation against the State Government. In order to assure the protection of environment and wildlife within the reserved area, the Supreme Court issued orders that no mining operation of whatever nature shall be carried on within the protected area.

FROM SHIFTING OF STONE CRUSHERS:

In *M.C. Mehta v. Union of India*[13], the Supreme Court issued instructions for stopping mechanical stone-crushing activities in and around Delhi, Faridabad, and Ballabhgarh complexes. Nevertheless, keeping in view the sustainable development, directions were also issued for allotment of sites in the new "crushing zone" location to Haryana in the village Pali to the stone crushers who were directed to stop their activities in Delhi, Faridabad and Ballabhgarh complexes.

This case was relied upon and followed by Punjab and Haryana High Court in *Ishwar Singh v. State of Haryana*[14]. The High Court issued the directions for closing down the stone crushing business of those which were not situated within the identified zone. The Court further directed that those who wanted to carry on their business of stone-crushing, should

[10] (2000) 9 SCC 572
[11] 1993 Supp (1) SCC 57
[12] 1992 Supp (2) SCC 448
[13] (1992)3 SCC 256
[14] AIR 1996 P. & H 30

shift to the identified zones. One of the most important directions given by the High Court was regarding the claim of compensation for those persons who had suffered due to the pollution caused by stone-crusher owners.

INDUSTRIAL POLLUTION:

An enormous judgment in M.C Mehta v. Union of India[15] (Bhopal Gas Tragedy) was dealt by the Supreme Court. There is no effective regulation that is amenable for the Bhopal Catastrophe which is only the materialization of the potential hazards of all chemical industries in the India. The people are shacked up due to the Bhopal disaster i.e., the outflow of bulky amount of Oleum gas which took place from one of the units of the Shri ram Chemicals situated in Delhi. This led to the diseases for the common people in the nearby place and also to the workman. The Supreme Court has evolved many principles and added it to the environmental jurisprudence, which is an effective step taken by the Judiciary.

At the beginning the court has taken attention of the question: Whether the plant which led to the tragedy could be allowed to carry on the operation in the same plant where it was located earlier and if it is not allowed to recommence the required measures are to taken immediately against the hazards of the chance of the leak, explosion, pollution of air and pollution of water, pollution of soil etc. for the purpose to answer immediately to the consequences with it which requisite immediate attention. First, 4000 workman was fired out of the employment from the plant due to the Bhopal Gas Tragedy and closure of the plant. Secondly, the production of chlorine in the said plant and the supply of the same affect the many activities in the State of Delhi. Lastly, there is also shortage in the supply of products due to the production of the downstream products.

A committee consisting of experts in the Management of plant and environment has been appointed by the Supreme Court to analyse and suggest certain process to eradicate the defects in the existing plant. After the Shriram Chemicals plant management satisfies the court that it is under their control and all safety measures are being done so that no tragedy will happen in future, it is held waiting for the concern about the issue of relocating or shifting the plant to some other suitable location. The provisions of the Water (Prevention

[15] AIR 1987 SC 965

and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981 have to be observed austerely before granting the license to recommence.
It is further submitted that the above judgement and guidelines provided by the Supreme Court was interrelated with the sustainable development and environmental protection.

In this case, the Supreme Court failed to answer to the question whether the Private enterprises (especially Shriram Chemicals) is within the meaning of the State under Art 12 of the Constitution even though when it is undertaking intrinsically dangerous hazardous activities so as to allow a Public Interest Litigation cases under Writ jurisdiction underneath Art 32 for Supreme Court or Art 226 for High Court. But the Supreme Court has allowed the writ petition under Art 32 of the constitution of India which impliedly brought the Private enterprises under the meaning of the State according to Art 12 of the constitution.

Indian Council for Enviro-Legal Action v, Union of India[16], is a landmark judgment on the point of environment protection and sustainable development. The Public Interest Litigation was brought before the Court alleging the pollution that is caused to the environment because of the private industrial units. In the present case the Public Interest Litigation was filed not asking for the writ, order or direction against the private industrial units but against the Union of India, State Government and also against the State Pollution Board who are concerned and under compulsion to perform their statutory duties on ground and that their failure to carry out their duties without violating the Art 21 of the Constitution i.e., Right to life of the citizens.
In the instant case, the private industrial units were located in the Village Bichhri in Udaipur (Rajasthan). These industrial units were producing in large amount the chemicals like Oleum (concentrated form of sulphuric acid) and H-Acid etc. But it was showed clearly that these private industrial units did not get any license or consents or any clearances from the Pollution Control Board and they didn’t even install any instrument or equipment to reduce the effects of the highly toxicities chemicals / effluents discharged by them as a result of the production of the Chemicals. The effluent from these industries percolate deep into the soil and also pollute the ground water which makes it unfit for the human beings and the animals to drink and also use it and even for the purpose of irrigation of the land because the plant

[16] (1996) 3 SCC 212

will contain the chemical effluents if it grows from the water polluted by the industries. This also indirectly affects the health of the Human beings if they consume the vegetables from those plants. It spread diseases and spoils the health of the people in the village and also in the villages which are surrounded nearby. Even after certain industrial units were being shut down the effects of the industrialized chemicals like "H-Acid" have the enduring, eternal and long lasting consequences to the earth, ground water, human beings, and animals and even to the village economy.

The Supreme Court at the same time while affirming the cases of the *M.C.Metha v. Union Of India*, held in its opinion that contention made by the petitioner is not accepted because respondents are being the Private corporate bodies and not the State within the meaning of the Art 12 of the constitution and a writ cannot be filed against them under Art 32 or Art 226 of the Constitution. If the Petitioner proves that the government authorities have not taken any mandatory measures which is the part of their duty and due to their ineffective action the people's right to life is being affected, then it is the vital duty of the court to get involved in the matter and give indispensable direction to the authorities to protect the life and liberty of the citizens under Art 21 of the Constitution.

The court has also taken the issue of the Idgah Slaughter House and its effect on the ecology. In the case of the *Buffalo Traders' Welfare Association v, Maneka Gandhi*[17], the court considered the matter of the hazardous industries that are operating in Delhi and the functioning of which should be stopped in the significance of the environment protection. The operation of these industries was allowed only temporarily until the guidelines provided by the Court are satisfied and the slaughter houses are maintained cleaned and the relocation of the houses is arranged.

SHIFTING / RELOCATION OF HAZARDOUS AND NOXIOUS / HEAVY INDUSTRIES:

Industries play a vital role in the development of the economy. But it is considered as the most important source for the environmental pollution and degradation. The court have continuously given its judgement in many cases that the industrial units should not be located in the densely populated area or in the residential area in order to curtail the harm of environmental pollution. From the below mentioned case laws it will be clear that the Courts

[17] (1996) 11 SCC 35

have issued the enormous guidelines for the shifting / relocation of the existing hazardous / noxious / heavy industries to a separate zone distinct for this purpose.

The Supreme Court in *M.C. Mehta v, Union of India*[18], has held that Government of India should go forward with the national policy for the location of the industries producing chemical and other hazardous products in the areas where there is population scant and there is little risk to the community in order to reduce the element of risk to the community from the industrial hazards. When the industries are located in the scant populated areas then proper care and caution should be provided and seen that the human habitation does not develop around them. There should also be Green Belt made around the industry in the width of 1 to 5 Km.

In *V. Lakshmipathy v, State*[19], the Karnataka High Court in Public Interest Litigation (PIL) instructed the Municipal Corporation to bring to a halt the industries set up in the inhabited area. The Court also analysed that the land which is earmarked for residential purposes should not be used for scheduling the industries.

TANNERIES AND DISCHARGE OF EFFLUENTS:

The industries have the responsibility for the treatment of the industrial effluents from the laws of the land. But it is very clear that some industries in various parts of the country are not complying with the above mentioned laws of the land. The industries are discharging the effluents directly to the environment without any effort to lessen its concentration and this is the major source of the pollution. The courts in such cases have given instructions to such tanneries to both fix and install primary treatment plant or to shut down the tanneries. The sustainable development is the path that is used by Judiciary in India.

In *Ganga Water Pollution case or Kanpur tanneries case (M.C. Mehta v. Union of India*[20]), a public interest litigation was brought to cover up the issue of issuance of orders warning and preventing the tanneries from discharging the chemical effluent into the River Ganga until an alternative remedy of installing a plant to control the effect of effluents is made to manage the pollution of the River Ganga.

[18] AIR 1987 SC 965
[19] AIR 1992 Kant. 57
[20] AIR 1988 SC 1037

As the tanneries did not respond to the Supreme Court order, it has directed the Authorities to shut down those tanneries which did not respond to the order. The Supreme Court observed as follows:

"The court pin pointed specifically that financial capacity of the tanneries will not be considered as an element for the non installation of the primary treatment plants. The license of the tanneries will be cancelled when there is absence of these machines."

In *Vellore Citizens' Welfare Forum v. Union of India*[21], the Supreme Court adopted the balancing concept of the principle of the Sustainable development, which is considered as one of the landmark judgement. This case is popularly known as T.N. Tanneries case.

The report of the survey clearly states that almost 35/000 hectares of agricultural land near the tanneries belt has become unfit for the purpose of cultivation. The effluents released by the industries not only ruin the properties of the soil but also the ground water by the way of percolation. Almost 350 wells out of total of 467 used for drinking and irrigation purposes had been polluted.

The Supreme Court has stated its view that the concept of "The Precautionary Principle" and "The Polluter Pays Principle" are the most essential characteristics of sustainable development and are a part of the law of land.

Some of the constitutional provisions like Articles 21, 47, 48-A and 51-A (g) and other provisions in the Statute Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986, it had faltering in holding the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.

URBANIZATIN MATTERS:

Our judiciary has taken important decisions in the problem of urbanisation and the want for protecting and preserving the environment.

In *M.L. Sud v. Union of India*[22], it was complained that the Delhi Development Authority (DDA) was denuding by cutting trees in the forest and putting up construction and laying roads in the city forest area which was shown in the Master Plan as "Green" and was to be maintained as city forest. The Supreme Court issued the necessary guidelines to the concerned authorities for maintaining the city forest.

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[21] (1996) 5 SCC 647

[22] 1992 supp (2) SCC 123

In *People United for Better Living in Calcutta v, State of West Bengal*[23], the Calcutta High Court held that it is the duty of the Court to find balance between development programme and environment. It was further held that wet land is important in maintenance of environmental equilibrium and necessary to preserve the environment.

JJR

[23] AIR 1993 Cal 215.

CHAPTER -2

DOCTRINES AND PRINCIPLES EVOLVED BY COURTS

The doctrines and Principles that is emerged from the Courts are noteworthy involvement to the environmental jurisprudence in India. The course of action on how decisions made at international conventions and conferences are incorporated into the legal system are incorporated in Article 253 of the Constitution of India. The procreation and application of the doctrines pave significant milestones taken by the judiciary for environmental protection in the path of environmental law in India. The cases which lead to the introduction the doctrines are public interest litigation are most attention-grabbing. The important doctrines evolved are,

A. Public Trust Doctrine
B. Polluter Pays Principle
C. Precautionary Principle
D. Doctrine of Sustainable development and Inter-generational Equity.

1. PUBLIC TRUST DOCTRINE:

The Public Trust Doctrine was originally espoused in common law as a part of its jurisprudence. For the free and unimpeded use of the public Rivers, seashore, forests and the air are with the government as trusteeship. The resources which are comparatively suitable for the use of above mentioned resources are also under the trusteeship of government because it is also for the benefit of the public.[24] The state has the duty to protect the resources as trustee. The resources under the trusteeship of government are meant for public benefit, hence, it is wholly unjustified to be converted into Private ownership.[25]

The doctrine is also found in the Constitution in Article 47 which forms the root. In fact, Constitution of India through its Preamble, Directive Principles of State Policy and Fundamental Duty to inflict a responsibility on the state as well as the citizens to preserve the environment and use for the maximum benefit of people. The Statute which resonate the Public Trust Doctrine is Section 2 of the Forest (Conservation) Act, 1980.

Professor Jaffe says,

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[24] Shanthakumar, note 7, pp. 108, 109.

[25] *M.C.Mehta v. Kamal Nath (*1997) 1 SCC 388, p 413. For details see, P. Leelakrishnan, Environmental Law in India, Third Edition, First Reprint, (2009), Lexis Nexis Butterworths Wadhwa, Nagpur.

> *"According to this doctrine, public lands dedicated to certain uses (for example, use as a park, a recreation ground, or a forest preserve) cannot be diverted by a public authority (such as a highway commission) to other uses less environmentally worthy, unless the diversion is inconsequential and does not seriously disturb the dedicated use."*[26]

The Supreme Court for the first time enforced this doctrine in *M.C.Metha V. Kamal Nath*[27], to an environmental problem. It took notice of a news item in the Indian Express newspaper dated 2 February 1996. The respondent family had direct link with Span Motel. They also had a club, in another enterprise which encroached upon the forestland. This club was started by first respondent when he was Minister for environment and forests in Central Government. To control the course of river Beas, and to keep high intensity of flow away from the motel they used bulldozers and earthmovers. As a result of this landslides and floods occurred in those areas. Once the diversion is complete, the Span management has plans to go in for landscaping. The court ordered the motel to pay compensation by way of cost for the restitution of the environment and ecology of the area.

In *MP Ramababu v. District Forest Officer*[28] case, it was held by the Andhra Pradesh High Court that if any person uses his own land and pollutes the underground soil and underground water then even in the nonexistence of any specific law the State can interfere in the matter and stop the person from doing so because the State has the responsibility to prevent contamination.

In *M.I.Builders Pvt Ltd v. Radhey Shyam Sahu*,[29] Lucknow Nagar Mahapalika legalized the building of an underground shopping complex underneath Jhandewala Park by the Appellant company M.I.Builders Pvt Ltd. The court quashed the order for the construction. Even the appellant accepted the contention of the Respondent that the park is of historical nature. The contention of the Appellant the construction is underground in order to reduce the overcrowding in the area. The High Court the construction in the underground will further set hurdles to the situation and the scheme could congest the area and the preservation and maintenance of the park will be affected. The builders appealed. The Supreme Court held that

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[26] P. Leelakrishnan, Environmental Law in India, Third Edition, First Reprint, (2009), Lexis Nexis Butterworths Wadhwa, Nagpur.
[27] (1997) 1 SCC 388.
[28] AIR 2002 AP 256.
[29] AIR 1999 SC 2468.

"It cannot be said that Mahapalika is an agent for the builders of the construction of the underground shopping complex. Concept of agency is totally missing in the present case. When the development is by the builder provisions of Section 14 of the Development Act would apply. There is no authorization for the building plan of the underground shopping complex.

2. **POLLUTER PAYS PRINCILE :**

The Polluter Pays' Principle came into existence in the year 1970's in Europe, when the importance of the environment and its protection was taken into consideration all over the world. Consequently the principle was publicized by the Organization for Economic Cooperation and development (OECD). The court has interpreted the Polluter Pays' Principle as the absolute liability for harm lead to the environment; the polluter should redress the cost of reimbursing the environmental degradation in addition to the compensation paid to the victims of the pollution.

The principle is based on the idea that the person who produces the goods or other objects should me made responsible for the pollution caused in the process of production. They should also retaliate the cost for the damages and destruction that is caused to the environment. The cost also includes paying compensation to the people who are affected by the effluents from the industries and also any deformation in the structure. This principle is invoked as guiding force following the public policy remedies to the problem. In the post Bhopal Gas Leak case, this principle was received great attention by and it has almost pushed the government and its institutions, including the judiciary.

Rio Declaration – Principle 16 – National authorities through an undertaking make effort to encourage the internationalization of environmental cost and also the use of the economic instruments, that the polluter is liable to bear the cost of pollution, with due regard to the public interest and without disturbing the international trade and investment.[30]

The rule in *Rylands v. Fletcher,*[31] was evolved in the year 1886. It provides that a person willingly brings an object to his land and also has the knowledge that if it escapes it would cause mischief, and then he has the responsibility to take care of it

[30] Mehdi, note 10, p.189.
[31] (1886) LR & HL 330, pp 339,340.

without escaping. In case if he fails, to do so, is prima facie liable for the damages which is the natural outcome of its escape. The liability under this rule is stringent. The defence that the thing escaped without the person's wilful act, default, or neglect. The person wilfully doing the act is bound to compensate the other for the damages caused by his object.

The Supreme Court emphasised on their responsibilities in the following words, "We have to evolve new principles and lay down new norms, which would adequately deal with the new problems, which arise, in a highly industrialized economy. The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of an accident in carrying on the hazardous or inherently dangerous activity by the enterprise."

The Polluter Pay Doctrine was primarily introduced to the Indian environmental law through the Supreme Court only, in the case of Indian Council for *Enviro-legal Action v. Union of India*[32], the Court said that for whatever the damage or loss happened by the hazardous substances of an industry, it is responsible to make good the loss caused. The Court observed that Sections 3 expressly empowers the Central Government (or its delegate) to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment. Similarly in Sec 5 the Central Government has power to issue directions for achieving the objects of the Act. Further in *M.C. Mehta v. Kamal Nath*[33] case, the Court said that the polluter is responsible for compensating and repairing the damage caused by his act. Despite its deterrent impact on potential polluters, the doctrine is limited in the sense that it can be applied as remedial stage, after pollution has taken place.

3. PRECAUTIONARY PRINCIPLE:

The Precautionary Principle or Precautionary concept implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found a plausible risk. If the further scientific research or findings emerge and prove it will not cause harm that then these protections can be relaxed.

[32] AIR 1996 SC 1446

[33] (1997) 1 SCC 388.p.415.

In Principle 11 of the UN General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the 'precautionary principle'. This was reiterated in the Rio Declaration its Principle 15 which reads as follows:

> Principle 15: In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. In case of threats of nature which are serious or irreversible damage; the excuse of the lack of full scientific certainty shall not be used as a reason for proposing cost-effective method to prevent environmental deprivation.

Foundation for the application of the principle was in the case *Vellore Citizens' Welfare Forum v. Union of India*[34], the Supreme Court has unambiguously recognized the precautionary principle as a principle of Indian environmental law. In the recent times, in *A.P. Pollution Control Board v. M.V. Nayudu*[35], the Court discussed the expansion of the precautionary principle[36]. Additionally, in the Narmada case[37], the Court explained that "When the uncertainty state is caused due to the lack of data or material about the extent of damage or pollution likely to be caused, then, in order to maintain the ecology balance, the burden of proof that the said balance will be maintained must automatically be on the industry or the unit which is likely to cause pollution."[38]

The Supreme Court of India in *Vellore Citizens Welfare Forum v. Union of India*[39] acknowledged that Precautionary Principle is also a part of the environmental law of the country like the Polluter Pay Principle.

The Facts of the case is as follows:

The Vellore Citizens Welfare Forum being the Petitioner filed the suit to take action against the running of tanneries in the State of Tamil Nadu which is discharging untreated effluent into agricultural fields, waterways, open lands and waterways in large amount which makes the land and water polluted and make them unfit for use. A report says that amongst other types of environmental pollution caused by the untreated effluents released by the tanneries, it is estimated that nearly 35,000 hectares of agricultural land in this tanneries belt has

[34] AIR 1996 SC 2715.
[35] AIR 1999 SC 812
[36] *S. Jagannath v. Union of India* (Shrimp Culture case), AIR 1997 SC 811.
[37] *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751.
[38] P. Leelakrishnan, "Environmental Law", Annual Survey of Indian Law, Volume XXXVI, 2000, pp. 252-257.
[39] AIR 1996 SC 2715.

become either partially or totally unfit for cultivation, and that the 170 types of chemicals used in the chrome tanning processes have ruthlessly polluted the local drinking water.

The points that court taken into consideration were that the company is a Foreign Exchange Earner. From the above statement it does not mean that it has got a right to devastate the ecology, degrade the environment or generate health hazards. The other point taken into consideration is whether the monetary considerations should be encouraged or the lives of lakhs of the people should be given more priority. The untreated effluents discharged have been stored like a pond openly in the most of the places adjacent to cultivable lands with easy access for the animals and the people.

The Court ordered the Central Government to establish an authority to analyse and determine the situation created by the tanneries and other polluting industries to the ecology as well as individuals in the State of Tamil Nadu. This authority shall implement the precautionary principle and the Polluters Pay principle, to identify the same.

The Collector/District Magistrates shall collect and disburse this money to reverse this environmental damage and compensate those who have suffered from the pollution.

If the industry which has polluted the environment refuses to pay compensation, then the industry will be closed by the order of the court and the compensation to be paid by them will be collected as arrears of land revenue. If the industry has installed the devices to control the pollution then it cannot escape from the liability that is caused earlier.

The tanneries if mentioned in the list given to the district then such tanneries are subjected to a fine of Rs.10,000/-. The amount will be added to the fund of "Environment Protection Fund". The amount so collected will be utilised to refurbish the environment and also to compensate affected persons. A committee of experts will frame the Scheme to prevent the pollution and further spreading of pollution. All tanneries should be installed with the effluent treatment plants. If they are not installed then the tanneries can be shut down by Superintendent of Police and the Collector/District Magistrate/Deputy Commissioner in each of the respective districts.

The application of the Precautionary principle was first directly done in M.C. Metha v. Union of India for shielding the Taj Mahal from air pollution. The result of certain study states that emissions from coke/coal based industries in the Taj Trapezium (TTZ) had harmful effect on the Taj. The court has stated that “the measures taken to prevent, anticipate and attack the causes of environmental degradation.” The tanneries have the responsibility of the “onus of proof” with the operation of the coke /coal is environmentally benign.

4. DOCTRINE OF SUSTAINABLE DEVELOPMENT AND INTER-GENERATIONAL EQUITY:

In *M.C.Metha v. Union of India*[40], which is a case relating to vehicular pollution in Delhi, the Supreme Court had instance to talk about the Precautionary Principle which is enshrined in the concept of Sustainable development. This principle will impose upon the government and health authorities to take appropriate action and prevent air pollution. The opinion of the court was that the delay in switch over to Compressed Natural Gas (CNG) buses affected the health of people especially children, while it helped private operators. The court further said that, children do not agitate or hold rallies and, therefore, their sound is not heard and the only concern of the government now appears to be to protect the financial health of the polluters, including the oil companies who by present international desirable standards produce low quality petrol and diesel at the cost of public health.

Currently environmental pollution and degradation is a serious problem. Judiciary being a social institution has a significant role to play in the redress of the reported problem. From early period, the progress of a society is decided by the industrialization and financial stability than other features. But, industrialization is contrary to the concept of preservation of environment. These are two conflicting interests and their harmonization is a major challenge before the judicial system of a country. The judiciary has given different pronouncements, and pointed out that there will be adverse effects on the country's economic and social condition, if industries are ordered to stop production because it creates pollution and damage the environment. The shutdown of the factory results in unemployment and poverty may sweep the country and lead it towards degeneration and destruction. At the same time, polluting industries threaten the stability of the environment.

In *Rural Litigation and Entitlement Kendra v. State of U.P.*[41] captivatingly it was the first case in India linking the issue relating to environment and development. The Court said that tapping of resources have to be done with the indispensable attention and care so that ecology and environment may not be affected in any severe way, there may not be depletion of water resources and long term planning must be undertaken to keep up the national wealth.

[40] AIR 2002 SC 1996.
[41] AIR 1985 Sc 652.

In *K.M. Chinnappa v. Union of India*[42], the Supreme Court observed that "the bitter fact which cannot be accepted is that there can be no development in any field without some adverse effect on the ecology and environment, and the projects of public utility cannot be deserted and it is necessary to fiddle with the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests because both are of equal importance. Where the commercial venture or enterprise would bring in results, which are far more useful for the people, difficulty of a small number of people has to be by past. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship

[42] AIR 2003 SC 724.

CHAPTER – 3

NATIONAL GREEN TRIBUNALS

In India, the need for the National Green Tribunal has raised in the case of *M.C. Mehta v. Union of India*[43], (Oleum Gas Leak Case) pointed out by the Justice P.N.Bhagwati. The National Green Tribunal was passed by the Parliament in the year 2010 after long struggle. The Act was notified by the Government of India on 18th October 2010. On the same day, Justice Lokeshwar Singh Panta, former judge of the Supreme Court of India took charge as chairman of newly constituted National Green Tribunal. India is the third country which has started the system of National Green Tribunals following the countries Australia and New Zealand.

In *Charanlal Sahu v. Union of India*[44] the court opined that "underneath the existing civil law present the damages are fixed by the civil Courts, after a long drawn litigation i.e., after long period of time, which will destroy the main purpose of giving compensation to the damages which helps the affected persons to rehabilitate them to meet their situation. So as to ensure instantaneous relief to the victims, by making the law which pave way for the constitution of the tribunal which is being regulated by the special procedure for determining compensation to victims of industrial disaster or accident, appeal against which may lie to this Court on the limited ground of questions of law only after depositing the amount determined by the tribunal."

The Supreme Court in *M. C. Mehta v. Union of India* observed that "Environment Court" must be established for expeditious disposal of environmental cases and reiterated it time and again. As a sequel to it the National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 19974 were passed by the Indian Parliament. But both the Act proves non-starter. They could not cut much ice and there was a growing demand that some legislation must be passed to deal with environmental cases more efficiently and efficaciously. Ultimately the Indian Parliament Passed The National Green Tribunal Act, 2010 to handle all the cases relating to environmental issues.

The Supreme Court of India in its judgment referred the needs for establishment of environmental court which would have the benefit of expert advice from environmental scientist and technically qualified persons as a part of judicial process, after an elaborate discussion of the views of jurists in various countries. The Supreme Court has also opined

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[43] AIR 1987 SC 965

[44] 1990 AIR 1480, 1989 SCR Supl. (2) 597

that as environment cases involve assessment of scientific data it would be desirable to have the setting up of "environmental courts on a regional basic with a professional judge and two experts keeping in view the expertise required for such adjudication".

The object as provided in the Preamble of the Act is that *"National Green Tribunal are for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto."*

National Green Tribunal (Practices and Procedure) Rules, 2011, was brought to remove the practical difficulties and proper working. It has exempted the poor person from depositing requisite fee for filing up of case and making complaint under the Act[45]. This was brought to afford justice to the people in the marginalised class. It also recommended that there should not be any provision of fee for the representative body or organization who intend to file a complaint.

JURISDICTION OF THE TRIBUNALS:

The National Green Tribunal Act, 2010 gives powers to the Tribunal that it has jurisdiction over all civil cases whenever there is a substantial question of law relating to Environmental law and the enforcement of the legal right), is involved and such question arises out of the implementation of the enactments mentioned in Schedule I to the Act[46]. It further provides a time-limit of six months within which the applications for adjudication of dispute under this section shall be entertained by the Tribunal. It also give powers to the Tribunal to allow such applications to be filed within a further period not exceeding sixty days, if it is satisfied that the application was prevented by sufficient cause from filing the application within the said period.

[45] Rule 12 National Green Tribunal Practice and Procedure Rule, 2011. It says there shall be no fee for file of application or appeal for claiming compensation by any person who is below of poverty line determined in accordance with the guideline or instructions issue by the central government or the state government from time-to-time in this regard or Indigent person determined in accordance with provision of the CPC, 1908.

[46] Section 14 NGT Act, 2010.

The Act confers upon the Tribunal the Jurisdiction which extends to the appellate jurisdiction[47] against certain orders or decisions or directions under certain Acts like the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Forest (Conservation) Act, 1980; the Air (Prevention and Control of Pollution) Act 1981; the Environment (Protection) Act; 1986 and the Biological Diversity Act, 2002.

High court v. National green tribunal:

Before National Green Tribunal, High Courts in different states used to take up important environmental cases, including suo-motu ones through 'Green Benches'. While some, in Tamil Nadu, West Bengal and Karnataka, remain active, others are slowly dying down, as environmental matters now go to National Green Tribunal. According to environmentalist Subhash Dutta13, the Green Bench is likely to become non-functional in the near future.

However, conflicts are brewing between National Green Tribunal and the high courts. As per the National Green Tribunal Act, appeals from National Green Tribunal can only go to the Supreme Court, thus by-passing the high courts. But the Madras High Court has disagreed with this provision. It has stressed that the bar imposed on lower courts by the Act, excluding them from deliberating on environmental cases, does not extend to the high courts. This is because the jurisdiction of a high court under Article 226/227 of the Indian Constitution is part of the Constitution's basic structure. In other words, the court stressed that environment appeals from National Green Tribunal had to go to the high court first before going to the apex court.

The following are the notable orders passed by the National Green Tribunal:

1. **Yamuna Conservation Zone**

On 25 April, 2014, The National Green Tribunal (NGT) said the health of Yamuna will be affected by the proposed recreational facilities on the river. The National Green Tribunal also suggested the State Governments to extent the area of River Yamuna for about 52 km in Delhi and Uttar Pradesh and also pronounces it as the conservation zone.

[47] Sec 16 NGT Act, 2010.

2. **Coal Block in Chhattisgarh Forest**

The National Green Tribunal has cancelled the clearance given by the Union Environment and Forest Minister, Jairam Ramesh, to the Parsa East and Kante-Basan Captive coal block in the Hasdeo-Arand Forest of Chhattisgarh, overruling the decision of the statutory Forest Advisory Committee. The forest clearance was given by Mr. Ramesh in June, 2011, overruling the advice of the Minister's expert panel on the two blocks for mining by a joint venture between Adani and Rajasthan Raiya Vidyut Utpadan Nigam Limited. The blocks requiring 1,989 hectare of forestland fell in an area that the government has initially barred as it was considered a patchable forest and demarcated as a 'no-go' area.

The order is bound to have a more extensive impact, with the tribunal holding that, "mere expression of fanciful reason relating to environmental concerns without any basis, scientific study or past experience would not render the advice of FAC – a body of expert – inconsequential. Under the Forest Conservation Act, 1980, the FAC is required to appraise projects that requires forestlands and advise the environment Minister to grant approval or reject the proposals.

But in this case, the National Green Tribunal noted, the Minister had taken all of one day and relied upon his "understanding and belief" without any "basis either in any authoritative study or experience in the relevant fields." The Minister, while clearing the coal block had given six reasons for doing so, including that the coal blocks are linked to super-critical thermal power plant, which is imperative to sustain the momentum generated in the XI Plan for increasing power production. These 'anthropocentric' considerations, the National Green Tribunal held, were not valid to evaluate the project.

3. **Ban on decade old Diesel Vehicles at Delhi NCR**

An attempt was made to minimize air pollution at capital of India and NCR. P.M. 2.5 particles have reached alarming level. As per the order passed by the National Green Tribunal, 10 years old vehicles were not allowed to ply. However, the report given by media is that, Central Government is planning to explore the appeal against the order of the National Green Tribunal in the Supreme Court, especially for personal vehicles.

4. **National Green Tribunal Bans Construction in Sundarbans**

National Green Tribunal (NGT), Eastern Zone Bench has ordered a blanket ban on construction in the Sundarbans.

5. **National Green Tribunal to UP Government: Potable Water in 6 Districts**

National Green Tribunal has directed the Uttar Pradesh Government to provide potable water to villages of six districts namely Baghpat, Meerut, Saharanpur, Shamli, Muzaffarnagar and Ghaziabad. These villages were reeling from the impact of highly polluted ground water.

6. **National Green Tribunal to Ministry of Environment and Forests (MoEF): Formulate Scheme for Disposal of E-Waste**

National Green Tribunal has directed the Ministry of Environment and Forests to organize a meeting to discuss about various plan and effective scheme which will be very helpful in protecting the environment from the disposal of the e-waste which harms the air, water and soil and suggest ways to make them environment-friendly.

7. **Notice by National Green Tribunal to 66 Offenders Dumping Waste on Railway Tracks**

National Green Tribunal has issued notice to 66 offenders who were caught dumping waste on railway tracks in the national capital and also refused to pay Rs 5,000 fine as per orders of the green panel.

8. **National Green Tribunal Denys to Lift Stay on Sand Mining in MP**

National Green Tribunal (NGT) has refused to lift its stay on sand mining in riverbeds during monsoons. The Tribunal has previously stayed sand mining in entire State on the ground that it is damaging river ecology.

9. **National Green Tribunal Denies Permission to Rafting Camps in Rishikesh**

National Green Tribunal has refused permission to rafting camps operating from the banks of Ganga from Shivpuri to Rishikesh in Uttarakhand.

10. **National Green Tribunal Imposes Rs 15 lakh Penalty on Sarpanch for Felling Trees**

National Green Tribunal (NGT) has imposed a penalty of Rs. 15 lakh on a former sarpanch and a gram sevak for felling 3000 trees in the forest area of a village.

11. **National Green Tribunal Raps DSIIDC Over Functioning of CETPs in Okhala and Lawrence Road**

National Green Tribunal (NGT) has rapped Delhi State Industrial and Infrastructure Development Corporation Ltd (DSIIDC) over functioning of common effluent treatment plants (CETPs) in Okhla and Lawrence road.

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SUGGESTIONS

1. Need to create public awareness without which any effort taken will be a failure.
2. There is a need for the creation of an autonomous Environmental Protection Authority of India to plan and execute the plan effectively.
3. To ensure the right of right to know about the working of the authorities.
4. To develop new machines and equipments, this will reduce the effect of the hazardous chemicals before harming the environment.
5. There is a need for monitoring the working of the Pollution Control Laws.
6. There is a necessity to delete the provisions regarding Declaration of Air Pollution Control Area under the Air Act and Section 24(2) of the Environmental Protection Act.
7. To check the fining powers on the Authorities appointed under the Acts.
8. Top widen the scope of filing the appeal in the higher courts.
9. There is a necessity to amend the environmental laws to ensure the sustainable use of the natural resources.
10. There is a need to enlarge the scope of the Public Liability Insurance Act.

Thus, to achieve this objective more effective measures are required to be taken so that the people may appreciate the virtue of clean environment and vices of polluted environment.

CONCLUSION

I would like to end with a thought by Elwyn Brooks White, in his book, 'Essay of E.B. White'.

> *"I would feel more optimistic about a bright future for man if he spent less time proving that he can outwit Nature and more time tasting her sweetness and respecting her seniority…….*

In order to achieve more fruitful result the environment court should be established in each state however, in case of smaller States and Union Territories, one court for more than one State or Union Territory may serve the purpose.

 Also it is a constitutional duty and obligation of all those lovers of clean environment including the members of the Parliament and 'We the people of India', to see that the Parliament brings out necessary amendments to correct flaws suggested above before much water runs down.

 To Sum up, it is hoped that the National Green Tribunal would fulfil the long felt need for an alternative forum to deliver speedy and inexpensive justice to victims of environmental pollution.

From the above, it is evident that for one reason or the other the pollution control laws are not being properly enforced. There seem to be three major factors behind it. One, lack of technical knowledge and funds, two, corruption and three, low deterrent effect of sanctions. Lack of technical knowledge and funds may be partly due to lack of political will to enforce the environmental regulations. Not only is this but technical expertise required to prosecute a case sometimes lacking. Another related problem is the close link of enforcement agencies and public prosecutors with the powerful industries that should be regulated. Similarly, mild sanctions as punishment for perpetrators of environmental crimes present additional obstacle to effective enforcement of environmental law. In that respect one should not forget that most of the industrial polluters are intelligent criminals and balance the expected costs of a crime against the expected benefits. In many cases the investments in environmental cleanup equipment required to meet the standards may be very high, and exceed the small risk of a fine in case an environmental crime is actually detected and prosecuted.

Thus to overcome these negative factors four things are indispensable, viz, clear goal of environment protection, comprehensive action plan to achieve this goal, means to translate this plan into action, willingness to pursue the action plan and last but most important to pursue the plan honestly. The most important of all the measures that may be suggested for the improvement of the quality of life on earth is to return back to our old dharma of environment protection. For this, a change in our outlook towards the environment is sine qua non, which is possible only by adopting a natural way of life. Spirituality develops discretion and rationality, enabling a man to distinguish between right and wrong and, behave accordingly. If a man succeeds in developing this attitude, it may provide a practical solution, not only to environmental problems, but also to other problems being faced today by the humanity all over the globe.

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