CHAPTER V

ROLE OF NATIONAL GREEN TRIBUNAL

5.1. Introduction

The National Green Tribunal has been established after a long journey of debates, later developments and a dire need to improve the environmental condition in the light of industrial growth and increasing numbers of pollutants in India. The last part of 20th century saw growing concern of humanity to protect the deteriorating environment.¹ The National Green Tribunal is not the result of one single effort but has a lot of tremendous hard work behind it, consistent efforts, legal battles on environmental issues, continuous failure of the Government of India to deal with the environment problems, judicial pronouncements, burden on courts to deal with the environmental cases apart from their main judicial functions, time to time observations made by different High Courts and the Supreme Court of India on environmental problems, research work done by Law Commission of India on it, international conferences and India’s commitment to them, and lastly the legislative efforts and Will are the some of the reasons which contributed significantly to bring a powerful and effective mechanism in one place wherefrom the problem of environment could be seen more transparently and dealt with effectively.²

There are a number of incidents which first drew the attention of the world community towards the environmental problems and one of which was the Stockholm Conference of 1972 at International level. Thereafter, the journey of environment awareness got started in true sense. Later, in the late 1970s and early 1980s when the concept of Public Interest Litigation was evolved by the Supreme Court of India, the journey of environment issues through judicial courts got started and it worked perfectly with some of the eminent environmentalist lawyers and Non-Governmental Organizations which was furthered by the renowned environmentalist lawyer named M.C Mehta and this idea of doing with the environmental issues through judicial platform

worked well. Be it Bhopal Gas Leak Tragedy of 1984 or the Oleum Gas Leak case of 1986, the environment issues were dealt with sharply.³

Therefore, the need of a uniform system to deal with the environmental issues and problems was felt in the beginning of 1990s which resultantly paved way to the National Environment Tribunal Act, 1995 which shortly culminated into the National Environmental Appellate Authority Act, 1997 but being in the initial stage of its origin, these two mechanisms could not perform efficiently on account of limited jurisdictions over the environmental issues. However, these two Acts proved as dead letter and a non-starter. These two tribunals were not efficient to handle sensitive matters of environment and economic development. Therefore, the closure of these tribunals created a judicial vacuum as there was no specific forum for new environmental cases and the pending cases were left in the lurch.⁴ Therefore, the law commission of India, on the consistent wake up calls from the Supreme Court of India, gave emphasize on the creation of new mechanism which could deal with the environmental issues and problems technically.

The Supreme Court of India suggested that there should be environmental courts on regional basis having professional judges with two experts in it having the adequate expertise needed to deal with environmental issues.⁵ This was emphasized by the Supreme Court that there was a need for speedy justice in respect of environmental protection and to reduce the burden on the High Court which were not able to do quick disposal of cases involving environmental issues because of judicial works and the already pending cases before them. Consequently, The National Green Tribunal (NGT) was founded on 18th October, 2010 under the National Green Tribunal Act, 2010 wherefrom the real journey of environmental protection got started in India.⁶ It is a statutory tribunal which was enacted by the Parliament for hearing the matters relating to environmental issues. It was a result of long process, developments and the staunch need for such expert platform which actually started long back in the year of 1984 after the Bhopal Gas Leak Tragedy. The NGT was set up with the specific mandate of handling

³ M.C. Mehta v.Union of India, AIR 1987 SC 965.
environmental disputes, particularly multi-stakeholder scenarios. It is a special fast-track court to handle the cases pertaining to environmental issues expeditiously. It has been established to ensure the right citizens of India to a healthy environment enshrined in Article 21 of the Constitution. The NGT has taken some robust steps after its creation and especially when the Justice Swatantar Kumar assumed the chair of it. The current Environment Ministry seems to want the NGT to make recommendations to the government instead of issuing directions like a judicial body. It has passed impactful verdicts on issues of control of pollution, forest clearance, and wildlife conservation. This chapter comprises the functioning of NGT from its inception till 2017 where the major decisions and orders will be discussed.

5.2. Need for Establishment of National Green Tribunal

The need of a uniform specified expert agency to save the environment was initially emerged and felt during the mid-1990s in consequence of the decisions and observations made by the Supreme Court of India in some important cases of environmental concern. Therefore, the Govt. of India had started working on the concept of building a new mechanism to handle the environments problems and issues and this task was given to the Law Commission of India to make a vast research on this subject and make a detailed report on it.

The industrial revolution which started during the 2nd Five Year Plan in India had given new dimensions to the economic growth but it posed a environmental threat simultaneously on account of the unbridled exploitations of the natural resources, the emissions of toxic industrial waste and mismanagement thereof were the same reasons which made the environmental conditions poor and miserable. The enforcement of

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available laws and lack of adequate laws on this subject forced the judiciary and the Govt. of India to set up a uniform expert agency which could work in this field pro-actively. Due to the complex nature of environment litigations, the Apex Court of India felt the need for establishing separate environmental court for faster, cheaper and more effective resolution of disputes in environmental matters.\textsuperscript{12} In India, the need for environmental court was first discussed by Justice P.N. Bhagwati, (as he then was) in Oleum Gas Leak Case.\textsuperscript{13} The Apex Court of India pointed out those cases involving issues of environmental pollution, ecological destruction and its conflict over natural resources involved assessment and evolution of scientific data and, therefore, according to the court, there was an urgent need of involvement of experts in the administration of justice.\textsuperscript{14} Therefore, this long cherished need manifested first in 1995 when The National Environment Tribunal Act, 1995 was made which shortly culminated into the National Environmental Appellate Authority Act, 1997 but both the environmental agencies failed to meet the goal set up behind them which overburdened the judicial courts to cope up with the environment issues again. Therefore, the already pending backlog of the cases in Indian courts, the pressure of prompt disposal of cases was expected highly and apart from it the large numbers of cases relating to environment were pending in courts and their resolution involves understanding complex issues of science and technology.\textsuperscript{15} The fundamental problem facing the judicial system in India is speedy disposal of cases. The problem is even more pronounced where environmental issues are concerned. Thus, new provisions were introduced in the Indian Constitution by the 42\textsuperscript{nd} Amendment carried out in 1976 after the United Nations Stockholm Conference on Sustainable Development in the years of 1972. Although the goal and aim of environmental protection was set up in the constitution but India had no specific authoritative mechanism in place which could deal with the environmental issues independently and efficiently. Therefore, pursuant to the observations of the Supreme Court of India in four judgments, namely, M.C. Mehta v.

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  \item \textsuperscript{12} Paramjeet S. Jaswal, et.al., ENVIRONMENTAL LAW, 4\textsuperscript{th} edn. Allahabad Law Agency, Haryana (2015) p. 373.
  \item \textsuperscript{13} M.C. Mehta v. Union of India, AIR 1987 SC 965.
  \item \textsuperscript{14} Ibid.
  \item \textsuperscript{15} Muhammed Siddik Abdul Samada, et.al., “Environmental Forensics in India –Four Years After the National Green Tribunal Act2010”, 30, Procedia Environmental Sciences (2015) p.94.
\end{itemize}
Union of India,\textsuperscript{16} Indian Council for Environmental-Legal Action v. Union of India,\textsuperscript{17} A.P. Pollution Control Board v. M.V. Nayudu,\textsuperscript{18} and A.P. Pollution Control Board v. M.V. Nayudu II,\textsuperscript{19} the Law Commission has undertaken a detailed study of the subject of “Environmental Courts”. In the 3rd of the above judgments, reference was made to the idea of a "multi-faceted" Environmental Court with judicial and technical/scientific inputs as formulated by Lord Woolf in England recently and to Environmental Court legislations as they exist in Australia, New Zealand and other countries.\textsuperscript{20} Having regard to the complex issues of fact of science and technology which arise in environmental litigation and in particular in the elimination of pollution in air and water, it is now recognized in several countries that the Courts must not only consist of Judicial Members but must also have a statutory panel of members comprising Technical or Scientific experts. Therefore, the Law Commission has done a vast research on the modus operandi of new environmental courts which ultimately culminated into the first National Environment Tribunal Act, 1995 which again culminated into the National Environmental Appellate Authority Act, 1997. But these two environmental courts could not function in accordance with the aim these were established and it was largely due to the lack of wide jurisdiction to deal with the environmental cases. Therefore, the government had to evolve another new effectual and purposeful mechanism which lastly resulted into the creation of NGT.\textsuperscript{21}

5.3. Evolution of National Green Tribunal

A great Judge emphasized the imperative issue of environment said that he placed Government above big business, individual liberty above Government and environment above all. Such is the importance of Environmental Courts as envisaged by the Supreme Court. At this point of time we have 29,315 pending cases in the Supreme Court, 32,24,144 cases in various High Courts and over 2,53,50,570 in various subordinate courts.

\textsuperscript{16} 1986 (2) SCC 176.
\textsuperscript{17} 1996(3) SCC 212.
\textsuperscript{18} 1999(2) SCC 718.
\textsuperscript{19} 2001(2) SCC 62.
By the time you finish reading this sentence hundreds more would have been filed. Under these tons of various cases it is of utmost importance to treat environmental cases. Considering the fact that the everyday of pendency of the case means greater loss to the ecology. Hence we are of the opinion that in order to deal with this anomaly the constitution of specialized ‘environmental courts’ is very essential.\textsuperscript{22} The evolution of National Green Tribunal of India has followed an extensive and faceted development and was determined by a number of factors.

\textbf{5.3.1. The Stockholm Declaration of 1972:} The first global environmental conference had adopted an action plan known as “The Stockholm Declaration of 1972”.\textsuperscript{23} The principle 1 of this declaration stated that people have “the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”\textsuperscript{24}

\textbf{5.3.2. Indian Constitution-} After the Stockholm Declaration, Indian Parliament amended the Constitution and adopted the Articles 48A (g) and Article 253. By virtue of these, the state has duty to protect and improve the environment and to safeguard the forests and wild life of country\textsuperscript{25} and Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.\textsuperscript{26} That Supreme Court of India has played a proactive role in resolving the environmental issues has helped the cause. However, with the development of law and pronouncement of judgments by apex court, Article 21 of constitution has been expanded to take within its ambit the right to a clean and green environment.\textsuperscript{27}

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  \item \textsuperscript{22} \textit{Tarun v. Union of India}, AIR 1992 SC 514.
  \item \textsuperscript{24} Principle 1 of Stockholm Declaration, 1972
  \item \textsuperscript{25} Article 48 A (g) of Constitution of India.
  \item \textsuperscript{26} Article 253 of Constitution of India.
  \item \textsuperscript{27} Nawneet Vibhaw, ENVIRONMENTAL LAW AN INTRODUCTION, 1\textsuperscript{st} edn. LexisNexis Publication, Gurgaon (2016) p.237.
\end{itemize}
5.3.3. The Legislative Initiative - After the Stockholm Conference so many environment beneficiary legislation are enacted by the parliament. The Water Act, 1974, the Air Act, 1981 and the Environment Act, 1986 passed by the Parliament for the protection of environment. The legislative initiative for constitution of environment courts as an alternative forum goes back to 1989 when it was vehemently advocated by Smt. Maneka Gandhi, the then Union Minister of Environment. She also prepared the concerned Bill but it was really unfortunate that the serious exercise on constitution of environment court did not see the light of the day as the Bill was put in the cold storage. It is now well settled principle of socio-legal perspective that the right to live with human dignity necessarily enshrines within its scope the protection and preservation of healthy environment, ecological balance free from pollution of air, water and sanitation which is necessary for the enjoyment of dignified human life.

5.3.4. The Rio Declaration 1992 - The second environment conference i.e. Rio Conference of 1992 stressed the need for judicial and administrative access to the citizens of a nation-state. This conference emphasized national law regarding the liability and compensation for environmental damages for the polluters.

5.3.5. Foreign Direct Investment (FDI) - Almost at the same time, after about four decades of self-reliance strategy, India initiated its economic reforms in 1991. Subsequently, Indian economy was gradually liberalized. Indian government facilitates the flow of Foreign Direct Investment by raising the limits of foreign equity holding in many priority industries. After the reform, since 2003, Indian economy experienced average annual growth of more than 8%. After this, it was observed that the export and FDI grew in the more polluting sectors relative to the less polluting sectors in the post-liberalization period. As a result of this issue of pollution the need was felt to protect the

29 The Air (Prevention and Control of Pollution) Act, 1981.
30 The Environment (Protection) Act, 1986.
ecology and social justice. So the need for effective, powerful, technically equipped green court are too obvious and was the need of the hour.34

5.3.5. National Environmental Tribunal - In India, the early efforts to establish the new environmental courts were materialized in 1995 when the first ever National Environmental Tribunal and the National Environmental Appellate Authority were set up at national level which can be regarded as the major breakthrough to protect the natural environment. The first one was passed by the Parliament as a consequence of the Rio Conference. In 1995 the Central Government of India established the National Environmental tribunal under Act of 1995.35 The Tribunal was enacted to provide effective and expeditor’s disposal of cases and to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance. The said tribunal had a very limited jurisdiction and it never came into operation.36

5.3.6. National Environmental Appellate Authority - Another legislation, i.e. the National Environmental Appellate Authority enacted under the Act of 199737 was enacted to hear the appeals and ensure that certain industrial operations or process in restricted areas are carried out subjects to safeguard under the Environment (protection) Act, 1986. The said Act also had a narrow scope of its jurisdiction and functioned with full composition only for three years.38 However the authority become defunct and the act repealed with the enactment of National Green Tribunal Bill, 2009.39

5.3.7. The 186th Report of Law Commission of India - The Environmental Courts was advocated in two earlier judgments also. One was MC Mehta v. Union of India where the Supreme Court said that in as much as environment cases involve assessment of scientific

38 The National Environmental Appellate Authority Act (NEAA) of 1997.
data; it was desirable to set up environment courts on a regional basis with a professional Judge and two experts, keeping in view of expertise required for such adjudication.40

• The Law Commission in its 186th Report has, inter-alia, recommended establishment of ‘Environment Court’ in each State, consisting of Judicial and Scientific experts in the field of environment for dealing with environmental disputes besides having appellate jurisdiction in respect of appeals under the various Pollution Control Laws.

• The Commission has also recommended repeal of the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997.

• To achieve the objective of Article 21, 47 and 51A (g) of the Constitution of India by means of fair, fast and satisfactory judicial procedure.

• ‘Environment Courts’ should be constituted in each state, and also stated that as under Article 253 read with Entry 13 list-I of VII that the parliament have exclusive jurisdiction to enact law for the purpose of establishment.


• No powers of Judicial review as under Article 226, but there can be provision for appeal to the Supreme Court.

• These Courts must be established to reduce the pressure and burden on the High Courts and Supreme Court. These Courts will be Courts of fact and law, exercising all powers of a civil court in its original jurisdiction.

• They will also have appellate judicial powers against orders passed by the concerned authorities under the Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986 with an enabling provision that the Central Government may notify these Courts as appellate courts under other environment related Acts as well.

• The environmental court shall consist of a chairperson and at least two other members. Each

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Environmental court shall be at least three scientific or technical experts known as commissioners.

• The Court shall not be bound to follow Civil Procedure Code and the rules of Evidence under the Indian Evidence Act, 1872.

• The Court should follow the principles of natural justice, and should apply the principles/doctrine of strict liability (Ryland’s v. Fletcher/Bhopal gas tragedy), polluter pays, doctrine of public trust, etc.

• The LOCUS STANDI before the court shall be as wide as it is before the High court/Supreme court. That means that any member for the cause of many can stand before the court of law.

• The powers of High Court under Article 226 and Supreme Court under 32 shall not be ousted.

Thus, a very specific and realistic approach was drawn in the 186th report of the Law commission of India with respect to the formulation of Environment courts.41

The 186th Report of Law Commission of India on the Proposal to Constitute Environmental Courts in September 2003, stated, that the "National Environmental Appellate Authority constituted under the National Environmental Appellate Authority Act, 1997, for the limited purpose of providing a forum to review the administrative decisions on Environment Impact Assessment, had very little work. It appears that since the year 2000, no judicial member has been appointed. So far as the National Environmental Tribunal Act 1995 is concerned, the legislation is yet to be notified after eight years of enactment. Since it was enacted by Parliament, the tribunal under the Act is yet to be constituted. Thus, these two tribunals are non-functional and exist only on paper".42 The 17th Law Commission of India, through Report No. 186, recommended the formation of Environmental Courts at State level as courts of original jurisdiction on all environmental issues and also as appellate authorities under the major environmental statutes. These courts were recommended to have technical members also. The

42 Ibid.
recommendation was pursuant to the observation of the Supreme Court in four judgments, viz., *MC Mehta v. Union of India*, Indian council of Environmental – legal action v. Union of India, *AP Pollution Control Board v. MV Nayudu*, *AP pollution control board v. MV Nayudu-II*,

5.3.8. **National Green Tribunal Bill, 2009**-Ultimately the National Green Tribunal Bill, 2009 was introduced in the Lok Sabha on 31st July 2009. The chairman, Rajya Sabha in consultation with the Speaker, Lok Sabha referred the Bill to the Parliamentary Standing Committee on Science and Technology, Environment and Forests for examination and reports. The Committee held meetings with representative of Ministry of Environment and Forests and also heard the views of eight experts on the subjects including Sunita Narain, Director, Centre for Science and Environment, Harish Salve and Rajeev Dhawan, Senior Advocates of the Supreme Court of India and Sanjay Upadhya, Head of the Enviro-Legal Defence Forum. The Committee appreciated the initiative of the Ministry and presented to Parliament 203rd report on National Act, 2010 is passed by our Parliament and the same has also been notified by the Government of India on 18th October 2010 and on the same day, Justice Lokeshwar Singh Panta, former judge of the Supreme Court of India took charge as Chairman of newly constituted National Green Tribunal.

5.3.9. **Major Judicial Pronouncements and their Relevance for the NGT** -The Supreme Court’s judgment in the case of *M.C. Mehta v. Union of India* (*Oleum Gas Leak Case*), Justice P.N. Bhagwati used the method of appointing expert committees for assessing the extent of harm to the environment. It is worthwhile to note that this case was the first case which stressed the need for ‘neutral scientific expertise’ as an essential input to inform judicial decision-making. Setting up of environment courts, on a regional

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43 1986 (2) SCC 176.
44 1996(3)SCC 212.
45 1999(2) SCC 718.
46 2001(2) SCC62.
49 (1986)2 SCC 176.
basis with one professional judge and two experts was also suggested.\textsuperscript{51} Since the
decision of Oleum Gas Leak Case, \textsuperscript{52} appointment of environmental experts when dealing
with disputes has been in vogue. The method of analyzing of data in some cases required
many months in most cases. This meant that the courts had to devote more time to those
cases because the expert’s reports were found to be insufficient in some and contradictory
in some others. The time constraints and exclusivity of the nature of disputes prompted
setting up of “Green Benches” in various High Courts in our country.\textsuperscript{53}

In Charanal Sahu \textit{v. Union of India},\textsuperscript{54} the court opined that “under the existing civil law
damages are determined by the civil Courts, after a long drawn litigation, which destroys
the very purpose of awarding damages so in order to meet the situation, to avoid delay
and to ensure immediate relief to the victims, the law should provide for constitution of
tribunal regulated by special procedure for determining compensation to victims of
industrial disaster or accident, appeal against which may lie to this Court on the limited
ground of questions of law only after depositing the amount determined by the tribunal.”

The Apex Court again reiterated the need to set up an environmental court in the case of
\textit{Indian Council for Environmental – Legal Action v. Union of India},\textsuperscript{55} wherein the court
gave several directions including the closure of industries. Item 6 of the directions given
by the court refers to the need for establishment of environmental courts manned by
legally trained persons /judicial officers and assisted by experts.

The Court attempted to create a parallel rule based structure using the machinery of
public interest environmental litigation that raises doubts about ordinary courts’
institutional competence and compels the Government to look for alternatives. This was
stressed in \textit{A.P. Pollution Control Board v. Prof. M.V. Nayudu I (Nayudu I)},\textsuperscript{56} which
prompted the Law Commission to suggest setting up of ‘environmental courts’ in our

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\textsuperscript{51} \textit{Ibid.}
\textsuperscript{52} \textit{M.C. Mehta v. Union of India}, AIR 1987 SC 965.
\textsuperscript{53} A Division Bench of the Supreme Court comprising of Justice Kuldip Singh and S. Saghir Ahmed
directed the Chief Justice of Calcutta High Court to constitute a Special Division Bench to hear
environment related petition for the first time in country.
\textsuperscript{54} (1990) 1 SCC 613.
\textsuperscript{55} 1996(3) SCC 212.
\textsuperscript{56} AIR 1999 SC 812.
country. However, it does not mean that ordinary courts are incapable of handling environmental disputes.

The commission also considered the reference made in the Nayudu I case to the idea of a “multi-faceted” Environmental Court with judicial and technical/scientific inputs as formulated by Lord Woolf in England recently and to Environmental Court legislations as they exist in Australia, New Zealand and other countries. The report also adopted the practice of the Environmental Courts in Australia and New Zealand which function as appellate Courts against orders passed under the corresponding Water Acts, Air Acts and Noise Acts and various Environment related Acts and also have original jurisdiction. They have all the powers of a Civil Court. Some have even powers of a Criminal Court.

Again in *A.P. Pollution Control Board v. Prof. M.V. Nayudu II*, the Supreme Court emphasized on the environmental court. It observed that “the court would have jurisdiction and owes including judicial review and civil procedure powers while dealing with environmental matters the law commission could kindly consider the question of review of the environmental laws and the need for constitution of environmental courts with experts in environmental law in addition to judicial members, in the light of experience in other countries.” The Supreme Court of India suggested that there should be environmental courts on regional basis with professional judges and two experts keeping in mind the kind of expertise needed to deal with such issues. This was emphasized by the Supreme Court as there was a need for speedy justice for environmental protection and to reduce the burden on the High court’s which were not able to do quick disposal of cases involving environmental issues as they were over burdened by cases. As a result of this dire need for speedy justice The National Green Tribunal (NGT) was founded on 18th October, 2010 under the National Green Tribunal Act, 2010. It is a statutory tribunal which was enacted by the parliament specially for hearing the matters concerning to environmental issues. It was a result of long procedure and the demand for such tribunal started long back in the year 1984 after the Bhopal gas tragedy. Then the Supreme Court specifically mentioned the need for such tribunals in

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59 *M C Mehta v. Union of India* 1986(2) SCC 176.
the case where the gas leaked from Shriram food and fertilizers limited in Delhi. The Supreme Court than in a number of cases highlighted the difficulty faced by judges in adjudicating on complex environmental cases and laid emphasis on the need to set up a specialized environmental court. Though the credit for enacting the NGT Act, 2010 goes to the then Environment Minister Jairam Ramesh, it became functional only because of repeated directions of the Supreme Court while hearing the Special Leave Petition titled *Union of India v. Vimal Bhai.* The legislate Act of Parliament defines the National Green Tribunal Act, 2010 as “An Act to provide for the establishment of a National Green Tribunal 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.”

5.4. The National Green Tribunal Act, 2010

A new player has now been added to the increasing volume of environmental litigation. The efforts of the Indian judiciary resulted in enactment of National Green Tribunal Act of 2010, that proposes to efficiently and expeditiously dispose of cases relating to environmental protection and conservation of forest and the natural resources including enforcement of legal rights relating to environment and giving relief and compensation for damages to persons and property and for matters enumerated therewith or incidental thereto. The National Green Tribunal (NGT) was set up under the National Green Tribunal Act, 2010, but the administrative formalities were completed in 2011 and the NGT started proceedings from that point. This tribunal is quasi-judicial body and blend of powers of civil and criminal courts in many respects. It replaced the National Environment Appellate Authority, a previous body with a more limited jurisdiction which

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60 SLP (Civil) No(s). 12065/2009
61 The National Green Tribunal Act, 2010
was largely considered ineffectual. The NGT, with each judicial bench comprised of a judicial as well as a technical member, is contemplated to be a “multi-faceted Environmental Court with judicial and technical/specific inputs.”\(^{64}\) The NGT is a specialized forum for effective and speedy disposal of cases pertaining to environment protection and conservation of forests.\(^{65}\) The NGT was first established with the Principal Bench in Delhi, later followed by four zonal benches in Chennai, Pune, Bhopal and Kolkata. The preamble of the Act declared that the NGT had been set up to carry out, interalia, the constitutional obligations under Article 21.\(^{66}\) Unlike the NEAA, the NGT was granted wide ranging powers allowing it to adjudicate cases of protection of the environment, natural resources and the legal rights of people being affected under a number of existing laws such as the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the wide-ranging Environment Protection Act, 1986 and the Biological Diversity Act, 2002.

The NGT was envisaged by its enactors as a specialized environmental body, consisting of judicial members as well as expert members who have the necessary proficiency to deal with the issues of environmental importance. On 18 October 2010, Justice Lokeshwar Singh Panta became its first Chairman thereafter it was chaired by Justice Swatantar Kumar in accordance with Section 7 of the Act and his term of office was ended on 19 December 2017. Thus, he had three more years to continue on his present course of environmental management and improvement. \textit{Now Justice Umesh Dattatraya Salvi has been appointed as acting Chairman of the NGT till February, 2018.}

\section*{5.5. Composition of the National Green Tribunal}

The Act seeks to establish specialized Green Tribunal with five benches located at different regions in the countries.\(^{67}\) The Tribunal shall consist of a full time chairperson.\(^{68}\) Chairperson will be appointed from Judge of the Supreme Court of India or

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\item \(^{64}\) \textit{A.P. Pollution Control Board v. M.V. Nayadu}, 1999 (2) SCC 718.
\item \(^{65}\) Praveen Bhargav, “Everything you need to know about the National Green Tribunal (NGT)” available on www.conservationindia.org/resources/ngt(accessed on 15\textsuperscript{th} June 2015).
\item \(^{66}\) The Preamble, the National Green Tribunal Act, 2010: “AND WHEREAS in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under Article 21 of the Constitution.”
\item \(^{67}\) Section 3 of the National Green Tribunal Act, 2010.
\item \(^{68}\) Section 4 of the National Green Tribunal Act, 2010.
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Chief Justice of a High Court. The chairperson has power to invite any expert member in
the related field to assist in the case if necessary. Chairperson along with the Central
Government makes rules for governing the procedures and rules of the tribunal.69

The tribunal consists of ten-twenty judicial members. According to act, there should not
be less than ten but maximum twenty full time judicial members. Usually judges form
different high courts and Supreme Court is appointed as judicial member of the tribunal.
This Act has balanced the number of judicial and expert members with the authority to
break a deadlock vested with chairperson of the tribunal. The Tribunal is empowered to
invite any one or more persons having specialized knowledge and experience in a
particular cases before the Tribunal to assist the Tribunal in that case.70 The expert
member should either be a degree in Master of Science (in physical sciences or life
sciences) with a Doctorate degree or Master of Engineering or Master of Technology or
an experience of fifteen years in the relevant field and administrative experience of
fifteen years in Central or a State Government or in a reputed National or State level
institution.71 Expert member must have practical experience in the field of environment
related issues.72 According to Section 21 of the Act,73 the decision of the Tribunal by
majority of Members shall be binding: Provided that if there is a difference of opinion
among the Members hearing an application or appeal, and the opinion is equally divided,
the Chairperson shall hear (if he has not heard earlier such application or appeal) such
application or appeal and decide: Provided further that where the Chairperson himself has
heard such application or appeal along with other Members of the Tribunal, and if there is
a difference of opinion among the Members in such cases and the opinion in equally
divided, he shall refer the matter to other Members of the Tribunal who shall hear such
application or appeal and decide the dispute.74

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69 Section 4 of the National Green Tribunal Act, 2010.
70 Section 4 of the National Green Tribunal Act, 2010.
71 The National Green Tribunal Act, 2010. Ministry of Law and Justice, New Delhi, June 2,2010
72 Section 5 of the National Green Tribunal Act, 2010.
73 The National Green Tribunal Act, 2010.
74 Section 21 of the National Green Tribunal Act, 2010.
5.6. Important Principles Adopted by the National Green Tribunal

One of the most important and unique features of the National Green Tribunal Act, 2010 is that it requires the tribunal to apply the important principles of sustainable development while passing any order or decision or award. This first legislation in India recognizes the “principles of sustainable development, the precautionary principle and the polluter pays principle” and gives them statutory recognition. It is important that the precautionary principle, which is arguably the most significant principle as far as scientific uncertainty is concerned, is treated as the prime directional principle within the system. But, its nature and extent ought to be translated in clear language. The principle states that "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." This principle is relevant for both administrative and adjudicatory decision making. The Principles of Sustainable Development is a principle which ought to guide decision-making at all levels.

One of the examples of these principles is the National Green Tribunal (NGT) imposed a complete ban on burning of waste in open places across the country and announced a fine of Rs. 25,000 on each incident of bulk waste burning. The green panel’s judgment was given on the petition seeking directions to local bodies in states and Centre for improving solid waste management methods. NGT’s judgment complete prohibition on open burning of waste on lands, including at landfill sites. For each such incident, violators will pay environmental compensation of Rs. 5,000 in case of simple burning and Rs. 25,000 in case of bulk waste burning, States and UTs to enforce and implement Solid Waste Management Rules, 2016 in a time-bound manner. Union Environment Ministry and all States must pass appropriate directions in relation to the ban on short-life Polyvinyl Chloride (PVC) and chlorinated plastics within a period of six months. Establish and operationalise of plants for processing and disposal of the waste and

75 Section 20 of the National Green Tribunal Act, 2010.
79 Ibid.
selection and specifications of landfill sites. Non-biodegradable waste and non-recyclable plastic should be segregated from the landfill sites. It must be used for construction of roads and embankments in all road projects all over the country.\textsuperscript{80}

The NGT Act incorporates the “principle of vicarious liability” of the person-in-charge, director, manager, secretary, head of department or any other officers for the offences under this Act.\textsuperscript{81}

The unique nature of the National Green Tribunal is guided by the “principle of natural justice”. The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure 1908,\textsuperscript{82} and the rules of evidence contained in the Indian Evidence Act, 1872.\textsuperscript{83}

5.7. Jurisdiction of the National Green Tribunal Act, 2010

The NGT’s jurisdictions include all civil cases relating to environmental laws on Air and Water pollution, the Environment Protection Act, the Forest Conservation Act and Biodiversity Act. With these efforts, India joined Australia and New Zealand, which have such specialized environmental tribunals.\textsuperscript{84}

5.7.1. Tribunal to Settle Dispute - The NGT is entrusted with the task of adjudication under the eight Acts mentioned in the Schedule - I which covers The Water (Prevention and Control of Pollution) Act, 1947; The Water (Prevention and Control of Pollution) Cess Act, 1947; The Forest (Conservation) Act, 1980; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1991; The Public Liability Insurance Act, 1991; The Biological Diversity Act, 2002.\textsuperscript{85} The National Green Tribunal Act mentioned that the Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment\textsuperscript{86} (including enforcement of any legal right


\textsuperscript{81} Section 27 & Section 28 of the National Green Tribunal Act, 2010.

\textsuperscript{82} Clause 1 of Section 19 of the National Green Tribunal Act, 2010.

\textsuperscript{83} Clause 3 of Section 19 of the National Green Tribunal Act, 2010.

\textsuperscript{84} J. Balaji, “Lok Sabha passes green tribunal Bill”, The Hindu, MAY 01, 2010.

\textsuperscript{85} Schedule- I of the National Green Tribunal Act, 2010.

\textsuperscript{86} Section 2(m) of the National Green Tribunal Act, 2010 defines the term ‘substantial question relating to environment’ shall include an instance where:- (1) There is a direct violation of a specific statutory environmental obligation by a person by which,- a) the community at large other than an individual or
relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule-I. However, it is important to mention here that two major environmental legislations have been excluded from the schedule I of the NGT Act, naming as The Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and The Wildlife (Protection) Act, 1972. The section 14 further adds the time limit of disputes to be entertained by the court. No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose. Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the period, allow it to be filed within a further period not exceeding sixty days. In Bhopal Gas Peedith Mahila Udyoge Sangthan v. Union of India, the Supreme Court observed that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the NGT. Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, the court in unambiguous terms directed that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act. This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

5. 7.2. Relief Compensation and Restitution- The Act of NGT provides various kinds of relief. The tribunal has authority to provide relief and compensation to those who are affected by the pollution and other damage to the environment arising under the enactments i.e. specified in the schedule I and also provide (b) for restitution of

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87 Section-14 of the National Green Tribunal Act, 2010.
89 Clause 3 of section 14 of the National Green Tribunal Act, 2010.
90 (2012) 8 SCC 326.
91 Sub-clause a of Section 15(1) of the National Green Tribunal Act, 2010.
property damaged;\textsuperscript{92} and restitution of the environment for such area or areas, as the Tribunal may think fit.\textsuperscript{93}

The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).\textsuperscript{94}

No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose: Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.\textsuperscript{95}

The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.\textsuperscript{96} The head specified under schedule II of NGT Act, are as under:

(a) Death; \textsuperscript{97}

(b) Permanent, temporary, total or partial disability or other injury or sickness;\textsuperscript{98}

(c) Loss of wages due to total or partial disability or permanent or temporary disability;\textsuperscript{99}

(d) Medical expenses incurred for treatment of injuries or sickness;\textsuperscript{100}

\textsuperscript{92} Sub-clause b of Section 15(1) of the National Green Tribunal Act, 2010.
\textsuperscript{93} Sub-clause c of Section 15(1) of the National Green Tribunal Act, 2010.
\textsuperscript{94} Clause-2 of Section 15 of the National Green Tribunal Act, 2010.
\textsuperscript{95} Clause-3 of Section 15 of the National Green Tribunal Act, 2010.
\textsuperscript{96} Clause-4 of Section 15 of the National Green Tribunal Act, 2010.
\textsuperscript{97} Clause-a of Schedule II of NGT Act, 2010, (Sections 15 (4) and 17(1)] Heads under Which Compensation or Relief for Damage May Be Claimed).
\textsuperscript{98} Clause-b of Schedule II of NGT Act, 2010, (Sections 15 (4) and 17(1)] Heads under Which Compensation or Relief for Damage May Be Claimed).
\textsuperscript{99} Clause-c of Schedule II of NGT Act, 2010, (Sections 15 (4) and 17(1)] Heads under Which Compensation or Relief for Damage May Be Claimed).
\textsuperscript{100} Clause- d of Schedule II of NGT Act, 2010, (Sections 15 (4) and 17(1)] Heads under Which Compensation or Relief for Damage May Be Claimed).
(e) Damages to private property;\(^{101}\)

(f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;\(^{102}\)

(g) Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;\(^{103}\)

(h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage;\(^{104}\)

(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;\(^{105}\)

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;\(^{106}\)

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;\(^{107}\)

(l) Loss and destruction of any property other than private property;\(^{108}\)

(m) Loss of business or employment or both;\(^{109}\)

(n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance.\(^{110}\)

\(^{101}\) Clause- e of Schedule II of NGT Act, 2010, (Sections 15(4) and 17(1) Heads under Which Compensation or Relief for Damage May Be Claimed).

\(^{102}\) Clause- f of Schedule II of NGT Act, 2010, (Sections 15(4) and 17(1) Heads under Which Compensation or Relief for Damage May Be Claimed).

\(^{103}\) Clause- g of Schedule II of NGT Act, 2010, (Sections 15(4) and 17(1) Heads under Which Compensation or Relief for Damage May Be Claimed).

\(^{104}\) Clause- h of Schedule II of NGT Act, 2010, (Sections 15(4) and 17(1) Heads under Which Compensation or Relief for Damage May Be Claimed).

\(^{105}\) Clause- i of Schedule II of NGT Act, 2010, (Sections 15(4) and 17(1) Heads under Which Compensation or Relief for Damage May Be Claimed).

\(^{106}\) Clause- j of Schedule II of NGT Act, 2010, (Sections 15(4) and 17(1) Heads under Which Compensation or Relief for Damage May Be Claimed).

\(^{107}\) Clause- k of Schedule II of NGT Act, 2010, (Sections 15(4) and 17(1) Heads under Which Compensation or Relief for Damage May Be Claimed).

\(^{108}\) Clause- l of Schedule II of NGT Act, 2010, (Sections 15(4) and 17(1) Heads under Which Compensation or Relief for Damage May Be Claimed).

\(^{109}\) Clause- m of Schedule II of NGT Act, 2010, (Sections 15(4) and 17(1) Heads under Which Compensation or Relief for Damage May Be Claimed).
It shall be duty of every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.\(^{111}\) The NGT Act for first time gives a statutory recognition of the principle of no fault liability (absolute liability-first recognize in oleam gas leak case) and principle of sustainable development, precautionary principle and polluter pays principle.\(^{112}\)

**5.7.3. Appellate Jurisdiction of the Tribunal** - Section 16 of the Act confers Appellate Jurisdiction on the Tribunal. It provides that any person aggrieved by-

- an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28,\(^{113}\) section 29,\(^{114}\) section 33A\(^{115}\) of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);\(^{116}\)
- an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);\(^{117}\)
- an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);\(^{118}\)
- any direction issued, or order made, on or after the commencement of the National Green Tribunal Act, 2010, under section 5\(^{119}\) and granting environmental clearance in the area in which any industries, operations or processes or class of

\(^{110}\) Clause- n of Schedule II of NGT Act, 2010, (Sections 15(4) and 17(1)] Heads under Which Compensation or Relief for Damage May Be Claimed).

\(^{111}\) Clause-5 of Section 15 of the National Green Tribunal Act, 2010.

\(^{112}\) Clause 3 of Section-17 of the National Green Tribunal Act, 2010.

\(^{113}\) Clause a of section 16 of the National Green Tribunal Act, 2010.

\(^{114}\) Clause b of section 16 of the National Green Tribunal Act, 2010.

\(^{115}\) Clause c of section 16 of the National Green Tribunal Act, 2010.

\(^{116}\) Clause d of section 16 of the National Green Tribunal Act, 2010.

\(^{117}\) Clause e of section 16 of the National Green Tribunal Act, 2010.

\(^{118}\) Clause f of section 16 of the National Green Tribunal Act, 2010.

\(^{119}\) Clause g of section 16 of the National Green Tribunal Act, 2010.
industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);\textsuperscript{120}

• an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);\textsuperscript{121}

• any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),\textsuperscript{122}

Any person aggrieved by an order or decision may within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal. Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period, allow it to be filed under this section within a further period not exceeding sixty days.\textsuperscript{123}

5.7.4. Fees to be paid with Application /Appeal-An application or appeal where compensation has been claimed shall be accompanied by a fee of equivalent to one per cent of the amount of compensation claimed, subject to a minimum of one thousand rupees. However, where the Tribunal permits a single application or appeal to be filed either by more than one person or by an association of persons, the fee payable shall be equivalent to one per cent of the total amount of compensation claimed.\textsuperscript{124}

The Tribunal is required to deal with the applications or, as the case may be, appeals, as expeditiously as possible and obligates the Tribunal to endeavor to dispose of the application or, the case may be, an appeal finally within six months from the date of

\textsuperscript{120} Clause h of section 16 of the National Green Tribunal Act, 2010.
\textsuperscript{121} Clause i of section 16 of the National Green Tribunal Act, 2010.
\textsuperscript{122} Clause j of section 16 of the National Green Tribunal Act, 2010.
\textsuperscript{123} Section 16 of the National Green Tribunal Act, 2010.
\textsuperscript{124} Section /rule 12 of National Green Tribunal Rules 2011.
filing the application, or, as the case may be, the appeal, after providing the parties an opportunity to be heard.\textsuperscript{125}

5.7.5. Bar on Jurisdiction of tribunal- This Act provides bar of Jurisdiction of civil courts. It provides that from the date of establishment of the Tribunal, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which then Tribunal is empowered to determine under its appellate jurisdiction.\textsuperscript{126} It further provides that no civil court shall have jurisdiction to settle or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment which may be adjudicated upon by the Tribunal and no injunction in respect of any action taken or to be taken by or before the Tribunal shall be granted by civil court.\textsuperscript{127}

5.8. Procedure and Powers of the Tribunal

The unique nature of the National Green Tribunal is guided by the “principle of natural justice”. The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908;\textsuperscript{128} and the rules of evidence contained in the Indian Evidence Act, 1872.\textsuperscript{129} However, the Act makes it very clear that the decision of the National Green Tribunal is judicial in nature and based on the principle of natural justice and the Tribunal shall have power to regulate its own procedure.\textsuperscript{130} The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908\textsuperscript{131} while trying a suit, in respect of the following matters, namely:-

- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of documents; receiving evidence on affidavits;

\textsuperscript{125} Clause 3 of Section 18 of the National Green Tribunal Act, 2010.
\textsuperscript{126} Clause 1 of section 29 of the National Green Tribunal Act, 2010.
\textsuperscript{127} Clause 2 of section 29 of the National Green Tribunal Act, 2010.
\textsuperscript{128} Clause 1 of Section 19 of the National Green Tribunal Act, 2010.
\textsuperscript{129} Clause 3 of Section 19 of the National Green Tribunal Act, 2010.
\textsuperscript{130} Clause 2 of Section 19 of the National Green Tribunal Act, 2010.
\textsuperscript{131} Clause 4 of Section 19 of the National Green Tribunal Act, 2010.
subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

• issuing commissions for the examination of witnesses or documents;

• reviewing its decision;

• dismissing an application for default or deciding it ex parte;

• setting aside any order of dismissal of any application for default or any order passed by it ex parte;

• pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

• pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule-I;

• any other matter which may be prescribed.\textsuperscript{132}

All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.\textsuperscript{133}

The decision of the Tribunal by majority of Members shall be binding: Provided that if there is a difference of opinion among the Members hearing an application or appeal, and the opinion is equally divided, the Chairperson shall hear (if he has not heard earlier such application or appeal) such application or appeal and decide: Provided further that where the Chairperson himself has heard such application or appeal along with other Members of the Tribunal, and if there is a difference of opinion among the Members in such cases

\textsuperscript{132} Clause 4 of Section 19 of the National Green Tribunal Act, 2010.

\textsuperscript{133} Clause 5 of Section 19 of the National Green Tribunal Act, 2010.
and the opinion in equally divided, he shall refer the matter to other Members of the Tribunal who shall hear such application or appeal and decide.\textsuperscript{134}

5.8.1. Appeal to Supreme Court- Any person aggrieved by any award, decision or order of the Tribunal can appeal to the Supreme Court within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on anyone or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908. It is provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.\textsuperscript{135} It further provides that where the Tribunal holds that it claim is not maintainable or is false or vexatious, and such claim is disallowed, in whole or part, the Tribunal may, if so thinks fit, after recording its reasons for holding such claim to be false or vexatious, make an order to award costs, including lost benefits due to any interim injunction.\textsuperscript{136}

5.8.2. Penalty -The NGT Act, 2010 provides deterrent punishment to those who fail to comply with orders /award/ decisions of Tribunal.

(i). The Act provides that whoever, fails to comply with any order or award or decision of the tribunal shall be punishable with imprisonment for a term which may extend to three years; or with fine which may extend to ten crore rupees; or with both.\textsuperscript{137} In case the failure or contravention continues, with additional fine which may extend to twenty five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(ii) In case a company fails to comply with any order or award or a decision of the tribunal such company shall be punishable with fine which may extend to twenty-five crore rupees and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day.\textsuperscript{138}

\textsuperscript{134} Section 21 of the National Green Tribunal Act, 2010.
\textsuperscript{135} Section 22 of the National Green Tribunal Act, 2010.
\textsuperscript{136} Section 23 of the National Green Tribunal Act, 2010.
\textsuperscript{137} Clause 1 of section 26 of the National Green Tribunal Act, 2010.
\textsuperscript{138} Ibid.
offence under this Act shall be non-cognizable within the meaning of Criminal Procedure Code.\textsuperscript{139}

5.8.3. \textit{NGT’s Power to make rule} -Section 35 of the NGT Act confers power on the Central Government to make rules for carrying the provisions of this Act. Central Government in exercise of the powers conferred by Section 35 of the NGT Act, 2010 has enacted the National Green Tribunal (Manner of Appointment of Judicial and Expert Members, Salaries, Allowances and Other members and Procedure for Inquiry) Rules, 2010 and The National Green Tribunal (Practices and Procedure) Rules, 2011.\textsuperscript{140}

5.9. \textbf{Implementing the National Green Tribunal Act, 2010 Decisions}

Further, the institutions involved in resolving environmental disputes, whether the Supreme Court or the National Green Tribunal, need to be strong and effective in ensuring that their directions are implemented. Implementation should not be done through monitoring committees. Many judges believe that the Court should not seek to implement its directions through the use of monitoring committees as this makes the Court an investigative rather than adjudicative agency. However, other judges believe that leeway has been given time and again to polluters and implementing agencies but they have only perpetuated illegal behavior, thus forcing the judiciary to intervene aggressively. Most concur, however, that implementing agencies need to be made stronger and more effective. Courts and the NGT should lay down strict conditions for the implementation of environmental judgments, identify the executive agency responsible for carrying them out, and ensure the accountability of the agency if it fails to follow directions. The Supreme Court and the National Green Tribunal need to fix responsibility on these implementing agencies.\textsuperscript{141}

5.10. \textbf{Important Judgments of the National Green Tribunal}

India’s National Green Tribunal played an important part in several notable environmental cases in 2016. MC Mehta, a great environmentalist pioneered in the area

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{139} Clause 2 of Section 26 of the National Green Tribunal Act, 2010.
\item \textsuperscript{140} Section 35 of the National Green Tribunal Act, 2010.
\item \textsuperscript{141} Armin Rosencranz and Geetanjoy Sahu, “Assessing the National Green Tribunal after Four Years”, 5, Journal of Indian Law and Society (Monsoon, 2014) pp. 196-197.
\end{itemize}
\end{footnotesize}
of environment concerns in India but the creation of NGT also herald a new area for any person interested in protection of environment.\footnote{Vini Kewaliya, “National Green Tribunal: A New Mandate towards Protection of Environment”, 2(1) International Journal of Socio Legal Analyses and Rural Development (2016) pp.19-20.} Before we discuss the role of the tribunal and decision-makers in this context, the current Indian practice of handling scientifically sensitive environmental issues has to be understood. This is for satisfying ourselves that a change may be necessary on a comparative level.\footnote{Principle 15 of the Rio Declaration on Environment and Development (1992).} As Lord Woolf asks, is the judiciary environmentally myopic?\footnote{Lord Woolf, “Are the Judiciary Environmentally Myopic?”, 4(1) Journal of Environmental Law 1(1995).} Environmental legislations were enacted on the basis of the shared legislative authority, and other constitutional provisions. Environmental protection was not mentioned in the original Constitution and was later introduced as a directive principle of state policy\footnote{Ibid., Art. 48a, inserted by constitution (Forty-Second Amendment) Act, 1976, Section 10 (with effect from Jan. 3, 1977), states that, “state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.”} and as a fundamental duty\footnote{Ibid., Art. 51a (g) states that it shall be the duty of every citizen of India “to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.”} by way of an amendment. Every citizen is entrusted with a duty to protect the environment. The purpose of the amendment was to ensure that the State and citizens are guided by environmental considerations when pursuing any activity.

The conspicuous absence of ‘right’ to environment, even after the amendment may be noted. But, the Bhopal gas tragedy case reminded the court that an unenforceable directive principle and inactive citizenry could lead to governmental inaction and serious damage to the public. This called for relaxation of norms for entertaining disputes relating to environment, which would in turn encourage participation by concerned individuals and keep a check on unrestrained governmental power.

As a first step, right to a healthy environment as a right was recognized in \textit{Subash Kumar v. State of Bihar}\.\footnote{AIR1991 SC 420.} It was then included within the ambit of the ever-growing ‘right to life’. The scope of right to environment within the right to life was then developed to include right to clean water,\footnote{Susheta v. State of Tamil Nadu & Ors. (2006) 6 SCC 563.} clean air,\footnote{Murli Deora v. Union of India (2001) 8 SCC 765.} etc. The recognition of these
rights coincided with the development of public interest litigation and relaxation of *locus standi* principle, which led to an increase in the volume of litigation. Courts became more confident in dealing with and governing environmental disputes.

In *POSCO case*, the NGT asked the Environment Ministry to review clearances after some local villages refused to consent to the project under the pro-tribal Forest Rights Act, 2006. Officials say the requirement of mandatory consent from the gramsabha for initiating any project is the biggest hurdle in pushing infrastructure development in mineral rich, poor regions. The NGT has repeatedly rejected the views of its nominal master, the Ministry of Environment and Forests (MoEF). It has criticized the Ministry for poor decisions or actions and has been frequently resorted to by civil society groups seeking and getting relief from environmentally irresponsible actions of the government.

Before the NGT was enacted, some environmental disputes were referred for settlement to the woefully ineffective National Environment Appellate Authority (NEAA). This body was created by the Parliament in 1997. The NEAA Act created a body that mainly dealt with environmental clearances, and was always under MoEF’s thumb. The Parliament of India, recognizing the need for the speedy and expeditious disposal of environmental cases, especially in light of the burden of pending litigation, established the NGT in 2010, which has superseded NEAA.

While passing Order, the NGT will apply the principles of sustainable development, the precautionary principle and the polluter pays principles. In fact, to make things simpler, the Supreme Court of India, in a 2011 judgment, has strongly recommended the setting up of an independent regulator for the environmental sector.

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150 Jona Razzaque, “Public Interest Environmental Litigation in India”, Pakistan and Bangladesh (2004).
In *Vimal Bhai v. Ministry of Environment and Forests*,\(^{155}\) a case where a forest clearance granted to a hydro power project was challenged, the respondents sought a narrow definition to “person aggrieved” under Section 16 of the NGT Act, and argued that the environmental group which had initiated the proceeding was not affected by the project since none of them resided in the project area. The NGT, however, held that a “person aggrieved” under Section 16 does not signify a person who is injured or affected, directly or indirectly by the Project, but includes any person without a malafide intention. The NGT drew a distinction between Section 18 and Section 16 and has held that while under Section 18 a person injured can seek relief, under Section 16 any person may approach the NGT. The relevant portion of this decision of the NGT is quoted below.

“The only exception to be made for treating an appeal/application as not maintainable could be a matter which falls beyond the seven (7) Acts as notified in Schedule I of the NGT Act, 2010 and in case of malafide and vexatious litigation brought before this tribunal and not otherwise.”

One of the important cases in this regard relates to the environmental clearance granted to Jindal Steel and Power Limited (JSPL) for its Gare-IV/6 Coal Mining Project and Pithead Coal Washery, located at Raigarh District in Chhattisgarh.\(^{156}\) The NGT ordered the cancellation of the environmental clearance in this case since there were gross procedural irregularities in the conduct of the public hearing. The NGT held the public hearing to be a “farce” and ruled that:

“This is not a case where there are a few ignorable procedural lapses in conducting the public hearing. This is a case of a mockery of public hearing, which is one of the essential parts of the decision-making process, in the grant of EC. This is a classic example of violation of the rules and the principles of natural justice to its brim. Therefore, we consider it appropriate to declare that the public hearing conducted in this case is nullity in the eye of law and therefore is invalid.”

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\(^{155}\) Appeal No. 5 of 2011, Order dated 14 December 2011.

In *Dileep B. Nevatia v. Union of India & Ors*, the main question arose of violation of the Noise Pollution (Regulation & Control) Rules, 2000 made under the provisions of the Environment (Protection) Act, 1986 by vehicles using multi-tone horns and sirens. It was also noticed in this case that no standard is also specified with regard to use of horns and sirens in the ambulances and Police vehicles. In the said order the Ministry of Road Transport & Highways was directed to notify the standards for sirens and multi-tone horns used by different vehicles either under Government duty or otherwise.

In another case dealt by the NGT, *Adivasi Majdoor Kisan Ekta Sangthan v. Ministry of Environment and Forests*, environmental clearance to a project was granted without a proper public hearing and observed that this was a classic example of a violation of the rules and principles of natural justice.


In *Jeet Singh Kanwar v. Union of India*, it was observed that certain environmental clearance for a power plant project was granted by the MoEF in contravention to the precautionary principle, moreover, the economic benefit of the project was found to be disproportionate to the excessive environmental degradation.

In *Sarpanch Grampanchayat and Others v. Ministry of Environment Forests*, it was held by the Tribunal that it is common knowledge that any dust emanating from mining cannot be said to be controlled by a 50 meter wide green belt which as per the EIA report can be avoided by creating a thick green belt. The dust emanating from such an activity may settle at distance more than half a km varying from season to season depending upon the wind direction. Trioda village being a seashore village and the wind from seashore would definitely carry the dust too far off places. Therefore, the travel of the fine dust emanating from mining operations was not taken seriously and without there being any scientific study as to the effect of the dust on the human habitation, particularly the school going children, the EAC could not have recommended for grant of EC. The

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157 Decided on 09-01-2013.
158 Appeal Number 3 of 2011 (T) (NEAA No. 26 of 2009) dated 20-4-2012.
159 Decided on 25-11-2014.
160 Appeal No. 10 of 2011 (T) dated 16-4-2013.
161 Appeal No. 3 of 2011.
Tribunal held that not only a serious lapse on part of authorities but a substantial procedural lacuna.

*In Paryawaran Sanrakshan Sangarsh Samiti Lippa v. Ministry of Environment and Forests & Others,*\(^{162}\) judgment of the National Green Tribunal in the matter regarding Kashang Hydro Electric Project in Kinnaur District of the State of Himachal Pradesh. The villagers of Lippa have filed this appeal seeking to assail the order of the Department of Forest, Government of Himachal Pradesh dated 15.01.2013 according sanction for diversion of 17.6857 hectares of forest land, order dated 22.03.2011 issued by the Ministry of Environment and Forests, Government of India (the Respondent No.1) granting Stage-I Forest Clearance and order dated 14.06.2011 also issued by the Ministry of Environment and Forest granting final approval for diversion of 17.6857 hectares of forest land for construction of 130 MW Integrated Kashang Stages II and III Hydro Electric Project in favour of M/S Himachal Pradesh Power Corporation Limited in the Kinnaur District of Himachal Pradesh. Tribunal directs Ministry of Environment and Forests and State of Himachal Pradesh to ensure that the entire proposal pertaining to Forest Clearance in respect of Stages II and III of 130 MW Kashang Integrated Hydro Electric Project is placed before the Gram Sabha of villages Lippa, Rarang, Pangi and Telangi in Kinnaur District of Himachal Pradesh as prescribed under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 as required under Condition 16 of the Forest Clearance dated 22.03.2011 issued by the Ministry of Environment and Forests.

*In Bhagat Singh Kinnar v. Union of India,*\(^{163}\) the decision of National Green Tribunal (NGT) to refer the 130MW Kashang hydropower project in Kinnaur district of Himachal Pradesh back to the affected gram sabhas has left tribal residents opposing the project. Even the green activists feel that now, it would not be possible for the state government and companies executing the project in the state to ignore voices of dissent. Local residents in the project-affected areas of Kinnaur and environmental activists had expressed their apprehensions about the project.

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162 M.A. No. 23 of 2011 (Arising Out of Appeal No. 17 of 2011) Order dated 04/05/2016.
163 M.A. No. 6 of 2011 (Arising Out of Appeal No. 14 of 2011).
In *M.P. Patil v. Union of India*,\(^{164}\) the Tribunal examined the details of the basis on which environmental clearance was obtained by the National Thermal Power Corporation Ltd (NTPC). It was found that NTPC was guilty of misrepresenting facts to obtain the EC. Additionally in this case the tribunal stressed on the importance of a Rehabilitation and Resettlement Policy that adequately took into consideration the needs of those affected by the project. In determining who would fall within the ambit of such persons, the tribunal chose an expansive definition instead of restricting it only to the land owners in the region. Finally, it was reiterated that the burden of proving that the proposed project was in consonance with goals of sustainable development was on the party proposing the project. The Principle Bench of the NGT at New Delhi examined the details of how National Thermal Power Corporation obtained environmental clearances and found them to be guilty of misrepresenting facts to obtain such clearances. Among the most notable recent take on environmental pollution, the NGT ordered a ban on diesel vehicles older than 10 years across the corporation areas in the State of Kerala\(^{165}\) also imposing a fine on defaulters.

In *Amit Kumar v. Union of India*,\(^{166}\) taking precautionary principle into consideration, Tribunal had observed in this case that if evidence is found that the migratory birds or their nests will be harmed by construction activity, all work in the immediate vicinity must be stopped until appropriate avoidance measures can be implemented. The Tribunal had observed that the builders must ensure that the do not pollute the nearby areas or do not use the resources of the migratory birds to fuel their own construction.

In *Rohit Chaudhary v. Union of India*\(^{167}\) this case dealt with the steps taken to protect and conserve the tiger reserve at the Kanziranga National Park in Assam. In this case important guidelines were given by the Tribunal to protect the habitation of the national park. The tribunal order to deduce any kind of human intervention in the area and said that it is not favorable to the natural habitat of the animals and restricted the free movement of wild life in the Kanziranga national park. The Tribunal noted the adverse impacts of human intervention in the said park which is also a world heritage site, understanding the

\(^{164}\) Appeal Number 12 of 2012 dated 13-3-2014.


\(^{166}\) Order dated 18-08-2015.

\(^{167}\) Original application no.174 of 2013, Order dated 22-04-2015.
harmful impacts on animals like rhino elephants and other fauna. Tribunal also ordered that not to construct any hotel or resort without the prior sanction from necessary authorities and also banned the parking of trucks.

In *Saloni Singh v. Union of India*\(^{168}\) this case dealt with the pollution had been caused along the railway tracks.

In case of *Shobha Phadanvis v. State of Maharashtra Another*\(^{169}\) the question raised was about the conservation, preservation and protection of forests and the ecology where the forests were destroyed immensely and without prior permission of the authorities. Tribunal has directed the forest authorities to continue the order of precautionary principle and to prepare a Disaster Management Plan (DMP) for protection of Forests. Tribunal observed that forests are a vital component to sustain the life support system on the earth.

In *Awaaz Foundation and Anr v. State of Maharashtra and Ors.*,\(^{170}\) The case of the Applicants is was that in exercise of powers U/s. 3 of the Environment (Protection) Act 1986 and Rule 5(d) of the Environment (Protection) Rules 1986, the Ministry of Environment and Finance (MoEF) issued CRZ Notification dated February 19\(^{th}\), 1991 declaring some Coastal Stretches of seas, bays, estuaries, creeks, rivers and backwater as Coastal Regulation Zones (CRZ) for the purpose of controlling certain categories of activities within the said area. State of Maharashtra prepared a Coastal Zone Management Plan (CZMP) as required under the said CRZ Notification. The CZMP was approved by the competent authority on September 27\(^{th}\), 1996. One of the activity is absolutely prohibited under the CRZ Notification is mining of sand, rocks and other substrata materials excluding only two (2) limited exceptions. Sand Mining and dredging of the Sea bed has become a huge commercial activity along the coastal areas in the State of Maharashtra. The unbridled, uncontrolled and rampant dredging of sea, dredging of Rivers for extraction of sand is being carried out in violation of CRZ Notification and other statutory provisions. A large number of sand mafias are indulging in such business

\(^{168}\) Original application no.141 of 2014.

\(^{169}\) Decided on 13-01-2014.

\(^{170}\) Appeal No. 34(THC)/2013(WZ) (Sand Mafia Case).
that is causing damage to the environment, ecology and the flora and fauna. The gangs of sand mafias have encroached on various spots of the creeks, tidal water, Estuaries and stretches of sea beds for the purpose of sand mining/dredging as well as transportation thereof. Unabated sand, dredging/mining activities would lead to damage to mangroves, marine life, interference with natural tidal flow of seawater on and along creeks and back water/estuaries. The authorities of the State have failed to adopt proper control measures to prohibit the dredging and illegal sand mining activities of the sand mafias. While allowing the Application the National Green tribunal deemed it proper to issue following directions:

• The extraction of the sand from coastal area by manual method may be permitted but the quantification of such sand shall be set out and if so required, the same traditional fishermen, if can be found eligible may be assigned the work of “maintenance dredging” without use of mechanical equipment in the channels which are required to be cleared.
• The sand extracted from the channels which are to be cleared/already cleared by dredging shall not be allowed to transport by any transport vehicle within HTL area.
• The contractors to whom the work for clearance of the channel is given on contract basis shall be allowed to use dredgers only during daytime between 11.00 a.m. to 4.00 p.m. The transportation vehicles also shall not be permitted to be used beyond the day time and in any case the same shall not be allowed to be parked in the CRZ areas.
• The Collector may act as coordinator over auctioning process and controller for the activities, so also for the purpose of collecting the revenue after “e” auction sale of the sand so extracted.
• The competent authorities, including the controlling authority like Police/Coastal Police shall give full support/assistance to the Maharashtra Maritime Board (MMB) and CRZ authorities to ensure compliances of the CRZ.

In M/S Assam Stone Crusher v. Rohit Chaudhary & Ors, industries were illegally established in “No Development Zone”, in and around Kanziranga National Park. So, directions were sought for closure of such industries. Here the tribunal directed the
central pollution control board to examine the conditions and to take final call on closure of industries. However, certain industries were directed to be closed which are in immediate vicinity of No Development Zone. In certain cases tribunal has decided matters by taking into considerations of employment of labors working there, financial condition of industry and need of local people. This view was taken because of the concept of sustainable development.

In *M/S Leela Textile Exports v. State of Rajasthan and Ors.*,172 where the State of Rajasthan had handed over a piece of land to the Rajasthan State Industrial Development and Investment Corporation Limited (RIICO) for the purpose of setting up an industrial area. Many industries were set up there without obtaining the permission of the state pollution control board and were discharging their effluents into the CETP without authorization. Tribunal aptly observed that “Keeping in view the principle of sustainable development, the peculiar facts and circumstances of the case and the time for which these industries have been in operation, we do not propose to direct their closure forthwith but would issue appropriate directions to enable them to operate while ensuring that there is no pollution.” In many cases tribunal has also applied the “a reasonable person’s test”, where life, public health and ecology have priority over unemployment and loss of revenue. Development and protection of environment are not enemies. Right to a clean and decent environment has been held to be a fundamental right, coupled with an obligation on the part of the State and the citizens. NGT has not hesitated in imposing huge penalty on big industry houses for example the tribunal has slapped a penalty of Rs. 25 crore on Adani-Hazira Port Pvt. Ltd (AHPPL) and its associate Hajira Infrastructure Pvt. Ltd for carrying out work at their Hazira-based port near Surat without acquiring environment clearance. Thus, toady it cannot be denied that NGT is a custodian of resources and development of the country.

In *Krishi Vigyan Arogya Sanstha v. MoEF*,173 the NGT in directed the MoEF to include in the terms of reference of all future thermal power projects, a requirement that the project proponents should submit details of the nuclear radioactivity levels of the coal proposed to be used in the project. The MoEF has been directed to ask the Department of

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172  Decided on 01-05-2014.
173  Appeal No. 7 of 2011(T) order dated 20 September, 2011.
Atomic Energy to prescribe national standards for nuclear radiation in residential, industrial and ecologically sensitive areas of the country.

In *Sudiep Shrivastava v. State of Chhattisgarh*, 174 another landmark decision given by the Principal Bench in March 2013 related to the diversion of forests in the Tara, Parsa and PEKB coal blocks. The Forest Advisory Committee (FAC) had rejected the proposal in its recommendations to the Central Government; however, the latter went against the recommendations and gave its approval. In the instant matter, the tribunal scrutinized not only the validity of the Government’s rejection but also the report submitted by the FAC. 175 Examining the report of the FAC in light of the Wednesbury principle of reasonableness 176, it was noted that instances of human wildlife conflict had not been examined by the FAC. Therefore, it was held that it had ignored a very relevant material which it should have taken into consideration, and thus the report itself was arbitrary. In the same case, the Central Government’s authority to act against the recommendations was also examined. Specifically, the question that arose was whether the advice rendered by FAC was to be followed by the Central Government. The tribunal averred that ‘advice’, read in its ordinary and grammatical sense, would not make it binding *stricto sensu* on the Central Government. However, the Central Government remains under an obligation to duly consider the advice of the FAC and pass a reasoned order either accepting with or without condition or rejecting the same based on facts, studies and such other authoritative material, if necessary gathered from further enquiry. The tribunal finally asked the Government to reconsider the entire matter afresh in accordance with law.

In *Braj Foundation v. Govt. of U.P.* 177 the case was brought forth by the Braj Foundation, and their contention was that the Government should be directed to execute the Memorandum of Understanding (MoU) for the afforestation of Vrindavan forest land. The Tribunal gave the verdict against them, holding that the MoU is not legally enforceable. Further, it was decided that the advertisement issued by the Forest

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174 Original Application No.33 of 2013.
175 Appeal No. 73 of 2012 dated 24-3-2014.
176 A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (*Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* (1948) 1 KB 223).
177 Application No. 278 of 2013 and MA No. 110 of 2014 dated 5-8-2014.
Department was only an ‘invitation to treat’ and could not be aground to enforce contractual obligations. Thus, the Government was allowed to continue with its policy decision of taking up the afforestation work on its own, especially since involvement of third parties would give rise to the possibility of illegal mining and encroachment. However, the Tribunal also went a step forward and gave directions to the Government itself to ensure proper afforestation. One of the most significant ones was the direction to declare at least a 100 meter long stretch on both sides of the Braj Parikrama route as a ‘no development zone’.

In *Kamlesh Singh v. Regional Officer*, 178 this case highlights the important role played by the pollution control boards and how even a bit of laxity on their part in granting clearance could adversely impact the environment and thus human health.

In *Vardhaman Kaushik v. Union of India*, 179 the Court took cognizance of the growing pollution levels in Delhi. It directed a Committee to prepare an action plan and in the interim, directed that vehicles more than 15 years old not be allowed to ply or be parked on the roads; that burning plastics and other like materials be prohibited; that a web portal and a special task force be created; that sufficient space for two way conveyance be left on all market-roads in Delhi; that cycle tracks be constructed; that overloaded trucks and defunct buses not be allowed to ply; that air purifiers and automatic censors be installed in appropriate locations. 180 In further orders in the next hearing, it directed that a fine of Rs. 1000 be levied on *all* cars parked on metal led roads and that multi-level parking be construed in appropriate areas.

Other recent decisions of the NGT have included *T. Murugandam v. Ministry of Environment & Forests*, 181 wherein the importance of proper analysis and collection of data and application of mind by the EAC was stressed upon. Questions of the jurisdiction of the Tribunal have also been fairly recurrent.

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178 Order dated 29-09-2011(Appeal No. 6 of 2011).
179 Original Application No. 21 of 2014.
180 *Ibid*.
181 Judgment of the National Green Tribunal (NGT) in Appeal No 50/12, *T Muruganandam & Ors v. Union of India & Ors*, dated 10 November 2014.
In *Kalpavriksh v. Union of India*, the Tribunal ruled that its jurisdiction extends to all civil cases which raise the substantial question of environment and arise from the implementation of the Acts stated in Schedule I of the NGT Act. For this purpose the term ‘implementation’ must neither be too constrained nor too expansive nor keep in view all the Notifications, Rules and Regulations promulgated under the Act.

In *Gram Panchayat Totu(Majthai) v. State of Himachal Pradesh*, some residents of the Gram Panchayat concerned, situated in District Shimla of Himachal Pradesh, have filed this appeal under Section 18(1) read with Section 14, 15 and 19 of the National Green Tribunal Act, 2010, inter alia praying to restrain the Municipal Corporation, Shimla and the State Government from undertaking construction of the “Solid Bio-Waste Management Plant” at one of the village falling under same Gram Panchyat about 9 kms away from Shimla Town and for other consequential reliefs.

In 1999, a Solid Bio-Waste Management Plant (MSW Plant) was installed by Shimla Municipality (M.C. Shimla) at a place commonly known as DARNI-KA-BAGICHA, Lalpass, and Shimla. By afflux of time, the Township of Shimla grew all around the place consequently the MSW Plant became virtually situated in the middle of the town. The plant, unfortunately did not work satisfactorily, as a result of which, stench and foul smell emanated from the site and polluted the surroundings, consequently the residents of the area were affected adversely due to the foul smell. The Municipality, it appears had entrusted the management of the plant to a private company which did not possess the necessary technical know how to run the plant, consequently the entire area was polluted and it caused nuisance to general public at large. Unfortunately, the disputed solid waste plant caught fire which disturbed the ecological and environmental balance of the Shimla town including the surroundings of the High Court of Himachal Pradesh and resultantly the High of Himachal Pradesh took *suo moto* cognizance of the matter and directed the municipality of Shimla to shift the solid waste plant to another landfill site after complying with the necessary environmental clearance and Municipal Solid Waste (Management and Handling) Rules, 2000. The Hon’ble High Court of Himachal Pradesh

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183 O.A No. 2 of 2011, decided on 11-10-2011)
had also invited the objections from the interested and affected parties but nobody had raised any objection before the High Court therefore the NGT had dismissed the application of the applicants citing that this court has found no reason to interfere with the new MSW landfill site selected by the MC Shimla. The NGT in para 31 of its order directed that:

“We therefore, dispose of this Original Application upholding the decision to set up the MSW Plant and Landfill site at Village BHARYAL in TARA-DEVI TOTU BYE PASS and direct the Project Proponent, Municipal Corporation Shimla to set up the said plant only after following the mandatory requirement stipulated in Municipal Solid Waste (Management and Handling) Rules, 2000 as well as after obtaining EC under the provisions of EIA Notification, 2006 as amended in 2009 before commissioning of the MSW facilities. We also direct the M.C. Shimla to plant at least two times of the trees i.e. 219 x 2 and double the saplings i.e. 1055 x 2 of the same species which have been felled by the project proponent to maintain ecological balance.”

In *Durga Dutt v. State of HP*, this case is related to environmental degradation and damage to Rohtang Valley Glaciers (The Crown Jewell of Tourism); the Tribunal decided that there was a need to restore the glacier’s degraded environment and prevent further damage by adopting precautionary measures including “regulating and restricted vehicular traffic” introducing stringent emissions norms; using clear natural gas and environment friendly fuels, prohibiting plastic bags and littering and banning commercial activities at the glacier.

Again the *Tribunal at its Own Motion v. Ministry of Environment & Forests*, it was held at wildlife is a part of environment and any action that causes damage or is likely to cause damage to wildlife, could not be excluded from the purview of the tribunal. The Tribunal has also given detailed directions in decisions involving contamination and pollution of river waters. The NGT observed that wildlife was a part of the environment.

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186 Original Application No. 16 of 2013 (CZ) dated 4-4-2014.
and that any action that harms or causes damage to wildlife will be dealt with under the purview of the tribunal.

In *Krishan Kant Singh v. National Ganga River Basin Authority*, the Tribunal gave a range of time bound and specific directions to the polluting industrial units as well as the Municipal authorities who were asked to allow the former to comply with directions. In the research paper titled “Geographical Indication-The Factors of Rural Development and Strengthening Economy” the author has tried to give the wider protection of “water which in Hindu religion is considered as God i.e. ‘Ganga Jal’ is considered to the sacred water and the only water which can be kept for longer duration and do not stink comparatively to the other water. Once the GI Case of Basmati rice is resolved based on the ‘crop grown in Gangetic terrain’, the matter of Ganga water cannot be ignored” and supported by in the same tune by the Hon’ble High Court of Uttarakhand in its landmark ruling on March 20, 2017, established two sacred rivers i.e. Ganga and Yamuna as “Living entities” as pronounced by Uttarakhand High Court in its landmark judgment.

In *Save Mon Region Federation and Ors. v. Union of India*, is a landmark judgment of the NGT on the point of access to information. The tribunal directed that the copy of entire environmental clearance for all projects which are granted environmental clearance in accordance under EIA Notification, 2006 be made available to the public through websites, public notice board, publication in newspaper as well as providing copies to local bodies including panchayats and municipal bodies. The tribunal observed that due to lack of knowledge about the grant of environmental clearance, concerned citizens and groups are unable to file an appeal before the NGT on time. In this case the NGT took strong exception to lack of transparency in the MoEF specifically with respect to its website. The judgment is a step towards ensuring greater access to environmental

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190 M.A.104 of 2014.
information and at the same time ensures that the remedy of appeal as provided in the NGT Act is made effective and doors of the tribunal are not shut on grounds of narrow interpretation of *locus standi* and limitation. In another, *Manoj Misra v. Union of India*, the Tribunal gave a set of twenty eight directions, ranging from prohibition on dumping debris to restricting silviculture and floriculture activities, in the interest of protecting and restoring the River Yamuna.

In *B.L.Mishra v. The Collector Chhatarpur and Others*, the tribunal ordered that the construction within the prohibited area be removed and cost incurred may be recovered from the encroachers after issuing notices by the concerned authorities so far as the problem regard to the pollution in the aforesaid water body was concerned, the municipal authorities were directed to ensure that no untreated sewage from the surrounding areas was allowed to flow into the Kishore Sager Lake. It was further directed that no solid waste or domestic waste was allowed to enter or be thrown into the lake the state pollution control board was directed to ensure the regular monitoring of the quality of water.

In *Asim Sarode and Others v. Maharashtra Pollution Control Board and Others*, the application under section 14(1)(2) and 15 of NGT Act,2010 was filed raising questions relating to unauthorized and unscientific burning of tyres which emit smoke containing toxics gases and pollutants affecting the environment and human life. it was contended in the application that burning of tyres has now became a regular feature in any social and political agitation resulting in pollution and environment damage. The NGT was of the considered opinion that there is an urgent need to regulate the used tyre disposal to avoid the environmental problems, on the principle of sustainable development and precautionary principles. The Tribunal further expected the MoEF and CPCB to take note of this environmental concern and explore the need and possibility of framing separate regulations on the lines of battery rules and e-waste rules. the tribunal also prohibited the burning of tyres in open areas and at public places, in the localities surrounded by the

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192 Original Application No.22/2013(Order dated 7 August, 2014).
193 Application No.43/2013(Order dated 6 September, 2014).
residential areas, public places, schools, hospitals, offices etc. in view of potential air pollution and health hazards.

In M/S Riverside Resort Pvt.Ltd. v. Pimpri Chinchwad Municipal Corporation and Others, the application was filed under section 18(1) read with section 14 and 15 of NGT Act, 2010, against the construction of crematorium activities of the respondent. The tribunal observed that construction of additional crematorium in the areas cannot be termed as ‘development activity’ as such. it expressed the opinion that proposed ‘pucca’ construction of crematorium is not required for any development purpose, nor it can be branded as ‘sustainable development’ within the meaning of environmental laws. While allowing the application, the tribunal directed that the construction of the retaining/protective walls on the side of the Pavanariver in CTS No.1703 or land S.no.293 to the extent it is over and above the ground level shall be immediately demolished by the PCMC within period of two weeks, at its own costs. On its failure to do so the PCMC shall be liable to pay amount of Rs.25,00,000/- (Rs. Twenty-five lakh) as cost for restitution work which will be carried out by appointment of a Commissioner. The PCMC shall not carry out any construction activity within the blue line area (prohibited zone) to construct the crematorium by raising pucca construction. The PCMC may erect poles by fixing them in cement-concrete foundation, keeping a distance of atleast 25 ft. from riverbank and may fix channeling/barbed wire fencing around the poles to secure the proposed place of cremation from danger of entry of stray animals scavenging birds or like birds/animals. The fencing so fixed around the place may be kept open for entry or gate may be fixed at the entry point from western side. There shall be no exit gate fixed or any exit place made available from eastern side site to facilitate the members of the public to go to the river for bathing or undertaking any activity like immersion of the ashes of the dead etc. A temporary bathing place/washroom facility may be provided within the place of cremation ground that will be earmarked for the purpose. The PCMC however may seek appropriate permission from the water resources authority and any other competent authority as provided under the Law if modern type crematorium with use of electric energy or furnaces charged with biogas, solar energy, or like fuel are to be used in order to avoid air pollution and deforestation.

In *Sai Prasad Mangesh Kalyankar v. The Regional Transport Officer*,\(^{195}\) the application is purportedly filed under Sections 14, 15 and 18 of the National Green Tribunal Act, 2010 alleging that forest land is being used for felling of trees, illegal mining and degradation of environment in the area, particularly, on account of modernization project at Banda check post. The Tribunal dismisses the application for the want of merits, yet it issued necessary directions to prevent illegal mining and felling of trees and fixing of responsibility for inaction on the part of government officials. The tribunal also directed compensatory afforestation of 44,000 trees (1:8) in the said area and directed the respondent to deposit an amount of Rs. 10 lakh as tentative cost for such afforestation programme to be executed through Agricultural University, Dapoli. The tribunal made it clear that non-compliance of these directions may attract section 26 of the NGT Act, 2010.

In *Wilfred J. and Another v. MoEF and Others*,\(^{196}\) it was held that the NGT has complete and comprehensive trappings of a court and within the framework of the provisions of the NGT Act and the principles. The NGT can exercise the limited power of judicial review to examine the constitutional validity/vires of the subordinate/delegated legislation. In the present case the CRZ Notification of 2011 that has been issued under provisions of the Environment Protection Act, 1986. However, such examination cannot extend to the provisions of the statute of the NGT Act and the Rules framed there under, being the statute that created this Tribunal. The NGT Act does not expressly or by necessary implication exclude the powers of the higher judiciary under Articles 226 and/or 32 of the Constitution of India. Further, while exercising the ‘limited power of judicial review’, the Tribunal would perform the functions, which are supplemental to the higher judiciary and not supplant them. In the facts and circumstances of the case in hand, part of cause of action has risen at New Delhi and within the area that falls under territorial jurisdiction of the Principal Bench of NGT. Thus, this bench has the territorial jurisdiction to entertain and decide the present cases.

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\(^{195}\) Application No.28/2014 (Order dated 10 September, 2014).

\(^{196}\) 2014 All (1) NGT Reporter (2) Delhi 137.
In Good Will Plastic Industries & Anr. v. Union Territory of Chandigarh & Ors., the constitutionality, legality and correctness of the notification issued by the Administrator, Union Territory of Chandigarh (Respondents), in exercise of the powers vested in him under Section 5 of the Environment (Protection) Act, 1986, issued a notification prohibiting usage, manufacture, storage, import, sale or transportation of polythene/plastic carry bags in the U.T. of Chandigarh was repugnant to the Plastic Waste (Management And Handling Rules), 2011 and thus would be inoperative. The tribunal applied here pith and substance doctrine here and upheld constitutional validity of the impugned notification.

In Samata v. Union of India, the Tribunal relaxed the concept of locus standi to allow a wider base of people to approach it with regard to environmental concerns. It was found that in the relevant provisions the term ‘aggrieved persons’ would include not just any person who is likely to be affected, but also an association of persons likely to be affected by such an order and functioning in the field of environment. The other issue in this case was whether the public hearing had been conducted if the Environmental Impact Assessment (EIA) report had not been published in the local language. The Tribunal found that there was no such requirement imposed; however, in the same breath it mandated the Expert Appraisal Committee to act in light of the public’s larger interests and work to balance developmental and environmental concerns. As in Samata, the South Zone bench emphasized the importance of the principles of precautionary principle and sustainable development in the K.K Royson case. Again in this case we witness the relaxation of locus standi requirements. The Bench held that where the matter concerned the ecology and the environment, everybody was directly or indirectly affected and thus the right to initiate action could not be limited only to persons who were actually aggrieved. Other issues that the Court examined in this case were that of an unqualified

197 2013 All (1) NGT Reporter Delhi 486.
199 Appeal No. 9 of 2011, NEAA Appeal No. 10 of 2010 dated 13-12-2013.
200 K.K. Royson v. Govt. of India, Appeals Nos. 172, 173, 174 of 2013 (SZ) and Appeals Nos. 1 and 19 of 2014 (SZ) and Appeal No. 172 of 2013 (SZ) dated 29-5-2014.
agency giving approval and of the requirements of conducting public hearing according to the EIA Notification, 2006.\textsuperscript{201}

\textit{In Sunil Kumar Chugh v. Secretary, Ministry of Environment and Forests, New Delhi,\textsuperscript{202}} the Principal Bench at New Delhi held that open spaces, adequate parking facilities in buildings and recreational grounds have an important bearing on a person’s right to life. This case is believed to have set a precedent in penalizing violators and setting aside the illegal grants of environmental clearances and stand out as a landmark judgment for environmental jurisprudence. \textit{This case expands the right to life of citizens in urban India General Principles and Rules of International Environmental Law.} The boom in India’s economic growth has resulted in mass urbanization on a scale rarely witnessed in the history of mankind. The population of several Tier-I and II cities has grown exponentially in the last two decades as millions of people seek better economic opportunities. However, this economic growth has come at a tremendous cost to the quality of human life as unplanned urban developments have mushroomed, giving rise to pollution, congestion and diseases that give rise to living conditions that would be termed “miserable” by western standards. Thus, it comes as no surprise that Indian cities figure at the bottom of any quality of life survey done at the international level. On September 3 this year, the principal bench of the National Green Tribunal (NGT) at New Delhi passed a landmark judgment that, for the first time, brought important principles of town planning within the scope and jurisdiction of the NGT. In its judgment in the matter of \textit{Sunil Kumar Chugh v. Secretary, Ministry of Environment and Forests, New Delhi,\textsuperscript{203}} the NGT held that open spaces, recreational grounds and adequate parking facilities in buildings had an important bearing on the right to life of people. The prime reason for this dismal state of affairs is visible everywhere-illegal construction. Developers blatantly violate development control regulations that stipulate mandatory open spaces, recreation grounds, parking and fire safety. Unscrupulous municipal officials look the other way and consequently, the right to life of citizens gets compromised. To make matters worse, enforcement of development control regulations was considered a municipal matter and not as one falling within the scope of the term “environment”.

\textsuperscript{201} \textit{Ibid.}
\textsuperscript{202} Appeal No. 66 of 2014.
\textsuperscript{203} Appeal No. 66 of 2014.
The fundamental right to a clean environment and its implications were also considered by a Bench of the Tribunal in a recent judgment in the case of M/s Sterlite Industries Ltd. v. Tamil Nadu Pollution Control Board,\textsuperscript{204} where the Tribunal, upon deliberation, held as” Article 21 of the Constitution of India which provides that no person shall be deprived of his right to life or personal liberty, except according to the procedure established by law, is interpreted by the Indian courts to include in this right to life, the right to clean and decent environment. Right to decent environment, as envisaged under Article 21 of the Constitution of India also gives, by necessary implication, the right against environmental degradation. It is in the form of right to protect the environment, as by protecting environment alone can we provide a decent and clean environment to the citizenry.

\textit{In Court on its own Motion v. State of Himachal Pradesh,}\textsuperscript{205} the application has been filed regarding the considerable increase in vehicular traffic in Himachal Pradesh, which has resulted in blackening/browning of snow cover in mountains, especially emissions of unburnt hydrocarbon and carbon soot. The Case focuses especially on the Kullu-Manali and Rohtang Pass areas, which have been under pressure of tourism and local vehicles.

The State of Himachal Pradesh is mostly mountainous nestling in western Himalayas, neighboring Tibet and China in the east, Jammu and Kashmir in the north and north-west, Punjab, Haryana and Uttarakhand in the south. It has a geographical area of 55,673 square kilometers with a population of 6.1 million and is located at altitudes ranging from 350 to 7000 meters (1050 feet to 21,000 ft.). The forests of Himachal Pradesh constitute about 2/3rd of the State's geographical area; are storehouse of rich biodiversity, vital in preserving the fragile and sensitive Himalayan ecosystem and are the primary source of livelihood of the residents. The recorded forest area is 36,986 sq.km. as per the Forest Survey of India report for the year 2011, which is 66.43\% of the total geographical area and the forest cover spreads over 14,679 sq.km.

One of the most significant gifts of nature to mankind in the wide Himalayan range is Rohtang Pass at a height of 13,500 feet above the sea level. The satellite spots of major tourist destination at Manali in the north-western Himalayas are mostly spread in snow

\textsuperscript{204} 2013 Vol. I All India NGT Reporter page 368.
\textsuperscript{205} Application No. 237 (THC)/2013 (CWPII No.15 of 2010).
(environment) and include Rohtang Pass, Marhi, Kothi, Salang Nala apart from other spots. This tourist spot is termed as the 'Crown Jewel' of Himachal Pradesh. It attracts a large number of tourists. Heavy tourism, besides being a boon to the economy of Himachal Pradesh, is also the cause for adverse impacts on ecology and environment of the State. Diverse and devastating impacts are attributable to unregulated and heavy tourism, overcrowding, misuse of natural resources, construction of buildings and infrastructure, littering of waste and other activities associated with tourism. The characteristics of these tourism spots are unique and are very vulnerable i.e. their ecology and environment can be subjected to rapid degradation because of the above activities. The negative impacts of tourism can only be managed effectively if they have been identified, measured and evaluated. These effects could be direct or indirect. Direct impacts are caused by presence of tourists and indirect impacts are by infrastructure created and services required in connection with tourism activities. The tourist spots to the north of Manali township have an influx of around 11 lakh visitors annually. These sites have a crucial and strategic role in governing the ecology as well as the atmospheric conditions influencing the local environment and economy of the area. The major ecological components are the cleanliness condition, amount and quality of water in the streams, land's proneness to erosion, physical load bearing capacity of the land surface and the state of flora and fauna etc. While the atmospheric components are ambient air quality status, diurnal and seasonal fluctuations in the atmosphere, rainfall and snowfall conditions ultimately, in a collective form, influence the atmosphere as well as the agriculture and water resources based activities throughout this valley. As per the report of the Expert Committee constituted by the High Court of Himachal Pradesh, vide order dated 12th October, 2010, nearly 10,000 persons visit this tourist spot and nearly 3600 (75% taxis) go to the Rohtang Pass per day in the months of May and June, every year, which number is continuously increasing. The available amenities and facilities for tourists within the township are becoming insufficient and thus, the carrying capacity of these amenities and facilities have virtually crossed its physical and ecological limits. Over-construction, increased vehicular traffic and associated air pollution and its impact on snow caps owing to unregulated tourism remain the notable impacts. As per the available data, the highest construction rate was recorded during 1980-85 at 2850 per cent
followed by 161.1 per cent during 1990-95. It has also been reported that nearly 87.3 per cent of the total vehicles plying on Rohtang Pass belong to tourists. Remaining small percentage of vehicles going to Lahaul Valley consists of goods vehicles transporting eatables and other essential materials. It needs to be noticed that the only entrance to Lahaul Valley is the Rohtang Pass. Such natural picnic spots being connected by roads in the Himalayan region lead to these areas being over-pressurized. The ambient air quality, due to high number of vehicles on the top of these mountains, also gets polluted and traffic congestion adds to it. The two snow points in the Himalaya, Rohtang Pass (3938 m) in the north-western Himalaya and the famous Hindu shrine-Badrinath (3133 m) in the central Himalaya are the headwater regions which can be approached directly by road. The snow cover is a source of recreation for the visitors. However, as an adverse impact of heavy tourism, there has been a considerable fall in the amount of snowfall received by the region. It is reported that snow recorded at Kaylong (3064 m.) in Lahaul & Spiti district in the north-western Himalaya, which is ahead of Rohtang, is reduced by 357 per cent, i.e. from 685 cm in 1990 to 150 cm in 2000. The Parbati Glacier in the Kullu Valley of Himachal Pradesh has been receding at the rate of 52 metres per year based on a study from 1990 to 2001. Based on another study conducted by the Indian Institute of Technology, Kanpur, Black Carbon, mostly produced by burning of agricultural waste and vehicles, is being seen as the major causative factor for rapid melting of glacier in the Himalayan region. Black Carbon is primarily unburnt fuel that travels from warmer to colder areas through air, settles on glaciers and makes them melt and is believed to be the biggest contributor to global warming after Carbon Dioxide.

In light of the above-mentioned facts, the Tribunal issued various directions:

(i) The State Government and all authorities concerned shall take immediate and effective measures for reforestation of the area of Kothi, Gulaba and Marhi. Reforestation shall be taken up as a top priority project and all possible efforts would be made for commencing and completing the plantation in this area.

(ii) As a first step in this direction, the State Government agencies should identify areas that can be brought under reforestation, using latest available remote sensing data coupled with ground verification by the Forest Department. (This exercise should be completed in the first three months).
(iii) Such species may be used for afforestation as the forest authorities in the State of Himachal Pradesh consider appropriate but it is recommended that up to 1000-metre height, coniferous species of chir, and broad-leaved species of siris, tun, behul, shisham, ritha, tut, behera, etc. should be planted. At a height of 1000 to 2000 meters, coniferous species of kail, deodar, chir, and broad-leaved species of poplar, willow, ohi, robinia, drek, toon, behmi, chulli, Walnut, khirik and oak while at a height ranging from 2000 to 3000 metres, coniferous species of deodar, kail, fir, spruce, taxus and broad-leaved species of Maple, Ash, bhojpatra, oak, horse chestnut, alder, robinia, poplar, walnut may be planted.

(iv) It is difficult to undertake plantation at a height of 2000 meters and above. The seedlings at this height are exposed to several biotic pressures of cattle, tourists and villagers, who trample the young saplings. Therefore, it is required that all the plantations must use fairly tall seedlings which have been grown and looked after in nurseries at appropriate height at least for a period of two to three years, having similar climatic conditions such that they could adjust or adapt to the harsh climatic conditions. Considering the harsh climatic conditions at higher elevations, it is necessary to provide appropriately designed canopy cover to the saplings in the first two to three years where after they should be planted at the defined region by providing due care and protection, while being appropriately maintained and looked after at least for a period of ten years.

(v) Keeping in view the ecological and geological fragility of the area, it is directed that all forestry programmes must be preceded by soil and moisture conservation works including bio-engineering measures in steep hills. A number of plants, particularly chir and kail have thick mat of needles on forest floor that makes the forests vulnerable to frequent fire hazards. Thus, the Government should take all precautionary measures and provide a specific scheme for forecasting, controlling, and preventing the forest fires.

(vi) The State Government shall provide due regulatory mechanism in this regard without any further delay and shall notify and implement the same in all parts.
The plantation programme must include at least 50% broad leaved species, as stated above. Joint forest management programme should be promoted by involving the local villagers by planting high conservation value medicinal plants like atish, kutki, kuth, etc.

(vii) Preparing and declaring a working plan by the Government is the sine qua non of scientific forestry and so shall it be prepared and declared.

The Tribunal also said that the directions given above are essential and are required to be obeyed by all concerned in the interest of sustainable development and protection of the ecological and eco-sensitive area of Rohtang Pass.

The Tribunal also gave further directions which would be inconsonance with the Constitutional mandate contained under Articles 21, 48-A and 51-A (g) and is the very essence of the Act of 1986.

(i) The Tribunal stated that it was informed by the State Government that it had created ‘Green Tax Fund’ in order to ensure proper development for protecting the environment in all its spheres. The persons who are travelling by public or private vehicles to the glacier of Rohtang Pass must pay a very reasonable sum of money as contribution on the principle of ‘Polluter Pays’. Thus, we direct that every truck, bus and vehicle of any kind which passes through the route ahead of Vashishta and Rohtang Pass shall be liable to pay a sum of Rs.100/- for heavy vehicles and Rs.50/- for light vehicles. The passengers travelling through the CNG or electric buses to Rohtang Pass as tourists shall be liable to pay a sum of Rs.20/- per head, which shall form part of the ticket for the bus.

(ii) The funds so collected shall be kept by the State Government under the existing head of Green Tax Fund. The amounts so collected shall be used exclusively for development of this area i.e. from Vashishta to Rohtang Pass and five kilometers ahead of Rohtang Pass. This amount should also be used for prevention and control of pollution, development of ecologically friendly

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market at Marhi, for restoring the vegetative cover and afforestation. The funds shall not be used for any other purpose whatsoever.

(iii) The operational vehicles like those of BRO/Army would be exempted from paying the Green Tax.

(iv) The GREF i.e. BRO is hereby directed to ensure that the road remains in a very good motor able condition round the year.

(v) The State Government, particularly the Department of Tourism, shall immediately take steps for collection and disposal of MSW on the entire route from Vashishta to Rohtang Pass.

(vi) To start with, the State Government shall provide all requisite funds for commencement and progress of the various projects that are to be commenced by it under these directions. These funds shall be provided on top priority basis.

(vii) The State Government and all its authorities, municipalities and all private organizations are directed to fully co-operate, co-ordinate and ensure that these directions are complied with, without default or demur.

(viii) We hereby constitute a Monitoring Committee consisting of Secretary (Environment), State Govt. of Himachal Pradesh; Conservator of Forests concerned of Kullu Division; Director (Tourism), Govt. of Himachal Pradesh; Environmental Engineer, Himachal Pradesh Pollution Control Board; and an eminent environmentalist from G.B. Pant Institute of Himalayan Environment and Development, Kosi-Katarmal, Almora. This Committee shall tour the area of Rohtang Pass and en route and ensure that the directions contained in this order are carried out in true spirit and substance. If any department, person or authority is found to be erring in such matter, then it shall bring the same to the notice of the Tribunal for appropriate action.

(ix) The above Monitoring Committee shall submit quarterly reports to the NGT, clearly stating non-compliances with the directions, if any, the persons responsible for such defaults and also suggestions, if any, as it may consider appropriate in order to make further improvements and catalyze the prevention and control of pollution in that area more effectively.
The State Government of Himachal Pradesh has already taken a definite stand and made a statement that it shall follow the ‘Madhya Pradesh Model’ for prevention and control of forest fires. Thus, we direct that an extra effort should be made by the State Government of Himachal Pradesh, for ensuring prevention and control of forest fires, particularly in the Himalayan region, as they are the direct source of deposition of Black Carbon and suspended particulate matter on the glacier.

The authorities concerned of the State Government of Himachal Pradesh including the Departments of Forest and Agriculture would ensure that no remnants of crops in agricultural fields are burnt, as this also results in deposits of Black Carbon and suspended particulate matter on the glacier.

G.B. Pant Institute of Himalayan Environment and Development, Kosi-Katarmal, Almora, after expiry of six months from the date of passing of this order, shall conduct a study of the glacier of Rohtang Pass in all respects and submit a report to the Tribunal immediately thereafter. The report, inter alia, shall deal with cleanliness, deposits of Black Carbon and suspended particulate matter, ambient air quality, progress in reforestation in the stated area and collection and disposal of municipal solid waste at, around and en route Marhi. The report shall specifically deal with comparative analysis of vehicular pollution, pre and post this order.

Preferably, no horses shall be permitted at Rohtang Pass. However, if the authorities and the committee concerned are of the view that horses should be permitted at Rohtang Pass in the interest of healthy tourism, then the authorities and the committee shall ensure that all the horsemen permitted to ply their horses at Rohtang Pass are permit holders. These permits will be issued by the representative of the committee concerned and the Deputy Commissioner, Kullu. The conditions of the permit should clearly state that horse dung be instantaneously removed/lifted and stored appropriately in the bins specifically provided for that purpose. Cleaning of horse dung, MSW and such other waste shall be the responsibility of the staff appointed at Rohtang
Pass. In the event of default, the permit issued to such horsemen shall be liable to be cancelled in accordance with law.

In *Raghunath S/o Rakhamji Lokhane v. MPWPB & Ors.*,\(^{207}\) the Applicants have demanded restitution of the environment, especially the groundwater environment, polluted by the industries of Waluj industrial area of Maharashtra. While investigations showed pollution of the groundwater system, the individual industries shirked responsibility. The tribunal ordered the Maharashtra Pollution Control Board (MCB), the government agency primarily responsible for monitoring and controlling pollution in the State, to work out the remediation cost with the help of experts and equitably distribute this cost on the polluters after identifying their extent of responsibility in pollution. Clearly, an environmental forensic investigation has to be initiated by MPCB to comply with the order of the tribunal. Similar orders were issued in *Janardan Pharande v. MoEF and Ors*\(^{208}\) and *Vinesh Madanyya Kalwal v. State of Maharashtra Ors.*,\(^{209}\)

In *Himanshu R. Barot v. State of Gujarat Ors.*,\(^{210}\) the tribunal had sought the help of the experts from a University to investigate the case of pollution by an industry. Based on their report the industry was made to take actions to prevent pollution. Moreover, the industry was made to pay INR 10, 00,000/- being compensation in general to be used for providing public facilities for the population surrounding the industries who were the victims of pollution.

But, in *Ramubhai Kariyabhai Patel v. Union of India &Ors.*,\(^{211}\) the tribunal itself collected relevant records and monitoring data available with various regulatory agencies pertaining to an accident that had happened a year back where hazardous waste was spilled to the environment, and arrived at the best estimate of the damage that could have happened at the time of spill. The operators were made to pay INR 25, 00,000/-towards restitution of environment in addition to compensation for farmers.

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\(^{207}\) Original Application No. 11/2013(THC)(WZ),

\(^{208}\) Original Application No. 7/2014 (THC) (WZ).

\(^{209}\) Original Application No. 30(THC)/2013(WZ).

\(^{210}\) Original Application No. 109/ (THC)/2013).

\(^{211}\) Application No. 87/2013 (WZ).
In *Jagat Ram Chicham v. the State of Madhya Pradesh* and others,\(^{212}\) the Bhopal Bench of the National Green Tribunal ordered on the issue of functioning of Madhya Pradesh Forest Development Corporation (MPFDC) vis-a-vis Forest Department and involvement of community e.g. the established institutional arrangements for management of certain forests such as JFM committees / Van Samrakshan Samiti in its working of cutting and planting of trees in the forest has issued detailed directions. The State Government and the Forest Department are required to examine the following directions and take decisions and implement them to avoid conflicts with the local communities in future and make them to participate in the activities of the MPFDC.

In *Orissa Mining Corporation Ltd. v. Ministry of Environment & Forest & Others*,\(^{213}\) Vedanta Resources plc is a global diversified metals and mining company headquartered in London, United Kingdom. It is the largest mining and non-ferrous metals company in India and has mining operations in Australia and Zambia. It is listed on the London Stock Exchange and is a constituent of the FTSE 250 Index. Vedanta is involved in a joint venture with the Odisha Mining Corporation Ltd (OMCL), a state-owned company, to develop a bauxite mine in the Niyamgiri hills and supply material to Vedanta's nearby alumina refinery. Vedanta has been criticized by human rights and activist groups, including Survival International, Amnesty International and Niyamgiri Surakshya Samiti because of the company's operations in Niyamgiri Hills in Orissa, India that are said to threaten the lives of the Dongria Kondh people who populate this region. The Niyamgiri hills are also claimed to be an important wildlife habitat in Eastern Ghats of India as per a report by the Wildlife Institute of India as well as independent reports/studies carried out by civil society groups. In January 2009, thousands of locals formed a human chain around the hill in protest at the plans to start bauxite mining in the area. The Union Environment Ministry in August 2010 rejected earlier clearances granted to a joint venture led by the Vedanta Group company Sterlite Industries for mining bauxite from Niyamgiri hills.

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\(^{212}\) Original Application No. 44/2014 (CZ) on 8 May 2014.

\(^{213}\) Writ Petition (Civil) No. 180 OF 2011 (Vedanta Refinery Case).
The matter came before the Supreme Court of India which ruled that the Vedanta Group's bauxite mining project in the Niyamgiri Hills of Orissa will have to get clearance from the gram sabha, which will consider the cultural and religious rights of the tribals and forest dwellers living in Rayagada and Kalahandi districts in Odisha. It was held that the gram sabha will examine the proposals, juxtaposing them with the community, individual as well as cultural and religious claims by the tribals and forest dwellers, including their rights of worship over the Niyamgiri hills, said the court.

In *N. Chellamuthu v. The District Collector*, the NGT set aside the environment clearance granted to the municipal solid waste processing plant of Municipal Corporation of Chennai for providing false information in the Environment Impact Assessment Report.

In *Hussain Saleh Mahmad Usman Bhai Kara v. Gujrat State Level EIA Authority and others*, the tribunal directed the MoEF to develop proper mechanism to check the authenticity of environmental data. It further directed to blacklist that EIA Consultant who provides wrong data.

In *Ranjana Jetley v. Union of India*, the tribunal observed that the concept of sustainable development is to be considered in terms of the pressing requirement of expanding infrastructure pertaining to transport sector. Urban city roads /sectoral roads are required to be expanded in order to avoid congestion and traffic jams due to increased vehicular population and are required to be addressed by increasing the supportive and assimilating capacity of traffic movement in the area.

In *Sanjay Kumar v. Union of India*, the appellant approached for protection of the forest area and environment, particularly, in relation to the central ridge area of new Delhi, falling under the jurisdiction of new Delhi municipal corporation (NDMC). The NGT directed the Delhi government to demolish all permanent and temporary illegal structures built by Sant Asha Ram Bapu trust in Karol Bagh within 4 weeks from the date of passing of order. It also directed the trust to dismantle the sewage pipe emanating from

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214 Original Application No. 20/2011(Principal Bench, New Delhi)
215 Transfer Appeal No.19/2011(Principal Bench, New Delhi).
216 Original Application No.120,127,155 and 156 of 2013(Order dated 1st April, 2014,Principal Bench, New Delhi)
the ashram and to plant 1000 trees in the area. It was further directed that in case of
default the cost of demolition would be recovered from the trust.

In, Godavari Magasvargiya Mastya Vyavsaai Sahakari Sanstha Mayradit v. The Ganga
Sugar Energy Ltd. & Ors²¹⁸, the applicants were not granted compensation for their loss
of income from fisheries due to the effect of pollution, because their claims were not
legally established. Similarly, in S. Munuswami and Others v. The Chairman Tamil Nadu
Pollution Control Board and Others,²¹⁹ the Tribunal did not entertain the Applicants’
request to order the Respondent industry to remediate the pollution as it was not
substantiated. Thus it can be said that the introduction of the National Green Tribunal has
created a space for environmental forensics in India.

In Jan Sahyog Manch v. Union of India,²²⁰ the applicant has filed the application before
the Tribunal under Section 18 (1) read with Section 14, 15, 16 & 17 of the National
Green Tribunal Act, 2010. The applicant has invited the attention of this Tribunal over
the issue of lead contamination from the lead present in daily life by using Polyvinyl
Chloride which is also known as PVC (Polyvinyl Chloride) pipes. The applicant has
specifically brought to the notice of the respondents about the fatal effects of lead. As no
action has been taken, he has approached the Tribunal to intervene on the issue. The
Tribunal observed in this case that the potential adverse health effects, due to presence of
lead in water flowing through PVC pipes, it necessary that the entire matter of usage of
lead as stabilizer in PVC pipes and its desired standards needs to be examined
expeditiously on scientific grounds by the MoEF & CC, based on environmental
considerations.

5.11. Other Noteworthy NGT Orders

The NGT is playing very crucial role in the protection of environment across the country
and the following orders passed recently have created a buzz. A very positive impression
has been created in so far as environment protection concerned.²²¹ In this country in this

²¹⁸ Original Application No. 30/2013(WZ).
²¹⁹ Original Application No. 152/2013(SZ).
²²¹ Nawneet Vibhaw, ENVIRONMENTAL LAW AN INTRODUCTION, 1st edn. LexisNexis Publication,
light and at the cost of repetition, following are some of orders which are worthy of noting:

5.11.1. NGT orders to check Ganga pollution- Some of the recent orders pronounced by the NGT to tackle pollution in the river Ganga are mentioned below:

- On 11 December 2015, there will be a complete ban on use of plastic of any kind from Gomukh to Haridwar along Ganga with effect from February 1, 2017 the NGT directed on Thursday while slapping a penalty of Rs 5,000 per day on erring hotels, dharamshalas and ashrams spewing waste into the river. The Tribunal passed a slew of directions to keep the river pollution free. It held that if any hotel, dharamshala or ashram releases their domestic waste and sewage into Ganga or its tributaries then “it shall be liable to pay environmental compensation for causing pollution of the river at the rate of Rs 5,000 per day”.

- On 15 January 2016, the bench had directed Uttar Pradesh and Uttarakhand government to identify seriously polluting industries located on the banks of Ganga and apprise it about “quantity and quality” of discharge generated by them in the river. The green panel had also ordered a joint inspection by a team comprising officials from central pollution control board, UPCB, UPCB and a representative from environment ministry at points where tributaries of river Ganga from Uttarakhand and Uttar Pradesh meet the Ganga.

- On 18 January 2016, the NGT has ordered the Jal Nigam and Municipal Corporation of Agra to file a compliance report, showing total sewage discharge from the city and how much of it is being treated, so one could check the quantity of untreated sewage flowing into the river. Jal Nigam, Agra Development Authority and the divisional commissioner have been asked to identify areas with no sewage connection. Uttar Pradesh Pollution Control Board (UPPCB) submitted

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that it would file the joint inspection report on sewerage treatment plants (STPs) along with an analysis report within one week.  

- On 31 January 2016, the National Green Tribunal has directed the Uttar Pradesh government and its state pollution control board to apprise the public about pending proceedings as it may order shifting of polluting industrial units located on the banks of Ganga. The green panel also asked ministry of environment and forests and ministry of water resources to take a clear stand on all aspects of industrial and domestic sewage entering directly or indirectly into the river.

- 17 February 2016, the National Green Tribunal (NGT) issued show cause notice to industries located on the stretch from Haridwar to Kanpur asking why they should not be shut down for polluting river Ganga. The green panel also directed industries like tannery paper and pulp, textile, slaughter houses etc. to clear their stand on attainment of zero liquid discharge, installation of online monitoring systems, current status of these units and asked what steps they have taken till now to control pollution resulting from their activities. The Tribunal ordered Uttar Pradesh Pollution Control Board to put on its website the list of 1,070 seriously polluting units and also the Environment Ministry to clarify the process of identifying seriously and grossly polluting industrial units in public domain.

- On 20 October 2016, the Ganga rejuvenation project, which is of national importance, is being carried out by officials “who do not know” how many drains are polluting the river, the National Green Tribunal lamented. The tribunal directed the panel to identify how many drains joined the river Ganga and also record quantity and quality of effluents generated in the river. It asked Ministry of Environment and Forests, CPCB, state pollution control board and UP Jal Nigam to clarify their stand on zero liquid discharge (water treatment process), online

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monitoring of effluents and discharge of waste in drains by industries releasing contaminants in the Ganga.\textsuperscript{227}

- On 20 November 2016, the National Green Tribunal (NGT) has questioned the Uttar Pradesh government and its pollution control board over regulation of tanneries on the banks of river Ganga in Kanpur, asking how they could regulate them if their officials “can’t even enter their premises” The NGT said industrial effluents, which contain high chromium, emanating from tannery clusters were polluting Ganga and even UP Pollution Control Board (UPPCB) was not aware of the actual number of tanneries till now. On November 15, the tribunal had stopped the government from spending "a single penny" for Ganga rejuvenation work between Haridwar and Unnao, saying a whopping Rs 20,000 crore was being spent on the entire national project by officials who did not even know about the river. The matter was listed for next hearing on November 21. The green panel has divided the work of cleaning the river in different segments - Gomukh to Haridwar (Phase-I), Haridwar to Unnao (termed as segment B of Phase-I), Unnao to border of Uttar Pradesh, border of Uttar Pradesh to border of Jharkhand and border of Jharkhand to Bay of Bengal.\textsuperscript{228}

- On 14\textsuperscript{th} July 2017, nearly a week after the Supreme Court stayed an Uttarakhand high court order that had declared the Ganga and Yamuna as living entities, the National Green Tribunal (NGT) prohibited dumping of waste within 500 metres from the edge of the river. It also ordered that every offender would be liable to pay a penalty of Rs 50,000 per offence along the stretch between Haridwar and Unnao.\textsuperscript{229} In a 543-page order on Thursday, given by NGT’s principal bench headed by Justice Swatantar Kumar, the green tribunal directed that "100 meters from the edge of the river would be treated as no development/construction zone"

\textsuperscript{227} NGT forms panel to check sewage joining Ganga through drains available on http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/NGT-forms-panel-to-check-sewage-joining-Ganga-through-drains/article15626707.ece (accessed on 2\textsuperscript{nd} January 2017).


\textsuperscript{229} NGT declares 100 metres from edge of Ganga as "no-development zone" The Economic Times, July 14\textsuperscript{th}, 2017.
along the stretch. It has asked the Uttarakhand and UP governments to formulate guidelines for any religious activities on the ghats of the Ganga or its tributaries.

5.11.2. NGT orders to stop crop burning-In the case of Vikrant Kumar Tongad v. Environment Pollution (Prevention Control) Authority, the NGT discussed a very important issue of the pollution caused by crop burning, more specially in the States of Haryana, Delhi, Punjab, Rajasthan, Uttar Pradesh etc. It has been widely reported from time to time that the farm fires residue crop burning by the farmers is one of major sources responsible for the depletion of air quality of NCR Delhi in particular the appellant relied on various NASA images and other research studies to point out the seriousness of this problem.

- On 3 May 2017, Order of the National Green Tribunal in the matter of Vikrant Kumar Tongad v. Environment Pollution (Prevention Control) Authority & Others regarding air pollution caused due to crop residue burning. Joint Director, Agriculture shall submit an affidavit on the number of Happy Seeders (Happy Seeder is a tractor-mounted machine that cuts and lifts rice straw, sows wheat into the bare soil, and deposits the straw over the sown area as mulch.) purchased. It is stated that 600 Happy Seeders had been purchased by the State of Punjab. NGT directs that the Affidavit should also state how the machines have been utilized and benefit thereof if any in reducing incidence of crop residue burning.

- On 7 March 2017, Order of the National Green Tribunal in the matter of Vikrant Kumar Tongad v. Environment Pollution (Prevention Control) Authority & Others regarding crop residue burning in the states of Haryana, Uttar Pradesh, Punjab, Rajasthan and NCT Delhi. The states would take clear instructions and

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231 Ibid.
place on record the effective steps that each one of them is taking to prevent crop residue burning in the coming harvesting season.

5.11.3. NGT Orders to Regarding State of Himachal Pradesh-On 9th may 2016; giving respite to Manali residents, the National Green Tribunal (NGT) has relaxed some of its conditions imposed on commercial activities in the eco-sensitive Rohtang Pass as following:

a) Now, 800 petrol vehicles can enter Rohtang every day. Earlier, the number was 600.

b) At the Beas Nullah to Sagu Fall and at Gulaba, not more than 50 scooters will be permitted to operate.

c) Photographers can operate in Rohtang, Gulaba, Solang and Marhi (subject to terms and conditions of the license to be provided by the concerned state authority).

d) The NGT has clarified that ‘no activity of any kind will be permitted at the Rohtang Pass, except the provision of local dresses and photography’

e) It will consider permitting other activities at Rohtang only after receiving the report of the commissioners appointed under the order.

f) No other activity or business, snow-scooters, ATVs and horses, except the ones specifically permitted above, and visiting of the tourists will be carried out at the Rohtang Pass.

g) The National Green Tribunal has also appointed six advocates as local commissioners and directed them to file their report within three weeks.

It has asked them to file the report on establishment of barriers, including technical support systems, regular checking of pollution of vehicles, whether all vehicles going to Rohtang possess requisite permissions, establishment of toilets, sanitary facilities and partial rehabilitation and incentive programme for the people involved in tourism activities in the areas.
The NGT observed: “The state has prayed for relaxation in certain directions issued by the tribunal, more particularly related to paragliding, snow-scooters and other activities, which according to them are non-polluting, as well as the number of vehicles. We do not find merit in all contentions raised on behalf of the state, but some of them can be permitted to be started in the restricted areas with an objective to examine if the government and its authorities are able to maintain a check and strike a balance without causing any pollution in the area. As far as Rohtang is concerned, we are completely unsatisfied with the proposals made as it is an extremely eco-sensitive area and cannot be subjected to further degradation on the mere assurance that the government will take appropriate steps. It will be appropriate to permit some activities to the state administration at lower levels and observe the consequences on the environment and the ecology.” It directed the state authorities to provide at least 30 eco-friendly toilets, submit a comprehensive status/compliance report regarding a ropeway, operation of CNG and electric buses and status with regard to establishment of eco-friendly market at Marhi. It also directed the state that in consultation with NEERI submit complete and comprehensive status report on the carrying capacity of the Rohtang Pass, Marhi, Solang, Gulaba and other tourist spots.\(^{234}\)

- On 30 May 2017, taking a tough stand on the issue of environmental degradation by haphazard construction in the Kasauli area, the NGT today directed the five hoteliers to demolish the unauthorized and illegally constructed portions of their buildings within two weeks. The Green Tribunal clarified in its order that each of these five hotels would pay the said environmental compensation within two weeks, failing which their premises would be liable to be sealed and water & electricity supply would also be disconnected. While passing this judgment Justice Swatantar Kumar observed that “Polluter Pays Principle mandates that a polluter must pay compensation for causing pollution as well as on account of restoration and restitution of the environment of the area in question.”\(^{235}\)


• On dated 16/05/2017, order of the National Green Tribunal in the matter of Baljeet Singh v. UOI & Ors. regarding illegal sand mining along Neugal river, Palampur District, Himachal Pradesh. NGT directs the miners whose tractors have been impounded to pay environmental compensation of Rs. 7,500 each which would be paid to the Himachal Pradesh Pollution Control Board and also file an undertaking before the Tribunal, the Pollution Control Board and the Police Authority that they would not use the tractors for carrying on illegal mining activity and transportation of such material.

5.11.4. NGT Orders on Vehicular Air Pollution Due To Diesel Vehicles—In terms of pollution control, when the air quality in Delhi began to deteriorate in early November, culminating in what ultimately was termed an environmental emergency, the NGT’s role was critical in the efforts to restore normalcy. The NGT supported the phased deregistration of 15-year-old diesel vehicles in Delhi, placed strict rules on incineration plants, constituted a committee to inspect gas stations, and even pioneered a ban on disposable plastics, in effect from January 2017. It also set an important precedent by banning construction activity in the peak stages of this emergency and stood clearly on the stance that economic setbacks cannot be a reason to ignore wide-ranging environmental problems.

5.11.5. NGT Order in the Art of Living Case—In one of the more recent case that was brought in front of the Tribunal, the issue was whether proper environmental clearance and consents were taken from the concerned authorities for organizing the world cultural festival, which as alleged by the applicants would cause massive damage to the flood plains of Yamuna including damage to the flora, fauna and overall biodiversity of the area. While the Delhi pollution control committee had mentioned that no permission was required from it, the Delhi development authority had stated that it has granted

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The NGT took note of the issue and contentions and cited and applied the principles, as stated in the judgment of Tribunal in case of *S.P. Muthuraman v. Union of India*. It emphasized that it was only dealing with the ecological, environmental and biodiversity damage done to the river and flood plains by the activity of the foundation and environmental consequences of holding such an event. The NGT held that Board had failed to exercise due diligence and in fact it has exercised its authority improperly in taking a stand that no orders were called from it in the facts and circumstances of the case. A cost of Rs.1 lakh was therefore imposed on DPCC. This order is a significant order as it not only highlights the powers and jurisdiction of authorities and its officials but also shows as to how the flora, fauna and overall biodiversity of floodplains could also stand threatened by what most people assume are recreational activities.

**5.10.6. NGT Order in relation to Coal Blocks in Chhattisgarh Forests** - The National Green Tribunal cancelled the clearance given by the then Union Environment and Forests Minister, Jairam Ramesh, to the Parsa East and Kante-Basan captive coal blocks in the Hasdeo-Arand forests of Chhattisgarh, overruling the statutory Forest Advisory Committee. The coal blocks requiring 1,989 hectares of forestland fell in an area that the government had initially barred as it was considered a patch of valuable forest and demarcated as a “no-go” area. The order is bound to have a more far-reaching impact, with the tribunal holding that “mere expression of fanciful reasons relating to environmental concerns without any basis, scientific study or past experience would not render the advice of FAC a body of expert’s inconsequential.”

**5.11.7. NGT orders stoppage of rat-hole mining in Meghalaya** - The Principle Bench of National Green Tribunal at New Delhi has admitted an application by All Dimasa Students Union and Dima Hasao Dist. Committee on the issue of illegal rat-hole mining in the State and has directed Chief Secretary, Government of Meghalaya and the Director General of Police, State of Meghalaya to ensure that rat-hole mining/illegal mining is

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240 *(2015)All (1) NGT Reporter (2) (Delhi) 170.*

241 Deepto Roy and Shivani Chugh, The National Green Tribunal and Environmental Clearances for Infrastructure Projects- SEERIL Current Practice Newsletter, 8(1) *Environment, Natural Resources and Infrastructure Law,* (September 2012).
stopped forthwith thought-out the State of Meghalaya and any illegal transport of coal shall not take place until further orders passed by this Tribunal. The Director General of Police, State of Meghalaya was also directed to report to this Tribunal about the compliance of the order by the next date of hearing.\(^{242}\)

### 5.11.8. NGT Order regarding installation of rainwater harvesting systems in all the schools and colleges in NCT Delhi

The National Green Tribunal (NGT) on 16/11/17 directed all private and government schools and colleges in Delhi to install rainwater harvesting systems on the premises at their own costs. The institutions have been directed to install the systems within two months. A bench, headed by NGT chairperson Swatanter Kumar, said, “Any institution which does not comply, has to pay an environmental compensation of Rs. 5 lakh.” The Tribunal constituted a joint inspection team, comprising senior officials from the Delhi Jal Board (DJB), the Central Ground Water Authority (CGWA), representatives from the Delhi Pollution Control Committee (DPCC) and the Directorate of Education. The Tribunal said the committee was required to carry out inspections of these institutions and issue a fitness certificate to make the rainwater harvesting systems operational. The NGT also said that all those institutions that were exempted by the committee would have to pay an environmental compensation, “which shall be compensated by installing rainwater harvesting systems in the area.”\(^{243}\)

### 5.12. Analyses of Cases Filed before the National Green Tribunal

The National Green Tribunal was constituted to provide for effective and expeditious disposal of the cases relating to environmental protection and provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage.\(^{244}\) A fundamental problem facing the judicial system in India is speedy disposal of cases. The problem is even more pronounced where environmental issues are concerned. A study done by the Delhi-based Centre for Science and Environment (CSE)

\(^{242}\) All Dimasa Students Union and Dima Hasao Dist. Committee v. State of Meghalaya & Ors. (Original Application No. 73/2014 and M.A. No. 174/2014).


on the status of cases filed by the state pollution control boards showed that as many as 96 per cent, 76 per cent and 55 per cent of cases filed by Chhattisgarh, Orissa and Karnataka boards respectively, were pending in the lower courts.

5.12.1. The impact of NGT: 2011-2013-The number of cases settled is almost double in first half (January –June) of the 2013 than first half (January –June) of the 2012. Out of 164 cases 34 related to Environment Council (EC) cases (2011-2015). 232 cases related to pollution were filled before the NGT. In this way NGT is proved to be the first track court in environmental justice

5.12.2. NGT cases from different states of India- Of the total 318 judgments given till December 2013, about 252 cases come from the different states of India. The majority of cases (65 cases) are settled from the southern state of Tamil Nadu. The 2nd most number of judgments (about 49 cases) is given to the cases filed from Assam. These cases are related to unregulated quarrying and mining activities near the Kanziranga National Park. A number of different and diverse litigations are filed from Maharashtra before the tribunal. In Goa major litigations filed in the green tribunal related to environment clearance granted for construction programs in and around the coastal areas in Goa. A very few cases have been filed before the NGT from mineral rich states. There are about 19 cases settled from Madhya Pradesh, 9 from Chhattisgarh and 5 from Orissa. Although, numerous mining and manufacturing activities are going on these states and Ministry of Environment and Forest has granted environment clearance for these projects. This is the reasons that fewer cases are filed before the tribunal.

5.12.3 The Impact of NGT till 2015-Till 31st January 2015, total numbers of 7768 cases were filed before the NGT out of which 5167 cases stood disposed off, thus leaving a pendency of 2601 cases in all the NGT benches. The number of cases being instituted each year is also increasing phenomenally. The number of cases filed has increased from

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248 Ibid. at p.449.
just 548 in 2012 to 3,116 in 2013 to 2,348 in the first three months of 2014. This has put enormous pressures on NGT. This also reflects an increasing environmental crisis in the country and a growing trust people have in NGT.\textsuperscript{250} In the three-and-a-half years since its establishment, NGT has done much better. It had 6,017 cases instituted and 3,458 cases were disposed of at a rate of about 60 per cent, as of August, 2014.

\textbf{5.12.4 The Environmental Impact Assessment Notification, 2006} - The Environmental Impact Assessment Notification, 2006 mandates that certain categories of development projects get environmental clearance from the government before the execution start. The disputes related to the no objection certificates granted by the authorities to projects like setting up of new industry, expansion of existing industry, new power plants and the disputes related to the environmental clearance given by the authority to different project like MSW treatment plant, landfills, etc. dominate the case list before the Tribunal.\textsuperscript{251}

- The Table 1 shows the nature of cases handled by the NGT.\textsuperscript{252}

<table>
<thead>
<tr>
<th>Type of cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Clearance &amp; Related</td>
<td>41</td>
</tr>
<tr>
<td>Pollution</td>
<td>23</td>
</tr>
<tr>
<td>Conservation &amp; Related</td>
<td>19</td>
</tr>
<tr>
<td>Others</td>
<td>17</td>
</tr>
</tbody>
</table>

\textbf{Table 1. Nature of case handles by National Green Tribunal (2010-2014)}

\textsuperscript{250} Yukti Chaudhary, Tribunal on Trial, available on http://www.downtoearth.org.in/ coverage/tribunal-on-trial-47400, (accessed on 30\textsuperscript{th} November 2015).


The Table 2 shows the case disposal statistics of NGT as on 31-08-2014. This indicates considerable improvement from past.253

<table>
<thead>
<tr>
<th>NGT Benches</th>
<th>Year</th>
<th>No. of Cases</th>
<th>Disposed</th>
<th>% of Disposed Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Bench</td>
<td>2011 – 2014</td>
<td>2597</td>
<td>2073</td>
<td>79.8</td>
</tr>
<tr>
<td>Southern Bench</td>
<td>Nov. 2012 – 2014</td>
<td>1496</td>
<td>574</td>
<td>38.3</td>
</tr>
<tr>
<td>Central Bench</td>
<td>April 2013 - 2014</td>
<td>1091</td>
<td>680</td>
<td>62.3</td>
</tr>
<tr>
<td>Western Bench</td>
<td>Aug 2013 - 2014</td>
<td>387</td>
<td>271</td>
<td>71.1</td>
</tr>
<tr>
<td>Eastern Bench</td>
<td>May 2014</td>
<td>46</td>
<td>15</td>
<td>31</td>
</tr>
</tbody>
</table>

Table 2. Case Disposal Statistics of NGT as On 31-08-2014

It seems that our country has geared up to settle effectively the environmental problem by bringing out special statute having overriding effect over enactments.254

5.13. Conclusion

Over the past seven years, the NGT’s role has been very progressive towards environmental protection, especially with regards to the rights of marginalized people. The NGT has come down heavily against not only the big corporate behemoths but also the central and state administrations. The year 2016 was a tumultuous one in terms of the environment across the world and India was no exception to this rule, having spent the final month of the year tackling a devastating cyclone in the country’s south and unbearable pollution levels in the national capital New Delhi up north. In terms of pollution control, when the air quality in Delhi began to deteriorate in early November, culminating in what ultimately was termed an environmental emergency, the NGT’s role

253 Ibid.
was critical in the efforts to restore normalcy. The NGT supported the phased deregistration of 15-year-old diesel vehicles in Delhi, placed strict rules on incineration plants, constituted a committee to inspect gas stations, and even pioneered a ban on disposable plastics, in effect from January 2017. It also set an important precedent by banning construction activity in the peak stages of this emergency and stood clearly on the stance that economic setbacks cannot be a reason to ignore wide-ranging environmental problems. In another recent judgment, the NGT had held it illegal to hire the services of retired bureaucrats as chairs of the statutory expert appraisal committees that review projects for environmental clearances. It had also forced the government's hand earlier in implementing the Western Ghats reports restricting polluting industries in the hill reaches of biodiversity-rich areas.