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"Pinnacle of Environmental Protection in India: NGT"

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INTRODUCTION

Colonial and post-colonial India did not have any broad policy dealing with environment. The mood was that of extraction and industrial development which only seemed logical given that we were a young, newly independent nation with majority of its population languishing in poverty. Feeding hungry mouths, having a strategic defense system in place trumped environmental protection. Thus, environment was not a part of the national discourse in any which way.

This does not imply that environment wasn't a concern in India. Environment has been given importance in Hinduism since the Vedic age. The religious texts, the scriptures-all profess a relationship of love and respect with nature. However as result of capitalism the EIC needed more markets and raw material to sustain what they had started and this brought them to India. Environment lost its importance at the hands of the colonial power. There were cases where the Indians protested against indiscriminate felling of trees to satisfy the East India Company's need for timber but these were isolated incidents.

It was the Stockholm Declaration of 1972 which turned the attention of the Indian Government to the boarder perspective of environmental protection. The then Prime Minister of India Indira Gandhi was one of the few head of states who attended this conference and ushered the era of environmental protectionism.

It is only with time that environment reclaimed its place in the national discourse of policy and politics. In order to align India with the principles that were adopted as a part of the Stockholm Declaration, the Parliament amended the constitution and inserted article 48 A (Protection and improvement of environment and safeguarding of forests and wildlife). National Council for Environmental Policy and Planning was set up in 1972 which was later evolved into Ministry of Environment and Forests (MoEF) in 1985. Subsequently, this then lead to the passing of Water (Prevention and Control of Pollution) Act 1974, Air (Prevention and Control of Pollution) Act 1981, and the Environment Protection Act 1984.

Environmental policy of a country is determined by international actors – either through trade conditions pushed by public pressure of the trading partner or through international covenants, the Paris agreement for instance. Though the international community has not arrived at a consensus on a binding instrument setting out rights and duties on environmental matters as in the case of human rights and trade, the Stockholm Declaration in 1972, the Montreal Protocol on Substances that Deplete the Ozone layer in 1987, the Rio Earth Summit in 1992, the Kyoto

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Protocol on Climate Change in 1997 and the Bali Roadmap to the UN Framework on Climate Change in 2007 have been important milestones in the evolution of international environmental policy.

DEVELOPMENT OF ENVIRONEMTAL LAW

In the present context environment is regulated through a developed set of legislation. However, before such legislations came into being the judiciary mostly relied on the common law for environmental justice. For example law of torts which forms a part of English common law is largely followed in India and most pollution cases fall under nuisance, negligence, trespass and strict liability. The growth of environmental law in India can broadly be traced through the area of tort litigation, writ jurisdiction and public interest litigation[1].

1. Tort is a civil wrong other than a breach of contract. Thus any tortuous act that results in damage to property, person or reputation (libel, slander) gives rise to subsequentdamages or compensation. In **M.C Mehta v. Kamal Nath**[2], the Supreme Court observed that "Environmental pollution amounts to a civil wrong and by its nature is a tort committed against the whole community and a person, therefore who is guilty of causing pollution has to pay damages for restoration of the environment of the environment and ecology".

Negligence is an important kind of tort where a remedy for environmental pollution lies. Simply put, negligence means a breach of duty caused by the omission in doing something. As it has been state in **Heaven v Pender**[3] that " actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury, to person or property." Thus in matters related to environmental hazards the link between the negligent act and the consequent result is established by the judiciary to bring environment as a subject of litigation within the ambit of torts. In **M.C Mehta v Union of India**[4] the Supreme Court went beyond the position of strict liability taken by the English courts in **Rylands v Fletcher**[5] and said " Where an enterprise is engaged in hazardous or inherently dangerous activity and harm results to any one on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident…". This along with the Bhopal Gas tragedy gave birth to the concept of absolute liability. This position was further reiterated in the **Indian Council of Enviro-Legal Action v Union of India**[6] as the polluter pays principle.

[1]SUKANTA K. NANDA,ENVIRONMENTAL LAW, 204-206, (4th ed, 2015)
[2] M.C Mehta vs Kamal Nath & Ors, (1997) 1 SCC 388 (India).
[3] Heaven v Pender (1883) 11 QBD 503, Court of Appeal.
[4]M.C. Mehta v. Union of India, (1987) SCR (1) 819.
[5] John Rylands v Thomas Fletcher, (1868) LR 3 HL 330.
[6]Indian Council For Enviro – legal Action v Union of India and Ors. Etc. (1996) AIR 1446, 1996 SCC (3) 212.

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2. An ancient Roman legal maxim states - ubi jus, ibiremedium which is translated as,"where there is a right, there is a remedy". On incorporating the fundamental rights in the Constitution, the framers in the same chapter included a fundamental right to remedy under Article 32 (Right to constitutional remedies) of the Constitution. Thus when there is a violation of a fundamental right a citizen has the right to go to the Supreme Court to seek a remedy under this article or to the High court under Article 226. This weapon of writ jurisdiction is most potent and is often used by citizens to enforce their right to life enshrined in Article 21 ("No person shall be deprived of his life or personal liberty except according to a procedure established by law."). Article 21 has been interpreted as a right to clean and healthy environment to give meaning to the right to life because without the means to live a healthy life the right is so on paper. It is important to quote the judgment of the Supreme Court in the **M.C Mehta v. Kamal Nath** where the court held that *"*Pollution was civil wrong. By its very nature, it was a tort committed against the community as a whole. A person, therefore, who was guilty of causing pollution had to pay damages (compensation) for restoration of the environment and ecology .He has also to pay damages to those who have suffered loss on account of the act of the offender. The power of this Court under Article 32is not restricted and it can award damages in a PIL or a writ petition as has been held in a series of decisions. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for other not to cause pollution in any manner."

In **M.C. Mehta v/s Union of India**[7], the petitioner alleged that the Taj Mahal had developed a yellowish tinge with brown and black spots owing to the increased levels of pollution. The main pollutant was identified as Sulphur dioxide released by the industries in the Taj Trapezium (a trapezoid area comprising five districts in the Agra region). The pollutant later on reacted with rain water to give acid rain. In order to preserve and protect the Taj Mahal, the Supreme Court stepped in and, directed the Government to make available natural gas to the Mathura Petroleum Refinery, the glass factories of Ferozabad and other industries in the Agra region.

In **Rural Litigation and Entitlement Kendra, Dehradun v/s State of U.P.**[8], the Supreme Court directed the closure of all lime-stone quarries in the Doon Valley. The Court placed the right of the people to live in a healthy environment with minimal disturbance of ecological balance as being superior to the right to trade and occupation of individuals and businesses under Article 19 of the Constitution.

3. This brings to the third important milestone in the evolution of environmental law – public interest litigation or PIL. A PIL as the name suggests is litigation ensued in public interest. In an ordinary litigation locus standi means that a person seeking a remedy should have suffered a legal injury by reason of violation of her own legal right without which a person cannot maintain

[7] M.C Mehta vs Union of India, AIR 1997 SC 734 (India).
[8]Rural Litigation and Entitlement Kendra, Dehradun v/s State of U.P.AIR 1985 SC 652.

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the writ petition. But with time this rule of locus standi has been relaxed to provide justice for a group or a class of people who in most cases cannot litigate on their own. Thus, the rule of locus standi is relaxed in public interest litigation. The only conditions for a PIL is that firstly there should exist a legal wrong, secondly the person moving the court must be acting with bonafide intention and finally he must have got sufficient interest. This change can be rooted to the post emergency period where the judiciary after facing much criticism started taking a position very close to the poor and the downtrodden.

Justice Krishna Iyer was the pioneer in this front who liberalized the judiciary and said "Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good cause is turned away merely because he is not sufficiently affected personally, that means some government agency is left free to violate law and that is contrary to public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In rare cases where they wish to sue merely out of public spirit, why should they be discouraged?" This was then for the first time extended to the field of environment in the Municipal Council, **Ratlam v. Vardichand (1980)**[9].

The instrument of PIL became the tool for judicial activism in the environmental field. The Bhopal Gas tragedy had shocked the nation bringing alive the potential threat to life due to unsafe manufacturing practices. Soon after, there was an incident of Oleum gas leakage from an industry in the national capital, Delhi, in which amongst others, a practising advocate died. This was brought to the Supreme Court in a PIL by M.C. Mehta, an advocate and a public-spirited citizen.Justice Kuldip Singh, also known as the "green judge", was one of the first to lead the environmental bandwagon in India. In the landmark judgement of **Vellore Citizens Welfare Forum vs Union Of India &Ors on 28 August, 1996,** the Supreme Court of India recognized the Principle of sustainable development as a basis for balancing ecological imperatives with developmental goods. Rejecting the old notion that development and environment cannot go together, the Court held that sustainable development is a viable concept to eradicate poverty. The court considered various constitutional provisions including Articles 47 (Duty of the State to raise the level of nutrition and the standard of living and to improve public health), 48-A (Protection and improvement of environment and safeguarding of forests and wildlife), 51-A(g)("to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures")and came to the conclusion that it is the duty of the State to protect and preserve the ecology, as Article 21 of the Constitution guarantees protection of life and personal liberty and every person has a right to pollution free atmosphere. Justice Singh devised the "precautionary principle" and the "polluter pays" principles. He asked the high courts to set up "green benches" to tackle local ecological hazards created by industries

[9]Municipal Council, Ratlam vs Shri Vardhichand & Ors 1980 AIR 1622, 1981 SCR (1) 97.

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In addition to these, in path breaking judgments by the Supreme Court of India such as the **A.P. Pollution Control Board vs. M.V. Nayudu[10] and A.P. Pollution Control Board vs. M.V. Nayudu II[11]**, the idea of a "multifaceted" environmental court containing both judicial and technical/scientific experts gained the momentum. Environmental cases involve interpretation and assessment of scientific data[12]. Hence, the need of both judicial members along with the subject experts who are familiar with the issues was realized.

Following the observation, the Law Commission of India was assigned to undertake a detail study of the subject for the establishment of "Environment Courts" in India. The study took examples from Lord Woolf in England and Environmental Court legislations from Australia, New Zealand and other countries. The Commission prepared a report recommending the laws on Environmental Courts and suggested that Courts must be established to reduce the pressure and burden on the High Courts and Supreme Court.

India gradually developed an environmental policy which was a result of both domestic needs and international pressures. It eventually culminated into the birth of a quasi- judicial body that operates on the principles of natural justice. NGT, a culmination of judicial activism, was a result of a long drawn evolution of environmental pollution in India.

National Green Tribunal

The Green Tribunal, a unique judicial mechanism, is a special fast-track quasi-judicial body to ensure speedy justice on the environment related cases. The tribunal is not bound by the Civil Procedure Code of 1908 and works on the principles of natural justice. The Principal Bench of the tribunal is located in New Delhi. There are circuit benches in Bhopal, Chennai, Kolkata and Pune.

As a government initiative, before the NGT Act come into existence, there were two other efforts to establish specialized environment courts in India. The first was the National Environmental Tribunal Act (NETA) of 1995. The second one was the National Environmental Appellate Authority (NEAA) constituted under the National Environmental Appellate Authority Act, 1997[13].India is the third country after Australia and New Zealand to have a specialized environment court and is one of the pioneers in establishing the green court among developing countries. In India, National Green Tribunal (NGT) was established in 2010 under Article 21 of the Indian Constitution. The Chairperson of the NGT is a retired Judge of the Supreme Court, Head Quartered in Delhi. Other Judicial members are retired Judges of High Courts. Each bench

[10]A.P. Pollution Control Board vs. M.V. Nayudu, 1999(2) SCC 718.
[11]A.P. Pollution Control Board vs. M.V. Nayudu II 2001(2) SCC 62.
[12] Swapan Kumar Patra & V.V Krishna, *National Green Tribunal and Environmental Justice in India,* Vol.44 (4)IJMS, 447.
[13]Swapan Kumar Patra & V.V Krishna, *National Green Tribunal and Environmental Justice in India*, Vol.44 (4)IJMS, 445, 446.

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of the NGT should comprise of at least one Judicial Member and one Expert Member. Expert members should have a professional qualification and a minimum of 15 years'experience in the field of environment/forest conservation and related subjects.

Powers and jurisdiction[14]

The NGT has the power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the NGT Act. These include the following:

- The Water (Prevention and Control of Pollution) Act, 1974;
- The Water (Prevention and Control of Pollution) Cess Act, 1977;
- The Forest (Conservation) Act, 1980;
- The Air (Prevention and Control of Pollution) Act, 1981;
- The Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biological Diversity Act, 2002.

Accordingly, only those violations and orders which pertain to these laws can be challenged before the NGT. Interestingly, the NGT has not been vested with powers to hear any matter relating to the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and various laws enacted by States relating to forests, tree preservation etc. Therefore, specific and substantial issues related to these laws cannot be raised before the NGT. The only option then is to approach the State High Court or the Supreme Court through a Writ Petition (PIL) or file an Original Suit before an appropriate Civil Judge of the taluk where the project that you intend to challenge is located.

The tribunal has the right to order for compensation of property damaged and also for restitution of the environment in the affected areas. In this case the tribunal has the authority similar to a civil court. Tribunal has also power to divide the compensation or relief payable under separate head specified in schedule II1. NGT Act for the first time gives a statutory recognition of the principle of no fault liability (absolute liability – first recognized in the Oleum Gas leak case) and principles of sustainable development, precautionary principle and polluter pays principle.

The major benefit with NGT is that it has a strong order enforcing mechanism. If the orders of NGT are not complied with than it has the power to impose both punishment as well as fine. The punishment is up to three years and the penalty is up to ten crore and for firms in can extend up to twenty five crores. Also the director or manager of the firm can be punished or penalized if it

[14]Praveen Bhargav, Everything you need to know about the National Green Tribunal (NGT), Conservation India, Monday May 2nd, 2011, http://www.conservationindia.org/resources/ngt

is found by the tribunal that the offence has been committed on the orders or with the consent of such officer of the firm.

In **M/S OpgPower Gujrat Private Ltd**. **vs Husain Saleh Mahmad Usman Bhai**,**2012** the tribunal made its first ruling when it ordered a halt to construction of a coal plant in Kutch in the western Indian state of Gujarat. The project was challenged in the tribunal by local fishermen and villagers protesting against the adverse impact of the project on the local ecology.The company had already started construction work prior to accord of CRZ (coastal regulation zone) clearance,even though the forest clearance had not been granted.The villagers doubted that project proponent will not follow rest of the conditions in operation phase. The tribunal sided with communities by pointing out that the EIA included fabricated data. The NGT also directed a halt to the construction of the plant, which had commenced despite not having obtained the requisite clearances.After the Kutch ruling, the National Green Tribunal struck again, revoking the environmental clearance for coal mines in the central Indian state of Chhattisgarh—a state considered the heartland of coal.

The POSCO Case is one of the most important cases in NGT's history. Since June 2005, when the agreement between the Government of Orissa and the South Korean Pohang Steel Company, aka POSCO, was signed, there have been manipulations, weak implementation of law, and concealment of information. All the main players, the state Government of Orissa, Government of India, and POSCO – colluded. P Chidambaram, then Minister of Finance, and Manmohan Singh, Prime Minister, are known to have breathed down the neck of A Raja, then Minister of Environment and Forests, to fast track necessary clearances for POSCO. The proposal was for an integrated steel plant with a production capacity of 12 million tonnes per annum (MTPA), along with a captive power plant in Jagatsinhpur district of Odisha which was first granted a clearance in 2007. There were subsequent protests from green activists and local residents that led to a four-member review committee being set up by the government in 2010. The panel delivered a split report, with three members finding the clearances illegal, while Chairperson Meena Gupta -- who had been environment secretary when the original Posco clearance was granted – merely recommended additional studies. The government ignored most of the majority report, and issued a January 2011 order upholding the clearances, with some added conditions. On March 30, 2012, the National Green Tribunal held in **Prafulla Samantra Anr. vs Union of India and Ors** that the 31.1.2011 final order of the Environment Ministry – permitting the POSCO project to go ahead with certain conditions – should be suspended until a full review of the project can be undertaken. According to the latest 2016 update, the South Korean major Posco has told the National Green Tribunal that its project in Odisha "cannot proceed" any further due to regulatory hurdles. The steel maker told the green panel that the company was yet to receive land and forest clearance. While the case is still going on in the court, it is worth mentioning that the Tribunal has stood its ground to support sustainable development and valued local communities above economic profit from the project.

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The National Green Tribunal (NGT) covered new ground for the 'polluter pays' principle by invoking it in two landmark judgments. First, it ordered Alaknanda Hydro Power Co. Ltd., a hydroelectric power company, to pay Rs 9 crore as compensation to people affected by Uttarakhand floods in 2013 because the dam constructed by the company contributed to the flooding experienced by residents of the region. Second, it fined Delta Marine Shipping Co., a marine shipping company, Rs 100 crore for the oil spill and ensuing ecological damage caused when one of the company's ships sank off the coast of Mumbai in 2010.The judgments in both cases are important instances of the NGT exercising its power to fix liability and hold private companies responsible for the environmental damage they cause. These judgments set a precedent for shifting the monetary responsibility of rectifying ecological damage from the government to the private actors responsible for causing the damage. These decisions will ensure that the tax payers money isn't washed down the toilet and more importantly it tells a story of success and courage where crusading citizens managed to sue a large corporation.

One of the first cases which put to test the efficacy of the NGT was the Kaziranga case. Kaziranga is not just a National park but also a UNSECO site. It is of great ecological and scientific importance. The appellant in this case approached the Tribunal invoking jurisdiction under Section 14(1) of the National Green Tribunal Act, 2010, inter-alia, praying for appropriate directions to the Authorities to safe guard Kaziranga and its ecology. According to the Applicant, unregulated quarrying and mining activities permitted in and around the area of "Kaziranga National Park", not only threatens the Eco-Sensitive Zone, but also the survival and existence of Rhinos, Elephants and other wildlife species. It was alleged that the Ministry of Environment and Forests (MoEF), showed apathy to the irregularities, overt acts and several omissions and commissions committed by the Authorities and acted as a mute spectator, to the rampant violation of the provisions of the Environment (Protection) Act, 1986. Facts, in the case in hand, make it clear that the Notification declaring NDZ within the radius of 15 km around the Numaligarh Refinery so as to protect Kaziranga National Park was issued in the year 1996. The said Notification was issued in exercise of the powers conferred under Section 5 of the Environment (Protection) Rules, 1986, and is still in vogue 28 and is not only binding but also enforceable. Issue no. 1 (one) accordingly stands answered. 28. "Continuous infringement of law and tolerance of violations of law, for the reasons good, bad or indifferent, not only renders legal provisions nugatory but also such tolerance by the Enforcement Authorities encourages lawlessness which cannot be tolerated by any civilised society." The NGT observed that despite a notification declaring certain areas as a No development zone there existed stone crushers, tea processing units and brick kilns which were in direct contravention of the notification. The NGT remarked "we are of the opinion that MoEF and the State Government of Assam have totally failed in their duties with respect to implementation of the provisions of the 1996 Notification and due to the callous and indifferent attitude exhibited by the Authorities, number of polluting industries / units were established in and around the No Development Zone of Kaziranga thereby

posing immense threat to the biodiversity, eco-sensitive zone, ecology as well as environment. We are, further, satisfied that this is a clear case of infringement of law. We, therefore, have no hesitation to direct the MoEF and the Government of Assam to deposit Rs. 1,00,000/- (Rupees one lakh only) each, with the Director, Kaziranga National Park for conservation and restoration of flora and fauna as well as biodiversity, eco-sensitive zone, ecology and environment of the vicinity of Kaziranga National Park in general and within the No Development Zone in particular." This strong worded judgment began the tryst with allegations of judicial over reach that the NGT has time and again faced.

JUDICIAL ACTIVISM AND OVER REACH BY THE NGT

The last few years have brought about a sea of change in the way the Tribunal has functioned. While the beginning saw a number of resignations and lack of proper infrastructure, the last one year saw the tribunal's jurisdiction being challenged by not only litigants but even the MoEF.

NGT has been accused of practicing judicial activism, overstepping its jurisdiction and taking actions for which it has not been empowered under the NGT Act. Judicial activism are judicial rulings that are suspected to be based on personal or political considerations rather than a precedent. Three issues have frequently cropped up. First, does NGT have powers to take cognizance of a matter on its own and take action upon it-the power of suomotu. Second, can NGT review and direct change in rules and regulations-the power of judicial review. Third, can NGT take up any case which can be termed as "substantial question of environment". The NGT Act refers to the scope of NGT's jurisdiction in Sections 14, 15 and 16. Section 19 states that the tribunal can determine its own procedure and this provision has been used by NGT to include within its ambit issues that the NGT Act does not authorize it to adjudicate upon.

As a government initiative, before the NGT Act come into existence, there were two other efforts to establish specialized environment courts in India. The first was National Environmental Tribunal Act (NETA) of 1995. The second one was National Environmental Appellate Authority (NEAA) constituted under the National Environmental Appellate Authority Act, 199

In the past, NGT has taken up cases on its own motion (suomoto). In Himachal Pradesh, the tribunal took up issues relating to the harmful impact of heavy and unregulated tourism in the Rohtang Pass area. The tribunal issued a long order with many directions. The ministry had been constantly reminding NGT that taking up suomotu cases is not within its jurisdiction. In India, suomotu jurisdiction is limited to superior courts like the Supreme Court and the high courts. According to

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ministry officials, NGT in the past has written to them to give it suomotu and contempt power, both of which were denied.

However, Justice Swatanter Kumar, NGT chairperson, maintains, "Suomotu jurisdiction has to be an integral feature of NGT for better and effective functioning. Under the Constitution, high courts also have not been exclusively conferred suomotu jurisdiction. However, they have been exercising the power. There are some inherent powers which are vital for effective functioning and suomotu jurisdiction is one such power" [15]

Rajeev Dhavan, noted Supreme Court lawyer, differs. "A tribunal is a statutory body whose jurisdiction is circumscribed by statute. NGT does not have powers of the high courts or the Supreme Court to strike down legislation or to take suomotu actions. A tribunal cannot enlarge its jurisdiction."[16] The issue of suomotu jurisdiction, which remained a grey area for quite some time, was addressed by the Madras High Court in early 2014. The court clipped the wings of NGT by passing an interim order which stated that it has no suomotu powers. After this order, NGT has refrained from taking up cases suomoto.

NGT and Judicial review

The ministry has been quite upset with NGT for bestowing upon itself the power of judicial review. NGT has given upon itself a wide ambit of jurisdiction in the name of "ancillary and inherent powers necessary in the interest of justice". The tribunal held that it is a specialized body and has a procedure of its own (Section 19), which gives it power to adjudicate on issues where judicial review is required.

In a case filed by Pune-based NGO Kalpavriksh ("Kalpavriksh& Others v Union of India & Others"), challenging the qualifications of expert appraisal committee members who recommend environmental clearances for projects under the Environmental Impact Assessment Notification, 2006, NGT invoked the power of judicial review and directed the ministry to revise the qualifications and experience in the notification.

NGT'S critics have also questioned the lack of environmental expertise of its expert members. "Usually, the expert members are experts of one particular field and not of environment as a whole. For instance, an expert member who has been working on forests for many years would not be able to comprehend the issues arising out of industrial pollution. Thus, the judgments are vague and not relevant in some cases," says an Odisha Pollution Control Board official[17].

[15]Yukti Choudhary, *Tribunal on Trial*, DOWN TO EARTH (Feb. 22, 2017), http://www.downtoearth.org.in/coverage/tribunal-on-trial-47400

[16] Yukti Choudhary, *Tribunal on Trial*, DOWN TO EARTH (Feb. 22, 2017), http://www.downtoearth.org.in/coverage/tribunal-on-trial-47400

[17]Yukti Choudhary, *Tribunal on Trial*, DOWN TO EARTH (Feb. 22, 2017), http://www.downtoearth.org.in/coverage/tribunal-on-trial-47400

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Many have also questioned some NGT judgements, for instance, the one dealing with the Okhla Bird Sanctuary in Noida. In September 2013, NGT'S principal bench gave an order that stopped all construction within a 10-kilometre (km) radius of the sanctuary because the government had not notified the eco-sensitive zone around it at that time. The order stopped constructions only in Uttar Pradesh, but inexplicably didn't do so in parts of Delhi which fall within the 10 km radius. Many have criticized the selective and "judicial" nature of this judgment.

Another case which challenged the NGT was the **Art of Living case**. The original case was against Sri Sri Ravishankar's Art of Living Foundation that had held a three-day World Culture Festival on the banks of the Yamuna, which was criticized by environmentalists for causing wide-spread and long-term damage to the ecosystem of the Yamuna floodplains. At the time, the NGT had pulled up the Delhi Development Authority (DDA) for giving permission for the event without checking other facts. The NGT passed an order asking the AOL foundation to pay 120 crores for restoration work on the Yamuna floodplain. This figure of 120 crores led to a flurry of litigation and the NGT in its subsequent order decided to not quote a figure but just enumerate the restorative activities that had to be undertaken so as to avoid further litigation. This was a smart move on behalf of the NGT. They tried to circumvent further litigation so as to ensure that the restoration process is not challenged time and again. Interestingly after this, a case was filed challenging the NGT on its own jurisdiction by three followers of Sri Sri Ravishankar[18]. The hearing for this case is pending before the NGT for which it has sought responses from the Center and the Delhi government.

The **Sand Mining Order** has been another victory of NGT. The Tribunal put a ban on all forms of Illegal River and Ocean bed sand mining which were rampant across the country due to the sand mafia's influence over the sand market. The NGT ban had followed a petition filed before the tribunal, in wake of Indian Administrative Service (IAS) officer Durga Shakti Nagpal's action against the mechanized sand mafia operating in Uttar Pradesh. The Tribunal, in a series of orders banned the mining and called upon state authorities to show cause why 'illegal sand mining had been going on without any environment clearances'. Goa chief minister Manohar Parrikar, calls the order "a case of judicial overreach", and that it "has resulted in rise of prices and black marketing of sand." He told the house that, unlike in many other states, mining in Goa was not mechanized and done manually, as a result of which the activity should not have been banned in states like Goa.Sulabh Shauchalaya (NGO-run community toilets) in Goa had no sand available to dispose waste, which might lead to people defecating in the open. "This is not the right way of judicial activism. Sudden activism does not solve problem,"[19]added Parrikar.

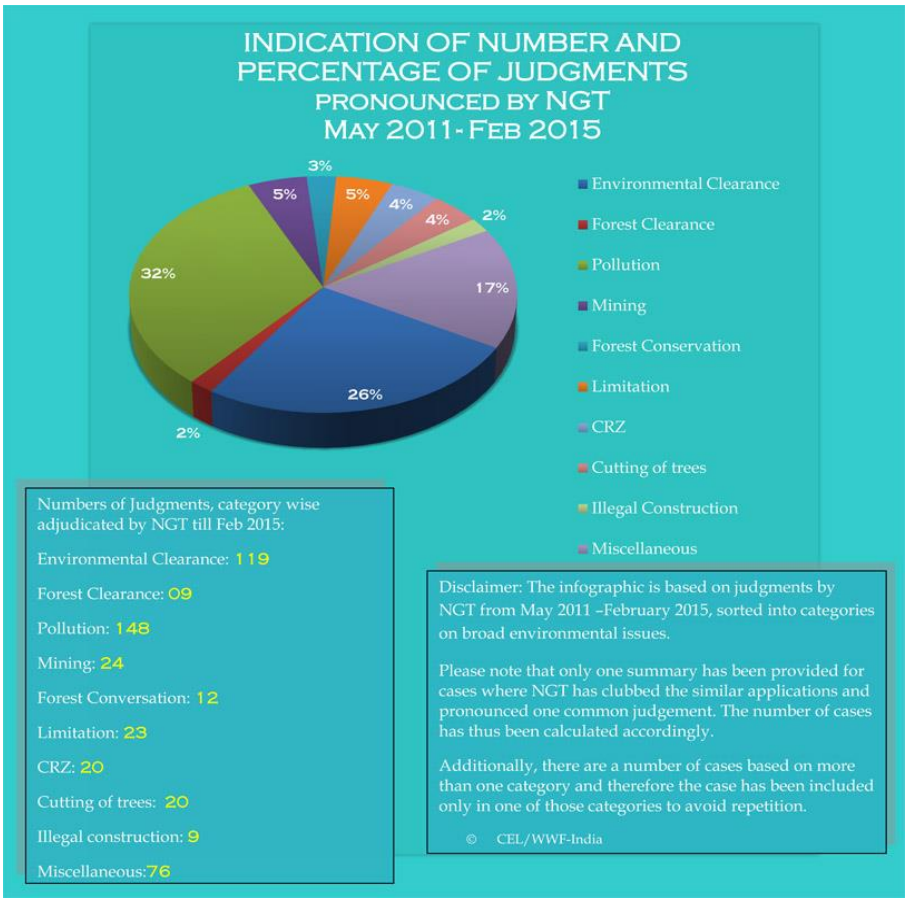
[18] Nikhil M. Ghanekar, Plea challenges NGT's jurisdiction in AOL case, DNA (Jan. 18, 2017, 8:05 AM), http://www.dnaindia.com/india/report-plea-challenges-ngt-s-jurisdiction-in-aol-case-2293559e.
[19] NGT's ban on sand mining is a judicial over-reach: Goa CM Parrikar, Firstpost, Oct, 15 2013 17:33:14 IST, http://www.firstpost.com/india/ngts-ban-on-sand-mining-is-a-judicial-over-reach-goa-cm-parrikar-1173281.html.

However while there have been accusations of over reach by the executive, the judiciary as often come out to shelter the NGT. A recent order of the National Green Tribunal (NGT) banning diesel vehicles over 10 years old from Delhi roads was widely criticized as being a case of impractical overreach. A review of recent verdicts and cases at the southern bench of NGT shows that the bench in Chennai is also stepping into what are essentially functions of the legislature and the executive[20]. Following NGTs blanket ban on vehicles older than 15 years plying the roads of Delhi a petition was filed before Supreme Court to test the validity of the order. The Supreme Court said that the Tribunal is empowered to issue directives to the center for banning vehicles. It recalled a judgment by the tribunal in July 2014 which declared the NGT to be a "court", holding that it has "all the trappings" of a judicial body. The judgment also ruled that the NGT can exercise the powers of judicial review and examine the validity of notifications passed under different laws.

This debate of judicial activism and over reached has to be seen from the prism of a larger struggle for power between the judiciary and the executive. Justice TS Thakur has defended judicial activism in environmental matters. He said that "this country knows that if today there is a movement for protection of environment, it is spearheaded by the judiciary and judiciary alone."[21] But time and again there have been allegations of over reach on the NGT. A graph courtesy the WWF throws light on the number and the percentage of judgements pronounced by the NGT. It may be noticed that a very high number of cases have been filed in the sphere of environmental clearance. This brings us to the earlier point as to how the NGT has been on logger heads with the Ministry of Environment so much so a month-and-a-half, at the end of 2013, no counsel from MoEF&CC appeared before NGT. The ministry has repeatedly contended that NGT has been overstepping its jurisdiction. An affidavit filed before Supreme Court, MoEF&CC'S deputy secretary during the previous regime labelled NGT'S conduct an "embarrassment" to the government in Parliament. The affidavit drew heavy criticism from Supreme Court, which termed it as "nonsense".

[20]Manish Raj, Green tribunal: Case of impractical overreach, The Times Of India City, TNN | Apr 19, 2015, 06.03 PM IST

[21] Express news Service, Environment: As Goyal sees judicial overreach, judge says here to stay, The Indian Express (Mar.16, 2015, 1:51 AM), http://indianexpress.com/article/india/india-others/environment-as-goyal-sees-judicial-overreach-judge-says-here-to-stay/



RECOMMENDATIONS

To avoid the confrontationist attitude between the two a number of steps can be taken. Firstly the Ministry of Environment should develop a more stringer method to award environmental clearances. It is a huge drain on human and economic capital when due to lack of coordination between the executive and the judiciary a project first gets an approval, the works begin and then subsequently it is reprimanded by the tribunal.

Secondly, environmental justice needs to be made more accessible. The law commission report on the environmental courts suggested that one such court should be established in every state. However, NGT with its only 5 principal benches established in different zones across the country makes it difficult for an ordinary village activist to reach the NGT. It is a well-established fact that the village and tribal folk suffer the most at the hands of environmental degradation. Their lifestyle if that of subsistence and they depend on the environment for their daily needs. Therefore putting environmental justice out of the reach of these very people who face the brunt of environmental degradation is something that requires immediate attention.

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Thirdly, the problem of pendency needs to be addressed. A study by Down to Earth shows that till August 31 2014, 2,559 cases-about 40 per cent of all cases-were pending before different Benches of NGT. The pendency was more than 60 per cent in the southern, western and eastern Benches. At the principal Bench, the pendency was about 30 per cent. The pendency indicates both the resources available at different Benches and the number of cases filed. All zonal Benches are handled by just one judicial and one expert member. The principal Bench, however, has four judicial members, including the chairperson, and six expert members[22]. Other zonal benches of the NGT need to be brought at power with the bench in Delhi to avoid centralization in environmental justice.

Fourthly, an investment in strengthening its infrastructure could go a long way. The NGT was operating from a guest house earlier. The members of the tribunal were not given houses and were living in government guest house. The funds were decreased further without taking into consideration the fact that NGT is already suffering from lack of adequate funding. The establishment of NGT also took away the right of civil courts to admit cases regarding environmental issues. So it is now compulsory to file the case before the NGT in these cases. Now even a PIL cannot be filed in the High Court of the state for environmental issues as all environmental litigation shall be dealt only by the five benches of NGT. There is a need for environmental tribunal on district bases but present system is not even providing it on state basis.

Fifthly, NGT also needs to put certain systems in place for transparent decision-making. It has started putting financial penalties on polluters, but has not come out with a guideline on this yet. NGT needs to establish principles and criteria to estimate fines, damages and compensation. It should also identify institutions and experts who can help it to scientifically estimate environmental damages/compensation/fines on a case-to-case basis. These will bring in objectivity in its judgements.

The other perceptional issue that NGT must correct is that it is taking up frivolous and anti-people cases. For instance, in one case, the tribunal's principal Bench ordered the closure of 12 eating joints in Delhi's Hauz Khas area for not having applied for consent to operate.This could result in shutting down most restaurants, if this judgement were to be applied across the country. In another case, NGT took strong exception to the nailing of bus stop signs onto trees by the Delhi Transport Corporation. People are questioning how such cases fall under "substantial question relating to the environment"? NGT will have to guard against such decisions because it can lose the support of the public and policymakers.

In conclusion, NGT is a crucial weapon to save the environment provided the very ministry under whose auspices it works colludes with the tribunal instead of being at logger heads with it.

[22]Yukti Choudhary, *Tribunal on Trial*, DOWN TO EARTH (Feb. 22, 2017), http://www.downtoearth.org.in/coverage/tribunal-on-trial-47400

As Ban Ki Moon rightly said that “Saving our planet, lifting people out of poverty, advancing economic growth... these are one and the same fight. We must connect the dots between climate change, water scarcity, energy shortages, global health, food security and women's empowerment. Solutions to one problem must be solutions for all.”

India needs a rational and logical approach to economic growth for if the growth takes place at the cost of our rich flora and fauna then it is no growth at all.