ACCESS TO ENVIRONMENTAL JUSTICE IN INDIA: INNOVATION AND CHANGE

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ABSTRACT

Access to justice is a pillar of democratic governance. It promotes just and equitable outcomes thereby supporting the rule of law. The importance of judicial institutions [courts and specialist tribunals to adjudicate environmental disputes] is widely acknowledged in international instruments. Principle 10 of the Rio Declaration, 1992, strengthens access rights by stating 'effective access to judicial and administrative proceedings, including redress and remedy, shall be provided by states in environmental matters'. In this context, India's commitment to secure environmental justice assumes significant practical importance. This chapter traces and evaluates the role of the Indian judiciary (Supreme Court of India and the National Green Tribunal) in contributing and promoting access to environmental justice. The chapter presents and analyses participatory parity in Indian environmental discourse evolved from the concept of broad and liberal litigant 'standing' in environmental matters facilitated by Supreme Court of India through Public Interest Litigation (PIL) and 'aggrieved party' by the National Green Tribunal (NGT). It reviews appropriate case illustrations in providing victims of environmental degradation with a way to access justice in a participatory manner.

1. INTRODUCTION

A broad understanding of environmental justice involves participation in environmental controversies. Participatory mechanisms can help to meliorate issues of inequality, recognition and the larger question of capabilities and functioning of individuals and communities. 'Parity of participation' comes with

the satisfaction of two conditions: 'that institutionalized cultural patterns of interpretation and evaluation express equal respect for all participants and ensure equal opportunity…' and 'the resources to enable participation'.[1]

The discourse and understanding of environmental justice has increased and now includes issues of fairness, equity and standing, rights of disadvantaged populations in developing countries and meaningful participation in the decision-making process to promote environmental governance.[2] This chapter focuses on a strong procedural dimension that reflects fair, open, informed and inclusive state institutional processes. In this context, access to justice through an accessible judicial mechanism that offers redress to environmental damage or harm and the protection and enforcement of legitimate interests becomes important.

Access to justice is a pillar of democratic governance. It promotes just and equitable outcomes thereby supporting the rule of law. Courts allow people to hold government, agencies, companies and individuals accountable for the violation of their fundamental rights as enshrined in the constitutional mandate. The UN Development Programme defines access to justice as 'the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.[3]

The importance of judicial institutions [courts and specialist tribunals to adjudicate environmental disputes] is widely acknowledged in international instruments. The World Charter for Nature provides 'all persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation.'[4] Additionally, the World Commission on Environment and Development Expert Group on Environmental Law adopted legal principles for environmental protection and sustainable development ensuring 'due process and equal treatment in administrative and judicial proceedings to all persons who are or may be affected by trans-boundary interference with their use of a natural resource or the environment.'[5]

Principle 10 of the Rio Declaration, 1992, strengthens access rights by stating 'effective access to judicial and administrative proceedings, including redress

1 *D. Schlosberg*, Defining Environmental Justice, 2007, pp. 25–29.

2 *B. Jessup*, 'The Journey of Environmental Justice through Public and International Law' in B. Jessup and K. Rubenstein (eds.), Environmental Discourses in Public and International Law, 2012, pp. 50–60; *J. Agyeman, R. Bullard and B. Evans*, Just Sustainabilities: Development in an Unequal World, 2003.

3 *R. Jayasundere*, Access to Justice Assessments in the Asia Pacific: A Review of Experiences and Tools from the Region. Bangkok, Thailand: UNDP, 2012, p. 11.

4 Article 23 World Charter for Nature 1982.

5 Article 20 Our Common Future, Annexe 1: Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development Adopted by the WCED Experts Group on Environmental Law.

and remedy, shall be provided by states in environmental matters'. Principle 10 has been recognised as a global framework incorporating elements for good environmental governance. It is characterised as promoting environmental democracy and facilitating the rule of law.[6] The Aarhus Convention[7] promotes Principle 10 and mandates binding environmental obligations that emphasise governmental accountability, transparency and responsiveness thereby bolstering access to justice and the rule of law.

Access to environmental justice is the first step to the achievement of environmental justice goals by articulating in the language of equity the assurance of legal standing for all affected and interested parties; the right of appeal or review; specialised environmental courts and other practical dispute resolution mechanisms.[8] In this context, India's commitment to secure environmental justice assumes significant practical importance. This chapter traces and evaluates the role of the Indian judiciary (Supreme Court of India and the National Green Tribunal) in contributing and promoting access to environmental justice. Accordingly, after this Introduction the chapter is divided into three parts. Part 1 offers an account of the role of specialist environmental judiciary to improve access to justice and environmental governance. Several international declarations and institutions also call for judicial specialisation, envisaging expert courts and trained judges and lawyers in environmental matters. They seek to strengthen capacity building among individuals within the decision-making process at national, regional and global levels. Part 2 presents and analyses participatory parity in Indian environmental discourse evolved from the concept of broad and liberal litigant 'standing' in environmental matters facilitated by Supreme Court of India through Public Interest Litigation (PIL) and 'aggrieved party' by the National Green Tribunal (NGT). It reviews appropriate case illustrations in providing victims of environmental degradation with a way to access justice in a participatory manner. Part 3 is the conclusion.

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6 Http://web.unep.org/about/majorgroups/partnership/participation-information; See also the 12 Bali Guidelines 2010 that deal with access to justice in environmental matters, demonstrating the importance of the rights-based approach in implementing Principle 10 of the Rio Declaration: guideline 15 (access to review procedures relating to information requests); 16 (access to review procedures relating to public participation); 17 (access to review procedures relating to public or private actors); 18 (liberal standing provisions); 19 (effective procedures for timely review); 20 (access should be not prohibitively expensive and assistance should be available); 21 (prompt, adequate and effective remedies); 22 (timely and effective enforcement); 23 (information provided about access to justice procedures); 24 (decisions to be publicly available); 25 (promoting capacity-building programmes); and 26 (ADR).

7 The UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters 1998.

8 *G. N. Gill*, The National Green Tribunal of India: A Sustainable Future Through The Principles of International Environmental Law, Environmental Law Review 2014 16(3) p. 183, 184 et seq.

2. ENVIRONMENTAL COURTS AND TRIBUNALS: FACILITATING AND PROMOTING ENVIRONMENTAL JUSTICE

The judiciary plays a 'lead role in shaping the normative interpretation of the legal and regulatory framework'. Justice Weeramantry in the commentary on the Bangalore Principles of Judicial Conduct observed that 'a judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance'.[9] An independent judiciary and the judicial process are vital for the implementation, development and enforcement of environmental law.

There is growing support for judges to play a central role in providing accessible, fair, impartial, timely and responsive dispute resolution mechanisms,. These include developing specialised expertise in environmental adjudication and innovative environmental procedures and remedies. Various international forums and associated documentation have recognised and promoted the role of the judiciary in in vindicating the rights of individuals substantively and in accessing the judicial process.[10] For example, Agenda 21 emphasises the need to provide an effective regulatory framework for improving the legal–institutional capacities of countries to cope with problems of national governance and effective law-making and law-applying in this field.[11] The Johannesburg Principles on the Role of Law and Sustainable Development adopted at the Global Judges Symposium in Johannesburg 2002 state:

> 'We emphasize that the fragile state of the global environment requires the Judiciary as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws… We are strongly of the view that there is an urgent need to strengthen the capacity of judges, prosecutors, legislators and all persons who play a critical role at national level in the process of implementation, development and enforcement of environmental law, including multilateral environmental agreements… especially through the judicial process.'[12]

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9 The Bangalore Principles of Judicial Conduct 2007 highlight seven core values: independence, impartiality, integrity, propriety, equality, competence and diligence. www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf.

10 For a detailed discussion see *N. A. Robinson*, Ensuring Access to Justice through Environmental Courts Pace Envtl. L. Rev 2012 29, p. 374 et seq.

11 Chapter 8, Agenda 21, paras 8.13, 8.26; www.un.org/esa/sustdev/documents/agenda21/english/Agenda21.pdf.

12 Www.unep.org/delc/judgesprogramme/GlobalJudgesSymposium/tabid/106158/Default. aspx. See also London Bridge Statement 2002 http://weavingaweb.org/pdfdocuments/ London%20Bridge%20Statement.pdf; Rome Symposium 2003 http://weavingaweb.org/ pdfdocuments/LN290304-Rome%20Statement%20FINAL.pdf; *Justice Paul Stein*, Why judges are essential to the rule of law and environmental protection https://portals.iucn.org/library/efiles/html/EPLP-060/section9.html; *Justice Amedeo Postiglione*, The role of the judiciary in the implementation and enforcement of environmental law www.eufje.org/images/docConf/bud2014/presAP2%20bud2014.pdf.

Also, Klaus Toepfer, UNEP Executive Director, in the 2005 UNEP Global Judges Programme stated:

> 'It is essential to forge a global partnership among all relevant stakeholders for the protection of the environment based on the affirmation of the human values set out in the UN Millennium Declaration: freedom, equality, solidarity, tolerance, respect for nature and shared responsibility. The judiciary plays a key role in weaving these values into the fabric of our societies. The judiciary is also a crucial partner in promoting environmental governance, upholding the rule of law and in ensuring a fair balance between environmental, social and developmental consideration through its judgements and declarations.'[13]

In Europe, the EU Forum of Judges for the Environment (EUFJE) was created in 2004 through which judges exchange information and ideas on the implementation and interpretation of EU legislation and provide training for judges. An aim of the Forum is 'to exchange experiences in the area of training of the judiciary in environmental law, contribute to a better knowledge of environmental law, share experiences with environmental case law and contribute to a more effective enforcement of environmental law.'[14]

In Asia and the Pacific, the Asian Development Bank (ADB) is active in promoting green justice through knowledge-sharing and capacity-building. The ADB is committed to 'strengthen the… legal, regulatory, and enforcement capacities of public institutions on environmental considerations.'[15] In 2010, the ADB organised the Asian Judges Symposium on Environmental Decision-Making, the Rule of Law and Environmental Justice emphasising:

> '… improving environmental and natural resource decision making and adjudication within regional judiciaries, without assuming that any particular form or structure is the best way to achieve effective environmental decision making and adjudication in different country contexts; highlighting environmental specialisation within general courts, as well as exploring work done by specialist environmental courts, boards, and tribunals. Importantly, without drivers for increasing the demand for effective environmental judicial decision-making from the judiciary, environmental judicial specialisations could go unused.'[16]

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13 UNEP Report UNEP/GC.23/INF/10 (2004), pp. 6, 14–15; also see *D. Kaniaru, L. Kurukulasuriya, and Okidi, C* UNEP Judicial Symposium on the Role of the Judiciary in Promoting Sustainable Development, Conference Proceedings Fifth International Conference on Environmental Compliance and Enforcement, Monterey, November 1998, p. 22; *M. Decleris*, Strengthening the judiciary for sustainable development (2011) www.unep.org/delc/Portals/119/publications/Speeches/MICHAEL_DECLARIS.pdf.

14 Www.eufje.org/.

15 *J. H. Hovland*, Foreword, Asian Judges Symposium on Environmental Decision Making ADB 2011, p. iv.

16 *Asian Development Bank*, Environmental Governance and the Courts in Asia Law and Policy Reform Brief 2012, p. 1.

Subsequently, the Bhurban Declaration 2012 included a promise for an educated judiciary, specialized courts, countries to improve the development, implementation, enforcement of, and compliance with environmental laws, as well as to make an action plan to achieve the same; strengthen the existing specialized environmental tribunals, as well as train judges and lawyers on environmental law. It included a commitment to establish green benches in courts for dispensation of environmental justice and to make necessary amendments or adjustments to the legal and regulatory structures to foster environmental justice in South Asia.[17]

Further, the ADB approved and supported technical assistance to establish the Asian Judges Network on Environment (AJNE) in 2010. The AJNE is an informal trans-governmental network committed to providing a dynamic forum for judicial capacity-building and multilateral exchanges on environmental adjudication.[18] In this network, the chief justices and judges of the Association of Southeast Asian Nations (ASEAN) and South Asian Association for Regional Cooperation (SAARC) regions have harnessed the collective judicial experience in environmental decision-making in Asia. The AJNE's contribution has been to encourage senior judiciary to recognise a shared professional mission to advance environmental justice beyond their national jurisdiction.

A consequence of these international developments has led many jurisdictions to develop some form of specialised environmental court or tribunal, while embracing a flexible mechanism for dispute resolution. Lord Carnwath, Justice of the Supreme Court of the United Kingdom, in 2012 stated:

> 'There is now widespread acknowledgement of an international 'common law' of the environment based on principles such as sustainability and intergenerational equity. There is now greatly expanded awareness of environmental issues among the judiciary, and the development of specialist courts and tribunals in many countries. … There has been progress also on public involvement, information and access to justice under Rio Principle 10.'[19]

Chief Justice Brian Preston of the State of New South Wales (NSW), Australia, Land and Environment Court observed:

> 'Increasingly, it is being recognised that a court with special expertise in environmental matters is best placed to play this role in the achievement of ecologically sustainable development… Specialisation [is] not seen to be an end, but rather a means to an end. It [is] envisaged that a specialist court could more ably deliver consistency in decision-making, decrease delays (through its understanding of the characteristics of environmental disputes) and facilitate the development of environmental laws, policies and principles.'[20]

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17 Www.adb.org/publications/south-asiaconference-environmental-justice.

18 Www.asianjudges.org/about-ajne/.

19 Www.theguardian.com/law/2012/jun/22/judges-environment-lord-carnwath-rio.

20 *B. J. Preston*, Benefits of Judicial specialisation in environmental law: the Land and Environment Court of New South Wales as a Case Study, Pace Environmental LR 2012 29(2),

The finely grained, global 2016 study by George Pring and Catherine Pring on environmental courts and tribunals identifies there were over 1200 ECTs operating in 44 countries, in every major type of legal system (civil law, common law, mixed law, Asian law and Islamic law), at all government levels, from the richest to the poorest nations, with the majority created in the previous 10 years.[21] The exponential growth of ECTs has resulted in the concomitant advantages attached to the specialised forum.[22] These include:

1. specialised expertise in complex legal, scientific and technical matters;
2. freeing the regular courts of significant and steadily increasing workload;
3. uniformity and consistency in decision-making processes;
4. greater dispatch in resolution of environmental controversies and more efficient adjudication;
5. more predictable environmental decision-making;
6. greater governmental accountability in environmental matters;
7. instilling public confidence and trust in the government and judicial system;
8. expanded notion of locus standi for effective public participation and vindication of rights;
9. reduced litigation costs;
10. adoption of flexible rules of procedure;
11. problem-solving approach that moves beyond traditional legal remedies to create innovative solutions resulting in promoting environmental sustainability including protection of human rights; and
12. demonstrating commitment to implement international obligations relating to access to justice, environmental rule of law and environmental sustainability.

Possible disadvantages include[23]:

1. costs to establish and maintain a separate legal system;
2. jurisdictional location of the ECTs to assure convenient access to parties;
3. insufficient caseload;
4. generalist judges not sufficiently trained in environmental matters;
5. tendency of an activist judiciary usurping its power and adopting an unbalanced approach;
6. lack of expertise (judges and lawyers);

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p. 386, 398,403 et seq; also see *A. H. Benjamin*, We, the judges, and the environment, Pace Environmental LR 2012 29 (2), p. 585; *M. Rackemann*, Environmental decision-making, the rule of law and environmental justice, Resource Management Theory and Practice 2011, p. 37 et seq.

21 This part is derivative from the extensive work of *G. Pring, and C. Pring*, The ABCs of the ECTs: A Guide for Policy-Makers for Designing and Operating a Specialised Environmental Court or Tribunal, (UNEP) 2016, p. 1 et seq.

22 *Id*. at p. 13, 14; also see *B. J. Preston*, Characteristics of successful environmental courts and tribunals, Journal of Environmental Law 2014 26(3), pp. 365–393 et seq.

23 *Id*. at p. 15.

7. risk of creating an inferior court below the general courts with less power and status; and
8. scepticism about defining an environmental case and determining the appropriate forum.

Although difficulties exist, the advantages attributed to environmental courts and tribunals are dominant. Specialised judicial forums in environmental matters provide a legitimate forum that helps to access environmental justice by its substantive decisions that protects constitutional, statutory and human rights, and flexible procedural requirements.

Within this context, the role of the Indian judiciary assumes enhanced importance. Access to justice, a pillar of democratic governance, promotes just and equitable outcomes thereby supporting the rule of law. In Fertilizer Kamgar Union v Union of India[24] the Supreme Court stated:

> 'The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement-the most basic 'human right'-of a system which purports to guarantee legal rights.'[25]

The following section reviews the present judicial structures that offer access to environmental justice in India. The initiative presented below has wider international purchase as it is a case study of a growing judicial development.

3. THE INDIAN JUDICIARY: PUBLIC INTEREST LITIGATION AND THE NATIONAL GREEN TRIBUNAL

PUBLIC INTEREST LITIGATION

Public interest litigation (PIL) is the product of realisation of the constitutional obligation of the court aimed at addressing and securing basic violations of human rights at the marginalised sections of society. The traditional adversarial process of 'cause of action', 'person aggrieved', and 'individual litigation' experienced a paradigmatic addition.[26] Social and economic inequality affects millions of

24 (1981) 1SCC 568.

25 *Id*. at p. 586.

26 See Report on the National Juridicare: Equal Justice – Social Justice Ministry of Law, Justice and Company Affairs 1977.

people and for these reasons the judiciary adopted the proactive role of providing redress through the innovative process of PIL or as Baxi describes 'social action litigation.'[27] The judiciary made conscious efforts to improve access to the courts for those who were historically and traditionally excluded from the legal process with regard to the protection of their fundamental human rights.[28] The word public interest has been understood as 'interest of a larger section as opposed to an individual interest and has the element of affecting greater section of the society. The expression public interest means act beneficial to general public. It means action necessarily taken for public purpose.'[29]

In Anirudh Kumar v MCD[30] the court stated:

> Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through 'class actions', 'public interest litigation' and 'representative proceedings'. Indeed, Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions.[31]

In relation to environmental matters, India's environmental justice discourse resonated from a growing judicial realisation and appreciation of the connection between human rights and environmental protection. The deficiencies in environmental regulation, contradictions and gaps in institutional mechanisms,

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27 *U. Baxi*, Taking suffering seriously: social action litigation in the Supreme Court of India Third World Legal Studies 1985 4(1), pp. 107–109. Baxi argued that whereas PIL in the United States has focused on 'civic participation in governmental decision making', the Indian PIL discourse was directed against 'state repression or governmental lawlessness' and was focused primarily to support the rural poor. Also see, *C.D. Cunningham*, Public Interest Litigation in Indian Supreme Court, Journal of Indian Law Institute(1987) 29 p. 494; *P.N. Bhagwati*, Judicial Activism and Public Interest Litigation, Columbia Journal of Transnational Law (1984) 23 p. 561.

28 The development of PIL in India can be traced through three phases. The first phase, or golden era, was in the 1970s and early 1980s when the courts entertained cases concerning the enforcement of the fundamental rights of marginalised and deprived sections of the society. The second phase started in the 1980s when the judiciary through innovative and creative judicial craftsmanship structured to protect ecology and the environment. The third phase saw the expansion of the jurisdictional ambit of PIL to include cases dealing with exposing corruption and maintaining probity and morality in state governance. For a detailed discussion see State of Uttaranchal v Balwant Singh Chaufal (2010) 3 SCC 402; *S. Dam*, Law-making beyond lawmakers: understanding the little right and the great wrong (analysing the legitimacy of the nature of judicial law-making in India's constitutional dynamic), Tulane Journal of International and Comparative Law 2005 13 p. 109, 115–116 et seq; *S. Deva*, Public interest litigation in India: a critical review, Civil Justice Quarterly 2009 28(1) p. 19, 27et seq.

29 Dighi Koli Samaj Mumbai Rahivasi Sangh v Secretary, Shri Jagannath Ambaji 2009 SCC OnLine Bom 1034.

30 (2015) 7 SCC 779.

31 *Id*. at p.780.

inefficiencies in administrative enforcement, multi-layered corruption (including political corruption for personal gain) collectively prompted the Supreme Court of India into the de facto role of a caretaker of the environment through PIL.[32] In State of Uttaranchal v B S Chaufal[33] the court observed:

> 'The scale of injustice occurring on the Indian soil is catastrophic. Each day hundreds of thousands of factories are functioning without pollution control devices. Thousands of Indians go to mines and undertake hazardous work without proper safety protection. Everyday millions of litres of untreated raw effluents are dumped into our rivers and millions of tons of hazardous waste are simply dumped on the earth. The environment has become so degraded that instead of nurturing us it is poisoning us. In this scenario, in a large number of cases, the Supreme Court intervened in the matter and issued innumerable directions.'[34]

Such large-scale environmental degradation and adverse effects on public health prompted environmentalists, NGOs and affected citizens to approach the courts, particularly the higher judiciary, for remedial action. Environmental PIL is a product of the higher judiciary's response to the inaction of the state or failures of state agencies to perform their statutory duties that resulted in the endangerment or impairment of people's quality of life as guaranteed by the Constitution of India. In the past two decades the courts have locked together human rights and the environment and entertained PIL petitions from various quarters seeking remedies, including guidelines and directions in the absence of legislation. The use of PIL as a broad-based, people-oriented approach that provides access to justice has become a 'wheel of transformation' for victims of environmental degradation.[35] The 'collaborative approach, procedural flexibility, judicially supervised interim orders and forward-looking relief '[36] by and large received strong public support and acquired social legitimacy.

In this regard, three constitutional provisions, Articles 21, 48 A and 51A (g), have played a significant role in producing a major shift in the environmental landscape of India. Article 21 being a fundamental right guarantees the right to life. The Supreme Court has developed its case law for environmental protection by providing an expansive interpretation of the term 'life' to include the protection and preservation of the environment, ecological balance free from pollution of

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32 *South Asian Human Rights Documentation Centre*, Human Rights and Humanitarian Law: Developments in Indian and International Law, 2008 p. 423.

33 (2010) 3 SCC 402.

34 *Id*. at p. 437.

35 For details *G. N. Gill*, Human rights and environmental protection in India: a judicial journey from public interest litigation to the National Green Tribunal in A Grear and E Grant (eds), Thought, Law, Rights and Action in an Age of Environmental Crisis, 2015 pp. 123–154; *S.P. Sathe*, Judicial Activism in India 2002 p. 210.

36 *L. Rajamani,* Public interest litigation in India: exploring issues of access, participation, equity, effectiveness and sustainability, (2007) 19(3) *Journal of Environmental Law*, p. 1.

air and water, sanitation, without which life cannot be enjoyed. In Municipal Corporation of Greater Mumbai v Kohinoor CTNL Infrastructure[37] the court stated:

> '… it must be noted that the right to a clean and healthy environment is within the ambit of Article 21, as has been noted in Court on its Own Motion v Union of India reported in 2012 (12) SCALE 307 in the following words: – The scheme under the Indian Constitution unambiguously enshrines in itself the right of a citizen to life under Article 21 of the Constitution. The right to life is a right to live with dignity, safety and in a clean environment.'[38]

Article 48 A, a directive principle of state policy, mandates the state to protect and improve the environment and safeguard forests and wildlife. Article 51A (g) imposes a fundamental duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have a compassion for living creatures. The social obligation under Article 51A(g) has broadened the scope of 'citizen' to permit public spirited citizens, interested institutions and non-governmental organisations [NGO's] to file and advance PILs for environmental protection. Importantly, the apex court has given effect to Articles 48A, 51A (g) and 21 by citing them as complementary to each other and in appropriate cases have issued necessary directions in environmental cases. In Intellectual Forum, Tirupathi v State of A.P.[39] the Supreme Court observed 'the environmental protection and conservation of natural resources has been given a status of a fundamental right and brought under Article 21 of the Constitution of India. This apart, Articles 48A and 51A (g) are not only fundamental in the governance of the country but also it shall be the duty of the state to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Article 21.'[40]

The Supreme Court devised new procedures applicable to PIL to provide access to environmental justice to people who otherwise would be denied it. In Mumbai Kamgar Sabha v Abdulbhai Faizullabhai[41] the court, while making a conscious effort to improve judicial access, observed 'procedural prescriptions

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37 (2014) 4 SCC 538.

38 Id. at p. 556; see also Delhi Jal Board v National Campaign for Dignity and Rights of Sewerage and Allied Workers (2011) 8 SCC 574; M C Mehta v Kamal Nath (2000) 6 SCC 213; Narmada Bachao Andolan v Union of India AIR 2000 SC 3751; A.P. Pollution Control Board v Prof M.V. Nayudu AIR 1999 SC 812; Vellore Citizen Welfare Forum v Union of India AIR 1996 SC 2715; Virender Gaur v State of Haryana (1995) 2 SCC 57; Subhash Kumar v State of Bihar AIR 1991 SC 420; Chhetriya Pradushan Mukti Sangharsh Samiti v State of Uttar Pradesh AIR 1990 SC 2060).

39 (2004) 3 SCC 549.

40 *Id*. at p. 576.

41 (1976) 3 SCC 832.

are handmaidens, not mistresses, of justice and failure of fair play is the spirit in which courts must view (processual) deviances.'[42] The relaxation of the rule of *locus standi* constitutes a major procedural innovation. Justice Krishna Iyer, one of the most socially aware and concerned judges, stated:

> '… the truth is that a few profound issues of processional jurisprudence of great strategic significance to our legal system face us. We must zero in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of the British-India vintage. If the centre of gravity of justice is to shift, as the Preamble of the Constitution mandate, from the traditional individualism of locus standi to the community orientation of public interest litigation, these interests must be considered.'[43]

Traditional locus standi has been modified in two ways: by representative and citizen standing.[44] Representative standing allows any person, acting bona fide, to advance claims against violations of human rights of victims who because of their poverty, disability or socially or economically disadvantaged position could not approach the Court for judicial enforcement of their fundamental rights. NGO's and environmental activists working on behalf of the poor and tribal people have entered the courts by exercising this procedure. For example, Indian Council for Enviro-Legal Action v Union of India (commonly known as the Bichhri case)[45] was a grass-root initiative by the NGO to take up an industrial pollution issue in rural India and its effect upon the peasant farmers and the local community. In Sterlite Industries v Union of India[46] the Supreme Court observed that voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest, environmental protection and against the mighty and resourceful. The citizen standing provides a platform to seek redress for a public grievance: this affects society as a whole rather than an individual grievance. The cases of Urban and Solid Waste Management[47] and The Taj Mahal[48] were heard as a result of an application through citizen

42 Id. at p. 837.

43 Municipal Council Ratlam v Vardhichand (1980) 4 SCC 162, p. 163.

44 *G. N. Gill*, Human rights and the environment in India: access through public interest litigation, Environmental L R (2012) 14 p.201, 203–204 et seq; *M. G. Faure and A. V. Raja*, Effectiveness of environmental public interest litigation in India: determining the key variable, Fordham Environmental L R (2010) 21225; *L. Rajamani,* Public interest litigation in India: exploring issues of access, participation, equity, effectiveness and sustainability, Journal of Environmental Law (2007) 19(3) p. 29; *S. Divan and A. Rosencranz*, Environmental Law and Policy in India, (2001), p. 133; *S. Shankar and P. Mehta*, Courts and socio-economic rights in India in V Gauri and D M Brinks (eds.), Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World (2008) p. 146–182.

45 AIR 1996 SC 1446; see also RLEK v. State of Uttar Pradesh and Others AIR 1985 SC 65; T. N. Godavarman v. Union of India AIR 1997 SC 1228.

46 (2013) 4 SCC 575.

47 Almitra H Patel v Union of India Writ Petition No 888 of 1996.

48 M. C. Mehta v Union of India AIR 1997 SC 734.

standing, whereby public-spirited citizens sought to make the state accountable for its inaction or wrongdoing.

The proactive Supreme Court of India acting as 'amicus environment' through representative and citizen standing has promoted dynamism and capability thereby providing victims of environmental degradation with a way to access justice in a participatory manner. Thus, the liberal interpretation of locus standi has removed traditional procedural shackles in order to enable the hearing of petitions for remedying hardships resulting from a gross violation of fundamental rights and brought by a group or class action, or when basic human rights are invaded, or where complaints of such acts have shocked the judicial conscience. For the purposes of locus standi what is relevant is the substance of breach of law or Constitution complained and not whether the citizen personally suffered little or no harm.[49] The environmental PIL and locus standi introduced a transformative process being polycentric, participatory and democratic in order to meet the challenges of the time.

Although PIL and its associated relaxed procedures have advantages for securing environmental justice they are not without external criticism. The critics see the courts adopting responsibilities traditionally exercised by Parliament and the executive. The widespread jurisprudential question concerning the appropriateness of judicial law making is no better illustrated than in India where the Supreme Court through PIL has been accused of being a hyper active law-making body.[50] The judges are breaching the doctrine of separation of powers by trespassing upon the areas traditionally and properly occupied by the executive and the legislature. For example, Court has issued notices and directives to the central and state governments on multiple environmental issues, such as relocating hazardous industries from the National Capital Region Delhi[51], issuing guidelines for the prevention of noise pollution[52], the conversion of all diesel-powered buses in Delhi to Compressed Natural Gas (CNG)-driven ones to check air pollution.[53] The court, however, has denied any such usurpation. In its pronouncements, it has justified its actions either under a statutory provision or as an aspect of its inherent powers.[54]

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49 Bombay Environmental Action Group v State of Maharashtra (1999) 2 Mah LJ 747.

50 *V. Gauri*, Public Interest Litigation in India: Overreaching or Underachieving? Policy Research Working Paper 5109, The World Bank, (2009) p.4; *A.H. Desai & S. Muralidhar*, Public Interest Litigation: Potential and Problems in B.N. Kirpal, A.H. Desai, G. Subramanium, R. Dhavan & R. Ramachandran (eds), Supreme but not Infallible: Essays in Honour of the Supreme Court of India (2000); *M.P. Jain*, The Supreme Court and Fundamental Rights in S.K. Verma and Kusum (eds), Fifty Years of the Supreme Court of India, (2008) p. 86; *U. Baxi*, How not to judge the judges: notes towards evaluation of the judicial role, Journal of the Indian Law Institute (1983) 25 p. 21.

51 M. C. Mehta v Union of India (2004) 12 SCC 18.

52 In re Noise Pollution AIR 2005 SC 3136.

53 M. C. Mehta v Union of India Order dated 28 July 1998.

54 *G. Sahu*, Implications of Indian Supreme Courts innovation for environmental jurisprudence, Law, Environmental and Development Journal (2008) 4(1) p.3, 17 et seq.

Further, a climate of inconsistency and uncertainty exists with reference to entertaining and rejecting environmental PILs. This has become a serious concern among public-spirited citizens who see the court as the last resort for protecting the environment and citizens' rights. Contrasting judicial decisions reflect environmental bias and inconsistency as:

> 'the right to environmental protection has thus been whimsically applied by individual judges according to their own subjective preferences usually without clear principles guiding them about the circumstances in which the court could issue a mandamus for environmental protection. It appears that when socio-economic rights of the poor come into conflict with environmental protection the court has often subordinated those rights to environmental protection. On the other hand, when environmental protection comes into conflict with what is perceived by the court to be 'development issues' or powerful commercial, vested interests, environmental protection is often sacrificed at the altar of 'development' or similar powerful interests.'[55]

The relaxation of the 'standing rule' has opened the Court to the possibility of 'forum shopping' whereby justice according to law is more personality driven than being institutionalised adjudication. Such judges have become known as 'green judges', 'pro poor', or 'progressive' whilst others seeking media coverage encourage PIL litigation cases in their courtrooms. These judges encourage the cult of individualism that, in turn, reduces the predictability factor associated with the doctrine of precedent. Judgements should be based neither upon the whim of the individual nor the pre-selection of a supportive judge.[56]

The liberal interpretation of locus standi has been criticised because it is promotes litigation within an already litigious society.[57] Cases are lodged within a system that is already groaning under the weight of its case load. What commenced as cost effective and expeditious litigation has become, at times, both expensive and time consuming. For example, in the Delhi Vehicular Pollution case, the original writ was filed in 1985. The case remains active to this day, although many interim orders and directions have been passed.[58]

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55 *P.R. Bhushan*, Misplaced priorities and class bias of the judiciary, *Economic and Political Weekly*, 2009 44(14), pp. 32–37. Also see *G. Sahu*, Why the underdogs came out ahead: an analysis of the Supreme Court's environmental judgments, 1980–2010, *Economic and Political Weekly*, (2014) 49(4), pp. 52–57; for details see *G. N. Gill*, Environmental Justice in India: The National Green Tribunal, (2017), pp. 50–52; *M. Galanter*, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change, Law and Society Review (1974) 9/1 pp. 95–16; Banwasi Seva Ashram v State of Uttar Pradesh AIR 1987 SC 374; DDA v Rajendra Singh AIR 2010 SC 2516; Orissa Mining Corporation v MoEF (2013) 6 SCC 476.

56 *B. N. Srikrishna*, Judicial Activism-Judges as Social Engineers, Skinning a Cat. SCC Journal 2005 p.8.

57 *S.P. Sathe*, Judicial Activism in India Transgressing Borders and Enforcing Limits, (2002) p. 232; see also *R. Moog*, Delays in Indian Courts, Justice System Journal (1992)16 pp. 19–36.; *M. Galanter*, Law and Society in Modern India, (1989), *Law Commission of India*, Delay and Arrears in Trial Courts, 77th Report (1978).

58 M C Mehta v Union of India Writ Petition Civil No. 13029 of 1985.

PIL and locus standi have also been exploited by the usage of bogus litigation that is collusive, profiteering or speculative. Manipulative litigants may seek to damage rivals or competitors through this procedure.[59] In recent years there has grown a feeling that publicity interest litigation has become private interest litigation producing a tendency to being counterproductive. In State of Uttaranchal v Balwant Singh Chaufal[60] the court observed:

> '… unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think the time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged…'[61]

Thus, although the environmental PIL both promoted and experienced an expansionist approach from the Supreme Court and resulted in a procedure that allowed indigents and concerned citizens to access the courts via PIL, the process did not prove to be a 'magic bullet'. Within such a restrictive structure PIL could have only a limited impact. Indeed, in 2009 when the Green Tribunal Bill was debated in Parliament figures provided in the federal legislature by Shri Jairam Ramesh, the former Minister of State of the Ministry of Environment and Forests, declared that some 5,600 environmental cases were back logged, awaiting disposal in the High Courts of India.[62] As with all processes it had its weaknesses and limitations. Innovation and change were needed. This occurred through the establishment of the National Green Tribunal (NGT).

THE NATIONAL GREEN TRIBUNAL

The establishment of NGT as a dedicated environmental court was a result of the recommendations of the Law Commission of India in addition to the above-mentioned problems of delay and back logging in PIL.[63] The Indian Parliament

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59 *G. N. Gill*, Human rights and the environment in India: access through public interest litigation, Environmental L R (2012) 14 p. 20, 205 et seq; see also *G. Sahu*, Implementation of Environmental Judgments in Context: A Comparative Analysis of Dahanu Thermal Power Plant Pollution Case in Maharashtra and Vellore Leather Industrial Pollution Case in Tamil Nadu, Law, Environment and Development Journal (2010) 6/3 p. 337, 340–341 et. seq.

60 (2010) 3 SCC 402.

61 Id. at pp. 409–410.

62 Lok Sabha Debates http://164.100.47.132/LssNew/psearch/Result15.aspx?dbsl=180.

63 *The Law Commission of India*, One Hundred and Eighty Sixth Report on 'Proposal to Constitute Environment Courts' (2003). The Law Commission of India was influenced by decisions of the Supreme Court of India that in dicta advocated the establishment of environment courts. In A.P. Pollution Control Board vs. M.V. Nayudu 1999(2) SCC 718 and 2001(2) SCC 62, M.C. Mehta vs. Union of India AIR 1987 SC 965 and Indian Council for Enviro-Legal Action vs. Union of India 1996(3) SCC 212 the Supreme Court acknowledged that judges face

passed the National Green Tribunal Act in June 2010.[64] It provides for the establishment of a NGT. The Tribunal decides cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment and gives relief and compensation for damages to persons and property. The NGT was established on 18 October 2010 and became operational on 5 May 2011 with New Delhi selected as the site for the Principal Bench.[65] The Ministry of Environment and Forests (MoEF), Government of India, issued a notification, on 17 August 2011, establishing regional benches of the NGT in Bhopal, Pune, Chennai and Kolkata to cover the central, western, southern and eastern zones of India.[66] Additionally, in order to become more accessible to people, especially in remote areas, the NGT follows the circuit procedure of 'courts going to people and not people coming to the courts'.[67] The effect is a reformist approach through a regional and circuit bench development that enables access to environmental justice.

The NGT is a specialised body where the decision-makers hold relevant qualifications and appropriate work experience both in law and technical fields. It is a multi-faceted, multi-skilled body. It produces a coherent and effective institutional mechanism to apply complex laws and principles in a uniform and consistent manner whilst simultaneously reshaping the approach to solve the environmental problem at its source rather than being limited to pre-determined remedies. The combination of legal, scientific and technical expertise has a dynamic impact on the content and development of environmental policies and law.[68]

The NGT, in its commitment to resolve environmental issues, adopts different procedures in order to promote the larger public interest and dramatically expands traditional judicial functions associated with case management and disposal of the individual case. These procedures provide steadfast foundations to guide decision-making in environmental matters that ultimately lead to

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difficulties as a result of lack of scientific knowledge and inadequate exposure and training in environmental matters. Environmental cases involve assessment and evolution of scientific and technical data. It might be desirable to set up environment courts on a regional basis with one professional judge and two experts, keeping in view the expertise required for such adjudication.

64 The National Green Tribunal Act 2010, the Gazette of India Extraordinary (No. 19 of 2010); See for details *G.N. Gill*, A Green Tribunal for India, Journal of Environmental Law (2010) 22(3 pp. 466–468).

65 Ministry of Environment and Forests (MoEF), Government of India, Notification, 5 May 2011, SO 1003 E.

66 MoEF, Government of India, Notification, 17 Aug. 2011, SO 1908 E.

67 Shimla has received circuit benches from Delhi (NGT/PB/157/2013/331 20 December 2013) as has Jodhpur from the central zone (NGT/PB/266/2013/281 2 December 2013), Meghalaya from the eastern zone (NGT/PB/Pr/CB/97/2014/M78) and Kochi from the southern zone (NGT/PB/266/2015/299).

68 For a detailed account see *G. N. Gill*, Environmental justice in India: the National Green Tribunal and Expert Members, Transnational Environmental Law (2016) 5(1) pp. 175–205.

better results based upon a right based approach. For instance, the adoption of an investigative procedure involving the inspection of affected sites by expert members.[69] The purpose of site inspection is to compare and contrast contradictory claims, positions and reports filed by the respective parties. The stakeholder consultative adjudicatory process is the most recent of the NGT's problem-solving procedures.[70] Major issues having a public impact either on public health, environment or ecology can be better handled and resolved when stakeholders are brought together alongside the Tribunal's scientific judges for eliciting the views of all concerned – government, scientists, NGOs, public and the NGT. Stakeholder process evokes a greater element of consent rather than opposition to a judgment.

With the implementation of the NGT Act 2010, 'standing' has been reformulated in terms of an 'aggrieved person' who has access to the Tribunal to seek relief or compensation or settlement of environmental disputes. An aggrieved person has the right to approach the Tribunal under its original[71] or appellate jurisdiction[72], and it is important to note that the 'aggrieved person' in environmental matters has been given a liberal and flexible interpretation. Section 18(2) NGT Act 2010 has wide coverage which also allows any aggrieved person and legal representatives of the various categories to file an application for grant of relief or compensation or settlement of dispute. This includes a person who

a. has sustained an injury;
b. is the owner of the property to which damage has been caused;
c. is the legal representative in the case of death resulting from environmental damage;
d. is a duly authorised agent; e represents a state agency; or
e. is an aggrieved person, including any representative body or organisation

The expression 'person aggrieved' is given a wide connotation and any person directly or indirectly affected or even interested is permitted to ventilate grievance in an application or appeal to address participatory parity. The NGT, in Jan Chetna v MoEF[73] explained the scope and ambit of the term and stated:

> '… the expression aggrieved person cannot be considered in a restricted manner. A liberal construction and flexible interpretation should be adopted. In environmental matters, the damage is not necessarily confined to the local area where the industry is established. The effects of environmental degradation might have far reaching consequences going beyond the local areas. Therefore, an aggrieved person need not

69 K.K. Singh v. National Ganga River Basin Authority. Judgment 16 October 2014.
70 Manoj Mishra v. Union of India, NGT Judgment, 13 January 2015 (now referred to as the Maily se Nirmal Yamuna Revitalization Plan 2017).
71 Section 14, NGT Act 2010.
72 Section 16, NGT Act 2010.
73 Judgment 9 February 2012.

> be a resident of the local area. Any person whether he is a resident of that particular area or not, whether aggrieved or not, can approach this Tribunal. In such a situation, it is necessary to review the credentials of the applicants/appellants as to their true intention or motives.'[74]

The bench, in its liberal interpretation was guided by two reasons: first, the inability of persons living in the area or vicinity of the proposed project to understand the intrinsic scientific details and the effects of the ultimate project and any disaster it may cause and thus the right to any citizen to approach the tribunal regardless of whether he is directly affected by a developmental project or whether a resident of affected area or not; second, the subservience of statutory provisions of National Green Tribunal Act 2010 to the constitutional mandate of Article 51A (g) providing a fundamental duty of every citizen to protect and improve the natural environment. Thus literally, any person can approach the Tribunal and complain of environmental threats or damage as a consequence of the activities of the State or any organization or individual under either original or appellate jurisdiction.[75]

The NGT, for example, allowed an appeal against the Ministry of Environment and Forests for the grant of environmental clearance for expansion of steel and power plant without following the mandatory requirement of a public hearing to the aggrieved party. A public hearing in environmental projects is not just a procedural formality but is meant to ensure that the decision is based on proper assessment, evaluation of the pros and cons including the cost and benefits in general, and takes into account the needs and living conditions of locals. The Tribunal identified a public hearing as a *sine qua non* for not only environmental matters but also in accordance with good governance based on transparency and accountability.

Another judgment that further expands the already liberal definition of an 'aggrieved person' is the case of Betty C. Alvares v State of Goa.[76] The word 'person' was construed to include 'an individual', whether an Indian national or a person who is not a citizen of India. The Tribunal appears to have opened its doors globally to each and every person, including incorporated bodies, who consider themselves 'aggrieved' within the political boundaries of India subject to the enactments specified within Schedule 1 of the NGT Act 2010.[77] The proceedings related to an environmental dispute raised by Betty Alvares (a resident in India but not an Indian citizen) and was held to be maintainable. The Tribunal held

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74 Id. at paras 21 and 22.

75 See also Amit Maru v MoEF Judgment 1 October 2014, Goa Foundation v. Union of India Judgment 18 July 2013 and Vimal Bhai v MoEF Judgment 14 December 2011.

76 Judgment 14 February 2014.

77 The enactments in Sch. I include the following: Water (Prevention and Control of Pollution) Act 1974; Water (Prevention and Control of Pollution) Cess Act 1977; Forests (Conservation) Act 1980; Air (Prevention and Control of Pollution) Act 1981; Environment (Protection) Act 1986; Public Liability Insurance Act 1981; and Biological Diversity Act 2002.

that it is not necessary that an individual has personally suffered any loss on account of damage caused to the environment by acts of illegal construction and encroachment of the sea beaches thereby violating coastal zone regulations.

Further, the ability both to fast track and to decide cases within six months of application or appeal[78], and the initial filing fee for application or appeal of £10[79], provide access to justice for all potential aggrieved parties. In contrast, the Tribunal has discouraged litigation where some persons with vested interests indulge in meddling with the judicial process either by force of habit or from improper motives. Litigious petitioners will not be entertained by the Tribunal as an 'aggrieved party' and costs will be imposed to deter such people from filing frivolous applications.[80]

Recent work[81] provides evidence that identifies the parties to environmental disputes by analysing some 1130 cases decided by the National Green Tribunal between July 2011 and September 2015. The most frequent plaintiffs are NGOs/ social activists/ public-spirited citizens. They account for 533 plaintiffs (47.2 per cent) of 1130 cases. For example, in Vimal Bhai v. Ministry of Environment and Forests[82] allowed an application by three environmentalists concerning the grant of an environmental clearance for the construction of a dam for hydroelectric power across the river Alakhnanda in Chamoli district of Uttarkhand. The NGT ruled that the three environmentalists were an aggrieved party and that their claim for a public hearing concerning the grant of an environmental clearance was sustainable. The history of PIL and relaxed locus standi (representative and citizen standing)[83] has developed this group as an experienced active body of plaintiffs, hence their regular and successful appearance in all NGT benches. The group success rate in cases they brought stands at 38.3 per cent. This significant number demonstrates both the opportunity to, and the ability for, public-spirited citizens and organisations to use the NGT as a route to seek remedies through collective proceedings instead of being driven into an expensive plurality of litigation, thereby, affirming participative justice.

Affected individuals/communities/residents brought 17.7 per cent of all cases with a success rate of 56 per cent. For example, in R J Koli v State of Maharashtra[84] the Tribunal allowed an application filed and argued in person by traditional fishermen seeking compensation for loss of livelihood due to infrastructural project activities. The relatively low costs of bringing the case coupled with positive

78 Section 18(3), NGT Act 2010. This contrasts with the historical and contemporary levels of delay that are, unfortunately, a powerful feature of the Indian court system.

79 Rule 12, National Green Tribunal (Practices and Procedure) Rules 2011.

80 Rana Sengupta v Union of India, Judgment 22 March 2013; Bajinath Prajapathi v Ministry of Environment and Forests, Judgment 20 January 2012.

81 For a detailed account see *G. N. Gill*, Environmental Justice in India: The National Green Tribunal (2017), pp. 194–195.

82 Judgment 14 December 2011.

83 See above notes 44 and 45.

84 Judgment 27 February 2015.

encouragement by the NGT to litigants in person reflect a conscious effort on the part of the Tribunal to promote access to environmental justice. Indigent and illiterate litigants have been encouraged to speak in their vernacular language (especially at regional benches) to ventilate their grievances and personal and community experiences. Confidence-building in the NGT has and will result in motivating litigation from within these groups who traditionally had little or no access to justice. This reflects a broad-based, people-oriented approach by the NGT.

The locus standi and the liberal interpretation of 'person aggrieved' has opened up access to the Tribunal to promote diffused and meta-individual rights. Nevertheless, with a rapidly increasing workload, delay might become a serious issue for the NGT. On a positive note the transformation sought by the NGT is a metamorphosis of societal environmental interests that encapsulate what is important for the well-being not only of the individual but also the larger public interest. The NGT's legitimacy is grounded in its inclusive participatory mechanisms.

4. CONCLUSION

Green jurisprudence in India reflects the application of an expansive interpretation of the Constitution by a liberal Supreme Court that created a procedure that allowed indigents and concerned citizens to access the courts via PIL and thereafter through the NGT. Principal 10 of the Rio Declaration has been given a radical interpretation and novel application in India. Active, participatory citizenship has been encouraged, particularly by the NGT's decisions, to challenge and bring to account recalcitrant both private and public parties that include the state and para-statal agencies, for their acts of negligence, malfeasance, misfeasance, indifference and indolence regarding their statutory and constitutional responsibilities to protect and maintain the ecology and environment of India.

The NGT has adjudicated according to its enabling statute but has gone much further through judicial activism by producing expansive, innovative judgments based on Article 21 of the Constitution the effects of which go beyond the 'court room' door resulting in far reaching social and economic results. The transformation of public awareness sought by the NGT has helped promote a change in societal attitudes to the environment and related challenges. In essence the Indian judiciary and the NGT have adopted the primary responsibility of environmental protection and promotion.