Environmental Benches In India Vis A Vis Sustainable Development Goals With Special Reference To New Zealand

Dr. Varun Chhachhar[1] & Dr. Niharika[2]

[1]Associate Professor, Faculty of Law, University of Lucknow,
Director, Dr. Shankar Dayal Sharma Institute of Democracy,
University of Lucknow
mail : chhachhar.varun@gmail.com
chhachhar_varun@lkouniv.ac.in
[2]Assistant Professor, Faculty of Law, University of Lucknow
nihar.rites@gmail.com

ABSTRACT

The need to resolve environmental concerns has become more urgent than ever. With each passing day, the world is coming closer to a time, when earth will become uninhabitable. The international community has been holding discussions for protection of environment for quite some time now, but the results has been anything but a game changer. The increased temperature, change in season cycles, extreme rainfall conditions, etc. are not only affecting human health but is also impacting the agricultural activities. Without food, water, and favourable weather conditions, human survival is impossible. In order to ensure the availability of resources for the future generations, it is necessary that every State acts actively within its territory and complies with its international commitments. The establishment of green courts/ environment benches is an effective way for speedy disposal of environment related matters. It can keep a check on environment degrading activities which will fulfil the ultimate objective of protection of environment. In India, National Green Tribunal is the statutory body that has full-fledged environmental jurisdiction. It is working as a dedicated agency for the protection of environmental rights. It is a quasi-judicial authority with expert members and judicial members. It has a jurisdiction to impose heavy penalties on degradation of environment. Similar jurisdiction started in New Zealand in as early as 1991 and became an instrument of justice delivery mechanism for environmental jurisprudence across world. This article attempts to understand the viability of green benches with reference to National Green Tribunal and similar jurisdictions in New Zealand. It

will also explore the role of urban local self-government in the protection of environment.

Keywords: Sustainable development, environment, green benches, local self-government.

I. INTRODUCTION

The need for environmental courts has been felt at various instances. It was in the case of M.C Mehta v. Union of India[1] that the Hon'ble Supreme Court observed that "environment courts" must be established for expeditious disposal of environmental cases which has been repeated time and again. As a result, the Indian Parliament enacted two significant legislations i.e., the National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997. But as time saw, these legislations were not able to do much and there was still an increasing demand for a comprehensive legislative framework to deal with the environmental cases more efficiently. Ultimately, the National Green Tribunal Act, 2010[2] was passed by the Parliament. The Act was need of the hour as it covered variety of issues associated with environment. The statutory body under the Act i.e., National Green Tribunal is in consonance with the international commitments on environment such as Stockholm Declaration of 1972, and Rio Declaration of 1992. These Declarations has called upon the States to provide effective access to judicial and administrative proceedings including redressal and remedy to the victims of pollution and environmental damages.

The Tribunal has been created with the objective of effective and speedy disposal of environmental cases covering environment

* The Author is an Associate Professor, Faculty of Law, University of Lucknow & Director, Dr. Shankar Dayal Sharma Institute of Democracy, University of Lucknow. He did his PhD on the Topic "*Right to Information, Accountability and Administration of Justice*" from Faculty of Law, Jamia Millia Islamia, New Delhi. He is also Project Director to a major research project on "*Role of Public Policies in better Environmental Management of Municipalities in the State of Uttar Pradesh with special reference to smart cities of State*" awarded by ICSSR, Ministry of Education, Govt. of India.

** The Co-Author is an Assistant Professor, Faculty of Law, University of Lucknow. She is also Co-Project Director to a major research project on "*Role of Public Policies in better Environmental Management of Municipalities in the State of Uttar Pradesh with special reference to smart cities of State*" awarded by ICSSR, Ministry of Education, Govt. of India.

[1] (1987) 1 SCC.

[2] It was passed on 02-06-2010 and came into force on 02-06-2010. It has repealed the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997.

protection, conservation of natural resources and forests. It also aims to facilitate the enforcement of legal rights related to environment and provide appropriate remedy including compensation for the damage caused to persons or property. The tribunal has lessened the burden of the courts in the country as it took large number of environmental cases for dispensing justice. Thus, India has become the third country in the world to have an exclusive court for environmental cases. In the leading case of Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India[3], the Supreme Court directed that the environmental issues and matter covered under the National Green Tribunal Act, 2010, Schedule I should be instituted and litigated before the National Green Tribunal. Matters instituted after coming into force of this Act are covered under the provisions of this Act and can be instituted and litigated before National Green Tribunal. It was also observed that "this will help in rendering expeditious and specialised justice in the field of environment to all concerned."

The NGT Act covers various aspects of environmental jurisprudence and this paper deals with that. This article deals with the establishment of green court in India and gives a brief background of how it came into being. This aspect covers Stockholm declaration thoroughly which highlights the need and relevance of National Green Tribunal. The journey of National Green Tribunal has also to be understood in the light of the Constitutional provisions and landmark judgements that evolved right to a clean environment as a fundamental right under Article 21 of the Constitution of India. It reflects the development of environmental jurisprudence in India and the contribution of Supreme Court in doing so.

This paper also covers a comparative analysis with New Zealand, which helps us to understand that how specific environmental jurisprudence developed in New Zealand with the passage of time. It also talks about the pros and cons of the New Zealand legislation. Further, the paper discusses the role of local self-government (especially urban) in the protection of environment. The paper has also dealt with the approach of Indian courts vis a vis sustainable development.

II. CONCEPTION OF GREEN BENCHES IN INDIA

a. International developments that paved way for green court in India

[3] (2012) 8 SCC.

The United Nations Conference on Human Environment represents the first occasion when issues related to environment were brought to international attention. It was held in Stockholm, Sweden from 5-16 June 1972 and is often referred to as the Stockholm Conference. It is considered as a major international event in respect of environmental concerns as it brought several countries on the table to discuss and reflect on the necessity of safeguarding the environment. After a lot of debate, the countries finally adopted 26 principles and 109 recommendations for preservation and improvement of human environment. The action plan so adopted by the countries is known as the Stockholm Declaration, 1972. These principles largely talk about safeguarding of natural resources for both present and future generation, man's duty to conserve and safeguard nature and wildlife, prevention of pollution, strategic environmental policies of all States so as not to hamper present and future development of developing countries, developmental policies must be compatible with the protection of the environment, education in matters related to environment, and among other things, most importantly the principles sought States' co-operation for protection and improvement of the environment[4].

The Conference suggested creation of an institution to improve environmental action and co-ordination within the United Nations Organization. This institution is known as United Nations Environment Programme (UNEP) and has wide acknowledgment now. It was further suggested that similar kind of conferences must be organized every ten years in different countries like, in Nairobi (Kenya) by the year 1982, in Rio de Janeiro (Brazil) by 1992 and in Johannesburg (South Africa) by 2002. The Stockholm Conference, 1972 is significant as it provided an international forum for discussion on environmental issues and was first of its kind in doing so. Further, it gave global recognition to the ideas and recommendations on environment protection[5].

Principle 1 of the Stockholm declaration is worth quoting to understand India's initiative after the conference. Principle 1 says that,

[4] Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, available at https://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.48/14/REV. 1 visited on 05-05-2023.

[5] Philippe Boudes, "*United Nations Conference on the Human Environment*", in J. Newman (ed.) *Green Ethics and* Philosophy-The Green Series: Toward a Sustainable Environment, Vol. VIII (2011), pp. 410-413. Available at https://www.researchgate.net/publication/308796618_United_Nations_Conference_on_the_Human_Environment visited on 06-05-2023.

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generations".

The Indian Parliament passed 42nd Constitution Amendment Act,1976 by which Articles 48-A[6] and 51-A[7] were incorporated in the Constitution of India, in unanimity with the Stockholm Declaration, 1972. Later, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 were also passed by the Indian Parliament. The Water Act was passed with an objective to prevent and control water pollution and establish a board to carry out this purpose. The objective of Air Act was to prevent, control and abate air pollution and establish a board for the said purpose. Further, the Environment (Protection) Act, 1986 was enacted to protect and improve the environment by regulating discharge of pollutants by industries, laying down procedural safeguards for handling of hazardous substances, and by laying down other regulatory frameworks.

The second environment conference, that is, the United Nations Conference on Environment and Development, was held at Rio de Janeiro from 3-14 June 1992. This conference also known as Earth Summit, witnessed an overwhelming gathering of the world leaders[8]. The nations pledged to commit themselves to pursue economic development in a manner which protects the environment of the Earth and non-renewable energy resources. The conference emphasized on sustainable development as is reflected from Principle 1 of the proclamation of the conference and is hereby quoted,

[6] Article 48A provides for protection and improvement of environment and safeguarding of forests and wildlife.

[7] Article 51-A(g) provides for fundamental duty to protect and improve the natural environment including forests, lakes, rivers, and wild-life, and to have compassion for living creatures.

[8] Edward A. Parson, Peter Haas and Marc A. Levy, *"A Summary of the Major Documents Signed at the Earth Summit and the Global Forum"*, Environment Science and Policy for Sustainable Development, 34(8):12-36, (1992), available at https://www.researchgate.net/publication/233115003_A_Summary_of_the_Major_Documents_Signed_at_the_Earth_Summit_and_the_Global_Forum, visited on 07-05-2023.

"Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."[9]

It also emphasized on the necessity of a national law for determining the liability and awarding compensation for environmental damages and harm suffered by pollution victims. Principle 10 can be quoted to stress on this point,

"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided".[10]

It was around this time only that India opened its economy. The year of 1991 marked the LPG era i.e., liberalization, privatization, and globalization in India. India witnessed an increased foreign direct investment (FDI) flow when it liberalized it economy. The increased growth of industrial sector, social movement, and developmental projects, mostly in the pollution causing sectors led to the need for establishing Green Courts which were both effective and powerful. In this light National Environmental Tribunal Act (NETA), 1995 and National Environmental Appellate Authority (NEAA), 1997 were enacted. NETA, 1995 was enacted with a view to implement the decisions taken at the Rio Conference, 1992. The objective of the Act was to fix liability for damages occurring because of any accident while dealing with hazardous substances. It provided for establishment of a National Environment Tribunal for dealing with such cases and granting appropriate relief. NEAA, 1977 was passed for establishment of a National Environment Appellate Authority, the function of which was to hear appeals with respect to certain restrictions imposed on industries, operations or processes or class of industries, operations or processes under the Environment (Protection) Act, 1986. It basically dealt with appeals against orders granting environmental clearance in certain restricted areas. Both

[9] Available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf visited on 09-05-2023.

[10] Report of the United Nations Conference on Environment and Development, United Nations General Assembly, Rio de Janeiro, 1992.

NETA,1995 and NEAA, 1997 were repealed and the Authorities established under these Acts were dissolved after passing of the National Green Tribunal Act, 2010.[11]

The proposal to establish "Green Courts" or "Environmental Courts" in India was submitted by the Law Commission of India (LCI) in its 186th Report in September 2003. The roots of this recommendation can be traced in several landmark Supreme Court judgements especially in the cases of M. C. Mehta v. Union of India[12], Indian Council for Enviro Legal Action v. Union of India[13], A.P. Pollution Control Board v. Prof. M. V. Nayudu (Retd.) & Ors.[14][I case] and A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) & Ors.[15][II case]. The Apex Court made certain crucial observations in the cases such as: a) environment related cases involve scientific data assessment and therefore environmental courts require judges and experts with requisite expertise in the area, b) necessity for establishment of environmental courts with civil and criminal jurisdiction for speedy disposal of environmental matters and, c) establishment of environmental courts with both judicial and technical or scientific experts[16].

Following the observation made in the above cases and acknowledging the complexity involved in environmental matters, the Law Commission of India was entrusted with the task of undertaking a study on establishment of "Environmental Courts" in India. Law Commission of India studied Environmental Court laws of various countries such as New Zealand and Australia and prepared a report. It recommended formation of Courts having all powers as that of a civil court as well as appellate judicial powers[17]. Further, it proposed that these Courts should be established initially at the State level which can be expanded afterwards[18]. Later, in consequence of

[11] National Green Tribunal Act,2010, S. 38(1) and (3).
[12] (1986) 2 SCC 176,201-202.
[13] (1996) 3 SCC 212, 252.
[14] (1999) 2 SCC, 718,730-731.
[15] (2001) 2 SCC 62, 84-85.
[16] Sridhar Rengarajan, Dhivya Palaniyappan, Purvaja Ramachandran, et al, *"National Green Tribunal of India-An Observation from Environmental Judgements"*, Environmental Science and Pollution Research 25, 11313-11318 (2018). Available at https://doi.org/10.1007/s11356-018-1763-2, visited on 10-05-2023.
[17] Available at http://lawcommissionofindia.nic.in/reports/186th%20report.pdf, visited on 11-05-2023.
[18] Swapan Kumar Patra, V. V. Krishna, "*National Green Tribunal and Environmental Justice in India*", Indian Journal of Geo-Marine Sciences, Vol. 44(4), (2014), available at https://www.researchgate.net/publication/266676371_National_Green_Tribunal_and_Environmental_Justice_in_India visited on 06-03-2020.

Supreme Court's observations and Law Commission of India's recommendations, the National Green Tribunal Bill, 2009 was introduced in the Lok Sabha on July 31, 2009, by the Ministry of Environment and Forests[19]. It received President's assent on 2nd June 2010.

b. The Constitutional roots of environmental rights and the approach of Supreme Court

The original text of Constitution of India, 1950 did not have any provision which specifically dealt with protection of environment, forests, wildlife, lakes, and rivers. It was in the backdrop of the Stockholm declaration, 1972 and growing environmental awareness, that 42nd Constitution (Amendment) Act, 1976 was passed. This amendment, inserted Articles 48A and 51A in the Constitution of India. While Article 48A occupies space in Part-IV, thereby imposing duty on the State to conserve the environment, wildlife and forests, Article 51A finds mention in Part-IVA which provides for fundamental duties. Article 51A(g) imposes duty on every citizen to take steps for conservation of environment, wildlife, lakes, rivers and show empathy for living creatures. The Amendment Act, 1976, also transferred certain entries from List II (State list) to List III (Concurrent list)[20] such as entry 17A, 20A, 33A, but in the present context, entry 17A is relevant. Since, Entry 17A[21], 17B[22] find mention in List III, it enables Parliament to make laws on environment related issues such as forests and wildlife.

Right to clean, pollution free and healthy environment is a fundamental right. Principle 1 of the Stockholm Declaration, 1972 also stresses upon this point. The survival of humanity is dependent upon such clean environment. It therefore becomes crucial to study the Constitutional origin and development of this right. It must be noted that there is no explicit provision in Part III of the Constitution which provide for environment protection. But the judgements of Indian Courts have been instrumental in the evolution of environmental jurisprudence and bringing it within the ambit of the Constitution. In Shobana Ramasubramanyam v. Chennai Metropolitan development authority[23], the Madras High Court, referred to environmental rights as "third generation rights" which

[19] Available at https://www.prsindia.org/uploads/media/Green%20Tribunal/Final%20Version%20-%20National%20Green%20Tribunal%20Bill.pdf visited on 09-06-2023.
[20] See Seventh Schedule, Constitution of India.
[21] Entry 17A-forests, Constitution of India.
[22] Entry 17B-Protection of wild animals and birds, Constitution of India.
[23] AIR 2002 Mad 125.

includes right to have a noise-free environment, with political rights being first generation rights and social & economic rights being the second-generation rights.

The courts have considered Articles 14,21 and 19 (1) (g) for developing a relationship between right to healthy environment and fundamental rights. Articles 21, 48A and 51 A (g) constitute the Constitutional scheme for protection and preservation of environment as it includes fundamental right to a healthy environment, State's obligation to protect environment and fundamental duty of citizens to conserve the environment. In Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay environmental action group[24], court observed that this constitutional scheme is based upon the concept of sustainable development which must be implemented and while stressing upon the need to consider ecological impact, a balance between development, ecological balance and intergenerational interest must be found. In short, while adopting sustainable development, a balance between developmental needs and environmental degradation must be found[25]. In Intellectual Forum v. State of Andhra Pradesh[26], the Supreme Court emphasized on State's responsibility to conserve natural resources. To accentuate, the court mentioned Stockholm Conference, 1972 and held that State responsibility is an accepted notion under international law. Doctrine of sustainable development, public trust doctrine and principle of inter-generational equity were also discussed. It was held that under the public trust doctrine, State is under a legal duty to protect natural resources in the capacity of a trustee.

In Amarnath Shrine, re,[27] court on the similar lines held that if any developmental work is undertaken then it should not affect forest cover and environment. In Samaj Parivartan Samudaya v. State of Karnataka[28], court declared that intergenerational equity and sustainable development have now become an integral part of Article 21.

The Courts, in various judgements, have analyzed the relationship between right to equality[29] and environment protection. The relation between social justice and equality was held to be complementary to each other and a part of Article 21 in the case of Consumer Education

[24] (2006) 3 SCC 434.
[25] *Intellectual Forum v. State of Andhra Pradesh*, (2006) 3 SCC 549.
[26] (2006) 3 SCC 549.
[27] (2013) 3 SCC 247,276.
[28] (2013) 8 SCC 154, 193.
[29] Guaranteed under Article 14 of the Constitution of India.

& Research Centre v. UOI.[30]On several occasions, court has struck down arbitrary official sanctions on grounds of being violative of Article 14[31]. In Chaitanya Kumar v. State of Karnataka[32], court considered, that in certain cases, arbitrary grant of lease and indiscriminate operation of mines may affect wildlife and other natural resources. It was held that in such cases courts must issue the writ to advance public interest over public mischief. In Kisan Bhagwan Gawali v. State of Maharashtra[33], court held that exclusion of some gazers and inclusion of others on the ground that excluded ones were engaging in illegal gazing was violative of Article 14 and therefore invalid. In D.S. Rana v. Ahmedabad Municipal Corporation[34], Gujarat High Court held that imposition of restriction on melting of gold and silver ornaments by running furnaces is not unreasonable as it was causing nuisance. Such restriction was held to be not violative of Article 14.

Further, courts in India have also addressed the relationship between right to carry on trade, occupation, or business and environment protection. In recent times, certain trade and businesses have become the main cause of pollution. Industries, tanneries, distilleries, acid factories, and hotel industries are significantly affecting the environment by causing pollution. Such pollution affects the vegetation, lives of animals, humans, and impacts the aquatic life as well. In the light of environmental pollution caused by industries and business activities, courts have considered the scope of right guaranteed under Article 19 (1) (g) of the Constitution. It has been observed in various cases, that, no right to carry on trade or business can be asserted if it endangers the environment and life of human beings. This approach reflects in the case of M.C. Mehta v. Kamal Nath[35], where Supreme Court held that hotels which are discharging untreated effluent into river Beas and are thereby injuring aquatic life and causing water pollution, cannot be permitted to operate. Further, it was held that, court is empowered to award damages on industries/hotels at fault, while exercising its jurisdiction under Article 32. In Jackson & Company v. UOI[36], court dealt with an issue where petitioners were manufacturing certain diesel generators which produced noise beyond the permissible limits. It was held that, where State made provision of “acoustic enclosure” mandatory with

[30] (1995) 3 SCC, SCC (L & S 604).
[31] *Ajay Hasia v. Khalid Mujib Sehravadi*, (1981) 1 SCC 722, *Kinkri Devi v. State of Himachal Pradesh*, AIR 1988 HP 4, *Sachidanand Pandey v. State of West Bengal* (1987) 2 SCC 295.
[32] (1986) 2 SCC 594.
[33] AIR 1990 Bom 343.
[34] AIR 2000 Guj 45.
[35] (2000) 6 SCC 213.
[36] AIR 2005 Delhi 334.

the diesel generator, such a rule will not amount to restriction on right to carry on occupation, trade, or business, if the aim is to prevent noise pollution.

Lastly, the interpretation made by the Apex court in a catena of cases, led to the development of relationship between right to life and right to clean and healthy environment. Right to life is guaranteed under Article 21 of the Constitution but it does not expressly confer right to clean and unpolluted environment. It is by judicial interpretation that the scope of Article 21 was expanded to include variety of rights relating to environment. In Rural Litigation & Entitlement Kendra v. State of U.P.[37], court addressed the issue of unregulated limestone quarrying activities which were being carried in the Mussoorie hill range of the Himalayas. Such uncontrolled quarrying took a toll on nature and destroyed the vegetation cover, natural waterfalls, caused ecological damage by causing noise and air pollution. It resulted in shortage of drinking water. The judgement suggests that the Supreme Court entertained the matter as involving violation of Article 21 even though it was an environment complaint. It shows that judiciary adopted a pro-environment approach long time back. Another case to emphasize on this approach is of M. C. Mehta v. Union of India[38] (Ganga Pollution case) in which Singh J stated that closure of tanneries may result in unemployment and other economic loss to the State but right to a healthy life and ecology is more important for the people.

Later, the ambit of Article 21 was enlarged in the case of Consumer Education & Research Centre v. UOI[39]. In this case, Court gave a wider interpretation to Article 21 and held that "life" does not mean mere animal existence but includes within its ambit right to livelihood, better standards of life, and hygienic conditions in the workplace and leisure. It can be summed up that Article 21 guarantees a right to life which extends beyond mere breathing and proposes to guarantee a life with dignity and quality. This approach was reflected in Hinch Lal Tiwari v. Kamla Devi[40], where court held that forests, tanks, ponds, mountains are nature's gift and that they maintain ecological balance. It is necessary to protect these to ensure a healthy environment and consequently a quality life to persons, which is also the essence of Article 21. Taking this into account, Court held that pond's land cannot be allotted for residential purposes. In various

[37] (1985) 3 SCC 614. Observed in *T. Damodar Rao v. Municipal Corporation of Hyderabad*, AIR 1987 AP 171. See, *N.D. Jayal v. Union of India*, (2004) 9 SCC 362.
[38] (1987) 4 SCC 463.
[39] (1995) 3 SCC 42.
[40] (2001) 6 SCC 496.

other cases, Supreme Court has held that any disturbance caused to the necessities of life, such as air, water and soil would be considered as hazardous to life under Article 21.

The Hon'ble Supreme Court was often called to resolve a conflict between fundamental right to life on one hand and right to development on the other. One such case was of N. D. Jayal v. Union of India[41] . In this case petitioner sought issuance of guidelines by the court for conducting safety tests on a dam built on Tehri for hydel power. It also requested the court to address the issue of rehabilitation of migrants affected by the construction of dam. Court declared that the concept of sustainable development is to be treated as an integral part of "life" under Article 21. Further, it emphasized that right to clean and healthy environment is a part of Article 21. It has been made clear by the Apex Court that environmental issues are not mere statutory issues but fall within the ambit of Constitution and are an important feature of Article 21[42]. Therefore, any activity which is injurious to the environment will be a violation of Constitutional provision and the Apex Court will be obliged and justified to step in. Moreover, "living environment" is a necessary condition to support human existence and by implication, it is also guaranteed under Article 21. Thus, activities that pollute the environment, make it unhealthy, cause hazard to human and animal health, and affect the nature will be violative of right to "living environment" guaranteed under Article 21. The ultimate realization of right guaranteed under Article 21 requires protection and preservation of natural resources and other gifts of nature as in the absence of a healthy environment, nothing can thrive and right to life cannot be enjoyed in its essence.

In subsequent cases, the Hon'ble Supreme Court has asserted its power to take up cases where no other remedy is available. In Sterlite Industries (India) Ltd. v. Union of India[43], the Supreme Court stated that it is empowered to order closure of an industry under Article 21, to ensure that it complies with the standards of emission and effluence prescribed under the Environment (Protection) Act, 1986; the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. It can do so in the absence of any other remedial measure and to ensure a safe and healthy environment. In Arjun Gopal v. UOI[44], Supreme Court declared that bad air quality is adversely affecting other rights such

[41] (2004) 9 SCC 362.
[42] *Noida Memorial Complex near Okhla Bird Sanctuary, re*, (2011) 1 SCC 744.
[43] (2013) 4 SCC 575, 600.
[44] (2017) 1 SCC 412, 416.

as right to education, work, and health and ultimately right to life and therefore this court is bound to address these concerns.

The Hon'ble Supreme Court, on the one hand, has affirmed various rights under Article 21 such as right to potable water[45], right to health (including medical care to the workmen) and hygienic working conditions[46], right to sleep peacefully, right to leisure and have a clean environment,[47]. On the other hand, it has prohibited certain activities as being violative of Article 21 such as unregulated exploitation of natural resources[48], failure to maintain sanitation, no steps for conservation of environment, carrying of any other activity which is hazardous to the life of human beings[49], animals and plants, use of insecticides and medicines having negative impact on health and are dangerous to life[50], and smoking in public places considering its hazardous implications on non-smokers. The continuous effort of Apex Court to guarantee a safe and healthy environment to the citizens has led to many interesting decisions. Such as, in the case of Research Foundation for Science v. Union of India[51], court declared right to information and public participation as part of right to life under Article 21. It also referred to the Basel Convention to substantiate this point. Taking a step further, the Hon'ble Supreme Court in the case of Centre for Environmental Law, World-Wide Fund-India v. Union of India [52], held that right to life is available to endangered species as well. Court explained that Article 21 imposes an obligation on humans to protect and preserve the endangered species.

From the analysis of landmark judgements as discussed above, it can safely be inferred that the progressive and eco-centric approach adopted by the Hon'ble Supreme Court and various other courts has paved way for the establishment of "Green Courts" in India. After the enactment of National Green Tribunal Act, 2010, the National Green Tribunal has become the exclusive body to deal with environment related matters. To understand more about the functioning of the Act, its salient features has been discussed in the next section.

[45] *F. K. Hussain v. Union of India*, AIR 1990 Ker 321.
[46] *Consumer Education & Research Centre v. Union of India*, (1995) 3 SCC 42.
[47] *Burrabazar Fire Works Dealers Assn. v. Commr. Of Police*, AIR 1998 Cal 121.
[48] *Kinkri Devi v. State of H.P*., AIR 1988 HP 4.
[49] *L. K. Koolwal v. State of Rajasthan*, AIR 1988 Raj 2. Also see, *M.C.Mehta v. State of Orissa*, AIR 1992 Ori 225.
[50] *Ashok v. Union of India*, (1997) 5 SCC 10. Case relates to S.27 of Insecticides Act,1968.
[51] (2005) 10 SCC 510.
[52] (2013) 8 SCC 234, 257.

III. COMPARATIVE ANALYSIS WITH NEW ZEALAND

As it is well discussed above that Indian law, National Green Tribunal Act, 2010 represents a vast population of 130 crores and hence more eyes and aspiration on the effective implementation of law. It is more often important to analyse New Zealand law also to understand quantum of access to justice mechanism in New Zealand, so that a comparative understanding of law can be understood within the purview of law. Also New Zealand is quite different from India in core structural and composite respects. New Zealand respects its urban and rural population needs and aspiration, New Zealand law makers very well know that for better development there must be a balance between development and environment. Taking that aspect into consideration Nineteen years before the passage of Indian law, NGT Act, New Zealand adopted Resource Management Act of 1991(RMA). The Resource Management Act sought to "promote the sustainable management of natural and physical resources.[53] It embraced an expansive conception of resource management, acknowledging 'social, economic and cultural well-being', recognizing the diverse community within New Zealand and emphasizing the need to consider "the reasonably foreseeable needs of future generation".[54]

It is also to be noted that New Zealand RMA provided for establishment of Environmental Courts, which replaced the pre-existing planning tribunals and furthermore this law gave Environment court authority over every important matter for environmental management including regional policy statement, regional and district plans, resource consents and water conservative orders.[55] To give this environmental body more teeth's the body is composed of two classes of individuals: environment judges and environmental commissioners.[56] The first class consists of qualitative legal knowledge with traditional judicial qualification whereas the latter seeks to ensure that the court possesses a mix of knowledge and experience in matters coming before the court", including economics, planning, surveying and indigenous concerns.[57] While performing its activities, the court wander from traditional common law court in important ways. As its authority to render judgement is clearly constrained by the enabling statutes, the Environment Court

[53] Section 5(1), Resource Management Act, 1991(N.Z).
[54] *Ibid*, Section 5(2), (N.Z)
[55] Angstadt, J. Michael, "*Securing Access to justice through Environmental Courts and Tribunals: A Case in Diversity*", Vermount Journal of Environmental Law, Vol. 17(2016), p.356.
[56] Section 248, Resource Management Act, 1991.
[57] Section 249-253, Resource Management Act, 1991.

is also empowered to decide policy matter.[58] It is also important to understand that wherein in India in NGT limited formal consideration of standing whereas in New Zealand is more rigid in this context regarding standing. This suggest that parties in New Zealand have to prove their interest and standing as far as procedural justice is concerned. New Zealand follow more purely substantive claims in support of their position. The court in New Zealand can raise an issue of standing as pro forma and quickly resolved in favour of permitting the claims to move forward.[59] Accordingly, while the Environment Court's more rigid construction of standing could outwardly appear problematic to less sophisticated litigants, in practice, the justice seems to hold their policy orders of nurturing inclusiveness.[60]

As illustrated above India and New Zealand enshrined international environment norms and ideals in enabling legislation of their respective environment courts. National Green Tribunal Act in India and RMA in New Zealand on the other hand consider the principle of natural justice, sustainable development, precautionary principle, and polluter pays principle as a mechanism jurisprudence for administration of justice. Both countries derive these instruments from Rio Declaration in 1992. Likewise New Zealand RMA require Environment courts to promote sustainable management of natural and physical resources and ensure that natural and physical resources meet the reasonable foreseeability needs of future generations.[61] In Practice, the courts in New Zealand gave more participatory judgements and show its willingness to consider matters pertaining to cultural rights vis-à-vis environmental concerns. The best example is Maori claims into environmental courts.[62] The Environmental Court in New Zealand not only gave cursory examination to Maori interest but gave meaningful consideration to customary rights.[63] Even the judgement shows that the opinion of the court is giving considerable protection to the interest of indigenous population. Moreover, the court believes that legal system can resolve native claims.[64] In practice both countries are doing their best in complying with these obligations. Indian NGT gave exclusive power and jurisdiction to

[58] Bret C. Birdssong, "Adjudicating Sustainability: New Zealand's Environment Court, 29 Ecology L.Q 1,28 (2002) (outlining scope of competency of New Zealand Environment Court).
[59] *Elwell-Sutton v. West Coast Regional Council* (2012) NZEnvC 273 at3-6.
[60] Angstadt, J. Michael, "*Securing Access to justice through Environmental Courts and Tribunals: A Case in Diversity*", Vermount Journal of Environmental Law, Vol. 17(2016), p.361.
[61] Resource Management Act, 1991(N.Z.) and Rio Declaration mandate.
[62] *Ngati-Rangi Tr. V. Manawatra Wanganui Reg'* I Council (2004) NZEnvC 067.
[63] *Ibid.*
[64] *Haraki Maori Tr. Bd v. Auckland Reg'*I Council (2002) NZEnvC 58/2002 (N.Z).

members. The NGT statute authorizes restitution of property damages and restitution of environment. NGT conceptually demonstrate its willingness to consider linkage between economics, Human and environmental ramifications of disputes. The NGT is playing a progressive role in permitting economic activity and understand environmental effect.[65] As National Green Tribunal is concerned with deposition of carbon in Himalayas and hence imposed vehicular emission tax under polluter pays principle and precautionary principle.[66] In doing so Environment Courts and Tribunals are helping in moving closer to observing international environment norms to the benefit of vulnerable population.

IV. SUSTAINABLE DEVELOPMENT GOALS VIS A VIS URBAN LOCAL SELF-GOVERNANCE

In India, the three-tiered government structure comprises of the central government, the state government, and the local self-government. The two major forms of local self-government in India relates to: a) urban areas (towns and cities), where local self-governance is carried out by bodies like municipalities and corporations, and b) rural areas (villages), where the local self-governance is carried out by Zila Parishad, block samitis, and panchayats. Articles 243G and 243W read with Eleventh and Twelfth Schedule of the Constitution of India highlight the powers and responsibilities of Panchayats and Municipalities respectively. Amongst other things, social forestry, farm forestry, urban forestry, protection of the environment, and promotion of ecological aspect can also be found in these Schedules' list.

Various States of India have been constantly working on achieving the environmental goals by adopting a variety of measures. For example, following the 2030 Agenda for Sustainable Development that was adopted by the members of the United Nations in 2015,[67] the Uttar Pradesh government under "Uttar Pradesh Sustainable Development Goals, Vision 2030" has taken commendable efforts. For the present article, measures taken in the direction of "life on land" has been mentioned. It lays down the commitment of Uttar Pradesh to protect, restore, and promote sustainable use of land in the interest of sustainable growth and inclusive development. The government's vision is to ensure sustainable use of natural resources such as cultivable land, forests, and water bodies and to reverse the environmental damage by restoring the degraded ecosystem so as to

[65] *Punamchand s/o Ramchandra Pardeshi v. Union of India & others* (2013) Original Application No. 10/2013 (THC) 8 (India)
[66] *Court on its own motion v. State of Himanchal Pradesh* (2014) application no. 237 (THC).
[67] Available at https://sdgs.un.org/goals, visited on 21-03-2023.

ensure its availability for future generations. The State also aims to conserve its biodiversity and natural habitats. The different departments of the State have already begun to bring schemes and other interventions for achieving the afore mentioned goals. Such as for increasing and conserving the forest cover, the forest department has undertaken large scale plantations with the help of other government departments such as urban bodies. For conservation and management of wildlife and biodiversity, The Uttar Pradesh State Biodiversity Board formed ninety-eight (98) Biodiversity Management Committees at the Gram Sabha Level under the Biodiversity Act, 2022.[68]

Another example is of Bhopal city which was the first one in India to join the global movement on localisation of Sustainable Development Goals (SDGs) after it released Voluntary Local Review (VLR).[69] VLR is a collaborative effort between the Bhopal Municipal Corporation, UN-Habitat, and a collective of over 23 local stake holders to measurably demonstrate the city's aspirations for a sustainable and inclusive urban transformation. VLR is basically being used by cities, local and regional governments to track and report on SDG progress.

Indore, one of the "smart cities" of India has also taken innovative steps towards achieving environmental goals. The Indore Municipal Corporation (IMC) recently issued green bonds to corporate investors and other institutions. The objective is to raise money for climate and environment projects. It is still in the nascent stage but has received overwhelming response. The city will use the raised funds for reducing financial burden related to drinking water requirements. It will use the capital for installing solar plants and use the renewable energy to get water from the Narmada River from the Khargone district which is around 80km away from the city. This used to cost a lot of money to the IMC which is now being supported by the raised funds to some extent. The IMC's first green bonds were oversubscribed by 5.90 times and raised about 720 crore rupees.[70] Uttar Pradesh's civic body Ghaziabad Nagar Nigam was the first one

[68] Uttar Pradesh Sustainable Development Goals, Vision 2030, Available at https://planning.up.nic.in/Go/SDG/VISION%20Doc%20Eng.pdf, visited on 23-06-2023.

[69] K.V.S Choudhary, Parul Agarwal, Pushkal Shivam, Tracking SDG progress the Bhopal Way, The Hindu (May 20, 2023), Available at https://www.thehindu.com/opinion/op-ed/tracking-sdg-progress-the-bhopal-way/article66871463.ece, visited on 20-06-2023.

[70] Sukriti Vats, Indore, country's cleanest city, gets rupees 720 crore on green bonds to build largest solar plant, The Print, 14 Feb 2023, Available on https://theprint.in/india/governance/indore-countrys-cleanest-city-gets-rs-720-crore-on-green-bonds-to-build-largest-solar-plant/1371439/, visited on 19-06-2023.

in India to issue municipal green bonds for setting up 'tertiary water treatment plant.'

Another noticeable step comes from the Thane Municipal Corporation (TMC) if Maharashtra which is working on replacing its public transport buses with electric buses in a phased manner. This civic body has already introduced eleven (11) e-buses with some being air-conditioned. It is an extremely positive step towards the sustainability of environment.[71] The Brihanmumbai Municipal Corporation (BMC), another civic body of Maharashtra, is responsible for growing 64 Miyawaki forests on plots with area ranging from 500 square meters to 7-8 acres. Mumbai is a highly populated city with very little open space and its green cover has also shrunk over the years. In this light, the measures taken by BMC comes as a respite for the nearby residents. The objective of BMC was to grow four lakh trees with the Miyawaki method by the end of March 2023.[72]

These are just few examples of the work that municipal corporations are doing towards environment protection and sustainable development. The increased participation of the urban local bodies can bring sea changes and can help the States to achieve sustainable development goals effectively.

V. SUSTAINABLE DEVELOPMENT AND COURTS IN INDIA

Judiciary is always a sharp critic of enforcement agencies when they go beyond jurisdiction as it is the chief custodian of constitutional values. It is one of the three organs of the State. Undoubtedly green benches played a major role in the preservation of environment and sustainable development. It will be right to say that judiciary enthusiastically maintained a balance between environment and sustainable development. It has played an important role for advancing the notion of sustainable development in India. Some of the leading cases advanced the core understanding of judicial activism in interpreting the cases related to environment pollution particularly with an emphasis to the concept of sustainable development. In M.C. Mehta v. Union of India[73], the Supreme Court held that setting up of primary treatment plant is necessary for every industry. It further held that just like where an industry which doesn't pay minimum wages to its workers can't be allowed to exist, an

[71] Available at https://www.outlookindia.com/national/maharashtra-thane-civic-body-plans-to-have-only-e-buses-in-its-public-transport-fleet-says-official-news-272217, visited on 20-06-2023.
[72] Manasi Phadke, A mini-forest boom is taking over Mumbai. It's called Miyawaki, Delhi is rushing in too, The Print, 3 Feb 2023, Available at https://theprint.in/feature/a-mini-forest-boom-is-taking-over-mumbai-its-called-miyawaki-delhi-is-rushing-in-too/1351366/, visited on 21-06-2023.
[73] (1987) 4 SCC 463.

industry which fails to set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large which is likely to be caused by the discharge of trade effluents from the tanneries to the river Ganga. The damage would be immense, and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure.

The Supreme Court in the context of deforestation has given many decisions like Ambika Quarry Works v. State of Gujarat[74], in which the court tried to strike a balance between the need of exploitation of the mineral resources lying hidden in the forest and the preservation of the ecological balance and to check the growing environmental deterioration. It was observed that the rejection of prayer for the renewal of lease was in conformity of the purposes of the Act of preventing deforestation and ecological imbalances resulting from deforestation. In this case the concept of sustainable development was given effect to. In State of Himachal Pradesh v. Ganesh Wood Products[75] the Apex Court held that the obligation of the sustainable development requires that a proper assessment should be made of the forest wealth and the establishments of the industries based on forest produce should not only be restricted accordingly but their working should also be monitored closely to ensure that the required balance is not disturbed. So far as forest-based industries are concerned, there is no absolute and unrestricted right to establish industries. There shall have to be a balance between development on one hand and proper environment and ecological balance on the other.

In G.R. Simon and Others etc. v. Union of India Others[76], the Delhi High Court that wildlife forms part of our cultural heritage in the same manner as other archaeological monuments such as painting, literature and each and every animal plays a role in maintaining ecological balance and therefore, the contention (of the petitioner) that certain animals are detrimental to human life is misconceived. Taking the case of even jackals, which are referred to by the petitioners as animals of no utility, these are natural scavengers who feed on offal and dead animals, thereby keeping the environment clean. Snakes which have been described by some petitioners as harmful and dangerous to human life feed on rats. Snakes are the natural killers of the rats which cause loss of nearly 33 million tons of stored cereals, apart from dreaded diseases such as plague. The above would show that even the most maligned animals which

[74] AIR 1987 SC 1073.
[75] (1995) 6 SCC 363.
[76] (1997) SCC ONLINE Del 324.

appear apparently to be of no utility, have a role to play in retaining ecological balance. Court further stated that, Wildlife is an asset and heritage to be preserved for future generations, by giving judicial recognition to the principle of intergenerational equity as referred in the international context. The Supreme Court in the case of T.N. Godavarman Thirumulpad v. Union of India and Others[77] had again shown the faith on the Principles of Sustainable Development. In this case a company made a proposal for setting up an alumina refinery in the area of Lanligarh Tehsil of Kalahandi District. According to CEC, Niyamgiri hills would be vitally affected if mining is allowed. The project would also destroy flora and fauna of the entire region and it would result in soil erosion. On the other hand, picture of object poverty in which the local people (including tribal people) are living in the area concerned.
There is no proper housing, no hospitals, no schools, and people are living in poor conditions. After analysing both the aspects, Supreme Court adopted the approach of Sustainable development. The court is not against the project, but it could not take risk of placing an important national asset into hands of applicant company. It is only safeguard by which we are able to protect nature and sub serve development. Similarly, in N.D. Jayal v. Union of India,[78] petition under Article 32 of the constitution was filed connected to the safety and environmental aspects of the Tehri Dam. The court emphasised that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of sustainable development. This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. Strict observance of sustainable development means a path that ensures development while protecting the environment, a path that works for all people and for all generations. The court further emphasized on the symbiotic association linking right to environment and right to development and held that: The adherence to sustainable development is sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. The right to environment is a fundamental right. On the other hand, right to development is also one. Here right to sustainable development cannot be singled out. Therefore, the concept of sustainable development is to be treated as an integral part of life under Article 21. The weighty concepts like intergenerational equity, public trust doctrine and precautionary principle which have been declared as inseparable ingredients of our

[77] (2002) 10SCC 606.
[78] (2004) 9 SCC 362.

environmental jurisprudence could only be nurtured by ensuring sustainable development.

V. CONCLUSION

The aspect of green benches in the form of Supreme Court benches and National Green Tribunal is an effective solution to check environment degradation and the need of the hour is to allow these benches to work for environmental balance by implementing their orders and decisions in letter & spirit. Because there are instances when the orders of NGT or green benches are not followed by the executive. This leads to catastrophe and the best example was Union Carbide judgment. It is also important to increase the jurisdiction of the National Green Tribunal to a wider spectrum. The two Acts i.e., Wildlife Protection Act, 1972 and Schedule Tribe and other Forest Dwellers (Recognition to Forest Rights) Act, 2006 have been kept out of the jurisdiction of NGT. This directly affects the enforcement of forest rights in crucial matters pertaining to environmental protection. It is important to understand that that NGT decisions are challenged due to their repercussion on economic growth and development. NGT only has three experts and three judicial members against the sanctioned strength of 10 each, which in fact is a major obstacle in administration of justice in environmental matters because it increases pendency of cases and reduces access to justice, and it also destroys the very purpose of NGT creation as it ought to dispose of environmental matter within six months.

Green Benches were conceptualized to ease out burden on higher judiciary though by the virtue of L. Chandra Kumar judgement, tribunals were held as not at par with the higher courts and hence appeals against orders of NGT are filed at Supreme Court in this regard. Furthermore, the concept of regional benches also does not qualify its objective because big cities and environmental hazard is more often taking place in dense forest and tribal areas hence jurisdiction as well benches at local tribal areas may help in achieving justice to the needy. The balance between sustainable development and green benches is the key to the future. Hence, we need more green benches and along with that we the people of India will also have to take a pledge by the virtue of fundamental duties to preserve our flora, fauna, and rivers because then only this notion of green benches may fulfill its objective. Apart from this, in the light of significant developments made by the local self-government in the area of environmental protection, it is necessary to increase their role. Because ultimately, when things are going to change at root

level (both urban and rural), only then the sustainable goals can be achieved at national level and then ultimately the international level.