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CONTEMPORARY DEVELOPMENTS

As the field of environment is an emerging and evolving area both at the national and international level, it becomes important to keep oneself abreast with the new developments. Establishment of National Green Tribunal (NGT), Regulation of Hazardous Wastes at the National level and Kyoto Protocol and few other international instruments at the International level are some of the key contemporary developments. Apart from Kyoto Protocol there are several other initiatives which have also been undertaken at the International level and which have contributed towards the cause of global environment protection.

Around 1980, the Indian legal system, particularly the field of environmental law, underwent a sea change in terms of discarding its traditional approach and it was marked by not only administrative and legislative activism but also judicial activism. 'Judicial Activism' refers to the active role played by the Courts in India by adopting new and innovative interpretations of the constitutional rights expanding their ambit. In determining the scope of the powers and functions of administrative agencies and in striking a balance between the environment and development, the Courts have played a crucial role and will continue to have this role. This activism of Courts have been strengthened by the tool of Public Interest Litigation (PIL), which has enabled the Courts to entertain cases from public spirited individuals and Non-Governmental Organisations active in the area of environmental protection. The Indian Courts, in this regard, have given some landmark judgements which have established the roots of environmental jurisprudence in India. This lesson aims to discuss the active role played by the Courts in India and the contribution which the Public Interest Litigation has made in this regard. The lesson will highlight all these important issues relating to environmental protection.



OBJECTIVES

After studying this lesson, you will be able to:

- explain the functions and role of National Green Tribunal (NGT);
- comprehend the Law relating to regulating of hazardous wastes;



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- identify the main objectives of 'Kyoto Protocol';
- list some other International Instruments directed at curbing environmental degradation;
- appreciate the role of Courts in environmental protection;
- explain the role of Public Interest Litigation (PIL) in environmental protection;
- understand the concept of 'Judicial Activism' and
- appreciate the role of some leading Judgements to protect environment.

27.1 NATIONAL GREEN TRIBUNAL (NGT)

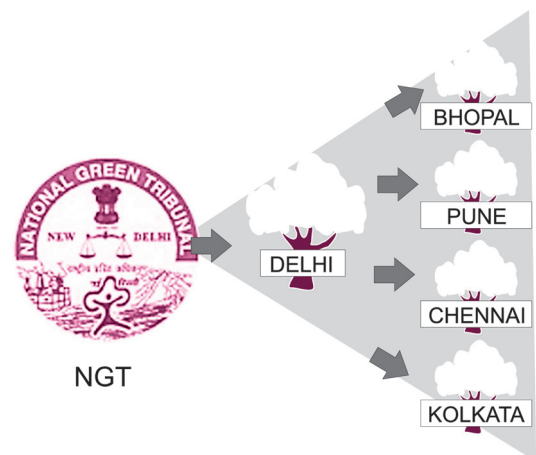
A Tribunal has trappings of a Court. Every Court is Tribunal but Tribunals are not Courts. A Tribunal is established for the adjudication of disputes related to some specific areas, whereas courts exist for the adjudication of all kinds of disputes regardless of any specific area. Rules of natural justice ensure fairness in any adjudicatory process. Final judgement of Tribunal is generally called 'award'.

The National Green Tribunal was established on 18th October, 2010 under the National Green Tribunal Act, 2010 for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues.

The Tribunal is to make efforts for disposal of applications or appeals finally within six months of filing of the same. Initially, the NGT was proposed to be set up at five places of sittings and follow circuit procedure for making itself more accessible. New Delhi is the principal place of sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai are the other four place of sitting of the Tribunal.

27.1.1 Composition of National Green Tribunal (NGT)

NGT comprises of both judicial and expert members as adjudicators. The Chairman of NGT is a judicial member and must be or has been a judge of the Supreme Court of India or Chief Justice of a High Court. The Chairman is appointed by the Central Government in consultation with the Chief Justice of India. Other judicial



members of the NGT must be or has been a judge of the High Court. For an expert member a person must have a doctorate degree in life sciences or physical sciences with fifteen years experience in the relevant field including five years practical experience in the field of environment and forest in a reputed national level institution or an administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or State Governments or in a reputed National or State level institution. The Judicial and expert members are appointed by the Central Government on the recommendation of a Selection Committee.



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27.1.2 Jurisdiction and Powers of NGT

Jurisdiction means authority of any Court or Tribunal to accept a matter for hearing and decision. NGT has the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I of the National Green Tribunal Act, 2010. Schedule I of the Act lists following legislations:

- (i) The Water (Prevention and Control of Pollution) Act, 1974;
- (ii) The Water (Prevention and Control of Pollution) Cess Act, 1977;
- (iii) The Forest (Conservation) Act, 1980;
- (iv) The Air (Prevention and Control of Pollution) Act, 1981;
- (v) The Environment (Protection) Act, 1986;
- (vi) The Public Liability Insurance Act, 1981;
- (vii) The Biological Diversity Act, 2002.

This explains the importance of NGT, as the above mentioned legislations together stands for what we know as the 'Environmental Law'. So now on for the enforcement of Environmental Law, be it matters related to Water Pollution, Air Pollution, Forest Conservation, Environment Protection or Biological Diversity, we have NGT.

NGT is empowered to provide by an order:

- Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I (including accident occurring while handling any hazardous substance) of the Act.
- For restitution of property damaged
- For restitution of the environment for such area or areas

The above mentioned remedies must be claimed by the persons aggrieved within 5 years from the date when the cause of action arose. Cause of action means the happening of the very reason which enables the person to approach NGT. Though, in exceptional cases the Tribunal may give sixty more days for filing

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of the application before it, if the Tribunal is satisfied that the applicant was prevented by a sufficient cause to file the application within 5 years.

The Act mandates that in case of accident, the Tribunal shall, apply the principle of 'no fault'. 'No fault principle' stipulates that in case of accident the owner or the employer cannot take the defence of him/her having committed no fault. If accident occurs and as a consequence of it damage is caused to any person or environment, the owner or the employer is liable, only because of the fact that accident occurred in his/her enterprise. Apart from this principle, NGT has to also apply the principles of 'Sustainable Development', 'precautionary principle' and 'polluter pays principle', while giving an order or decision or award.

27.1.3 Procedure

NGT is not bound to follow the procedures laid down in the Code of Civil Procedure, 1908; or the Indian Evidence Act, 1872; rather it has to be guided by the principles of natural justice. It has for the purposes of discharge of its functions all the powers of the Civil Court for trying a suit as given under the Code of Civil Procedure, 1908. Any decision, order or 'award' of the Tribunal is executable by the Tribunal as a 'decree' of the Civil Court and, therefore, for this purpose the 'Tribunal' will have all the powers of a Civil Court. The Tribunal can also if it deems fit transmit its order or award for execution to a Civil Court having local jurisdiction as if it were the 'decree' of that Civil Court. Minimum number of members who must together hear and decide a case is two, out of which one must be a judicial member and other an expert member. The decision of Tribunal by majority is binding. In case the opinion of the bench is equally divided then the matter is to be heard and decided by the Chairman of NGT if he/she was not part of the equally divided bench. In cases, where the Chairman himself/herself is part of the equally divided bench then he/she shall refer the matter to other member of the Tribunal not part of that equally divided bench to hear the case and decide.

27.1.4 Penalty

Whoever fails to comply with any order, decision or award of the NGT under the National Green Tribunal Act, 2010, commits a cognizable offence and shall be punishable with an imprisonment for a term which may extend to three years or with fine which may extend to 10 Crore rupees (25 Crore in case of a company) or with both and in case the failure or contravention continues, with additional fine which may extend to 25,000 Crore (1 Lakh Crore in case of a company) for every day during which such failure or contravention continues after conviction for first such failure or contravention.

Where any Department of the Government fails to comply with any order or 'award' or decision of the tribunal under this Act, the Head of the Department

shall be guilty of such failure and shall be liable to be proceeded against for having committed an offence and punished accordingly. Provided that if such Head of the Department proves that he/she exercised due diligence and that he had no knowledge about the commission of the offence he shall not be punished. Apart from this any other Government officer may also be punished accordingly for such offence if it can be proved that the offence was committed with the consent or connivance of such officer or is attributable to his/her neglect.



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27.1.5 Appeal

In an appeal the person who has lost the case can again challenge the decision made by the NGT before the Supreme Court. Any person aggrieved by any decision, order or award of the Tribunal, may file an appeal before the Supreme Court within 90 days from the date of communication of such decision, order or award. Though, the Supreme Court may allow a person to file such appeal even after 90 days if the Court is satisfied that the person appealing was prevented to do so for sufficient cause.



INTEXT QUESTIONS 27.1

1. What is main reason for the establishment of Tribunals?
2. What was the main purpose for the establishment of National Green Tribunal (NGT)?
3. Explain 'No Fault Principle'.
4. Where a person aggrieved by any order, decision or award of NGT can go in appeal?
5. What is the minimum number of members needed to constitute a bench of NGT, which can hear and decide a case?

27.2 REGULATION OF HAZARDOUS WASTES

Disaster occur both due to natural and man-made activities. The adverse impact caused due to the indiscriminate disposal of hazardous wastes comes under the category of environment disasters. For example the release of Methyl Isocyanate (MIC) gas in Bhopal from the Union Carbide factory in the year 1984 caused severe disaster taking thousands of human lives and adversely affecting the health of even the future generations of the people affected it.

Control and regulation of hazardous substances has always been the main concern in the exercise of environment protection. The issue has been specifically addressed under the Environment Protection Act, 1986 by way of delegated legislations. A delegated legislation refers to the legislative function of the executive organ of the government. This takes place under the legislation enacted by the legislatures which authorises the executive to frame rules for the

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actual implementation of the legislation enacted. The name delegated refers to the delegation of the power to legislate under the legislation by the legislature to the executive after laying down the broad policy objectives in the legislation. The Delegated legislation under the Environment Protection Act, 1986 includes the Hazardous Wastes (Management and Handling) Rules, {HW (M&H) Rules} 1989 made by the Government of India through the Ministry of Environment and Forests (MoEF). In order to encourage the implementation of these rules the MoEF has further brought out guidelines for HW (M&H) Rules in the year 1991. These rules provide for a regulatory framework for the handling of hazardous wastes.

27.2.1 Definition of Hazardous Substance

A 'hazardous substance' is defined not only as a substance, but also as a preparation, which by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment.

This definition explains the nature of what may be considered a hazardous substance. These are present in our surroundings which may harm our environment and hence there needs to be some guidelines for dealing with such substances, so as to protect our environment from the potential harm. An example of hazardous waste can be industrial waste, which is waste collected from a factory meant for manufacturing certain goods.

27.2.2 Procedure for the Regulation of Hazardous Wastes under HW (M&H) Rules

A. Identification of Hazardous Waste Generation - Identification of the hazardous waste generating industries is the first step.

B. Data Collection - After identifying the 'hazardous waste' generating industries, the inventory of data pertaining to hazardous waste generation can be prepared by conducting surveys in each of the identified industries.

C. Waste Characterisation - The 'hazardous waste' that is generated from the study region should be characterized. This can be done in the laboratory. Detailed hazardous waste characterisation pertaining to physical, chemical and general characteristics, and properties pertaining to ignitability, corrosivity, reactivity & toxicity is to be taken.

D. Identification of site for disposal - After quantifying the 'hazardous waste' and assessing the probable area requirements for its treatment, storage and disposal, the sites are to be identified.

E. Conducting Environmental Impact Assessment (EIA) - The impacts from the project should be identified and public acceptance should be obtained for clearing the site for Treatment, Storage and Disposal facility.

F. Implementing Treatment, Storage and Disposal Facility - The treatment, storage and disposal facility programme should be implemented at the final designated site. The site should contain adequate provisions for storage, treatment and final disposal. The site should have laboratory facilities to monitor these functions.

The above mentioned steps need to be followed carefully for guarding our environment from the dangers which the existence of hazardous waste may cause to it. Proper treatment, storage and disposal of hazardous wastes are the need of the hour for a pollution free environment.



INTEXT QUESTIONS 27.2

1. Define 'Hazardous Waste'?
2. How a 'Hazardous Waste' may impact us?
3. What was the main objective behind the making of Hazardous Wastes (Management and Handling) Rules, 1989?
4. How do you define by EIA in relation to the management and handling of hazardous waste?

27.3 KYOTO PROTOCOL

Environment protection is not territorial but a global concern and therefore, the effort to protect the environment is going on also at the international level as the environmental policy of any country does not only affects the environment of that country, rather it affects in whatever extent possible, the global environment. 'Kyoto Protocol' is the example of a measure undertaken at the international level under the aegis of the United Nations aimed at curbing the emission of Greenhouse gases (Carbon Dioxide, Methane, Nitrous Oxide, Sulphur Hexafluoride and two groups of gases hydro fluorocarbons & per fluorocarbons) by the industrialised countries, which adversely impacts the global environment.

'Kyoto Protocol' is the part of the United Nations Framework Convention on Climate Change (UNFCCC). UNFCCC sets an overall framework for inter-governmental efforts aimed at tackling the challenges of climate change. Climate Change refers to the fact that due to developmental human activities the original climate of the world is changing and the average temperature of



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world is rising every year and this will result in climate change which may have very serious consequences for present and future generations. The increase in temperature is primarily because of the emission of greenhouse gases, which are emitted mainly from industries. This also adds to the depletion of the ozone layer which prevents the harmful effects of the sun from reaching the Earth. Therefore, this is a movement to protect the world inhabited by us from becoming a world unsuitable for human existence.

The 'Kyoto Protocol' sets binding obligations on industrialised countries to reduce emission of Greenhouse gases. The Protocol was adopted on 11 December 1997 in Kyoto, Japan and entered into force on 16 February 2005. More than 190 countries are the members of the Protocol, significantly though the United States of America is not the member of the Protocol. India is also a member of the Protocol.

Some of the principal concepts of the 'Kyoto Protocol' are:

- Under the Protocol 37 industrialised countries and European Union made up of 15 European countries (called Annexure 1 countries) have committed themselves to binding obligations to reduce emission of greenhouse gases.
- In order to meet the objectives of the Protocol, Annex I, Parties are required to prepare policies and measures for the reduction of greenhouse gases in their respective countries. In addition, they are required to increase the absorption of these gases.
- Accounting, Reporting and Review in order to ensure the implementation of the Protocol.
- Establishing a Compliance Committee to enforce compliance with the commitments under the Protocol.

'Kyoto Protocol' is a very important milestone as it is an acknowledgement of the fact that in the name of industrial development the environment cannot be harmed to such an extent that we render it unsuitable for a healthy human existence. Industrialised countries by accepting the binding obligation to reduce the emission of the greenhouse gases have accepted their collective responsibility in making the global environment cleaner and healthier and thereby realizing the goal for a sustainable development. This obviously is a work in progress but what is important is its realisation and the exhibition of a global will to address this menace.

**INTEXT QUESTIONS 27.3**

1. Identify the gases that are called the 'greenhouse gases'?
2. What is the impact of 'greenhouse gases' on our environment?

3. Define the main aim or objective of 'Kyoto Protocol'?
4. How will the reduction in the emission of greenhouse gases protect our environment?

27.4 OTHER INTERNATIONAL INSTRUMENTS

International Instruments are like legislations and rules drafted by the different countries coming together at the international level to make laws applicable to them. Kyoto Protocol is not the only instrument directed at curbing environmental degradation, in fact there are several such measures that have been undertaken at the international level. These international instruments collectively constitute what is known as International Environmental Law. These laws have affected the growth of environmental law in many countries to a great extent. India's main environmental legislation the Environment Protection Act, 1986 was also enacted in order to give effect to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972.

Some of the important International Instruments are -

1. The Stockholm Declaration, 1972

- Laid the foundation of the modern global environmental law.
- Recognizes that different approaches are required to tackle problems of developed and developing countries.
- Recognizes a healthy environment as an extension to the right of life.
- Introduces the concept of inter-generational equity.
- Calls for balancing the needs of the environment with those of development
- Nations have the sovereign right to exploit their own resources, subject to the responsibility not to cause damage to the environment of other States.

2. The Vienna Convention for the Protection of the Ozone Layer, 1985

- It is a framework treaty within which member states share research and information, develop technologies, etc, for the protection of the Ozone layer

3. The Montreal Protocol on Substances that Deplete the Ozone Layer, 1987

- Protocol requires parties to reduce the consumption of ozone-depleting substances to certain stipulated levels.
- Developing countries given a grace period of 10 years to comply.



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**Notes****4. The Report of the World Commission on Environment and Development (“The Brundtland Commission”), 1987**

- Milestone in the development of international environmental jurisprudence and policy
- Established the doctrine of “Sustainable Development”

5. The Rio Declaration on Environment & Development, 1992

- Builds on the principles of sustainable development, inter-generational equity, and sovereign rights in the Stockholm Declaration.
- Expands the concept of sustainable development.
- Reaffirms, amongst others, the importance and centrality of:
 - The Precautionary Principle,
 - The Polluter Pays Principle, and
 - Environmental Impact Assessment

6. The U.N. Convention on Biological Diversity (1992)

Three main goals:

1. The conservation of biological diversity;
2. The sustainable use of its components; and
3. The fair and equitable sharing of the benefits from the use of genetic resources.

In 2000, a supplementary agreement - the Cartagena Protocol on Biosafety - sought to protect biological diversity of states against risks from living, modified organisms created by biotechnology.

In April 2002, the parties to the Convention committed themselves to achieving the target of “a significant reduction in the current rate of biodiversity loss at the global, regional and national level,” by 2010.

7. Agenda 21, 1992

Comprehensive road-map of action to be taken at the global, national, and local levels, for the protection of the environment framed at the Rio Summit.

8. The United Nations Framework Convention on Climate Change (UNFCCC), 1992

This sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. Under the Convention, governments:

- gather and share information on greenhouse gas emissions, national policies and best practices

- launch national strategies for addressing greenhouse gas emissions and adapting to expected impacts, including the provision of financial and technological support to developing countries
- cooperate in preparing for adaptation to the impacts of climate change

The Convention entered into force on 21 March 1994.

These international instruments clearly reflect the fact that the issue of environment protection has been a matter of grave concern which has attracted international attention. All these instruments also acknowledge the fact that for environmental protection there cannot be a one stop solution; this is a continuous process which must continue incessantly.



INTEXT QUESTIONS 27.4

1. Name any two International Instruments in the field of environment protection other than the 'Kyoto Protocol'.
2. What is the main objective of UNFCCC?
3. Explain the three main objective of U. N. Convention on Biological Diversity (1992)?
4. What is stated in the U. N. Declaration for Environment & Development, 1992 (The RIO Declaration on Environmnet and Development)?

ROLE OF JUDICIAL ACTIVISM IN ENVIRONMENTAL PROTECTION

27.5 ROLE OF COURTS IN ENVIRONMENTAL PROTECTION

The concept 'the right to life' under Article 21 of the Constitution of India was not given an expansive dimension in the beginning but gradually Courts in India started expanding the meaning of this term by playing an active role. The question, how to bring about a balance between the environment and development, poses a great dilemma. **The Rural Litigation and Entitlement Kendra v. State of U.P.** is the first case where the Supreme Court of India made an attempt to look into this question. In this case, the petitioners, a voluntary organisation, feared that mining activities of the lessees caused ecological disturbance. The lessees had rights given by the Government and on conditions laid down under a specific law. According to a committee of experts, appointed by the Supreme Court, mining of limestone in certain areas was found dangerous and damaging ecological balance. The Supreme Court ordered to close the mining operations in these areas, though it allowed mining operations in certain areas reported as not dangerous. The Court considered the hardship caused to the lessee but thought that 'it is a price that has to be paid for protecting and safeguarding





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the right of the people to live in healthy environment with minimal disturbance to ecological balance'. What is important is that the case was filed under Article 32 of the Constitution of India and orders were given with emphasis on the need to protect environment. Under Article-32 the Supreme Court of India can only be approached for the violation of fundamental rights and there is no specific fundamental right to environment mentioned as fundamental rights in our Constitution. This means that the Supreme Court treated the right to clean environment as a fundamental right and this can only be done by expanding the meaning of 'the right to life' as it appears in Article 21 of the Indian Constitution as one of the fundamental rights.

The right to humane and healthy environment is seen indirectly approved in the **M. C. Mehta group of cases** decided subsequently by the Supreme Court. In the first **M. C. Mehta (M. C. Mehta v. Union of India)** case, the Court had to deal specifically with the impact of activities concerning manufacturing of hazardous products in a factory. The activities were a threat to the workers in the factory, as well as members of the general public living outside. It was alleged that the leakage of Oleum gas from the factory resulted in the death of the person and affected the health of several others. The question was, whether or not the plant should be closed down. Many conditions were laid down under which industries of hazardous products should be allowed to restart. In doing so the Court found that the case raised 'some seminal questions concerning the scope and ambit of Articles-21 and 32 of the Constitution'.

Although the second *M. C. Mehta* case, (**M. C. Mehta v. Union of India**) the Court modified some of the conditions, the third **M. C. Mehta** case, (**M. C. Mehta v. Union of India**) posed an important question concerning the amount of compensation payable to the victims affected by leakage of Oleum gas from the factory. The Court held that it could entertain a petition under Article 32 of the Constitution, and laid down the principles on which the quantum of compensation could be computed and paid. This case is significant as it evolved a new jurisprudence of liability to the victims of pollution caused by an industry engaged in hazardous and inherently dangerous activity. Although it did not specifically declare the existence of the right to a clean and healthy environment in Article 21, the Court evolved the principle of 'absolute liability' of compensation through interpretation of the constitutional provisions relating to the right to live and to the remedy under Article 32 for violation of fundamental rights. The basis for this decision is clear and unambiguous – the fundamental right to a clean and healthy environment.

In **Chhetriya Pardushan Mukti Sangharsh Samati v. State of U. P.** and **Subhash Kumar v. State of Bihar**, the Honourable Supreme Court took a step forward. Chief Justice Sabyasachi Mukerji in **Chhetriya Pardushan** case observed:

“Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated in Art. 21 of the Constitution of India.”

Justice K. N. Singh in *Subhash Kumar* case observed:

“Right to live.....includes the right to enjoyment of pollution free water and air for full enjoyment of life.”

The decisions of the Courts have widened the scope of the right to life by reading into it, the right to a clean environment. Thus, Courts in India have lived up to the needs of the time and have made significant contributions in evolving new principles and remedies.

**INTEXT QUESTIONS 27.5**

1. Whether expanding the dimensions of Article 21 of the Constitution can be termed as an example of ‘judicial activism’?
2. Whether Article-32 of the Constitution of India can be used by approaching the Supreme Court in case of violation of the right to clean environment?
3. Identify the nature of liability of an industry engaged in inherently dangerous and hazardous activity towards the victim of pollution caused by it?
4. Whether right to clean environment is a fundamental right specifically given by the Constitution of India?

27.6 ROLE OF PUBLIC INTEREST LITIGATION (PIL)

Contrary to the past practices (strictly as per the *locus standi* principle) wherein, only a person himself/herself, being aggrieved, could have come knocking the doors of the courts, today a person acting bona fide and having sufficient interest can move the courts for redressing public injury, enforcing public duty or for protecting social and collective rights and interests. This is known as the dilution of the principle of *locus standi*. The ability to invoke the jurisdiction of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution of India is a remarkable step forward in providing protection for the environment. Courts have widened the dimensions of the substantive rights to health and a clean and unpolluted environment. In most cases, this progress was made with aid of PIL. The courts by allowing a case to be filed as PIL have shown that the procedure cannot come in the way of ensuring that the justice is done. In **Tarun Bhagat Sangh Alwar v. Union of India**, a social action group challenged the legality of granting a mining license in the protected area of a forest. Upholding the contention, the Supreme Court observed;

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“This litigation should not be treated as the usual adversarial litigation. Petitioners are aid of a purpose high on the national agenda. Petitioners concern for the environment, ecology and the wildlife should be shared by the Government”

The observation of the Court is important as it emphasises the rationale of PIL in environmental issues. Any person who raises an environmental issue, whether individual, group or institution is equally concerned with the problem as is the State. Such litigation can never be considered as one of adversarial confrontation with the State. In the 1984 case of *‘Bandhua Mukti Morcha v. Union of India’*, Justice P. N. Bhagwati stated that if a person was physically or economically unable to approach the Court, he/she “may move the Court even by just writing a letter,” because the legal system would otherwise be inaccessible to some of its citizens.

The range of issues in PILs has been very broad. It extends from compassion to animals and privileges of tribal people and fishermen, to the eco-system of the Himalayas and forests, eco-tourism, land use patterns and problems facing a village due to ecological damage. The cause of environment has been taken up before courts through PIL by a wide spectrum of people in society. Lawyers, association of lawyers, environmentalists, groups and centres dedicated to environment protection and forest conservation, welfare forums, consumer research centres have successfully agitated environmental issues before Courts.



INTEXT QUESTIONS 27.6

1. Whether PIL is an example of the dilution of the strict principle of *‘locus standi’*?
2. Who can file a PIL?
3. What are the kinds of issues that can be raised in a PIL?
4. What do you understand by an Adversarial System of Justice Delivery?

27.7 TECHNIQUES OF ISSUING DIRECTIONS

The powers of the Supreme Court to issue directions under Article-32 and that of the High Courts to issue directions under Article-226 have attained great significance in environmental litigation. There are several such directions which have resulted as milestones in the path of environmental protection.

1. Evolution of doctrines in environmental jurisprudence

The formulation of certain principles to develop a better regime for protecting the environment is a remarkable achievement of PILs. In *‘M. C. Mehta v. Union of India’*, the Supreme Court formulated the doctrine of ‘absolute

liability' for harm caused by hazardous and inherently dangerous industries. In *Sludge's case* (*Indian Council for Enviro- Legal Action v. Union of India*), when the people in a village suffering from lethal waste left behind by a group of chemical industries were asked to be given the compensation by such industries by the Supreme Court, the Court applied the 'Polluter's Pay Principle'.

The 'Precautionary Principle' came to be directly applied in *M. C. Mehta v. Union of India*, for protecting the Taj Mahal in Agra from air pollution. Expert studies proved that emissions from coke/coal based industries in the vicinity of Taj Mahal had damaging effect on Taj Mahal. The Supreme Court ordered that the potential polluters had to change over to natural gas as an industrial fuel and those that were not in a position to obtain gas connections-for any reason-should stop functioning in the vicinity of Taj Mahal and relocate themselves in alternative plots outside the demarcated area within a stipulated time.

The Supreme Court has also applied the principle of 'Sustainable Development' in several cases to balance the developmental concerns with the ecological balance. The **Rural Litigation and Entitlement Kendra v. State of U.P.** can be cited as an example here.

2. Protection of Social Environment

The rights to livelihood and clean environment are of grave concern to the courts whenever they issue a direction in an environmental case. Labourers engaged in the asbestos industry were declared to be entitled to medical benefits and compensation for health hazards which were detected after retirement by the Honourable Supreme Court in '**CERC v. Union of India**'.

3. Filling gaps in law and lacunae in administration

In most cases courts have issued directions to remind Government authorities of their responsibility to protect the environment. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns and cities.

4. Environmental awareness and education

The directives of the Supreme Court went to the extent of spreading environmental awareness and literacy as well as the launching of environmental education not only at the school level, but also at the college level. In *M. C. Mehta v. Union of India*, the Supreme Court emphasised the need for the awareness of environmental protection. The Court also required every State Government and Education Boards to take steps for environmental education.

Thus, it is clear from the above discussion that the PIL has played a very important role in the field of environment protection by empowering the courts in India to do whatever it can for this noble cause.



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**Notes****INTEXT QUESTIONS 27.7**

1. What do you mean by EPCA?
2. What do you mean by CNG?
3. What kind of pollution will be caused by vehicles?
4. What kind of pollution will be caused by industries putting their industrial waste into rivers?

27.8 LEADING JUDGEMENTS TO PROTECT ENVIRONMENT

We saw how ‘judicial activism’ has contributed immensely to the field of environmental protection. There are hundreds of such judgements which have collectively contributed to this cause, yet some of these judgements can be specifically highlighted which have considerably impacted the field of environmental protection. Most of these landmark judgements have also come through the means of Public Interest Litigation (PIL). From making the polluter to compensate for the pollution caused by it to declaring the concept of absolute liability for industries involved in inherently dangerous or hazardous activities, from forest preservation to initiatives for addressing the lack of civic amenities, from pollution of river Ganga to the kind of air people breathe in Delhi, from directing the closure of mining operations posing environmental risk to protecting Taj Mahal from losing its shine because of air pollution; all these issues have been taken up by the courts in India to promote the objective of a clean and healthy environment. Some of such landmark cases include-

1. The Delhi Vehicular Pollution Case

The PIL was filed by M.C. Mehta, an established environmental activist and lawyer, in 1985. It is a citizen standing case. Mehta expressed his concern about the alarming rise in the levels of air pollutants and suspended particulate matters in the atmosphere over the city of New Delhi and the surrounding region. The result was pollution-related illnesses that included tuberculosis, asthma, and bronchitis and lung cancer. Mehta argued that the respondents, the Union of India and Delhi Administration and the DTC had acted against the common law of India and the environmental legislation. He claimed that he and Delhi residents had a right to live in a clean environment and this right had been breached by the respondents. He prayed that the Court would make an order against the respondents to take action to stop those vehicles that were emitting noxious gases.

The case was filed in 1985 but no action was taken until 1990. Thereafter, a series of directions were passed by the Supreme Court. There was progress, albeit slow. From 1990 to 1992 the Court ordered periodic vehicle emission checks, particularly focusing on public buses, with the power to cancel the registration certificates of faulty vehicles. As the litigation progressed, the Court responded by directing the authorities to introduce and use unleaded fuel in a three-phased manner, starting in Delhi and encompassing all India by 2001; converting Government vehicles to compressed natural gas; ensuring two- and three-wheeler vehicles had catalytic converters and compressed gas or unleaded fuel; and that a body be established to oversee the implementation of the Court's orders.

In January 1998, the Supreme Court endorsed the Central Government's proposal to create an expert authority, to be known as the Environment Pollution (Prevention and Control) Authority (EPCA).

However, in July 1998, the Court passed an 'historic' order which became the public battleground for the various stakeholders over an issue which claims more victims than the terrorists' guns. It included the phasing out of all commercial vehicles and taxis which were more than 15 years old as of October 1998; a ban on the supply of 2T oils at petrol stations by December 1998; the increase of public transport to 10,000 buses by April 2001, the stoppage of leaded petrol within NCT Delhi by September 1998; replacement of all pre-1990 auto rickshaws and taxis to new vehicles on clean fuel by 31 March 2000; no eight-year-old buses to ply except on CNG (Compressed Natural Gas) or other clean fuel by 1 April 2000; entire city bus fleet (DTC and private) be steadily converted to single fuel mode on CNG by 31 March 2001. The Court further stressed and directed that the authorities must take effective and adequate steps to bring to the notice of the public, both through print and electronic media, the directions issued by the judiciary from time to time. The July 1998 order provided time lines to be adhered to for bringing the change in the city. The judges, while delivering the order, stated: 'This timeframe, as given by EPCA and today by this Court, in consultation with the learned counsel for the parties, shall be strictly adhered by all the authorities. We administer a strong caution to all the concerned that failure to abide by any of the direction would invite action under the Contempt of Court Act against the defaulters.'

The next target of the Supreme Court was diesel vehicles, accounting for 90 per cent of the nitrogen oxide and respiratory suspended particulate matter. The diesel particulate is toxic and chronic exposure to such toxic air would lead to 300 cases of lung cancer per million. In 1999, restrictions were imposed on the monthly registration of diesel driven vehicles. Also, diesel taxis were prohibited in National Capital Region (NCR) Delhi unless they conformed to safety standards.

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From 2000-2003, the focus of the Supreme Court was on the implementation of its orders. The Court applied the 'precautionary principle' to the auto fuel policy. The auto fuel policy focused upon the measures to anticipate, prevent and attack the cause of environmental degradation. These efforts eventually meant that all buses now run on CNG. The transport sector, including private vehicles, was given priority over the industrial sector with regard to the allocation of CNG. Thus, the mission embarked upon by the Supreme Court was successfully accomplished.

The '*Delhi Vehicular Pollution*' case reflects the commitment and dedication shown by the Supreme Court of India to protect the lives of the citizens. Judicial progress was slow, as was the implementation of its directions, but as a consequence of PIL actions Delhi's atmosphere is now relatively clean.

2. M. C. Mehta v. Union of India, Ganga Pollution case (AIR 1998 SC 1037)

The tanning industries located on the banks of Ganga were alleged to be polluting the river. The Supreme Court issued directions to them to set up effluent plants within six months from the date of the order. It was specified that the failure to do so would entail closure of business. The Court issued directions to the Central Government, U. P. Pollution Control Board and the District Magistrate concerned. The Court concluded that the closure of industries might result in unemployment and loss of revenue- life, health and ecology had greater importance. The Court is still monitoring the task of cleaning the river Ganga.

3. Indian Council for Enviro-legal Action v. Union of India, The Bichhri Village Case

Bichhri is a little-known village in the Udaipur district of Rajasthan. However, in 1988, a group of chemical industries established plants to produce hydrochloric acid and related chemicals for export. Although the production of this acid is prohibited in European countries, there remains a need for it. Thus, a remote village in India became a site for the production of this lethal chemical. 'Rogue Industries' commenced production of these chemicals without obtaining the appropriate 'no objection certificates' from the pollution control authorities. The factories' waste products amounted to between 2,400 and 2,500 metric tonnes that were highly toxic. At least 400 farmers and their families in eleven villages were directly affected by the groundwater pollution.

However, in October 1989, a PIL was filed in the Supreme Court by a Delhi-based NGO, the Indian Council for Enviro-Legal Action, led by Mr M.C. Mehta. The NGO presented the subhuman living conditions being experienced by the

villagers and requested remedial action by the court. The Supreme Court accepted the petition and thus began the legal struggle which continues to this day. Between 1989 and 1994, Orders were passed by the court. They included a request to establish an expert committee to examine the situation in and around the affected area and thereafter provide recommendations for both short- and long-term remedial action.

In February 1996, the Court declared the final order. It stated that ‘absolute liability’ rested with the rogue industries to compensate for the harm caused by them to the villagers in the affected area, to the soil and underground water and that they were bound to take all necessary measures to remove the sludge and other pollutants and defray the costs of remedial measures required to restore the land and underground water. The Court invoked the ‘polluter pays’ principle and empowered the central Government to determine and recover the cost of remedial measures from the industries. The Court ordered the closure of all chemical plants located in the Bichhri area. It is noteworthy that the Court suggested the establishment of dedicated environmental courts for the adjudication of such matters and the establishment of the National Green Tribunal fulfils this long standing demand made by the Court.

In November 1997, the Court required the industries to pay Rupees 37.38 Crores towards the cost of environmental remediation and Rupees 34.28 Lakhs to the villagers, which were not immediately complied with. Finally, in 2011, the Supreme Court imposed a compound interest of 12 per cent on the remedial amount of Rupees 37.38 Crores on the polluter for the 15-year delay in making the payment. The polluters were given two months to make the payment; failure to do so would result in the recovery being made as arrears. The polluting industries had no other option but to comply with the orders of the Court this time.

The importance of the *Bichhri* case is that it allowed the villagers’ grievances to be heard via PIL. The application of Article 21, ‘absolute liability’ and the ‘Polluter Pays Principle’ makes the case a landmark judgment in India’s emerging environmental jurisprudence.

4. T. N. Godavarman Tirumulkpad v. Union of India, (AIR 1997 SC 1228)

The idea of ‘sustainable development’ had its influence on the judiciary in interpreting the provisions of law relating to forest. Various dimensions of the problem came to be examined by the Supreme Court in this case. The decision of the Court can be summarised as follows:

- Mining license in forest area without proper approval by the Government is violative of the Forest (Conservation) Act. All on-going activities under



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such invalid license must cease. The State Governments have to take necessary remedial measures.

- Running saw mills of any kind is a non-forest activity. All saw mills within a distance of 100 kilometres from the border of the State of Arunachal Pradesh are to be wound up.
- Responsibility was imposed on each State Government to report on the number of saw mills, actual capacity of mills, proximity to the nearest forest and their sources of timber.
- Complete ban on felling of trees in the forests of Arunachal Pradesh. Felling of forests in other States also suspended except in accordance with working plans.
- Movement of cut trees and timber banned.
- Each State Government to constitute expert committees to identify forest areas and forests covered by plantation trees and to assess the sustainable capacity of the forest in relation to saw mills.
- In State of Jammu & Kashmir, no private agencies should deal in felled trees or in timber.
- In Tamil Nadu the tribals who are residing in the forest area to continue to grow and cut trees according to the Government scheme and in accordance with the law applicable.

The case came back within four months for review of the follow up action as directed by the Court. Interestingly, the Court proceeded to constitute a committee to oversee the implementation of its orders in the north-eastern region of India. Unlicensed saw mills and veneer and plywood industries in the States of Maharashtra and Uttar Pradesh were directed to be closed. All trees felled in the janman areas of Tamil Nadu were ordered to be delivered by the plantations to the State Government.

The orders passed by the Supreme Court clearly demonstrates the failure of executive to ensure compliance with the forest laws of India, so much so that even for the supervision of the implementation of the Court orders, the Court had to constitute a committee, a work which otherwise should have been done by the executive.

Many developing countries look to India as a country where human rights are championed by an independent judiciary and certainly in the area of environmental protection through the means of PIL, the Indian judiciary has led by some landmark examples which aptly shows the commitment of the Courts in India towards this cause.

**INTEXT QUESTION 27.8**

1. Name four leading cases relating to protection of Environment.

**WHAT HAVE YOU LEARNT**

A Tribunal is established for the adjudication of disputes related to some specific areas, whereas courts exist for the adjudication of all kinds of disputes regardless of any specific area. Whenever a Tribunal is created by law the jurisdiction of courts to adjudicate the disputes related to that area for which the Tribunal is created is taken away from it and given to the Tribunals.

The National Green Tribunal was established under the National Green Tribunal Act, 2010 for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

National Green Tribunal is empowered to provide by an order:

- Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I (including accident occurring while handling any hazardous substance) of the Act.
- For restitution of property damaged
- For restitution of the environment for such area or areas

A 'hazardous substance' is defined under the Hazardous Wastes (Management and Handling) Rules, 1989, not only as a substance, but also as a preparation, which by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment.

The 'Kyoto Protocol' sets binding obligations on industrialised countries to reduce emission of Greenhouse gases.

International Instruments are like legislations and rules drafted by the different countries coming together at the international level to make laws applicable to them. There are several such International Instruments which collectively constitute what is known as International Environmental Law.

The clean air people in Delhi breathe is largely because of the PIL which was heard by the Supreme Court highlighting the dangers of the air pollution caused



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by the vehicles causing pollution by emitting dangerous smoke as a result of the use of diesel and petrol. It took several years for the Court to ensure that the public transport vehicles plying on the roads of Delhi must use CNG as fuel and not petrol and diesel. All this could be realised through the means of PIL.

Through the means of PIL, the Supreme Court has also undertaken the task of pollution in the river Ganga. Supreme Court in 'Bichhri village case' applied the 'Polluters Pays Principle' and asked the polluting industries to compensate for the environmental damage caused by it. This case also reached the Supreme Court through the means of PIL.

Supreme Court has also undertaken the task of forest preservation very actively through the means of PIL in *T. N. Godavarman Tirumulkpad* case.

**TERMINAL QUESTIONS**

1. What were the reasons for the establishment of National Green Tribunal?
2. What is the composition of National Green Tribunal?
3. Describe the jurisdiction of National Green Tribunal?
4. What can be the impact if the Hazardous Wastes are not properly treated, stored or disposed off?
5. What are the different steps in the handling and management of Hazardous Wastes?
6. What are the Greenhouse Gases?
7. Define the 'International Environmental Law'?
8. Define the 'Judicial Activism' especially as applied in the field of environmental protection?
9. Discuss briefly the role of Public Interest Litigation (PIL).
10. Name the four leading Judgements of the Supreme Court relating to Environment Protection.
11. Under which provisions of the Constitution of India a PIL can be filed in the Supreme Court and the High Courts in India?
12. Define 'PIL'? Explain the basic features of PIL.
13. What do you understand by the Adversarial System of Dispute Resolution by the Courts?
14. Explain briefly the '*Delhi Vehicular Pollution* case'.

15. How and why did the Supreme Court of India apply the 'Polluters Pay Principle' in the *Bichhari Village* case?



ANSWER TO INTEXT QUESTIONS

27.1

1. The main reason behind the establishment of Tribunal is to ensure expeditious adjudication of disputes by including experts from the area concerned as adjudicators along with the judicial members.
2. The National Green Tribunal was established for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matter connected there with or incidental thereto.
3. 'No Fault' principle stipulates that in case of accident the owner or the employer cannot take the defence of him having committed no fault. If accident occurs and as a consequence of it damage is caused to any person or environment, the owner or the employer is liable, only because of the fact that accident occurred in his enterprise.
4. In an appeal the person who has lost the case can again challenge the decision made by the NGT before the Honourable Supreme Court.
5. Minimum number of members who must together hear and decide a case is two, out of which one must be a judicial member and other an expert member.

27.2

1. The substance or preparation which by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment is called 'Hazardous Waste'.
2. Hazardous Waste if unattended and simply dumped can give rise to serious health and environmental issues.
3. The objective behind the making of Hazardous Wastes (Management and Handling) Rules, 1989 is the control and management of Hazardous Waste.
4. EIA implies that the impacts from the project of treatment, storage and disposal of hazardous waste should be identified and public acceptance should be obtained for clearing the site for such use. This is the needed EIA in relation to the management and handling of Hazardous Wastes.



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1. Carbon Dioxide, Methane, Nitrous Oxide, Sulphur Hexafluoride and two groups of gases hydro fluorocarbons & per fluorocarbons.
2. Greenhouse gases are responsible for the climate change which includes rise in average temperature of the Earth and depletion of the ozone layer.
3. Kyoto Protocol is the example of a measure undertaken at the international level under the aegis of the United Nations aimed at curbing the emission of Greenhouse gases.
4. Because the emission of greenhouse gases is responsible for climate change, hence its reduction will automatically stop the extent of damage caused to the environment.

27.4

1. The RIO Declaration on Environment and Development or the Convention on Environment and Development at Rio de Janeiro in the year 1992 & United Nations Framework Convention on Climate Change (UNFCCC).
2. UNFCCC sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change.
3. The three main objectives are:
 - i. The conservation of biological diversity;
 - ii. The sustainable use of its components; and
 - iii. The fair and equitable sharing of the benefits from the use of genetic resources.
4. The 'RIO Declaration' on Environment Development, 1992 builds on the principles of sustainable development, inter-generational equity, and sovereign rights in the Stockholm Declaration, expands the concept of sustainable development and reaffirms, amongst others, the importance and centrality of the Precautionary Principle, Polluters Pay Principal and the Environmental Impact Assessment.

27.5

1. Yes
2. Yes
3. Absolute Liability
4. No

27.6

1. Yes
2. Today a person acting bona-fide and having sufficient interest can move the Courts under PIL for redressing public injury, enforcing public duty or for protecting social and collective rights and interests. . The cause of environment has been taken up before courts through PIL by a wide spectrum of people in society. Lawyers, association of lawyers, environmentalists, groups and centres dedicated to environment protection and forest conservation, welfare forums, consumer research centres have successfully agitated environmental issues before Courts.
3. The range of issues in PILs has been very broad. It extends from compassion to animals and privileges of tribal people and fishermen, to the eco-system of the Himalayas and forests, eco-tourism, land use patterns and problems facing a village due to ecological damage.
4. Adversial System of Justice Delivery means that the two parties to the case fight the case between each other and the judge simply sits as a neutral umpire or referee to decide who has a better case.

27.7

1. Environment Pollution (Prevention and Control) Authority
2. Compressed Natural Gas
3. Air Pollution
4. Water Pollution

27.8

1. (i) The Delhi Vehicular Pollution Case.
(ii) M. C. Mehta vs. Union of India, Ganga Pollution Case.
(iii) Indian Council for Enviro-Legal action vs. Union of India–The Bichhri Village Case.
(iv) T. N. Godavarman Triumulpad vs. Union of India (AIR 1997 S.C. 1228).



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