# Contents

## A. Articles – On Environment Issues And Concerns

<table>
<thead>
<tr>
<th>Article</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian Environmentalism</td>
<td>1</td>
</tr>
<tr>
<td>Justice D.Y. Chandrachud&lt;br&gt;Judge, Supreme Court of India, India</td>
<td></td>
</tr>
<tr>
<td>Ecocentrism :The New Paradigm of Environmental Jurisprudence</td>
<td>13</td>
</tr>
<tr>
<td>Justice S. Ravindra Bhat&lt;br&gt;Judge, High Court of Delhi, India</td>
<td></td>
</tr>
<tr>
<td>Emergent Challenges for Paris Climate Regime&lt;br&gt;CBDR in the Context of INDC</td>
<td>19</td>
</tr>
<tr>
<td>Professor (Dr.) Usha Tandon&lt;br&gt;Professor-In-Charge, Campus Law Centre&lt;br&gt;University of Delhi, India</td>
<td></td>
</tr>
<tr>
<td>Inclusive Green Growth: A Key to Unlock Multi-Dimensional Problems</td>
<td>29</td>
</tr>
<tr>
<td>Dr. Rajni Malhotra Dhirga&lt;br&gt;Dean &amp; Professor&lt;br&gt;Vivekananda Law School, Vivekananda Institute of Professional Studies&lt;br&gt;GGSIIPU, New Delhi, India</td>
<td></td>
</tr>
<tr>
<td>Sustainable development as a sine qua non for sustainable living -Lesson from reinterpreting ‘Matsyanyaya’ or ‘Justice in the World of Fish’</td>
<td>37</td>
</tr>
<tr>
<td>Dr. Charu Sharma&lt;br&gt;Executive Director&lt;br&gt;Center for Environmental Law and Climate Change&lt;br&gt;Jindal Global Law School, O P Jindal Global University&lt;br&gt;Sonepat, Haryana, India.</td>
<td></td>
</tr>
<tr>
<td>Sustainable Development as Environmental Justice&lt;br&gt;Exploring Judicial Discourse in India</td>
<td>51</td>
</tr>
<tr>
<td>Dr. Nupur Chowdhury&lt;br&gt;Assistant Professor&lt;br&gt;Centre for the Study of Law &amp; Governance&lt;br&gt;Jawaharlal Nehru University&lt;br&gt;New Delhi, India</td>
<td></td>
</tr>
</tbody>
</table>
B. Environmental Jurisprudence
Impact of Tribunal’s Judgments Nationally and Internationally

Dr. Bharti Kumar
Associate Professor, National Law University, Delhi, India
Vishwendra Panwar
Research Scholar, National Law University, Delhi, India
Shachi Singh
Research Scholar, National Law University, Delhi, India

C. Report of National Green Tribunal

Ms. Sheetal Sharma, Deputy Registrar
National Green Tribunal, New Delhi, India

- Chapter – I  Best Practices – National Green Tribunal 89
- Chapter – II  Composition of National Green Tribunal 91
- Chapter – III  Composition and Functioning of Benches 93
- Chapter – IV  Case Statistics - National Green Tribunal 95
- Chapter – V  National Green Tribunal: An Institutional Appraisal 99
- Chapter – VI  Initiatives of National Green Tribunal 107
- Chapter – VII  E – Courts At National Green Tribunal – E –Justice 109
- Chapter – VIII  Way Forward 109

D. Events-National Green Tribunal

E. National Green Tribunal Representation on International Forum
National Green Tribunal
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VOL.II OF 2017

Editorial Board

Hon’ble Mr. Justice Umesh Dattatraya Salvi
Judicial Member, NGT

Ms. Sheetal Sharma
Deputy Registrar, NGT
Editorial Note

It gives immense pleasure to introduce to the readers ‘Volume II of 2017 National Green Tribunal International Journal on Environment’. Previous volumes of the Journal have been received well and National Green Tribunal is in the fourth year of publishing this journal which highlights issues raising serious environmental concerns nationally and internationally.

The present volume is concerted effort to prepare a comprehensive and meaningful compilation of articles on environment. Various articles in this volume authored by eminent jurists, professors and environmentalists highlight environment issues, its impact and measures taken up by various organisations. It also focuses on the efforts of National Green Tribunal in combatting the environmental degradation through judicial intervention.

Present volume is an attempt to bring out a clear picture of emerging environmental problems in a developing society and ways to overcome them. It aims to provide a clear insight of the environmental jurisprudence and infuse an innovative point of view to assess the damages and suggesting measures to curb them with the support of Law.

Through this Bi-Annual International Journal, we assure to interact frequently with our prospective readers through various articles authored by distinguished Jurists, Professors, Environmental Scientists, Social Activists and other personalities of national and international repute in the field of environment.

It is a proud moment for us to release Volume II of 2017 on this occasion of International Conference on Environment-2017 at New Delhi in the august presence of National and International dignitaries. We further take this opportunity to extend our gratitude to Hon'ble Mr. Justice Swatanter Kumar, Chairperson, NGT for constant encouragement to make this journal effective and purposeful. We are hopeful that the National Green Tribunal’s International Journal on Environment Volume II of 2017 achieve success.

Justice Umesh Dattatraya Salvi  
Judicial Member, NGT  

Ms. Sheetal Sharma  
Deputy Registrar, NGT
ARTICLES ON
ENVIRONMENT ISSUES & CONCERNS
Sustainable development as a sine qua non for sustainable living - Lesson from reinterpreting ‘Matsyanyaya’ or ‘Justice in the World of Fish’

Dr. Charu Sharma*

Abstract

This paper advances the urgent need for making sustainable living as the moral, cultural, and legal basis of natural resources protection, environmental protection, and human development in India. A concerted change is required within the social and cultural attitudes. If society is to combat the injustice and damage wrought due to unplanned development, mismanagement in the use of natural resources, effects of climate change, urban pollution, agricultural woes and human living conditions, people need to reorient their attitude as a whole.

This paper has attempted to highlight how the courts have so far been expanding and interpreting sustainable development and related principles for sustainable living. It is argued that learning from India’s ancient jurisprudence and balancing it with modern development and environmental issues will expand the concept of sustainable living and ideas of justice for the environment and the people, raise awareness and provide a platform for change in internalizing better management of natural resources, environmental protection and better living strategies.
Introduction

Sustainable or balanced development is much more a *sine qua non* of contemporary times in India than it was when introduced by Norwegian Prime Minister Gro Harlem Bruntland four decades ago to the rapidly developing world.\(^1\) However, sustainable development has not led to sustainable living or to environmental justice in India. If one juxtaposes the prevalent modern understanding of environmental justice and sustainable development with the ancient Indian writings on ecology and environment and the parable of ‘Matsyanyaya’, where ‘big fish eat small fish’ - a reinterpretation of the latter for meaningful sustainable living and balanced development one could reach and appeal to the Indian psyche in a manner so as to reorient society towards sustainable living.\(^2\) Disharmony in respect of natural resources extraction for imbalanced development, grave environmental pollution problems impinging upon not only current but also future generations. If society needs to reorient itself towards sustainable living relying on sustainable development then reinterpretation of the concept of ‘matsyanyaya’ in order to align it with ‘sustainable living’, ‘environmental justice’, ‘developmental justice’, and ‘eco-centric justice’ needs to be internalized. Internalization of sustainable development into sustainable living practice necessarily encompasses all the environmental principles including precaution, conservation, preservation and protection in India.

Matsyanyaya\(^3\) and learning from ancient jurisprudence - a lesson to be learnt for its reinterpretation for sustainable development

MatsyaNyaya - (fish justice) denotes ‘Big fish devouring small fish’.\(^4\) The ancient scriptures in Hindu religion have been taken often to convey parables with lessons on the way of living or origin of human beings and civilization from the ocean.\(^5\) Such parables also provide a metaphor for the law of the jungle where the strong overpower the weak in a state of nature where there is chaos and the rule of law is not followed. In the ancient folklore, a small fish approaches a king (Manu, considered to be the representative of mankind) and requests his protection from bigger fish. As Manu embodying humankind with a rational mind, faculty of choice and compassion (such faculties being absent in animals) chooses to save the small fish from its bigger enemies and from being devoured that day. The fish is grateful. However, very rapidly the fish outgrows its home and the king realizes his mistake as the fish has now increased to a size that all the vessels, ponds, lakes, rivers and even the sea is too small to hold the fish. While the fish was growing everyday Manu kept providing a bigger space and vessel to the fish he did not realize that act was causing a detriment to other living beings. At the point of crisis, Manu realizes that the whole world has suffered and would be affected detrimentally by the rising seawater, so invokes the gods to save him and the world. In the story, the gods save the world and the king. However, upon one interpretation, Manu is given a lesson where he is admonished that when he interfered with the matsyanyaya or world’s natural order he let his love, compassion or greed to be seen as the savior of all led to an injustice or ‘adharma’ as a king towards the others causing an imbalance within nature.\(^6\) A manifestly unjust state of affairs arose due over zealousness, greed, desire that should not be allowed to enter the world of
humans and other living beings as opposed to one being.

One possible analysis of the above story, in modern times could be that although human beings are endowed with complex faculties and can use those for taming and harnessing nature what they ought not to do is disturb and cause disharmony in the processes of nature.

Juxtaposing the story in modern times it is trite to say that what is happening in the world with unsustainable patterns of development and the gap between rich and poor nations, resource rich and resource starved nations is essentially the application of the law of jungle. Upsetting the ‘niti’ or natural processes due to unsustainable patterns of living lead to consequent human suffering and injustice/nyaya nature’s justice. Added to this if one considers the costs of development whether in form of clearing of forests, mining, building of power stations or siting land for waste and garbage disposal in an unscientific or unplanned manner lives are lost and governance institutions questioned.

What is required is indeed a reinterpretation of the ancient adage a rethinking – as although in nature, no animal or fish would rescue the small or the meek but human beings with their rational faculties have power to defy the law of the jungle and injustices caused by unsustainable development. Thus it is argued that use of legal and social institutions encourage sustainable development and hence sustainable living. The laws, which human beings have made and the policies and practices that govern sustainable development are the modern day dharma, niti and nyaya taking account of not only saving the rich but also protecting the poor, of not only use and extraction of natural resources for the benefit of a specific society but also preservation, conservation and protection of the environment and the victims of excessive use. Similarly it has been argued that one needs to consider human interference when one is talking about the right to development and the right to environmental and development justice issues.7

The value accorded to the environment must take into consideration the opportunities it offers (for people for creating better living standards and sustainable development for humans) and active pursuit of the benefits of the environment that human rational faculty can devise and create.8 Sen argues that as development is an empowering process one must not only think of environment exclusively in terms of conserving pre-existing natural conditions as the environment also includes human creations.9 Apropos a lesson from the matsyanyaya story is that sustainable development becomes a tool, an evolutionary process to seek a balance and to throw the fish back to where it came before it is too late, in other words ‘realizing when to stop in pursuit of best material life’.10 Thus following the path of dharma.

Accordingly, sustainable development concept demands letting go at the right time and hence it is a process that demands a delicate balance and challenges social practices, policies, procedures, laws and environmental justice.

**Sustainable Development and Environmental Justice**

Should one interpret this concept as balanced development? Or ‘sustainable living’? Sustainable development is an artificial construct.15 The ‘right’ to development and protection of environment/nature/natural resources pose a dilemma for humankind. Article 1, Declaration of the Right to Development, United Nations General Assembly Resolution16 defines sustainable development as:

>"An inalienable human right by virtue of which every human person and people are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

Sustainable development for ‘sustainable living’ demands cooperation from all people, for governance institutions, social institutions, local community, and individuals to to be able to create an ‘environment’ to realize not only basic human rights for all but also able to live sustainably.17
Unraveling the definition

The definition as interpreted through the years encompasses realization of basic human rights where all people are able to realize their basic human rights. However it demands a cost to be extracted from Nature/ecological systems with unplanned development often-violent leading to degradation (the use of natural resources and benefits from the environment are itself necessary and essential to a point). Yet what has happened in reality taking account of external factors there is over-use of natural resources and the natural environment.

In sustainable development theory, the aim is to strike a balance between this continuous evolution and development, taking only what is due and adopting practices that are mindful of taking necessary steps of precaution to avoid harm, conservation for the upkeep, preservation of a valued resource and protection from unnecessary abuse of environmental and natural resources.

As enumerated by the Indian Supreme Court in the Indian Council For Enviro Legal Action vs UOI...

...The necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand... Accordingly the equation of sustainable development includes an objective of all laws on the environment and sustainable development to be mindful of not only the balance in nature and planned development but also take account of

- Environmental practices for protection
- Development Economic social political
- Sustainable living

Thus maintaining a harmony between all the factors as neither can be sacrificed on the altar of the other. This however poses a challenge and a dilemma. The environmental governance laws and their application by the Supreme Court have tried to maintain this balance in India.

The evolutionary application of the concept of sustainable development has been recently reflected by India’s Prime Minister, Mr Narendra Modi. Speaking at the Plenary Meeting of the General Assembly of the United Nations Summit for the adoption of the post-2015 development agenda (25 to 27 September 2015,) in New York the Prime Minister recognized and reiterated the environmental linkages that define our lives with India's social, economic and developmental goals under the Sustainable Development 2030 Agenda. He also reiterated that much of India's development agenda mirrors sustainable development goals including climate change, energy alternatives, vulnerability of farmers, technological exchanges, empowerment to the people to meet the sustainable development goals which has been made possible through varied national schemes. Thus reflecting India's commitment for a sustainable path to prosperity.

Within India the 1972 amendment to the Indian Constitution article 48 A and 51 A incorporated the broader ideals of the IUCN and Our Common Future. Thus it became logical concomitant to maintain eco processes and life support systems, Use of species and ecosystem that needed to be sustainable and to preserve genetic Diversity.

Thus sustainable development meant “Development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs” and take account of needs of needs of poverty stricken and be mindful of the fact that as a developing country India's ability to meet needs is limited by science and technology hence a precaution ought to be in built while using natural resource base that it was endowed with.

Thus the Supreme Court not only devised ways and means for a legal procedure for standing of victims of the 'environmental injustice' or 'development injustice' rendered to the people and the ecology but also devised remedies, interpreted and upheld the rule of law, the Constitution, statutes and notification to include sustainable development that took into account pertinent consideration of

- Environmental and bio diversity protection
- Use conservation preservation of natural resources
Intergenerational equity
- Precautionary principle
- Polluter pays
- Duty to consider natural resources within the public trust domain
- Duty to assist and cooperate with governmental institutions, people, NGOs and international bodies
- Eradication of poverty, financial assistance,
- building education and awareness for environmental issues, sustainable living and alternate sources of energy
- Food security

Being a developing country, economic progress is essential; at the same time, care has to be taken of the environment. Thus, the question that squarely arises is: How can sustainable development, with economic progress and without environmental regression, be ensured within the Indian legal framework?

Concomitant to the evolution of the environment protection ideals and sustainable strategy at the international level India's international obligations arising from the Stockholm Conference, the Forty-Second Amendment to the Indian Constitution in 1976 introduced explicit principles of environmental protection.

Facets of sustainable development including various manifestation of diverse theories of justice are reflected in various Indian cases. This has included by application and interpretation of various environmental principles under environmental framework conventions and customary law (whether precautionary, polluter pays, public trust doctrine, intergenerational equity or right to life under article 21 of the Constitution) It has included application and expansion of the scientific uncertainty and risk management precautionary principle as enumerated in principle 15 of the Rio convention in Vellore Citizens Forum v Union of India.36

The precautionary principle in the context of environmental protection is essentially about the management of scientific risk. It is a component of the concept of ecologically sustainable development and has been defined in Principle 15 of the Rio Declaration, 1992.37 According to this principle, "where there is threat of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation." In other words, any human activity or behavior which bears the harmful effect to the environment, has got to prevented at all costs.

The Supreme Court in Indian Council for Enviro Legal Action v Union of India38 while deciding upon the pollution caused by chemical industries to the land and surrounding areas affecting not only people but also property and ecology of the area observed that 'we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions in this country. Once the activity carried on is hazardous or inherently dangerous, the polluter carrying on such activity is liable to make good the loss caused to any other affected party by polluter's activity irrespective of the fact whether the polluter took reasonable care while carrying on his activity.'

Similarly in M. C. Mehta v. Kamal Nath39, imposing liability upon the polluter that 'polluter pays principle has been recognized as fundamental objective of Government's environmental policy to prevent and control pollution. The Court in this case observed that the "calculation of environmental damages should not be on the basis of claim put forward by the party, but it should be on the basis of examination of the situation by the Court, keeping in view the factors such as deterrent nature of the award." Thus one sees a deterrence approach in applying the polluter pays principle in this case. In the RLEK v State of Uttar Pradesh or the Doon valley case40, dispute arose over limestone quarrying and mining in the hilly areas of Dehra Doon, Mussoorie situated in the state of Uttar Pradesh. The Supreme Court after much investigation, ordered the stopping of mining work. However in 1991, in the Doon Valley case the Court allowed a mine to operate until the expiry of lease as exceptional case on condition that land taken on lease would
be subjected to afforestation by the developer. But as soon as the notice was brought before the court that they have breached the condition and mining was done in most unscientific way, the Supreme Court directed the lessee to pay a compensation of three lacs to the fund of the monitoring committee. This has been directed on the principle of 'polluter pays'. But one easily observes how the Court follows a judicious and balanced approach upholding the sustainable development principle reflecting a right to development in allowing mining in respect of economic growth of the state and banning such activity in regard for ecology. Thus prioritizing development and ecological environmental justice.

Thus the concept of sustainable development as introduced and applied by the Supreme Court in the context of economic development was necessary in the view of the developing economy that India was and to still is.

In The Ganga Pollution cases the The Supreme Court went so far as to say that:

"Life, public health and ecology is entitled to a priority over unemployment and rural poverty. The right to adequate conditions for living must be recognised and fundamental human rights must be guaranteed for all. All people should have equal opportunities for acquiring knowledge and skills required to become worthy members of society. There ought to be a balance for a fair allocation of community resources."

Recent application of the precautionary principle is seen in Nimmala Akkaiah Vs. Union of India26 by the National Green Tribunal. The Southern bench of the National Green Tribunal while applying the precautionary principle as contained in the National Green Tribunal Act of 2010, disallowed the construction of a medical college and an industry that might have affected the protection accorded to the bird sanctuary and surrounding areas despite the fact that the state government had also issued notifications for allotment of land to the respondents.

In the Taj trapezium case41 in 1997 the court recognized Mr Mehta's efforts and objective behind this litigation which was to stop the pollution of the area surrounding the Tajmahal. The court held that while the development of industry is important for the economy of the country, but at the same time the environment and the eco-systems have to be protected.

Further still in the State of Himachal Pradesh v Ganesh Woods44 the Supreme Court invalidated forest based industry, recognizing the principle of inter-generational equity and sustainable development.

In Dighi Koli Samaj Mumbai (Regd) v. Union of India45 in 2009 the Mumbai High court reiterated that the successful environmental policies require many things, the most vital being the support of the common masses and that happens only if there is an ethical commitment to environmental values.

In Karnataka Industrial Areas Development Board v C Kenchappa46 the Supreme Court while emphasizing the importance and awareness of ecology and environment laid down principles applicable while acquiring land from farmers by the Karnataka Industrial Area Development Board that emanated from sustainable development.

Similarly Dr. Meenakshi Bharath Vs. State of Karnataka47, the Karnataka High Court has summarized the evolution of sustainable development and public trust doctrine towards sustainable living in that the state, as a trustee of all natural resources, was under a legal duty to protect them, and that the resources were meant for public use and could not be transferred to private ownership. Thus reiterating the duty of the government for an affirmative state action for effective management of resources; laws and policies that empower citizens to question ineffective management of natural resources.

In Human Care Charitable Medical Trust v Union of India48 on the importance of getting environmental clearance certificates(EC) for construction activities from the State Environment Impact
Assessment Authority (SEIAA), Justice Swatanter Kumar Chairperson, has held that “the principle of sustainable development by necessary implication requires due compliance to the doctrine of balancing and precautionary principle.

In Ajay Gautam v Union of India, the Uttarakhand High Court (Nanital bench) Rajiv Sharma and Alok Singh, JJ dealt with another environmental and planning problem depicting the urgent need for overcoming unsustainable development in the state of Uttarakhand.

In view of the rapidly evolving scope of sustainable development policies within India and legal decisions one must not forget the vast number of people who are still denied environmental justice. Over 260 million people in India live below the poverty line, of which 70 million are tribals. The tribal communities are dependent upon forests and natural resources, the tribal lands have their own form of indigenous governance and hold richest minerals and natural resources on their lands comprising 60% of India’s forests. The context and background of historical injustices to the vulnerable communities, e.g. tribals, poor farmers, migrant population or those who rely upon traditional understanding of nature and justice ought not to be over looked.

The formal legal system ought not to overpower the indigenous, local and traditional forms of governance or justice where communities may have their indigenous methods and manner to determine rights or claims over natural resources and claims in respect of land use and management. Recognizing their way of life only further enriches the ecological jurisprudence and empowers them to develop their own concept for the future of development and best use of the natural resources which they host. The foundations of modern environmental justice were laid following the civil rights struggles of United States when African-American communities in the 1970s and 1980s came to perceive the siting of waste facilities and other environmental harm as unjust. Within India one can identify it with social justice movements in the form of struggle to save the trees in the Northern states against cutting of forests for development, in the Chipko Andolan by social activist Mr Sunderlal Bahugna, or protests against development of a series of the dams over river Narmada in the central Indian states, protest against farmer’s breeder rights, seed campaign violence in Bangalore, land acquisition and lower compensation and subsidies to farmers in the country, farmer suicides across the country, cutting of trees within protected forest by private entities allowed by the state government, violent protest by tribal communities against mining by state corporations and private corporates. Most of these social movements have been about environmental justice. Thus environmental justice within India as elsewhere has involved questions about access to the law and the courts and equity ensuring that everyone, regardless of means, where they live, or their background, enjoys right over a clean and healthy environment in all its aspects including use and extraction of natural resources or sustainable living. Most tribal mineral rich communities rank low in terms of the Human Development Index (HDI).

Viewing sustainable development and unsustainable patterns

How does one view the struggles and controversies in context of balanced development?

On September 25th 2015, countries adopted a set of goals to end poverty, protect the planet and ensure prosperity for all as part of a new sustainable development agenda. Each goal has specific targets to be achieved over the next fifteen years. UN's Development Agenda for 2016-2030 i.e. “Transforming our World: the 2030 Agenda for Sustainable Development” comprising 17 Sustainable Development Goals (SDGs) and 169 related Targets were adopted and signed by the Government of India in Sept 2015.

The Planning Commission or the 'NITI Aayog' has been assigned the role to oversee implementation by Ministries and to coordinate with States for the achievement of developmental targets as
enshrined in the SDGs. These Goals within India have been broken down into various schemes to ensure sustainable management of resources both environmental and human. Thus the Planning Commission goals have included schemes to ensure availability and sustainable management of water and sanitation for all, action to combat climate change and its impacts; conserve and sustainably use the oceans, seas and marine resources for sustainable development; ensure healthy lives and promote wellbeing for all at all ages; protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss; promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. However for the goals to be reached for sustainable living a concerted effort is needed: duty upon the government, the private sector, civil society and all of us.

However, in recent times the frequency of man made ecological and environmental disasters due to unsustainable development, have increased manifold. This has built up to a point of crisis that needs to be addressed, managed and sensitize people into adopting sustainable living practices. Simultaneously the governance and social institutions ought to empower people to adopt sustainable development within local customs and antipollution practices, akin to public private partnership for sharing and use of natural resources.

A tragedy struck Kedarnath valley in the month of June, 2013. Ashok Gautam v UOI was a public interest litigation that was filed that underscored the untold miseries suffered by the persons who were trapped in a landslide that killed over 10,000 pilgrims and destroyed and damaged property and public infrastructure. It was not all a natural disaster. The case highlights how the Kedarnath area received an unprecedented heavy rainfall in June 2013. Cloudbursts and landslides due to major weather conditions are a natural and expected occurrence in a hilly area. However, in the June cloudburst the Chorabari Lake collapsed and millions of tons of debris and boulders were carried by flash flood downstream. Several roads, buildings and other structures were washed away. Bodies were strewn all over the place, roads had been washed away and the rescue teams unable to reach many people who were trapped in the debris. On surface it was a natural disaster but the mishandling or lack of preparedness in the handling and rescuing of the aftermath caused the petitioner to move the court.

The case highlights that many man made factors contributed to the victims dying due to non availability of rescue aid, medical aid, food and water, over use of infrastructure resources, unplanned, haphazard construction and development activities which exacerbated and added to the fatalities. Added pressure of population in the cities surrounding or near the area and their unplanned growth was also a major threat to the whole river system of the State. Further non-degradable solid wastes and several pollutants being dumped in the rivers without treatment and plying of heavy transport vehicles, including trucks and buses posed a threat to the fragile ecology of the area due to emission of smoke. The situation as the case enumerates reflects a poor state of planning and violation of sustainable development goals and laws that have been enacted. Taking cognizance of the tragedy and the state of affairs for violation of most of the environmental laws, sustainable development and loss of life the Tribunal issued mandatory directions to the state government, inter alia, in taking DNA samples from the bodies of the dead victims so as to identify them and inform their families or cremate them with dignity, making a development master plan for the area, creating restrictions for mass tourism in eco-sensitive zones, in order to save the glaciers by preparing the National Code of Tourism and Pilgrims; ensure that no untreated sewage is discharged in the rivers enroute to ‘Chardhams’; create biometrics data of all the tourists/pilgrims by installing biometrics machines so in case of tragedies victims can be identified and families of victim can be informed. It went further to order a complete ban of chips, cookies, noodles (emphasis mine) and eatables wrapped in plastics in the entire ‘Valley of Flowers’. And sanctioned against activities that would
attract a environmental penalty of Rs. 10,000 where a threat, damage and harm is caused to the flowers and vegetation. It issued directions to “Divisional Forest Officer concerned to take cognizance of damage caused to the flowers and vegetation in the Valley of Flowers and impose penalty till the law is enacted by the State. The amount of penalty shall be used for preservation of environment and ecology of the Valley of Flowers.” In this the court was mindful of the contextual background in according environmental justice and in upholding the fundamental right of a person under article 21 to be buried with dignity, of the ecological, historical, cultural and religious importance of the area and the lack of sustainable development practices in the region. The above directions as highlighted reflect a pluralistic approach in handling the situation that was a tragedy not only natural but also man made. It caused injustice to many victims.

The court’s consideration of the objectives sustainable development policies and environmental justice in directing the state government point towards the court not only deciding upon doing justice to the victims but also doing justice by exploring various remedies in ecological, social, and developmental justice and by “law making” in the interim.

Conclusion: A Reinterpretation of Moutsanyayatowards Sustainable Living

The recent fatal tragedies due to over-generation of waste and mismanagement in the capital and other cities and towns of India are just the tip of the iceberg. On 1 September 2017 a Garbage landfill in east Delhi collapsed killing two people and injuring a few others on the road. The accident occurred as the landfill collapsed under weight of heavy rainfall falling upon a high-tension wire pole that came in its way causing the fatalities. The experts who commented on the tragedy attributed it to explosion of gases in the garbage which loosened the solid waste and triggered the slide. The local people had been earlier complaining about the landfill sinking into the ground due to being overburdened. The East Delhi Municipal Corporation admitted that work on releasing the trapped gases inside the massive mound of garbage was pending. The landfill mound was fifty meters high and forms as one of the four primary garbage dumping site in Delhi. This landfill held approximately 2,200 tonnes of solid waste and refuse. This sad incident just reflects the degree of unsustainable practices of not only the people in generating huge amount of waste but also mismanagement by the authorities, lack of planning, disposal methods and neglect despite having Municipal Waste Disposal Rules in place in the capital of Delhi.

It also raises many questions, inter alia, of environmental justice for those who suffer from living in and around the area every day; how and why so much of waste is generated within the households, lack of landfills, scarcity of land, unplanned siting of waste dumps, exhaustion of resources and whether only urban residents exhibit such unsustainable practices; a high degree of consumerism, an attitude of use and throw instead of recycle, reuse and upcycle to reduce waste and perform their constitutional duty of protecting the environment. How does this affect the environment? Apart from causing air pollution, water pollution, a dumpsite having residents living near it are susceptible to diseases, underground water contamination, explosions due to build up of gases, abuse of the land resource in overburdening the capacity of land to bear the load amongst others.

Many cities have adopted ingenious waste recycling practices in India however waste management in big metropolis cities is a major environment and developmental issue.

So far piecemeal legislation, herculean efforts by the Indian Supreme Court, the State High Courts, and the National Green Tribunal decisions have acted as valiant protectors of the environment, natural resources, environmental justice, and developmental justice. In view of the crisis apparent in each city, town, and rural areas a revolution is required.
According to Jeffery Sachs “The world’s current ecological, demographic and economic trajectory is unsustainable, meaning that if we continue with “business as usual” we will hit social and ecological crises with calamitous results”. Sustainable development based on addressing the needs of the poor and optimal harnessing of scarce resources of water, air, energy, land, and biodiversity will have to be sustained through more cooperative endeavors. Then alone, we could make some headway in saving our lone planet from the brink of climate disasters.”

One ought to keep in mind how progressive laws and institutional improvements or judicial activism can empower the poor to challenge and bring a halt to the continuous harm to the environment or ecology and natural resources capital. Competing conceptions of justice may also lead to a plurality of arguments with different facets and provide scope for debate and expansion. Besides such formal governance institutions availability of legal fora, the awareness at the ground level in the social structures within communities with participation of every individual can pave the way for a sustainable living for every one. What is required is a reorientation towards empowering such communities and specific individuals for achieving the goal of sustainable living.

Hence sustainable development for environmental justice rightly reflects adoption of various theories of justice. Competing principles, based on utility, equity and a right to the product of one’s labor do not reconcile with one another into one neat theory of justice. Sen argues that this “plurality is not necessarily bad.” “Theories can also allow for complexity and diversity of aims.” A theory that attempts to simplify reasons for societal cooperation and means of measuring well-being by a single standard does not meet modern demands of justice.

Thus to follow the path of sustainable development, the global energy diet, which is fossil fuels centric, must be changed. Efforts must be made to harness the potential of alternative sources of energy, such as hydropower, solar and wind and progressively make transition to clean energy. When one is considering sustainable development for sustainable living for all, government policies and laws on one hand and on another people’s attitudes must accord with an internalization of the benefits of the environment rather than harm due to the excess abuse. Thus progressing and reorienting the manner of thought within society towards sustainable living. At the same time let us not forget that unsustainable living leads to injustice as it is a direct consequence of over greed, over zealous attitude that there are havens and have not’s. Consequently sustainable development becomes a tool, an evolutionary process to seek a balance and to throw the fish back from it came before it is too late, in other words realizing when to stop in pursuit of best material life or ever extraction.

Thus learning a lesson from the concept of mātyanya or “justice on the world of the fish’. Poor and vulnerable communities suffer from various forms of environmental injustice, often unable to fight back and reverse trends which keep them mired in a state of exclusion. Without a paradigm shift in how natural resources and the environment are valued and governed, inequality will deepen and post-2015 development goals will be threatened, if not reversed.

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Endnotes:


3. Matsya Nyaya (fish, law) within ancient myths from India refers to a parable referring to how the natural world operates. It arises from the myth of Lord Vishnu being incarnated as a fish to lead the first human, “King Manu” for creation of the new world order and civilization. Authors from religious and Sanskrit studies of the various scriptures have compared the legend having many similarities to the legend of Noah’s Ark. Drawing from the parable, before civilization and living by rule of law in a civilized society, people conducted themselves “without any sense or code of discipline which led to chaos and the Gods decided to destroy the world and recreate it. As the legend goes Lord Vishnu who is considered the preserver took an aquatic form of fish and sought Manu’s help that the Matsyaavatar. By showing compassion and using his power of intellect to discriminate between situations, Manu had shown himself to be an apt person for the establishment of codes of a more civilized world. A world where the weak could live without fear, a civilized world which unlike the natural world would give protection even to the weakest. However the lesson to be drawn from the parable is that the moment the fish was big enough to not be threatened by other fish, Manu should have stopped giving it protection. When the weak no longer remain weak any support only goes on to feed the natural hunger for power and privilege all humans have. To know when to stop is very important.” See at https://commentarymahabharat.wordpress.com/2012/12/12/Matsya-nyaya-pranali/ and http://eleu.du.ac.in/mod/book/print.php?id=125408&chapterid=26283 (translated from Hindi, accessed 11 Sep 2017); Chapelle, Christopher and Mary Evelyn Tucker, HINDUISM AND ECOLOGY: THE INTERSECTION OF EARTH, SKY AND WATER, Harvard University Press: Center for the Study of World Religions, Harvard Divinity School, 2000, pp. 80-81 Matsya Nyaya- ‘Big fish devouring small fish’ referring to penal provisions in Kautiya’s Arthasastra Ghosh discusses how an ecological balance needs to be maintained and guarded, while utilizing the natural resources to benefit mankind; Ghosh, Ashish, NATURAL RESOURCES CONSERVATION AND ENVIRONMENT MANAGEMENT, APH Publishing Corporation, 2003, pp 1, 2-12; Justice Jos, M Ramu, ANCIENT INDIAN LAW: ETERNAL VALUES IN MANUSMRTI, Universal Law Publishers, (2002, reprint 2010) pp 63, 64; Bhuler, G., THE LAW OF MANU (translated from Max Mueller, 1886).


14. Various facets of sustainable development include application and consideration of various environmental, economic, social and cultural factors.


20. ibid 296.

21. ibid

22. The United Nations Conference on the Human Environment or the Stockholm Conference, was an international conference convened under United Nations auspices held in Stockholm, Sweden from June 5-16, 1972. It was the UN’s first major conference on international environmental issues, and marked a turning point in the development of international environmental politics see UN Sustainable Development Platform https://sustainabledevelopment.un.org/milestones/humanevironment


24. See the High level Plenary Meeting Mr Narendra Modi’s address at https://sustainabledevelopment.un.org/content/documents/20265india.pdf

25. The UN Declaration of 1972 was followed by the World Conservation Strategy of the International Union Conservation of Nature in 1980 IUCN which coined the term sustainable development.


27. The UN Earth Summit in Rio de Janeiro in 1992 was unprecedented in terms of both its size and the scope of its concerns.

The Conference sought to help the countries and their governments "rethink economic development and find ways to halt the destruction of irreplaceable natural resources and pollution of the planet." See at http://www.un.org/geninfo/bp/enviro.html (accessed 9 Sep 2017) It influenced all subsequent UN conferences. Through the years all such UN conferences on environment, development and its interrelationships and impacts have, dealt with, inter alia, poverty, population, social development, women and human settlements — and the need for environmentally sustainable development. For example the Vienna World Conference on Human Rights, held in in 1993, underscored the right of people to a healthy environment and the right to development, controversial demands that had met with resistance from some Member States until Rio. See at http://www.un.org/geninfo/bp/enviro.html


30. Entry into force on the 30th day after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55% of the total global greenhouse gas emissions have deposited their Instruments of Ratification, Acceptance, Approval or Accession with the Depositary. The first of these thresholds was achieved on 22 September 2016. See at UNFCC Paris Agreement available at http://unfccc.int/paris_agreement/items/9485.php (Accessed 9 Sep 2017)


34. In 1995 the Vellore case laid the foundation of interpreting international principles of sustainable development; Karnataka industrial areas development board v Sri C Renukappa AIR 2006 SC2038; ND Jaiyal v UOI (2004) 9 SCC352; State of HP v Ganesh Wood Products AIR 1996 SC149; AP Pollution Control Board vProf MV Naiklu 1999(2) SCC 718; Court on its Motion v UOI SuoMoto Writ Petition Civil no 284 of 2012 (2013) 1MLJ 639 SC.; MC Mehta v Kamal Nath 1997 1 SCC 388; Reliance Natural Resources Ltd v Reliance Industries 2010 7 SCC 14
35. RLEK v ST of UP 1989 AIR 594 1989 SCC Supl. (1) 537
   JT 1988 (4) 710 1988 SCALE (2)1574 per RanganathMisra,
   Venkatachallie, M.N [J])
36. AIR 1996 SC 2715, per Kuldip Singh J.
37. See the Rio Declaration on Environment and Development A/
   CONE151/26 (Vol. I) REPORT OF THE UNITED NATIONS
   ... available at
38. www.un.org/documents/ga/conf151/aconf15126-l annex1
   nm. UN Stockholm Declaration, principle 6, states “The discharge
   of toxic substances or of other substances and the release of heat, in
   such quantities or concentrations as to exceed the capacity of
   the environment to render them harmless, must be halted in order
   to ensure that serious or irreversible damage is not inflicted upon
   ecosystems. The just struggle of the peoples of all countries against
   pollution should be supported.” See at
40. 1996 AIR SC 1446; available at http://envis.mse.ac.in/
   problems%20pdf/BICHHR%20CAS.pdf
41. (1997)1 SCC 388.
42. (1985) 2 SCC 431; (1985) 3 SCC 614; 1986 Supp SCC
   517; 1987 Supp SCC 485; 1989 Supp (1) SCC 504; 1989 Supp
   (1) SCC 537.
43. Application No. 216 of 2015 (S2), NGT South Bench,
   Chennai
44. (1997) 2 SCC 533
45. 1996 AIR 149; 1995 SCC (6) 363
46. 2009 (5) Bom. CR 97
47. AIR 2006 SC 2038 Writ Petition 23745/2011 LB/
   BMP/PIL available at http://judgments.hc.karnaric.in/judgments/
   bisstream/123456789/6722961/wp23745-11-30-11-2011.pdf
   (on file)
48. Appeal No. 30 of 2016
50. MANU/SC/0887/2013 : 2014 Volume 4 Supreme Court
   Cases 574
52. In the instant case the West Bengal State Pollution
   Control Board (SPCB) had granted consent to establish and consent to
   operate a thermal power plant to the Bakreshwar Thermal Power
   Station (BKTPS) under the West Bengal Power Development
   Corporation Ltd. The claimant, a public spirited citizen alleged
   pollution of water of river Chandrabhaga due to discharge of fly
   ash laden water from the ash pond to the river thereby affecting the
   biodiversity, aquatic life, agriculture and health of the people in
   the area. He also alleged violation of the Air Act 1981, the Water
   Act 1974 and the Environment (Protection) Act, 1986 and also
   non-implementation of MoEF guidelines issued from time to time on
   utilization of fly ash.
   Experience in Legal Empowerment”, p 13
54. id 11
55. id 12
56. id. 11-12. See also UNDP “Access to Environmental Justice:
   A Sourcebook on Environmental Rights and Legal Remedies”
   UNDP website at http://www.ombudsman.gov.ph/UNDP4/access-
   to-environmental-justice-a-sourcebook-on-environmental-rights-
   and-legal-remedies/index.html. See also UNDP, UNECE, U.N.
   Women (2012). Informal Justice Systems: Charting a Course for
   Human Rights-Based Engagement, p 11.
57. See in general Ballard, R. D. DUMPIN IN DIXIE, RACE,
   CLASS, AND ENVIRONMENTAL QUALITY, Westview
   GROUND UP: ENVIRONMENTAL RACISM AND THE
   RISE OF THE ENVIRONMENTAL MOVEMENT,
   New York University Press: New York, 20 as cited by Ole W
   Pedersen; W, “Environmental Principles and Environmental
   Justice” 12(1) 2010 Env. L. Rev (April 20, 2010).
58. KhodayKishan and Jisha Natrajam, “Fairness and
   International Environmental Law from below: Social Movements
   and Legal transformation in India” (2012) Leiden Journal of
59. See Narmada Bachao Andolan v Union of India, Supreme
   Court of India, Judgment of 18 October 2000, (2000) 10 SCC
   664.
60. Vandana Shiva, “Monsanto v Indian Farmers”, see at http://
   vandanashiva.com/?p=402; “Is it time for Monsanto to quit
   India?” Indian Express blog at http://indianexpress.com/article/
   blogs/time-for-monsanto-quit-india-2996995/. See also Specter
   Micaiah, Seeds of Doubt — An activist’s controversial crusade
   against genetically modified crops’, a long time and highly respected
   staff writer at The New Yorker, profiles and analyses the claims
   made by one of the world’s most virulent anti-GMO campaigners,
   Vandana Shiva. Compare from
   cold-hard-facts-debunking-the-myths-behind-gmo-debate/#.V
   rzFhSfJrpl
62. Pedersen, Ole W., “Environmental Principles and
   Environmental Justice” 12(1), Env. L. Rev. 2010, pp 22-29. (April
   or http://dx.doi.org/10.2139/ssrn.1592850. See also Schlosberg,
   D ENVIRONMENTAL JUSTICE AND THE NEW
   PLURALISM: THE CHALLENGE OF DIVERSITY FOR
   ENVIRONMENTALISM, Oxford: Oxford University Press
   1999, Schlosberg, D, “Reconceiving Environmental Justice: Global
   Movements and Political Theories” 13(3) Environmental Politics
   (2004) and Schlosberg, D, DEFINING ENVIRONMENTAL
   JUSTICE: THEORIES MOVEMENTS, AND NATURE,
   Oxford University Press: Oxford 2007. See also S. Foster, “Justice
   from the Ground Up” 86 Calif. L. Rev. 775 (1998).
63. See Kuehn, R. R. “A Taxonomy of Environmental Justice”
   30 Envl. L. Reporter 10681 (2000) and Latzner, R.J., “Pursuing
   ‘Environmental Justice’: The Distributional Effect of Environmental
- equal distribution of environmental harm; Procedural justice  
- emphasizing issues of participation, access to information and  
justice for minority neighborhoods, and for decisions to be made in  
accordance with the concept of ‘free informed consent’. Recognition  
- contrast to definitions dealing with distribution only, an explicit  
need for recognition of minority populations and underlying social  
conditions alongside the distributive and procedural approaches.

64. Social justice defined as ‘... promoting a just society by  
challenging injustice and valuing diversity’. It exists when all people  
share a common humanity and therefore have a right to equitable  
treatment, support for their human rights, and a fair allocation of  
community resources. ‘Substantive right – for all individuals  
to be protected from environmental degradation, echoes calls  
made in the human rights debates; Productive justice - instead of  
focusing on the distribution of harm and anthropocentric exposure  
to such harm, certain environmental justice campaigners take a  
more holistic approach when challenging decisions that present a  
potential environmental risk before such decisions are implemented;  
Ecological justice - borrowing from environmental ethics, applied  
outside anthropocentric social justice settings and to the non-human  
sphere of the environment and animals. See Rahul J. B., ‘The Co-  
Evolution of Sustainable Development and Environmental Justice:  
Cooperation, then Competition, then Conflict’ 9 Duke Envtl L &  
Principles and Environmental Justice”, 12(1), Env. L. Rev. 2010,  
pp 22-29. See also P. Stookes, A PRACTICAL APPROACH TO  
ENVIRONMENTAL LAW (2nd ed), 2.30. 29-30

65. See Rahul J., ‘The Co-Evolution of Sustainable Development 
and Environmental Justice: Cooperation, then Competition, then  
Conflict’ 9 Duke Envtl L & Policy 1616 (1998) 180 as cited in  
Pedersen Ole, above, p 22.

66. The Aarhus Convention, enforced on 30 October 2001,  
provides a more direct definition as it provides the checks and  
balances for the procedural rights of information and participation,  
and also provides a route of review of more substantive right such as  
a right to healthy environment.

67. SDG 2030 Agenda see at https://sustainabledevelopment.  
un.org/post2015/transformingourworld (last accessed 7 Sep, 2017)

68. See for example National Rural Drinking Water  
Programme.Nirmul Bharat Abhiyan, Pradhan Mantri Krishi Sinchana  
Yojana.National River Conservation Programme (NRCP) for  
sustainable management of water See Niti Aayog webpage SDG  
available at http://niti.gov.in/content/SDGs.php (last accessed 2 June  
2017)

69. Scheme National Action Plan on Climate Change; National  
Mission for a Green India; National Solar Mission; National  
Mission for Enhanced Energy Efficiency, National Mission for  
Sustainable Habitat, National Water Mission, National Mission  
for Sustaining the Himalayan Ecosystem, National Mission  
for Sustainable Agriculture and National Mission on Strategic  
Knowledge for Climate Change. See Niti Aayog webpage SDG  
available at http://niti.gov.in/content/SDGs.php (last accessed 2  
June 2017)

70. For example see schemes introduced for  
Panchayat Yuva Kriedaan Krishi Abhiyan (PYKKA);  
71. Development of Infrastructure Facilities for Judiciary including  
Gram Nyaya Yojana; Integrated Child Protection Scheme (ICPS)  
72. Digital India; Pragati Platform(Public Grievance Redressal  
System); RTI (Right to Information/Act). See NitiAayog webpage  
SDG available at http://niti.gov.in/content/SDGs.php (last accessed 2  
June 2017)

73. The State of Uttarakhand is also popularly known as  
"Dev Bhumi" or 'the land of the gods' in the ranges of the Himalayas.  
It is of significant importance as the Ganges and its several  
tributaries have developed one of the most fertile and prosperous  
plain of the World i.e. the Northern Indian Plain. Part of the state  
is a catchment area of Ganga and Yamuna rivers. Many religious  
shrines and the ‘Chandiram’ (four holy shrines), Kedarnath, 
Badrinath, Gangotri and Yamunotri are situated in the Garhwal  
region which is most popular. So ecologically rich and with abundant  
historical and religious importance this place attracts inter alia a  
lot of tourists and pilgrims.

74. Aajay Gautam v UOI Writ Petition (PIL) No. 85 of 2014; MANU/UC/0176/2016

75. Aajay Gautam v UOI Writ Petition (PIL) No. 85 of 2014; MANU/UC/0176/2016

76. ibid

77. MANU/UC/0176/2016, p 9

78. See Bhattacharya, Somnath and Prabhakar Yadav, “Two people  
as 50 Tonnes of Waste hurtles down Ghazipur landfill” Times of  
India 2, September 2017, p.1. Two people were reported killed  
and many injured when an overflowing landfill site collapsed on  
1 September in East Delhi due to overburdening, untrammelled  
generation of waste and lack of proper disposal and management by  
authorities, that seemingly are resources starved.

79. Municipal Solid Wastes (Management and Handling) Rules,  
1999, impose a duty on every municipal authority to, be responsible  
for the implementation of the provisions of these rules, and for any  
infrastructure development for collection, storage, segregation,  
transportation, processing and disposal of municipal solid wastes.  
Municipal Solid Waste Disposal Rules 1999 were formulated under  
the EPA and amended in 2016 see S.O. 1357(E) [08-04-2016]  
: Solid Waste Management Rules, 2016 Ministry of Environment  

80. See Manohar, Mayank, “Garbage mound 10 storey building  
High and 15 years of apathy”, 2 Sep 2017, Times of India, p 2.

81. See generally Sachs, Jeffrey D. Common Wealth: Economics for  

82. For example where a small community with its  
sustainable practices harnessed solar power for its own  
consumption not relying on the state authorities it may not  
only benefit the state authorities by going back to the grid but in  
spreading awareness amongst the community about saving energy
Contents

A. Articles – On Environment Issues And Concerns

Indian Environmentalism .......................... 1
Justice D.Y. Chandrachud
Judge, Supreme Court of India, India

Ecocentrism: The New Paradigm of
Environmental Jurisprudence .................. 13
Justice S. Ravindra Bhat
Judge, High Court of Delhi, India

Emergent Challenges for Paris Climate Regime
CBDR in the Context of INDC .................. 19
Professor (Dr.) Usha Tandon
Professor-In-Charge, Campus Law Centre
University of Delhi, India

Inclusive Green Growth: A Key to Unlock
Multi-Dimensional Problems .................. 29
Dr. Rajni Malhotra Dhingra
Dean & Professor
Vivekananda Law School, Vivekananda Institute of Professional Studies
GGSIIPU, New Delhi, India

Sustainable development as a sine qua non for
sustainable living - Lesson from reinterpreting
‘Matsyanyaya’ or ‘Justice in the World of Fish’ 37
Dr. Charu Sharma
Executive Director
Center for Environmental Law and Climate Change
Jindal Global Law School, O P Jindal Global University
Sonipat, Haryana, India.

Sustainable Development as Environmental Justice
Exploring Judicial Discourse in India .......... 51
Dr. Nupur Chowdhury
Assistant Professor
Centre for the Study of Law & Governance
Jawaharlal Nehru University
New Delhi, India
B. Environmental Jurisprudence
Impact of Tribunal’s Judgments
Nationally and Internationally

Dr. Bharti Kumar
Associate Professor, National Law University, Delhi, India
Vishwendra Panwar
Research Scholar, National Law University, Delhi, India
Shachi Singh
Research Scholar, National Law University, Delhi, India

C. Report of National Green Tribunal

Ms. Sheetal Sharma, Deputy Registrar
National Green Tribunal, New Delhi, India

- Chapter – I Best Practices – National Green Tribunal 89
- Chapter – II Composition of National Green Tribunal 91
- Chapter – III Composition and Functioning of Benches 93
- Chapter – IV Case Statistics - National Green Tribunal 95
- Chapter – V National Green Tribunal: An Institutional Appraisal 99
- Chapter – VI Initiatives of National Green Tribunal 107
- Chapter – VII E–Courts At National Green Tribunal – E–Justice 109
- Chapter – VIII Way Forward 109

D. Events-National Green Tribunal

E. National Green Tribunal Representation on International Forum