COURSE 6
Environment Protection Mechanisms

Centre for Environmental Law, WWF-India
172-B, Lodi Estate, New Delhi-110003

National Law University, Delhi
Sector-14, Dwarka, New Delhi-110078

June, 2014

Disclaimer: Maps are not to scale. The maps are solely a representation of real-world conditions and are made available to the Recipient for information purposes only.

Chapter Compilation
CEL, WWF-India

Course Advisor & Editor
Moulika Arabhi, CEL, WWF-India
Ramya Iyer, CEL, WWF-India

Proofreading
Neeru, Independent Consultant

Laser Composition
Tessa Media & Computers, New Delhi

Course 6: Environment Protection Mechanisms

1 Introduction to Public Interest Litigation

Chapter Contents **Page Nos.**

1.1 Introduction

The Constitution of India follows parliamentary system of government. The Constitution was adopted by the India Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950. The Constitution of India is the document which defines the manner in which the country is to be governed. It embodies within itself the founding faiths of the nation and guiding principles for its governance. In the Preamble to the Constitution it is stated that the people of India have resolved to secure to all the citizens justice - social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and to promote fraternity among all. Actions of the three branches of the government – Legislature, Executive, and Judiciary - have to be in consonance with the constitutional mandate and guiding philosophy of the Preamble.

Another important feature of the Indian Constitution is Judicial Review. In the Indian constitution, Judicial review is dealt with under Article 13. Judicial Review refers that the Constitution is the supreme power of the nation and all laws are under its supremacy. Article 13 states that:

1) All pre-constitutional laws, if in part or completely in conflict with the Constitution, shall have all conflicting provisions deemed ineffective until an amendment to the Constitution ends the conflict. In such situation the provision of that law will again come into force, if it is compatible with the constitution as amended. This is called the *Doctrine of Eclipse*.

2) In a similar manner, laws made after adoption of the Constitution by the Constituent Assembly must be compatible with the constitution, otherwise the laws and amendments will be deemed to be void *ab initio*.

3) In such situations, the Supreme Court or High Court interprets the laws to decide if they are in conformity with the Constitution. If such an interpretation is not possible because of inconsistency, and where a separation is possible, the provision that is inconsistent with constitution is considered to be void. In addition to article 13, articles 32, 226 and 227 provide a constitutional basis to judicial review in India.

Despite the laudatory goals set out in the Preamble and the fundamental rights guaranteed by the Constitution, there are still a lot of issues. The poor, the uneducated, the socially backward do not know their rights; and others are too scared to raise a voice against their oppressor. To overcome such practical implementation problems with access to justice, the Supreme Court of India in 1970s started a new kind of proceedings before itself (and which was soon adopted by the High Courts) called Public Interest Litigation. This form of proceedings allowed persons, who would otherwise probably not have any standing before the Court, to represent disadvantaged sections of society who are unable to fight for their fundamental rights and other rights.

In Indian law, **Article 32** of the Indian constitution contains a tool which directly joins the public with judiciary. A PIL may be introduced in a court of law by the court itself *(suo motu),* rather than the aggrieved party or another third party. For the exercise of the court's jurisdiction, it is not necessary for the victim of the violation of his or her rights to personally approach the court. In a PIL, the right to file suit is given to a member of the public by the courts through judicial activism. The member of the public may be NGO, an institution or an individual. The Supreme Court, rejecting the criticism of judicial activism, has stated that the judiciary has stepped in to give direction because due to executive inaction, the laws enacted by Parliament and the state legislatures for the poor since independence have not been properly implemented.

The need for PILs is not only for the marginalized sections of society but also because in cases where a voice is raised to challenge administrative action (or inaction), there is may be one to hear it. The legislature and executive may be plagued by inaction towards its own public duty and to the demands of people whose rights are being violated or who are being affected by the administrative indifference.

The law relating to Public Interest Litigation (PIL) has evolved over the last four decades. PILs have been filed on behalf of a wide spectrum of subject areas and for varied causes – from prisoners' rights to rights of minimum wage earners, from rights of child labourers to right to pollution free air, from harassment at work place to corruption in bureaucracy. The response of the Courts to the PILs have also been very progressive and, in fact, innovative at times. In some cases the Courts have chosen to monitor the compliance of its orders by the Executive on a regular basis and in some cases they have disposed of the matters with a single order. In some cases, in appreciation of the work done by the person bringing the matter to court, the Court has directed the party to pay the costs of the litigation to such person.

While the need for PIL proceedings in a country like India is undeniable, Courts in the recent past have on a number of occasions commented that people who are fighting for their personal interests in the garb of filing a PIL should not be entertained and that the Court should not have to waste time on frivolous and vexatious petitions.

In this chapter we will study the history of PILs proceedings in India, and will study how the Courts have loosened the restrictions with regard to standing before the Court. We will also look at some of the distinguishing features PIL type of litigation. Throughout the chapter, examples of PILs before the Courts will be referred to, particularly in the context of environmental law. We will finally discuss some of the ways in which the Courts are regulating the PILs filed before them.

1.2 Public Interest Litigation – An Overview

Public Interest Litigation as the name suggests is litigation in the interest of the public. It is in the interest of these people that PILs as a type of proceedings were initiated by the Supreme Court in 1970s in which other persons were allowed to represent them. In the last two decades the scope of PILs have extended considerably and are now filed not only to espouse the rights of a certain disadvantaged group but also to demand governmental action on a certain issue, to fight a cause such as protection of the environment, or to raise important constitutional questions. In

Indian law, public interest litigation means litigation for the protection of the public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public interest litigation is the power given to the public by courts through judicial activism. However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a frivolous litigation by a busy body.

> Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and proceed suo motu or cases can commence on the petition of any public-spirited individual.
>
> PILs do not find a mention in the text of the Constitution. But they have proved to be an extremely crucial tool in cases in which the rights enshrined in the Constitution are violated or the government fails to perform its public duties. PILs are not restricted to cases in which fundamental rights are violated. They can be filed even when statutory rights of a certain group of persons have been violated or a public duty owed to the citizenry by the government has not been performed.
>
> PILs can be brought before the Supreme Court of India under Article 32 and before the High Courts under Article 226 of the Constitution of India. Under Article 32, a person can approach the Supreme Court if her fundamental right is violated. There is no restriction on the kind of orders the Supreme Courts can give when it is exercising its jurisdiction under this Article. High Courts can be approached under Article 226 for violation of fundamental rights and other rights.

Locus Standi

The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in Mumbai Kamagar Sabha vs. Abdul Thai (AIR 1976 SC 1455; 1976 (3) SCC 832) and was initiated in Akhil I3/taratiya Sos/ail Karnuu:hari Sangh (Raihvaiy vs, Union of India, wherein an unregistered association of workers was permitted to institute a writ petition under Art.32 of the Constitution for the redrcssal of common grievances. Krishna lyer J., enunciated the reasons for liberalization of the rule of Locus Standi in Fertilizer Corporation Kamgar vs. Union of India (AIR 1981 SC 149; 1981 (2) SCR 52) and the ideal of 'Public Interest Litigation' was blossomed in S.F. Gupta and others vs. Union of India, (AIR 1982 SC 149).

Public interest litigation or social interest litigation today has great significance and drew the attention of all concerned. The traditional rule of "Locus Standi" that a person, whose right is infringed alone can file a petition, has been considerably relaxed by the Supreme Court in its recent decisions. Now, the court permits public interest litigation at the instance of public spirited citizens for the enforcement of constitutional o- legal rights. Now, any public spirited citizen can move/approach the court for the public cause (in the interests of the public or public welfare) by filing a petition:

1) in Supreme Court under Art.32 of the Constitution;
2) in High Court under Art.226 of the Constitution; and
3) in the Court of Magistrate under Sec.133, Cr. P.C.

Justice Krishna layer fertilizer Corporation Kamgar Union vs. Union of India, (1981) enumerated the following reasons for liberalization of the rule of Locus Standi:-

1) Exercise of State power to eradicate corruption may result in unrelated interference with individuals' rights.
2) Social justice wan ants liberal judicial review administrative action.
3) Restrictive rules of standing are antithesis to a healthy system of administrative action.
4) "Activism is essential for participative public justice".

Therefore, a public minded citizen must be given an opportunity to move the court in the interests of the public.

In order to ensure that FRs did not remain empty declarations, the founding fathers made various provisions in the Constitution to establish an independent judiciary. Provisions related to FRs, DPs and independent judiciary together provided a firm constitutional foundation to the evolution of PIL in India. The founding fathers envisaged ''the judiciary as a bastion of rights and justice''. An independent judiciary armed with the power of judicial review was the constitutional device chosen to achieve this objective. The power to enforce the FRs was conferred on both the Supreme Court and the High Courts—the courts that have entertained all the PIL cases.

The rule of *Locus Standi* requires that only a person who is aggrieved can approach the Court i.e. a person who has suffered a specific legal injury can claim a judicial remedy. This rule is followed to ensure that only persons who are themselves

affected and who would themselves benefit from a judicial remedy approach the courts. Many laws which set up decision making bodies also provide for a list of persons who would have the *locus standi* or the legal standing to approach this decision making body. For instance, the National Environment Appellate Authority Act 1997, about which you will learn more in a later unit, in Section 11(1) gives a list of persons who can approach the Appellate Authority with their appeals. If a person cannot prove her standing before the Court – that is, she is unable to convince the Court that she is in some way aggrieved by some action or law, the Court can decide not to listen to that case.

However, a strict compliance of this rule of *locus standi* has the impact that many lapses in the administration of the country would go unnoticed. The poor and oppressed sections of the society who are unable to raise their voice to fight their cause, would never get justice, because no one else would be able to fight on their behalf and in their interest.

Liberalisation of the rule of *locus standi*

In 1970s the Supreme Court started giving a broader interpretation to the rule of *locus standi* to accommodate cases on behalf of the underprivileged sections of the society which could not initiate legal action themselves. In *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai* AIR 1976 SC 1455, the Supreme Court held that the 'public interest is promoted by a spacious construction of *locus standi* in our socio-economic circumstances'.

The main concern that was raised against the broad interpretation of *locus standi* was that it would open the floodgates and the Courts would be inundated with cases as there would be no control over who could file a case. The Supreme Court responded to this concern in *Bar Council of Maharashtra v. MV Dabholkar* 1976 SCC (2) 291 in which it held that

> "*The possible apprehension that widening legal standing with a public connotation may unloose a flood of litigation which may overwhelm the judges is misplaced because public resort to court to suppress public mischief is a tribute to the justice system*."

The turning point with regard to this issue came in 1981 with the decision of the Supreme Court in the case of *SP Gupta v. Union of India* (1981) Supp SCC 87. The case was a landmark case for many reasons but one of the main issues of law addressed by the judgment in this case was with regard *locus standii* of the persons approaching the Court. Justice Bhagwati in his decision addressed a crucial issue –

if no specific legal injury is caused to anyone by an act of commission or omission of the Administration, but injury was caused to public interest, then who can bring an action for vindicating performance of the public duty.

Some of the important parts of this decision are provided below which give an idea as to why PILs and the liberalization of the *locus standii* rule were important.

> "*If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would then be open to the state or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without redress if the law is contravened.*
>
> …
>
> *Whenever there is a public wrong or public injury caused by an act or omission of the state or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such wrong or public injury.*
>
> …
>
> *… we would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or form violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision.*
>
> …
>
> *If public duties are to be enforced and social collective 'diffused' rights and interests are to be protected, we have to utilize the initiative and zeal of public minded persons and organizations by allowing them to move the Court and act for a general or group interest, even though they may not be directly injured in their own rights.*"

In another landmark case, *People's Union for Democratic Rights v. Union of India* AIR 1982 SC 1473, Justice Bhagwati elaborated this matter even further. In this case, the Petitioner, People's Union for Democratic Rights (PUDR), a voluntary non-profit organisation addressed a letter to Justice Bhagwati complaining of the violations of labour laws by private contractors who had been awarded contracts in the run up to the Asiad Games to be held in Delhi in 1982. The letter was treated as a PIL.

The workers at construction sites were being denied the benefits under various labour laws such as minimum wage, weekly holidays, etc. The workers were economically and socially disadvantaged and were not in a position to approach the courts for legal recourse. The Respondents in the case objected to the maintainability of the case on the ground that the PUDR had no *locus standii* to approach the Court. Justice Bhagwati observed in his order –

> *"This Court has taken the view that having regard to the peculiar socio-economic conditions prevailing in the country where there is considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress were to be blindly adhered to and followed and it is therefore necessary to evolve a new strategy by relaxing this traditional rule of standing in order that justice may become easily available to the lowly and the lost."*

Blurring of the lines of Separation of Powers

One of the fundamental principles of governance in India is the separation of powers – i.e. the three branches of the government – legislature, executive and judicial – have to function separately and without arbitrary interference into each other's spheres of functions. A system of checks and balances has been put in place so that each of the branches can ensure that the other branch is exercising its powers legally, discharging its duties and is not overstepping its jurisdiction.

When an action is initiated before the Supreme Court or the High Courts as part of a PIL, it generally challenges some action or inaction on part of the Executive branch of the Government. For instance, in *Indian Council for Enviro-Legal Action v. Union of India* AIR 1996 SC 1446, the matter before the Court was that industrial effluents were polluting the land and water supply of the villagers and the concerned authorities were not taking action against the polluters.

In PILs, the directions of the Judiciary are such that they often 'step on the toes' of the Executive branch of the government. The Judiciary through its decisions tells the Executive how to do its job and sometimes even gives a time line within which the Executive has to comply with the directions. It is almost as if the Judiciary is performing the functions of the Executive since it has not been able to do so itself. Therefore, PILs has led to a blurring of the lines of separate jurisdictions of the branches of the Government.

1.3 Features of Public Interest Litigations

***Types of* Locus standii**

Three categories of PILs can be identified based on the persons who approach the Court:

1) A case initiated by a person or a group of persons who are members of a class which may have been adversely affected by an administrative wrong.

   Example: In *Kinkri Devi v. State of Himachal Pradesh* AIR 1988 HP 4, a PIL was initiated before the High Court of Himachal Pradesh which highlighted impact of the unscientific and uncontrolled blasting for limestone in the Shivalik hills on the ecology and the inhabitants of Sirmaur district. The Petitioner was one of the affected villagers.

2) A case initiated by a citizen or a group who does not belong to the class of persons whose rights have been violated, but is approaching the Court to vindicate the rights of such persons.

   Example: In *MC Mehta v. Union of India & Others* (1988) 1 SCC 471, the Supreme Court was approached by activist lawyer MC Mehta who brought to the attention of the Court the pollution caused to the river Ganga by the release of untreated trade effluents by tanneries located near the river in Kanpur. His standing before the Court was based on the fact that he was interested in protecting the lives of people who are dependent on the water of the river Ganga.

3) A case initiated by a public-spirited citizen who is not representing any particular class of persons, but is filing the case in her own capacity of being a citizen of the country to whom certain public duty is owed to by the Government.

   Example: Almitra Patel v. Union of India was a PIL filed in the Supreme Court in 1996. In this case, the Petitioner raised the issue of faulty and deficient garbage disposal system in the country. The Court was requested to directed the concerned government authorities to stop open dumping of garbage and to identify mechanisms for proper disposal of waste across the country.

Letters and news items as petitions

Several PILs in the courts have been initiated through a simple letter to the court by an affected individual or a public-spirited concerned individual. The reason behind doing away with the formal processes of drafting and filing a case in the Courts in the case of PILs is that the Petitioner as a member of the public is often undertaking the litigation in the Court voluntarily and not in self-interest. In many of the cases, the Petitioner belongs to the poor and disadvantaged section of the society. In view of this, the Courts have considered it necessary to do away with the procedural requirements of a regular litigation and to accept letters sent to the Court as a PIL. Letters are not rejected by the Courts on the grounds that they are not accompanied by an Affidavit.

The Courts have also initiated PILs on the basis of articles appearing in print media which are a result of investigative journalism into some problem in the country. The Courts then direct the concerned Government authorities to respond in the matter. An example of this is a case regarding pollution in the River Yamuna which was heard by the Supreme Court. A newspaper article titled '*And quiet flows the Maily Yamuna*' published in the Hindustan Times in 1994 was converted into a PIL by the Supreme Court. The news article highlighted the deterioration in the quality of the water in the river Yamuna once it entered Delhi. The Chief Secretary of Delhi was asked to be personally present in the Court during some of the hearings to ensure that the Government of Delhi was strictly complying with the orders of the Court.

Nature of proceedings

The nature of proceedings in a PIL is often unconventional. In India, litigation before the Courts is adversarial in nature – i.e. the two opposing parties are 'adversaries' and each party tries to convince the Court that its stand is correct. Courts have repeatedly held that PILs are not adversarial litigation but in fact require collaborative effort from all parties. PILs are filed for socio-economic cause and in public interest. The respondents in PILs are government authorities who are equally interested in upholding the rights which are in question or discharging the public duty which is assigned to them is a proper fashion. Therefore, the 'opposing parties' in a PIL are in reality both on the same side. The Executive branch of the government, becomes part of the problem solving exercise and it works with the Court, Court-appointed committees, petitioners and other interested parties to ensure that the Court's directions are complied with.

The Court in *Bandhua Mukti Morcha v. Union of India* AIR 1984 SC 802 held that 'public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution'.

The Courts have developed several innovative ways to arrive at constructive solutions to the problems which come before it. The unique nature of PILs – the fact that they are filed in response to the consistent failure of the concerned authorities, the complexity of the matter involved, the impact of the Court's directions on different sections of the society across different parts of the country – make it necessary for the Court to resort to techniques which would allow for effective decision making.

Appointment of Amicus Curiae

The issues involved in a PIL are often complicated and require the consideration of several technical facts and appreciation of the ground situation. The Courts, given the constraints on time and resources available to the Court, have taken recourse to appointing *Amicus Curiae* or 'friends of the court' to assist the Court in analyzing the varied facts and points of law. *Amicus Curiae* are lawyers who are requested by the Court to assist it in a particular matter based on their area of knowledge and legal expertise. For instance, the Supreme Court has appointed Mr. Harish Salve, Mr. UU Lalit, Mr. Siddharth Choudhary and Mr. ADN Rao – lawyers of good standing in the Supreme Court – to assist it in *TN Godavarman v. Union of India*. This case is also known as the Forest Case and was initially filed in 1995. It concerns the conservation of forests across the country.

Appointment of Expert Bodies

Appointment of expert bodies and Committees are another example of the kind of innovative measures undertaken by the Court to deal with peculiar situations which are thrown up in PILs. These expert bodies assist the Court by conducting site inspections, listening to detailed arguments of different interested/affected parties, preparing reports and recommendations for the Court to consider. These bodies generally consist of members with varied backgrounds to suit the case – experts from the field, lawyers, former judges, former and current bureaucrats, scientists, academics etc. The recommendations made by such expert bodies are presented to the Court and it is then for the Court to decide whether it wishes to accept or reject them. The Court is not bound by recommendations by these bodies.

In the Forest case, as mentioned above, the Court has appointed the Central Empowered Committee as an Expert body to assist it in dealing with the all pending applications as well as the task of examining the reports and affidavits filed by the states in response to the orders made by the Court. As each application has a unique set of facts, the Committee hears the parties first, visits the site if necessary and then makes its recommendation to the Court.

Continuing Mandamus

PILs are litigated in the Courts for several years with the Courts passing a series of orders. As the PILs are a result of the failure of the Executive to discharge its functions properly, judges are aware that just giving directions and disposing of a case serves no purpose. Regular monitoring to ensure compliance of the directions of the Court is necessary along with further orders and modification of previous orders. The case then becomes a 'continuous mandamus' – the Court keeps the case under its judicial oversight for several years and keeps issuing orders and directions to the concerned government authorities suited to the situation on the ground.

1.4 Regulation of Public Interest Litigation

PILs have been introduced as a special form of litigation for a very important purpose – to give a voice to the downtrodden and the disadvantaged. The Courts do away with the formality of traditional litigation, often give priority to hearings of PILs and spend years on each case issuing series of orders to address the injustice and administrative failure. While on one hand the Court has liberalized the definition of *locus standi*, on the other hand, the Courts have been careful to ensure that the person who is approaching as a petitioner in a PIL should be genuinely interested in the matter and that the issues he is bringing to the Court are not for his private benefit but in response to administrative failure to address certain social, economic, political or environmental problems. The Court in *People's Union for Democratic Rights v. Union of India* AIR 1982 SC 1473 held that –

> "*where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason of poverty, disability or socially educationally disadvantaged position not able to approach the court for judicial redress, any member of the public acting* bona fide *and free of any extraneous motivation may move the court for judicial redress of the legal injury or wrong suffered by such person or class of persons*" (emphasis added)

- The Courts have on several occasions observed that a PIL cannot be entertained if it is filed by a person who has no interest in the matter or if the person has filed the PIL for his private interest or personal gain or for some political motivation. A very serious view has been taken by the Courts in cases where a frivolous case is filed by a Petitioner which serves no public interest but in turn wastes the time of the Court and the government. In many cases, judges have imposed costs on the petitioner – i.e. fined the petitioner – for wasting the time the Court in the garb of a PIL and abusing the process of law. Judges have also directed the Bar Associations of different states to ensure that lawyers registered at their Bar to not indulge in filing frivolous and unnecessary PILs.

- In *Gurpal Singh v. State of Punjab & Others* (2005) 5 SCC 136, the Court held that the scope of entertaining a petition styled as a PIL and *locus standi* of the petitioner, the Court must be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. The Court has to strike balance between two conflicting interests- (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions.

- In the recent past judges especially in the Supreme Court have become very critical about unnecessary cases being filed in the name of PILs. The current Chief Justice of India, Justice SH Kapadia soon after being appointed as the Chief Justice of India observed in a case that PIL petitioners were moving the courts straightaway without bringing the problem to the notice of the authorities and that the Courts were entertaining these PILs and virtually taking over the function of the authorities. He held that such bypassing of the authorities would not be allowed to take place anymore. He further warned that huge costs would be imposed on parties bringing frivolous cases. The issue before the Supreme Court in *State of Uttaranchal v. Balwant Singh Chaufal & Ors.* Civil Appeal Nos.1134-1135 of 2002 was a issue which had been decided by several courts previously – whether there was any age limit for persons who were appointed as Advocate General of a state (in this case Uttarakhand). The Supreme Court in a lengthy decision listed the number of cases in which this issue had already been decided – there was no such age limit. The judges observed that lawyers should at least carry out basic research before approaching the Court. The Court imposed cost of one lakh rupees on the persons who had brought the case to the High Court initially. Towards the

end in the judgment, the judge lay down guidelines with regard to entertainment of PILs and they held -

"In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

1) *The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.*

2) *Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.*

3) *The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.*

4) *The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.*

5) *The court should be fully satisfied that substantial public interest is involved before entertaining the petition.*

6) *The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.*

7) *The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.*

8) *The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."*

1.5 Examples of Environmental PILs

Several important achievements have been made in the field of environment protection through the route of PILs. Public spirited citizens as well as those affected by environmental degradation have filed PILs requesting the Court to intervene and direct the concerned authorities to ensure that the natural environment is conserved. Following are examples of some of the PILs filed in the Supreme Court of India in the environmental context-

In *Rural Litigation and Entitlement Kendra, Dehradun & Others v. State of U.P. & Others* AIR 1989 SC 594, the Petitioner organization approached the Court to protest against the quarrying in the lime stone quarries in the Doon Valley as it was adversely affecting the environment of the region particularly the water sources. The Court heard this matter for over three years, and finally decided, given the impact of the quarrying on the region, to close down the mines. The Court appointed a Monitoring Committee to oversee the reforestation activities and other related activities initiated to restore the environment of the Doon Valley. The Court also expressed the need to set up another committee to monitor the rehabilitation of the displaced miners.

The issue of pollution of the river Palar by the discharge of wastes by tanneries near Vellore was raised before the Supreme Court in *Vellore Citizens' Welfare Forum v. Union of India* (1996) 5 SCC 647. The Court directed the defaulting tanneries to meet the standard of effluent discharge as set by the Pollution Control Boards and allowed the tanneries to continue only after they compensated the persons affected by the pollution and paid the cost of restoring the damage done to the environment. As the case would require continued monitoring, the Supreme Court requested the Chief Justice of the High Court of Tamil Nadu to form a 'Green Bench' to deal with the case.

In *S. Jagannath v. Union of India* & Others (1997) 2 SCC 87, a PIL was filed by the Gram Swaraj Movement, a voluntary organization working for the upliftment of the weaker section of society. The petitioner sought the enforcement of Coastal Zone Regulation Notification dated 19.2.1991 and stoppage of intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas. The Court passed several significant directions including:

- The Central Government shall constitute an authority conferring on the said authority all the powers necessary to protect the ecologically fragile coastal

areas, seashore, waterfront and other coastal areas and specially to deal with the situation created by the shrimp culture industry in coastal States. The authority so constituted by the Central Government shall implement "the Precautionary principle" and "the Polluter Pays" principles.

- The shrimp culture industry/the shrimp ponds are covered by the prohibition contained in para 2(i) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ notification. This shall be applicable to all seas, bays, estuaries, creeks rivers and backwaters. This direction shall not apply to traditional and improved traditional types of technologies (as defined in Alagarswami report) which are practised in the coastal low lying areas.
- All acquaculture industries/shrimp culture industries/shrimp culture ponds operating/set up in the coastal regulation zone as defined under the CRZ Notification shall be demolished and removed from the said area before March 31, 1997.
- The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of the shrimp culture ponds.
- The authority was directed to compute the compensation under two heads namely, for reversing the ecology and for payment to individuals.
- The compensation amount recovered from the polluters shall be deposited under a separate head called "Environment Protection Fund" and shall be utilised for compensating the affected persons as identified by the authority and also for restoring the damaged environment.

1.6 Conclusion

With the view to regulate the abuse of PIL the apex court itself has framed certain guidelines (to govern the management and disposal of PILs.) The court must be careful to see that the petitioner who approaches it is acting bona fide and not for personal gain, private profit or political or other oblique considerations. The court should not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain political objectives. There may be cases where the PIL may affect the right of persons not before the court, and therefore in shaping the relief the court must invariably take into account its impact on those interests and the court must exercise greatest caution and adopt procedure ensuring sufficient notice to all interests likely to be affected.

At present, the court can treat a letter as a writ petition and take action upon it. But, it is not every letter which may be treated as a writ petition by the court. The court would be justified in treating the letter as a writ petition only in the following cases-

i) It is only where the letter is addressed by an aggrieved person or

ii) a public spirited individual or

iii) a social action group for enforcement of the constitutional or the legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress.

Even though it is very much essential to curb the misuse and abuse of PIL, any move by the government to regulate the PIL results in widespread protests from those who are not aware of its abuse and equate any form of regulation with erosion of their fundamental rights. Under these circumstances the Supreme Court Of India is required to step in by incorporating safe guards provided by the civil procedure code in matters of stay orders /injunctions in the arena of PIL.

Public Interest Litigants, all over the country, have not taken very kindly to such court decisions. They do fear that this will sound the death-knell of the people friendly concept of PIL. However, bona fide litigants of India have nothing to fear. Only those PIL activists who prefer to file frivolous complaints will have to pay compensation to then opposite parties. It is actually a welcome move because no one in the country can deny that even PIL activists should be responsible and accountable. In any way, PIL now does require a complete rethink and restructuring. Anyway, overuse and abuse of PIL can only make it stale and ineffective. Since it is an extraordinary remedy available at a cheaper cost to all citizens of the country, it ought not to be used by all litigants as a substitute for ordinary ones or as a means to file frivolous complaints.

Let us have a look at some guidelines by the Supreme Court of India (Based on full Court decision dated 1.12.1988 and subsequent modifications) -

No petition involving individual/ personal matter shall be entertained as a PIL matter except as indicated hereinafter.

Letter-petitions falling under the following categories alone will ordinarily be entertained as Public Interest Litigation:-

1) Bonded Labour matters.

2) Neglected Children.

3) Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases).

4) Petitions from jails complaining of harassment, for (pre-mature release)[1] and seeking release after having completed 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as a fundamental right.

5) Petitions against police for refusing to register a case, harassment by police and death in police custody.

6) Petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping etc.

7) Petitions complaining of harassment or torture of villagers by co- villagers or by police from persons belonging to Scheduled Caste and Scheduled Tribes and economically backward classes.

8) Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance.

9) Petitions from riot -victims.

10) Family Pension.

All letter-petitions received in the PIL Cell will first be screened in the Cell and only such petitions as are covered by the above mentioned categories will be placed before a Judge to be nominated by Hon'ble the Chief Justice of India for directions after which the case will be listed before the Bench concerned.

If a letter-petition is to be lodged, the orders to that effect should be passed by Registrar (Judicial) (or any Registrar nominated by the Hon'ble Chief Justice of India), instead of Additional Registrar, or any junior officer.

---

[1] Petitions for premature release, parole etc. are not matters which deserve to be treated as petitions u/Article 32 as they can effectively be dealt with by the concerned High Court. To save time Registry may simultaneously call for remarks of the jail Superintendent and ask him to forward the same to High Court. The main petition may be forwarded to the concerned High Court for disposal in accordance with law.
Even in regard to petitions containing allegations against Jail Authorities there is no reason why it cannot be dealt with by the High Court. But petitions complaining of torture, custody death and the like may be entertained by this Court directly if the allegations are of a serious nature.

To begin with only one Hon'ble Judge may be assigned this work and number increased to two or three later depending on the workload.

Cases falling under the following categories will not be entertained as Public Interest Litigation and these may be returned to the petitioners or filed in the PIL Cell, as the case may be:

1) Landlord-Tenant matters.
2) Service matter and those pertaining to Pension and Gratuity.
3) Complaints against Central/ State Government Departments and Local Bodies except those relating to item Nos. (1) to (10) in above list.
4) Admission to medical and other educational institution.
5) Petitions for early hearing of cases pending in High Courts and Subordinate Courts.

In regard to the petitions concerning maintenance of wife, children and parents, the petitioners may be asked to file a Petition under sec. 125 of Cr. P.C. Or a Suit in the Court of competent jurisdiction and for that purpose to approach the nearest Legal Aid Committee for legal aid and advice.

Merits of PIL:

1) In Public Interest Litigation (PIL) vigilant citizens of the country can find an inexpensive legal remedy because there is only a nominal fixed court fee involved in this.
2) Further, through the so-called PIL, the litigants can focus attention on and achieve results pertaining to larger public issues, especially in the fields of human rights, consumer welfare and environment.

Some Demerits of PIL:

1) The genuine causes and cases of public interest have in fact receded to the background and irresponsible PIL activists all over the country have started to play a major but not a constructive role in the arena of litigation. Of late, many of the PIL activists in the country have found the PIL as a handy tool of harassment since frivolous cases could be filed without investment of heavy court fees as required in private civil litigation and deals could then be negotiated with the victims of stay orders obtained in the so-called PILs.

2) The framers of Indian constitution did not incorporate a strict doctrine of separation of powers but envisaged a system of checks and balances. Policy making and implementation of policy are conventionally regarding as the exclusive domain of the executive and the legislature.Vishaka v State of Rajasthan which was a PIL concerning sexual harassment of women at work place.The court declared that till the legislature enacted a law consistent with the convention on the Elimination of All Forms of Discrimination Against Women which India was a signatory, the guidelines set out by the court would be enforceable.

3) The flexibility of procedure that is a character of PIL has given rise to another set of problems. It gives an opportunity to opposite parties to ascertain the precise allegation and respond specific issues.

4) The credibility of PIL process is now adversely affected by the criticism that the judiciary is overstepping the boundaries pf its jurisdiction and that it is unable to supervise the effective implementation of its orders. It has also been increasingly felt that PIL is being misused by the people agitating for private grievance in the grab of public interest and seeking publicity rather than espousing public cause.

2 Forest Cases and Responses

Chapter Contents **Page Nos.**

2.1 Introduction

Forests are critical for the quality of global environment. They are of great importance to the sustainability and prosperity of human beings since they yield multiple benefits to society. These include tangible products such as fuel wood, timber, fodder, manure and minor forest products, intangible services such as hydrological benefits, soil conservation, climate change mitigation and habitat for wildlife, and other intangible values such as spiritual or aesthetic values. These benefits flow towards many different beneficiary groups. Only some of these beneficiaries live in physical proximity of the forest. Others live downstream in the watershed, or in the whole region or nation or even world. It is estimated that some 1.6 billion people worldwide depend on forests for their livelihoods. 60 million indigenous people depend on forests for their subsistence.

The subject of forest has received special attention of the Supreme Court since the year 1996 when the Court on a weekly basis started hearing a petition titled T.N Godavarman Thirumulpad Vs Union of India ['Godavarman' for short]. The understanding of the some of the orders in *Godavarman* is crucial for it shows the scope of public Interest litigation but also how the Courts fill up gaps in existing laws and policies. Through the *Godavarman* case, the Supreme Court has dealt with

a wide range of issues concerning the subject of forest. It set up a Committee to assist it in dealing with forest issues i.e the Central Empowered Committee (under Section 3 (3) of the Environment (Protection) Act, 1986.

This chapter provides an overview of some of the major issues related to forest on which the Court has passed significant orders. However, before that, let us revisit the important forest legislations:

- ***Forest Conservation Act, 1980***

The history of modern forest legislation in India is more than a century old. The first codification which came to the statute book in relation to the administration of forest in India was the Indian Forest Act, 1865. In 1980, the Parliament, in response to the rapid decline in the forest covers in India, and also to fulfill the Constitutional obligation under Article 48-A, enacted a new legislation called the Forest Conservation Act, 1980.

- ***Panchayats Extension to Scheduled Areas (PESA) Act 1996***

Panchayat Extension to Scheduled Areas Act (PESA) was passed in the year 1996. It was passed with a view to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

- ***The Scheduled Tribes and other Traditional Forest Dwellers Act, 2006***

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was passed almost unanimously by the Lok Sabha as well as the Rajya Sabha on December 18, 2006. This legislation, aimed at giving ownership rights over forestland to traditional forest dwellers. The law concerns the rights of forest dwelling communities to land and other resources, denied to them over decades as a result of the continuance of colonial forest laws in India.

2.2 Forest Conservation Act and the Genesis of the Godavarman Case

The Forest (Conservation) Act, was enacted in 1980 and subsequently amended in 1988. Section 2 of the Act forms the core and states that 'no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force that State) or any portion thereof, shall cease to be reserved;

ii) that any forest land or any portion thereof may be used for any non-forest purpose;

iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;

iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation.—For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for —

a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plant;

b) any purpose other than reafforestation; but does not include any work relating or ancillary to conservation, development and management of forest and wild life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purpose.

The Godavarman Case-

The genesis of the *Godavarman* case was a result of the non-responsiveness of various State Governments to the issue of forest conservation. The Writ Petition filed by *Environmental Awareness* Forum (W.P. 171 of 1995) and the *T.N. Godavarman Thirumulpad* (W.P. 202 of 1995) on limited and restricted issue of forest conservation was extended by the Supreme Court on 02.09.1996, when the Court directed the issue of Notice to Chief Secretaries of all the State Governments other than States that were already made parties. The Court in its order noted that "inspite of notice being issued to all the State Governments, many of them have not entered appearances". The Court, therefore, directed the issue of fresh notice. Unfortunately, even this did not result in much response. The Court in its order dated 28.11.1996 observed that inspite of notice been served on all the State Governments, there is no representation on behalf of most of the State Governments. The Court felt that the version of the North Eastern States in particular is necessary 'but no assistance

to that effect was available to the Court on account of absence of any representation at that time on behalf of any of the seven North Eastern States'. The Court emphasized the fact that "it is necessary that effective representation on behalf of each of the seven North Eastern States be ensured during the entire hearing of this matter". It, therefore, directed the personal presence of the Secretary dealing with Forest and Environment of each of the seven North Eastern States along with the Secretaries of Sikkim, Kerala and Maharashtra during the hearing of this matter.

On the next date of hearing i.e. on 12.12.1996, the Supreme Court passed an Interim order that was to be one of the most significant decisions of the Court on an environmental issue. The order of 12.12.1996 became the basis for the subsequent judicial involvement in forest conservation.

Among the most significant orders passed by the Supreme Court in *Godavarman* was the order of 12.12.1996 which clarified certain provisions of the Forest (Conservation) Act, 1980 [**FCA**] and also extended the scope of the Act.

The Supreme Court observed in its order of 12.12.1996 stated that there is misconception in certain quarters about the true scope of the Act and the meaning of the word "forest" used therein. There is also misconception about the need of prior approval of the Central Government. The Court order dealt with the following aspects

Dictionary Meaning of Forest

The Court did a purposive interpretation of the Act, and held that the Act was enacted with a view to check further deforestation which ultimately results in ecological imbalances, and therefore, the provisions made therein for conservation of forests must apply to all types of forests irrespective of the nature of ownership or classification. Most significantly, the Court held that:

- The word "forest" must be understood according to the dictionary meaning. The Court clarified that this description covers all statutorily recognized forest, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Act.
- The term "forest land" as occurring in Section 2 will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.
- The provisions enacted in the Act, for the conservation of forests must apply clearly to all forests so understood irrespective of the ownership or classification thereof.

Identifying Forest

Having extended the scope of the Act by including diverse categories as "forest", the Court directed each State Government to constitute within one month an expert committee to:

- Identify areas which are 'forests' irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;
- Identify areas which were earlier forests but stand degraded, denuded or cleared; and
- Identify areas covered by plantation trees belonging to the Government and those belonging to persons.

Specific Directions on Non Forest Activities

The Court directed that in accordance with Section 2 of the Act, "all ongoing activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith". Significantly, the felling of trees in all forests was to remain suspended except in accordance with working plans of the State Government, as approved by the Central Government. Specific orders were passed for the North Eastern State and especially for Tirap and Changlang in Arunachal Pradesh Jammu and Kashmir, Himachal Pradesh and hill regions of Uttar Pradesh, Tamil Nadu. Most importantly, it was directed that this order (i.e. 12.12.1996) will operate and be implemented notwithstanding any order at variance, made or which may be made by any Government or any authority, tribunal or court, including the High Court.[1]

Thus, began the engagement of the Supreme Court on a continuing basis with the issue of forest conservation. This case came to be known popularly as the *Godavarman*[2] case or less commonly the 'forest conservation case'.[3] The prime focus of *Godavarman* was the effective implementation of the Forest (Conservation) Act, 1980. However, as the case progressed, the Wild life (Protection) Act, 1972 [WPA] and all State and local laws relevant for forest conservation also came within the purview of the *Godavarman* case.

---

1 This was further reiterated in order dated 04.03.1997.

2 Incidentally, the petitioner, TN Godavarman Thirumulpad has little to do with the subsequent developments in the case.

3 Shyam Diwan and Armin Rosencranz, Environmental Law and Policy in India 289 (Oxford University Press, 2nd ed., 2001).

Godavarman and Centre for Environmental Law

Forest conservation law in India is now impacted not only by the outcome of the *Godavarman* case but also the ongoing litigation concerning the National Parks and Sanctuaries through the *Centre for Environmental Law WWF-India v. Union of India*, (W.P. 337 of 1995). Although, in principle the case concerns the issue of settlement of rights in National Parks and Sanctuaries, yet its scope is much beyond this issue. Perhaps, the most significant was the order dated 13.11.2000, wherein the Supreme Court through an interim order restrained all State Government from dereserving National Parks, Sanctuaries and Forests. The order reads as follows:

> "This Court while directing to list the above application after five weeks DOTH ORDER THAT pending further orders no dereservation of Forests/ Sanctuaries/National Parks shall be effected…
>
> AND THIS COURT DOTH FURTHER ORDER THAT this ORDER be punctually observed and carried into execution by all concerned"

The inclusion of the word 'forest' is significant and adds a completely new dimension to the implementation of forest law in the country and specifically of the Forest (Conservation) Act, 1980 and the Wild Life (Protection) Act. 1972

The combined implication of the *Godavarman* and *Centre for Environmental Law* case can be summarized as follows:

- The Court by order dated 12.12.1996 in *Godavarman* restrained all State Governments from using forest land for non-forest purpose without the prior approval of the Central Government in accordance with the provisions of section 2(ii) of the Forest (Conservation) Act, 1980.
- The Court by the same order stayed all non-forest activities insofar as they were being carried out without prior approval of the Central Government. Thus, the decision of 12.12.1996 aimed at ensuring the proper and effective implementation of the Forest (Conservation) Act, 1980.

ORDERS AND JUDGEMENTS :

Working Plan

The *Godavarman* case attracted significant attention when on 12.12.1996 the Court in its order 'suspended' the felling of trees in all forest except in accordance with the working plans of the State Governments which were approved by the Central Government. It was brought to the notice of the Court that most of the working

plans on the basis of which timber were harvested were based on plans which placed primacy to commercial consideration over ecological and social concerns. The issue of working plans was dealt with extensively in the order dated 15.01.1998, The Court directed that working plans for all forest divisions shall be prepared by the State Governments and approval will be obtained from the Government of India. It was clarified that the term 'State Government' would also include District Councils constituted under Schedule VI of the Constitution of India. The working plans would have to be prepared within a period of two years. During the intervening period, the forest shall be worked according to an annual felling program approved by the Ministry of Environment and Forests. In respect of District, Regional and Village Council Forests, it was directed that the same shall be worked in accordance with worked with working scheme which has to specify both the program for regeneration and harvesting. It was however clarified that the plantation schemes raised on private and community holding shall be excluded from these requirements but will be regulated under the respective State rules and regulations. For the purpose of preparing the working plans, the States were directed to constitute a state level expert Committee to be headed by the PCCF.

Very interestingly, the Court in its above order directed the North Eastern States to identify ecologically sensitive areas in consultation with Institutions such as the Indian Council of Forest Research and Education, Wild Life Institute of India, North Eastern Hill University, North Eastern Regional Institute of Science and Technology and NGOs and ensure that such identified ecologically sensitive areas are totally excluded from any kind of exploitation, The Court further stipulated that minimum extent of such area shall be 10% of the total area of the State.

Subsequently, (on 12.05.2001), the Court laid down detailed guidelines for the felling of trees from forest areas as well as non forest areas including plantation. As per the order, the felling of trees from forest areas could be allowed only as per the approved Working Plans/schemes, whereas the felling of trees from non forest area could be allowed only as per detailed guidelines which are prepared by the State Government with the concurrence of the Central Government. This order, together with the order of the Court on 15.01.1998 forms the guidelines for felling of trees. The highlights of the Order dated 12.05.2001 were-

i) Felling of trees from forest shall be only in accordance with working plans/ schemes or felling schemes approved by the Ministry of Environment and Forests.

ii) Such working plans/schemes shall also be needed for felling of trees from any non-Government forest areas including land which is required to be treated as "forest " as the decision of the Court on 12.12.1996.

iii) While implementing the Working Plans/schemes approved by the Central Government, the State Government or the concerned authority shall ensure that no felling is done unless and until sufficient budgetary provisions exist for the regeneration of such areas.

iv) For felling of trees from non-forest areas, including plantations on concerned State Government which will come in force only after concurrence from the Ministry of Environment and Forest.

v) The Guidelines/Rules shall also include provisions for penalties and mode of disposal in respect of any felling done in violation of such Guideline/Rules.

vi) Till such Guidelines/Rules become effective no felling from any area other than that under approved working pans/schemes or felling schemes shall be permitted.

vii) The schemes are to be prepared within a period of three months and the Ministry of Environment and Forests has to take a decision on the same within a period of one month of the date of receipt.

2.3 Cases Related to Mining

In a series of orders in the *Godavarman* case, the Supreme Court dealt at length and at times in minute details about instances of mining taking place in forest area. The Supreme Court however, made it clear that it was not against mining *per se* but against mining which is in violation of the Forest (Conservation) Act, 1980, and also mining in National Parks and Sanctuaries. In one of its order dated 17.12.1999, on application filed by the National Mineral Development Corporation (N.M.D.C.), the Court clarified its position vis-à-vis wherein it held that the ban imposed on mining was subject to the approval of the Central Government and when Central Government has granted the permission the applicant would be at liberty to operate the said mines.[4] What was prohibited was illegal felling of trees without the permission of the Central Government.

[4] I.A. No. 419 & 420.

The Kudremukh Case

The continued operations of the Kudremukh Iron Ore Company Limited (KIOCL), a Government of India, a Public Sector Unit, was a major issue for many environmental groups.. The Supreme Court's response was based on an application filed by Wild Life First!' a Karnataka based NGO.

According to the Petitioner, inspite of the orders passed by the Supreme Court, mining activities were conducted by the KIOCL within the Kudremukh National Park which were in clear violation of orders passed by this Court. The main reliefs sought were: (a) to direct the MoEF to withdraw the illegal "temporary working permission" issued by it and stop mining activities, (b) direct KIOCL to stop polluting the Bhadra river due to open cast mining, (c) take action against KIOCL for illegal encroachment in the forest and for the destruction of forests in the Kudremukh National Park., and (d) to stop KIOCL from laying a new slurry pipe line in the forest of the National Park, The main reliefs sought were (a) to direct the MoEF to withdraw the illegal 'temporary working permission' issued by it and stop mining activities (b) direct KIOCL to stop polluting the Bhadra river due to open cast mining (c) take action against KIOCL for illegal encroachment in the forest and for the destruction of forests in the Kudremukh National Park: and (d) to stop KIOCL from laying a new slurry pipe line in the forest of the National Park. The Court accepted the time period for stopping mining activities as fixed by the Forest Advisory Committee constituted under Section 3 of Forest (Conservation) Act, 1980. It meant that KIOCL was to be given five years to wind up operation from the time its earlier lease expired (it had already expired). This meant mining would be allowed till the end of 2005 by which time the weathered secondary ore available in the already broken area will be exhausted. In view of the series of temporary working permission that were granted, as well as the inconsistency on part of the Government of Karnataka and Ministry of Environment and Forests, the Court observed:

> *"Before we part with the case, we note with concern that the State and the Central Government were not very consistent in their approach about the period for which the activities could be permitted. Reasons have been highlighted to justify the somersault. Whatever be the justification, it was but imperative that due application of mind should have been made before taking a particular stand and not to change colour like chameleon, and that too not infrequently."*

The *Kudremukh* case is also important in view of the law laid down with respect to the use of discretionary powers to be exercised under the Forest (Conservation) Act, 1980. The Court also emphasised the need to implement the provisions of the Convention on Biological Diversity:

"Duty is cast upon the Government under Article 21 of the Constitution of India to protect the environment and the two salutary principles which govern the law of the environment are; (i) the principles of sustainable development and (ii) the precautionary principle. It needs to be highlighted that our country has acceded to the Convention on Biological Diversity and therefore, it has to implement the same. As was absence by this Court in Vishaka v. State of Rajasthan, [1997(6)SCC 241], *in the absence of any inconsistency between the domestic law and the international conventions, the rule of Judicial Construction is that regard must be had to international conventions, and norms been in construing the domestic law. It is, therefore, necessary for the Government to keep in view the international obligations while exercising discretionary powers under the Conservation Act unless there are compelling reasons to depart there from".*

2.4 Cases Related to Saw Mills and Wood Based Units

The Court in order dater 12.12.1996 directed that all ongoing activities within any forest without the prior approval of the Central Government must cease forthwith The Court made it absolutely clear that the running of saw mills of any kind, including, veneer or plywood mills are not permissible without prior Central Government approval. Specifically concerned about the danger to the tropical wet evergreen forest of Tirap and Changlang in Arunachal Pradesh, the Court directed the immediate closure of all saw mills, plywood mills and veneer mills within a distance of 100 kms from the border of Assam. Further, in order to stop the trade in timber, the Court directed that there shall be a complete ban on the movement of cut trees and timber from any of the seven North Eastern States to any other State.

Each State Government was directed to file within two months a report regarding the number of saw mills, veneer and plywood mills operating within each State, the real owners of these mills, the licensed and actual capacity of the mills their proximity to the nearest forest and their source of timber. Further the Sates were also directed to constitute within one month an Expert Committee to:

- assess the sustainable capacity of the forest of the State vis-à-vis saw mills and timber based industries;
- the number of existing saw mills that can be safely be sustained by the State; and
- the optimum distance from the forest at which the saw mills should be located.

In view of the large number of saw mills operating in the North Eastern Region, the Court constituted a High Power Committee (HPC) on 04.03.1997 in order to

oversee the 'strict and faithful implementation' of the orders of the Court. On the same day, the Court passed an order that no new unlicensed sawmills, plywood, veneer and wood based units shall function in the State of Uttar Pradesh and Maharashtra. All unlicensed sawmills, veneer, plywood industries in the States of Maharashtra and Uttar Pradesh were to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/ license for the opening of any such sawmill, veneer and plywood industry. The Court directed that it shall not grant any fresh permission/license for this purpose.

The order dated 15.01.1998 was very significant and dealt at length with the running of wood based industries specifically in the North Eastern States. The Court in its order observed:

> *"Even though the proliferation of wood based industries has been the main cause of degradation of forest in the North Eastern States, considering the extent of forest (64% of the geographical area) and the dependence of local people on the forest in the region it is neither feasible nor desirable to ban completely either the timber trade or running of wood based industries. However, their number and capacities are to be regulated ... and they are also required to be relocated in specified industrial zones. Moreover, industrial requirements have to be subordinated to the maintenance of environment and ecology as well as bona fide local needs."*

With a view to regulating the saw mills, the Court directed the State Governments to notify industrial estates for locating wood based industrial units in consultation with the Ministry of Environment and Forest some of the important directions issued are as follows:

- Licenses given to all wood based industries shall stand suspended.
- Wood based industries cleared by the HPC will have the option to shift to identified industrial estates.
- Units which do not want to shift shall be allowed to be wound up as per law.
- Licenses of units shall be renewed annually only when no illegality is attributed.
- Number of wood based industries shall be determined strictly within the quantity of timber that can be felled annually on a sustainable basis as determined by approved working plan from time to time.
- There shall be a complete moratorium on the issue of new licenses for any wood based unit for the next five years.

2.5 Compensatory Afforestation

Compensatory afforestation refers to afforestation activities carried out to compensate the losses due to diversion of forest land due to non forest activities. Compensatory afforestation prior to the orders of the Court was carried out in accordance with the guidelines issued by the Ministry of Environment and Forests under the provisions of the Forest (Conservation) Act, 1980. According to the guidelines:

- *The compensatory afforestation is to be done over an equivalent non-forest are at the cost of the user agency.*
- *Wherever non-forest land is not available, which is to be certified by the Chief Secretary of the State, compensatory afforestation is to be done over double the degraded forest area at the cost of the user agency.*
- *After the funds for compensatory afforestation are deposited with the concerned State Government and the land for this purpose is transferred and mutated in favour of the forest department, a formal approval for diversion of forest land for non forest use under Section 2 of the FC Act is given by the Ministry of Environment and Forests.*
- *Compensatory afforestation is generally to be done by the Forest Departments in the respective States.*

The Central Empowered Committee considered at length all aspects related to compensatory afforestation. It consulted the Ministry of Environment and Forests as well as the State Governments. Although, there were guidelines on compensatory afforestation, the same were not uniformly followed. For example, the procedure for the receipt and utilization of funds differed among different states. Thus, in the States of Chhattisgarh, Madhya Pradesh, Uttaranchal and Uttar Pradesh, the money received on account of compensatory afforestation is directly deposited by the user agency with the Forest Department as "forest deposit" and do not form part of the consolidated fund of the State. In these States, accessing funds for compensatory afforestation is not a problem. Unfortunately, in most other States, the funds received from the user agencies for compensatory afforestation are deposited as 'revenue receipts' with the State Governments, which are made available to the forest department only through budgetary provision and sanction. As such, in all States other than Karnataka, there is problem of timely release of funds for compensatory afforestation. It was, therefore, felt that a Fund for Compensatory Afforestation should be created to be called 'Compensatory Afforestation Fund' wherein all the

amount received from the user agencies be deposited and subsequently released directly to the implementing agencies as and when required. It was further recognized that plantations raised under compensatory afforestation can never adequately compensate for the loss of natural forests as they are poor substitutes of the natural forests. The CEC in its report noted that in the states of Madhya Pradesh and Chhattisgarh, the net present value is being recovered at the rate of Rs. 5.80 Lakh per hectare to Rs.9.20 Lakh per hectare of forest land depending upon the quality and the density of the forest land diverted for non forest purpose. The CEC recommended that the Net Present Value of the forest land diverted for non-forest purposed should also be recovered from the user agency while according approval under FCA. The fund so recovered could be utilized for undertaking specific activities such as forest protection and other conservation measures.[5]

Compensatory Afforestation Fund Management and Planning Authority (CAMPA)

On 29.10.2002, the Court directed that a Compensatory Afforestation Fund shall be created in which all the monies received from the user agencies towards compensatory afforestation, additional compensatory afforestation, Net Present Value of forest land, Catchment Area treatment fund shall be deposited. The fund will be administered through a body called CAMPA. However, in view of the fact that the considerable time would be required till CAMPA becomes operational, the Court constituted[6] an Ad Hoc CAMPA. The Ad Hoc CAMPA would comprise of Director General of Forest as Chairman and have members from the CEC, the CAG and Ministry of Environment and Forest. It was directed that all the State Governments/ Union Territories shall account for and pay the amount collected with effect from 30th October, 2002 in conformity with the order dated 29.10.2002 to the said Ad-Hoc CAMPA.

The functioning of CAMPA and specifically the management of funds collected by the Ad Hoc CAMPA was considered at length by the Courts at different hearings. It was observed by the Court that various agencies had deposited amounts by way of Net Present Value when the forest area were utilised for non forest purposes. This amount is lying with CAMPA. The issue was examined in detail by the CEC and a report filed.[7] Based on the Report of the CEC, the Court accepted[8] the following recommendations:

5 I. A. No. 566; see order dated 26.09.2005.
6 Order dated 05.05.2006.
7 I.A. No. 2143.
8 Order dated 10.07.2009.

A) The guidelines and the structure of the State CAMPA as prepared by the MoEF may be notified/implemented. All previous orders passed by this Court regarding this would stand modified to the extent necessary for implementation of the present proposal.

B) Substantial amount of funds have been received by the Ad-hoc CAMPA and sudden release and utilization of this large sum all at one time may not be appropriate and may lead to its improper use without any effective control on expenditure. This Court considers it appropriate to permit the Ad-hoc CAMPA to release, for the next 5 years, in proportion of 10% of the principal amount pertaining to the respective State/UT as per the conditions given below:

   i) the details of the bank account opened by the State Executive Committee (in Nationalized Bank) are intimated to the Ad-hoc CAMPA;

   ii) the amount towards the NPV and the protected area may be released after the schemes have been reviewed by the State Level Executive committee and the Annual Plan of Operation is approved by the Steering Committee;

   iii) The amount towards the CA, Additional CA, PCA and the Catchment Area Treatment Plan may be released in the respective bank accounts of the States/UTs immediately for taking up site specific works already approved by the MoEF while granting prior approval under the Forest (Conservation) Act, 1980.

C) An amount upto 5% of the amount released to the State CAMPA may also be released and utilized by the National CAMPA Advisory Council, for monitoring and evaluation and for the implementation of the various schemes as given in para 19 of the Guidelines on the State CAMPA. It is left to the discretion of the National CAMPA Advisory Council whether it wants to spend money directly or through the Ad hoc CAMPA.

D) The recommendations for the release of the additional funds, if any, will be made in due course from time to time after seeing the progress made by the State Level CAMPA and the effectiveness of the accounting, monitoring and evaluation systems.

E) The State Accountant General shall carry out the audit of the expenditure done out of State CAMPA funds every year on annual basis.

F) The State Level Executive Committee shall evolve an appropriate and effective accounting process for maintenance of accounts, returns and for audit.

G) The interest received by the State CAMPA on the amounts placed at their disposal by the Ad hoc CAMPA may be used by it for administrative expenditure.

Till an alternative system is put in place (after obtaining permission from this Court) the money towards CA, NPV and Protected Areas (National parks, Wildlife sanctuaries) shall continue to be deposited in the Ad hoc CAMPA and its release will continue to be made as per the existing orders of this Court

2.6 Conclusion

Since 1996, the Supreme Court of India has assumed the role of the principal decision maker so far as issues relating to forests and wildlife are concerned. This has been due to Supreme Court's intervention through the following cases:

1) The T. N. Godavarman Thirumulkpad vs Union of India and ors (WP No 202 of 1995) concerning the implementation of the Forest Conservation Act, 1980.

2) The Centre for Environmental Law (CEL), WWF vs Union of India and ors (WP No 337 of 1995) concerning the issue of settlement of Rights in National Parks and Sanctuaries and other issues under the Wildlife (Protection) Act, 1972.

   These cases are being heard for the last nine years and are a part of what is termed as "continuing mandamus", whereby the Courts, rather than passing final judgments, keeps on passing orders and directions with a view to monitor the functioning of the executive.They have led to fundamental changes in the pattern of forest governance and decision making.

   Some examples include:

   a) By virtue of the Supreme Court's order dated 13.11.2000 in the CEL WWF case (W.P. No. 337 of 1995), no forest, National Park or Sanctuary can be dereserved without the approval of the Supreme Court.

   b) No non-forest activity is permitted in any National Park or Sanctuary even if prior approval under the Forest (Conservation) Act, 1980 has been obtained.

   c) The interim order dated 14.2.2000 prohibited the removal of any dead or decaying trees, grasses, drift wood etc. from any area comprising a National Park or a Sanctuary notified under Section 18 or 35 of the Wildlife (Protection) Act, 1972.

It was also directed that if any order to the contrary has been passed by any State Government or other authorities the operation of the same shall be stayed. In order to advise the Supreme Court on the various issues concerning forest and wildlife conservation, the Central Empowered Committee (CEC) was set up as an authority under Section 3 (3) of the Environment (Protection) Act, 1986 to adjudicate on forest and wildlife related issues. Despite its wide impact and implication on forest management and governance most environment, human rights and activists groups and also the Government are not generally aware of the current developments in the Courts. Existing methods of reporting of Court's orders and judgments are generally inadequate and do not reach the concerned the groups in time. An Information Dissemination Service is therefore been envisaged as a neutral body that will keep a watch on the happenings in the Supreme Court and disseminate information through electronic as well as other means to interested groups and individuals on all decisions concerning the above two cases.

3 Right to Information Act, 2005

Chapter Contents **Page Nos.**

3.1 Introduction

Most aspects of our daily lives are touched by governmental action (or inaction). Very often we are either personally affected by corruption and inefficiency in different levels of government or know of someone who has been – inordinate delays, demands for bribe, nepotism, red-tapism, waiting for months for a ration card or a passport – these are common, very unfortunate, experiences for any Indian citizen. The root cause of corruption in government is the lack of transparency and accountability. A citizen finds himself faced with massive government machinery which works behind closed doors and shrouds its actions in secrecy and silence. No one knows where the government spends its money, what is the progress of development work undertaken by the government, how much subsidy is being given and to whom, what projects are being sanctioned and why. This lack of information in the public domain allows government officials to manipulate the citizenry at its will. A government official can without hesitation ask for bribe because he knows that the common man would rather pay the bribe than be

harassed for years. The official is further emboldened in his dishonest motivations because the whole governmental structure and policy is often designed to support this corruption.

How can society rid itself of the evil of corruption and ensure that the government that it has democratically elected serves it efficiently and effectively? The answer lies is bringing complete transparency in governance, increasing accountability in government decision making and providing access to government records and documents to the citizenry thereby opening the whole government structure to scrutiny. Once their actions are open to public scrutiny, government officials would no longer be able to under-perform or engage in any form of corrupt practices with impunity.

Each citizen of India has the fundamental right to be informed. This right is guaranteed by the Constitution of India and the Supreme Court of India has upheld this on several occasions. Therefore, a citizen has the right to seek information relating to any action of the government without any arbitrary restriction. While this fundamental right has been existence for several decades now, citizens could not enjoy it for various reasons – the existence of legislation called the Official Secrets Act which had been introduced by the colonial rulers in 1923; a bureaucracy which believed that it was accountable to no one; rampant corruption in every aspect of governance. To give this fundamental right a more meaningful status, from 1997 to 2003 legislatures of nine states across the country formulated laws which more clearly defined this right and how citizens could enjoy. However, these laws had many weaknesses and what was required was a central standardized legislation. A legislation called the Freedom of Information Act 2002 was passed by the Parliament but it never came into force.

In June 2005, under the leadership of the UPA-led government, the Right to Information Act 2005 (RTI Act) was passed by the Parliament. It came into force on 12 October 2005. The Act has been considered to be revolutionary piece was legislation as it gives citizens the rights to access almost all information held by not only government bodies, but also bodies held, controlled or substantially financed by the government.

In the context of environment protection, the RTI Act is being used by citizens and environment groups across the country to access information on a broad spectrum of issues such as work done by the government towards protection of environment, expenditure and budget outlays for such works, and information relating to projects which are being submitted to the government for approval which have an impact

on the environment. The information received through filing of RTI Applications is proving to be an immensely useful tool in the environment protection movement.

This Chapter will discuss the right to information as guaranteed by the Constitution of India, the provisions of the Right to Information Act 2005 (RTI Act 2005), and the issues involved in its implementation. We will also discuss some of the instances in which the RTI Act has been used to help protect the environment.

3.2 Right to Information – A Fundamental Right

Introduction

The Constitution of India recognizes certain rights as fundamental rights. These rights are paramount and no law in India can take away these rights. If any law made by a legislature or any act of a government is found to be in violation of these rights, the law or the act would be considered to be unconstitutional and will be struck down. Chapter III of the Constitution of India identifies several rights as fundamental rights. However, over the years, the Supreme Court of India has broadened the spectrum of fundamental rights by liberally interpreting the existing rights. The right to information is one such right which the Supreme Court of India has considered to be a fundamental right of every citizen of this country under Article 19(1)(a) of the Constitution of India. Article 19(1)(a) of the Constitution provides-

19. (1) All citizens shall have the right—

(a) to freedom of speech and expression;

Case law

One of the first cases in which the Supreme Court held that the public has a right to know was *State of Uttar Pradesh v. Raj Narain* AIR 1975 SC 865. The Court held that –

> "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. *The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing.* The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public

> security. To cover with veil secrecy the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption." (emphasis added)

Some years later, the issue before the Supreme Court in *SP Gupta v. Union of India* 1981 (Supp) SCC 87 was whether the correspondence between the law minister and the Chief Justice of India and the Chief Justices of the High Courts of Delhi and Patna in relation to the transfer and non-appointment of judges could be disclosed. The Court held that in the functioning of the Government, disclosure of information must be the ordinary rule while secrecy must be an exception, justified only when it is demanded by the requirement of public interest. The approach must be to narrow the area secrecy as much as possible while bearing in mind that disclosure also serves an important aspect of public interest.[1] The Court ordered that the correspondence to be disclosed. Justice P.N. Bhagwati in his decision in this case emphasized need for information and accountability in a democracy and wrote:

> "Where a society has chosen to accept democracy as its credal faith, it is elementary that *the Citizens ought to know what the Government is doing.* The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. *No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government…a popular government without popular information or the means of obtaining it, is but a prologue to a force or tragedy or perhaps both.* The Citizen's right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic state".[2]

In *Secretary, Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal* AIR 1995 SC 1236, the Supreme Court opined that the right to information was crucial in a democratic set up. In a democracy where each person has a right to participate, participation in the governance of the country has no

[1] Para 66
[2] Para 64

meaning unless the persons are well informed with regard to all the issues. The Court held-

> "True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. *The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce* when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisations."

The Supreme Court in *Dinesh Trivedi v. Union of India* (1997) 4 SCC 306 held that to ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is concomitant of a free society. Sunlight is the best disinfectant.

Right to Information – an internationally recognised right

Several international legal instruments recognize the right to information as part of the right to freedom of speech and expression. India has made commitment under these instruments to honour this right.

- The Universal Declaration of Human Rights 1948 (UDHR) has been signed by India. Article 19 of this Declaration specifically states that the right to freedom of opinion and expression includes the right to seek, receive and impart information.

  Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

- India has also signed and ratified the International Covenant on Civil and Political Rights1966. Article 19(2) of this Covenant reiterates what had been provide in the UDHR-

Article 19

1) Everyone shall have the right to hold opinions without interference.

2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

…

In the environmental context the access to information is all the more important as good environmental decision making requires participation of all affected persons. In 1992, 178 countries including India signed the Rio Declaration on Environment and Development. Principle 10 of the Rio Declaration is -

Principle 10

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

3.3 Right to Information Act 2005

Freedom of Information Act 2002

In 1997, the Government in power drafted a law called the Freedom of Information Bill 1997. However, this Bill was not enacted. In 1998, the then Prime Minister Mr. Atal Bihari Vajpayee announced that a law on the Right to Information would be passed soon. In the year 2000, the Freedom of Information Bill 2000 was tabled before the Parliament. The Bill was passed by the Parliament in 2002 and it was called the Freedom of Information Act 2002. This Act never came into force as the required notification under the Act was never issued.

Right to Information Act 2005

The UPA led coalition government which came to power at the Centre in 2004 released its agenda in the form of the Common Minimum Program in May 2004. In this program, a clear commitment was made by the Government to pass the Right to Information Act. It was stated - '*The Right to Information Act will be made more progressive, participatory and meaningful*'. A National Advisory Council was

constituted by the Government to look into the implementation of the Common Minimum Program. Two members of the National Advisory Council – Ms. Aruna Roy and Mr. Jean Dreze – had been associated with the right to information campaign in India for a long time. Ms. Aruna Roy and Mr. Jean Dreze played an instrumental role along with other civil society organizations such as the Commonwealth Human Rights Initiative and the National Campaign from People's Right to Information pressurized the Government in honouring its commitment.

The Right to Information Bill 2004 was introduced in the Parliament on 23 December 2004. On 11 May 2005, Dr. Manmohan Singh, the Prime Minister, made an intervention with regard to the Bill. In his speech he stated –

> "I believe that the passage of this Bill will see the dawn of a new era in our processes of governance, an era of performance and efficiency, an ear which will ensure that benefits of growth flow to all sections of our people, an era which will eliminate the scourge of corruption, an era which will bring the common man's concern to the heart of all processes of governance, an era which will truly fulfill the hopes of the founding fathers of our Republic"

The Bill was passed by the Lok Sabha on 11 May 2005 and by the Rajya Sabha on 12 May 2005. After being passed by both Houses, it received the Presidential assent on 15 June 2005. The Right to Information Act 2005 (RTI Act) came into force through notification on 12 October 2005.

Overview of the RTI Act

Preamble

The RTI Act in its Preamble sets down the rationale behind the framing of this Act. It recognizes the importance of access to information for the functioning of a democracy and that a well-informed citizenry can help in reducing corruption in the Government and hold the Government accountable. The Preamble states-

> AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;
>
> AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

> AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;
>
> NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

It is interesting to note that the Parliament was well aware of the fact that there would be certain conflicting interests involved – disclosure of information to citizens may conflict with the efficient functioning of a government office, the limited financial and human resources available in a government office and the requirement to keep certain sensitive information as confidential. Therefore, the provisions of the RTI Act are drafted in a manner that these conflicts can be minimized while at the same time transparency in government offices is ensured.

Territorial jurisdiction

As the RTI Act is a central Act, it applies to every state of the country except the State of Jammu and Kashmir. The State of Jammu & Kashmir had its own J&K Right to Information Act 2004 which was replaced by the J&K Right to Information Act 2009. State governments and the Central government as well as certain other competent authorities as defined in the Act have been given the power to draft rules which would regulate certain aspects of the Act such as the fees payable by the person requesting the information; salaries of persons appointed as Information Commissioners and officers of the Commissions and procedure to be adopted by the Commissions.

Act to have overriding effect

The RTI Act replaced its predecessor - the Freedom of Information Act 2002. Section 22 of the RTI Act is one of the most important provisions of the Act and its states-

Section 22: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

According to this section, the RTI Act ***overrides*** any other previous law in force in case there is a conflict between the provisions of the RTI Act and such previous law. Other Acts such as the Indian Evidence Act 1872 have certain provisions which, if and when in conflict with the RTI Act, will be overridden by the RTI Act. However, it is important to know that the provisions in these other Acts do not cease to exist-

i.e. they are still valid in law. It is only *when there is a conflict*, the RTI Act will overrule. This includes the Official Secrets Act 1923- which had been brought into force by the colonial rulers which made most governmental actions and records confidential and not open to scrutiny. This Act has not been repealed, but several parts of it have been rendered redundant by the RTI Act whose provisions would gain primacy.

Applicability

Information can be sought under this Act by any citizen of India. This means that only individuals can seek information and bodies such as associations, society, companies etc. cannot seek information under the Act. It must be pointed out here that if a person is seeking information on behalf of any such body, as long as he or she has written his or her name, there should not be a problem. Also, if a person writes his designation or post in an organisation along with his name- it is acceptable. However, if a person only writes his position, for example, secretary of a resident welfare association – and does not include his name – the Application for information may be rejected.

Information under the RTI Act can be sought from Public Authorities. A Public Authority is defined in Section 2(h) of the RTI Act as-

Section 2(h): "public authority" means any authority or body or institution of self-government established or constituted—

a) by or under the Constitution;

b) by any other law made by Parliament;

c) by any other law made by State Legislature;

d) by notification issued or order made by the appropriate Government, and includes any—

i) body owned, controlled or substantially financed;

ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government

Public authorities therefore include-

- All central and state government departments;
- Any authority, body or institution which has been set up under the Constitution of India – for example - Public Service Commissions and Election Commission

- Any authority, body or institution which has been set up by a central or state law – for example – central and state pollution control boards, National Environment Appellate Authority
- Any authority, body or institution which has been set up under any notification order made by the central or state government – for example – the Central Empowered Committee
- Bodies which are owned, controlled or substantially financed directly or indirectly by government funds
- NGOs which are substantially financed directly or indirectly by government funds

The RTI Act does not provide a definition of substantially financed and till date a case- to-case analysis has been used by the Commissions set up under the Act and the Courts to decide whether a particular body is substantial financed or not.

Suo moto disclosures

The RTI Act is not only *reactive* statute- i.e. it does not come into action only when a person seeks certain type of information from a department. One of the reasons why the RTI Act is considered to be a landmark legislation is because it mandates that public authorities would *suo moto* (on its own) make certain disclosures. Section 4 of the RTI Act includes an extensive list of kinds of information which the public authorities are required to make available to the public within 120 days of the enactment of the Act. This information should be regularly updated and disseminated widely and in a manner and form which makes it easily accessible to citizens. Uploading information on official websites is the most commonly used method of dissemination of information. This section also requires public authorities to properly catalogue and index the records in a way that they are easily accessible under the RTI Act.

Section 4(1)(b) of the RTI Act requires the following information to be publicly disclosed by public authorities -

i) the particulars of its organisation, functions and duties;

ii) the powers and duties of its officers and employees;

iii) the procedure followed in the decision making process, including channels of supervision and accountability;

iv) the norms set by it for the discharge of its functions;

v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

vi) a statement of the categories of documents that are held by it or under its control;

vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

ix) a directory of its officers and employees;

x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

xiii) particulars of recipients of concessions, permits or authorisations granted by it;

xiv) details in respect of the information, available to or held by it, reduced in an electronic form;

xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

xvi) the names, designations and other particulars of the Public Information Officers;

xvii) such other information as may be prescribed;

The last requirement - 'such other information as may be prescribed'- is important as it allows for other types of information which have not been specified in the Act to be subsequently identified. The significance of this section lies in the fact that public authorities are expected to make information easily accessible and open to

public scrutiny. This disclosure of information is also expected to make departmental procedures and norms, budgets, expenditure, minutes of meetings etc. easily available to the public thereby making the public authorities more transparent.

3.4 Right to Information Act – In Practice

The process of filing a RTI Application

A citizen of India can request for information from any public authority by filing a RTI Application. What is a public authority has been discussed above in 4.4.3.4. Information has been defined in Section 2(1)(f) of the RTI Act as –

Section 2(f): "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

Therefore, information which is available on record with the public authority can be sought for in a RTI Application. Samples can also be sought (for example – samples of material used to make a road). A RTI Applicant can also request for an inspection of records. A RTI Application cannot ask the public authority to take action or to redress any grievances. Information can also be sought about a private body if it is information that the public authority can access from the private body under any law. For instance, if the law allows the public authority to direct a private body to submit records to it, then such records can also be sought through a RTI Application.

A RTI Application is written to the Public Information Officer of the concerned Department in English or Hindi or in the official language of the area in which the Application is made. Each Public Authority is required to designate one or more of its officers as Public Information Officers (PIOs) in all administrative units/offices. The RTI Application can be sent by post to the PIO and need not be hand delivered. Along with a RTI Application, an application fee which is prescribed has to be deposited in the manner prescribed. For instance for all Central government departments the application fee is ten rupees and it has to be deposited by way of cash against proper receipt, or by demand draft or bankers cheque or Indian postal order (IPO) payable to the Accounts Officer of the Public Authority. The public authority can refuse to accept a RTI Application if application fees are not paid in the prescribed manner. Persons who are below poverty line are not required to pay application fee.

There is no special format for a RTI Application, but many departments suggest a format on their websites. The following should be there in a RTI Application

- Name of Applicant
- Contact Information- address; phone number; email address
- Details of information sought
- Date of filing RTI Application
- Proof of person being below poverty line (if applicable)
- A statement whether the information sought concerns the life and liberty of a person

The RTI Act clearly states that the RTI Applicant need not mention reasons for which he or she is seeking information. It is often believed that information can be requested for only when there is a larger public interest being served and that unless the RTI Applicant gives evidence that the information he or she is seeking is in public interest, information need not be disclosed. This is a wrong understanding of the law. Information can be sought for any purpose. The PIO has to provide the information in accordance with the provisions of the RTI Act, irrespective of the purpose for which it has been sought.

Processing a RTI Application

Once a RTI Application is received in any public authority, the PIO has to consider whether the questions concern some other public authority. If it concerns some other public authority, the PIO has to transfer the RTI Application to such other public authority within five days of receiving the RTI Application. A PIO cannot reject a RTI Application on the ground that it does not concern his or her public authority.

If the information sought concerns the life and liberty of a person (not necessarily of the RTI Applicant), the information sought has to be provided by the PIO within forty eight hours of receiving the Application. If not, then information has to be provided within 30 days. The PIO can seek assistance of such other officer of the same public authority who is the custodian of the information sought while providing information to the Applicant.

If the information has to be provided in the form of photocopies of documents, or a compact disc for which the public authority has to incur a cost, the same is chargeable to the Applicant on the basis of prescribed rules. For Central Government departments, the fees are as follows:

- Two rupees for each page created or copied (A4 or A3 size)
- Actual charge or cost price of a copy in a larger paper size
- Actual cost or price for samples or models
- Fifty rupees per diskette or floppy
- First of inspection is free and then a free of rupees five for each subsequent hour of inspection
- For information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication

Persons below poverty line do not have to pay the afore-mentioned fees and the information has to be provided free of cost to such persons. The PIO has to inform the Applicant the amount that has to be paid and the calculations with regard to how he came to this amount. The intervening period between this intimation requesting the Applicant to pay fees and the payment of the fees by the Applicant is not included in the thirty days that the PIO has to respond to a RTI Application. It is important to note that fee that is charged is all inclusive. No additional fees may be charged for postage of information to the Applicant or for the human resource spent in gathering the information.

If the RTI Applicant has specified format in which he or she is seeking information, it has to be provided in that format. The exception to this rule is that if providing the information in that format would disproportionately divert the resources of the public authority or would be detrimental to the safety and preservation of the record. Even then information cannot be refused by the PIO. It must then be provided in a different format. For example, if the information sought by the Applicant is very voluminous, the PIO may offer inspection of the documents by the Applicant instead of photocopying of the documents. Once the Applicant has inspected the documents, he or she may identify the documents which he or she requires photocopies of.

If the information sought by the Applicant is provided to him after thirty days of receiving the RTI Application, the PIO has to provide this information free of cost.

The PIO may decide to reject whole or part of the RTI Application. In such a case, reasons for rejecting the Application have to be sent to the RTI Applicant within thirty days of receiving the RTI Application. The Applicant has to be informed about the period within which an appeal may be filed against the rejection and the contact details of the person with whom the appeal has to be filed.

Grounds on which information may not be disclosed

According to the RTI Act, information has to be provided as a rule and there are only limited specified grounds based on which information may not be disclosed. These grounds are provided under **Section 8 and 9 of the RTI Act**. Section 8(1) has ten clauses each of which is a different ground for exempting information from disclosure.

Any of the following information need not be disclosed except in circumstance discussed later:

a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

f) information received in confidence from foreign Government;

g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

h) information which would impede the process of investigation or apprehension or prosecution of offenders;

i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

It must be kept in mind that these exemptions have to be construed narrowly as they impinge on the fundamental right to information. The Delhi High Court in *Bhagat Singh v. CIC & Ors.* W.P. (C) 3114/2007 has observed the following in this regard -

> "13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself."

These exemptions are not blanket exemptions and there are certain circumstances in which the information would still have to be provided even if the exemption applied-

- Circumstances that are mentioned along with the exemptions themselves. For instance, cabinet papers which are otherwise exempt from disclosure shall be made public once the decision is taken.
- If the public authority finds that the public interest in disclosing the information outweighs the harm caused to the private interests if the information is disclosed. This is provided in Section 8(2) of the Act which states-

Section 8(2): Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

For instance, if it is found that information sought is personal in nature and the disclosure may invade the privacy of the person to whom the information relates

to – the information would ordinarily be exempt from disclosure. But if the disclosure of such information serves a public interest which outweighs the harm done to such a person on disclosure, the information would have to be disclosed.

- Section 8(3) provides that in case the information sought pertains to any incident or matter which took place twenty years before, the information will be made public even if any of the exemptions apply. However, if the exemptions under clauses (a), (c) and (i) as mentioned above apply – the information cannot be disclosed.

Under Section 9 of the RTI Act, the PIO can reject a request for information if providing access to such information would lead to an infringement of copyright subsisting in a person. However, if the copyright subsists in the State, this provision does not apply and the PIO would have to disclose the information.

Severance of information

In a situation where part of the information that has been sought is exempt but the rest of the information is not, the PIO may provide the information that is not exempt after severing it from the part which contains exempt information. For example, if the RTI Applicant is seeking a copy of an investigation report and the PIO is of the opinion that if the names of the witnesses are revealed then their life would be in danger and therefore clause (g) of the exemption would apply – the PIO can provide a copy of the report after deleting the names of the witnesses and any other clue to their identification from the report and then give it to the Applicant.

Information relating to third party

Under the RTI Act, any citizen can seek information even about a third party. Third party has been defined under the RTI Act in Section 2(n) as-

Section 2(n) "third party" means a person other than the citizen making a request for information and includes a public authority.

However, if the PIO finds that the information sought about the third party has been given to the public authority by the third party and is being treated as confidential by such third party, then in accordance with Section 11 the PIO will within five days of receiving the RTI Application send a notice to such third party asking for submissions whether the information should be disclosed. The PIO will then consider the submissions received from the third party before deciding whether any of the exemptions under Section 8(1) and 9 apply; and if yes, any of

the circumstances mentioned above which override the exemptions, apply. Many PIOs make the mistake of considering Section 11 to be an exemption clause itself and they refuse to provide information to the RTI Applicant if the third party objects to the disclosure of the information. Section 11 is only a procedural section. It lays down the procedure to be adopted in case the information relates to the third party and is treated as confidential by this third party. Even if the third party objects, the PIO has to independently apply his or her mind to the case and see if information can still be disclosed in accordance with the provisions of the RTI Act.

3.5 Information Commissions

Central Information Commission

The Central Information Commission (CIC) has been set up under the RTI Act. The CIC consists of the Chief Information Commissioner and other Information Commissioners, not more than ten in number. The office of the CIC is in Delhi. The CIC has jurisdiction over public authorities which are departments of the Central Government or any of the Union Territories; or are formed by central Acts or orders/ notifications issued by the Central Government or any of the Union Territories; or are controlled or substantially funded by the Central Government or any of the Union Territories.

The Central Information Commissioners are appointed by the President on the recommendation of the following persons- the Prime Minister, the Leader of the Opposition and a Union Cabinet Minister who has been nominated by the Prime Minister. They hold the post for a period of five years or till the age of sixty five – whichever is earlier. Commissioners are supposed to be 'persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance'.

State Information Commission

State Information Commissions (SIC) have been set up in every State of the country under the RTI Act. Each SIC consists of a Chief Information Commissioner and Information Commissioners, not more than ten in number. The SICs have jurisdiction over the public authorities which are departments of the respective state Government; or are formed by State Acts or orders/notifications issued by the State Government; or are controlled or substantially funded by the State Government.

The State Information Commissioners are appointed by the Governor of the respective state on the recommendation of the Chief Minister, Leader of the Opposition and a Cabinet Minister who is nominated by the Chief Minister. Like the Central Information Commissioners, State Information Commissioners hold the post for a period of five years or till the age of sixty five – whichever is earlier. Commissioners are supposed to be 'persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance'.

Powers of Information Commissioners

Central and State Information Commissioners have the following powers:

- Decide on Appeals filed under Section 19 and Complaints under Section 18
- Penalise erring PIOs and/or recommend disciplinary proceedings against them
- Award compensation to RTI Applicants for any loss or detriment suffered due to the delay in providing the information
- Recommend specific steps to public authorities so that they can work in consonance with the RTI Act such as providing access to information in a particular form, directing that certain category of information be published, suggest changes in the practices of the public authority, require the submission of an annual report with regard to *suo moto* disclosure of information under Section 4 of the Act.

The Information Commissioners have to submit an annual report to the Central or State Government which includes details regarding the implementation of the RTI Act. This report has to be presented before the each House of Parliament or Legislature.

3.6 Appeal Under Section 19

First Appeal Procedure

Each Public Authority has to designate a person as the First Appellate Authority. He or she has to be a person who is a senior in rank to the PIO. If the RTI Applicant is not satisfied with the information given by the PIO; or has not received any information from the PIO or the request for information has been wrongly rejected- he or she may file a first appeal with the First Appellate Authority. This Appeal has to be filed within 30 days of receiving the reply of the PIO or the date on which the PIO's reply should have been received – i.e. within 30 days of filing of the RTI

Application. An appeal may be accepted after the time period of 30 days has passed, if sufficient cause is shown that the Appellant was prevented from filing the appeal within time.

If a third party is aggrieved by the decision of the PIO to disclose the information to the RTI Applicant, such third party may also file a first appeal.

During the hearing of the First Appeal the onus lies on the PIO to prove that the denial of information was justified. The First Appellate Authority has to decide the matter within 30 days of receiving the appeal. This time period of 30 days may be extended upto 45 days for reasons which have to be given by the First Appellate Authority in writing.

Second Appeal Procedure

If the RTI Applicant is not satisfied with the order of the First Appellate Authority, or the Authority has not delivered an order within the time limit stipulated in the Act or the order of the Authority has not been complied with- the RTI Applicant can file a Second Appeal before the CIC or the SIC. The Second Appeal has to be filed within ninety days of receiving the order of the First Appellate Authority or ninety days from the date on which the order should have been issued but was not. A Second Appeal may be accepted by the CIC or the SIC after the period of ninety days has passed if sufficient cause is shown by the Appellant that he was prevented from filing it within ninety days.

During the second Appeal proceedings, as in the first Appeal proceedings, the onus lies on the PIO to prove that the denial of information was justified. The CIC or the SIC has the power to direct the public authority to take

The decision of the CIC or the SIC is binding. No appeal lies from the decision of either the SIC or the CIC. It is important to understand that the CIC does not have any jurisdiction over the SIC and the subject matter jurisdiction of these Commissions are entirely separate. Therefore, no appeal or review lies from the decision of the SIC to the CIC.

Penalty

The Information Commissions have the power to impose penalty on the PIOs, if the PIO, without reasonable cause-

- refused to receive an application for information
- did not furnish information within the time limit stipulate in the Act

- malafidely denied the request for information
- knowingly gave incorrect, incomplete or misleading information or destroyed information which was the subject of the request
- obstructed in any manner in furnishing the information

If the PIO has sought assistance from another officer who is the custodian of the record, then for the purposes of penalty such other officer would be considered the PIO. The CIC and the SICs have to give a proper hearing to the PIO before coming to a conclusion. The burden lies on the PIO to prove that he acted reasonably and diligently. The discretion lies on the Information Commissioners to decide whether a reasonable cause existed or not. If the Commission finds any of the above circumstances to exist in any case without reasonable cause, it has the power to impose a penalty of two hundred and fifty rupees each day till the application is received or the correct information is furnished. The Act stipulates a maximum limit of twenty-five thousand rupees as penalty. Therefore, any delay of more than hundred would attract the same amount of penalty – twenty-five thousand rupees. This penalty has to be paid by the PIO personally and is not paid by the Public Authority.

The Commission can also recommend disciplinary proceedings against a PIO if he or she without any reasonable cause and persistently does any of the afore-mentioned actions.

3.7 Complaint Procedure

A Complaint may be filed with the Information Commissions for any of the following reasons-

- If a RTI Applicant has not been able to submit his request to the PIO as either no such officer has been appointed by the Public Authority or because the PIO appointed has refused to accept the RTI Application.
- If the PIO has refused to give access to any of the information requested under the Act
- If the RTI Applicant has not received a response to the Application within the time limit stipulate in the Act.
- If the RTI Applicant has been asked to deposit fees which he or she finds to be unreasonable

- If the RTI Applicant believes that incomplete, misleading or false information is being provided
- Any other matter relating to requesting or obtaining access to records under this Act

The grounds for Complaint under Section 18 of the Act are similar to the grounds for Appeal under Section 19 and this has been one of the criticisms with regard to the drafting of the Act. However, grounds such as non-appointment of PIOs and unreasonable fees can only be grounds for complaint under Section 18 and not Appeal under Section 19. Also there can only be complaint about 'any other matter relating to requesting or obtaining access to records under this Act'. Examples of this last ground are if the RTI Applicant is harassed by any person for seeking information under the RTI Act, or if department proceedings are initiated against a RTI Applicant who is a government employee for seeking information from his own department.

Penalty proceedings can be initiated in response to a Complaint as well. The process is exactly the same as that for Appeals.

The Commission has the power to initiate an inquiry into a matter if it is satisfied that there are reasonable grounds to do so. While inquiring into any matter, the Commission have the powers vested in a civil court while trying a suit under the Code of Civil Procedure, 1980 in respect of the following matters-

a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

b) requiring the discovery and inspection of documents;

c) receiving evidence on affidavit;

d) requisitioning any public record or copies thereof from any court or office;

e) issuing summons for examination of witnesses or documents; and

f) any other matter which may be prescribed.

3.8 Use of RTI Act in Environmental Decision-making

RTI Applications are very useful tools for citizens who wish to intervene in environmental decision-making in the country. By filing a RTI Application, a citizen can gain access to various documents which the government has in its custody such as - Environment Impact Assessment Reports, minutes of meetings held by

different committees on environmental issues, file notings of government officers which often reflect the real reasons behind an administrative decision and correspondence between the Department and licensees which would reveal the action taken by the Department with regard to compliance of clearance conditions.

The Courts and judicial forums across the country have also relied on information which has been procured by either party through the RTI route. In two important environmental cases before the High Court of Delhi, the Petitioners produced information before the Court which had been accessed through the RTI route.

In *Utkarsh Mandal v. Union of India & Others*, WP (C) No. 9340/2009, the High Court of Delhi decided that the Environmental Clearance to a mining project in Goa granted by the Ministry of Environment and Forests had to be set aside as it was based on recommendations given by the Expert Appraisal Committee whose credibility was in doubt. The Petitioner in the matter had presented before Court information that it had received in response to a RTI Application filed with the Ministry of Environment and Forests. The reply received from the Ministry showed that the Chairman of the Expert Appraisal Committee (EAC), which had recommended the mining project for clearance, was himself a Director of four mining companies. The reply also revealed that the EAC had recommended 419 mining projects for clearance in six months. The High Court observed in its order that this information created a doubt over the credibility of the EAC. This was one of the reasons why the Environmental Clearance granted was set aside by the Delhi High Court.

In another case, *Balachandra Bhikaji Nalwade v. Union of India & Others*, WP (C) No. 388 of 2009, the High Court had to decide whether the Environmental Clearance granted to a thermal power plant in Maharashtra was valid in law or not. The Petitioner challenged the Environmental Clearance on the ground that a proper Environment Impact Assessment had not been undertaken prior to the grant of Clearance. The Petitioner in this case produced before the Court copies of correspondence he had received in response to his RTI Application between the Government and a research institution which clearly proved that enough research had not been undertaken before the Environmental Clearance was granted. The High Court on this basis quashed the Environmental Clearance.

In both these cases, the information which was produced before the Court by the Petitioner was able to convince the Court because it was part of the authoritative reply given by a public authority itself and not just based on the Petitioner own contentions.

RTI Applications have also been used by environmental organizations such as Kalpavriksha for their research work. Kalpavriksha released a report called 'Calling the Bluff' in 2009 in which it analysed, among other things, the level of compliance and monitoring of conditions stipulated in Environmental Clearances. One of the main source of data for this study was the information received by Kalpavriksh in response to RTI Applications filed by it. The information revealed that there was virtually no monitoring or compliance of conditions stipulated in the Environmental Clearances and Companies were flouting several environmental regulations as there was no efficient monitoring mechanism in place.

3.9 Conclusion

The agencies that are exempt are Central Intelligence and Security agencies specified in the Second Schedule like IB,Directorate General of Income tax(Investigation), RAW, Central Bureau of Investigation (CBI), Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CID-CB, Dadra and Nagar Haveli and Special Branch, Lakshadweep Police. Agencies specified by the State Governments through a Notification will also be excluded. The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human rights violation could be given but only with the approval of the Central or State Information Commission.

The following is exempt from disclosure under section 8 of the Act:-

- Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, "strategic, scientific or economic" interests of the State, relation with foreign State or lead to incitement of an offense;
- Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- Information received in confidence from foreign Government;
- Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption);
- Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. However, this does not apply to disclosure of "trade or commercial secrets protected by law".

4 Introduction to Environment Tribunals

Chapter Contents **Page Nos.**

4.1 Introduction

As one of the largest economies of the world, India is constantly striving towards a double digit economic growth rate. As the economy grows, so does the 'collateral damage' – the impact on the environment. From industries letting out poisonous sewage into the rivers and streams to lakhs of vehicles emitting poisonous gases into the air; from hazardous waste being negligently dumped near residential areas to rampant decimation of forests and wildlife; from encroachment of the fragile coastal areas to widespread mining in the middle of pristine jungles – the common man in India has experienced it all.

The Constitution of India gives every person a right to life. It is a fundamental right and no law or administrative action can violate this right. The Supreme Court of India has interpreted several other rights within this right to life including the fundamental right to clean and healthy environment. In the past two decades, the Supreme Court of India and the High Courts have on many occasions upheld this right guaranteed under Article 21 of the Constitution of India to protect different aspects of the environment – air, water, forests, wildlife, soil, etc.

The Constitution of India also recognizes as one of the fundamental principles of governance the duty of the government to protect and improve the environment and safeguard forests and wildlife. It also places a duty on every citizen of the country to protect and improve the natural environment.

Several legislations have been enacted to protect various aspects of the environment such as the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981 and the Environment (Protection) Act 1986. These legislations, among other things, put in place processes to analyse the impact of any activity on the environment; lay down norms and criteria to reduce the adverse impact of human activity on the environment; and create institutions to monitor the activities of industries and redress grievances.

Given that each citizen of this country has the fundamental right to clean and health environment and there are statutes to minimize the impact on the environment, it is the constitutional mandate of all three branches of the government – the legislature, the executive and the judiciary - to ensure that the fundamental right can be enjoyed (and not violated) and the statutes are enforced. One important way in which this can be done is to make available effective redressal mechanisms which the citizens can resort to when their rights are violated or statutory requirements are not adhered to.

Over the past few decades, the higher judiciary in the country – the Supreme Court and the High Courts – has played a crucial role in providing redressal mechanisms. Exercising jurisdiction under Articles 32 and 226 of the Constitution, these courts have passed orders with far reaching consequences for people and the environment. In many cases where the other two branches of the government – the Legislature and the Executive – have not performed their functions or met their constitutional mandate to protect the environment, the courts have stepped in to give strict directions to these branches.

But the higher judiciary cannot be the only redressal mechanism available to the citizens. On a practical level - it could be many years before the courts given any decision in a matter as they are overburdened with lakhs of pending cases. On a more substantive level – the issues relating to the environment which come before the courts are very technical in nature and require scientific and technical expertise to be resolved. Courts in most cases do not possess this expertise and have on several occasions had to seek assistance from specially constituted expert bodies before making a decision.

Over the past decade, the judiciary has on many instances voiced the need for specialised courts/tribunals which can deal with environmental litigation in a more efficacious manner. These 'environmental courts' should include scientific and technical experts in their panel, alongside legal/judicial members so that the decision making in the environmental matters is better informed.

4.2 Need for Green Tribunals

The Constitution of India guarantees several fundamental rights to persons in India. Some of these rights have been clearly spelt out in the text of the Constitution (e.g. right to equality, right to life, right to freedom speech and expression, etc.) while others have emerged as a result of the liberal interpretation of the 'spelt out' rights by the judiciary of this country. The fundamental right which has been most broadly interpreted to include other rights is the right under Article 21. Article 21 of the Constitution of India states–

> ***21.*** *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

The Supreme Court of India on many occasions has held that this right to life is not the right to mere animal existence but something much more than physical survival. This 'something more' has been used by the Courts to include several other rights within the ambit of right to life and give them the status of fundamental rights such as the right to livelihood, right against torture, right to legal aid, etc. One of the most significant set of rights which the Supreme Court has read into the fundamental right to life is the right to clean and healthy environment and other concomitant rights. One of the first cases in which the Supreme Court of India gave an expansive interpretation to the right to life to include the right to enjoyment of clean environment is *Subhash Kumar v. State of Bihar* AIR 1991 SC 420 in which the Court held -

> "Right to live is a fundamental right under Art 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life."[1]

[1] Article 32 of the Constitution of India gives the right to any person whose fundamental right has been violated to approach the Supreme Court of India for the enforcement of such right. Jurisdiction under Article 32 can only be invoked if there has been a violation of a fundamental right and therefore this decision is significant because it opens the doors of the Court under Article 32 for violation of the right to clean (unpolluted) environment.

In Part IV, the Constitution of India lays down certain fundamental principles called the Directive Principles of State Policy which the State is expected to keep in mind while framing laws. One such Principle is enunciated in Article 48A which states –

> ***48A.*** *The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.*

Article 51 A enumerates certain duties of every citizen of India. In clause (g) of Article 51 A, a duty has been imposed on every citizen to '*protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures*'.

Though neither Article 48A nor Article 51A are judicially enforceable,[2] the fact that Article 21 has been given an expansive interpretation to make the right to enjoy a clean environment a fundamental right, allows the Courts to take action and at the same time invoke Article 48A and Article 51A(g).

While the Constitution guarantees the fundamental right to clean environment, environment legislations such as the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981 and the Environment (Protection) Act 1986 provide statutory rights to clean environment by bringing into force, among other things, emission/disposal standards, procedures to consider the environmental impact of an industry before it is set up and processes by which the adverse impact on the environment caused by activities can be monitored. If there is any violation of the emission/disposal standards laid down in the statute or if there is non-compliance of statutory conditions, the industry can be taken to court by the government or by any citizen.

From mid-1980s more and more cases relating to the environment started coming to the Supreme Court and the High Courts. The Courts on many occasions had to decide between two contrary scientific opinions being brought before it by opposite parties. Having little technical expertise, the Courts started seeking advice from scientific experts or setting up expert bodies to investigate a matter and submit a report making recommendations to the Courts. The Courts relied on these recommendations to come to its final decision.

---

[2] Unlike fundamental rights, Directive Principles of State Policies and Fundamental Duties are only directory in nature and not mandatory. Therefore, if the state makes a law which violates such a directive principle (and not a fundamental right) or a citizen of the country does something which is against her fundamental duty under Article 51A, the same cannot be judicial enforces under the Constitution unless some other statutory remedy has been specifically enacted for the same.

In the following section we look at some of the decisions of the Supreme Court of India in which the Court has expressed the need for specialised environmental courts which would be able to meet the need for expertise on scientific issues by having experts on the adjudicating panel along with judges.

Case law

In 1986, a case came before the Supreme Court in which the issue before the court related to the leakage of oleum gas from a fertilizer plant in Delhi because of which one person had died and whether the plant should be allowed to restart. The Court in this case had been faced with conflicting reports from exports and therefore appointed another Expert body to assist it. In its order *M.C. Mehta v. Union of India* (1986)2 SCC 176 in Para 22, the Court made the following observation -

> "There is also one other matter to which we should like to draw the attention of the Government of India. We have noticed that in the past few years there is an increasing trend in the number of cases based on environmental pollution and ecological destruction coming up before the Courts. Many such cases concerning the material basis of livelihood of millions of poor people and reaching this Court by way of Public interest litigation. In most of these cases there is need for neutral scientific expertise as an essential input to inform judicial decision making. These cases require expertise at a high level of scientific and technical sophistication. We felt the need for such expertise in this very case and we had to appoint several expert committees to inform the court as to what measures were required to be adopted by the Management of Shriram to safeguard against the hazard or possibility of leaks, explosion, pollution of air and water etc. and how many of the safety devices against this hazard or possibility existed in the plant and which of them, though necessary, were not installed. We have great difficulty in finding out independent experts who would be able to advise the court on these issues. Since there is at present no independent and competent machinery to generate, gather and make available the necessary scientific and technical information, we had to make an effort on our own to identify experts who would provide reliable scientific and technical input necessary or the decision of the case and this was obviously a difficult and by its very nature, unsatisfactory exercise. It is therefore absolutely essential that there should be an independent Centre with professionally competent and public spirited experts to provide the needed scientific and technological input. We would in the circumstances urge upon the

> Government of India to set up an Ecological Sciences Research Group consisting of independent, professionally competent experts in different branches of science and technology, who would act as an information bank for the Court and the Government Departments and generate new information according to the particular requirements of the Court or the concerned Government department. We would also suggest to the Government of India that since cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, it might be desirable to set up Environment Courts on the regional basis with one professional Judge and two experts drawn from the Ecological Sciences Research Group keeping in view the nature of the case and the expertise required for its adjudication. There would of-course be a right of appeal to this Court from the decision of the Environment Court."
>
> (emphasis added)

Almost a decade after this decision of the Court, the Court stated in its judgment in *Indian Council for Environmental-Legal Action v. Union of India* 1996(3) SCC 212 that 'suggestion for establishment of environment courts is a commendable one'. The Court observed that the work load in ordinary criminal courts was very high and therefore prosecutions launched in these courts never reach their conclusion. In para 6 the Court further observed that -

> "Moreover, any orders passed by the authorities under Water and Air Acts and the Environment Act are immediately questioned by the industries in courts. Those proceedings take years and years to reach conclusion. Very often, interim orders are granted meanwhile which effectively disable the authorities from ensuring the implementation of their orders. All this points to the need for creating environment courts which alone should be empowered to deal with all matters, civil and criminal, relating to environment. These courts should be manned by legally trained persons/judicial officers and should be allowed to adopt summary procedures. This issue, no doubt, requires to be studied and examined indepth from all angles before taking any action."
>
> (emphasis added)

In two significant orders in *A.P. Pollution Control Board v. Prof. M.V. Nayudu* 1999 (2) SCC 718 and 2001 (2) SCC 62, the Supreme Court once again reiterated the need for environmental courts. In this case the Court was dealing with the issue of whether a hazardous industry could be located within a ten km radius of two water reservoirs which were the source of water for the twin cities of Hyderabad and Secunderabad. The Court decided to refer the matter to the National Environment Appellate Authority to investigate the issues which were very technical and scientific in nature. The Court held that -

> "53. In a large number of matters coming up before this Court either under Article 32 or under Article 136 and also before the High Courts under Article 226, complex issues relating to environment and pollution, science and technology have been arising and in some cases, this Court has been finding sufficient difficulty in providing adequate solutions to meet the requirements of public interest, environmental protection, elimination of pollution and sustained development. In some cases this Court has been referring matters to professional or technical bodies. The monitoring of a case as it progresses before the professional body and the consideration of objections raised by affected parties to the opinion given by these professional technical bodies have again been creating complex problems. Further these matters sometime require day to day hearing which, having regard to other workload of this Court, (- a factor mentioned by Lord Woolf) it is not always possible to give urgent decisions. In such a situation, this Court has been feeling the need for an alternative procedure which can be expeditious and scientifically adequate."
>
> (emphasis added)

In the second order, the Court on the issue of Environmental Courts referred the matter to the Law Commission of India for its consideration on the question of review of the environmental laws and the need for constitution of environmental courts with experts in environmental law along with judicial members in light of experience in other countries.

Report of the Law Commission

Pursuant to the second order of the Supreme Court in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, the Law Commission of India submitted its 186th report in September 2003 in which it recommended the following:

> "The Judicial body will be an Environment Court at State Level consisting of sitting/retired judges or members of the Bar with more than 20 years standing, assisted by a statutory panel of experts in each State. It will be a Court of original jurisdiction on all environmental issues and also an appellate authority under all the three Acts, viz., Water Act, Air Act and Environment (Protection) Act, 1986 and will reduce the burden of High Courts/Supreme Court. There will lie a further statutory appeal direct to the Supreme Court against the judgment of the proposed Environment Court. In our view, this scheme is preferable to the Government's proposal of a single appellate Court at Delhi, which will be beyond the reach of affected parties."

Other reasons in support of environment courts or green tribunals[3]

There are other reasons which support the constitution of environment courts or green tribunals other than those mentioned by the Supreme Court. These include:

- Specialised tribunals can help in improving government accountability. If there is a more informed adjudicatory authority overlooking the actions of the executive branches of the government, these agencies are likely to act in more transparent and responsible manner.
- In the absence of specialised tribunals, decisions given by separate high courts of the country and the Supreme Court lack consistency in terms of the principles applied and the conclusion reached. If an environment court is constituted, it would bring uniformity in environmental adjudication and would also help in increasing the predictability of the decision making process.
- Environment courts can draft more flexible rules with regard to standing and costs which can make it easier for persons to come before it and complain against environmental damage. Litigation in general can be prohibitively expensive and specialised courts can also reduce the costs involved by moving faster on the issue.
- As some environmental cases require urgent hearing to prevent environmental damage, specialised courts can prioritise such cases and fast track them. Environment courts are expected to handle cases more efficiently than other general courts given their technical and scientific expertise.

[3] Adapted from *Greening Justice*

- Environment Courts also allow for the adoption of an integrated approach to dealing with separate environmental laws, so that all environmental aspects of a problem can be dealt with simultaneously.
- Flexible rules of such a court can also help by allowing the court to be innovative with regard to the remedy that may be provided in any particular situation.

Access to environmental justice in International Law

In 1992, 178 countries including India signed the Rio Declaration on Environment and Development. Principle 10 of the Rio Declaration is -

Principle 10

> Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.
>
> (emphasis added)

Specialised environmental courts or green tribunals provide a more effective judicial remedy because of the adjudicating panel includes experts with the required scientific and technical background who would be able to make a more informed decision than a panel consisting only of judges trained in the area of law.

A study published in 2009 called 'Greening Justice' has recorded that in 1970s there were only a handful of environmental courts/ green tribunals in the world. In 2009, the number has gone up to 350 such courts in 41 countries.[4] Over half of these courts have been created after 2004.

[4] Most countries do not have national level environmental courts but have them on regional or local level. This would explain the large number of courts in less number of countries.

4.3 National Environment Tribunal and National Environment Appellate Authority

National Environment Tribunal

India had participated in the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992 and signed on the Rio Declaration. Among other principles set out in the Declaration were Principles 10 and 13 quite significant. Principle 10 (as stated above) requires states to provide access to effective judicial and administrative process, remedies and redressal. Principle 13 states –

> **Principle 13**
>
> States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

To meet the requirements of Principles 10 and 13, the Parliament passed the National Environment Tribunal Act 1995 with the following Preamble:

> "An Act to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto.
>
> WHEREAS decisions were taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, calling upon the States to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages;
>
> AND WHEREAS it is considered expedient to implement the decisions of the aforesaid Conference so far as they relate to the protection of environment and payment of compensation for damage to persons, property and the environment while handling hazardous substances;"

The Act laid down provisions with regard to compensation which could be claimed in case of injury or death due to damage to property or environment cause by an individual activity or as a result of a combination of activities. Heads were specified in the Act under which compensation could be claimed (death, permanent, temporary, total or partial disability or other injury or sickness, loss of wages, etc.). Provisions were included in the Act for the constitution of the National Environment Tribunal which would decide on an application for compensation. This Tribunal was given the powers of a civil court under the Code of Civil Procedure 1908 and an appeal against the decision of the Tribunal would lie with the Supreme Court of India. The Tribunal would consist of a mix of judicial and technical members. A person would not be qualified for appointment as a technical member unless he had adequate knowledge of, or experience in, or capacity to deal with, administrative, scientific or technical aspects of the problems relating to environment.

Despite the 'noble' intentions of the Parliament to bring in place a mechanism for awarding compensation in environmental matters, the National Environment Tribunal was never formed as the Ministry of Environment and Forests did not take any steps to notify its constitution.

National Environment Appellate Authority

The National Environment Appellate Authority (NEAA) was constituted under the National Environment Appellate Authority Act 1997. The NEAA was meant to be an authority where clearances granted under the Environment (Protection) Act 1986 with regard to siting of industries could be challenged. The Preamble of the Act stated-

> An Act to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto.

National Environment Appellate Authority had performed below exceptions and despite being constituted (unlike the National Environment Tribunal), the NEAA was rendered ineffective. At this point it would suffice to state that the National Environment Appellate Authority Act has also provided that the NEAA consist of a mix of judicial and technical members, the latter bringing the required expertise in scientific and technical areas to the decision making process.

4.4 National Green Tribunal Act, 2010

Introduction

It is significant that the Preambles of the National Environment Tribunal Act and National Environment Appellate Authority (discussed above) do not make any reference to the need for specialised courts arising from the fact that more and more complicated and technical issues were coming before the courts which the judiciary was finding difficult to respond to.

In April 2010, the Parliament passed the National Green Tribunal Act, 2010. In the Preamble of this Act, for the first time, the Parliament specifically makes reference to not only the multi-disciplinary issues which are coming up before the courts, but also the expansive interpretation of Article 21 of the Constitution as discussed above. It includes the need to provide relief and compensation to affected persons and makes reference to the various international commitments that India has made. The Preamble is as follows -

> An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.
>
> AND WHEREAS India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment;
>
> AND WHEREAS decisions were taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage;
>
> AND WHEREAS in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution;

AND WHEREAS it is considered expedient to implement the decisions taken at the aforesaid conferences and to have a National Green Tribunal in view of the involvement of multi-disciplinary issues relating to the environment.

Composition of the Tribunal

The Tribunal would consist of a Chairperson, full time judicial members minimum ten in number which could go up to a maximum of twenty and full time expert members minimum ten in number which could also go up to a maximum of twenty in number. The Chairperson can appoint additional experts in a particular case to assist the Tribunal.

The Chairperson will be appointed by the Central Government in consultation with the Chief Justice of India. Only a former Supreme Court judge or a former Chief Justice of a High Court is eligible for the post of the Chairperson of the Tribunal. A former judge of the High Court is eligible to be appointed as a judicial member. Interestingly, legal practitioners in the area of environmental law are not eligible for becoming a judicial member. For Expert members, the qualification is as follows:

a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or

b) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.

It is interesting to note that only those with a background in Engineering, Science or Technology are eligible for the position of Expert Member. Experts from the social sciences have been completely excluded even though in recent years it has been seen that most environmental matters are intricately linked with social and anthropological issues.

***Locus standi*[5]**

Any person who is aggrieved by the following orders or decisions made on or after the commencement of the National Green Tribunal Act, 2010, can appeal to the Tribunal within thirty days of the passing of such order or decision:

a) an order or decision by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974;

b) an order passed by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974;

c) directions issued by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974;

d) an order or decision by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977;

e) an order or decision by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980;

f) an order or decision by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981;

g) any direction issued under section 5 of the Environment (Protection) Act, 1986;

h) an order granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986;

i) an order refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986;

j) any determination of benefit sharing or order by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002

Even though the time limit set is thirty days, if the Tribunal finds that the Appellant was prevented from approaching the Tribunal by sufficient cause from filing the appeal within thirty days from the date of the order, the Tribunal may allow an extension of an additional time but not more sixty days. It may be noted that the National Green Tribunal has the power to hear all the cases which the National Environment Appellate Authority has the power to hear.

[5] *Locus standi* means who has the legal standing or ability or eligibility to take a case to court.

The following persons can approach the Tribunal for grant of relief or compensation or settlement of dispute:

a) the person, who has sustained the injury; or

b) the owner of the property to which the damage has been caused; or

c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

e) any person aggrieved, including any representative body or organisation; or

f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 or any other law for the time being in force:

The person could be an individual, a Hindu undivided family, a company, a firm, a local authority, an association of persons, a trustee of a trust, or any other artificial person.

Powers of the Tribunal

The Tribunal has the power to decide on:

- All civil cases where a substantial question relating to the environment, including enforcement of any legal right relating to environment is involved. According to the Act, a substantial question relating to the environment would include an instance where -

  i) there is a direct violation of a specific statutory environmental obligation by a person by which,—

     A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

     B) the gravity of damage to the environment or property is substantial; or

     C) the damage to public health is broadly measurable;

  ii) the environmental consequences relate to a specific activity or a point source of pollution;

- Questions arising from the implementation of any of the following laws:
  1) The Water (Prevention and Control of Pollution) Act, 1974
  2) The Water (Prevention and Control of Pollution) Cess Act, 1977
  3) The Forest (Conservation) Act, 1980
  4) The Air (Prevention and Control of Pollution) Act, 1981
  5) The Environment (Protection) Act, 1986
  6) The Public Liability Insurance Act, 1991
  7) The Biological Diversity Act, 2002

The Tribunal can award relief and compensation to persons who have been victims of pollution and environmental damage including any accident due to the handling of hazardous wastes. Depending on the situation, the Tribunal can also award restitution of property or direct restitution of the damaged environment. This means that the Tribunal can ask the person responsible for the damage to undo the damage and bring restore the original state of affairs. An application for grant of compensation or relief has to be filed with the Tribunal within five years from the date on which the damage/cause for compensation first arose. For instance, if persons have consumed poisonous water and the impact of consuming this water is visible only after some time, then they five years from the date on which the impact was felt before which they have to approach the Tribunal. The Tribunal has the discretion to increase this period by additional two months if it sees sufficient cause. The National Environment Tribunal which was never constituted would have heard such cases if it had been constituted.

The Tribunal has all the powers of a civil court and can therefore summon and enforce the attendance of any person, receive evidence on affidavit, ask for any public record to be brought before it, pass an interim order, review its own order and pass any order directing any person to stop committing any violation of any statutory provision. Since the Tribunal has been given the powers of a civil court, no other court in the country has the power to entertain cases which the Tribunal has the power to hear.

If the Tribunal's order is not complied with, the person responsible can be punished with imprisonment maximum of 3 years or with fine which may extend upto rupees ten crores. If the failure to comply with the order of the Tribunal continues, then an additional fine of rupees twenty five thousand per day can be imposed.

The Act states that the Tribunal would be guided by the principle of sustainable development, precautionary principle and polluter pays principle. An appeal against the decision of the Tribunal can be made before the Supreme Court of India within ninety days from the date on which the order is passed by the Tribunal.

As soon as the National Green Tribunal Act 2010 is notified by the Central Government, the National Environment Tribunal Act 1995 and the National Environment Appellate Authority 1997 will be repealed and would no longer be in force. The National Environment Appellate Authority would be dissolved and all pending cases which were being heard by the Authority would be transferred to the National Green Tribunal for subsequent proceedings.

4.5 Arguments against Green Tribunals

While there are several reasons why environmental courts and green tribunals should be set up, some arguments have also been raised against the constitution of such specialised court. These include:

- Some people are of the opinion that creating specialised courts would marginalize the environmental cases as these cases would get less attention, less qualified decision makers, and inadequate budgets.
- Creating a new adjudicatory forum would entail a substantial expenditure for judges, infrastructure, staff, training etc. An under-funded or overburdened court would not help in increasing access to environmental justice and remedy.
- For an environment court or green tribunal to be effective, it has to have well-trained members. If the members are not properly trained, they would not be able to make the expert contribution that they are expected to make and the decision making process would remain ill-informed.
- Sometimes non-environmental issues may be intricately linked with the environmental issues and the specialised environment court would neither have the power nor the capability to decide on such matters. An ordinary court with general powers would have the jurisdiction to all the issues.

4.6 Conclusion

As per the Green Tribunal Act, the Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal shall not be bound by

the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same.Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible; New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other 4 place of sitting of the Tribunal.

The sanctioned strength of the tribunal is currently 10 expert members and 10 judicial members although the act allows for up to 20 of each. The Chairman of the tribunal who is the administrative head of the tribunal also serves as a judicial member. Every bench of the tribunal must consist of at least one expert member and one judicial member. The Chairman of the tribunal is required to be a serving or retired Chief Justice of a High Court or a judge of the Supreme Court of India. Members are chosen by a selection committee (headed by a sitting judge of the Supreme Court of India) that reviews their applications and conducts interviews. The Judicial members are chosen from applicants who are serving or retired judges of High Courts. Expert members are chosen from applicants who are either serving or retired bureaucrats not below the rank of an Additional Secretary to the Government of India (not below the rank of Additional Chief Secretary if serving under a state government) with a minimum administrative experience of five years in dealing with environmental matters. Or, the expert members must have a doctorate in a related field.

The Tribunal has Original Jurisdiction on matters of "substantial question relating to environment" (i.e. a community at large is affected, damage to public health at broader level) & "damage to environment due to specific activity" (such as pollution). However there is no specific method is defined in Law for determining "substantial" damage to environment, property or public health. There is restricted access to an individual only if damage to environment is substantial. The powers of tribunal related to an award are equivalent to Civil court and tribunal may transmit any order/award to civil court have local jurisdiction.The Bill specifies that an application for dispute related to environment can be filled within six months only when first time dispute arose (provide tribunal can accept application after 60 days if it is satisfied that appellant was prevented by sufficient cause from filling the application).

Also Tribunal is competent to hear cases for several acts such as Forest (Conservation) Act, Biological Diversity Act, Environment (Protection) Act, Water & Air (Prevention & control of Pollution) Acts etc. and also have appellate

jurisdiction related to above acts after establishment of Tribunal within a period of 30 days of award or order received by aggrieved party. The Bill says that decision taken by majority of members shall be binding and every order of Tribunal shall be final. Any person aggrieved by an award, decision, or order of the Tribunal may appeal to the Supreme Court within 90 days of commencement of award but Supreme Court can entertain appeal even after 90 days if appellant satisfied SC by giving sufficient reasons. We will examine ti Tribunal in detail in the next chapter.

5 National Green Tribunal

Chapter Contents **Page Nos.**

5.1 Introduction

The last chapter discussed the need of a Green Tribunal and arguments against it. This Chapter will focus on the National Green Tribunal Act 2010, the National Green Tribunal (NGT), and its impact on the environmental law sector.

The Right to a healthy environment has been construed as a part of Article 21 of the Constitution in the judicial pronouncement in India. The Constitution, as a part of its Directive Principles of State Policy, states that,*"The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country,"* and bestows upon the citizens the duty to protect the environment, *"it shall be the duty of every citizen of India … to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."* Therefore, environmental protection has been an integral part of India's socio-economic jurisprudence since the beginning of India's legal process.

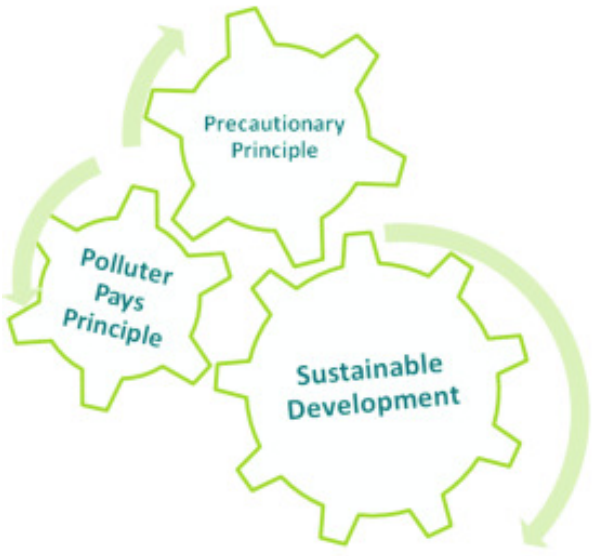
While Judicial bodies like the Supreme Court and High Courts have addressed environmental concerns since the time they were established,the need for a special environmental Court was felt after India participated in the United Nations Conference at Stockholm in 1972 and later the Rio de Janeiro Conference in 1992, both of which called upon the states to take effective action against environmental

degradation. After the failure of the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority 1997, the Supreme Court requested the Law Commission to set up a specialised Environment Court. The National Green Tribunal was thereafter set up on *18October 2010* under the National Green Tribunal Act 2010 (NGT Act).

The Preamble to the Act establishes it as *"an act to provide for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto".*

The fairly new Tribunal has consistently given judgments and orders upholding the fundamental principle of Sustainable Development. As on 1 April 2014, three hundred and ninety three (393) judgments had been successfully delivered by NGT. Irrespective of the hiccups in the beginning, NGT has come a long way in establishing itself as the principal authority to address environmental law disputes across the country. It has territorial jurisdiction in four regional Benches across India and has a mechanism of circuit Benchesthat have been held in cities like Shimla, Jodhpur and Shillong to address cases in areas too far from the nearest regional Bench. The aim is to reach out to as many people as possible and make environmental litigation accessible to the remotest areas of the country.

The Tribunal follows the three basic principles of environmental jurisprudence.



- **Precautionary Principle**

Precautionary Principle means that an action should be taken when a problem or threat occurs, not after harm has been inflicted. It is based on the premise that if there is a chance of excessive environmental damage due to a certain action, even if it is not foreseeable by scientific studies, the action should not be undertaken.

The Tribunal rejected the Environmental Clearance (EC) in *Jeet Singh Kanwar Vs MoEF and Others*[1] based on the same and stated:

> *"The precautionary principle requires the authority to examine probability of environmental degradation that may occur and result into damage. In the present case, it was utmost necessary to thoroughly examine the viability of the project in question, particularly, when there were identical coal- based power projects in the proximity of the area and the area is declared as critically polluted one. There cannot be any doubt about the fact that installation of such thermal power plant, based on consumption of coal as fuel, would cause additional pollution load in the surrounding area. The suggested safety measure of increasing height of the chimney may not prove to be sufficient to disperse such excessive pollutants. Such contingency called for caution before giving green signal to the Project, which involved "ifs & buts". In the Judges' opinion, therefore, by applying precautionary principle, the EC should not have been granted by the MoEF."*

- **Polluter Pays Principle**

This principle means that an industry or individual who causes pollution or environmental damage should be held responsible for compensating for the damage caused to the environment. The principle aims to hold the pollutant responsible for the life cycle of the product and its environmental impact.

In *Hindustan Coco-cola Beverages Pvt. Ltd. Vs Member Secretary, West Bengal Pollution Control Board and Others,*[2] the Tribunal stated:

> *"An Industry or a person who pollutes the surrounding area or environment is bound to compensate the persons who have suffered the loss because of the activity. An industry or a person being responsible for causing the pollution cannot escape the responsibility of not meeting the expenses of removing the damages caused*

---

1 Jeet Singh Kanwar Vs MoEF and Others;APPEAL No. 10/2011 (T)

2 Hindustan Coco-cola Beverages Pvt. Ltd. Vs Member Secretary, West Bengal Pollution Control Board and Others; Appeal No. 10 OF 2012

and restoring the environment to its original position. Section 20 of the National Green Tribunal (NGT) Act, 2010 clearly lays down the principle upon which this Tribunal should function. Thus it is no more res-integra, with regard to the legal proposition that a polluter is bound to pay and eradicate the damage caused by him and restores the environment. He is also responsible to pay for the damages caused due to the pollution caused by him."

- **Sustainable Development**

According to the Brundtland report, "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

The Tribunal defined Sustainable Development in *Jeet Singh Kanwar Vs MoEF*[3] *:*

"The concept of "Sustainable Development" is an exercise of balancing the industrial activity with environment protection. The balancing act requires proper evaluation of both the aspects, namely, degree of environmental degradation which may occur due to the industrial activity and degree of the economic growth to be achieved. It is well settled that the person who wants to change the status quo has to discharge burden of proof to establish that the proposed development is of sustainable nature."

5.2 Background of Tribunal

Historically, India has had a number of legislationsgoverning environment, forests, and wildlife. While the British enacted the Forest laws for the sole reason of making timber commercially available, it was only after Independence that Forest laws were amended for conservation purposes. However, there was no specific court of law that could efficiently deal with specific environmental matters. The National Environment Tribunal Act, 1955 was enacted to provide for strict liability for damages arising out of any accident during the handling of any hazardous material, and for the establishment of the National Environment Tribunal (NET) for the effective and expeditious disposal of cases arising from such accidents, with a view to giving relief and compensation for damages to persons, property and the environment. However, the NET was not established due to its limited mandate. Thereafter, the National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority (NEAA) to hear appeals

[3] Jeet Singh Kanwar Vs MoEF and Others;APPEAL No. 10/2011 (T)

with respect to restriction of areas in which industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The NEAA had a limited workload because of the narrow scope of its jurisdiction and was not effective in its approach. Thereafter, the Supreme Court in *M.C. Mehta Vs Union of India*[4] stated:

> *...Since there is at present no independent and competent machinery to generate, gather and make available the necessary scientific and technical information, we had to make an effort on our own to identify experts who would provide reliable scientific and technical input necessary or the decision of the case and this was obviously a difficult and by its very nature, unsatisfactory exercise. It is therefore absolutely essential that there should be an independent Centre with professionally competent and public spirited experts to provide the needed scientific and technological input. We would in the circumstances urge upon the Government of India to set up an Ecological Sciences Research Group consisting of independent, professionally competent experts in different branches of science and technology, who would act as an information bank for the Court and the Government Departments and generate new information according to the particular requirements of the Court or the concerned Government department. We would also suggest to the Government of India that since cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, it might be desirable to set up Environment Courts on the regional basis with one professional Judge and two experts drawn from the Ecological Sciences Research Group keeping in view the nature of the case and the expertise required for its adjudication. There would of-course be a right of appeal to this Court from the decision of the Environment Court."*

Taking into account the large number of environmental cases pending in the higher courts, the Supreme Court requested the Law Commission of India to consider the need for constitution of a specialised environmental court. The Law Commission of India submitted its 186th report in September 2003 in which it recommended the following:

> *"The Judicial body will be an Environment Court at State Level consisting of sitting/retired judges or members of the Bar with more than 20 years standing,*

[4] M.C. Mehta Vs Union of India 1987 AIR 965; Page 24

assisted by a statutory panel of experts in each State. It will be a Court of original jurisdiction on all environmental issues and also an appellate authority under all the three Acts, viz., Water Act, Air Act and Environment (Protection) Act, 1986 and will reduce the burden of High Courts/Supreme Court. There will lie a further statutory appeal direct to the Supreme Court against the judgment of the proposed Environment Court. In our view, this scheme is preferable to the Government's proposal of a single appellate Court at Delhi, which will be beyond the reach of affected parties."

Accordingly, the National Green Tribunal (NGT) was set up on 18 October 2010 under the National Green Tribunal Act, 2010.

NGT was established as a statutory body with original and appellate jurisdiction. The Chairperson, who is or has been the judge of the Supreme Court or Chief Justice of any High Court, heads the Tribunal with a body of experts who provide technical expertise to adjudicate solely over environmental matters. Three years since its inception, the NGT has been recognized as a tribunal with special powers, successfully advancing the model of sustainable development in India. It is true thatinitially NGT faced a number ofhiccups with constantly changing Chairpersons and functioning with multiple addresses, but over time and with Supreme Court's interventions, NGT finally has a stable set up anda permanent address - Faridkot House complex in New Delhi, which provides a humble abode to the Principal Bench of the Tribunal today.

4.3 Structure of the Tribunal

The Green Tribunal was established with the intention of making it accessible to the largest number of people across the country. The Principal Bench was the first to start functioning in New Delhi and slowly the regional Benches were established. The Tribunal has original and appellate jurisdiction all over India.However, it should be kept in mind that the Primary Bench is not above the regional Benches but only acts as the administrative head of the Tribunal. An appeal from NGT goes to the Supreme Court (Section 22 of the NGT Act) only.

Following is a list of the Zonal Benches where NGT has territorial jurisdiction.

Zone	Place of Sitting	Territorial Jurisdiction
North	Delhi (Principle Bench)	Uttar Pradesh, Uttarakhand, Punjab, Haryana, Himachal Pradesh, Jammu and Kashmir, National Capital Territory of Delhi and Union Territory of Chandigarh
West	Pune	Maharashtra, Gujarat, Goa with the Union Territory of Daman and Diu and Dadar and Nagar Haveli
Central	Bhopal	Madhya Pradesh, Rajasthan, Chattisgarh
South	Chennai	Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Union Territory of Pondicherry and lakshwadeep
East	Kolkata	West Bengal, Odisha, Bihar, Jharkhand, Seven sisters of the North Eastern region and Sikkim, Andaman and Nicobar Islands

5.4 National Green Tribunal Act, 2010

India is party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972, which called upon states to take appropriate steps for the protection and improvement of the human environment. India also participated in the United Nations Conference on Environment and Development held at *Rio de Janeiro* in June 1992, which called upon States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National Laws regarding Liability and Compensation for the victims of pollution and other environmental damage.

The National Green Tribunal is based on these principles of advancing environmental protection through judicial and administrative measures for strengthening environmental protection and the conservation of forests and other natural resources. The Statement of Objects and Reasons of the National Green Tribunal Act, 2010 states that, *"the rapid expansion in industrial, infrastructure and transportation sectors and increasing urbanisation in recent years have given rise to new pressures on our natural resources and environment. There is a commensurate increase in*

environment related litigation pending in various Courts and other authorities. The risk to human health and environment arising out of hazardous activities has also become a matter of concern."

The Tribunal is expected to ensure effective environmental management and conservation, give relief and compensation for damages to persons and property and connected matters, and at the same time ensure sustainable development.[5]

Composition:

NGT was established with the intention of adjudicating cases that involved a Substantial Question of Environment[6] . Before NGT became operational, the NEAA was still functional and all cases were to be transferred to NGT. The Supreme Court in *Vimal Bhai vs Union of India*[7] established the composition of members of NGT until the Rules were framed in order to kick-start the Tribunal. It gave an Order called the National Green Tribunal (Removal ofDifficulties) Order, 2010:

> *Appointment of Expert Member of the Tribunal onad hoc basis. - The Central Government may appoint aperson, possessing the qualifications specified insection 5 of the National Green Tribunal Act, 2010 (19of 2010) to act as Expert Member on an ad hoc basisfor a period not exceeding six months to exercise thepowers and perform the functions of an Expert Memberof the National Green Tribunal or until an ExpertMember has been appointed in accordance with theprovisions of the National Green Tribunal Act, 2010, whichever is earlier."*

Counsel for the respondent submitted that with appointment of an Expert Member the Bench ofthe Tribunal would become functional, but thoseinterested in filing applications/appeals will not be able to do sobecause the rules regulating the procedure of the Tribunalhave not been framed. He further submitted that the aggrievedpersons might also face the hurdle of limitation despite the fact that theycould not file applications/appeals because the Tribunalhas not become functional.

The Court therefore gave the following order:

> *The period of limitation prescribed for filing the appeals under the National Environment Appellate Authority Act, 1997 shall also apply to the applications/ appeals which may be filed after the Bench of the Tribunal becomes functional.*

---

5 BaijnathPrajapati vs Moef&Ors; NGT Appeal No. 18/2011

6 National Green Tribunal Act 2010; Section 14

7 Vimal Bhai Vs Union of India, Special Leave to Appeal (Civil) No(s).12065/2009

The period between 18.10.2010 i.e. the date on which National Environment Appellate Authority stood abolished by operation of Section 38(5) of the 2010 Act and the date on which Bench of the National Green Tribunal becomes functional shall be excluded while computing the period of limitation for filing applications/appeals etc.

Once the Rules were notified, the NGT Act came into force:

Section 4 of the Act gives the composition of the Tribunal.

The Tribunal consists of the following members:

a) full time Chairperson;

b) Not less than ten but subject to maximum of twenty full time Judicial Members as the Central Government may, from time to time, notify;

c) Not less than ten but subject to maximum of twenty full time Expert Members, as the Central Government may, from time to time, notify.

Qualification of Members:

A person can be qualified for appointment as the Chairperson or Judicial Member of the Tribunal if he is or has been a Judge of the Supreme Court of India or Chief Justice of a High Court.

An individual has to fulfill the following criteria to be eligible for the post of Expert Member. He cannot be an Expert Member unless he;

a) Has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or

b) Has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.

Jurisdiction

Section 14 of the Act gives NGT the power to settle disputes.

1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right

relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

Schedule 1 states the following enactments:

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

2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1), settle such disputes, and pass order thereon.

3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

(Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.)

Section 14 gives the Tribunal original jurisdiction over all civil cases involving a **Substantial Question relating to environment**falling within the limitation period of 6 months from the day the cause of action first arose with an additional period of sixty days if the Tribunal is convinced that the applicant was delayed due to sufficient cause.

Substantial Question relating to environment has been defined very clearly in *Goa Foundation vs Union of India*[8]

Section 2(1)(c) of the NGT Act explains the word 'environment' as follows:

> *"Environment' includes water, air and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property."*

[8] Goa Foundation Vs Union of India; Application no. 26 of 2012

Section 2(m) defines the term 'substantial question relating to environment' as follows:

"It shall include an instance where, —

i) there is a direct violation of a specific statutory environmental obligation by a person by which, -

A) The community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

B) The gravity of damage to the environment or property is substantial; or

C) The damage to public health is broadly measurable;

ii) the environmental consequences relate to a specific activity or a point source of pollution."

The legislature, in its wisdom, has defined the word 'environment' in very wide terms. It is inclusive of water, air, land, plants, micro-organisms and the inter-relationship between them, living and non-living creatures and property. Similarly, 'substantial question relating to environment' also is an inclusive definition and besides what it means, it also includes what has been specified under Section 2(m) of the NGT Act. Inclusive definitions are not exhaustive. One has to, therefore, give them a very wide meaning to make them as comprehensive as the statute permits on the principle of liberal interpretation. This is the very basis of an inclusive definition. Substantial, in terms of the Oxford Dictionary of English, is of considerable importance, strongly built or made, large, real and tangible, rather than imaginary. Substantial is actual or real as opposed to trivial, not serious, unimportant, imaginary or something. Substantial is not

the same as unsubstantial i.e. just enough to avoid the de minimis principle. In re Net Books Agreement [1962] 1 WLR 231347, it was explained that, the term 'substantial' is not a term that demands a strictly quantitative or proportional assessment. Substantial can also mean more than reasonable. To put it aptly, a substantial question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the case and its issues relating to environment.

Section 2(m) of the NGT Act classifies 'substantial question relating to environment' under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the

environmental consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal.

Section 15of the Act provides for the **Relief, Compensation and Restitution** to victims of pollution or other environmental damage.

The Tribunal, may by an order, provide-

a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the 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, as the Tribunal may think fit.

Relief can be sought by the following persons:

- A person who has sustained an injury
- A owner of property
- Legal representative of deceased
- Any person aggrieved including any representative body or organisation

Appeal under Section 16 and 18 can be filed by:

- **"Any person aggrieved"** can prefer an Appeal
- 'Person' *includes* an association of persons or individuals *whether* incorporated or not
- It also includes *individuals*, *trusts*, *local authority*

An **aggrieved person** has been defined in *Save Mon Region Federation vs Union of India.*[9]

Law gives a right to 'any person' who is 'aggrieved' by an order to prefer an appeal. The term 'any person' has to be widely construed. It is to include all legal entities so as to enable them to prefer an appeal, even if such an entity does not have any direct or indirect interest in a given project. The expression 'aggrieved', again, has to be construed liberally. The framers of law intended to give the right to any person aggrieved, to prefer an appeal without any limitation as regards his locus or interest. The grievance of a person against the Environmental Clearance may be general and not necessarily person specific"

[9] Save Mon Region Federation and another Vs Union of India and Others; APPLICATION NO. 104/2012

Limitation

Relief	Time period
For violation of Law and Substantial questions related to environment	6 monthsfrom the time when the cause of action first arose + 60 days (with sufficient cause)
For Seeking compensation and restoration	5 years + 60 days (with sufficient cause)
For Filing Appeal	30 days + 60 days (with Sufficient Cause)

If the case is filed after the limitation period is over, a provision of condoning the delay is provided. However, there should be a sufficient cause for delay. Sufficient Cause has been defined in *Save Mon Region Federation and another Vs Union of India*

> *The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in areasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the Appellant.*

5.5 Important Judgments

In the last three years of its existence, NGT has given some landmark judgments that have become precedents in the field of environmental jurisprudence. There are a number of significant issues like Mining, Environmental Clearances, Public Hearings, and Sand Mining etc. that have been raised by the Tribunal.

Following are some of the important Orders given by NGT in the last three years.

1) **Environment Impact Assessment**

- **Jeet Singh Kanwar Vs Ministry of Environment and Forests**[10]

This case is one of the most important cases in NGT history. It is the only case where the Tribunal quashed the EC completely and stated:

[10] Jeet Singh Kanwar Vs Ministry of Environment and Forests; APPEAL NO. 10/2011

"It appears that the EAC did not conduct "detailed scrutiny" nor gave adequate reasons as to how the objections raised by the members of public were addressed by the Project Proponent and that the stand of the Project Proponent was found acceptable. On this ground also, we are inclined to hold that the impugned order of EC is arbitrarily issued and therefore it is unsustainable."

…"it was necessary for the EAC /MoEF to verify the R&R Plan, action plan for CSR activities, the responses of the Project Proponent to the issues raised in the public hearing and to examine the relevant materials before granting the EC. We find that such exercise is skirted by the MoEF."

- **PrafullaSamantara Vs Union of India (POSCO Case)[11]**

This case was filed against the Environment Clearance given to industrial giant-POSCO industries. The Tribunal agreed that the EIA report was not made properly and gave the following order:

A close scrutiny of the entire scheme of the process of issuing final order in the light of the facts placed before us and material placed on record together with the observations made by the review committee though in two separate volumes; reveals that a project of this magnitude particularly in partnership with a foreign country has been dealt with casually, without there being any comprehensive scientific data regarding the possible environmental impacts. No meticulous scientific study was made on each and every aspect of the matter leaving lingering and threatening environmental and ecological doubts un-answered. We have dealt with some of these issues on the basis of records placed before us by the MOEF and argued by the Appellant –however for the purpose of cancellation of original ECs granted in 2007.

It became an important precedent as NGT took cognizance of the fact that development cannot be at the stake of environment and it is essential to take a cumulative view of the impact the industry will have on the coastal state. The Tribunal ordered the MoEF to start the process of EIA from the beginning and take a strategic view of the overall impact that the industry and the sub- projects have on the environment.

[11] PrafullaSamantara Vs Union of India; APPLICATION NO. 8/2011

Public Hearing

- **AdivasiMajdoorkisanEktaSangathan and Anr Vs MoEF**[12]

The Case was filed to question the 'Public hearing' conducted as a part of the EIA process. The Tribunal in its Judgment observed:

> *"In the case on hand, after viewing the CD of the public hearing conducted on 5.1.2008, we are surprised to note to our dismay that the same was a "farce". It was a mockery of the public hearing and the procedure required to be followed thereof. All the norms required in conducting a smooth and fair procedure was given a go by.*
>
> *Even before the public hearing could start, the affected people raised slogans to stop the public hearing. However, on the intervention of the Additional District Magistrate a few persons came forward and gave their statements saying that no Gram Sabha was conducted and the Gram Panchayats have issued "No Objection Certificates" and such certificates are invalid and cannot be relied upon to say that the people in the village have no objection for acquiring their lands for establishing the project ... In the meanwhile, it appears the persons raising slogans againsteach other also pelted stones and that created some commotion which resulted in the intervention of the police and use of force. The participants however, broke all the plastic chairs and left the place. The officers were all sitting quietly even after the people left the place after the police used force. Some media persons and the local people objected for continuing the proceedings after the people left the place. In fact, there was no announcement that the proceedings would be resumed after some time. However, the Additional District Magistrate resumed and continued the proceedings in the presence of few persons.*
>
> *This time only the supporters of the project were paraded one after the other only to say one word* ***"I Support".*** *The persons who supported the project all appeared to have been brought and prompted by the proponent. It was a mockery of the entire process of public hearing."*

The Environment Clearance was set aside and the MoEF was directed to conduct the Public Hearing again.

[12] AdivasiMajdoorkisanEktaSangathan and Anr Vs MoEF; M.A. NO. 36 OF 2011 (ARISING OUT OF APPEAL NO. 3 OF 2011)

Bio Medical Waste

- **Haat Supreme WastechPvt. Ltd. Ors.Vs State of Haryana Ors.**[13]

The Tribunal dealt with the issue 'Whether or not the bio-medical waste disposal plants require Environmental Clearance (EC) in terms of the Environmental Clearance Regulation, 2006 (for short 2006 Notification)'. The Tribunal also discussed the issues related to Bio-Medical waste:

"The decline in environmental quality which was evidenced by increasing pollution levels, loss of vegetation cover and biological diversity, excessive concentration of harmful chemicals in the ambient atmosphere and in the food chains creating reasons for environmental accidents and threats to life support systems compelled the international community and more particularly, the Indian Legislature to enact the Act of 1986. This was an Act to provide for the protection and improvement of environment and various matters allied thereto. The Act of 1986 vested wide rangingpowers in the Central Government to protect and improve the environment. The Central Government was expected to take various measures to achieve this object by planning and execution of nation-wide programme for prevention, control and abatement of environmental pollution.

The Rules of 2008, the Municipal Solid Waste (Management and Handling) Rules, 2000 (for short the 'Rules of 2000) and the Rules of 1998 have been framed to handle, deal with and dispose of various kinds of wastes.

Now, we may proceed to examine as to what is the Bio-Medical Waste and if it is hazardous or otherwise. As far as Act of 1986 is concerned, it does not define as to what is a Bio-Medical Waste. However, the expression 'hazardous substance' has been defined under Section 2 (e) of the Act of 1986, which we have already referred above. The underlying feature of the definition is chemical or physico-chemical properties that are liable to cause harm to human beings and other living creatures including plants, micro-16organism, property or the environment. The Rules of 1998 define,under Section 3(5), the 'Bio-Medical waste' as waste which is generated during the diagnosis, treatment or immunization of human beings or animals or in research activities pertaining thereto or in the production or testing of biologicals, and including categories mentioned in Schedule – I of the same rules. Under these very Rules, the Bio-Medical Waste treatment facility is explained as a facility wherein treatment, disposal of bio-medical waste or process incidental to such treatment and disposal is carried out.

As already noticed, Rules of 1998 deal with the handling, treatment and disposal of bio-medical waste for which an authorization under these Rules is granted. Also, hospital waste

[13] Haat Supreme WastechPvt. Ltd. Ors. Vs State of Haryana Ors; Appeal No. 63/2012

or health care waste should include any type of material generated in any healthcare establishment including aqueous and other liquid waste. Hospital waste is normally understood to be any solid, fluid or liquid waste material including its container and any other intermediate product which is generated during short term and long term care consisting observational, diagnostic, therapeutic and rehabilitative services for a person suffering or suspected to be suffering from disease or injury and for parturients or during research pertaining to production and testing of biological, during immunization of human beings. Hospitals wastes include garbage, refuse, rubbish and Bio Medical Waste. Waste management is one of the important public health and measures over the entire globe. Besides, other the hospital waste may even relate to body parts, organs, tissues, blood and body fluids along with soiled linen, cotton, bandage and plaster 17casts from infected and contaminated areas and need great care. With the proliferation of blood borne diseases, more attention is being focused on the issue of infectious medical waste and its disposal. It may contain highly virulent pathogens some of which may cause epidemics. Moreover, since pathogens multiply, even a small spread may lead to much larger consequences. Proper management of hospital waste is essential to maintain hygiene, aesthetics and cleanliness and control over environmental pollution. Hospital waste has been classified into hazardous waste(10-25%) and non-hazardous waste (75-90%). Out of the hazardous waste, 15 to 18% is infectious while 5 to 7% are other hazardouswastes. Such other hazardous waste may include radioactive waste,discarded glass, pressurized containers, chemical waste, cytotoxic waste and incinerator ash which have to be disposed of in accordance with Rules of 1998. On the other hand, the nonhazardous waste which forms greater part of the hospital waste is dealt with as municipal dump and is liable to be disposed of in accordance with the Rules of 2000. The sharp bio-medical waste may also be infectious and can transmit diseases like Tetanus, AID, Hepatitis, etc. The sharp bio-medical waste including needles,hypodermic needles, scalpels and other blades, knives, infusion sets, saws, broken glass, are considered to be highly hazardous waste and can cause cuts or puncture wounds. Hospital waste has to be treated in different forms and methods. General waste which is non-hazardous, non-toxic and non-infectious, should be dealt with, and its disposal ensured by municipal authorities inaccordance with the Rules of 2000. On the other hand, the biomedical waste has to be handled, treated and disposed of by installation of incinerator, deep burial and auto-clave, micro-wave treatment, shredding, securing the landfill while the radio-active waste management has to be undertaken as per the guidelines of BARC, and finally, the liquid and chemical waste should be handled with due caution. Thus, multifarious treatments are itself indicative of the fact that the bio-medical waste is not an expression which is capable of being understood in abstract. It must be taken together with various kinds of procedures, methodologies that are required to be adopted for dealing with different hospital wastes which fall within the head of bio-medical waste.

The above scientific studies show that bio-medical waste is one of the more serious and hazardous pollutants and it can produce large number of infectious diseases, which would be very harmful to the humanity at large. Their impact on public health can be very adverse and it is not only expected but is mandatory that such bio-medical waste is dealt with strictly in accordance with Rules of 1998 to ensure that bio-medical waste does not cause any injury to public health and environment. For this purpose and with this object it is important to give wide interpretation to the relevant entries to ensure appropriate checks in regard to dealing and disposal of bio-medical waste. Thus, an interpretation which would put greater checks and balances over this process would be in line with even the object of the Act of 1986.

2) **Forest Clearance**

- **Vimal Bhai Vs Union of India**[14]

The Tribunal dealt with the issue of Forest Clearance in this case and stated:

"We are surprised to find that most of the State Governments do not pass separate orders in the light of the basic requirement of Section 2 of the FC Act as explained above thereby creating an embargo and depriving a person aggrieved from filing an Appeal. Section 2 of the FC Act, mandates that as and when the State Government decides to permit use of the Forest land for non forest purpose, it has to pass order to that effect. The said order

along with the conditions imposed by the Central Government according Stage – I and Stage – II Clearance is mandatorily required to be displayed in the website. A copy of the order should also be sent to the MoEF forthwith. After receiving the copy of the order MoEF is also required to upload the same in its website so as to make the entire transactions transparent and bring it to public domain or Government portal and to enable any person aggrieved by the order passed under the provision of Section 2 of the FC Act, to approach this Tribunal in consonance with Section 2 (A) for FC Act or Section 16 (e) of the NGT Act…

Apart from the said action the State Government should also insist that the Project Proponent should publish the entire forest clearances granted in verbatim along with the conditions and safe-guards imposed by the Central Government in Stage – I Forest Clearance in two widely circulated daily newspapers one in vernacular language and the other in English language so as to make people aware of the permission granted to the Project Proponent for use of forest land for non-forest purposes. The cause of action for filing an Appeal would commence only from the date when such publication is made in the newspapers, as well as

[14] Vimal Bhai Vs Union of India; APPEAL NO. 7/2012

from the date when the forest clearance and permission to use the Forest land for non-forest purpose is displayed in the website of the concerned State Government or the MoEF, as the case may be.The copies of the Forest Clearance should also be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt."

3) **Mining**

- **All Dimasa Students Union DimaHasao Dist. Committee Vs. State of Meghalaya &Ors[15]**

The Tribunal gave an Order to stop rat-hole mining in Meghalaya through this judgment:

"We are of the considered view that this act should be condemned and in any event such illegal activities are to be putto an end and the State of Meghalaya should come forward with an appropriate scheme and the statutory rules. Even though, in this application the applicant has restricted himself in respect of rat-hole mining operations in Jaintia Hills of the State of Meghalaya, we are of the view that if in the entire State of Meghalaya such illegal and unscientific operations of rat-holemining are taking place, the same shall also be put to an end inthe interest of people of the area and also people working in the mines for their safety as also for the protection of environment...

...We direct the Chief Secretary, Government of Meghalaya and the Director General of Police, State of Meghalaya to ensure that rat-holemining/illegal mining is stopped forthwith thought-out the State of Meghalaya and any illegal transport of coal shall not take place until further orders passed by this Tribunal. The Director General of Police, State of Meghalaya is also directed to report to this Tribunal about the compliance of the order by the next date of hearing."

Animal Corridors

- **Tribunal at its own motion Vs MoEF[16]**

The Bhopal bench of the National Green Tribunal took suomoto cognizance of environmental degradation and reducing corridors due to mining and stated that*'mining is required to be taken up only if it is compatible with the objective of protectingthe environment'*. The Bench had instituted a case on the basis of a news

[15] All Dimasa Students Union DimaHasao Dist. Committee Vs. State of Meghalaya &Ors;Original Application No. 73/2014 And M.A. No. 174/2014

[16] Tribunal at its own motion Vs MoEF; Original Application No. 16/2013 (CZ)

item in the Bhopal edition of daily newspaper 'Times of India' dated 10th April, 2013 published on the front page under the caption "Dolomite mining a threat to Tiger corridor in Kanha - Foresters want ban on mining in Mandla District". The Tribunal stated:

"...The recent reports further reveal that due to increase in their population, because of good management practices, it is not only leading to increase of incidents of human animal conflict but the Tigers are trying to migrate/disburse to the nearest Protected Area/wildlife habitats by establishing corridor even in non forest tracts crossing human habitations and crisis cross road net work. The best example is the recent news report wherein it was stated that one male Tiger is moving from Panna Tiger Reserve and heading towards Bandhavgarh Tiger Reserve which is about 120 km. distance crossing the fragmented habitat. It is reported that earlier the corridor from Panna to Bandhavgarh was freely accessible for movement of wildlife but of late, increase the anthropogenic activity caused its discontinuity. This incident gives an indication how even the areas well beyond 10 km. from the boundaries of the Protected Areas and restoration of lost corridors connecting the habitat of this magnificent animal are critical and there is urgent need to minimize the human interference in these areas particularly from the activities such as mining.

Forest corridors play an important role in movement of Tigers from one locality to the other and thus help avoid inbreeding and maintain genetic variation among the Tigers. Therefore there is every need to restore the corridors wherever possible and increase the size of buffer areas around the Protected Areas if scientific management of the Tigers has to be sustained keeping pace with their increase in numbers in the wild. A new mechanism is required to be put into place adding as many buffer areas including non forest lands adjacent to the Protected Areas / forest areas, as possible. The private landscapes which are contiguous to the Reserved Forests also can be identified through an innovative mechanism within the framework of the existing environmental and wildlife provisions based on the scientific and objective criteria and developed as ecologically viable buffers which will increase opportunities and create viable buffers to existing Tiger habitats in the Protected Areas and reserves. Further, maintaining gene flow between isolated Tiger population is very important in order to avoid deleterious effects of low genetic diversity and inbreeding."

...It is reported that the Dolomite mined from these mines in Mandla District is of superior quality, highly valued and is in good demand in the market. It is also reported that this superior quality mineral is not found elsewhere in the country. However mining is required to be taken up only if it is compatible with the objective of protecting the environment, more so in the context of location of Dolomite mines relatively in close proximity to Kanha National Park. While the objective of granting ML forms part of the development process of the country, it is the duty of the Central Government and the State Government to take steps to

protect the environment which includes wildlife and maintain the ecological balance and prevent damage that may be caused by mining operations...

The Tribunal gave the following orders:

i) Necessary penal action shall be initiated against those ML holders who were found violating the provisions of Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 as well as the ML conditions and Forest Act and even revoking their licence if repeatedly found violating the provisions of law.

ii) Though, ML area of most of the mines is limited and below 5 hectares, they are located in clusters in the limits of aforesaid 6villages. Heavy human activity in these clusters involving high concentration of labour, deployment of machinery, movement of trucks to and from the mine sites shall definitely have a cumulative impact. Therefore, it may be examined whether these mines requirecumulative Environment Impact Assessment (EIA) study and then Page 24 of 25only granting EC under cluster approach as envisaged in EIA Notification, 2006 and amendments made therein from time to timeand in accordance with guidelines issued by the MoEF from time to time. In the meanwhile, movement of vehicles and mining activities shall be regulated in consultation with the Forest Department so as to not to disturb the wildlife in the area.

iii) The reply filed on behalf of the State Govt. functionaries reveal that there is no coordination between the Mining and Forest Departmentsatleast in case of those mines which are located in the Forest area and which are in close proximity to the forest boundary. In the reply filed on behalf of the Respondents No. 2, 3, 4 and 6 it was stated that the local Forest officials have expressed their deep concern pertaining to the mines sanctioned in the Reserved Forest and mine operators are required to obtain transit passes from the Forest Department. It was also stated that the ML conditions are not informed to the Forest Department and the ML holders are also reluctant to provide the information to the Forest Department. There is a need to put full stop to this state of affairs and streamline the entire procedure of sanctioning & operating the mines. The Government should evolve a suitable mechanism to avoid such conflicting situation and ensure coordination among all the law enforcing authorities in the state.

iv) The irregularities pointed in the reply filed by the Regional Office, MoEF shall be taken up seriously and all the mines found violating the provisions & ML conditions as well as Environmental laws shall be dealt with seriously in accordance with law.

v) Keeping in view the concern expressed by the NTCA in their affidavit dated 25.02.2014 dealt under para 18(supra), all the necessary caution Page 25 of 25needs to be taken

before reviewing the existing MLs and granting / renewing EC and also before granting the Consent to Operate the mines.

vi) *Even though the mines are under operation for a long period, it is surprising to note that such grave irregularities have been noticed only during the inspection of mines by the officials of the Regional Office, MoEF that too after the case was taken up suomotu by this Tribunal and no record was placed before us to the effect that any severe action has been taken against the defaulting ML holders. The Chief Secretary shall get the whole issue enquired and initiate action against the erring officials if it is found that they indulged in dereliction of duty by allowing the mines to continue to operate violating the law.*

vii) *With regard to those mines which are located on the boundary of the notified forest itself the issue may be examined in details and action may be taken to revoke their licence in accordance with law, if no such provision of granting MLs touching the notified forest boundary, exists.*

4) Sustainable Development

Sustainable Development is one of the fundamental principle in National environmental laws. Protection of the environment cannot be at the stake of development and vice versa. There has to be a balance between the two and the Tribunal applies the same while adjudicating on environmental cases.

♦ **Goa Foundation Vs Union of India**[17]

This case was filed against the indiscriminate development across the Western Ghats. The Case was important because it defined several tenets of the National Green Tribunal Act 2010. It defined:

'Substantial Question of Environment'

"To put it aptly, a substantial question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the case and its issues relating to environment... Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act."

'Aggrieved Person'

"person aggrieved", thus, can be a person who has no direct or personal interest in invoking the provisions of the Act, or who can show before Tribunal that it affects the environment, and therefore, prays for issuance of directions within the contemplation of the provisions of Section 16 of the NGT Act."

[17] Goa Foundation Vs Union of India; Application no. 26 of 2012

'Cause of Action'

"Cause of action" is, in fact, a bundle of facts, which a party pleads before the Court or Tribunal to claim a relief. It is a bundle of facts pleaded and proved for the purpose of obtaining the relief claimed in the petition. These are the material facts and if the application discloses even a small cause of action, it is a settled law that the plaint cannot be rejected."

5) **Cumulative Impact Assessment**

- **T. Murugandam and Others Vs Ministry of Environment and Forest and Others**[18]

The Tribunal raised important issues regarding Cumulative Impact Assessment (CIA) in this case and directed the project proponent to include a CIA report in addition to the EIA report.

"The cumulative impact assessment exercise is considered necessary in this particular case, as Pichavaram Mangroves are located at a distance of 8 km from the Southern boundary of the proposed Power Plant, added to it the issues pertaining to the cumulative impacts were raised during the public hearing. As such, we strongly feel keeping in view the precautionary principle and sustainable development approach, cumulative impact assessment studies are required to be done in order to suggest adequate mitigation measures and environmental safeguards to avoid any adverse impacts on ecologically fragile eco-system of Pichavaram Mangroves and to the biological marine environment in the vicinity."

6) **Thermal Power Plants**

- **Samata and Ors Vs Union of India**[19]

This case was filed against the Environmental Clearance granted to a coal based Thermal Power Plant near Komarada village in Vizianagaram District, Andhra Pradesh. The Tribunal set aside the EC and directed the Expert Appraisal Committee to "*considereach and every issue separately and independently and record the reasons either for rejecting or accepting the concerns and objections and also the response by the Project Proponent thereon enabling thereby to understand both the Project Proponent and Objectors, ensuring transparency in the process of recommending either for acceptance or for rejection of the EC by the regulatory authority, namely the MoEF."*

---

[18] T. Murugandam and Others Vs Ministry of Environment and Forest and Others; APPEAL No. 17 OF 2011(T) NEAA NO. 20 OF 2010

[19] Samata and Ors Vs Union of India; Appeal No. 9/2011

7) **Wetlands**

- **Nagarjuna Construction Company Vs Mohana and Others (Sompeta case)**[20]

This case was transferred from NEAA to the Tribunal. Environmental Clearance was given to a project proposed to be established on "Beela Swamp" of Somepeta , a critical Wetland essential to the ecosystem of the area. The EC was *prima facie* flawed and the Tribunal stated:

"Considering the submissions made before this Court in the light of the ratio decided by the Supreme Court in the case of S. Nagraj (Supra) we find that the Member of NEAA did not bear in mind the cardinal principles of law while passing the impugned order. He has not only utilized his personal knowledge, but also did not follow the fundamental principles of Natural Justice. He has also not discussed voluminous records produced before him and arrived at a conclusion abruptly only on the basis of facts gathered by him during the visit."

After going through Paragraph 6, we find that theMember, NEAA who visited the site has disposed of the case solely on the basis of the impression gathered by him personally without granting any opportunity to any of the 10Parties to answer/ meet or clarify such impression. Thus he has become the "judge of his own cause". The order further reveals that he had made up his mind before commencement of the hearing and the hearings made thereafter were only a empty formalities. It is well settled that justice should not only be done but it should appear to have been done. None of the Parties should feel that he has not been given an opportunity to rebut materials which form the basis of the order/judgement.

8) **National Parks and Sanctuaries**

- **Rohit Choudhury Vs Union of India and Others**[21]

This case was filed against the unregulated quarrying in and around Kaziranga National Park. The Tribunal stated:

After hearing Learned Counsel for the parties and perusing the records, this Tribunal finds materials to reveal that 10 (ten) stone crusher units have been set-up in the NDZ after issuance of Notification in 1996.

After giving the matter a conscious thought and after taking into account all the factors, we are of the opinion that MoEF and the State Government of Assam have totally failed in their duties with respect to implementation of the provisions of the 1996 Notification and

[20] Nagarjuna Construction Company Vs Mohana and Others REVIEW PETITION NO. 2 OF 2010 (ARISING OUT OF APPEAL NO. 1 TO 6 OF 2010)

[21] Rohit Choudhury Vs Union of India; APPLICATION NO. 38/2011

due to the callous and indifferent attitude exhibited by the Authorities, number of polluting industries / units were established in and around the No Development Zone of Kaziranga thereby posing immense threat to the biodiversity, eco-sensitive zone, ecology as well as environment. We are, further, satisfied that this is a clear case of infringement of law. We, therefore, have no hesitation to direct the MoEF and the Government of Assam to depositRs. 1,00,000/- (Rupees one lakh only) each, with the Director, Kaziranga National Park for conservation and restoration of flora and fauna as well as biodiversity, eco-sensitive zone, ecology and environment of the vicinity of Kaziranga National Park in general and within the No Development Zone in particular. The said amount shall be utilised exclusively by the Director, Kaziranga National Park for conservation, protection 39and restoration as well as for afforestation of suitable trees of the local species in and around the No Development Zone.

9) **Noise Pollution**

- **Dileep B. Nevatia Vs Union of India and Others**

This was a first of its kind case where the Tribunal directed the Pollution Control Board to implement a regulated level of noise through vehicles.

The discussions made during the course of the proceeding reveals that no standards so far have been specified for use of sirens and multi-tone horns under the Motor Vehicles Act, 1989. The Government of India through the Ministry of Environment and Forests (for short MoEF) have already notified ambient noise standards under the provisions of the Noise Pollution (Regulation and Control) Rules, 2000 for different areas which include industrial areas, commercial areas, residential areas and silence zone. The ambient air quality is influenced by various sound producing sources such as loudspeakers, musical systems, sirens and horns fitted to vehicles, air compressors, high speed industrial machines, D.G. Sets, etc. In order to control ambient noise pollution, it is essential to control emanating noise at the source itself for which source specific standards are required to be formulated. Source specific standards have already been evolved by the MoEF and Central Pollution Control Board (for short CPCB) for the D.G. Sets, Industries, etc.

The Tribunal passed the following Orders:

"The Ministry of Road Transport and Highways is directed to notify the standards for sirens and multi-tone horns used by different vehicles either under Government duty or otherwise within a period of 3 months hence.

ii) Based upon the standards to be prescribed by the Ministry of Road Transport and Highways, Government of India, the State of Maharashtra and the Transport Commissioner, Government of India, Maharashtra, Respondent Nos. 1 and 3

respectively will take adequate step to notify the standards for sirens and multi-tone horns for different zone, within a period of one month from the date of the notification.

iii) The Transport Commissioner, Government of India of Maharashtra, is also directed to ensure the number of vehicles installed sirens and multi-tone sirens are limited to the bare minimum so as to comply with ambient air quality standards as specified in the Noise Pollution (Regulation and Control) Rules, 2000.

iv) The Police Commissioner of Maharashtra is also directed to ensure that no private vehicle should be allowed to use sirens or multi-tone horns in residential and silent zones and in the vicinity of educational institutions, hospitals and other sensitive areas and also during night except emergencies and under exceptional circumstances.

The Police Commissioner shall further ensure and take precaution to the effect that the residents and residential areas are not affected by indiscriminate use of loud speaker during night time in other words the use of loud speaker should be strictly restricted to the prevailing Rules and Regulations."

5.6 Conclusion

The National Green Tribunal has been successful to a great extent in upholding the principle of Sustainable Development in environmental jurisprudence in India. However, it is still in its nascent stages of development and therefore invites criticism from various stakeholders. The following are some of the criticisms that NGT faces:

1) Access to NGT

NGT faces a major issue of not being accessible through different states in the country. It currently has territorial jurisdiction in five zones and holds circuit benches in various parts of the country but it still becomes difficult for people to travel across from one state to the other for cases. It is essential to make the Tribunal becomes accessible to more people; either through increased number of circuit Benches in different cities or establishing more seats in other parts of the country.

2) Appeal to Supreme Court

The NGT Act clearly states that any appeal from the Tribunal will go to the Supreme Court.

Section 22:

Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision

or order of the Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.

However, the Chennai High Court, through a recent order stated that a High Court under the powers given to it through Article 226 of the Constitution of India could entertain appeals from the NGT. It is felt that there should be some clarity on this matter as the purpose of establishing an Environmental Tribunal was to bring it at par with a High Court where an appeal could only be filed at the Apex Court.

3) Limitation period

The limitation period for filing a case for relief, compensation and restitution is 5 years, which may not be enough in cases where the effect of a particular environment problem takes a long time to manifest. Example: a woman who washes her husband's clothes daily contracts a fatal disease after 15 years due to the asbestos in the husband's factory clothes. She might not be able to file a complaint in the NGT due to the bar of limitation. It is essential to address the issue of limitation as effects of environmental pollutants can take a long time to manifest and the Tribunal should be the primary authority regulating such violations of environment protection standards.

Despite all these setbacks, NGT has been successful in establishing itself as the principle Court for environmental disputes. It is fairy new and according to statistics the judgments have gone up considerably since its inception. While there were 35 judgments delivered in 2011, the number went up to 91 and 154 judgments in 2012 and 2013 respectively. It is a clear indication of the growing awareness of environmental issues and redressal of the same. It is important to take advantage of the special environmental tribunal and use legal intervention measures to target environmental issues at an individual level.