

DISSERTATION

ACCESS TO ENVIRO-JUSTICE AND ROLE OF NGT: A STUDY

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DEGREE OF MASTER OF LAWS (LL.M)

UNDER THE GUIDANCE OF

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DECLARATION

I, Vaidehi Parikh, bearing roll no. 19ML026, do hereby declare that the dissertation submitted is original and is the outcome of the independent investigations/ research carried out by me and contains no plagiarism. The dissertation is leading to the discovery of new facts/ techniques/ correlation of scientific facts already known. This work has not been submitted to any other University or body in quest of a degree, diploma or any other kind of academic award. No part of this report has been copied in an unauthorized manner and no part in it has been incorporated without due acknowledgement.

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- M. C. Mehta And Others Vs. Uoi Air 1987 Sc965 (India)
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- Ms. Betty Alvaares Vs. The Stete Of Goa (Appln. No.53 (Thc) Of 2012)
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- Save Mon Region Federation Vs. Union of India, Appeal No. 39 of 2012
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LIST OF ABBREVIATIONS

AIR- All India Reporter

NGT- National Green Tribunal

IT- Information Technology

SDG- Sustainable Development Goal

MDG- Millennium Development Goal

Vol.- Volume

No.- Number

Pgs.- Pages

SC- Supreme Court

vs.- Versus

PIL- Public Interest Litigation

NJA L.J.- National Judicial Academy Law Journal

GlobCon- Global Constitutional Journal

Cri. LJ- Criminal Law Journal

AP- Andhra Pradesh

TN- Tamil Nadu

Cal.- Calcutta

SCC- Supreme Court Cases

SCR- Supreme Court Reports

Comm.- Commissioner

ISSN- International Standard Serial Number

ISBN- International Standard Book Number

US- United States

INDEX

CONTENTS	DESCRIPTION	PAGE NO
Declaration		2
Certificate		3
Acknowledgement		4
Table of cases		5
List of Abbreviations		6
CHPATER 1	SYNOPSIS	10
	1.1 Introduction	
	1.2 Literature Review	
	1.3 Statement of Problem	
	1.4 Objectives of Study	
	1.5 Significance of the Study	
	1.6 Scope of the Study	
	1.7 Research Questions	
	1.8 Research Methodology	
	1.9 Chapter Scheme	
CHAPTER 2	INTRODUCTION	19
CHAPTER 3	JOURNEY FROM MILLENNIUM DEVELOPMENT GOALS(MDGS) TO SUSTAINABLE DEVELOPMENT GOALS(SDGS): A STUDY	22
	3.1 Sustainable Development Goals- A need	
	3.2 Lessons acquired from MDGs	
	3.3 Analysis	
	3.4 India's participation in SDG's formation	

CHAPTER 4	ACCESS TO JUSTICE AS A SUSTAINABLE DEVELOPMENT GOAL WITH SPECIAL FOCUS ON ENVIRO- JUSTICE & INDIA'S COMMITMENT	28
	4.1 Introduction	
	4.2 SDG 16: Access to justice and analysis	
	4.3 India's attempts to implement Goal 16	
CHAPTER 5	ACCESS TO ENVIRO- JUSTICE AND THE ROLE OF NGT	36
	5.1 Development of NGT	
	5.2 NGT Jurisdiction	
	5.3 Role of NGT in achieving Enviro- justice	
	5.3.1 Sustainable Development	
	5.3.2 Precautionary Principle	
	5.3.3 Polluter Pays Principle	
	5.4 Landmark Judgments	
CHAPTER 6	CONCLUSION & SUGGESTIONS	72
	6.1 Conclusion	
	6.2 Analysis of Research Questions	
	6.3 Suggestions	
BIBLIOGRAPHY		79

CHAPTER 1 SYNOPSIS

1.1 INTRODUCTION:

Rule of Law really plays an important role in the country which follows a fair and equal outcomes. India believes to be the same country that follows this principle. The specialized Tribunals i.e. specialized environmental courts in India namely National Green Tribunal follows the International Principle to deal with the environmental disputes for a complete justice. “The creation of National Green Tribunal¹ was done under the National Green Tribunal Act, 2010². The Tribunal follows the internationally developed principles namely the polluter pays principle and precautionary principle.”³

“In India since long back, environmental issues have been majorly dealt by the Supreme Court via Public Interest Litigation (PIL) but after the establishment of the green court, environmental issues can be directly addressed by the same.”⁴

The efficient working of justice delivery system plays very important role in resolving the environmental disputes as it needs quick action to stop further damage. The environmental disputes are such that they need they require knowledge of science and technology to deal with them. The judges should be equipped with such knowledge or

¹ National Green Tribunal hereinafter referred as NGT.

² National Green Tribunal Act, 2010 hereinafter referred as NGT Act, 2010.

³ Mukherjee, J.S. (2017). The Millennium Development Goals And Sustainable Development Goals. Oxford Scholarship Online.

⁴ Ibid.

they should be assisted for this. The NGT has such provision wherein the legal experts and technical experts jointly decide the matter [Section 4 of NGT Act, 2010].

The sound justice delivery system and justice without delay are the need of the day. This need has been felt by each nation. The Sustainable Development Goals declared in the United Nation's General Assembly also includes Goal 16, which clearly mentions Justice to promote peace, access to justice by providing transparent and accountable institution, mainly implementing the rule of law and equality principles.

The SDGs are total 17 targets that are designed in such a manner as to create a better future for the whole world. They were set out in 2015 and replaced the Millennium Development Goals (MDGs) and are basically planned to be completed till 2030. These all targets are interconnected to each other to achieve social, economic and environmental development.

The present study mainly focuses on the Sustainable Development Goal 16 which aims at achieving access to justice for all. India has prepared the plan to implement its commitments to achieve the Sustainable Development Goals till 2030. Access to justice is one of them. For the effective implementation of the concept of justice in the issues related to environment, National Green Tribunals have been established. "The present research investigates the role of NGT in achieving Sustainable Development Goal 16"⁵ i.e. access to justice with special reference to Enviro-justice.

⁵ Sustainable Development Goal hereinafter referred as SDG.

1.2 LITERATURE REVIEW:

-“NOT ENOUGH TEETH IN GREEN TRIBUNAL” BY KRISHNA GOPAL

The author in this book has expressed its point of view regarding the subject matter like what is the concept of NGT and its role in handling the environment protection issues. The author mainly criticizes the role of National Green Tribunal as according to his views, it fails to solve the environmental issues.

-“INDIAN ENVIRONMENTAL LAW- KEY CONCEPTS AND PRINCIPLES’ REVIEW: ENVIRONMENTAL RIGHTS AND GUARANTEES” BY SUHRITH PARTHASARTHY

This book describes the environment right and the concept of the same. The author also mentions regarding the evolution of environment right but fails to depict the present scenario regarding the same.

- “ENVIRONMENTAL JUSTICE IN INDIA” BY G. GILL

In the present book the author explores the effectiveness of the Indian National Green Tribunal (NGT).The book also gives us a slight hint of how the concept of environment protection is developed by Supreme Court in the beginning and how it shifted to NGT. How the principles of SDG are developed by the NGT is also described in the present book. The concept of sustainable development is also depicted in the book.

-“THE NATIONAL GREEN TRIBUNAL ACT, 2010: AN OVERVIEW” BY ARUNA B VENKAT

In the present book, the information about the NGT Act, 2010 and its contributions in the latest developments in the environment scenario in India. The book also contain information regarding the constitutional perspective of the environmental law which includes the fundamental right to life guaranteed by Article 21 of the Indian Constitution.

-“ENVIRONMENTAL LAW AND POLICY IN INDIA” BY SHYAM DIVAN AND ARMIN ROSENCRANZ

The authors in this book has expressed its point of view regarding the subject matter like what is the concept of Public Interest Litigation and its relation with Environmental Law. There are so many cases related with PIL which have been discussed under this article which are relating to environment protection. But the study limits its scope to only the concept and the contribution of PILs in environmental laws in India while the writer is silent about the critical analysis of the PILs and whether the directions are being implemented by the government authorities regarding the development of environment protection.

-“DIMENSIONS OF CLIMATE CHANGE IN INDIA-A DEVELOPMENT PERSPECTIVE” BY AK THAKUR AND DALIP KUMAR

Sustainable development and various dimensions to climate change discussed in this book. The sustainable development goals are also explained in the present book. Causes factors responsible for the climate change have been described in this book. The authors have also emphasize on the solution to the problems regarding the climate related changes in the book.

***-“ENVIRONMENTAL JURISPRUDENCE AND THE SUPREME COURT” BY
GEETANJOY SAHU***

The current book the author examines the Supreme Court’s role in environment protection. It described how the Supreme Court handled the environment related issues, also states regarding how the Supreme Court gave justice to the environment related issues with the help of the international principles. It also gives a hint about the judicial activism of the Courts in deciding such matters. Further gives us information about how the NGT came into existence and the present situation about the same.

1.3 STATEMENT OF PROBLEM:

Sustainable development’s main component is environmental justice. The aim of this paper is to evaluate the existing judicial systems providing access to justice with main reference to environmental justice in India and focusing primarily on the position of the NGT in relation to the same. After the Bhopal Gas tragedy in 1984, the situation regarding the environment related laws have completely changed and became exhaustive in nature.

India has made a commitment towards fulfilling the SDG 2030 plan. The India is already in progress towards fulfilling its Goal no.16 by establishing the National Green Tribunal which was a decisive step towards a proper and rather a mature approach in resolving environmental issues. The Tribunal has already become a rather effective means of achieving one’s rights by solving the environmental issues at a fast pace.

However, there are some components like poor application of laws by the authorities as well political factors are the main reason of the failure which affect development of

environmental protection and as a consequence environmental justice is delayed. The present study focuses into inquiring about what role is played by NGT in securing SDG 16 i.e. enviro – justice and NGT’s contribution towards fulfilling the same looking to the present trend.

- **1.4 OBJECTIVES:**

- To study India’s commitment to the Sustainable Development Goal 16 with special reference to enviro- justice in India.
- To study the jurisdiction of NGT.
- To analyze the role of NGT in securing Enviro- Justice.
- To understand the effectiveness of NGT, identify drawbacks and suggest changes.

- **1.5 SIGNIFICANCE OF THE STUDY:**

This study will provide the people a clear idea regarding the concept of enviro-justice and the role of NGT of India. The Fundamental Principles of Environment Protection that exist in India which are exercised by NGT to deal with environment issue will also be discussed in detail. It will further give the overview of how NGT is promoting the sustainable development goal and the concept of enviro- justice. The present study will give an idea regarding the India’s efforts and commitments to the SDG 16 with special reference to enviro- justice and further how the concept of enviro- justice in India got developed as well its present scenario. It will also provide some information regarding the jurisdiction of the NGT as well as its limitation and mainly regarding NGT’s role in promoting the access of justice i.e. SDG 16.

- **1.6 SCOPE OF THE STUDY:**

Through the present study, the researcher has thrown some limelight on the evolution of the environment protection with respect to the working of NGT which has led an important contribution in the development of the environment protection by providing enviro- justice (SDG no. 16). The study depicts the analysis of various environmental principles and the impact of NGT in securing justice through series of judgments of NGT which holds a great importance in the development of environment related laws in India. The study will also contain with various recommendations being made at the end of the study. The scope of the paper is limited to NGT of India only with respect to SDG 16.

- **1.7 RESEARCH QUESTIONS:**

- Whether there is access to enviro- justice in India?
- What are India's commitments towards access to justice with regard to sustainable development goal?
- What is the role of NGT in securing enviro- justice in India?
- What are the techniques adopted by NGT to secure enviro- justice?
- What are the impacts of orders of National Green Tribunal?

- **1.8 RESEARCH METHODOLOGY:**

The study would be doctrinal in as much as it pertains to building the information of the environmental justice and NGT's role in promoting the same. The doctrinal research would

involve a study of the relevant contexts of the Environmental and judicial pronouncements on the subject of study rendered thereunder.

It would also be analytical, qualitative and explorative in nature.

Analytical – The study will analyze the series of cases passed by NGT which led the improvement of environment protection laws in India and its implementation by the local authorities and how far the National Green Tribunal is implementing the sustainable development goal.

Qualitative- The study will find the reasons about why the guidelines which are given by National green tribunal are not properly implemented by the local authorities and the reasons for its fruitless implementation.

Exploratory – The study will explore about the existing situation and will try to explore the reason for non-effective implementation of directions given by NGT for the improvement of environment protection laws in India.

The scholarly writings in the form of articles, anthologies, excerpts, blogs etc. are available on the common domain of the worldwide internet for the secondary references. For the modifications that Indian conditions require for the legal implants, various books, articles and writings of scholars are considered and analyzed as part of the larger doctrinal study.

Research sources, thus, would cover all the literature available on the subject including books, research papers, periodicals, law journals, Newspapers, brochures of law schools, magazines etc.

1.9 CHAPTER SCHEME:

- CHAPTER 1: SYNOPSIS
- CHAPTER 2: INTRODUCTION
- CHAPTER 3: JOURNEY FROM MILLENIUM DEVELOPMENT GOALS TO SUSTAINABLE DEVELOPMENT GOALS: A STUDY
- CHAPTER 4: ACCESS TO JUSTICE AS A SUSTAINABLE DEVELOPMENT GOAL WITH SPECIAL FOCUS ON ENVIRO- JUSTICE & INDIA'S COMMITMENT
- CHAPTER 5: ACCESS TO ENVIRO- JUSTICE AND THE ROLE OF NGT
- CHAPTER 6: CONCLUSION & ANALYSIS

CHAPTER 2: INTRODUCTION

2015 can be considered as an important period in the history of United Nations with the adoption of Sustainable Development Agenda 2030. The SDGs came into existence after the Millennium Development Goals. “The SDGs basically consists of total 17 goals and 169 targets which works on environmental aspects which very important to note and also works on economic and social factors and development of the same. As far as access to justice is concerned, Goal 16 specifically deals with the same. It states regarding the creation of peaceful societies and to provide the access to justice via institutions at all levels.”⁶

“The concept of sustainability is simply quoted under the 1987’s Brundtland Report stating that it basically means the progress which keeps in mind the need of both present as well as future generation without any kind of compromise.”⁷ Thus this is often considered as a positive notion and has been since then used in National as well as International Law for the overall development including environment laws development as well. “The same principle thus is being used in the Delhi Declaration which further established a series of the sustainable principles which mainly focused on the poverty eradication as well as international principles like precautionary principle and polluter pays principle.”⁸

“The sustainable development principle is required to be implemented in India especially in the legal field as the same is not followed properly. As far as the growth of

⁶ Sustainable Development Goal 16.

⁷ Visser, W., & Brundtland, G.H. (N.D.) World Commission on Environment And Development.

⁸ Ibid.

environmental law is concerned, it began to grow after the Bhopal Gas Tragedy. The government took the environmental law development issue as a serious matter after this incident. The legislation in India was poorly implemented which was witnessed in the year 1970-1980.”⁹

India witnessed a series of failed implementation of legislative drafts regarding the environment development. The Courts basically granted immediate relief to people to protect the environment via Article 32 and Article 226, further the Public Interest Litigation was established for the environment protection but it resulted in inflation of cases in the Courts and this resulted in the need of a specialized Courts which specifically deals with the environment matters.¹⁰ Later after several attempts enactment of a specialized environmental Courts took place via NGT Act of 2010.

“The NGT can only deal the civil matters relating to the environment as per its jurisdiction. It replaced the place of National Environment Appellate Authority. The jurisdiction of the NGT is over the civil cases related to environmental matter specified in Schedule 1 namely The Water Act, 1974; , The Environment Protection Act, 1986; The Forest Act, 1980; The Air Act, 1981; The Biodiversity Act, 2002 and The Public Liability Insurance Act, 1991.”¹¹

“In a country like India where the Supreme Court is considered to be paramount, the creation of environmental courts is a positive step taken in order to promote the sustainability principle to provide access to justice i.e. SDG 16 .”¹²

⁹ Ibid.

¹⁰ Gill, G. (2016). Environmental Justice in India.

¹¹ SUPRA NOTE 3

¹² Sustainable Development Goals. (N.D.). Retrieved Form

<https://www.undp.org/content/undp/en/home/sustainable-development-goals.html>

“Sustainable Development Goals has played a vital role in the development of environmental laws and the environment protection. Thus, the present study will focus on how far India is successful in implementing the SDG 16 through NGT as well as NGT’s role in securing enviro- justice in India and will also give a detail study about how the shift from Millennium Development Goals¹³ to SDGs took place. It will also further give the information regarding the various techniques that are being used by the tribunal to secure the enviro- justice and the commitments of India towards the access of justice with regard to sustainable development goal. An analysis is also done by the researcher regarding the impact of the orders of the National Green Tribunal and the present scenario of the environment protection in India.”¹⁴

The next chapter will give a brief regarding the concept of the Millennium Development Goals (MDGs) and further will give an overview regarding a clear shift from the MDGs to SDGs.

¹³ Millennium Development Goal hereinafter will be referred as MDG.

¹⁴ *ibid*

CHAPTER 3: JOURNEY FROM MILLENNIUM DEVELOPMENT GOALS (MDGs) TO SUSTAINABLE DEVELOPMENT GOALS (SDGs) : A STUDY

“The MDGs are a set of goals which were established to attain some social development in the field like poverty, hunger disease, education, gender inequality and degradation of the environment. They were total set of eight goals and were established to promote global awareness, political accountability and social feedback”¹⁵.

“The MDGs which were adopted at the United Nations General Assembly on September 2000 created a huge difference in the field of poverty, i.e. it bought a significant change in the poverty for 15 years from 2000 to 2015. The development towards the eradication of the poverty was variable across the globe but it started right after the economic growth witnessed in China. India is also a signatory to the Millennium Declaration with a main aim to eradicate poverty, illiteracy and poor health”.¹⁶

According to the Millennium Development Goal which was designed in such a manner that by the year of 2015, the signatory countries would be able to make a meaningful progress towards the mentioned goals which in reality didn't able to happen and a shortfall was witnessed instead in which people with low income experienced lots of pain as the promises kept by the rich countries regarding the official development have not been kept.

¹⁵ Ibid.

¹⁶ Research Note On SDGs and achievements of India, Pp.6-7

The MDGs drove progress for over 15 years in areas like reducing poverty, sanitization facilities, reduction in child mortality rate, overall health development and providing education. The MDGs have also handled the HIV/AIDS and other deadly diseases like TB, Malaria. The main focus was towards the poverty reduction which was not enough because in today's world the overall development is required which includes other goals as well.

“For the above mentioned reasons, world's government took a decision to frame new set of goals and to continue the 15 years MDG's development and thus the Secretary- General of United Nation's panel has published a report to accept the SDGs and later same goals are being endorse by the Rio+20 summit.”¹⁷

3.1 SUSTAINABLE DEVELOPMENT GOALS- A NEED:

The MDGs provided us with valuable lessons and lots of experience to work on for subjects like poverty, illiteracy, hunger etc. The SDGs basically covers the targets and planning for the comprehensive issues ranges from human life to environment and governance of state etc. Humanity faces many hurdles which includes climatic changes due to greenhouse gases, environmental pollution due to release of untreated effluents or nitrogen based and phosphorous based fertilizers, depletion of ozone layer etc. To address the diverse issues related to all aspects of human development and environment sustainability and proper governance, comprehensive strategic planning is required. The sustainable development goals provide targets which the states should follow with such

¹⁷ Mukherjee, J. S., The Millennium Development Goals and Sustainable Development Goals.

strategic planning. Beyond the environmental threats, there are other threats as well which are faced by the human beings. Due to the advent of the globalization since 1980, there has been an unequal distribution of income among the people which has created a huge gap as only certain class of people are getting a decent income while rest of the others are suffering. The employment among the people still remains a serious topic for discussion as even the skilled people are sitting at their home being unemployed, which indirectly affects the country's economic condition.

Of course, there are many other goals which are yet to be addressed like that of gender inequality between boys and girls, although the girl's education and women's participation in business and politics are few of the development which took place in recent era but still lots of work need to be done in the same. The presence of racism, discrimination against the indigenous people etc. are still witnessed and also which are increasing day by day. The recent example of racism which is being witnessed by the whole world is that of George Floyd in U.S.A. which shook the whole world. Thus, SDGs are a need which required to be addressed in order to bring a positive change across the world.

3.2 LESSONS ACQUIRED FROM MDGS:

“A lot of benefit can be taken by SDGs from all the ups and downs of the MDGs. The MDGs can be considered as a set of eight simple goals which were one a kind and also covered every subject. They were different from most other UN goals and these eight goals brought a significant development during 15 years in the field most importantly in poverty

eradication and due to its simplicity more advocacy and public awareness were witnessed.”¹⁸

“Secondly, the MDGs nature was different, i.e. they were not legally bounded but were a set of goals which were empirical in nature.”¹⁹ They were somewhat effective even though they were not legally binding in nature unlike that of Kyoto Protocol which were legally binding in nature. Kyoto Protocol were ignored in practice due to absence of effective enforcement mechanisms but same was not the case of MDGs, rather the case was opposite.

Third, the main power that the MDGs had is that of its practical nature, government of different countries can adopt specific and practical methods to fulfill these goals.

3.3 ANALYSIS:

The MDGs had many weaknesses and these should be recognized by the SDGs and should not be repeated and rather should be worked on. The general criticism involved regarding that of lack of analytical power and also justification regarding the chosen goals. It lacks the goals regarding that of gender equality and only emphasized on the poverty eradication. MDG 8 focuses mainly on donor achievement, rather than development successes.

The other main point which is required to be taken into consideration is that of the environmental sustainability, i.e. MDGs didn't put sufficient emphasis on the environmental sustainability. Other and most important goal i.e. of Agriculture is not

¹⁸ Supra Note 1

¹⁹ SUPRA NOTE 17

mentioned in MDGs even though world's half population consists of poor farmers. The access to justice was not at all available with regard to that of environment and on the contrary environmental degradation is observed. MDGs also did not focused on the women empowerment. The health related goal failed to show any kind of development rather worsens the condition.²⁰

The MDGs which lack the focus on gender issues was of main concern. If there would have been a focus on the same there would be a better condition of women i.e. women empowerment would have been achieved, development in all the other factors like health care, reduction in child mortality rate, better nutrition would have been observed but due to lack in political will the same was not achieved MDGs thus lacked in working towards the gender equality development policies.²¹

3.4 INDIA'S PARTICIPATION IN SUSTAINABLE DEVELOPMENT GOAL'S FORMATION:

India being a developing country, addressed a lot of issues that are being faced by a developing countries so that the SDGs can be formulated accordingly. It mainly talked regarding lifting up of the poor section of the society i.e. poverty eradication issue which would directly affects the economic development of a country. It further stated that a lot of work is already being done like that of infrastructure facilities but the main is that of the development of the weaker section of the society which is still a massive question.

²⁰ Maskay, B. K. (2006). Millenium Development Goals: Opportunities & Challenges. Kathmandu: Rotary Club Of Rajdhani.

²¹ Clarke, M. (2013). Millennium Development Goals: Looking Beyond 2015. London: Routledge.

India also emphasized on the international cooperation among the other developed countries so that a technology transfer can take place between the developed and developing countries. Institutional setup is made I.e. NITI Aayog, the function of the same is to see that the SDG is being implemented at a national level. It also prepares a reports e.g. Baseline Report 2018. It thus keeps an eye on the government and States to see that the SDGs are being followed in a proper manner or not.

“The credit for the development of SDGs can also be to the Ministry of Statistics and Programme Implementation (MoSPI).”²² It has so far developed 306 national indicators in line with the 169 SDG targets and the Global Indicators Framework. Out of the same 62 priority indicators have been identifies for tracking the important developmental objectives for India. The development of an environmental court is established finally in 2010 named National Green Tribunal which a huge step of India towards following the SDG 16 providing the access to justice and also towards development of the environmental laws in India. Thus, form the above points it can be said that India is a follower of SDGs since day one which can be seen from the above changes made.

The next chapter will provide a brief information regarding how the Sustainable Development in India took place and what is the present scenario of the same in India. It will also give us a brief regarding the India’s efforts about providing access to justice in the field of environment as well as India’s attempts in implementing the SDG 16.

²² Ibid.

CHAPTER 4: ACCESS TO JUSTICE AS A SUSTAINABLE DEVELOPMENT GOAL WITH SPECIAL FOCUS ON ENVIRO- JUSTICE & INDIA'S COMMITMENT

4.1 INTRODUCTION:

NITI Aayog is established in India by the Government of India which would make sure that the SDGs are implemented in India. The Prime Minister of India Mr. Narendra Modi enunciated “sabka saath sabka vikas” which means the collective effort of all will lead to the overall development. There are total 17 Sustainable Development Goals which generally states regarding the overall development in eradication of poverty, illiteracy, promoting education, good health, gender equality, providing clean sanitization facilities, economic development, environment development etc. One such goal which speaks about access to justice is Goal No. 16 which is explained in detail in the present paper. India has developed several policies to eradicate the poverty, illiteracy, promote gender equality, climate change and also promoted the access to justice with the establishment of National Green Tribunal. NITI Aayog has been providing all the planning and leadership in implementing the SDGs in India which basically targets to implement all the 17 goals in the form of government policies, Central or State Schemes etc.

“As far as SDG 16 is concerned which is in focus in the present work, it marks the intersection between peace and the 2030 Agenda. It mainly talks regarding providing

access to justice to all via institutions which includes Courts and as per the recent development it also includes the National Green Tribunal. Goal 16 as per the description mentioned in 2016 UNDP Annual Report on the ROL (Rule of Law) and HR (Human Rights) states that the goal basically developed to bring peaceful, just and inclusive societies.”²³

The Goal 16 is designed to address serious issues of child rights violation, homicide, human trafficking cases and sexual violence in order to promote a peaceful society which would ultimately leads towards a sustainable development. The same issues were being witnesses since long in countries like Latin America, Sub- Saharan Africa and around Asia. “The Goal basically promotes the idea to first develop a more transparent regulations and to develop a more independent human rights institutions around the world. The main rationale behind the goal is to provide access to justice and to build successful institution which would promote the same.”²⁴

4.2 SUSTAINABLE DEVELOPMENT GOAL 16: ACCESS TO JUSTICE AND ANALYSIS

The concept of Justice is changing continuously in the globalized era. Even the role of the State is changed, it is not only limited to maintain the law and order but it is also performing the role of a welfare state. Thus many new rights and duties are recognized. Earlier issues were only related to law and order but now many issues are introduced, one such is the environment protection as well as right to aesthetic thing is also now recognized.

²³ “Sdg” India Index And Dashboard 2019-2020, Pp. 68

²⁴ Ibid.

Environment is such area wherein we have right to aesthetic thing which means it talks not merely about right of life or freedom but also includes right to have a clean environment or right to breathe pure air etc. Thus the perspective have been changed. So that's why the access to justice with reference to environment has different connotations. The SDG 16 includes access to enviro- justice.²⁵

“The most important thing to follow in order to establish the SDG 16 is that the government, society as well communities should work in harmony to solve issues regarding the corruption, violence and thus to provide justice. Public should have freedom to express their own thoughts as well as all the laws should be applies to every individual without any kind of discrimination. The bribe system which is witnessed in the present time should be completely abolished and all the institutions which are established in order to promote justice should work in a transparent manner and without any kind of corruption.”²⁶

If no action is taken, then the violence can affect the whole nation. It can create trauma and the consequences of the injustice would be worst. “Injustice means that the conflicts will remain unsolved thus would affect the public as they won't be able to get any protection and redress. The institutions which do not work in proper manner will be prone to arbitrariness and would be abusing their power in short. Thus such functioning can affect the human rights as well as would give rise to the violence.”²⁷

²⁵ United Nations, Department Of Economic And Social Affairs For Sustainable Development, Goal 16, Targets And Indicators

²⁶ Supra Note 13

²⁷ Report Of The Secretary-General, "Progress Towards The Sustainable Development Goals", E/2017/66

At the most as a citizen of any country all we can do is to keep an eye on what the government is doing. As a citizen one can utilize their right to freedom of information which cannot be denied under any circumstances. “Promotion of transparent work by government and thus once the same is achieved it will be really easy to establish SDG Goal 16.”²⁸

As per International SDGs, certain targets are established by the committee at international level and likewise the SDG 16 targets are decided which are as follows:

- “First and the foremost aim is to end all kinds of violence”.²⁹
- The Second Target states to end the abuse, trafficking, exploitation as well as to end violence against children.³⁰
- To promote the rule of law at both National as well as International Level and to make sure that equal access to justice is provided for all.
- “To reduce illicit financial and arms flows by 2030 as well as to reinforce assets which are heisted and to tackle different types of crimes.”³¹
- To reduce fraud.
- To establish an efficient and transparent organizations.
- To ensure that a responsive, participatory administration.
- To ensure that all are provided with a legal identity including birth certificate by 2030.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Supra Note 4.

³¹ Ibid.

- “To provide information and to protect freedom of public w.r.t. National as well as International agreements”.³²
- To build up National as well as International Institutions for all to prevent any kind of violence and to deal with the terrorism and all kinds of crime.
- “To ensure promotion of laws and policies which are free from discrimination.”³³

4.3 INDIA’S ATTEMPTS TO IMPLEMENT GOAL 16:

Before the arrival of SDGs, since long back India has very good constitution provisions wherein Independence of Judiciary has already been given. “Article 48A which is a fundamental duty of the state to protect the forest and environment and Article 51A (g) , a fundamental duty of individual for the protection of environment as well as right to clean environment as a Fundamental Right under Article 19 of Indian Constitution.”³⁴ This is the first assurance wherein the access to justice was witnessed. Judicial Review, Proper gradation of Courts are existing which actually helped in implementing the SDG. India adopted the SDG in 2015 but before that the roadmap of India for the same was ready, which can be seen by the previous developments. One such is the establishment of the National Green Tribunal Act, 2010 where in the enviro- justice is given.

Six major indicators have been identified which shows India’s attempt towards the implementation of Goal 16, it includes: Reported Murders, Court density, Crimes against children, Corruption crime rate, Births registered and Aadhaar coverage. Based on these

³² Ibid.

³³ Ibid.

³⁴ SUPRA NOTE 16.

indicators the SDG Index Score of India is 71, goal of states is between ranges 53 and 91 whereas score of UTs is between 62 and 92. The main aim of India is to create an environment of peace and justice by providing transparent institutions.

To achieve the same India has taken various measures which includes the rights based legislation system. The establishment of Right to Information Act, 2005 which allows a transparent of institutions as well as their accountability. The Aadhaar is the best yet unique identification system and thus by these initiatives India is making a huge progress towards the sustainable development.

India also made a huge progress in fulfilling the target Goal 16 by establishing National Green Tribunal via The National Green Tribunal Act, 2010 which basically aims to promote access to environment justice. There is a drastic change that is observed in the development of the environmental laws. Certain principles like that of sustainability, precautionary pays and polluter pays principles are observed by NGT for environment protection.

After the establishment of NGT Act, 2010, provisions of the same provided people with access to justice. The important provisions are as follows:

- “Section 4 states the composition of NGT which would composed of Judicial Member as well as Expert Member in order to provide complete access to justice to the environment issues.”³⁵

³⁵ ‘National Green Tribunal Act, 2010’.

- “Section 10 mentions about Judicial Member or the Expert Member can be removed/ suspended if they have been found as a convict or have abused their position etc.”³⁶
- “Section 14 states that the according to Tribunal’s jurisdiction, it can take only civil matters of environment issues.”³⁷
- “Section 15 states that the Tribunal can grant compensation or restitution.”³⁸
- “Section 16 states that the Tribunal has an Appellate Jurisdiction.”³⁹
- “Section 19 states that NGT can regulate its own procedure and is not compelled by the rules of the Indian Evidence Act, 1872.”⁴⁰
- “Section 22 states that anyone who is not satisfied by Tribunal’s decision can file an appeal to the Supreme Court.”⁴¹
- “Section 26 states that Tribunal can grant the penalty to anyone who fails to follow its orders.”⁴²

Above provisions thus states that NGT do play in fulfilling the SDG 16.

The Goal 16 basically provides government an opportunity to reinforce them while drawing their attention towards the accountability. “Some of the initiatives taken by the India’s government namely the India’s Digital Campaign which provides electronic governance answers for the society as well as the RTI Act, 2005.”⁴³ “Same way NITI

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ SUPRA NOTE 25

Aayog has recognized many schemes which would make sure that the implementation of Goal 16 is properly taking place, the names of these schemes are Panchayat Yuva Krida aur Khel Abhiyan, judicial building's infrastructure expansion and the Integrated Child Protection Scheme.”⁴⁴ “There are also other schemes which are implemented by the government to follow the SDG 16, these schemes are National Rural Drinking Water Programme (NRDWP) to improve and provide with safe drinking water, Swachh Bharat Abhiyan and Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS).”⁴⁵ However the government plays a vital role in the sustainable development goal 16 implementation as it is government's duty to make sure that transparent and accountable governance system is given at both National as well as International level.

The upcoming chapter will give us a detail information regarding the establishment of NGT as well as methods adopted by the NGT to implement the sustainable development Goal 16. It will also give us a brief about hoe the International Principles are adopted by NGT in discharging justice to environmental issues.

⁴⁴ Ibid.

⁴⁵ Ibid.

CHAPTER 5: ACCESS TO ENVIRO- JUSTICE AND THE ROLE OF NATIONAL GREEN TRIBUNAL

5.1 DEVELOPMENT OF NGT:

Existence of the NGT has really helped in achieving access to justice. In early few decades the concept of enviro- justice was blur and not clear but slowly and gradually because of the Stockholm Conference it got developed. Later on in absence of any specific law dealing with a particular environment issues, specific laws were enacted in which Article 32 played important role and number of cases were filed before the court and after which even PIL i.e. Public Interest Litigation came into existence.

Even though there was a positive response of the PIL which were dealing with environment issues but the cases of the same were burdening the Supreme Court. Judiciary was depending on National Environmental Engineering Research Institute (NEERI) for the technical research purpose as the court was not good with the same kind of research which was also highlighted in the M.V. Nayudu Case, Vellore Citizen Forum Case and Indian Council for Enviro- legal Case. In India it was the Apex Court that is the Supreme Court that recognized and identifies the need for a specialized tribunal that should solely deal with only the environment matters. “For achieving the SDGs, improvement is required in the environmental laws and mainly to develop a specialized courts which are dedicated just for handling the environment matters. In the above cases the Supreme Court observed that environment cases require a scientific research, thus development of National Green Tribunal would save more time and would give proper data required to solve the

environment matters as the court will only deal with the environment cases. The NGT was established with the vision in which it will be having judicial members as well as technical experts and thus the access to justice to the environmental issues can actually be achieved.

The NGT is basically created under the NGT Act, 2010 which is a specialized courts dedicated only towards dealing with the environment matters. “The main aim for the creation of the NGT is to create environmental awareness and to give justice in those matters as well as to develop the environmental laws in India.”⁴⁶

The bench of NGT is comprised of not only the judicial members but also includes experts so that the cases can be given complete justice. The United Kingdom got impressed with the working of NGT in India as it has so far been successful in dealing the complex environmental matters, thus even United Kingdom is planning to establish a similar body.

5.2 NGT JURISDICTION:

“The jurisdiction of NGT allows it to hear civil cases which has environment issues as well as questions related to all the subjects mentioned under Schedule I of the NGT Act, 2010 which includes- The Water Act, 1974; The Water Cess Act, 1977; The Forest Conservation Act, 1980; The Public Liability Insurance Act, 1991; The Air Act, 1981; The Biological Diversity Act, 2002, The Environment Protection Act, 1986 etc. Thus it is pertinent to note that the matter relating to only the same Acts can be filed in the NGT.”⁴⁷

⁴⁶ Ibid.

⁴⁷ SUPRA NOTE 35.

One of the limitation of NGT is that it cannot hear the matter falling under the Wildlife (Protection) Act, 1972 or the Forest Act, 1927 as well as various laws that are being implemented by the States in regard to the forests, trees preservation etc.⁴⁸ “Thus when any matter is observed under these Acts, one cannot approach NGT but is opened to file a case under High Court or the Supreme Court through PIL or can approach any civil court by filing the original suit in whichever district the project which a person intend to challenge is located.”⁴⁹

“It also has power to hear cases of the personal matters wherein injury is caused due to breach of any environment related laws.”⁵⁰ “However the NGT do not have jurisdiction to hear matters of criminal law which is still criticized, as people are of the opinion that due to jurisdiction limitation the tribunal is not dealing with the criminal matters of environment and thus not providing full justice.”⁵¹

“The NGT Act 2010 also follows the environment right mentioned under Article 21. The Tribunal also follows the international recognized principles which are sustainable development, the polluter pays and the precautionary principle. As far as the NGT Act, 2010 is concerned the tribunal can issue penalty up to 10 crore rupees for Individuals, and 25 crore rupees for a company as well as imprisonment which may extend up to 3 years for not following the tribunal’s order.”⁵²

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ SUPRA NOTE 11.

⁵² SUPRA NOTE 7.

5.3 ROLE OF NGT IN ACHIEVING ENVIRO- JUSTICE:

The rules of standing which are adopted by the NGT can be considered same as that of the Supreme Court which means that the cases in NGT cannot only be filed by the party which are directly affected but can also filed by any representative organizations. “The same is upheld in the decision which is passed by NGT in the case of Vimal Bhai vs. MoEF, in the same case tribunal decided the meaning of the term “aggrieved person” (Sec. 18(2) (8), NGT Act 2010)”⁵³.

NGT thus promoted access to justice to all by this development and further stated that every citizen can approach the NGT and the NGT has a duty to hear the complaint of any environmental threat, thus the development in the environment protection is observed. If we compare the scenario of NGT in United Kingdom, the rules of standing are far narrower as compared to that of India. It is quite expensive to apply in their NGT as well as there is a lot of burden on their NGT with so many cases thus even delay in justice is observed, the scenario is quite in contrast in India.

The establishment of NGT proved to be a positive step towards the development of the environmental laws in India as well as to promote the access to justice i.e. SDG Goal 16 via its functioning and judgments. The International Principles have proved to be a great help to NGT to discharge justice while dealing with all the environmental matters.

⁵³ ‘National Green Tribunal Act, 2010’.

One of the key case which was dealt by NGT was that of the coal blocks of Chattisgarh forest. The tribunal in the same case cancelled the clearance given by the then Minister of the Environment and Forest in India named Jairam Ramesh. The blocks which were approx. 1,989 hectares of land in forest was felling in area which was earlier declared as a “no- go” for the conservation of the forest value. The same clearance was given in June 2011, by not following the expert committee’s advice. The NGT hold the Minister grossly responsible for such clearance⁵⁴.

Another significant decision of Supreme Court, in case of Vardhaman Kaushik vs. UOI, a Delhi Pollution matter wherein significant amount of the pollution was observed in Delhi, to which NGT gave its decision prohibiting the 10 year old diesel vehicles as well as prohibiting 15 years old petrol vehicles usage. A petition was filed opposing this stating that NGT has no role to play in such matter, but the apex court upheld the NGT’s decision.

The NGT basically follows the Principles of the Natural Justice and do not function on the basis of the Civil Procedure Code, 1908 nor on the basis of the Indian Evidence Act, 1872. The formation of the NGT is proved to be a success as far as providing access to justice and following the SDGs are concerned. It has its own procedure and can also be referred as a “Fast Track” courts which have wide powers. NGT, 2010’s Sec. 20⁵⁵ mandates the tribunal to work on the basis of internationally accepted environmental law 3 key principles which are as follows:

⁵⁴ Ibid.

⁵⁵ National Green Tribunal Act, 2010, Section 20.

5.3.1 SUSTAINABLE DEVELOPMENT

The said principle simply means ability to use the resources by the present generation in such a manner without any kind of compromise on future generation's needs. The Sustainable development principle is proved to leave a positive impact on the environment protection. One such case was heard by the NGT in which a project is being going on for which forest clearance was asked. In the said project forest clearance was asked from MoEF for Uttarakhand project which was challenged stating the sustainable development principle is affected by the residents living in that particular area. Environment clearance was already granted in 2007 but the only question was that of the forest clearance. The NGT observed some positive practice in the said project, which involved an NGO to communicate with the local residents, the use of less invasive technology and benefits were granted in terms of education, employment and services. Finally the NGT looked at the negative effects which were damage to agricultural land as well as river bed, etc. to which NGT came to a conclusion that even though the project is spreading a positive impact on the society but the environmental harm it has created cannot be neglected thus a committee was appointed by the NGT to look deep in the matter and to prepare a cumulative impact assessment report.

On the contrary, the NGT passed another case which falls under the same principle with different approach. "In Balachandra Bhikaji Nalwade vs. MoEF, the appellants in their argument stated that the environment clearance is not a valid one. Tribunal upheld the appraisal committee results then further it analysed the other argument regarding the damage of the mango orchards and aquatic life which it appeared to be a false allegation. Finally the NGT reviewed the coal project plant and stated that since the industrial

development is essential as a part of the sustainable development, the present case is important as when the same is worked by taking proper ecological precautions, then it can make contributions towards the development of industry. Hence, the tribunal dismissed the appeal.”

The above two judgment can be considered as a contrasting ones but in both the judgments the NGT followed a complete different approach. One is a scientific approach whereas the other is the attempt made by the tribunal to uphold the International and National sources together to support the environment protection and in both the cases the rule of law is maintained. The NGT addressed all the applications and appeals. Moreover, the NGT developed a relation with the Apex Court by emphasizing the decision of the Apex Court.

The Tribunal also sometimes faces a challenge due to pending of any case in the Apex Court, one such is the Ganga pollution Case, the example of never ending litigation process. “In the case of Krishan Kant Singh vs. National Ganga River Basin Authority, application was filed before the NGT stating regarding the condition of the contamination of the Ganga water from multiple sources, mainly from sugar mills and thus prohibition of the release of toxic effluents was requested. In light of the given facts, the sugar mills were ordered to stop such discharge of toxic effluents, stating that it is a violation of international principles. The sugar mills were asked to pay Rs. 5 crore.”

Tribunal has focused on the human side of the principle but has also not neglected the ecological part of the said principle. “The appellants in the case named Ossie Fernandes vs. MoEF stated that there was insufficient public hearing which is basically an important step in the Environment Impact Assessment. There were other infirmities as well in the entire EIA process, to which the Tribunal, due to Section 20 of the NGT Act, 2010 gave an order

to just make changes in the Environment Impact Assessment report in accordance to the ecology's requirements asked by the appellents. In spite of such huge damage to ecological system, not extreme step is taken by the tribunal. But tribunal is fulfilling its duty of protecting environment as much as it can by using the available resources but in most of the cases ecology is affected and no step is taken for such loss."⁵⁶ It is also an obligation on the Union and State Governments to conserve the natural resources.

5.3.2 PRECAUTIONARY PRINCIPLE:

"The sustainable development principle is incomplete without the principle of precautionary as well as polluter pays principle."⁵⁷ The present principle basically states that if there is any risk to the human and the environment, simply absence of definite scientific explanation is not the reason for not taking any action against the same. The principle at such times enter and advocates action to anticipate and prevent the environmental harm. It was first advocated by the UN Framework Convention on Climate Change under its Article 3 and thus making it most popular legal principle in light of environment protection.⁵⁸ The same is an international concept which plays an important role to implement the concept of sustainable development goals as well as most importantly to provide access to justice to all.⁵⁹

⁵⁶ SUPRA NOTE 7

⁵⁷ SUPRA NOTE 12

⁵⁸ Report Of The World Commission On Environmentt And Developmentt, Our Commonn Future.

⁵⁹ Ibid.

The Indian courts have addressed this principle in the case of Vellore Citizens Welfare Forum vs. UOI where the petitioners filed a PIL under Art.32 regarding the pollution caused by the untreated effluents released by the tanneries in Tamil Nadu state to which the court took action by establishing the precautionary principle for the very first time and stated that tanneries/ industries have no right to harm the environment and create pollution.

The Tribunal started to use this international Principle for the environment protection. “The Tribunal in, Sarpanch Gramppanchayat vs. MoEF, the decision of the same was issued on 12th Sept. 2011, this was a case which was transferred by the High Court of Bombay which was regarding environmental clearance for a mining project at Tiroda Iron Mine in which the present principle was applied.”⁶⁰ “As the Tribunal was of the opinion that the project didn’t take any precautionary measures, in its judgment the opponents were asked to get a new matter by EAC.” In the same case a relocation of school building was asked and also several other measures in order to avoid any kind of noise, air or water pollution to the area and citizen residing in the area of Tiroda, thus implementation of precautionary principle was done successfully in the same case.

In the case named Goa Foundation, wherein the question of protection of Western Ghats was raised. The tribunal in its order pointed out the ambiguities of the MoEF in the present case after which the whole responsibility to examine the issues related to the ecology were that of the MoEF, once the same is done, final notification can be issued on such protected areas. In this case the tribunal did not take action directly but rather left it to the MoEF to clean the mess that it created on the very first place.

⁶⁰ Supra Note 1

In case of the M/s. Sterile case⁶¹, the Tribunal defined the precautionary principle laid down few of the ingredients of the precautionary principles which includes:

- Presence of imminent threat to environment or ecology
- Accompanied by technical data
- Taking preventive measures would create a huge public and environment interest.

Thus the presence of the above elements is necessary in order to implement the precautionary principle.

5.3.3 POLLUTER PAYS PRINCIPLE:

“The polluter pays principle was for the very first time introduced in the year 1972. After the same Rio Declaration in its Sustainable Development Goals inserted this principle. In simple language the meaning of polluter pays principle is as the word itself speaks is that polluter should pay the cost of pollution.” “It basically imposes a responsibility on a person who pollutes the environment to pay for the same regardless of the intent.”⁶²

“The concept was first adopted in the Oleum Gas leak case⁶³, where it observed regarding the compensation was made.” The bigger the magnitude of the company, the bigger will

⁶¹ Sterlite Industries (India) Ltd. V. Union Of India, (2013) 4 Scc 575

⁶² Shyam Divannn, Environmental Law And Policyy In India Pp. 45

⁶³ M. C. Mehtaa Vs. UOII AIR 1987 SC 965 (India)

be the compensation. The Polluter pays principle was supported by sustainable development goals and was defined clearly under the Bundtland Commission.⁶⁴

Few of the elements are mentioned whose presence is mandatory for the application of polluter pays principle which includes:

- Project carried out without any permission which includes forest and environmental clearance
- Violation of the clearance
- Industries running without any permission and polluting the environment
- Polluting the environment at large scale
- Negligence on the part of the authorities creating pollution
- Activities which are affecting the livelihood of any community

Thus the presence of any of the above elements constitutes a liability under the said principle. “In India the same is followed in many cases which includes Vellore Citizens’ Welfare Forum vs. UOI, Indian Council for Enviro- legal Action vs. UOI, Oleum Gas leak case, M.C. Mehta vs. Kamal Nath etc. In the Vellore Citizens’ Welfare Forum case, the Court interpreted the same principle and the absolute liability principle was formed which states that the cost of restoration of the environment degradation is also must”. “And the polluter is responsible to pay such compensation”.⁶⁵

“NGT in Godavari Magasvaargiyaa Mastyaa case defined the polluter pays principle and further addressed few of the difficulties that are being faced by the tribunal in

⁶⁴ Ibid.

⁶⁵ Divan, Environmental Law And Pollicy In India, Pp. 67

implementing the principle”⁶⁶. One of the most difficult part is that regarding the decision of who actually is the polluter, in few cases the same is very easy to find but in most of the cases, it is difficult.⁶⁷ Once the same is decided, it is very difficult to identify about the responsibility. “The next concern comes regarding in what ways the environment damage should be paid as it is very hard to restore the same (difficult to restore the loss of diversity, habitat, soil, land, etc.)”⁶⁸ The compensation is always in terms of the money, money cannot really fixes the ecological damage.

The tribunal has acted smartly in dealing with few of the challenges that it faces regarding the polluter pays principle and thus to provide access to justice to all. The tribunal follows a strict obedience of the Rule of law and whenever the tribunal is of the opinion that it cannot decide any particular issue than the same can be decided by the committee which the NGT has created and thus it can take the suggestion from such committee.⁶⁹

The Tribunal in the case of Ramubhai Kariyabhai Patel vs. UOI, stated further regarding the applicability of section 15 of the NGT Act, 2010 regarding the compensation arisen in the case from the damage that was caused to the ecology by the toxic waste spread and soiled in 2012 in the agriculture fields in Gujarat.⁷⁰ The tribunal in the present case upheld the decision that it took in the Godavari Magasvargiya Mastya and stated that polluter pays principle will be applicable and the respondent has to pay according to the actual loss and non-pecuniary damages. “The tribunal further asked the PCB to conduct scheme related to

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Supra Note 24

⁷⁰ Michael G Faure And Av Raja, “Effectiveness Of Environmental Public Interest Litigation In India: Determining The Key Variables,” Fordham Environmental Law Review, 2010

operation of the toxic waste in order to avoid any future instances in the same way.” The tribunal thus follows a two way approach which includes a strict way to hold the polluter liable and to pay damages and the other approach includes that of the implementation of the international sustainable development principles. Thus, the tribunal truly contributes towards promoting access to justice to all via passing such judgments and also contributing towards the environment protection.

The tribunal dealt with a case named Manoj Misra vs. UOI ⁷¹famously known as a Yamuna River case in which the tribunal applied the principles of both i.e. Precautionary as well as the Polluter Pays Principle. River Yamuna is polluted since long due to discharge of waste directly in the river, even the apex court seized the matter through PILs, in order to improve the waste management and to reduce the pollution as well as making environmental conditions better for the people living on the bank of the river.

Failed by the efforts of the Supreme Court, the case was gradually passed onto the NGT to reach at a conclusion. “NGT after referring section 14 and 15 of NGT Act, 2010 was of the opinion that there was breach of Article 21 as well as redressal should be taken for such pollution.”⁷² “A new project called “Mailey se Nirmal Yamuna” was started by the government but was a complete failure.” “The Tribunal applied all the three principles to bring a proper environmental justice.”⁷³

Judges after a brief study was of the opinion that there has been a grave environmental degradation and also was of the opinion to immediately stop such discharge of the waste

⁷¹ Manoj Misra Vs. UOI 2 SCC 594

⁷² Ibid.

⁷³ Ibid.

which are causing great harm to the human beings as well as affecting their health. The tribunal also holds the Municipality liable for not taking any action for such waste discharge in the very first place by applying the polluter pays principle as well as private companies were also made liable. The tribunal later ordered to establish the waste treatment plant to avoid such discharge of waste. Further order to pay restoration of damages. The dumping of the debris was totally banned as a precautionary measure.

“The other and most important difference between the Supreme Court and NGT was witnessed in the present case, the tribunal itself formed a special committee as well as took help of an expert i.e. double check whereas the Apex Court might only rely on the technical data only”. NGT relied in the present case on a technical data which had a proper degree of assurance.

Then it applied the precautionary as well as polluter pays principles and sustainable development principle. The NGT also applied the section 15 and section 20. “It thus highlights a positive scenario which reflects positive judiciary side of NGT in India and also the other side which includes defective operation of laws/decisions as well as lengthy proceedings.”⁷⁴

Thus, the above are the main principles which NGT follows in order to promote the environmental justice in India and which in turn fulfil the main object of the sustainable development.

5.4 LANDMARK JUDGMENTS:

⁷⁴ Gitanjali Nain Gill, “A Green Tribunal For India,” Journal Of Environmental Law Pp.40

The researcher has tried to explain the whole scenario of how the international principles are implemented in India with the help of the landmark judgments. Before the establishment of NGT, Civil Courts, High Courts and Supreme Court were dealing with the environmental issues. Through the following landmark judgments, how a shift has taken place will be witnessed from the Courts to NGT. NGT has also gone to the extent of *suo motu* as well as judicial activism in order to serve the enviro- justice. These landmark judgments will also show the role played by NGT in achieving the implementation of SDG 16.

M.C. MEHTA AND OTHERS V. UNION OF INDIA (OLEUM GAS LEAK CASE)⁷⁵

The present case is also referred as an oleum gas leak case. In the present case, Shriram Food and Fertilizers Industry who is a respondent in the present case was producing caustic and chlorine. “Leak of the oleum gas was witnessed at respondent’s company in the Delhi city, as a result of which several deaths of people were witnessed including that of a lawyer in the December 1985.”⁷⁶

The leakage was a result of a negligent performance of human working in the respondent’s company as well as due to some mechanical error as well. The leakage resulted in falling down the tower which resulted in creating a panic among the people residing the area around the respondent’s company.⁷⁷

⁷⁵ M. C. Mehta And Others Vs. Uoi Air 1987 Sc965 (India)

⁷⁶ Ibid.

⁷⁷ Ibid.

The case was heard by the District Magistrate and he referred Sec. 133(1) of CrPC, 1973 who directed that respondent should stop manufacturing of dangerous gases like chlorine, oleum and phosphate. “In the meanwhile, petitioner filed for the damages that were being made by the respondent’s company and pleaded not to allow respondent’s company to restart.”⁷⁸

There were many issues that were being raised in the present case. Those issues were regarding the scope and ambit of the jurisdiction of the Supreme Court under Article 32. The other was whether Article 21 as a fundamental right is available against the Shriram Foods and the liability of the respondent.⁷⁹

Supreme Court held in the present case that the present case requires a new principle of liability which has not even developed by the English Courts. The Court found it necessary to develop a new liability principle so that it can deal with such kind of cases in which such kind of dangerous incident which has occurred due to respondent’s gross negligence. To give a complete justice, absolute liability principle is developed. By using the said principle, Court in the present case held Shriram Foods as an absolute liable for the incident that cost the lives of people.

“The greater the company, the greater would be the compensation and vice- versa was decided by the Court.”⁸⁰

⁷⁸ Ibid.

⁷⁹ Supra Note 30

⁸⁰ Ibid.

VELLORE CITIZENS WELFARE FORUM VS. UOI⁸¹

“In the present case, Petitioners i.e. Vellore Citizen Welfare Forum claimed that around 900 tanneries and other leather industries were using 170 types of toxic chemicals in which around 35 liters of water was being used for processing 1 kg of finished leather, the same toxic effluents are being released directly in the water of river Palar which is a main drinking source for the people living near the area of river.”⁸²

Due to the discharge of such toxic effluents, agricultural land near the river around 35,000 hectares got unfit for the cultivation. “According to a survey performed by Peace Members, an NGO stated in its report that around 350 wells were polluted which were in use for the drinking purposes by such tanneries and leather factories”⁸³. “The TNPB asked such tanneries and leather factories to install the effluent treatment plants, even the guidelines to control the pollution were also given by the Central Government, but none of this was followed.” The main issue that was whether such tanneries and leather factories shall be allowed to function which are causing severe damage to the lives of the people as well as spreading pollution.⁸⁴

In the judgment, Justice Kuldip Singh held that the leather industries shall not be allowed to function as it already has done enough damage to the lives of the people as well as to the environment. In the present case almost all the principles and constitutional provisions were incorporated. The Sustainable Development Principle is recognized by the Supreme

⁸¹ Vellore Citizens Welfare Forum Vs. Uoi, 5 S.C.R. 241 (1996) (India)

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

Court. “Also the Court recognized both the Precautionary and Polluter Pays Principle.”⁸⁵
“The Court also incorporated Constitutional Provisions like Article 47, 48A and 51A(g) along with several other acts were also further imposed a duty upon the Central Government to take an action to control such pollution”.⁸⁶

Further, the Court directed a complete ban within 1 km of the river any of the establishment of industries. “The Court also directed that all the tanneries are under the obligation to follow the NEERI standard guidelines and imposed Rs. 10,000 fine on all such tanneries for causing the pollution and such environmental damage.”⁸⁷

“The Court also gave directions to develop an authority which would work on the tanneries and the leather industries and those committee would work on the basis of the international principles and in case of any breach, the compensation should be given in accordance to such principles.”⁸⁸

This was an important judgment in which two international principles were incorporated under the domestic law. The Court incorporated the Sustainable Development principle. The Court ditched the traditional approach and followed the above principles in solving the present case.

The Court is silent about the individual compensation to the people suffered as well about the compensation for the environmental damage. In 2009, it was found that the committee

⁸⁵ Ibid.

⁸⁶ Supra Note 31

⁸⁷ Ibid.

⁸⁸ The Environment Protection Act, Section 3(3)

which was developed for such purpose acted in negligence and failed to follow the guidelines given by Court and it was found that out of 547 industries, only 347 industries paid the fine. In the present scenario also no action has been taken for the same. The Court sure did incorporate the principles but it did not venture into the elements required to invoke those principles. “Thus there is wrong explanation of the polluter pays into pollute and pay. Court has been silent about the same”⁸⁹.

The Precautionary Principle was applied in this case. The Court applied this principle stating that wherever there is any activity that might cause potential harm to the environment and toxic in nature should be immediately stopped. But the Court is silent about the fact that what actually is the factors that are causing such pollution i.e. it is not going into detail about those factors, as sometimes it may be possible that the actual factors that are causing the pollution are not at all addressed and due to which still the pollution is taking place. Thus the Precautionary Principle is not implemented in a proper manner.

Thus, if we look towards the positive effects one can say that it is due to the Judicial Activism of the Indian Court due to which the development in the environmental laws is being witnessed. The need of Environmental Courts were arisen in this case so that a complete justice can be given to the environmental issues.

INDIAN COUNCIL FOR ENVIRONMENTAL ACTION VS. UOI⁹⁰

⁸⁹ Ibid.

⁹⁰ 1446 (1996) (India) , Scc (3) 212 (1996) (India)

“The petitioner filed a petition against eight respondents namely Govt. of India, Rajasthan Pollution Control Board, Govt. of Rajasthan, Hindustan Agro Chemicals, Silver Chemicals, Rajasthan Multi Fertilizers Ltd., Phosphate India and Jyoti Chemicals.”⁹¹

A village named Biccharri in Udaipur of Rajasthan District. “In the North side one Industrial was set up which caused the water pollution. In the year 1987, by Hindustan Agro Chemicals Ltd. production of oleum and single super sulphate was made.”⁹² Sister company of the same named Silver Chemicals started production of Hyaluronic acid. “The production of such chemicals gave birth to enormous toxic effluents in particular iron and gypsum sludge”.⁹³

Later Rajasthan Multi Fertilizers Ltd., Phosphate India named industries came into existence. “Hindustan Agro Chemicals, Silver Chemicals, Rajasthan Multi Fertilizers Ltd., Phosphate India and Jyoti Chemicals were in common geographical area only”.⁹⁴ Complex was located in Bichhri village. The toxic waste released from these acid manufacturing units was allowed to flow freely in water. The result was worst, it polluted the water to that extent that the water was no more in a drinkable condition for human consumption, cattle or for crop irrigation and the environmental degradation of land was witnessed. People of Bichhri revolted against the same.⁹⁵

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Supra Note 32

As a result of such revolt, District Magistrate under Sec.144 of Code of Criminal Procedure gave an order for closure of silver and Jyoti chemicals in 1989. After which writ under Article 32 in August 1989 was filed along with photos, technical data and other materials.

“Rajasthan Pollution Control Board and HAC Ltd. obtained NOC from the Court for sulphuric acid and aluminum sulphate production with certain conditions”. Later on NOC was granted under Water and Air act with certain conditions. The Unit started production of oleum and single sulphate without clearance from the Board and thus in 1987 the same consent was refused and closure was ordered. Later on consent was refused under both the acts.

Silver Chemicals was promoted without NOC by HAC Ltd. for manufacturing Hyaluronic acid in February 1988 and as a result its closure order was given in April 1988. “Again in May 1988 consent was refused. Further the Government was directed to cut the electricity and water supply but all was in waste”.⁹⁶

The respondent named Rajasthan Multi Fertilizer did not get NOC and further was not even applied by them for consent. Phosphate India established without NOC nor applied for NOC. The Board was aware about the method of disposal of the toxic waste i.e. the Government of Rajasthan was aware about the pollution but is taking action through RPCB. In the process 60 wells were polluted. “Respondent named Hindustan Agro Chemicals Ltd. and Jyoti Chemicals applied NOC and received one from RPCB applicable up to 15th Aug 1988.”⁹⁷ Respondent named Rajasthan Multi Fertilizers Ltd. was a small scale industry and thus no NOC was required. Phosphate India received no subsidies from

⁹⁶ Ibid.

⁹⁷ Ibid.

the government and merged with respondent named Hindustan Agro Chemicals in 1987-88. Jyoti Chemicals had no electricity and water supply so no production. Hyaluronic acid was produced only for one month on trial basis.

“Order of the Court that received during 1989-1992 ordered NEERI ⁹⁸which is basically a lab to study the situation in around Bichhri and submit report with alternatives and remedies”. RPCB was directed to give the report about situation in Bichhri and the production of Hyaluronic acid has been stopped. “RPCB was asked to make arrangements for safe disposal of waste and the price will be paid by respondents.”⁹⁹

The after effects which was witnessed were that there was no removal of the sludge before monsoon, de-watering of well which was ordered was proved impossible. As a result one team of experts visited the place in March 1992 and submitted the report. Report stated highly toxic waste was found, water pollution was still there and the water turned reddish due to chemicals in the water. Land pollution was observed due to waste deposits.

“NEERI’s research suggested that there was Highly toxic waste-gypsum and iron sludge and corrosive waste water and the field survey shows damage to crop production, plants and trees, land pollution”. Further no effluent treatment plant in Industries, willful and negligent disposal of waste, untreated water was observed. “Thus, the report made observation that the industries continue industrial activity producing obnoxious waste water.”¹⁰⁰ Thus it was necessary to take immediate action.

⁹⁸National Environmental Engineering Research Institute

⁹⁹ SUPRA NOTE 20

¹⁰⁰ Ibid.

Court provided its observation on the basis of the same report and stated that looking to the damage to the crop, plants, cattle and torture to the villagers the polluter pays principle should be applied. “Absolute liability principle should be applied and estimated cost which should be payable is of Rs. 342.8 lakhs and cost of environment restoration is decided to be Rs. 3738.5 lakhs.”¹⁰¹

“In the arguments, Petitioner referred oleum gas leakage case and on the basis of the reports, data, photos the respondents are culprits, suggestion for absolute liability was made whereas Respondent stated that they do not fall under Article 12 as they were a private entity and thus the writ petition was not applicable and also tried to shift burden on Hindustan Zinc Limited.”¹⁰² Further stated that 70 industries in India produce Hyaluronic acid and so there is no justification in picking up only respondents. “The liability was shifted to the RPCB as they have harassed respondent by illegal policy and procedure and was recommended to form green courts all over the country and the writ in this court under Article 32 and 226 should be discouraged as these matters require technical issues.”¹⁰³

“Court finally addressed the issues by referring Article 48A and Article 51A(g), Section 24, 25, 25 (1) , section 33 of Water Act and Air Act, 1981 and section 6 of EPA, 1986 and stated in its judgment directing the Central Government to decide the amount of redressal.” It further directed to close all the plants and factories of the respondent. “And regarding the claim for damages by villagers, it is open for them to apply in civil court.”

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ SUPRA NOTE 74.

“The central govt. should make machinery both at the center and state strong and environment audit should be made on permanent basis and further directed that the Respondent should pay Rs. 50,000 to the petitioner for litigation.” “Polluter Pays was applied stating that the principle requires the polluter to pay all the damages for the pollution caused by the polluter.” Thus, the Polluter Pays Principle and its application was indeed explained by the Court in detail via the same case.

A.P. POLLUTION CONTROL BOARD VS. PROF. M. V. NAYUDU & ORS.¹⁰⁴

In the present case the Precautionary Principle was referred by the Court and also the need to develop environmental courts were mentioned. In the present case, the Respondent’s industry was about to start which would carry the vegetable oil production in the Andhra Pradesh State. Respondent purchased a land for the same from a village named Peddashpur in Indore. The said area was near the range of reservoir which provides drinking water to around 5 million people.

In 1988, the Ministry of Forest and Environment prepared a red list which carried the names of the hazardous industries and in the same list, respondent’s company’s name appeared. “Again in 1994 another notification came which stated regarding prohibition of the industries in about 10kms of the reservoir.”¹⁰⁵ “The application of the respondent for NOC was accepted but the same was rejected in 1996 by the APCB.”¹⁰⁶ “The respondent stated that he has invested huge sum of money in the said industries and requested the State

¹⁰⁴ A. P. Pollution Control Board Vs. Prof. M. V. Nayodo & Ors. 1994 (3)

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

Government to which State Government gave permission with certain guidelines which should be followed by the respondent to prevent water pollution”.¹⁰⁷The NOC permission was not granted to the respondent though, so the respondent filed an appeal under Section 28, Water Act before the Appellate Authority. Appellate Authority allowed the NOC and reversed the APCB order.

Issues that were raised includes whether the industry of the respondent can be considered as a hazardous one and whether such industry is likely to cause any pollution in the Himayat Sagar and Osman Sagar lakes.

“Appellant in their argument stated that the respondent cannot start the construction in absence of clearance from the A.PPCB and the Board also in its argument stated that the products that the respondent company would manufacture is likely to create pollution, those products were nickel and emission of sulphur dioxide as well as oxide of nitrogen.”

“The respondent in their arguments stated that they already got the NOC from the appellate authority under Water Act Sec.28.” “In affidavit, respondent also stated that they are following all the eco- friendly measures in order to avoid any kind of pollution and further they also got the certificate from the Indian IICT of Hyderabad who declared that their industry is not a polluting industry.”

The Court in its judgment reverse the decision of the appellate authority and further after a thorough observation stated that the NOC cannot be issued to the respondent as the same

¹⁰⁷ Ibid.

is not appropriate for the environment and obviously is causing environmental degradation as per the 10 km rule and for the protection of environment. The Court further stated that even if all the precautions are taken by the respondent but there are always chances of the human error so the Court cannot take any risk as the same reservoir is used for drinking purpose by millions of people. Thus NOC cannot be granted to the respondent.

The decision given by the Court is reasonable as the Court cannot grant a NOC to an industry by risking the lives of people otherwise it would be considered as an arbitral behaviour of the Court. The Court applied Precautionary Principle and also kept in mind the fundamental rights of the people i.e. Right to clean environment under Article 21 and gave justice to the matter but the Court in the present case suggested that there should be development of the environmental courts which should have expert members so that such kind of matters can be dealt in an easy manner.

M.C MEHTA V. KAMAL NATH ¹⁰⁸

Exemplary damages have been awarded in the cases where there is environmental issue and one such case is the present case. “The Court stated that the Pollution can be said as a civil wrong, which means that anyone who caused the environmental damage and who is guilty for the same has to pay compensation for such harm and also for environment repair”. Further, that person also has to remunerate the sufferers who have suffered due to such damage caused.” ¹⁰⁹The Court has power to grant exemplary damages also to the

¹⁰⁸ M. C. Mehta Vs. Kamal Nath Air 2002 Sc 1515 (India)

¹⁰⁹ Ibid.

person who is liable to cause such damage especially the environmental damage so that the same act is avoided in future.

TAJ TRAPEZIUM CASE:¹¹⁰

NGT recently passed an order regarding the area around the Taj Mahal stating that it can't be compromised and thus further gave an order to demolish the unlicensed hotels in the area of Taj Trapezium Zone.¹¹¹ It further gave an order to develop plantations in the area close to Taj to prevent any kind of pollution. The Tribunal also heard the cases in regard to the tree felling near the Taj Mahal to which it took action.¹¹²

“The NGT also ordered to not approve any of the building construction near Taj Mahal area and further order the PCB to inspect the glass industries to see whether they follow proper norms or not.” “If found not following then to slap them with the fine or legal inquiry.”¹¹³

DECISION OF NGT IN PROMOTING THE USE OF BIODEGRADABLE GANESH IDOLS:

The NGT on September 2015, directed that Ganesh Idols which are made from biodegradable material only should be allowed for immersion. Thus to prevent any kind of pollution as well as to promote the use of plastic products.

¹¹⁰ M. C. Mehtha Vs. Uoi Air 1987 Scr (1) 819

¹¹¹ Ibid.

¹¹² Supra Note 27

¹¹³ Supra Note 36

NGT's BAN ON CROP BURNING:

In the case of Vikrant Kumar Tongad vs. Environment Pollution (Prevention & Control) Authority, NGT passed a decision regarding ban on the crop burning. It further asked the State Government to educate the farmers about the bad effects of such burning and the pollution caused by the same. It also passed several recommendations in same matter.

“MS. BETTY ALVAARES VS. THE STATE OF GOA AND ORS.”¹¹⁴

“Facts was that a foreign national named Betta Alvarez filed a case regarding the illegal construction in the Coastal area in Goa.” “To which issue was that before the case can be proceeded further on merits based.”

“Objections were that petitioner had no *locus standi* in the case as she was not resident of India.” “The second was that the matter was barred by the Limitation Law”.¹¹⁵

In judgment, the NGT rejected the objections. The NGT was of the opinion that Betty filed several complaints before and no actions were taken by the State authorities regarding such illegal construction and in order to support the *locus standi* issue, NGT read the text of NGT Act, 2010 Section 2(j) which states that the word person includes both national as well as a person who is a Non- Indian. And thus Betty's application was allowed in discharge of the environmental justice.

¹¹⁴ Ms. Betty Alvaares Vs. The Stete Of Goa (Appln. No.53 (The) Of 2012)

¹¹⁵ Ibid.

“ALMIRA PATTEL & ORS. VS. UOI.”¹¹⁶:

“The case in which NGT's judgment placed a full ban on open field burning to mitigate emissions. A relevant case addressed by NGT on solid waste management.”¹¹⁷

In the present case petitioner basically file a case under Article 32 before the Apex Court and pleaded to bring a change regarding the Solid Waste Management treatment in India.

“The Solid Waste was not properly disposed of and there was no proper treatment that was followed for such disposal. It was rather directly dumped in rivers, lakes, ponds etc. giving open invitation to the pollution. The Tribunal noted that from such wastes effective fuel can be generated for the whole country.”¹¹⁸

“Thus the Tribunal passed the judgment and in the same directed every States to abide by SWMR, 2016.”¹¹⁹ The Tribunal further directed the States to follow a proper segregation of such solid waste before its disposal and should be bio- stabilized within 6 months.

“SRINGAR BANNDH AAPDAA SANGHARSH SAMITI & ANR. V. ALAKNANDA HYDRO POWER CO. LTD. & ORS”¹²⁰. :

“In the present case the principle of no fault liability was witnessed.” In the case Petitioner filed a case against Alaknanda Hydro Power Co. Ltd. to compensate with Rs. 9,26,42,795

¹¹⁶ Almitra H Patel V. Union Of India (1998) 2 Scc 416

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ (2014) 1 Scc 769

against the damage suffered by the petitioner and the 2013 Uttarakhand floods is the backdrop of the same case. The respondent in the present case had dumped a massive waste. “When the dam gates were opened, waste got stuck in village nearby the dam resulting a massive loss of life and property in that village.”¹²¹

In its Judgment the tribunal held the respondent liable and stated that the destruction in the village of the petitioner was not due to the flood but was due to the action of dumping waste by the respondent. The respondent was ordered to pay 1 lakh rupees fine to each applicant and the section 17(3) of NGT Act, 2010 was applied which is a no fault liability principle.

“SAMIT MEHTA VS. UNION OF INDIA.”¹²² :

“The polluter pays theory was observed and public interest was raised.” An environmentalist filed a case with regard to the harm witnessed to the marine life due to sinking of a ship which released a massive amount of coal, oil and diesel.

In the judgment the NGT held the respondent liable and stated that due to their gross negligence the same scenario has been created affecting the marine ecosystem. “Further the respondents were made liable to pay Rs. 100 crore to the Ministry of Shipping for such damage caused”.¹²³

¹²¹ Ibid.

¹²² Sameet Mehta Vs. Union Of India/Gt/0104/2016

¹²³ Ibid.

“SAVE MON REGION FEDERATION AND ORS. VS. UNION OF INDIA AND ORS.”¹²⁴ :

In the present case, an environment clearance was granted to a Hydro project worth Rupees 6,400 crore, an appeal was filed against the same. The project was located very near to area where there was sanctuary consisting of Schedule I species of Wildlife Protection Act. The environment clearance was granted without carrying any proper survey.¹²⁵ The NGT in its judgment declared that suspension of the environment clearance of the said project.

GANGA POLLUTION CASE (M.C. MEHTA VS. UOI) (2017)¹²⁶

River Ganga has been experiencing massive amount of pollution since long and thus there were back to back cases were filed for the same since long but no proper implementation is taking place of the directions. For the same issue a case was file in 2017, direct untreated effluents are released in Ganga River water.

Directions issued by NGT:

- The whole drainage system should be cleaned properly and the waste should be removed.
- “NGT ordered no activity zone i.e. no construction or movements should be witnessed in the same within 100 mts. From Ganga.”
- “Complete ban on the disposal of MSW or bio- medical waste.”
- Ban on any instream mechanical mining.
- “Any violation for the direction, Rs. 50,000 compensation”.

¹²⁴ Save Mon Region Federation v. Union of India, Appeal No. 39 of 2012

¹²⁵ Ibid.

¹²⁶ I.A. NO. 494/2017, I.A. NO. 489/2017

The precautionary principle was applied as well as the sustainable development principle.

M.C.MEHTA VS. UOI (KANPUR TANNERIES CASE):¹²⁷

The most recent development, NGT slapped a fine of Rs. 280 crore on total 22 Kanpur tanneries for causing pollution in River Ganga. Apart from the same, the U.P Government was also slammed for not checking the pollution levels. The NGT stated that sewage contains toxic chromium.

The Government was also slapped with total Rs. 10 crore fine for failing to check the pollution level. The UP Pollution Control Board and UP Jal Nigam was also fined with Rs. 1 crore each for ignoring the illegal toxic discharge in river.¹²⁸

A huge number of public health has been compromised in the present case for which even these fines cannot be enough. Public Trust Doctrine was applied. UP government had ordered a closure of total number of 264 tanneries in Kanpur and Unnao due to such pollution in the year 2018. After the closure of such tanneries, after the span of 7-8 months, 101 tanneries out of 264 were allowed to resume but strictly under the NGT directions. The present case was a remarkable case in the environment history.

VIZAG GAS LEAK CASE

¹²⁷ M.C.Mehta vs. Union of India 1988 AIR 1115; 1988 SCR (2) 530; 1988 SCC (1) 471; JT 1988 (1) 69.

¹²⁸ Ibid.

The NGT has according to its wide jurisdiction power of starting its own proceedings *suo motu* i.e. on its own as the same cannot keep quiet on the matters like the present case in which a gas leak happened at LG Polymers India which is a huge plant in the Vishakhapatnam in which a huge environmental damage took place and also human loss is witnessed, at least 11 people dies on the spot and due to the same around 1000 people has suffered.

In order to clear any kind of jurisdiction doubt to the respondent, NGT Chaiperson in the beginning only stated that NGT has power to provide compensation to the people suffered and compensation for the environmental damage and restoration as well.

“For the events like the present case, NGT has power to set its own procedure and thus this power includes power to start the *suo motu* proceedings on its own to provide an instant justice to the sufferers and also for the environmental protection, also to protect the rights of the people which includes right to life and public health.”¹²⁹

The NGT further stated that failure of suo motu proceeding in such kind of serious cases would be also against the rule of law and also against the concept of justice. It further stated that if no such proceedings are taken by the tribunal, situation would cause the environmental damage and loss of public life and the justice can only be provided only if the victims apply to the tribunal which would again result in the injustice.

“The NGT Act, 2010 suggests that for the environmental protection as well as to grant relief to the victims, the one decided in the UN Conference on Human Environment held

¹²⁹ Dutta, R, & Purohit, S. (2015). Commentary on the National Green Tribunal Act, 2010. Van Haren Publishing.

in Stockholm and Rio de Janerio as well as decisions of the Apex Court to establish a tribunal”.¹³⁰

Once the question of Right to Life is in violation, the tribunal has to act in order to give justice and for the same reason it has been established in the very first place and also in such cases the tribunal has right to decide its own procedure which also includes the *suo motu* proceedings.¹³¹

A slap of Rs. 50 crore as a compensation for the restoration of the environmental damage as well as the loss of human lives was directed by the NGT and further stated that the calculation of such amount would be confirmed and after that decided by the Environment Ministry and Central Pollution Control Board (CPCB).¹³²

The NGT further directed the A.P chief Secretary to take actions against the people responsible for such tragedy, as well as authority for the failure of law and permitting the industry to work without the environment clearance and to give the report of the same. The NGT also asked the MoEF to form a committee which would constitute the environmental norms and would see that they are not violated by any of such establishments which produce such harmful chemicals.

The damage to the human life as well environment should be restored by the application of the international principles.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

NGT has been witnessed practicing the judicial activism as well as going beyond its jurisdiction, the recent example of the same is of Vizag Gas leak Case in which NGT took *suo motu* proceedings and the question regarding its jurisdiction were raised.¹³³

Judicial activism basically means ruling which are based on the political opinion or the personal views rather than the actual law. It was also witnessed that NGT making changes in its own rules in the name of using the substantial question of environment tag. And also stating that it has power to do so, i.e. NGT has power to form its own procedure. It has been argued on several occasions that tribunal do not have power of the *suo motu* proceedings and also do not have power to strike down the legislation. But in case of the environmental emergency NGT has always taken care of the environment like its own baby by taking up the *suo motu* proceedings and the same cannot be denied anytime.

SRI SRI RAVISHANKAR CASE

“Against Sri Sri Ravisahnkar’s Art of Living Foundation, a matter was filed. Foundation organized a World Culture Fest on Yamuna river banks. The environmentalist strongly opposed the same festival, arguing that the same festival caused tremendous harm to the Yamuna river and even to the eco-system. The NGT held DDA who gave permission without further investigation”¹³⁴.

¹³³ SUPRA NOTE 99

¹³⁴ Rosencranz , *Environmental Law And Policy In India* Vol. 1, Pp. 60

After such damage was observed, penalty of Rs. 120 crores was imposed on the Art of Living for causing such environmental damage and for the restoration of the same, immediately after hearing such huge amount of compensation, many back to back cases were filed by the Art of Living Foundation challenging the order of the NGT. To avoid the same, NGT further removed the sum of Rs. 120 crore and asked the Art of Living Foundation to pay only the actual amount required for the environmental restoration. It was later reduced to Rs. 5 crores. Even three followers of Sri Sri Ravishankar filed a case against the NGT challenging it on the basis of its jurisdiction. The case is still pending before the NGT.

CHAPTER 6: CONCLUSION & SUGGESTIONS:

6.1 CONCLUSION

The development of National Green Tribunal has indeed shown a positive effect towards the progress in environment related laws. The National Green Tribunal works on mainly three International Principles which includes Sustainable Development, Precautionary Principle and Polluter Pays Principle. The National Green Tribunal is so far been successful in providing access to justice to all and thus it can be said that India has so far been successful in implementing the Sustainable Development Goal 16.

The National Green Tribunal has been referred as a “fast track court” which is so far proven to be true and the same can be witnessed in the cases which are discussed in the present work. India being a country where sustainable development is a part of land, the National Green Tribunal has always complemented with the Court’s decision in every matter and thus follows the same principle since day one and thus is promoting the transparency and accountability.

The National Green Tribunal having experts committee provides a complete justice to all the environment matter and digs deeper in solving the matters as soon as possible with utmost detail and information. The judges in the environmental courts have a wide knowledge and are well versed with all the environmental developments and laws. These are the courts also known a “green courts”, specifically deals with the environment matters only, the amount of burden is not much as that of the other courts and thus provide a speedy justice. The other main point is that in the National Green Tribunal, any person who is

affected directly or indirectly can file the case. Due to the same the Non- Government Organization are performing the role similar to that of watch dog and indirectly helping the National Green Tribunal to deal with the environment matters and thus reinforcing the rule of law principle that Tribunal supports.

The NGT has both positive as well as negative points. Proceeding towards the negative ones, the main and most important is that of the jurisdiction issue i.e. the NGT has only jurisdiction to hear the civil matters related to environment and cannot deals with the criminal matters relating to environment as well as cannot deal with the matters falling under Forest Act due to same, complete justice to environment matters is not done.

The National Green Tribunal also has a limited power when environmental clearance regarding the projects which involve a public importance. The tribunal shall be granted wide powers so that the Sustainable Development Goal 16 can be achieved at ease. The limitations of the National Green Tribunal are hampering the access to justice to all and thus indirectly hampering the implementation of the Sustainable Development Goal 16.

India is a country which accepts the international principles in development of the environmental related laws and to give access to justice by interpreting them under Article 21 of the Indian Constitution i.e. Right to life. The regulatory enforcement process is not strong in India which can be seen in many cases like the Ganga Pollution Case, Taj Trapezium Case, etc. which has been dealt by the tribunal since long yet due to poor operation of Tribunal's orders the results are not achieved and everyday a new violation is reported in such cases. India is making a huge effort in implementing the sustainable development goals and has been successful also to some extent but few of the factors which includes the regulatory enforcement process as well as its limitation is harming the

progress. If these drawbacks are addressed in a proper manner, India can make a huge progress not only in the environment field but in each and every other fields as well.

Whatever might be the drawbacks, the National Green Tribunal in true sense has made a huge progress in the environment protection as well as provided a healthy environment to all the people residing in large cities as well as remote areas.

6.2 ANALYSIS OF RESEARCH QUESTIONS

The researcher started the research with the inquiry into matters like the question regarding presence of enviro- justice in India, the commitments of India towards access to justice with regard to sustainable development goal as well as regarding the role of NGT in securing enviro- justice in India; what different techniques are adopted by NGT to secure enviro- justice and the impacts of orders of National Green Tribunal.

The Indian response towards fulfilling SDG 16 is positive which can be said after the research analysis. First and the foremost thing is that there was presence of enviro- justice long before the arrival of the NGT, Act, 2010. The Constitutional Provisions like Article 21 which includes Right to clean Environment as a Fundamental Right, Fundamental duties includes Article 48A which states that the state has responsibility to protect environment and Article 51A(g) states the individual's duty to protect the environment. Then the arrival of the PIL under Article 32. After the same, NGT Act, 2010 was created.

India is committed towards fulfilling the access to justice with regard to sustainable development goal which can be seen clearly by the establishment of the NGT Act, 2010, not only that there were several initiatives taken by the government as well to fulfill the

same which includes Digital India Campaign which provides e- governance answers for public projects and the RTI Act, 2005.

NITI Aayog was established, the function of NITI Aayog is to make sure that the Sustainable Development Goals are implemented in India. NITI Aayog has recognized many schemes which would make sure that the implementation of Goal 16 is properly taking place. “These schemes are are Panchayat Yuva Krida aur Khel Abhiyan, judicial building’s infrastructure expansion and the Integrated Child Protection Scheme.”

“NGT implemented various International Principles like Precautionary Principle, Polluter Pays Principle and Sustainable Development Principle in order to secure enviro- justice”. The NGT was established with an aim to provide an access to justice to all the environmental matters. With the adoption of these International Principles, NGT to some extent achieved its goal in providing the justice to the environmental issues as well as helped in shaping the Environmental Laws in India via its judgments.

This is one of the organ of the state and through this organ what activism is shown that is actually implementing the SDG 16. It has also given the exemplary damages in few of its judgments so that such kind of environmental issues are not repeated in future. Even with the limitation of the jurisdiction, i.e. it can only deal with the civil matters related to the environmental issues, thus with the same limitation also it performs its role in a very effective manner.

Another positive aspect that can be taken into consideration is that NGT do not cause any delay in announcing its judgment. Once the matter is taken by NGT, it would refer it in

detail by taking help of its Judicial as well as its Expert Member (Section 4 of NGT Act, 2010). The main reason for its establishment was to eliminate the delay factor which so far is being achieved. It will dispose of the cases in a rapid manner unlike that of the High Court / Supreme Court. Earlier there wasn't any specialized authority which would work to solve only the environmental issues but after the NGT establishment, the environmental laws development has been witnessed in India. The other positive outcome that is being witnessed is that the NGT has encouraged many lawyers all over India to specialize in the environmental law.

6.3 SUGGESTIONS

The NGT is already working in a proper manner by disposing many cases in a rapid manner every year since its establishment. But there are certain improvements or rather certain changes which are required to be addressed for its better functioning.

India is a country with huge population, even the environmental issues are increasing day by day, to implement the sustainable development goal in a proper manner, more Tribunals shall be established. In India there are only 5 principle benches of NGT. As far as village is concerned it is very difficult for village people to access the same. The village people suffers the most due to the environment degradation and their lifestyle, daily needs and employment is dependent on the environment, thus more Tribunals should be develop in village area as well to provide complete justice. The process should be made simpler and not complex.

“The NGT has so far acted rapidly in dealing with the environmental issues, but still the issue of pending cases needs to be taken care of.” A study shows that there were about 60% of cases pending before NGT’s southern, eastern and western benches and as far as principal bench is concerned, it is 30% pendency of cases. The main issue is due to shortage of Judicial and Expert Members. In each tribunal there is only one Judicial and Expert that deals with the matter whereas in Principal bench there are four Judicial Members and Six Expert Members. Thus, even the number of Judicial and Expert members should be increased at other zonal benches as well so that more and more cases can be addressed.

The Tribunal can only deal with the civil and administrative matters according to its jurisdiction which is its limitation. In order to address more environmental issues, Tribunal shall be given wide jurisdiction powers so that all types of environmental cases can be dealt by Tribunal. “The Tribunal shall also be given wide jurisdiction i.e. should be allowed to deal with the matters falling under the Wildlife (Protection) Act, 1972 or the Forest Act, 1927 as well as laws that are being implemented by the States in regard to the forests, trees preservation etc.” Thus, in this way it would reduce the burden on the High Court/ Supreme Court and NGT would serve as a single stop to deal with all types of environmental issues and also it can be disposed of in a rapid manner. There should be strict penalties for implementation of the order of the NGT in a proper manner.

The NGT infrastructure facilities is very much required as now the present scenario is that all the environmental matters are almost filed in NGT. The civil courts has now no jurisdiction to deal with the environmental matters, as those matters are now directly filed

in the NGT. Earlier, NGT was functioning from a government guest house. Due to lack of funds for the same, this issue remains unsolved.

The Ministry of Environment should make their method of giving environmental clearances more stringent and should only after careful and thorough examination should grant environmental clearance. Once all these points are taken into consideration, the working of NGT can be improved as well as the access to justice i.e. SDG 16 can be implemented in a proper manner.

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