

## Role of National Green Tribunal in Protecting Environment

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### *Abstract*

*Man's association with nature is primitive. The elements of nature were known as Panchmahabhut and were worshipped throughout India. It is believed that the universe comprising the Earth was the creation of Brahma. There is a very deep relationship between man and environment. The mankind realized it quite early in the process of evolution of human civilization. But, the environment during that period was not so much threatened as to compel human being to think about aggressively about its conservation. But the advent of industrial revolution, brisk pace of industrial activities, discharge of huge quantity of greenhouses gases in the atmosphere and their impact on earth, exhibited by rise in temperature, change in weather, unprecedented rainfall or drought, failure of crops after crops, etc. forced mankind to think about meeting the challenges thrown open by the brisk pace of industrial activities and their impact on environment and earth. The Supreme Court in four landmark judgments viz. M.C. Mehta v. Union of India, Indian Council for Environmental-Legal Action v. Union of India, A.P. Pollution Control Board v. M.V. Nayudu and A.P. Pollution Control Board v. M.V. Nayudu II observed the need for creation of "Environmental Courts". As a result of these four judgments, the Law Commission of India in its 186<sup>th</sup> Report in the year of 2003 dealt with the proposal to constitute environment court in the country. This was one of the most important developments that led to the passage of the National Green Tribunal Act, 2010. The evolution of the National Green Tribunal in India has followed an extensive and faceted development and was determined by a number of factors. The judiciary itself keeps reaffirming the necessity for a system of specialized environmental courts. The establishment of NGT has been a very positive development because of the impact it has had on environment protection in our country. It is an exclusive forum to address the issues of environment. Be it issues of noise pollution, sand mining, protection of sandalwood varieties or de concretization of trees, NGT has been dealing with a whole lot of issues. The NGT had on March 9, 2016 refused to prohibit the World Culture Festival on the bank of Yamuna, but at the same time imposed a fine of Rs. five crores on the foundation "art of living" for damaging biodiversity.*

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### INTRODUCTION

*Man's paradise is on earth. This living world is a beloved placed of all. It has blessings of nature's bounties, love in lovely spirit.*

*Atharva Veda*

It is axiomatic that "mankind is the part of nature and life depends on the uninterrupted functioning of natural system which ensured the supply of energy and nutrients" which is essential for every life support system. Man must live in harmony with nature which

nourishes him and provides all basics of human life. [1] In the preamble to the Stockholm Declaration of 1972, the enjoyment of the healthful environment has been linked with the right to life. [2] Since time immemorial the man had made conscious and determined efforts to make use of the natural resources and to modify his surroundings so that the adverse effect caused by the extreme temperature rainfall and predators may be reduced. In the quest of making life more comfortable the man has always exploited the

nature. [3] Protecting environment is the moral duty of every human being on this planet, rather it's not only protecting the environment indirectly it is about protecting ourselves from major loss. How ignorant can we afford to be when it is the question of our survival?

Bhagwati, CJ in *M.C. Mehta v. Union of India and Shriram Foods and Fertilizers Case*, observed “*It might be desirable to set up environmental courts on the regional basis with one professional judge and two experts drawn from the Ecological Sciences Research Group keeping in view the nature of the case and the expertise required for its adjudication. There would of course be a right to appeal to this court from the decision of the Environmental Court.*”

The Indian Parliament has passed the National Green Tribunal Act, 2010 to handle all the cases relating to environmental issues.

#### **ENVIRONMENT: DEFINITION**

According to the definition under 2(a) of the Environment (Protection) Act, 1981, ‘environment’ includes water, air and land, and human beings, other living creatures, plants, micro- organisms and property.[4]

#### **ENVIRONMENTAL POLLUTION: MEANING AND TYPES**

The Environment Protection Act defines environmental pollution as “the presence in the environment of any environmental pollutant” [5] and environmental pollutant means “any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment” [6]

There are following types of pollution:

**AIR POLLUTION:** The definition adopted by the WHO expert committee is as follows: “Substances put into air by the activity of mankind in concentration sufficient to cause harmful effects on his health, vegetation, property or to interfere with the enjoyment of his property”. [7]

Section 2(b) of the Indian Air (Prevention and Control of Pollution) Act, 1981 defines air

pollution as ‘the presence in the atmosphere of any air pollutants.’

**WATER POLLUTION:** Pollution of water means a departure from a normal state (rather than a pure state of water, for ideally unpolluted water is a misconception) of water by human activities in such a manner to prevent it from being use for the purposes thought as normal.

Section 2(e) of the Water (Prevention and Control of Pollution) Act, 1974 [8] defines water pollution.

**LAND POLLUTION:** The deposition of waste materials on land or underground in any manner which can contaminate the soil, threaten public health and can cause nuisances can be called as land pollution.

**RADIOACTIVE POLLUTION:** Radioactive pollution of the environment has been defined “as the increase in natural background radiation, emerging from the activities of man involving the use of naturally occurring of artificially produced materials”. [9]

**NOISE POLLUTION:** The term ‘noise’ connotes unwanted or excessive sound that can have deleterious effects on environment and human health.

Industrialization, urbanization, growing populations, modern agricultural practices are some of the factors responsible for causing environmental pollution.

#### **AIMS AND OBJECTS OF THE NATIONAL GREEN TRIBUNAL ACT, 2010**

The Act has been passed: *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.*

The Supreme Court in the case of *M.C. Mehta v. Union of India* [10], observed that

“environment courts” must be established for expeditious disposal of environment cases and reiterated it time and again. This act was the need of the time. The National Green Tribunal (NGT) has been created with an aim to check industrial pollution and allow aggrieved persons to approach the tribunal to claim civil damages for non-implementation of environmental laws. Now, India has become the third country in the world to have a special court for environmental issues.

The Supreme Court in the case of *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India* [11] directed that the environmental issues and matters covered under the National Green Tribunal Act, 2010, under Schedule I of the act, should be instituted and litigated before the National Green Tribunal.

The Central Government has been authorized to establish the NGT which will be headed by a full time Chairperson and other members. The Chairperson shall be appointed by the Central Government in consultation with the Chief Justice of India. The post of the chairperson is reserved for former judges of the Supreme Court and chief justices of high courts. [12]

#### JURISDICTION OF THE TRIBUNAL

Section 14 of the Act provides that the tribunal shall have jurisdiction on all the civil matters where a substantial question relating to environment including enforcement of any legal right relating to environment arises out of the following Acts:

1. Water (Prevention and Control of Pollution) Act, 1974
2. Water (Prevention and Control of Pollution) Cess Act, 1977
3. Forest (Conservation) Act, 1980
4. Air (Prevention and Control of Pollution Act), 1981
5. Environment (Protection) Act, 1986
6. Public Liability Insurance Act, 1991
7. Biological Diversity Act, 2002

The tribunal has power to grant relief and compensation to the victims of pollution and other environmental damage arising out of said enactments including accidents occurring while handling hazardous substances. It can

also order restitution of any property damaged and for restitution of the environment for such area or areas. [13]

The civil courts are barred from entertaining any appeal in respect of any matter, which the tribunal is empowered to determine under its appellate jurisdiction. [14]

#### PROCEDURE FOR FILING AN APPLICATION OR APPEAL

If the party is not satisfied with the order of the court then he can file an application before the national green tribunal against an appeal, order or any decision of the court. Everyone has the right to approach the tribunal against any entity for breach of environmental laws and can approach the tribunal to claim civil damages arising out of inadequate implementation of environmental laws.

#### SIGNIFICANT NGT ORDERS

**Order to Check Ganga Pollution:** The NGT rapped the Uttar Pradesh State Government for inaction over pollution in Ganga. The tribunal also imposed a complete ban on use of plastic from Gomukh to Haridwar along Ganga. It also issued a show cause notice to industries located on the stretch from Haridwar to Kanpur asking why they should not be shut down for polluting Ganga.

**Order to Stop Crop Burning:** In the case of *Vikrant Kumar Tongad v. Environment Pollution (Prevention & Control) Authority* [15], NGT discussed about the pollution caused by crop burning. The tribunal urged the state governments to educate and advice farmers about the bad effects of crop burning. The tribunal also encouraged the states to take appropriate punitive actions under the existing legislations. It also passed some recommendations in order to tackle this problem.

In the case of *Vardhaman Kaushik v. Union of India* [16], [16] NGT passed an order directing that all the diesel vehicles which more than 10 years are old, will not be permitted on the road of NCR, Delhi.

**Coal Blocks in Chhattisgarh Forests:** The National Green Tribunal has 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.

**NGT Decision on Using Biodegradable Ganesh Idols:** In September 2015, National Green Tribunal bench headed by Chairman Justice Swatanter Kumar, directed that idol immersion would be allowed only to those one which are made from biodegradable material and not plastic/Plaster of Paris and in addition to this only those colors should be used on idols which are environment-friendly.

### **SUPREME COURT'S MAJOR JUDGMENTS REGARDING ENVIRONMENT PROTECTION**

**M.C. MEHTA V. UNION OF INDIA (VEHICULAR POLLUTION IN DELHI CITY CASE):** The apex court held that, it is the duty of the government to see that the air didn't become contaminated due to vehicular pollution. Article 21 of Indian Constitution also includes right to clean air.

**SUBHASH KUMAR V. STATE OF BIHAR:** [17] In this case, the supreme court held that right to life is a fundamental right under Art. 21 and it also includes right to enjoyment of pollution free water and air for full enjoyment of life.

**M.C. MEHTA V. UNION OF INDIA:** [18] In this case, the apex court established a new concept of "absolute liability" for disasters arising from the storage of or use of hazardous materials from their factories.

**VELLORE CITIZENS WELFARE FORUM V. UNION OF INDIA:** [19] Principle of 'sustainable development' should be adopted in deciding the pollution caused by the industries. 'Precautionary Principle' and 'polluter pays principle' has been accepted as a part of the law of the country.

### **SUGGESTIONS**

Despite existence of Environmental Policy, the constitutional mandate of environmental protection, flurry of legislations and

administrative infrastructure of implementation, the fact remains that problems of environmental pollution still remain a great cause of concern in our country. Deterioration of environment can't be allowed to perpetuate. Prudent environment management is the need of hour. There is no doubt about it that the need of the hour is to protect and preserve the environment and the ecological balance. The menace of environmental pollution can be fought against only by creating awareness and sensitivity among the people regarding the protection of the environment. Environment is the key for existence of life on the earth. Without it, there can be no life on earth. At present there are some loopholes in the NGT Act, which should be covered properly for the protection of environment. These are following:

- NGT lacks independence from the government. The government official can be appointed as a judge and a government official will never rule against the government.
- One cannot deny the fact that the institution of the NGT opens a new era of environmental justice with specialized tribunal with both original and appellate jurisdictions related to environmental laws with the potentiality of expeditious disposal and enforcement. The law commission report suggested that there should be an environmental court in every district. But the NGT has only five benches. It creates a problem for the common citizen to approach a court which is in different state.
- After the establishment of NGT, the civil courts lost their right to admit cases related to environment. Even a PIL cannot be filed in the High Court of the state because all the environmental litigation shall be dealt only by the 5 benches of NGT.

*"The environment is where we all meet; where all have a mutual interest; it is the one thing all of us share."*

*- Lady Bird Johnson*

### **CONCLUSION**

Time is not so far when India will be counted amongst the highly industrialized countries

due to its industrial revolution. The economic condition of the common man will improve. Prosperity will prevail and India will again become the legendary “golden bird”. This is all proverbially “one side of the coin”. The other side of the coin is pollution which is not very bright.

*“By destroying nature, environment, man is committing matricide, having in a way killed Mother Earth. Technological excellence, growth of industries, economical gains has led to depletion of natural resources irreversibly. Indifference to the grave consequences, lack of concern and foresight has contributed in large measures to the alarming position”. [20]*

### ARIJIT PASAYAT J

In many cases, where the offence was actually committed, either the offenders may go scot free without any punishment, or the real offenders are hardly found out and proceeded against. The gains of industrialization and the benefits of developments are always in the minds of the lawmakers, development managers and judicial decision makers. Does not this fact obstruct effective prosecution against the people responsible for the greatest assaults on environment? [21] Environment statutes are regarded as ‘beneficent’ legislation, enacted to advance the directive principle of state policy contained in Article 48A of the Constitution. Being beneficent legislation, it is the duty of the court to adopt an interpretation favoring ecological preservation. Frequently, judges choose between two possible interpretations of an environmental statute, one that advances environmental protection, and the other favoring some other interest such as industry, jobs or the need for energy. [22] Right to life would become meaningless if there is no healthy environment. [23] The NGT is the most consistent and progressive environmental authority in India.

*If we have the power to turn another planet into Earth, then we have the power to turn Earth back into Earth.*

*Neil Degrasse Tyson*

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