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**Paper Two**

**REFLECTION ON NGT VERDICTS ON THE STATE OF KARNATAKA – POLICY  
AND PRACTICE:  
A REPORT**

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## **Executive Summary**

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The paper begins with a detailed introduction into the philosophy of the nature as created by God and how it is the duty and primary responsibility of man to maintain the sanctity of it. The Indian civilization in which the most ingrained quality is that of revering the nature and associating various Gods and Goddesses with the elements of nature, trees, plants and animals.

Secondly, the next choice of focus is a brief insight into the State of Karnataka. The author has given insight into the geography, topography, anthropology and the presence of flora and fauna in the state of Karnataka for the readers to be able to get a precursory glance into the kind of environment which exists in this State. The National Green Tribunal, which is the court of jurisdiction for the protection and conservation of environment, has that much of a responsibility to ensure the functioning of the laws to conserve the State and its bountifulness.

The author goes ahead in giving importance to the legal mandate surrounding the conservation and protection of the environment. The concept of having a ‘qualitative life’ has been mentioned by the author in much detail and with a broad understanding keeping up the fact that every transgression from the ecological norms or violations of rights of people concerned, shall be put forth to the judiciary for environmental remedies. Author has spanned the growth of environmental consciousness since the development of the first environmental policy in the country and laid significant consideration to the inclusion of environmental protection since the five-year plans started. However, as the 42<sup>nd</sup> Constitutional Amendment came into place, there was not only a domestic urgency to take the environment seriously, but an international one, with Stockholm Convention.

Lastly, coming to the final research agenda, the author sheds light on to the National Green Tribunal Act, 2010 and states the legal framework of its functions and powers while giving an insight into its efficacy and cases as decided. The paper has attempted to shed light on to the gaps of this system of having an Environmental Tribunal through analysing case laws and their effects on the environment and state of environment that whether or not the same has had any positive effects.

## **1. Background Information and Introduction**

We, spiritually, believe that the Almighty is the creator of this Universe. He made provisions to all the animate, inanimate, rational and irrational beings. The long-lasting bounty of nature, made our life more pleasant, allowed us to develop, harvest and utilize it without being consumed. The natural resources are, well balanced, enough to satiate our needs but not the greed. Correspondingly, we owe a duty to eke our life ensuring its conservation, promotion and maintenance, failing which nature will not remain our saviour.

The seed of Indian civilization has been germinated, raised, reared and guarded with due reverence to the nature. Normative structure of Indian society is closely associated with nature saving formula. There is no strife between the almighty and the living beings. Gods and goddesses are having indispensable relationship with Plants, animals, birds, mountains, rivers, stones etc in one or the other way. This has not only made us god fearing but also infused compassionate concern towards it.

Indubitably, we are rational being, born free possessing the ability to do both good and evil. In the event of necessity, we have no bounds or reasons or rhyme, lose the capacity to decipher between what must be done and what must not be. No civic society, including God, would encourage disobedience to the precepts. Any defiance, hypocrisy and disbelief would

invite the wrath of the almighty vis-à-vis nature. Therefore, no one does have the right either to use natural resources haphazardly or to exploit natural ecosystems beyond their carrying capacity but shower compassion, respect and care with due deference. This shall be our dharma for the welfare of living being.

### **1.1 Panorama of Karnataka**

The State of Karnataka, originally known as State of Mysore, came into being immediately after the re-organisation of States, although the annals of history record its existence in 320-200 A.D. The term Karnataka is derived from the Kannada words 'karu' and 'nadu' which means "elevated land". Andhra Pradesh, Telangana, Kerala, Tamil Nadu, Maharashtra and Goa are its neighbouring States. Kannada is, one of the classical languages of India, an official language of the State. Konkani, Marathi, Tulu, Tamil, Telugu, Kodava, Beary and Sanskrit are also in usage. Literacy rate of the State is of 75.60%.

It is the eighth largest Indian State having, an area of 191,791 Sq. Kms (6.25% of India's total geographical area of 3,065,027 sq.km.), and 30 districts. It lies between 11.5° and 18.6° North latitude and 74.0° and 78.4° East longitudes on the South Western part of the Deccan Peninsula carrying 6.11 Crores populations. Its coastal range runs about 400 Km length situated between the Western Ghats and Arabian Sea (Learmonth A.T.A. et.al.1962). It lies between 11041 to 140211 North latitudes i.e. from Karwar town in the North to a little beyond Mangalore city in the South. On the basis of geographical structure and relief features territory of the State is divided into three major physiographic regions i.e. (1) Coastal Region ;(2) Malnad Region; and (3) The Maidan Region.

### **1.2 Forest Coverage**

The Karnataka State is, ranked at 18th place in the Country, encompassed with 36991 sq.km forest coverage i.e. 19.3% of its total geographical area. Out of this 73.88% is categorized as

Reserve forests, 10.15% as protected forests and remaining 15.97% as un-classed forest area including cultural landscape, running 22,919 sq.km, comprising of 1576 villages which are in Western Ghat's Ecologically Sensitive Area(ESA) / Ecologically Sensitive Zones(ESZs) / Protected Areas(PAs) / World Heritage Sites(WHSs). Amongst it has housed 5 national parks (2431.300sq.km.), and 21 wildlife sanctuaries (3887.827sq.km) in its fold.

The Western Ghats forests, widely known for rich fauna and flora, are very valuable as both genetic and natural resources. Many plant and animal species are endemic to forests in the State. Several economically important species such as Sandalwood (*Santalum album*), Rosewood (*Dalbergia latifolia*), Teak (*Tectona grandis*), Honne (*Pterocarpus marsupium*), White Cedar (*Dysoxylum malabaricum*) and many non-timber and other medicinal plant species grow naturally in the forests of Karnataka.

The flora of Western Ghats comprises about 12,000 species ranging from unicellular cyanobacteria to angiosperms. In this spectrum the flowering plants constitutes about 27% of Indian flora with 4000 species of which about 1,500 species are endemic. Most of the endemic plants of peninsular India are paleoendemic having found favourable ecological niches in the hill ranges on either side of the Western and Eastern Ghats. The ecological niches in Western Ghats resemble islands so far as the distribution of endemic species is concerned (Nayar, 1996). Many of these species are traditional source of medicines. Majority of the medicinal plants in India are higher flowering plants with trees 33 %, shrubs 20 %, herbs 32 %, climber 12 % and others 3 %. They also play a significant role in the economy of the country, providing raw materials for a variety of industries. Depletion of biodiversity at an alarming rate due to anthropogenic activities has necessitated inventorying, monitoring and management. Hence, vegetation and floristic studies have gained increasing importance and relevance in recent years.



The Western Ghats are also rich in faunal diversity and endemism (Daniels 2003; Sreekantha et al. 2007) accounting for 330 butterflies (11% endemics), 289 fishes (41% endemics), 157 amphibians (85% endemics), 156 reptiles (62% endemics), 508 birds (4% endemics) and 120 mammals (12% endemics). The central Western Ghats is also a rich repository of faunal diversity. They harbour many rare, endangered and endemic faunal species whose presence signifies the ecological importance of the region. Some faunal species occurring in this region are highly endemic and featuring in Red List of IUCN. They are also protected by the Schedules of Indian Wildlife Protection Act (1972).

### **1.3 Climate**

Karnataka has a tropical climate with three major seasons warm and dry from February to May, Monsoon from June to October and winter from November to January. The state has a salubrious climate, cosmopolitan culture and a global image, which makes the state an ideal destination to live and work. Different parts of the State have different types of climate. Coastal areas, Western Ghats and Malnad areas have moist rainy monsoon climate. Interior central and northern districts have semi-arid climate. Bellary, Bijapur region has arid and very warm climate. The highest recorded temperature was 45.6 °C (114 °F) at Raichur and the lowest recorded temperature was 2.8 °C (37 °F) at Bidar.

### **1.4 Rainfall**

The State receives normal annual rainfall, 1139 mm, through southwest monsoon (June to September – 806 mm) and Northeast monsoon (October to December – 195 mm). The rainfall during post monsoon period, i.e. January- March is about 14 mm and in pre-monsoon period, (April to May) it is 124mm. Of these, the coastal zone receives the heaviest rainfall with an average rainfall of about 3,638.5 mm (143 in) per annum, far in excess of the state

average of 1,139 mm (45 in). Agumbe, in the Shivamogga district receives the second highest annual rainfall in India.

### **1.5 Rivers**

Karnataka is blessed with abundant water wealth in the numerous rivers and streams. The State Rivers have been classified into two systems one is in North and another in South i.e.

(1) Krishna and its tributaries, which includes the Bhima, Ghataprabha, Vedavathi, Malaprabha and Tungabhadra; and (2) Cauvery and its tributaries which embraces Hemavathi, Shimsha, Arkavathi, Lakshmana Thirtha and Kabini. Suvarnavathy, Manjra, Mahadayi/Mandavi, Kalinadi, Gangavalli (Bedthi), Aganashini (Tadri), Sharavathi, Chakra nadi, Varahi(Haladi), Netravathi, Uttara Pinakini, DakshinaPinakini, Palar and Barapole (Valapattanam) are other major rivers of the State.

### **1.6 Agriculture**

Indian economy is primarily agro-based, making agriculture as a way of life, by providing sustenance for our major population. Business, trade and avocation, directly or indirectly, are sizably connected to agro-systems-products. Nearly 44.6% of our population is finding their bread from agricultural, connected, activities. Out of total geographical area of 190.50 lakh hectares about 123.07 lakh hectares of land is cultivable out of which 21.97 lakh ha. Brought under irrigation.

The agro-policy of the Government is ‘Farmer Centric’. It is based on the concept of ‘Pancha Sutra’ i.e. (i) to protect and improve soil health, (ii) Conservation of natural resources, with special emphasis on water and micro irrigation, (iii) Timely availability of credit and other inputs to the farmers, (iv) Integrate post-harvest processing with the production process, and

(v) Reducing the distance between ‘Lab to Land’ in transfer of technology. The main object of this policy is to generate an honourable level of growth in the net income of the farmer through value addition and agro-processing.

The agricultural activities being undertaken in three agro-seasons i.e. (1) KHARIF (April to September); (2) RABI (October to December); and (3) SUMMER (January to March). Rice, jowar, ragi, corn, wheat, pulses, cotton, sugarcane, oil seeds, tobacco, coffee, tea, rubber, coconut, Arecanut, cashew, pepper, cardamom, spices, aromatic and medicinal crops, and tropical fruits etc. are the major agricultural and horticultural crops.

With the advent of green revolution, in mid-sixties, we adopted chemical approach to augment agricultural production. Day by day this has depleted the natural resource base for sustainable agricultural growth by disturbing the biological composition leading to lasting adverse impact on equilibrium. On realising its ill effects of it and in order to restore natural resource base ( viz soil health, fertility and vegetative cover), equilibrium ensuring sustainable agricultural growth with competitive edge, the Government has unveiled organic system of agriculture on conventional model trusting that this model would promote holistic development of natural resources aiming at sustainable livelihood and security for all life forms in the region.

### **1.7 Fisheries**

Karnataka State has 320 Km long coast line along with 27000 Sq. km continental shelf area, 5.65 lakh hectares of various inland water resources and has vast scope for fisheries development. The brackish water area of 8000 hectares also provides good scope for shrimp/ fish culture. There are about 9.61 lakh fishermen in the state of which 3.28 lakh fishermen in marine and 6.33 lakh fishermen are in inland who are involved in various fisheries activities.

Karnataka is in 6th position in marine fish production and 9th position in inland fish production when compared to fish production in the country.

### **1.8 Minerals**

Karnataka is widely known for rich mineral resources in India. Mineral deposits are found in all 30 Districts encompassing 1.92 lakh sq.km areas. It is having gold, silver, copper, iron-ore, manganese, limestone, dolomite, asbestos, felsite, bauxite dolomite, chromite, kaolin and granite rock in 1.92 lakh sq.km areas spreading across 30 districts.

### **1.9 Industry**

Industrial activities were gained momentum, in Karnataka, with a popular slogan 'Industrialise or Perish'. The pursuit of industrialisation, a step towards improving quality of life, made us to employ science and technology in production of goods and service though it is embedded with inherent risk or hazard. This has changed the scenario of Karnataka blending modern high-tech capital goods and knowledge intensive industries and traditional consumer goods industries e.g. Iron & steel, cement, sugar, textiles, machines, tools, Automotive, Aerospace, IT & BT. Consequently, Karnataka is considered as one of the most desired and potential industrial locations in the country for setting up resource based Industries and Demand Based Industries, Micro, Small and Medium industries, in the field of Agriculture, Horticulture, Live Stock & Poultry, Forest, Fisheries, Sericulture, Minerals /Glass & Ceramics, Rubber products, Plastic Products, Chemical Products, Pharmaceutical, Engineering (Automobile, Aerospace & Precision tools), Paper Products, Food & Allied Products, Mechanical Products, Metallurgy, Electrical Products, Gems & Jewellery, Leather Products, Handicrafts, Textile Products & Hosiery, Electronic Industries etc. Consequently, today, we are having 120 companies engaged in Machine Tools Manufacturing, Electronics

& Semiconductor Manufacturing, 221 formulation units and 74 bulk Drugs & Pharmaceuticals Manufacturing units, 500 companies connected to Large Infrastructure under Development for Promoting Petrochemical industry, 1054 large & medium manufacturing industries in various sectors in the State which include Machine Tool, Steel, Cement, Automotive and Aerospace industries, 1054 large & medium manufacturing industries in various sectors in the State which include Machine Tool, Steel, Cement, Automotive and Aerospace industries, about 2500 IT companies, about 600 Textile units, nearly 4.81 lakh Micro, Small and Medium Enterprises (MSMEs) and 319 tourist destinations.

## 2. Legal Mandate

Everyone, born free, enjoys equality in dignity and rights.<sup>1</sup> Right to adequate food, clothing, shelter, health, sanitation and education to have decent human existence is his inherent right<sup>2</sup> which is duly and equally protected from any kind of discrimination.<sup>3</sup> This could be made possible when he has contaminated/ pollutant free food, air, water and sanitation. Any contravening act or actions would adversely affect the healthy body and mind, the environment.

True, everyone is longing for qualitative life ensuring a favourable living and working environment. No dream for availing goods and services with the aid of science and technology without causing harm to the nature but find a means to mitigate the hazard to the reversible extent<sup>4</sup>. One shall be permitted to exploit, even one's own, natural resources subject to the environmental and developmental policies without causing any damage.<sup>5</sup> Correspondingly, exchange/ transfer of improved and innovative technical knowhow to

<sup>1</sup> Article 1, Universal Declaration of Human Rights, 1948; Article 14, Constitution of India

<sup>2</sup> Article 25, Universal Declaration of Human Rights, 1948; Article 21, Constitution of India; Proclamation 4, Principle 1, United Nations Conference on Human Environment at Stockholm from 6th to 16th June, 1972.

<sup>3</sup> Article 7, Universal Declaration of Human Rights, 1948; Article 15, Constitution of India

<sup>4</sup> Principle 6, United Nations Conference on Human Environment at Stockholm from 6th to 16th June, 1972, *M.C. Mehta and Anr. v. Union of India and Ors.* AIR 1987 SC 965.

<sup>5</sup> Principle 2, Rio Declaration on Environment and Development (1992).

strengthen endogenous capacity-building would become paramount, in this behalf, for the purpose of sustainable development.<sup>6</sup>

This Universe being called as Vasundhara, people lives therein belongs to vasudaiva Kutumbakam<sup>7</sup>, administrators are its trustees. Every inhabitant living therein is the beneficiary. He is allowed to enjoy usufructs, alone without putting the planet earth in stake, by nurturing the natural resources.<sup>8</sup> In pursuit of it he ensures that intellectual, moral, social and spiritual growth is achieved for himself and his progeny<sup>9</sup>. This trait of him groomed his culture and inspired him to work with creative and scientific mind for human development and paved the way for moulding human civilization.<sup>10</sup> In this process, care has been taken to see that, no ecological imbalance and the consequent environmental damage are caused, reparatory measures are initiated to alleviate damage if need be. This duty is on the Central Government, State Governments and Local Self Government E.g. Municipal Corporations, Municipalities and Panchayaths to save environment.<sup>11</sup>

Each and every act or action of transgression from the ecological norms or violation of rights guaranteed shall be put to judicial scrutiny to remedy the environmental maladies to avert damage to the person and property.<sup>12</sup> This would inculcate a confidence among the populace

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<sup>6</sup>Principle 29, Rio Declaration on Environment and Development (1992), "Concerned that biological diversity is being significantly reduced by certain human activities. Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures. Noting that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source. Noting further that the fundamental requirement for the conservation of biological diversity is the in-situ conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings." Preamble, Convention on Biological Diversity dated: 5th June, 1992

<sup>7</sup> VI.71-73 Mahopanishad

<sup>8</sup>*M.C. Mehta v. Kamal Nath and Ors.* 1997 (1) SCC 388.

<sup>9</sup> Proclamation 1, United Nations Conference on Human Environment at Stockholm from 6th to 16th June, 1972.

<sup>10</sup> The World Charter for Nature, United National General Assembly adopted on October 29, 1982

<sup>11</sup> Article 48A, 51A(g), 11<sup>th</sup> & 12<sup>th</sup> Schedule, Constitution of India; Proclamation 7, United Nations Conference on Human Environment at Stockholm from 6th to 16th June, 1972.

<sup>12</sup> Preamble, NGT Act, 2010.

to foster the natural objects in a natural state and instil fear in the mind of wrong doer.<sup>13</sup> This ordeal is not just to punish the culprit but to balance the eco-systems with an aim to promote common wealth.

## 2.1 Developmental (Environment) Policy

Indian society is 'eco-centric', wedded to nature. Our days used to begin with the oblation to the nature. The scenario has changed, with the advent of science and technology, introduction of Forest Policy of 1894 & 1952 and five-year plans as it has started, wielding dominion over the nature to make our life qualitative, moving from 'eco-centrism' to 'Anthropo-centrism'<sup>14</sup>. In a haste to raise the standard of living we entered the forest, converted forest land indiscriminately, without caring the interest of present and future generation. This unfettered exploitation of natural resources and developmental activities has paved the way for human conflict with nature and adversely affected the environment, eco-system, the plants and animals living within the forests causing irreparable loss. Resultantly, the forest cover was reduced below 15% and natural rain forest cover around 5% although the desired forest cover is 33%.<sup>15</sup> The Statement and reasons appended to Forest (Conservation) Act, 1980, underlines thus –

“(1) Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation had been taking place on a large scale in the country and it had caused widespread concern.

(2) With a view to checking further deforestation, the President promulgated on the 25th October, 1980, the Forest (Conservation) Ordinance, 1980. The Ordinance made the prior approval of the Central Government necessary for de-reservation of reserved forests and for

<sup>13</sup>*Ibid*, Preamble, Environment (Protection) Act, 1986.

<sup>14</sup>*Karnataka High Court Suo Motu v. The State of Karnataka*, 8 October, 2013.

<sup>15</sup>*T.N. Godavarman Thirumulpady. Union of India & others* (2012) 3 SCC 277; *T.N. Godavarman Thirumulpady. Union of India & Ors. Writ Petition (Civil) No. 202 of 1995*, Supreme Court of India, March 12, 2014.

use of forest-land for non-forest purposes. The Ordinance also provided for the constitution of an advisory committee to advise the Central Government with regard to grant of such approval.”

On realising the significance of intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components including the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere eco-ethics started marching from 'Anthropo-centrism' to 'eco-centrism'.<sup>16</sup>

On perceiving the threat of significant reduction or loss of biological diversity, lack of full scientific certainty and recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources and to meet the food, health and other needs of the growing world population we are resorting to *in-situ* measures and *ex-situ* conservation with the cooperation of people.<sup>17</sup>

In furtherance of Constitutional mandate<sup>18</sup> the State machinery is taking all possible and appropriate steps to -

- a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;
- b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;

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<sup>16</sup> “Whereas with the growing pace of urbanisation, industrialisation and increasing population, there has been indiscriminate felling of a large number of trees in the rural and urban areas of the State of Karnataka leading to erratic rainfalls, recurring famines and floods, soil erosion and consequent ecological disturbances; Whereas it is expedient to provide for the preservation of trees in the State by regulating the felling of trees and for the planting of adequate number of trees to restore ecological balance and for matters connected therewith”, Preamble to the Karnataka Preservation of Trees Act, 1976; Forest policy, 1988, F. No. 1-1/2012-FP (Vol.4) Government of India Ministry of Environment, Forest and Climate Change Forest Policy Division Draft National Forest Policy, 2018 (Approved Draft version).

<sup>17</sup> United Nation Convention of Bio-Diversity, 1992, Section 36, Bio-Diversity Act, 2002

<sup>18</sup> Article 48A, 51A(g), 11<sup>th</sup> & 12<sup>th</sup> Schedule, Constitution of India; Proclamation 7, United Nations Conference on Human Environment at Stockholm from 6th to 16th June, 1972.



- c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices;
- d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and
- e) Encourage cooperation between its Governmental authorities and its private sector in developing methods for sustainable use of biological resources.

### **3. The National Green Tribunal Act, 2010**

In furtherance of United Nations Conference on Human Environment held at Stockholm, in June, 1972, member States resolved to make provisions for effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for victims of pollution and other environmental damage United Nations Conference on Environment and Development held at Rio de Janeiro, June, 1992, to which India was a party. The need for setting up of a separate court on environmental issues, time and again, was underlined by the Supreme Court and Law Commission of India in its 186<sup>th</sup> report in 2003 as it has been looking for technical knowledge, expertise, speedy disposal, and continuous monitoring<sup>19</sup>. In corollary, National Environment Appellate Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997 was repealed.<sup>20</sup> Accordingly, the Union of India felt it is expedient, in view of the involvement of multi-disciplinary issues relating to the environment, to promulgate the

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<sup>19</sup>Society for Protection of Environment & Biodiversity Versus Union of India and others, Original application no. 677 of 2016 (M.A. No. 148/2017); the National Green Tribunal Principal Bench New Delhi, 8<sup>th</sup> December, 2017.

<sup>20</sup>Section 38, NGT Act, 2010.

National Green Tribunal Act, 2010<sup>21</sup> (No. Act of 2010) [in short 'NGT'] on 2<sup>nd</sup> June, 2010, for –

- a) 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; and
- b) Honouring the right to healthy environment as a part of Article 21 of the Constitution.

### 3.1 Constitution of Tribunal

The National Green Tribunal (NGT) is, a multi-disciplinary body but autonomous Adjudicatory Forum, consisting of a full-time Chairperson, judicial and non-judicial/ expert members. The non-judicial/expert members are drawn from the field of physics, chemistry, botany, zoology, engineering, environmental economics, social sciences and forestry who help and advise judges on, different aspects of environmental problems, on a regular basis to serve larger interests of environment and development.<sup>22</sup> It is felt that the combination of judicial member and non-judicial/expert members would facilitate the tribunal to equip better to dispense speedy and efficient justice by availing specialised knowledge.<sup>23</sup> However, they cannot claim parity of status on par with the judges of High Court since a separate mechanism created for their appointment.<sup>24</sup>

### 3.2 Jurisdiction

<sup>21</sup> The National Green Tribunal Act, 2010, has replaced the National Environmental Tribunal Act, 1995, vis-à-vis the National Environment Appellate Authority, which was established in 1997, since it was ridden with several inbuilt problems.

<sup>22</sup> Section 4, The National Green Tribunal Act, 2010

<sup>23</sup> *L. Chandra Kumar v. Union of India And Others*, 1997 (2) SCR 1186; *R.K. Jain v. Union of India*, 1993(65)ELT305(SC).

<sup>24</sup> Article 323-A, Constitution of India; *M.B. Mujumdar v. Union of India*, (1990) 4 SCC 501.

The NGT deals with civil cases, but not criminal cases, which contains substantial question concerning to environment including, enforcement of any legal right thereto, implementation of enactments specified in Schedule-I<sup>25</sup>. This, would vests original jurisdiction<sup>26</sup>, includes the enforcement of any legal right arising from these laws, or if there is a direct violation of a specific statutory environmental obligation by a person which affects the community at large (not just an individual); or causes substantial damage to the environment or property; or causes damage to public health that is broadly measurable. The environmental consequences shall relate to a specific activity or a point source of pollution.

The NGT is empowered to exercise Appellate jurisdiction and resolve cases in which a regulatory approval or consent granted or rejected by the Authorities concerned is being challenged provided it falls within the ambit of Schedule-I<sup>27</sup>. The Tribunal may cancel an approval or consent granted– if it is found to be illegally obtained. It can also issue a stop work notice or a stay order; or issue a direction to constitute committees of experts to carry out fact finding or monitor the implementation of its orders.

The NGT do have exclusive jurisdiction in respect of such dispute or such question relating to any claim for granting any relief or compensation or restitution of property damage or environmental damage and no other court is supposed to entertain such a case, and if such a case is filed, then the court is expected to ask the parties to approach the NGT for proper adjudication.<sup>28</sup>

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<sup>25</sup>Section 14, Schedule – I, NGT Act, 2010 i.e. The Water (Prevention and Control of Pollution) Act, 1974 (Water Act); The Water (Prevention and Control of Pollution) Cess Act, 1977; The Forest (Conservation) Act, 1980; The Air (Prevention and Control of Pollution) Act, 1981 (Air Act); The Environment (Protection) Act, 1986; The Public Liability Insurance Act, 1991; The Biological Diversity Act, 2002; *Wilfred J. v. Union of India*, 204 ALL (I) NGT Reporter 2013.

<sup>26</sup>Section 14, NGT Act, 2010.

<sup>27</sup>Section 16, NGT Act, 2010.

<sup>28</sup> Section 14,15& 29, NGT Act, 2010, In *Bhopal Gas Peedith Mahila Udyog Sangathan & Ors., v. Union of India &Ors.* the Supreme Court held as under:- "40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the 'NGT Act') particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule 1 should be

### 3.3 Relief

The NGT, when it deems fit, may by order in writing provide<sup>29</sup> -

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

### 3.4 Limitation

An aggrieved shall prefer an application before the NGT within six months from the date on which the cause of action of the dispute first arose. Even belated application, if filed within further period not exceeding 60 days, may be considered by the NGT when it is convinced that the applicant was prevented by reasonable cause to file the case within stipulated time<sup>30</sup>. However, this provision has been lucidly construed when the issue is an ongoing activity or continuing adverse impact on the environment to treat any point of time as the point when the cause of action first arose. Further, the NGT may entertain application for grant of any compensation or relief or restitution of property or environment when it is made within five

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instituted and litigated before the National Green Tribunal (for short 'NGT'). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and the NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before the NGT. This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule 1 of the NGT Act, should also be dealt with the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice." (2012) 8 SCC 326, *UK District Consumers and Citizen v. State of Karnataka* on 30 July, 2014 WP No.14000/2008 (GM-POL-PIL)

<sup>29</sup>Section 15, NGT Act, 2010.

<sup>30</sup> *ibid*

years from the date on which the cause for such relief and compensation first arose or within a further period not exceeding 60 days when there is a sufficient cause for the delay in filing.<sup>31</sup> A five year time period has been offered to contain possible impact of environmental degradation (like industrial pollution) which may not be apparent for a long time, but manifestly appear subsequently to an earlier event resulting in accrual of fresh right to sue and hence reckoning of fresh period of limitation.<sup>32</sup>

An appeal against the order of the Appellate Authority may be preferred to the NGT within a period of thirty days from the date on which the order or decision or direction or determination is communicated or within a further period not exceeding 60 days when there is a sufficient cause for the delay in filing.<sup>33</sup>

The application/appeal shall be preferred, in Form-I<sup>34</sup> concerning to specified cause of action claiming single or multiple reliefs regarding multiple cause of action provided they are consequential to one another and are based upon a single cause of action. The multiple causes of action again would be of two kinds. One, may arise simultaneously and other, may arise at a different or successive point of time. In the first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the “cause of action first arose” even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may give rise to a

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<sup>31</sup> *ibid*

<sup>32</sup> *The Forward Foundation v. State of Karnataka and others*, Before the National Green Tribunal Principal Bench New Delhi Original Application No. 222 of 2014, 7<sup>th</sup> May, 2015.

<sup>33</sup> Section 16, NGT Act, 2010.

<sup>34</sup> Rule 14 of the National Green Tribunal (Practices and Procedure) Rules, 2011.

fresh cause of action. The phrase “cause of action first arose”, would include there could be “cause of action first arose”, “recurring cause of action” or “successive cause of action”.<sup>35</sup>

### 3.5 Who Can Approach the Tribunal

An application for grant of relief or compensation or settlement of dispute may be made to the NGT by an aggrieved who is an individual or legal representatives of the deceased, duly authorized agent, representative body or organisation e.g. company, firm, trust, Non-Governmental Organisation (NGOs) etc., State Instrumentalities E.g. Municipalities, Municipal Corporation, Panchayath, Central / State Pollution Control Board etc. The person need not be directly affected by the project or development in question, but could be any person who is interested in protecting and preserving the environment<sup>36</sup>.

### 3.6 Seat Of NGT

The Principal Bench of the NGT is situated at New Delhi along with four Zonal Benches.<sup>37</sup>

The jurisdiction of the Bench is as under –

Sl. No.	Zone	Place of sitting	Territorial jurisdiction
1	Northern	Delhi (Principal place)	Uttar Pradesh, Uttarakhand, Haryana, Himachal Pradesh, Jammu & Kashmir, Delhi and Chandigarh
2	Western	Pune	Maharashtra, Gujarat, Goa, Daman & Diu, Dadra & Nagar Haveli
3	Central	Bhopal	Madhya Pradesh, Rajasthan &

<sup>35</sup>*The Forward Foundation v State of Karnataka and others*, Before the National Green Tribunal Principal Bench New Delhi Original Application No. 222 of 2014, 7<sup>th</sup> May, 2015.

<sup>36</sup>Section 18, NGT Act, 2010.

<sup>37</sup>Section 4, NGT Act, 2010, MoEF notification Dated: August 10, 2017.

			Chhattisgarh
4	Southern	Chennai	Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, Pondicherry, and Lakshadweep
5	Eastern	Kolkata	West Bengal, Odisha, Bihar, Jharkhand, Assam, Nagaland, Mizoram, Arunachal Pradesh, Manipur, Tripura, Meghalaya, Sikkim, and Andaman & Nicobar Islands

### 3.7 The NGT Verdict

The NGT shall hear and finally dispose the application or appeal, as the case may be, as expeditiously as possible but within six months from the date of its filing after providing the parties concerned an opportunity to be heard<sup>38</sup>. While passing any order or decision or award, including the costs, the NGT shall apply the principles of sustainable development, precautionary principle and the polluter pay principle<sup>39</sup>. Such decision shall be taken by majority. If the opinion of members is equally divided such matter shall be referred to the other member who has not heard earlier.<sup>40</sup>

### 3.8 Appeal

The party aggrieved from the decision of the NGT may prefer an appeal to the High Court and Supreme Court on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908, within ninety days from the date of communication of the award, decision or order of the NGT. The High Court and Supreme Court, as the case may be, may

<sup>38</sup>Section 18, NGT Act, 2010.

<sup>39</sup> Section 20 & 23, NGT Act, 2010, *The Forward Foundation v. State of Karnataka and others*, Original Application No. 222 OF 2014, The National Green Tribunal Principal Bench New Delhi 7th May, 2015.

<sup>40</sup>Section 21, NGT Act, 2010.

entertain any such appeal after the expiry of ninety days if it is satisfied that the Appellant was prevented by sufficient cause from preferring the appeal<sup>41</sup>.

### 3.9 Review

The NGT may review its own order/decision<sup>42</sup>, akin to the Civil Court<sup>43</sup>, on the discovery of new or important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/ decision<sup>44</sup>.

However, the NGT cannot exercise the power of judicial review of legislative action to the exclusion of the High Courts and the Supreme Court<sup>45</sup> but competent to hear matters where the vires of subordinate legislations and rules are questioned.<sup>46</sup>

### 3.10 Court Fee

The Applicant or Appellant, if claims compensation, shall pay a fee of equivalent to one percent of the amount claimed subject to a minimum of rupees one thousand. The application may be filed either individually or jointly<sup>47</sup>. Whereas for writ Petition, other than the writ of

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<sup>41</sup>Section 22, NGT Act, 2010.

<sup>42</sup> Section 19(4)(f), NGT Act, 2010.

<sup>43</sup> Order XLVII, Rule 1, Code of Civil Procedure, 1908.

<sup>44</sup> *State of West Bengal and Ors v. Kamal Singh and Anr*, (2008) 8 SCC 612.

<sup>45</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

<sup>46</sup> *Social Action For Forest And Environment (SAFE) v. Union of India and others*, Review Application No. 32 of 2015 in Original Application No. 179 of 2014 The National Green Tribunal Principal Bench New Delhi 10<sup>th</sup> December, 2015.

<sup>47</sup> Rule 12, National Green Tribunal (Practices and Procedure) Rules, 2011



Habeas Corpus, or a petition under Article 227, Constitution of India, to the High Court rupees one thousand needs be paid.<sup>48</sup>

### **3.1 1 Powers and Functions Of NGT**

The National Green Tribunal has complete control over its functioning and all the administrative powers, including transfer of cases, constitution of benches and other administrative control over the functioning of the Tribunal, are vested in the Chairperson of the NGT under the provisions of the NGT Act.<sup>49</sup>

### **3.12 Compensation**

The compensation awarded or relief ordered, by the NGT, on the ground of any damage to environment shall be remitted to the Authority mentioned in Section 7A (3) of the Public Liability Insurance Act, 1991, to facilitate to credit the same to the Environmental Relief Fund and the same shall be utilised, by the person or authority concerned, for such purposes as may be prescribed.<sup>50</sup>

## **Supreme Court of India and High Courts**

The Parliament, by law, has constituted the NGT to resolve all civil cases where substantial question relating to environment (including enforcement of any legal right relating to

<sup>48</sup>Article 11(s), Schedule II, Karnataka Court-fees and Suits Valuation Act, 1958.

<sup>49</sup>Society for Protection of Environment & Biodiversity v. Union of India and others, Original Application No. 677 OF 2016(M.A. NO. 148/2017) The National Green Tribunal Principal Bench New Delhi, 8<sup>th</sup> December, 2017.

<sup>50</sup>Section 24, NGT Act, 2010.

environment), is involved and such question arises out of the implementation of the enactments specified in Schedule-I.<sup>51</sup>

The National Green Tribunal Act specifically keeps out Civil Court from exercising Jurisdiction to settle dispute or entertain any question to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated by the NGT<sup>52</sup> but allows the Supreme Court to entertain any appeal on any one or more of the grounds specified in Section 100, Code of Civil Procedure Code, 1908, but, it does not exclude the jurisdiction of the High Court<sup>53</sup>. Thus, all the decisions of the NGT may be subjected to the jurisdiction of the High Court, within whose territorial jurisdiction the Tribunal concerned falls, under Articles 226/ 227 of the Constitution and heard by a Division Bench of respective High Court. This would enable to filter out all frivolous claims and ensures to have reasoned decision on merits. Correspondingly, the decisions of NGT would be subjected to judicial scrutiny of the High Court under Article 227 of The Constitution.<sup>54</sup>

## 4. Challenges Faced By the NGT

### 4.1 Vacant Positions

The National Green Tribunal (as earlier mentioned) was setup after the ineffectiveness of the National Environment Tribunal (NET) and the National Environmental Appellate Authority (NEAA). The reasons for the failure of the NET and the NEAA was simply because of the ignorance and/ or lack of political will by the Governments to establish a powerful and specialised authority dealing in environmental matters. At the beginning of the NGT its fate

<sup>51</sup>Article 323A, Constitution of India, r/w Constitution (42nd Amendment) Act, 1976, Section 14, NGT Act, 2010; *S.P. Sampath Kumar v. Union of India*, (1987)1SCC 386.

<sup>52</sup>Section 29, NGT Act, 2010.

<sup>53</sup>Section 22, NGT Act, 2010.

<sup>54</sup>*H S Neelakantappav. State of Karnataka*, WP NO.47599/2011 (GM-RES-PIL) c/w WP NO.25255/2012 (GM-RES-PIL) Karnataka High Court on 8<sup>th</sup> July, 2013.

seemed to be heading in the same directions as its predecessor authorities. The NGT was established on 18.10.2010 with Sh. Justice L.S. Panta being appointed as the first Chairman.<sup>55</sup> The appointment of the Chairman was however not enough for the Tribunal to start functioning.<sup>56</sup> The NGT Act after coming into effect repealed the NET and the NEAA and as a result all the cases pending before the NEAA was to be decided by the NGT however since there was no Expert Members appointed hence even the NGT could not hear any matters thus leaving all pending cases in a limbo<sup>57</sup> and no redressal forum being available to citizens for new matters. It was only after the intervention and orders of the Supreme Court that the MoEF finally appointed more judicial members and an equal number of expert members after which the NGT heard its first matter on May 25<sup>th</sup> 2011. The reason for tracing the original issues is to show how not much has changed even today. The current strength of the NGT is 4 judicial members and 2 expert members<sup>58</sup> as against the sanctioned strength of 10 judicial members and 10 expert members. Time and again it has been reported that applicants have to travel to Delhi and appear before the Principal Bench as the Zonal Benches lack the adequate minimum number of members to decide a matter.<sup>59</sup>

#### **4.2 The number of Benches and their location hinders justice.**

On one end we notice that the existing Benches are not able to function due to inadequacy if requisite members on the other hand there is a growing demand for the setting up of more Benches across the country. Dayamani Barla has been an instrumental tribal leader in fighting for the rights of the forest dwellers and tribal people affected by displacement due to mining activities. She states that “A green tribunal should have been based in a place that has the

<sup>55</sup> Available at <http://www.greentribunal.gov.in/writereaddata/notice/rti.pdf> accessed on 27.03.2019

<sup>56</sup> Section 4(4)(c) “provided that the number of Expert Members shall, in hearing an application or appeal, be equal to the number of judicial members hearing such application or appeal.

<sup>57</sup> Available at <https://casi.sas.upenn.edu/iit/ghosh> accessed on 27.03.2019

<sup>58</sup> Available at [http://www.greentribunal.gov.in/judicial\\_members.aspx](http://www.greentribunal.gov.in/judicial_members.aspx) accessed on 27.03.2019; available at [http://www.greentribunal.gov.in/expert\\_members.aspx](http://www.greentribunal.gov.in/expert_members.aspx) accessed on 27.03.2019

<sup>59</sup> See, < <https://economictimes.indiatimes.com/news/environment/developmental-issues/benches-shut-ngt-forcing-petitioners-to-come-to-delhi/articleshow/63918018.cms?from=mdr>>

highest forest cover or large mineral deposit. That is where the dispute is and that is where the extremely poor live”.<sup>60</sup> Her statement does have a strong logical basis since the Principal Bench and the Four other Benches are in cities far away from forests and mines where most of the pollution matters occur. The alternative argument may be made that the Benches in such places far away from cities may not function as lawyers and retired judges would not be very willing to travel such distances far away from cities. However, the question that needs to be answered is “whether the NGT was setup for the access to justice and for the ease and convenience of fighting cases by the poor and the marginalised or was it setup for the convenience of practice for lawyers and judges?” It is indeed worrisome to imagine a tribal person or a poor litigant who may have to travel long distances to appear before the Tribunal against large industries and the Government. Under such circumstances the litigant would more often than not choose to refrain from approaching the Tribunal and continue to suffer quietly as though it was a matter of fate.

#### **4.3 Dilution of Powers and effectiveness of NGT**

From its very inception the NGT has been like a thorn in the side for the MoEF. Earlier, the MoEF gave environmental clearances without there being any authority to check its powers however with the establishment of the NGT more and more of its orders began to be challenged in the Tribunal. Such was the tension between the two bodies that in an affidavit filed before the Supreme Court the then MoEF & CCs deputy secretary had stated that the NGTs conduct was an “embarrassment” to the Government in Parliament.<sup>61</sup> While the NGT has on a number of occasions reprimanded the Ministry for lackadaisical behaviour in attending hearings. The tussle between the two bodies has been out in the public domain. Also, the continuous check by the NGT on government policies and clearance certificates is

<sup>60</sup> See < <http://www.greentribunal.gov.in/Writereaddata/Downloads/NGT2017Vol2combine21112017.pdf> >

<sup>61</sup> See, < <https://www.downtoearth.org.in/coverage/tribunal-on-trial-47400> >

causing frustration in the power corridors. The growing insecurity of the executive can be seen in the Finance Act, 2017 which makes several changes in the constitution of NGT members, their appointments, salaries conditions of services etc.<sup>62</sup> The government to avoid any debate in the Parliament chose to the route of the Finance Bill instead of making amendments to the NGT Act.<sup>63</sup> These changes effectively violate the independence of the Tribunal members which in turn put a deliberate check on its powers. The changes incorporated will in effect force the members of the NGT to bow down before the whims and fancies of the executive. As was expected there was a huge public outcry against the amendments in the Finance Act of 2017. Several petitions were filed in the Supreme Court to scrap the amendments on grounds of unconstitutionality. The Supreme Court began hearing pleas challenging the said Act<sup>64</sup> and put a stay on certain portions of the Act which were being contested.<sup>65</sup>

#### **4.4 Arbitrariness in passing judgements**

One of the ingenuities in the NGT Act is that it does not need to abide by the Code of Civil Procedure, 1908<sup>66</sup> (CPC) nor is it bound by the rules of evidence under the Indian Evidence Act, 1872<sup>67</sup> (IEA). The Tribunal is only bound by the Principles of Natural Justice and is even allowed to frame its own rules of procedure. The reasoning behind such exemption to the Tribunal is based on earlier judgments with regard to environment protection. While devising the new mechanism of Public Interest Litigation (PIL) the Supreme Court did away with many procedural aspects (for e.g. the rule of locus standi) to provide access to

<sup>62</sup> Section 183 and 184, The Finance Act, 2017

<sup>63</sup> See, < <https://timesofindia.indiatimes.com/india/finance-act-2017-emasculates-the-national-green-tribunal-pil-in-sc/articleshow/59928357.cms>>

<sup>64</sup> See, < <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-to-hear-pleas-challenging-finance-act-provisions-on-november-23/articleshow/60974031.cms?from=mdr>>

<sup>65</sup> See, < <https://www.thehindu.com/news/national/sc-stays-new-tribunal-rules/article22708072.ece>>

<sup>66</sup> Section 19 (1), National Green Tribunal Act, 2010.

<sup>67</sup> Section 19 (3), National Green Tribunal Act, 2010.

environmental justice to people. Consequently, the PIL became the chosen path to approach the Supreme Court in most environmental matters. The fact that NGT is not bound by the CPC and the IEA does make its functioning more effective in the sense that it does not waste time in unnecessary formalities however without a reasonable set of guidelines the Tribunal has on certain occasions resorted to “guess work” while computing fines and compensation. In a matter before it in 2015 the bench fined Triveni Industries with 25 Lakhs and stated “At this stage it is not possible to determine with certainty the extent of pollution caused and consequences of the violations committed by the industry and therefore some kind of guesswork has to be applied by the Tribunal to direct payment of environmental compensation”<sup>68</sup>. There have been many similar incidents in which the Tribunal had to resort to guesswork<sup>69</sup>. The result of such guess work can have detrimental effects and will raise questions on the impartiality of the Tribunal. Justice cannot be dependent on some kind of guesswork and the Tribunal will have to work towards formulating mechanisms for calculation of fines.

#### **4.5 Post Judgement Impact Analysis**

One of the major challenges faced by the NGT is the effective implementation of its orders and judgements. The body is already functioning with bare minimum staff to even adjudicate the matters that come before it. In such situations it becomes extremely difficult if not impossible for the members of the NGT to keep a regular check on the implementation of its orders. Handing over this task to the executive seems problematic given the fact that a majority of the cases are filed against government orders as well. Simply speaking the NGT just does not have the numbers to keep a check on its orders being carried through. A

<sup>68</sup> Krishan Kant Singh v. M/s. Triveni Eng. Industries Ltd. Before the National Green Tribunal Principal Bench New Delhi, Original Application No. 317 Of 2014.

<sup>69</sup> See, < <http://www.indiaenvironmentportal.org.in/files/file/green-tribunal-green-approach-report.pdf> >

judgement without its implementation is as good as no judgement. Environmental justice cannot be said to have been done unless the Tribunal comes up with mechanisms to ensure that its judgements are being executed in letter and spirit. One of the reasons for ineffective implementation is also the fact that many of the matters which come up before the NGT are common concerns of public nature thus, no one single person pursues the matter to its end and ultimately the task rests with the executive or the Pollution Control Boards to give effect to the judgement. Another concern is the distribution of compensation money. Many NGOs and environmental lawyers agree that there have been many instances wherein the violator has, in consonance with the judgment deposited the required amount. However, even then the disbursement process is cumbersome and often delayed.<sup>70</sup>

#### **4.6 Biased Committees Reports**

In 1980 one of India's most famous judges, Justice V.R. Krishna Iyer while hearing a matter, visited the polluted site himself to get first-hand information of the situation on the ground<sup>71</sup>. It is true that a judge cannot himself go to the site in every pollution matter before himself. However, judges also cannot rely solely on affidavits. In court rooms judges have to decide the case on facts and evidences produced before him, but how does the judge decide which set of facts are true and which one is fabricated? Therefore, to take stock of the ground situation judges rely on Committees. These Committees are formed to report to the judge of the actual state of affairs. The Committees however are more often than not formed by senior bureaucrats; members of NGOs, environment activists and each have their own biased agendas. Therefore, the Committee reports have often been questioned.<sup>72</sup>

<sup>70</sup> See, <<https://www.downtoearth.org.in/coverage/governance/tribunal-on-a-tightrope-60224>>

<sup>71</sup> Municipal Council, Ratlam vs Shri Vardhichand & Ors. 1980 AIR 1622

<sup>72</sup> See, < <https://www.hindustantimes.com/delhi-news/art-of-living-questions-ngt-expert-committee-report-on-yamuna-damage/story-ikcI02FsPDkKleQbeCERUK.html>> , < <https://www.newsclick.in/thoothukudi-sterlite-protests-tarun-agarwal-committee-report-flawed>>

## 5. Environmental Issues in Karnataka

The following are few of the environmental issues which the State of Karnataka is currently grappling with:

### 5.1 Bio-Medical Waste Treatment

Today, Karnataka State, in particular Bengaluru, is emerging as health tourism hub, owing to rise in the standard of health care, by attracting People across the nation and Asian countries. In corollary- consequent to the raise in bedded healthcare facilities and non-bedded clinics - hospital waste collection, packaging, transportation, storage, processing, treatment and disposal has posed risks to healthcare workers, patients, waste handlers, rag pickers and the general public.<sup>73</sup> It is high time to lend attention to provide facilities to establish Common Bio-Medical Waste Treatment Facility (in short 'CBWTF') to avert adverse impact on the environment. The bio-medical waste shall be handled, treated and disposed without any deleterious effect to human health and ecosystem<sup>74</sup>. Poorly managed, sharps have a considerable risk potential for healthcare workers, waste handlers and the community. Failing which infected bio-medical waste would act as an agent to transmit virulent diseases not only to the healthcare professionals but also to the people handling them like waste handlers and rag pickers. However, no occupier shall establish on-site treatment and disposal facility, if service of common biomedical waste treatment facility is available at a distance of 75 km.<sup>75</sup>

### 5.2 Sand Mining

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<sup>73</sup>State of Environment Report Bangalore 2008 Department of Forest, Ecology and Environment Government of Karnataka.

<sup>74</sup>Rule 8, Bio-Medical Waste (Management & Handling) Rules, 2016.

<sup>75</sup>Rule 7, ibid



Today, sand and gravel are the most sought-after construction materials, for roads, bridges, buildings etc, across the globe. The River (riverbed and flood plain), Lakes and reservoirs and coastal bank/ seabed are the main pockets for sand in Karnataka. River sand mining is a common practice as habitation concentrates along the rivers and the mining locations are preferred near the markets or along the transportation route, for reducing the transportation cost. Ecosystem does cooperate when it is optimally exploited and would be replenished on the passage of time.<sup>76</sup> However, sand mining needs to be done at right time, right place and without damaging the river bed or margins.<sup>77</sup>

Over the years the demand for sand and gravel, though the people had alternate material<sup>78</sup>, is ever increasing beyond its replenishment capacity and caused heavy pressure on the supply of the sand resource. During the course of sand mining, no care has been taken to discern between zone of erosion and zone of deposition. Unscientific planning and management of sand mining, from in-stream and upstream of rivers, has been causing disturbance on marine ecosystem by upsetting the ability of natural marine processes to replenish the sand. This has adversely resulted on the stream's physical characteristics like channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, water turbidity, temperature etc.

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<sup>76</sup>The Processes of sand mining are - (a) Identification of areas of accretion / deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited. (b) Calculation of annual rate of replenishment and allowing time for replenishment after mining in area. (c) Identifying ways of scientific and systematic mining. (d) Identifying measures for protection of environment and ecology. (e) Determining measures for protection of bank erosion. (f) Identifying steps for conservation of mineral. (g) Implementing safeguards for checking illegal and indiscrete mining, Sustainable Sand Mining Management Guideline September 2015 Ministry of Environment, Forest & Climate Change Government of India, New Delhi.

<sup>77</sup>Sustainable Sand Mining Management Guideline September 2015 Ministry Of Environment, Forest & Climate Change Government Of India, New Delhi

<sup>78</sup>Ibid, Bureau of Indian Standards(BIS), the National Standards Body of the country has evolved alternate materials on various precast concrete products such as solid and hollow concrete blocks, light weight concrete blocks, autoclaved aerated concrete blocks, preformed foam concrete blocks, partial prefabricated concrete flooring and roofing units, concrete pipes, etc, all permitting use of fly ash and slag.

Further it is, posing threat to the safety of bridges, disturbing ecological equilibrium of riverine regime including the in-stream biota and riparian habitats.<sup>79</sup>

### 5.3 Plastic

Today, plastic products<sup>80</sup> are having immutable say in our walk of life, nobody is in a position to say no it, as it is available at consumer-friendly price. Consequent to the demand, across India about 30,000 processing units 150 plastic processing machinery manufacturers and 2,000 exporters are functioning to satiate the need of consumers<sup>81</sup>. In Karnataka, there are about 2996 plastic producing industries are located. Among them Karnataka State Pollution Control Board (in short 'KSPCB') has accorded permission to 201 manufacturing units to produce carry bags, out of which 120 units are working in Bengaluru and these units is said to have been producing plastic to the tune of 77,247 tons every year.<sup>82</sup> Annual average per capita consumption of plastic in India is of 11 kg(as against global average of 28kg), though lags behind in disposing plastic waste when compared to other nations,<sup>83</sup> and the per capita consumption is expected to rise to 20 kg by 2022.<sup>84</sup> Alarming and indiscriminate usage of plastic is generating about 15,000 tonnes of plastic every day of which about 40% remains uncollected and about 70% of plastic packaging products become

<sup>79</sup>Deepak Kumar etc. Vs State of Haryana and Others. SPECIAL LEAVE PETITION (C) NO. 19628-19629 OF 2009, Supreme Court of India, on 27 February, 2012.

<sup>80</sup>e.g. bags, containers, bottles, packaging material, homes, water pipes, toilet seats, the insulating material in wires, hospitals, agriculture, the automobile/transport industry, building and construction, furniture and housewares, toys etc.,

<sup>81</sup>See, <<https://yourstory.com/2018/06/plastic-disposal-karnataka-best-practices/>>

<sup>82</sup>M/s. K.K. Plastic Waste Management Pvt Ltd. and others Vs The State of Karnataka and others Application No.110 of 2016(SZ) Appeal Nos.117, 118, 119, 125, 128 to 130 of 2016 (SZ) Diary No.542 of 2016 In Appeal No. of 2017, Before The National Green Tribunal Southern Zone, Chennai Dated: 13th January, 2017

<sup>83</sup>See, < <https://timesofindia.indiatimes.com/india/local-manufacturing-cheap-prices-defeating-ban-on-plastic-carry-bags-in-india-study/articleshow/64443561.cms><https://www.downtoearth.org.in/news/waste/an-indian-consumes-11-kg-plastic-every-year-and-an-average-american-109-kg-60745>>

<sup>84</sup>See, <[https://www.business-standard.com/article/companies/demand-for-plastics-high-in-south13112800981\\_1.html](https://www.business-standard.com/article/companies/demand-for-plastics-high-in-south13112800981_1.html)>

waste in a short span.<sup>85</sup> Virtually, the plastic industries in Karnataka are responsible for the generation of about 28 metric tons plastic waste per day. It is said about 11 metric tons of plastic waste per day is generated in Bengaluru city from about 1,199 industries out of which about 35 tons of non-recyclable plastic is being disposed indiscriminately every day in and around Bengaluru.<sup>86</sup> The plastic is derived from chemical polymer which is generally, remains inert, not bio-degradable through natural process and does not decompose for a long period leading to one or the other form of pollution, causing adverse effect on environment and the health of human being/ flora and fauna by moving into the food chain, soil and water courses. Further, it not only spoils the aesthetic beauty of the places where it is dumped but also adds to the municipal solid waste issues.<sup>87</sup>

#### 5.4 Land Encroachment

The environment, [inalienable] is pleasing, eternal, indispensable and everything for every living being. We are being the beneficiary shall, ardently cherish and nourish for future generations, not be ruthless destroyer. No ravenous act would ever bring us any joy and love.<sup>88</sup> On realising the importance of environment, while giving ourselves the Indian Constitution, we resolved to impose fundamental duties on every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.<sup>89</sup> Even the Constitutional mandate directs the State to make

<sup>85</sup>See, <<https://www.thehindu.com/news/national/indias-per-capita-plastic-use-among-lowest-modi/article24089578.ecehttps://timesofindia.indiatimes.com/india/india-processes-24-per-cent-of-solid-waste-generated-govt-data/articleshow/63259274.cms>>

<sup>86</sup> Waste management, Karnataka State of the environment report 2003

<sup>87</sup>M/s. K.K. Plastic Waste Management Pvt Ltd. and others Vs The State of Karnataka and others Application No.110 of 2016(SZ) Appeal Nos.117, 118, 119, 125, 128 to 130 of 2016 (SZ) Diary No.542 of 2016 In Appeal No. of 2017, Before The National Green Tribunal Southern Zone, Chennai Dated: 13th January, 2017, Environmental Management & Policy Research Institute (EMPRI). State of Environment Report Karnataka 2015

<sup>88</sup>Principle No. 3, Stockholm Declaration of United Nations on Human Environment, 1972

<sup>89</sup>Article 51A, Constitution of India

sincere endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.<sup>90</sup> Amid of industrialization, urbanization and explosion of population the State have been making honest attempt to, put an end to overexploitation of resources, promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political justice is met.<sup>91</sup> In furtherance of it, the State is striving to ensure 33% forest cover in the territory.<sup>92</sup> Correspondingly, a major thrust has been accorded to reassure environmental stability and maintenance of ecological balance/atmospheric equilibrium,<sup>93</sup> by augmenting perennial flow of ecosystem services, including watershed, biodiversity, cultural and spiritual services to both upstream and downstream population since these are vital for the sustenance of all life forms, human, animals and plants.

### 5.5 Wetland<sup>94</sup> Spoilage

The Karnataka is having 5,42,515 ha. Of wetland area, out of which 3,320 ha. are Natural wetlands and 5,39,195 ha. are Manmade, amongst MoEF identified two as Natural i.e. Sharavathi valley (Thalakalale Jog Falls) & Kargal and twenty as Manmade.<sup>95</sup> In these wetlands about 36,696 inland water bodies are identified. A proactive approach has been infused to conserve these systems and areas and, if required, their revitalization to meet the

<sup>90</sup>Article 48A, Constitution of India

<sup>91</sup>Article 38, Constitution of India

<sup>92</sup>National Forest policy 1988, T.N. Godavarman Thirumulpad Vs Union of India & Ors., Writ Petition (Civil) No. 202of 1995, Supreme Court of India, March 12, 2014.

<sup>93</sup>Draft National Forest policy 2018,

<sup>94</sup>Article 1.1 "...wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres". Article 2.1 further provides that it "...may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands." International Convention on Wetlands (i.e. Ramsar Convention), Section 2 (g) "wetland" means an area of marsh, fen, peatland or water; whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters, but does not include river channels, paddy fields, human-made water bodies/tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreation and irrigation purposes, Wetlands (Conservation and Management) Rules, 2017

<sup>95</sup>Wetlands of India Directory MoEF,1990

aspirations of present and future generations to prevent it from degradation and ultimate death.<sup>96</sup> Thus, a statutory prohibitions are imposed on such activities which are perilous in nature apart from initiating ‘Site-specific and Non-Site –Specific’ measures.<sup>97</sup> The objectives of these prohibitions is to make the people to share the resources with each other, to the extent it could be replenished by caring earth, adopting life styles and development path that respect and work within nature’s limits. The Supreme Court said <sup>98</sup> –

“Nation's progress largely depends on development; therefore, the development cannot be stopped, but we need to control it rationally. No government can cope with the problem of environmental repair by itself alone; peoples' voluntary participation in environmental management is a must for sustainable development. There is a need to create environmental awareness which may be propagated through formal and informal education. We must scientifically assess the ecological impact of various developmental schemes. To meet the challenge of current environmental issues; the entire globe should be considered the proper arena for environmental adjustment. Unity of mankind is not just a dream of the enlightenment but a biophysical fact.”

## 6. Important Environmental NGT Cases in the State Of Karnataka

### 6.1. T.N. Godavarman Thirumalpad Vs. Union of India & Ors. And Cauvery Sene (Regd.), Medikeri vs. The State of Karnataka<sup>99</sup>

This case was regarding the felling of trees in Karnataka. The Tribunal in its order directed that all persons felling, cutting trees in the forest area or even on the private land were

<sup>96</sup>National Lake Conservation Plan (NLCP) since 2001, National Water Policy-2002

<sup>97</sup>Wetlands of India Directory MoEF,1990, Article 2.1 & 3.1, International Convention on Wetlands (i.e. Ramsar Convention),

<sup>98</sup>Karnataka Industrial Area Development Board v C Kenchappa AIR 2006 SC2038.

<sup>99</sup>Before the National Green Tribunal, Principal Bench, New Delhi, M.A. No. 1182 of 2015 (I.A. No. 2530 of 2009) M.A. No. 1183 of 2015 (I.A. No. 2531 of 2009) In W.P. (C) No. 202 of 1995 And Original Application No. 167 of 2016 (Earlier no. 30/2013 (THC) (SZ) W.P. No. 3388 of 2009) Decided in 2017.

prohibited from cutting the trees unless and until they plant before cutting, 10 trees for each tree cut or felled from and/or proposed to be felled or cut. Further, such persons shall have to deposit sufficient money with the Forest Department to ensure that the trees were duly cared for and due protection was provided to them at least for a period of 5 years from the day of planting. The place of planting, the Tribunal said should be on that land itself or in the nearby land as determined by the Forest Department subject to the conditions mentioned above by the NGT. The Tribunal stated that the Forest Department of the State of Karnataka was required to monitor compliance of this Order.

### **6.2 K.N. Somashekar vs. State of Karnataka & Others<sup>100</sup>**

This case was regarding the Yettinahole water diversion project in Karnataka. The NGT in this case restrained the State Government of Karnataka and the Project Proponent from felling, cutting any trees without obtaining permission from the Competent Authority under the Karnataka Preservation of Trees Act, 1976 and if they were given permission they would simultaneously carry on afforestation at least 10 times of the trees that were felled and produce proof thereof before the Tribunal of the same.

### **6.3 Narayana Manjunatha Hegde & Others Vs Union of India & Others<sup>101</sup>**

This case was regarding the Environment Clearance (EC) granted by the State Level Environment Impact Assessment Authority (SEIAA), Karnataka dated 17/02/2011 for establishing a Municipal Solid Waste Plant (MSW Plant) in Manaki Village, Kumta Taluk, Uttara Kannada District, Karnataka. The Principal Chief Conservator of Forest, Karnataka in his letter dated 14/12/2005 had submitted a proposal to obtain approval Section 2 of the

<sup>100</sup>Before the National Green Tribunal, Principal Bench, New Delhi, M.A. Nos. 862 of 2016 & M.A. Nos. 863 of 2016 In Original Application No. 393 of 2016 (Earlier Application No. 118/2016) (SZ) And M.A. No. 864 of 2016 In Original Application No. 394 of 2016

<sup>101</sup>Before The National Green Tribunal Southern Zone, Chennai, Application No. 1 of 2012 (SZ) W.P.No.36467 of 2011 (High Court of Karnataka)

Forest (Conservation) Act, 1980 for diversion of 2.00 ha of forest land in Survey No.108A of Manaki Village for the purpose of establishing MSW plant at Kumta Town in favour of Town Municipal Council, Kumta. The NGT, after looking at the facts of the case in its Order declared that the notification of the Government of Karnataka dated 06/04/2009 in granting approval for the establishment of MSW plant at Kumta Town was null and void.

#### **6.4 M/s A. Purushottam Chitrapur vs. Union of India & Others<sup>102</sup>**

This case was regarding the Yettinahole water diversion project. The Counsel appearing for the State of Karnataka submitted that about 6,000 trees had been fell/ cut, however, in lieu thereof approximately 3,200 trees had been planted under the scheme of afforestation. This statement was disputed by the counsel appearing for the Applicants. According to them the respondents had already felled more than 15,000 trees approximately and they did not have proper permission from the Competent Authority to do so.

In view of the disputed facts, the Tribunal directed the Senior Officer from the Regional Office of MoEF &CC to visit the area in question along with the Applicants, Officers of the Respondents. It stated that the inspection, if needed, would continue on day today basis, till its conclusion. The Tribunal directed that the composite report by the State Officer should be submitted before the Tribunal, with regard to the trees that had been cut/fell for this project and the afforestation thereof and the likely impact of felling of large number of trees on the environment and ecology of the area as it could not be disputed that it was an eco-sensitive area and had effects on the wildlife habitat.

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<sup>102</sup>Before The National Green Tribunal, Principal Bench, New Delhi , Original Application No. 392 of 2015 (Earlier Application No. 83/2015 (SZ)) And Original Application No. 391 of 2016 (Earlier Application No. 49/2015 (SZ)) AND Original Application No. 393 of 2016 (M. A. No. 862/2016, M. A. No. 1036/2016 & M. A. No. 1227/2016) (Earlier Application No. 118 of 2016 (SZ)).

**6.5 N. Godavarman Thirumalpad vs. Union of India & Ors.<sup>103</sup>**

This case was regarding the protection of the eco sensitive area in Western Ghats. The NGT in this case directed the State of Karnataka to ensure that a notification in relation to the declaration of forest/deemed forest area should be processed and notified within three months from the order. Not only the notification, it stated that steps should also be taken by the State Government for physical demarcation of such areas.

**6.6 M/s. Sree Divya Granites Bangalore vs. The Karnataka State Pollution Control Board Bangalore<sup>104</sup>**

The case involved several Granite cutting companies (Appellants) who had come before the National Green Tribunal (NGT) praying for the quashing of orders for closure of their units. The order was passed by the Karnataka State Pollution Control Board in accordance with the Notification of the Karnataka State Government which stated that all industrial units within 1 km radius of rivers had to be shut down. The contention of the appellants was that they had already obtained requisite permissions from the Gram Panchayat and the Department of Commercial Tax. They further contended that the said units were not involved in any activity which would produce air pollution or water pollution. They had also been supplied electricity from the Bangalore Electric supply Company Ltd. (BESCOM). In addition to the above they also stated that the SPCB had already granted them the Consent to Operate and hence the sudden order for closure of the said units without any notice and inspection was illegal. The fact that the appellants were not even given an opportunity to be heard, violated the very basic principles of natural justice. The appellants also raised the plea that their units were not

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<sup>103</sup>Before the National Green Tribunal, Principal Bench, New Delhi, M.A. No. 1167 of 2015 (I.A. No. 3620/2013) In W.P. (C) No. 202 of 1995

<sup>104</sup>Before the National Green Tribunal Southern Zone, Chennai Appeal Nos. 98-101, 105-113 and 156-158 of 2013 (SZ)



within the stipulated 1 km radius of the river and hence the notification of the Karnataka Government did not apply to them.

The appellants also made submissions to state that all the water used by their units were completely recycled and any waste that was generated was disposed of as per the directions of the SPCB. It was also stated that there had been complaints from the local communities and also since no inspection was done hence the order of the SPCB had to be quashed. The shutting down of the units had resulted in grave losses to the companies and also resulted in loss of jobs for the people working in the said units.

The SPCB on the other hand contended that the facts submitted by the appellants were a distortion of the facts. It stated that only 3 of the units had obtained the necessary consent to operate and even the validity of the consent to these 3 companies had expired. They further stated that the companies were will within the 1 km radius where industrial units were prohibited from being setup. They further contended that those units which were not in the said 1 km radius were still within zone 4 in which only green industries could be setup and since the appellants units were in the orange category. Hence, they could not be allowed to operate in the zone 4 as well.

On the issue of no opportunity of being heard being given to the appellants, the SPCB contended that since the appellants were in violation of law therefore, they could not come and claim for the right to be heard. One of the principles which is clearly established is that the one who comes to court must come with clean hands. The appellants had established their units without taking the requisite permission from the SPCB and as such their activities were illegal. Hence, they could not claim the right to be heard before the order of closure of unit was passed by the SPCB.

The NGT after hearing both the parties came to a conclusion that indeed the State Government had the power to issue the notification under Section 3 of the Environment (Protection) Act and the SPCB was bound by law to follow the said notification. Therefore, the order by the SPCB for closure of the appellants units was in conformity with law. The Tribunal also dismissed the contention by the appellants that they were not given an opportunity to be heard and instead agreed to the contention put forward by the SPCB that since the activities of the appellants were inherently illegal. Hence, they cannot claim the right to be given an opportunity to be heard.

#### **6.7 Vinay Shivanand Naik vs. State of Karnataka & Others<sup>105</sup>**

This case was regarding the purchase of diesel engine buses by BMTC (Bengaluru Metropolitan Transport Corporation). The Respondents argued that use of diesel of BS IV was equivalent to CNG fuel and from the point of view of safety, it was better than CNG. It was also argued that in all 3672, BS IV norms compliant buses were sought to be secured by 4 State Transport Corporations in the State for which tenders were floated. It was also argued that the BS IV norms buses are necessary to replace the old BS I, BS II and BS III norm buses. It was also submitted that the Apex committee of Atal Mission for Rejuvenation and Urban Transformation (AMRUT) approved the proposal to purchase 500 new buses as proposed and sanctioned the required funds and the funds would lapse if not utilized before 31.03.2017. It was also pointed out that the prayer in the application is only with regard to the buses plying in the city of Bengaluru and therefore there cannot be any objection for purchase of buses by the other corporations which were plying the buses outside the Bengaluru city especially when even as per the case of the appellant, CNG fuel is not available there. The Court in its judgment stated that the BS IV norm buses were sought to be purchased to

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<sup>105</sup>Before the National Green Tribunal Southern Zone, Chennai Application No. 183 of 2016 (SZ)

replace the BS I, BS II and part of the BS III norm buses which were definitely causing more pollution. It stated that in such circumstances, it was not in the interest of justice to prohibit the BMTC from purchasing the BS IV norm buses. The Court said that the BMTC and other State Transport Corporations were permitted to purchase the BS IV stage buses as sought for. It also made it clear that the permission granted shall not be taken a ground to contend later that they need not switch over to CNG buses, which was the question to be decided in the main application. The Tribunal directed that before purchasing any additional buses, in addition to the BS IV norm buses which were now permitted, BMTC shall have to take the Tribunal into confidence and satisfy why the CNG vehicles are not being chosen.

#### **6.8 Mohammed Kabir & Others vs. Union of India & Others<sup>106</sup>**

This Application was filed by the Applicants that were aggrieved by the environmental degradation and pollution caused by the respondent industries located within in the jurisdiction of Ullal Town Municipal Council Dakshina Kannada District, Mangaluru. The respondent industries were engaged in the production of fish oil and fish meal, the process of which was causing environmental degradation. This was affecting the day to day affairs of residents living within half to three km. radius. It was further submitted by the applicants that the respondent industries were located in an ecologically fragile area at the edge of Gurupur and Netravathi estuary, right on the banks of thin piece of the land abutting the estuary of these rivers. At the Eastern and North Eastern sides is the estuary, at the Western side is the sea and at South Eastern side mangroves were located. These industries were not located on private lands but on the lands belonging to the State Government under the control of the Department of Public Works, Port and Inland Water Transport. The respondent industries were the lessees of the said lands which fell within the CRZ(Coastal Regulation Zone) -I area

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<sup>106</sup>Before the National Green Tribunal Southern Zone, Chennai Application No. 261 of 2014 (SZ).

and a bare perusal of the lease agreement revealed that the said land was leased solely for storing fish products but in contrary the respondent industries had established units for the manufacture of fish oil and fish meal.

The NGT in this case imposed a penalty of Rs. 25,00,000/- (Rupees Twenty-Five lakhs only) under the Polluter Pays Principle against the respondent, Fish oil Manufacturers Association for their gross negligence and non-maintenance of standards in operating the CETP (Common Effluent Treatment Plant) which resulted in the release of untreated effluents into the sea thereby causing pollution.

It stated that all the above said amounts shall have to be paid to the Environment Relief Fund established under Section 24 of the National Green Tribunal Act, 2010 within one month from the date of this judgment. With respect of unit of one of the respondents which was established for the first time in Sept. 1991 viz. after the CRZ Notification 1991 came into force, the Tribunal stated that it was a clear violation of the notification and the authorities failed to appreciate this fact and granted the NOC and also the Consent. It stated that the unit was existing illegally in violation of CRZ Notification 1991. Therefore, it ordered that the operation of the unit would be stopped forthwith and the unit was directed to remove the machinery and equipment and vacate the site within one month from the date of this judgment and the Port Department would cancel the lease and resume the land. It directed that the KSPCB (Karnataka State Pollution Control Board) would continue to monitor the units and do not allow them to operate unless the CETP was made to function by meeting all the required standards and all the individual units install the deodorizers and evaporators and make them fully functional.

### **6.9 M/s. Sri Guru Krupa Dyeing Unit & Others vs. Karnataka State Pollution Control Board & Others<sup>107</sup>**

The applicants in this case were small dyeing units engaged in Silk dyeing. They used manual methods for the dyeing process. The Respondent was an Environmental Officer of the Karnataka State Pollution Control Board. He stated that the units were discharging effluents directly into the water bodies as they did not have any Common Effluent Treatment Plant (CETP) setup. The applicants contested the submission made by the respondent and stated that they did have a CETP plant at Nayandahalli.

Considering the above said aspects, the NGT directed a committee to be formed to report to it the ground realities. The committee was to consist of a scientist and an Advocate of the court. Their primary duty would be to assess the situation at the said units in particular with respect to the quantity and type of effluents being discharged, and whether they could be safely carried to the treatment plant. The committee was also supposed to look into other alternative remedies for safely disposing the effluent and after the collection of the abovementioned data it was supposed submit a report to the NGT.

### **6.10 D. Kupendra Reddy vs. State of Karnataka & Others<sup>108</sup>**

This case was regarding the dumping of sewage in Bellandur lake, Karnataka. The Counsel appearing for the State of Karnataka submitted that he would place before the Tribunal a complete action plan, particularly in relation to:

1. Removal of silt from the lake
2. Treatment of the sewage which is going into the lake, untreated or partially treated

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<sup>107</sup>Order of the National Green Tribunal (Southern Zone, Chennai) in the matter of M/s. Sri Guru Krupa Dyeing Unit & Others Vs Karnataka State Pollution Control Board & Others dated 05/02/2015 regarding pollution by small dyeing units engaged in silk dyeing using manual method.

<sup>108</sup>Before the National Green Tribunal, Principal Bench, New Delhi Original Application No. 125 of 2017 And Original Application No. 217 of 2017 (M.A. NO. 761 OF 2017)

3. Municipal solid waste and all other waste deposited in or around the lake
4. Establishment of STPs by all the residential complexes around/near the lake.
5. The action that should be taken against the residential complexes which are causing pollution, generating sewage, sending detergents and allied pollutants to the lake, the time frame thereof.
6. The existing STPs, their capacity, technology and the parameters which they are capable of providing to the effluent upon treatment.

The Tribunal directed that all the officers shall have to personally inspect the sites before placing the facts and the proposed action plan before the Tribunal.

#### **6.11 D. Kupendra Reddy vs. State of Karnataka & Others and Court on its own Motion vs. State of Karnataka<sup>109</sup>**

This case was regarding fire in the Bellandur Lake in Bangalore. NGT in this case directed the industries which were located in the catchment area of the Bellandur Lake and were discharging their effluent (treated or untreated) into the water body to be closed down and no waste of any kind including municipal solid waste or C&D or domestic waste shall be dumped into the lake or on the buffer zone of the lake. NGT further directed the Karnataka Government and all other authorities and stakeholders to place before the Tribunal, within two weeks of this particular direction, their action plan to completely prevent and control of pollution of Bellandur Lake in future as well as for its restoration and rejuvenation in all respect

#### **6.12 Forward Foundation & Ors. vs. State of Karnataka & Ors.<sup>110</sup>**

<sup>109</sup>Before the National Green Tribunal, Principal Bench, New Delhi Original Application No. 217 of 2017 And Original Application No. 125 of 2017 (M.A. No. 440 of 2017)

<sup>110</sup>Before the National Green Tribunal, Principal Bench, New Delhi, Original Application No. 222 of 2014 Ors..

This case was regarding commercial projects that were being developed in a large-sized, mixed use development project/building complex, including setting up of a SEZ park, Hotels, Residential Apartments and a Mall, covering approximately 80 acres on the valley land immediately abutting the Agara Lake and more particularly identified as lying between Agara and Bellandur Lakes, exposing the entire eco system to severe threat of environmental degradation and consequential damage.

National Green Tribunal in this landmark judgment imposed a new buffer zone of 75 metres for lakes and wetlands which will be a no-construction zone, as opposed to 30 metres of buffer earlier in Bangalore. The court also ordered Mantri Techzone Private Limited to demolish structures built on buffer zone around lakes and rajakaluves in Bengaluru and ordered Mantri Developers to pay the fine of Rs. 117. 35 Crores prior to commencement of any project activity at the site.

### **6.13 National Green Tribunal Bar Association vs. Dr. Sarvabhoum Bagali (State of Karnataka)<sup>111</sup>**

This case was regarding the mechanical mining of minerals in rivers and flood plains in Karnataka. The Counsel appearing for the State of Karnataka in this case submitted that they will not permit mechanical mining of minerals and mining for extraction of minerals in any river or flood plain. However, the State of Karnataka put forward that they would only permit regulated dredging for removal of clay and sand from the river for the purposes of maintaining its free flow. The Tribunal ordered that there shall be no mining contract granted for in river and flood plain mining.

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<sup>111</sup>Before the National Green Tribunal, Principal Bench, New Delhi Original Application No. 366 of 2015 And Original Application No. 367 of 2015

## **7. RECOMMENDATIONS**

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In view of the above observation, the Government may ponder to make provisions for the following in the NGT Act vis-à-vis NGT Rules, as the case may be, –

### **7.1 Regular filling up of Vacancies**

One of the primary reasons for setting up the NGT was that judges in the High Courts and Supreme Court realised that environmental matters require expert knowledge in the science streams without which judges may not be able to adjudicate such matters. This often led to environmental case being piled up. It was also agreed that environmental concerns are such, which require immediate attention as the polluting activities may cause irreparable harm. The NGT received the Presidential assent in June 2010, the first Chairperson was appointed in October, 2010 however it was only in May 2011 that the NGT heard its first matter. The reason for this delay was insufficient members. Unfortunately, even after 8 years of its functioning the NGT continue to be plagued by shortage of members. It is of the utmost necessity that duly appointments are made to the Tribunal for its smooth and uninterrupted functioning.

### **7.2 Setting up of Circuit Benches across the Country**

Access to justice is prerequisite to delivery of justice. India consists of 29 States and 7 Union Territories, has a total area of 3.287 million sq. km with a population of over 1.3 billion people. It is disappointing that we have only 5 benches to look into all civil environmental matters for the entire country.



In August, 2017 the MoEFCC came out with a notification for excluding Goa from NGT's Pune Bench jurisdiction<sup>112</sup>. The High Court of Bombay at Goa struck down the notification for transfer of jurisdiction and stated "Our duty and that of every government too, must be to ensure that these attempts to protect the environment can be brought to a forum that is close at hand, where environmental issues can be addressed quickly, without having to travel inordinate distances, and at a cost that the poorest in the land, not just the well-heeled, can afford."<sup>113</sup> Therefore, we need to have Circuit Benches across the country so that people may not be deprived of access to justice.

### **7.3 Expert Member/s, who is/are conversant with ecological features of the respective State, may be drawn from the State concerned:**

Sections 4 and 5 of the NGT Act, talk about composition and qualifications of the members of the Tribunal. They state that the Tribunal should consist of minimum 10 Judicial Members and 10 Expert Members. They also mention certain minimum qualifications for the both the types of members however there is no mention of any geographical representation. It is recommended that members should be appointed from the jurisdiction of the zonal benches so as to give a geographical representation in the Bench. A person belonging to the local area would have more insights into the problems being faced by the local people hence it is advised that members of the Bench should include people residing in the territorial jurisdiction of the Bench.

### **7.4 Appointment of subject domain experts**

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<sup>112</sup> See, < [http://ismenvis.nic.in/Database/Notification\\_11th\\_Aug\\_2017-SO2582E\\_15401.aspx](http://ismenvis.nic.in/Database/Notification_11th_Aug_2017-SO2582E_15401.aspx) >

<sup>113</sup> High Court at Goa on its Own Motion v. Union of India and Ors., 2017

NGT should have subject domain experts. NGT can have up to 10 expert members. Therefore, they should have one expert from each of the big sectors E.g. mining, forest, industries, health, water. This will help in faster disposal of cases and better appreciation of the facts and evidences produced before the Tribunal.

### **7.5 Specialization wise Panel of independent rapporteur**

Committees appointed by the NGT comprises of senior bureaucrats or other government persons or NGOs who may have biased opinions therefore it is necessary that the NGT should appoint independent rapporteurs or 10 independent lawyers in each State to investigate and enquire into the matter and give unbiased reports and will also have the duty to have vigil on compliance of directives of the NGT.

## **8. Concluding Remarks**

The State of Karnataka has been endowed with a rich biodiversity, and a varying geographical landscape with hills, plains, forests and water bodies. It is imperative that we protect this rich heritage as we are dependent on it for most of our resources which we use in our day to day lives. Rising population, unchecked and unregulated urbanisation, and high levels of pollution are issues of grave concern which need immediate attention so as to check any irreparable harm that may be caused to the environment.

Green Benches formed at the High Court and Supreme Court were looking into environmental issues earlier. However, with the coming of the National Green Tribunal (NGT) all such cases are now dealt by the Tribunal. The Stockholm Conference called for all nations to establish environmental courts to look into matters concerning the environment. India being a member of the Stockholm conference established the NGT to fulfil its

obligation under the international agreement. Environmental issues with respect to the state of Karnataka are dealt by the Southern Zonal Bench of NGT situated at Chennai. It has played a pivotal role in adjudicating much of the environmental concerns facing Karnataka in the past few years.

The NGT Act, 2010 gave the Tribunal wide powers to deal with matters under its jurisdiction however the implementation of the law to setup the NGT has been worrisome. While the NGT continued to struggle and work with limited resources, the government has further made amendments so as to take away its teeth. This will only reduce its effectiveness as the primary forum for environmental matters. There are also issues with the manner in which awards for compensation have been passed in a few judgements which further raises questions on impartiality of the Tribunal.

Despite the above-mentioned issues reports indicate that the NGT has done a satisfactory job in clearing backlog of cases, and is a speedier forum for environmental justice. That being said there is still much room for further improvement and it is in the best interest of the state of Karnataka and the Union of India to allow the NGT to continue functioning without the dilution of its powers.