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Issue No: 02

November 2019

# LEGAL SPECTRUM



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# LEGAL SPECTRUM

Peer Reviewed Journal  
NOVEMBER 2019

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## STATUTORY RECOGNITION OF NEW ENVIRONMENTAL STANDARDS AND GREEN JURISPRUDENCE

Preethi Nayak\* & Santhosh Prabhu\*\*

### Abstract

*Environmental Sustainability is the first step to the achievement of environmental Justice by articulating in the language of equity the assurance of legal standing for all affected and interested parties; the right of appeal or review; specialised environmental courts and other practical dispute resolution mechanisms. In this context, India's commitment to the newly formed National Green Tribunal (NGT) assumes a significant practical importance. In seeking a balanced judicial forum to advance green jurisprudence, the NGT is a 'fast track' court having wide powers, staffed by judges and environmental scientific experts. Section 20 of the National Green Tribunal Act, 2010 mandates the application of the principles underpinning international environmental law, namely, sustainable development, precautionary and so on. This article addresses the application of these principles in the Indian context, thereby recognising its international commitments concerning environmental protection<sup>1</sup>.*

**Key Words:** - National Green Tribunal, Environmental Sustainability, Environmental Law.

### Introduction

Let's start with why the National Green Tribunal (NGT) was set up. The earliest call for environmental courts came from the Supreme Court (SC) in the case of *AP Pollution vs Nayudu* decided on 1 December, 2000<sup>2</sup>. In this judgment, the SC had requested the Law Commission of India to study the possibility of setting up special 'environmental courts' to tackle complex environmental disputes. It is important to note that the SC and the subsequent report of the 17<sup>th</sup> Law Commission took care to use the term 'courts' and not 'tribunals'. In this report, the Law Commission had called for establishing Environmental courts under Article 247 of the Constitution,

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<sup>1</sup>Gill, Gitanjali, *The National Green Tribunal of India: A Sustainable Future through the Principles of International Environmental Law*, 2014.

<sup>2</sup>(1999(2) SCC 718)



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which permits Parliament to create additional courts. 'Tribunals', on the other hand, are established under Article 323A or Article 323B of the Constitution. Now, Articles 323A and 323B were inserted in 1976 via the 42nd Constitutional Amendment, which was enacted during the emergency imposed on the Country by Indira Gandhi's Parliament.<sup>3</sup> At the time, then Prime Minister Indira Gandhi was furious with India's 'Independent' Judiciary, which had not only called the bluff on her election but had also been bold enough to strike down her policies for being illegal and unconstitutional. The idea of tribunals was to transfer some substantial powers of the Judiciary to these Tribunals, which did not have the same safeguards for judicial independence that High Courts and Civil Courts did. To shield the rulings of these tribunals from review by High Courts, Indira Gandhi's amendments also expressly kept them out of the latter's jurisdiction.<sup>4</sup>

The Supreme Court was given only limited rights of review under its discretionary powers mentioned in Article 136. 'Additional courts' would have come under the jurisdiction of High Courts in most matters; being so placed has major implications for judicial independence since it is the High Court that has the final say in the appointment and removal of all judges in subordinate courts, apart from substantial control over their administrative and financial matters. Tribunals, though, as originally conceived by the Centre, would be dependent on the Government for everything, especially appointments, thus compromising their 'independence'.

Nevertheless, by the time the Law Commission Report on 'environmental courts' ran its course through the Government and Parliament, the idea transformed into one of 'environmental tribunals. By 2010, the idea of tribunals had faced such extensive litigation at the apex court (for over two decades), that Indira Gandhi's original proposition had been watered down considerably.<sup>5</sup> Through a long series of hard-fought battles between the Government and Advocate Bar Associations from across the country, the SC made it clear to the Government that appointments to tribunals could be made only in consultation with the Judiciary; more importantly, it made it clear that High Courts would have the power of judicial review over orders passed by tribunals. By 2010, with the SC Judgment in the case of *R Gandhi vs. Union of India*<sup>6</sup>, the distinction between Tribunals and Courts had worn thin. The Centre, however, appeared to be in denial, and, instead of ensuring conformity with SC judgments, persisted with its old ways, trying to exert control over key tribunals.

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<sup>3</sup>T.K. Tope's Constitutional Law of India, 3<sup>rd</sup> Edn. 2010, Eastern Book Company, p.1010

<sup>4</sup>Ibid

<sup>5</sup>Supra note 4

<sup>6</sup>Civil Appeal No. 3067 of 2004



<sup>7</sup><http://www.tope> on 15/06/2019

<sup>8</sup>National Green <sup>9</sup>AIR 1999 SC 811



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When the NGT Act of 2010 was finally enacted by Parliament in October 2010 and notified as a law, it was promptly challenged in December 2010 in a public interest litigation (PIL) at the Madras High Court by Naveen Kumar, a law student at School of Excellence in Law, on the grounds that the tribunal lacked judicial independence from the Government. Three months after the PIL was filed, the Madras High Court stayed all appointments to the tribunal.<sup>7</sup>

Most conservationists would have heard of the National Green Tribunal (NGT), and some may have already filed applications before it. This short primer explains how, when and where to approach the NGT, and looks at the fundamental difference between courts and tribunals, and the structure and jurisdiction of the NGT.

The National Green Tribunal has been established on 18.10.2010 under the National Green Tribunal Act 2010 for 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. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. 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.

Since the enactment of NGT Act in October 2010 till 31st January 2015, the total institution of cases before the NGT and its four Zonal benches located in Kolkata, Chennai, Pune and Bhopal was 7768 cases. Of these, 5167 cases were resolved and 2601 cases were pending.<sup>8</sup> Almost 67% of the cases have been disposed of within nine months. Unlike its predecessor the National Environmental Appellate Authority (NEAA), the NGT and its Zonal benches are wide ranging powers to adjudicate upon any dispute that involves substantial questions related to legal right to environment. This power of NGT coupled with technical expertise has exponentially dealt with a number of complex environmental problems.

### Evolution and changes

The Indian courts both Supreme Court and High courts at the state level have played a major role in addressing environmental litigations; but of the late the Courts in India expressed their inability to deal with complex environmental issues involving science and technical details. In the *A.P. Pollution Control Board v. M V Nayadu*<sup>9</sup>,

<sup>7</sup><http://www.toxicwatch.org/2013/05/the-trouble-with-tribunals-open-magazine.html> ,last visited on 15/06/2019

<sup>8</sup>National Green Tribunal International Journal on Environment, Volume 3. February 2017.

<sup>9</sup>AIR 1999 SC 812.





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the Supreme Court referred to the need for establishing a specialised environmental court consisting of both experts and judicial members. On hearing this case, the Supreme Court observed that environmental cases involve scientific and technological aspects. In such a situation, considerable difficulty has been experienced by the both the Supreme Court and the High Courts in adjudicating upon the correctness of the technological and scientific opinions presented to the courts. Similar difficulties arise or in regard to the efficacy of the technology proposed to be adopted the industry or in regard to the need for alternative technologies or modifications as suggested by the Pollution Control Board or other bodies. The difficulties faced by the environmental courts in dealing with are highly technological or scientific data appears to be a global phenomenon. Many scholars and legal experts are of the opinion that the judicial systems are not equipped to deal with complex environmental issues and there is a need for a specialised multi-disciplinary body. As Lord Woolf<sup>10</sup> pointed out "a multi-faceted, multi skilled body should lead to faster, cheaper and more effective resolution of disputes in the environmental area."

Similar concern was also made in the earlier *M C Mehta v. Union of India*<sup>11</sup>, in which the Supreme Court held that in as much as environmental litigation involve assessment of scientific data, it was desirable to set up environmental courts on a regional basis with a professional judge and two experts, keeping in a view the expertise required for such adjudication. The other judgment was *Indian Council for Enviro-Legal Action v. Union of India*<sup>12</sup> in which the court observed that the environmental courts having civil and criminal jurisdiction must be established to deal with environmental issues in a speedy manner.

In response to these directions, the Government of India passed the National Tribunal Act in 1996 but it never got notified. Thereafter, the National Environmental Appellate Authority was set up in 1997. This authority was also not effective as it functioned without a Chairperson after the first Chairperson's tenure ended in 2000. In addition to this, the number of environmental litigations increased and the Courts in India, which were already over burdened with thousands of cases, expressed its inability to expedite the process of adjudication on environmental matters. Additionally, there were inconsistencies in judgments and the courts were increasingly dependent on expert members. All these factors led to the increasing

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<sup>10</sup>Lord Woolf (1991). Are the Judiciary Environmentally Myopic?" Journal of Environmental Law, Vol.4, No.1.  
<sup>11</sup>AIR 1987 SC 965.  
<sup>12</sup>AIR 1996 SC 1446.



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demand for a specialized environmental court from various quarters ranging from the Court to environmental groups.

**Structure**

The Principal Bench of the NGT has been established in the National Capital – New Delhi, with regional benches in Pune (Western Zone Bench), Bhopal (Central Zone Bench), Chennai (Southern Bench) and Kolkata (Eastern Bench). Each Bench has a specified geographical jurisdiction covering several States in a region. There is also a mechanism for circuit benches. For example, the Southern Zone bench, which is based in Chennai, can decide to have sittings in other places like Bangalore or Hyderabad.

The Chairperson of the NGT is a retired Judge of the Supreme Court, Judicial members are retired Judges of High Courts. Each bench of the NGT will comprise of at least one Judicial Member and one Expert Member. Expert members should have a professional qualification and a minimum of 15 years. Experience in the field of environment / forest conservation and related subjects.<sup>13</sup> On 18 October 2010, Justice Lokeshwar Singh Panta became its first Chairman. Currently it is chaired by Justice Swatanter Kumar since 20 Dec 2012.<sup>14</sup>

**Powers**

The NGT has the power to hear all Civil Cases relating to Environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the NGT Act. These include: The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention and Control of Pollution) Cess Act, 1977; The Forest (Conservation) Act, 1980; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1986; The Public Liability Insurance Act, 1991; and The Biological Diversity Act, 2002. The provision under these laws allow civil society and environmental groups and citizens to resort to the Green Tribunals if there is any violation pertaining to these laws, or any order/decision taken by the Government under these laws.

This means that any violations pertaining only to these laws, or any order/ decision taken by the Government under these laws can be challenged before the NGT. Importantly, the NGT has not been vested with powers to hear any matter relating to the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and various laws enacted by States relating to forests, tree preservation etc. Therefore, specific and substantial issues related to these laws cannot be raised before the NGT. It has to

<sup>13</sup>Sec. 8 & 5, Green Tribunal Act, 2000.

<sup>14</sup>The Hindu (Chennai, India) 25, December 2012.





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approach the State High Court or the Supreme Court through a Writ Petition (PIL) or file an Original Suit before an appropriate Civil Judge of the taluk where the project that intends to challenge is located.<sup>15</sup>

### Procedure for filing an Application or Appeal

The NGT follows a very simple procedure to file an application seeking compensation for environmental damage or an appeal against an order or decision of the Government.

The official language of the NGT is English. For every application / appeal where no claim for compensation is involved, a fee of rupees 1000/- is to be paid. In case where compensation is being claimed, the fee will be one percent of the amount of compensation which subject to a minimum of Rupees 1000/-.

### Mentoring and Implementation

For implementation of environmental laws, proper monitoring is essential. The Supreme Court of India has constituted several committees for the purpose of effectively implementing environmental laws. The implementation of the Hazardous waste (Management and Handling) Rules, 1989 is monitored under a repetition Committee constituted by the Supreme Court, which has wide powers including the power to issue closure orders.

A claim for Compensation can be made for; Relief/compensation to the victims of pollution and other environmental damage including accidents involving hazardous substances; Restitution of property damaged; Restitution of the environment for such areas as determined by the NGT.

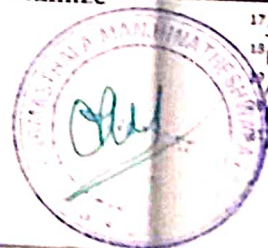
No application for grant of any compensation or relief or restitution of property or environment shall be entertained unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.<sup>16</sup>

### Principles of Justice adopted by NGT

The NGT is not bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. Further, NGT is also not bound by the rules of evidence as enshrined in the Indian Evidence Act, 1872. Thus, it will be relatively easier (as opposed to approaching a court) for conservation groups to present facts and issues before the NGT, including pointing out technical flaws in a project, or proposing alternatives that could minimize

<sup>15</sup> Environmental Law Desk Book, ELR- 851.

<sup>16</sup> *Ibid*, p. 663.



<sup>17</sup> *Supra* 9.  
<sup>18</sup> <http://www>  
<sup>19</sup> Appeal No  
<sup>20</sup> Prafulla S  
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environmental damage but which have not been considered.<sup>17</sup> While passing Orders/decisions/awards, the NGT will apply the principles of sustainable development, the precautionary principle and the polluter pays principles. However, it must be noted that if the NGT holds that a claim is false, it can impose costs including lost benefits due to any interim injunction.

### Review and Appeal

Under Rule 22 of the NGT Rules, there is a provision for seeking a review of a decision or order of the NGT. If this fails, an NGT order can be challenged before the Supreme Court within ninety days.<sup>18</sup> Section 16 (Clause A to J) in Chapter III of the NGT Act clearly laid down that any person aggrieved by the above mentioned seven enactments under the jurisdiction of NGT can appeal to it within 30 days of the decision taken by the authority.

### Notable orders

#### Yamuna Conservation Zone

On 25 April 2014, The NGT said that the health of Yamuna will be affected by the proposed recreational facilities on the river. The NGT also recommended the Government to declare a 52 km stretch of the Yamuna in Delhi and Uttar Pradesh as a conservation zone of India<sup>19</sup>

In the *POSCO case*<sup>20</sup>, the NGT asked the Environmental ministry to review environmental clearance after some local villages refused to consent to the project under the Forest Rights Act, 2006. Officials say the requirement of mandatory consent from the Gram Sabha for initiating any project is the biggest hurdle in pushing infrastructure development in mineral rich, poor regions. The NGT repeatedly rejected the views of its nominal master, the Ministry of Environment and Forests. For instance, in the case of *M.P. Patil v. Union of India* wherein the Tribunal examined the details of the basic on which environmental clearance (EC) was obtained by the National Thermal Power Corporation (NTPC) Ltd, it was found that NTPC was guilty of misrepresenting facts to obtain the clearance.

Similarly, in *Jeeth Singh Kanwar v. Union of India*<sup>21</sup>, the petitioners challenged the environmental clearance given to the respondents' proposal to install and operate a coal- fired power plant. The petitioner argued that the mandate of the various

<sup>17</sup>Supra 9.

<sup>18</sup><http://www.conservationindia.org/resources/ngt>, Last accessed on 21/06/2019.

<sup>19</sup>Appeal Number 12 of 2012 dated 13-03-2014.

<sup>20</sup>*Prafulla Samantray v. Union of India*, Appeal No. 8 of 2011 dated 30-3-2017.

<sup>21</sup>Appeal No. 10/2011, dated 16-04-2013.



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guidelines in the Public Consultation Process had not been complied with and had even been flouted in granting the clearance. Neither the executive summary of the EIA report in vernacular language nor the full EIA report had been made available, as required, 30 days prior to the scheduled date of public hearing. The NGT observed that according to the precautionary principle, the environmental clearance should not have been granted by the Ministry of Environment, Forest and Climate Change (MoEF & CC). Moreover, it observed that the economic benefit of the project would have to defer to environment if the project involved continuing and excessive degradation of the environment. The Tribunal further pointed out that the impugned order of the MoEF granting environmental clearance to the power plant was illegal and liable to be quashed.

### Coal Blocks in Chattisgarh Forests

The National Green Tribunal has cancelled the clearance given by the Union Environment and Forests Minister, Jairam Ramesh, during UPA Government, to the Parsa East and Kante-Basan captive coal blocks in the Hasdeo-Arand forests of Chhattisgarh, overruling the statutory Forest Advisory Committee.<sup>22</sup>

The forest clearance was given by Mr. Ramesh in June 2011, overriding the advice of the Ministry's expert panel on the two blocks for mining by a joint venture between Adani and Rajasthan Rajya Vidyut Utpadan Nigam Limited. The blocks requiring 1,989 hectares of forestland fell in an area that the government had initially barred as it was considered a patch of valuable forest and demarcated as a 'no-go' area.<sup>23</sup>

The order is bound to have a more far-reaching impact, with the tribunal holding that "mere expression of fanciful reasons relating to environmental concerns without any basis, scientific study or past experience would not render the advice of FAC- a body of experts -inconsequential. Under the Forest Conservation Act, 1980, the FAC is required to appraise projects that require forest lands and advise the Environment Ministry to grant approval or reject the proposals.

But in this case, the NGT noted, the Minister had taken all of one day and relied upon his "understanding and belief without any basis either in any authoritative study or experience in the relevant fields." The Minister, while clearing the coal blocks, had given six reasons for doing so, including that the coal blocks are linked to super-critical thermal power plant, which is imperative to sustain the momentum generated in the XI Plan for increasing power production. These 'anthropocentric' considerations, the NGT held, were not valid to evaluate the project.

<sup>22</sup> *Ibid.*

<sup>23</sup> Environmental Law Desk Book, ELR- 611.



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**Order of the National Green Tribunal regarding green belt encroachment by petrol pump in Badarpur**

Order of the National Green Tribunal in the matter of Letter received with the subject - Save Forest land of Green Belt on Molarbad-Faridabad Bye-pass Road dated 13/09/2019 regarding remedial action against illegal setting up of a petrol pump in the green belt at Molarband, Badarpur, behind Sector 37 Police Station, Faridabad.

A report filed by the Municipal Corporation, Faridabad after many delays was found to be highly "unsatisfactory and cryptic". The report says that no NOC or permission has been issued for the petrol pump by the municipal corporation. Further, the Commissioner shifted the blame for not taking any action against the illegal operation of the petrol pump in the green land on the plea that the land belongs to HUDA.

The NGT while asking the Chief Secretary, Haryana to ensure that appropriate legal action against the petrol pump is taken, also directed that the Chief Secretary to look into the "failure and negligence of the Municipal Commissioner" on such matters. The Tribunal categorically stated that such important posts should be headed by a suitable and responsible officer and a decision should be taken at the earliest "so that public service functions assigned to such high officer are discharged in a responsible manner". NGT passed this order as there were found to be repeated failures of the Commissioner in performing her functions in various matters.<sup>24</sup>

**Saloni Singh & Anr. Vs. Union of India & Ors.<sup>25</sup>**

The issue is on Compliance of Plastic and Solid Waste Management Rules, 2016 at the railway compartments, stations and railway tracks. The Tribunal considered the report of the Comptroller and Auditor General of India (CAG) called "Environment Management in Indian Railways" based on study of the major railway stations and the 83rd report of the Public Accounts Committee and found unsatisfactory handling of waste generated and dumped on the railway tracks, open defecation on the tracks, leading to unhygienic conditions and health hazards. The Tribunal directed that 36 railway stations, i.e. 5% of all stations achieve the target of achieving environment standard '14001' laid down by BIS for selected railway stations in the form of

<sup>24</sup><http://www.indiaenvironmentportal.org.in/content/465623/order-of-the-national-green-tribunal-regarding-green-belt-encroachment-by-petrol-pump-in-badarpur-13092019/>

<sup>25</sup>(O.A. No. 141/2014)



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Environment Management System within three months. The Eco-smart stations' are to be replicated in phases in rest of the country<sup>26</sup>.

**Threat to life arising out of coal mining**

*South Garo Hills district Vs. State of Meghalaya & Ors*<sup>27</sup>

Rat hole mining in Meghalaya:- The Tribunal directed the expert committee headed by former High court judge Justice B.P. Katakey and comprising of representatives from of CPCB and Indian School of Mines, Dhanbad to expedite efforts to identify victims of rat hole mining in Meghalaya since 2012. The committee's interim report has found that mining activity has been going on for a long time in unplanned and unscientific manner resulting in huge ecological disturbance and negative impact on the environment. It will continue to make field trips across the state to formulate a comprehensive restoration plan of the affected region by 31 March 2019. In order to ensure better compliance, the Tribunal has now also redirected its approach on the issue and has imposed an interim penalty of Rs. 100 crores on the government of Meghalaya. Further, the Tribunal also laid down that the state can be made liable for colluding with the polluters apart from non-compliance.<sup>28</sup>

**Sterlite Plant Issue - Thoothukudi**

The National Green Tribunal gave clearance to Sterlite Plant at Thoothukudi, Tamil Nadu, which was shut down after violent protests by local people for alleged environmental pollution. Thirteen people were killed in police firing on May 22-23, 2018, after the 99-day long protest by the local people and Tamil Nadu government prematurely ordered the closure of the plant citing pollution concerns on May 28, 2018. A bench headed by NGT chairperson A K Goel rightfully directed the Tamil Nadu Pollution Control Board (TNPCB) to issue a fresh order of "renewal of consent" within three weeks time. The NGT also accepted Sterlite Company's offer to invest Rs 100 crore in social welfare schemes in villages around Thoothukudi over three years<sup>29</sup>

**Ban on decade old Diesel vehicles at Delhi NCR**

An attempt to minimize air pollution at capital of India and NCR PM 2.5 particles have reached alarming level. As per this order, 10 years old vehicles are not allowed

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<sup>26</sup>[http://www.greentribunal.gov.in/Display\\_file\\_judgement.aspx?ID=30305&type](http://www.greentribunal.gov.in/Display_file_judgement.aspx?ID=30305&type), last visited on 10.07.2019

<sup>27</sup>(O.A. No. 110(THC)/2012)

<sup>28</sup>Ibid

<sup>29</sup>[https://en.wikipedia.org/wiki/National\\_Green\\_Tribunal\\_Act](https://en.wikipedia.org/wiki/National_Green_Tribunal_Act).

<sup>30</sup><http://www>

<sup>31</sup>Section 14

<sup>32</sup>Section 16

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to ply. However, as per Media report Central Government exploring to appeal against the order at Supreme Court especially for personal vehicles.<sup>30</sup>

The tribunal is having 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 as arises out of this implementation of any of the provisions of any of the enactments intended for the protection of environment.<sup>31</sup> The tribunal has power to grant relief and compensation to the victims of pollution and other environmental damage arising out of the said enactments including accidents occurring while handling hazardous substances. It can also order restitution of any property damaged and for restitution of the environment for such area or areas.<sup>32</sup> where death of, or inquiry to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an accident the adverse impact of an activity or operation or process, under any enactment specified, the person shall be responsible to pay such relief or compensation for such death, injury, or damage, under all or any of the heads specified to the schedule-II<sup>33</sup> of the enactment. The civil courts are barred from entertaining any appeal in respect of any matter, which the tribunal is empowered to determine under its appellate jurisdiction.<sup>34</sup>

### Conclusion

The National Green Tribunal was established as a special fast-track quasi-judicial body comprising of judges and environment experts who will ensure expeditious disposal of cases. The National Green Tribunal has given fast-track judgments in a lot of cases ensuring that the purpose of its establishment is satisfied. However, some environmental clearance is of such a grave nature that giving a judgment on them in 6 months would lead to grave injustice like the "Lavasa" case. On one hand the National Green Tribunal gives fast-track judgements and it deals with cases extensively when required. The NGT fulfills its purpose of stopping environmental violations very well, for example following a PIL, National Green Tribunal has passed an order to curb noise pollution in Delhi, outlining actions that include making noise pollution a compoundable offence. The tribunal has asked traffic cops to act against polluting vehicles. The National Green Tribunal also suspended the

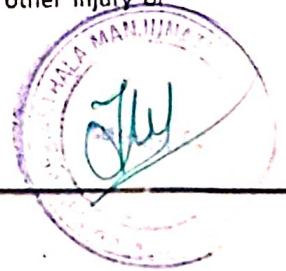
<sup>30</sup><http://www.conservationindia.org/resources/ngt>, last accessed on 11.06.2019.

<sup>31</sup>Section 14 of the Green Tribunal Act, 2010.

<sup>32</sup>Section 16 of the Green Tribunal Act, 2010

<sup>33</sup>Compensation can be claimed on death, permanent or temporary, disability, or other injury or sickness, loss of wages.

<sup>34</sup>Section 29 of the Green Tribunal Act, 2000.



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environmental clearance granted to Posco's mega steel project in Orissa in January 2011. Therefore, the establishment of NGT will benefit India to a great extent.

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