

ACCESS TO JUSTICE AND LITIGATION ON ENVIRONMENTAL MATTERS

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INTRODUCTION

Collective and Individual rights, encompasses almost all arenas of international and national legal systems of the states, where environmental rights are enforced. Environmental rights infringed, often been have talked and formally represented at national and international forums. Where right to life is taken away by an economic or profit making activity, it is collective, and in certain cases, individual rights are trespassed, which have a massive bearing on the lives of people. In practice, it means excessive litigation and a lot of work at the trial where lawyers, activists, citizens, state and the judiciary are involved to the detrimental effects of pollution created. The activity is perceived as having a detrimental effect to the very existence of citizens whereby the wholesome lives may be affected. The more of such activities, calls for a law to be in place, lawyers who have a thorough information on such litigation, affected citizens knowing and informing the government agencies to control the activity, government officials taking note and drawing reports and finally the judiciary judging the activity for injunction, compensation for the environment and the citizens as well as restoration of environment as far as possible to its original form. The enforcement of rights contemplated under environmental issues calls for ally systems in place for an effective trial and restoration of environment to take place. The global commons affected by any activity, calls for retribution where access to justice be speedily granted. For speedy justice to prevail, cognizance of environmental damage and life threatening incidents should find quick remedies under the law. Liability for public nuisance is the earliest forms of wrongs recognized under the International arena. Nuisance crossing borders or within borders calls for action work calling for injunction on such activity. Industrial and other forms of environmental disasters have been relentlessly carried out in the race to be recognized as an advanced country of the world. Conscious efforts have yielded positive results, but the effect is dimmed when other activities are not so controlled, so alternate harm takes place. Recognition of rights not only for the current generation but also future generations affected by detrimental activities is causing a loss so great, that rejuvenation seems impossible to achieve in the coming years. A battered planet is the inheritance where disappearance of all life forms and even the natural forms of earth would be passed to the future generations.¹ Those of the present generation have certain fundamental duties to perform, be it the government or be it the citizens of a country. A need to invoke the fundamental rights is felt when duties of citizens and the State are not complied, with leading to chaos in the society. It is imperative that along with substantive and procedural measures, a speedy justice is made

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¹ See, Mitchell Cameron Robert et al, *Twenty Years of Environmental Mobilization: Trends among National environmental Organizations*, Society and Natural Resources, Volume 4, pp.219-234, July 1991.

available, or delay can also lead to denial for rights to be enforced. Different Nations follow different systems for enforcement of the fundamental rights which includes ‘Right to life’. Indian legal system also provides certain substantive and procedural rights to be followed and implemented. The legal order needs to be in place where fundamental rights can be enforced.

INTERNATIONAL LAW

International law² formally introduced environmental aspects into the international forum in 1972³ with principles governing the Nations of the world. The Magna Carta had to offer a framework based on certain principles expecting the nations to follow into the domestic framework of their lands. It based environment as being our ‘global commons’ which should be protected and preserved from the adverse effect of activities not environmentally benign. From 1972 to 1982 with the World Charter for Nature⁴ was a soft law era where enforcement of rights in environmental context were not spoken. It was after The Brundtland Report in 1987⁵ for ‘Our Common Future’ and ‘Vienna Convention of Depletion of Ozone layer, 1985’⁶ were negotiated that action work or hard law obligations were recognized for environment. In 1992, The Earth Summit⁷ brought in a vast framework of hard law obligations with principles, Agenda 21⁸ and Conventions on Climate Change⁹ and Biodiversity¹⁰ were asked to be imbibed in the domestic legislations of participating Nations for action work on protection against degradation on environment. The Aarhus Convention in 1998¹¹, though was a regional European convention introduced procedural rights for environmental laws with acceptance of its principles by almost all Nations of the world. It also brought in, ‘Access to Justice’ as an essential component for procedural rights. In 2002, the Johannesburg Summit¹² took place in South Africa and discussed the problems of the third world countries for environment and other protections to be invoked. International law has progressed along with environmental developments, but what remains is action work for problems like climate change and Protection of biodiversity and perishing life forms on the earth.

INDIAN LAW

² See, Goldston A. James, *Public Interest Litigation in Central and Eastern Europe: Roots, Prospects, and Challenges*, Human Rights Quarterly, Volume. 28, pp. 492–527, 2006

³ The Stockholm Declaration, 1972; <<http://www.un-documents.net/aconf48-14r1.pdf>> Accessed on: 01 October 2017

⁴ See, <<http://www.un.org/documents/ga/res/37/a37r007.htm>> Accessed on: 01 October 2017

⁵ See, <<http://www.un-documents.net/our-common-future.pdf>> Available on: 01 October 2017

⁶ See, <<http://ozone.unep.org/en/treaties-and-decisions/vienna-convention-protection-ozone-layer>> Accessed on: 01 October 2017

⁷ See, <<http://www.un.org/geninfo/bp/enviro.html>> Accessed on 01 October 2017

⁸ See, <<https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>> Accessed on: 01 October 2017

⁹ See, <<http://environment-ecology.com/climate-change/599-united-nations-framework-convention-on-climate-change.html>> Accessed on: 01 October 2017

¹⁰ See, <<https://www.cbd.int/doc/legal/cbd-en.pdf>> Accessed on: 01 October 2017

¹¹ See, <<http://ec.europa.eu/environment/aarhus/>> Accessed on: 01 October 2017

¹² See, <<http://www.un-documents.net/jburgdec.html>> Accessed on: 01 October 2017

The Indian law has percolated all elements of International environmental law into the domestic legislative framework of the legal system. The Indian law has both its substantive and procedural laws in place for enforcement of violated environmental rights. It has a central legislations, and rules and procedures for various forms of harmful environmental activities. The Government and various departments are involved in the protection of environment, water and air, wild life etc. To check pollution it has Central and State boards, which with the help of central and state laboratories are authorized to check pollution, prepare reports not only as records but for the public to be well informed of all activities. It has various departments for granting licenses for working of hazardous activities with continuous monitoring systems and mechanisms for checks on polluting activities. It also has a judicial system present at the district, state and the central level for trial of cases. In 2010, a National Green Tribunal¹³ with various benches of seating has been set to try on environmental litigation.

A) THE LEGISLATURE

The drafting of the Legislature includes, Fundamental Rights guaranteed to the citizens under the Constitutional law calls for protection of 'Right to Life' under Article 21¹⁴, Right to Equality under Article 14,¹⁵ Right to carry on Trade or business under Article 19(1)(g),¹⁶ which should not trespass on others rights. The Directive Principles of the State Policy accommodates duties of the Citizens and the State to follow namely, Articles 47, 48-A and 51 (A)(g).¹⁷ The earliest drafted legislation in India was of the Indian Forest Act, 1927¹⁸ during the British rule in India. Then post-colonial rule came, the Wildlife (Protection) Act, 1972.¹⁹ Then came The Water (Prevention and Control of Pollution) Act, 1974.²⁰ Then, The Forest (Conservation) Act, 1980.²¹ Then The Air (Prevention and Control of Pollution) Act, 1981²² came into force. After the Bhopal Disaster, The Environment (Protection) Act, 1986²³ was brought into effect. Along with it came, The Public Liability Insurance Act, 1991.²⁴ The National Environmental Tribunal Act, 1995²⁵ was drafted but never saw the light of the day as it did not come into force. Similar was the case of, The National Environment Appellate Authority Act, 1997²⁶ which was not enforced. Then the Biological Diversity Act, 2002(18 of

¹³ See, <<http://www.greentribunal.gov.in/>> Accessed on: 01 October 2017

¹⁴ Case Material of Faculty of law, University of Delhi, July 2016

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

2003)²⁷ was brought into effect. Besides this, to deal with specific problems like ozone Depletion, hazardous waste etc, rules and regulations were enforced to regulate hazardous activities.

B) THE STATE

The valued judgment by the Indian State comes through its own mechanisms to deal with cases of pollution. Decision makers are insulated by the government policies with the help of Ministry of Environment and Forests²⁸, a Central Pollution Control Board²⁹, State Pollution Control Boards³⁰ set up in various states, Central Laboratories³¹ set up to draw samples and account for the levels of pollution prevalent and otherwise constantly monitoring the levels and likewise for Forests and Wildlife. The crippling effect on the environment by such activities despite conscious efforts to control pollution is guided by several factors as uneducated citizens, poverty, uninformed decision making, rituals and festivals where practices often tend to leave a polluted environment.

C) JUDICIARY

The legitimacy of judicial intervention in environmental matters is bolstered by the Constitutional law backing judicial power to take cognizance of environmental pollution. The right to Constitutional remedies³² and power of High Court³³ justifies judicial power in pollution matters. The judicial adjudication of environmental matters has dominated the entire environmental jurisprudence in India. The environmental litigants, lawyers, courts affected people are guided by principles of representative standing for environmental litigation. A few citizens are aware of the citizens standing rule as this is not much prevalent under the Indian law. "Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental rights of a citizen. Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be determined to the quality of life. A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Article 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the

²⁷ Ibid

²⁸ See, <<http://envfor.nic.in/>> Accessed on: 01 October 2017

²⁹ See, <<http://cpcb.nic.in/>> Accessed on: 01 October 2017

³⁰ See, <<http://www.indiaenvironmentportal.org.in/category/3884/thesaurus/state-pollution-control-board-spcb/>> Accessed on: 01 October 2017

³¹ See, <<http://www.envfor.nic.in/legis/env/so728e.htm>> Accessed on: 01 October 2017

³² Article 32, Constitution of India

³³ Article 226, Constitution of India

community.”³⁴ The Constitutional legality for environmental trials finds way through writs issued of habeas corpus, mandamus, certiorari and prohibition thereby providing environmental remedy under the law. Judicial calling under the writ of mandamus is issuance of action to be done by an administrative or judicial branch; excessive use of an authority is restrained by writs of certiorari and prohibition.³⁵

D) FORMS OF LITIGATION

Public Interest Litigation in India is an interesting mix of features of both the adversarial and inquisitorial systems. Approach based on public interest litigation is one of the most viable methods of providing environmental justice to the citizens while providing efficacy to the environmental laws.³⁶ “Public interest litigation”³⁷ contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law.”³⁸ Features of public interest litigation are non-adversarial, collaborative, cooperative and investigative in India. The litigations³⁹ pro bono publico where the litigation is filed on behalf of the public⁴⁰ on account of poverty or disability or socially or economically disadvantaged position cannot approach the Court for relief, such member of the public may move the Court and in certain trials the courts has considered letters and even newspaper articles are maintainable as appropriate proceeding.⁴¹ The report to the Indian Ministry of Law, Justice and Company Affairs by Justice Bhagawati and Justice Krishna Iyer, “expressly recommended lowering the locus standi requirement as a means of allowing concerned citizens to file cases on behalf of the underprivileged.”⁴² The other kind of litigation more common in Australian, New Zealand and in American courts is the *Citizen Suit provision*,⁴³ whereby a citizen files a suit not as a representative of others⁴⁴ but on his

³⁴ *Subash Kumar v. State of Bihar*, AIR 1991 SC 420: SCC 1991 (1) 598

³⁵ Jaswal S. P. et al, *Environmental law*, Allahabad Law Agency, Third Edition, pg.79, 2009

³⁶ See, Lee J. Christine, *Pollute First, Control Later No more: Combating Environmental Degradation in China Through an approach based in Public Interest Litigation and Public Participation*, 17, Pacific Rim Law and Policy Journal, 795 (2008).; Wang L. A. et al, *Environmental Courts And The Development Of Environmental Public Interest Litigation In China*, Journal of Court Innovation, Volume 3, pp 37-50, 2010.

³⁷ See, John Denvir, *Towards a Political Theory of Public Interest Litigation*, North Carolina Law Review, Volume 54, pp.1133-1160, 1976. Available at: <<http://scholarship.law.unc.edu/nclr/vol54/iss6/1>> Accessed on: 01 October 2017

³⁸ *Bandhu Mukti Morcha v. Union of India*, (1984) 2 SCR 67 : (AIR 1984 SC 802); *Sachidanand Pandey v. State of West Bengal*, (1987) 2 SCC 295 at p 331 : (AIR 1987 SC 1109); *Ramsharan Autyanuprasi v. Union of India*, (1989) Supp 117 SCC 251 and *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*, (1990) 4 SCC 449.

³⁹ Zygmunt J.B. Plater and Joseph H. King Jr., *The Right to Counsel Fees in Public Interest Environmental Litigation*, Tennessee Law Review, Volume 41, pp. 27-39, 1973.

⁴⁰ Meadow Menkel Carrie, *When Litigation is not the only way: Consensus building and Mediation as Public Interest Lawyering*, Washington Journal of Law & Policy, Volume 10, pp. 37-61, 2002.

⁴¹ Supra note 39

⁴² See, Michael G. Faure & A.V. Raja, *Effectiveness Of Environmental Public Interest Litigation In India: Determining The Key Variables*, Fordham Environmental Law Review, Vol. XXI, pp. 239-294, 2010.

⁴³ Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III*, Michigan Law Review, Volume 91, pp. 163-236, 1992.

own behalf whereby his rights are effective. This provision is also available to citizens under the Indian Law.⁴⁵

PUBLIC INTEREST LITIGATION AS REPRESENTATIVE STANDING

Public interest litigation with the backing of the law and the Supreme Court and other courts of India finds an aggressive use of this form to deal with environmental cases. It is this form of litigation that has maximized litigation for environmental matters. The courts have placed liabilities on Industrial activities based on 'polluter pays principle' for compensation not only for damage to the environment⁴⁶ but also to people living in those areas. Compensation goes not only to citizens but also the reformation of environment back to its original form wherever it is possible.⁴⁷ The court has further directed the State not to allow detrimental activities to be started before assessing the harm caused by such an activity is made by the Government through its environmental impact assessment measures. "The 'uncertainty' of scientific proof and its changing frontiers from time to time has led to great changes in environmental concepts during the period between the Stockholm Declaration, 1972 and the Rio Conference, 1992." The burden lies on a developer to show how his activity is environmentally benign. In Indian Cases, the courts have relied on the 'precautionary principle' as the new 'burden of proof' for giving out environmental clearance to a project.⁴⁸ Judgments based on 'Inter-generational equity' for resources to be protected as an inheritance which we pass to our future generations were called for in cases where leather tannery Industry in Tamil Nadu created an environmental havoc.⁴⁹ State as a trustee of our natural resources has a duty not to divert natural resources even for a 'fair cash' equivalent. It should be protected in a manner which is freely available to all citizens and be used only for a 'public purpose'.⁵⁰ The procedures to safeguard the fundamental rights of citizens where environmental rights violations take place were deliberated by courts in environmental trials.⁵¹ The court stopped mining activities in Dehradun as it was detrimental for the environment and causing health problems to people living in that area.⁵² The courts took a newspaper item as recognition of violation of fundamental rights of citizens of 'kullu manali'

⁴⁴ Zinn D. Matthew, *Policing Environmental Regulatory Enforcement: Cooperation, Capture, and Citizen Suits*, Stanford Environmental Law Journal, Volume 21, pp.81, January 2002.

⁴⁵ 'The Water (Prevention and Control of Pollution) Act, 1974; 'The Air (Prevention and Control of Pollution) Act, 1981

⁴⁶ *Indian Council for Enviro Legal Action v. Union of India*, AIR 1996 SC 1446; *Vellore Citizens Welfare Forums v. Union of India*, AIR 1996 SC 2715

⁴⁷ Ibid

⁴⁸ *A. P. Pollution Control Board v. M.V.Nayudu*, AIR 1999 SC 2715.; *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751.; *Goa Foundation, Goa v. Diksha Holdings Pvt. Ltd*, AIR 2001 SC 184.; *Vellore Citizens Welfare Forums v. Union of India*, AIR 1996 SC 2715.

⁴⁹ *Vellore Citizens Welfare Forums v. Union of India*, AIR 1996 SC 2715

⁵⁰ *T.N. Godavarman Thirumulpad v. Union of India*, AIR 2005 SC 4256.; *Intellectuals Forum, Tirupati v. State of A.P.*, AIR 2006 SC 1350.; *Ms. Susetha v. State of Tamil Nadu*, AIR 2006 SC 2893.

⁵¹ Supra note 39

⁵² *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1982 SC 652

where a resort was built and because the river Beas was threatening to its existence, the laws were bent to allow the owner to change the course of the river. The court imposed injunction and placed compensatory and additional penalties for the damage and restoration work to be completed.⁵³ The Directive Principles of the State Policy where duties of the State and citizens were discussed while allowing a small portion of land of a zoo for tourism purposes was allowed under change of land use policy, with a proviso that there should be no construction which would either affect the environment or the path of the migratory birds which come in seasonally.⁵⁴ In pursuance of environment protection, restrictions need to be placed on Noise Pollution, The Noise pollution Rules, 2000 were framed whereby it is an infringement of right to life under Article 21 and no noise pollution can be permitted between 10 p.m. to 6 a.m. The relaxation can be given for two hours only during festival season.⁵⁵ The court allowed a onetime decision on development to take place where allocated land for industrial purposes was allowed for development of an Institutional area.⁵⁶ The Ganga pollution from Kanpur tanneries effluents was stopped and injunction was placed asking the tanneries to install treatment plants before letting off the effluents was upheld by the Supreme Court.⁵⁷ The installation of treatment plants for discharge of water effluents were upheld in all subsequent cases and asked to be installed in all Industrial units across the country before granting licenses to such activities. Such activities were also asked to be monitored after they start functioning as a part of the government policies.⁵⁸ Relocation of industries around the Taj Mahal and restrictions on Mathura refinery were made after the findings that the white marble of the Taj Mahal an International monumental heritage was under the threat of destruction. Popularly known as the Taj Trapezium case, the Court ordered a new Industrial area to be assigned for industries to be relocated and the modern equipment which did not create pollution to be installed in these industries.⁵⁹ Where studies depicted the effect on non-smokers by people who smoke in their vicinity called for a ban on smoking in public places in Delhi. It was based on the Rajasthan Prohibition of Smoking and Non-Smokers Health Protection Act, 1999 (Act. 14 of 2000).⁶⁰ The switch over of the pollution fuels as diesel to CNG as the new fuel which creates less pollution was ordered by the courts in 2002. They also banned the use of diesel vehicles as public transport systems for future use.⁶¹ The courts ordered 'Shrimp culture' farming to banned, as it was detrimental for land ecology and for quick profits more and more people were shifting to shrimp farming method from traditional farming.⁶² The first and the foremost cases on environmental pollution was the Bhopal

⁵³ *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388; *M.C. Mehta v. Kamal Nath*, 2002(2) SCALE 654

⁵⁴ *Sachidanand Pandey v. State of West Bengal*, AIR 1987 SC 1109

⁵⁵ *Forum, Prevention of Environment & Sound Pollution v. Union of India*, AIR 2006 SC 348

⁵⁶ *Karnataka Industrial Area Development Board v. C. Kenchappa*, AIR 2006 SC 2038

⁵⁷ *M.C. Mehta v. Union of India*, AIR 1988 SC 1037 (Kanpur Tanneries case)

⁵⁸ *M/s Delhi Bottling Co. Pvt. Ltd. v. Central Board for the Prevention and Control of Water Pollution*, AIR 1986 Del. 152.

⁵⁹ *M.C. Mehta v. Union of India*, AIR 1997 SC 734 (Taj Trapezium case).

⁶⁰ *Murli. S. Deora v. Union of India*, AIR 2002 SC 40.

⁶¹ *M.C. Mehta v. Union of India*, AIR 2002 SC 1696(CNG Vehicles case).

⁶² *S. Jagannath v. Union of India*, AIR 1997 SC 811(Shrimp Culture case).

Disaster and the Oleum gas leak case⁶³ in Delhi responsible for environmental and protectionist legislations to be enacted. The court called for restraining all mining activities being carried out in the Sariska Tiger Reserve which is a protected reserve in Rajasthan.⁶⁴

CITIZENS SUIT PROVISION AS INDIVIDUAL STANDING

As environmental degradation in its high tide wave amidst policy, law and rules and regulations is countermanded, a small provision under the regulation whispers the rights of citizens to be enforced. This right is available to the citizens as Individuals only under Section 49 of 'The Water (Prevention and Control of Pollution) Act, 1974' and Section 43(1) (b) of 'The Air (Prevention and Control of Pollution) Act, 1981. "One way federal courts ensure that they have a "real, earnest, and vital controversy" before them is by testing the plaintiff's standing to bring suit. The plaintiff must allege at the pleading and later prove, an injury that is fairly traceable to the defendant's challenged conduct and that is likely to be redressed by the relief sought."⁶⁵ "Citizen-suit provisions create incentives for environmentalist plaintiffs to pursue their self-interest, in the form of settlements, remediation projects, and attorneys' fees, or to pursue symbolic victories with other value."⁶⁶ The Citizen Suit Provision⁶⁷ allows the citizens as affected parties to sue the State, not as representation of public detriment but of their own standing as Individuals to whom a public duty is owed by private individuals as well as the state. It is often referred to as 'Citizen Standing.'⁶⁸ The check of abuse on citizens finds motivation in the doctrine.⁶⁹ India being not a novelty to this situation allows the same as a part of its legislation and to be challenged by citizens in the mannerisms prescribed under the law. "The need for this standing was as a check on the abuse of executive authority in a modern welfare state. In India, since the government's regulatory competences give it enormous power, the misuse of power and authority is bound to happen. At times, government policy or inaction may threaten the environment. In such cases, application of the traditional standing doctrine could preclude citizens from seeking protection. Thus, the Supreme Court of India has expanded standing to enable citizens to challenge government actions in the public interest, even though the citizen himself suffered little or no harm."⁷⁰

NATIONAL GREEN TRIBUNAL 2010

The National Green tribunal, 2010, was a step for courting the environment issues for the first

⁶³ *M.C. Mehta v. Union of India*, AIR 1987 SC 965 (Oleum Gas leakage)

⁶⁴ *Tarun Bhagat Sangh v. Union of India*, AIR 1992 SC 514 (Sariska case)

⁶⁵ Roberts G. John (Jr.), *Article III Limits on Statutory Standing*, Duke Law Journal, Vol. 42, pp.1219-1232, 1993

⁶⁶ See, Jonathan H. Adler, *Stand Or Deliver: Citizen Suits, Standing, And Environmental Protection*, Duke Environmental Law & Policy Forum, Vol.12, pp.39-83, Fall 2001

⁶⁷ Adler H. Jonathan, *Stand or Deliver: Citizens Suits, Standing and Environmental Protection*, Duke Environmental Law & Policy Forum, Volume 12, pp.39-83, Fall 2001

⁶⁸ *Gujarat Pollution Control Board v. Nicosulf Industries & Export Pvt. Ltd*, AIR 2008 (Supp.) SC 1118

⁶⁹ *Manu Anand, Managing Director v. Madhya Pradesh Pollution Control Board*, Legal Eagle 2016 (MP) 803

⁷⁰ See, Michael G. Faure & A.V. Raja, *Effectiveness Of Environmental Public Interest Litigation In India: Determining The Key Variables*, Fordham Environmental Law Review, Vol. XXI, pp. 239-294, 2010

time in India by way of 186th Report of the Law Commission of India. What was carried on as regular trial got the elevation of specialized trials for environmental purposes. The Act led to setting up of a specialized tribunal with various places of seating of the benches in almost all corners of India. Before this only a few developed countries had specialized courts. It was around 2010, almost forty countries across the world set up specialized courts with India taking the long awaited step to be brought into force.⁷¹ The discussion of kinds of jurisdictions on environment, it is classified into three categories,” first, systems handing over environmental matters to general jurisdictions; second, systems relying on “internal specialization” of the judicial bodies (the creation of green benches or green judges without a formal change of the judicial structure); and third, systems creating innovative “Environmental Courts or Tribunals.” The third model is based on the constitution of environmental courts or tribunals, as courts specializing in only environmental cases.”⁷² Specialized courts would be reference to people having specialized knowledge in relation to environmental matters such as Judges, lawyers, technical experts and people having specialized knowledge for environmental offence related judgments and specialized procedural guidelines. The procedure indicates that after cognizance of pollution has been taken by the pollution control board and after taking in samples, assessing the damage and monetary compensation imposed on the polluter, the aggrieved party from the decision of the board may approach the tribunal for redressal. Its composition of judges and technical experts calls for civil legislation and trials for environmental justice as lawyers appearing for matters pro bono publico envisaged by the Act. The Tribunal has both original and appellate jurisdiction for environmental trials. The final appeal however lies to the Supreme Court for the grand finale. The locus standi operates by way of Section 18 of the Act of creation of ‘Access to justice’ by Individuals as well as representative standing even by NGOs for environmental purposes. Since its inception, NGT has given many fast track judgments in various cases and has passed several orders to the respective authorities like ban on illegal sand mining, against noise pollution in Delhi, preservation of bio diversity of western ghats, wildlife protection in Kaziranga national park in Assam, suspended many environmental clearances and so on.⁷³ Judicial Activism remains in the forefront of all pollution matters, and a realization of protection of environment of fundamental rights and duties, by both Citizens as well as States is adhered to under the trials.

CONCLUSION

⁷¹ See, Pring George et al, *Increase in Environmental Courts and Tribunals Prompts New Global Institute*, Journal of Court Innovation, pp.13-21, 2010; Robert Carnwath, Institutional Innovation for Environmental Justice, 29 Pace Environmental Law Review 555 (2012) Available at: <<http://digitalcommons.pace.edu/pelr/vol29/iss2/>> Accessed on: 01 October 2017

⁷² Domenico Amirante, *Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India*, Pace Environmental Law Review, Volume 29, pp.441, Issue.2, winter 2012. Available at: <<http://digitalcommons.pace.edu/pelr/vol29/iss2/3>> Accessed on: 01 October 2017

⁷³ See, Patra k. Swapan & Krishna V.V., *National Green Tribunal and Environmental Justice in India*, Indian Journal of Geo-marine Science, Volume 44(4), pp.445-453, April 2015.

The cumulative effect of contested litigations in India, can be traced to mainly decisions of courts, where trials have taken as Public Interest Litigations. The environmental issues as appear worldwide, are linked to economic factors, such as cost benefit analysis, while determining an activity to be environmentally benign. “However, the Supreme Court of India demonstrates that even though the intervention of the court may not be optimal, it can successfully promote environmental quality where the legislative and executive branches fail.”⁷⁴ The access to justice may be done by the government too, but the applicability of implementation appears to be feeble in the hands of the government. The aftermath of the Bhopal disaster not only triggered legislation but also the litigation for environmental activists, lawyers and judicial activism. The lesser known form of citizen suit provision, though subtle in our legislation, the citizens do not have enough awareness about the said provisions and therefore is not too frequent to be invoked. The Industrialist seems to pursue the single minded course of economic self-interest, which only when discovered appears to have curtailed by court decisions. Those polluted and gone for want of monetary means, do not leave a story well told to the citizens. It is the precedent set for future activities, that although, the government and courts call for establishing the ‘onus of proof’ before acceptance is given by way of a license to the activity, the truth is otherwise in most of the cases. Despite cases being in court and trials being undertaken, the river Ganga is more polluted than ever for want of disposal of waste in an uncaring manner. The corrupt unsaid practices take their toll in the care needed for protection of environment. Consequently the courts should take equal cognizance of Public Interest litigation and citizen suit provisions for future references. Exclusion of criminal liability calls for a stronger action by the legislature to enact and include provisions of criminal liability of a repeated offender. The tendency for administrative and action delays should not be a routine matter the government agencies. Monetary causes for environmental liabilities where the cash equivalence is insufficient for irretrievable losses, demands a penal liability for prosecution of a violator in environmental trials.

⁷⁴ Supra note 70