

# ENVIRONMENTAL JURISDICTION AND CLIMATE CHANGE IN INDIA WITH SPECIAL REFERENCE TO COVID - 19

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## **ABSTRACT**

*Scholars have repeatedly proposed to implement the concept of retributive justice to establish responsibility for climate change. This article is an attempt in this direction wherein, we may understand the viability of NGT and Climate Change in India vis-à-vis its significance in Covid - 19. Climate change has more often reminds world community as well as India that increasing population, demand/supply and pandemic in form of Covid-19 has changed the world order. The world community and especially India should rethink its strategy on climate change as well as environmental courts in India have a huge responsibility in this direction. Issues like greenhouse gas emission and increasing demand of the population prompt nations to progressively think about climate change and its impact on human civilisations. To control climate change phenomena the countries, need specific environmental jurisdiction and National Green Tribunal is one among them. National Green Tribunal is a statutory body by the virtue of legislative intent which paved the way for full-fledged environmental jurisdiction in India. It is a mechanism for access to justice for have and have-nots for the purpose of preserving flora, fauna and rivers. National Green Tribunal is constantly striving hard to administer justice through its directions and orders. It is a jurisdiction which started in 1991 in New Zealand and became an instrument of justice delivery mechanism for environmental jurisprudence across world. Its orders are widely acclaimed and appreciated by jurisdiction including different High Courts and the Supreme Court of India. National Green Tribunal has reduced the burden of different High Courts and Supreme Court in deciding environmental concerns. Covid-19 and its impact on human civilization imminently changed the whole of the ecological factors and due to these environmental changes NGT got a chance to understand environment and apply jurisprudences for pollution free environment in India.]*

**Keywords:** National Green Tribunal. Environmental Courts, Environmental Jurisdiction, Climate Change, Covid-19

## **INTRODUCTION**

Climate change is regarded as one of the most problematic issues, which is having direct consequences for production of food, fresh water and natural ecosystem. The Climate change is such a phenomenon that it is likely to affect the vulnerable section of society and that is why deprived and poor section of society is the real sufferer. Climate change as well as the ozone layer depletion has been prominently recognized to be earth's largest problem in last few decades. The only way to resolve this issue is control of greenhouse gas emission and international agreements. But certain environmental jurisdictions like National Green Tribunal may be a game changer in resolving climate change issues.

In *M.C Mehta v. Union of India*<sup>1</sup> the Supreme Court of India decided that “environment courts” is a real need of the hour and must be established for speedy disposal of environmental matters. In this context the National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997 were enunciated by the Parliament of India. Unfortunately said legislations were not able to solve the problem and this led to comprehensive legislative framework for solving environmental cases more proficiently and effectively. Hence the Government of India passed the National Green Tribunal Act, 2010.<sup>2</sup> The National Green Tribunal was the call of the hour as it intricate multi-disciplinary issue pertaining to the environment. The National Green Tribunal was enunciated keeping in mind the principles of Stockholm Declaration of 1972, and Rio Declaration of 1992, which call for the States to provide effective access to judicial mechanism which may provide compensation to the victim of pollution as well as other environmental damages.

The National Green Tribunal was enunciated with an objective to maintain check and balance for the victim of pollution as well as industrial liability with respect to the environmental damages. The Tribunal reduced the burden from the higher courts of the country as it decides large numbers of environmental damages. By the virtue of this development India was recognized as the third nation in the world to have special court for environmental jurisdictions named ‘National Green Tribunal’. In the leading case of *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India*<sup>3</sup>, the Supreme Court decided that all such matters and issued pertaining to Schedule I of the National Green Tribunal Act, 2010 must be instituted before National Green Tribunal. It was also observed that it will reduce the burden of other courts and specialized justice may be rendered in the field of environmental law to the people at large.

The NGT Act covers almost all aspects of environmental jurisprudence and this paper deals with those aspects. This research paper is covering the historical background of National Green Tribunal, wherein Stockholm declaration is discussed thoroughly so that the need of National Green Tribunal can be understood in the letter and spirit in which it is intended by the legislature. It is important to understand that the journey of National Green tribunal involves many important facets and that is why this paper consists of Constitutional development of environment rights. It

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<sup>1</sup> (1987) 1 SCC.

<sup>2</sup> It was passed on 02-06-2010 and came into force on 02-06-2010. It has repealed the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997.

<sup>3</sup> (2012) 8 SCC.

discusses how Right to healthy environment as a fundamental right under Article 21 of the Constitution of India.

### NOTICEABLE FEATURES

The National Green Tribunal Act, 2010 was enacted with an objective to set up a body for prompt and operative disposal of matters relating to environment such as protection of environment, conservation of natural resources, forests etc. The Act aims to provide a forum for enforcement of legal rights related to environment and provide appropriate compensation for damages caused to persons and the property. National Green Tribunal Act was passed keeping in mind the principles undertaken by world community at Stockholm in “United Nations Conference on Human Environment, 1972” and “Rio Declaration of 1992” of which India was Signatory. In the light of these two conferences and the wide judicial interpretation of Article 21, Constitution of India, which made right to healthy environment as part of right to life, it was considered necessary to establish a body for dealing with diverse environmental issues and speedy administration of justice. The Act is divided into five Chapters and includes three Schedules. It broadly talks about establishment of National Green Tribunal (NGT), its jurisdiction and powers. It further prescribes a detailed procedure to be followed by NGT and mentions the penalties that it can impose. It is paramount to explore the definition of “environment” before proceeding further. The Act defines “environment” as something which includes all the three elements of Earth that is air, water and land and covers within its ambit the relationship among and between these elements along with their relationship with other living creatures, micro-organisms, plants, and property.<sup>4</sup>

The National Green Tribunal Act, 2010 has following salient features:

The important feature of the Act is that it defines “substantial question relating to environment”, which is crucial for the effective understanding and application of the Act. Section 2 (m) defines it as any instance where a detailed legal environmental responsibility has been violated by any person and such violation has resulted in: a) significant harm to the environment or property, b) damage to public health and c) community at large was directly having likelihood of affecting the environmental. It empowers the Central Government to establish a tribunal to be known as National Green Tribunal<sup>5</sup>, comprising of a Chairperson a full time authority with minimum 10 & maximum 20 judicial members full time and minimum 10 & maximum 20 expert members<sup>6</sup>. Central Govt. pick all the members on the recommendations of the selection committee. For

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<sup>4</sup> *Ibid* s. 2(c).

<sup>5</sup> *Ibid* s. 3.

<sup>6</sup> *Ibid* s. 4(1).

appointment of Chairperson, Central Government consults the Chief Justice of India.<sup>7</sup> All the Members of the Tribunal including the Chairperson are appointed for a term of five years and cannot be re-appointed. Act also lays down the maximum age up to which the office can be held by the Members and the Chairperson<sup>8</sup>. Central Government specifies the sitting of the tribunal and its control in that area<sup>9</sup>. The rules relating to procedure for hearing of applications, quorum of members to hear the appeals & application, sitting of cases from one place to another by the Chairperson are framed by the Central Government in consultation with the Chairperson<sup>10</sup>.

Further, it lays down eligibility criteria for appointments of members. A sitting Supreme Court Judge or Chief Justice of a High Court or retired shall be eligible for appointment as a chairperson or Judicial member of the Tribunal<sup>11</sup>. Any person who is or was a High Court judge is also qualified for appointment as a judicial member of the Tribunal. Any person who has a degree and required experience in the field of science relating to life sciences, technology, engineering, and a person having special knowledge in the field of environment and forest shall be eligible for appointment as an Expert member of the committee<sup>12</sup>. Alternatively, a person having 15 years of experience in dealing administratively with environmental matters shall also qualify for appointment as the Expert member<sup>13</sup>.

It talks about the jurisdiction of NGT and its power to award appropriate remedy. The tribunal is empowered to try issues pertaining to substantial question of law relating to environment<sup>14</sup>, where such question has arisen upon implementation of certain enactments like; the Forest (Conservation) Act, 1980, Environment (Protection) Act, 1986, and other Acts as are laid down under Schedule I. It also has jurisdiction to fix issues involving enforcement of legal right with respect to environment. An application for adjudication of dispute must be filed within a period of six months calculated from the date of cause of action. In certain circumstances, at the discretion of the Tribunal, this time can further be extended to a period of sixty days<sup>15</sup>. Tribunal grants remedies in the form of compensation to pollution victims, restitution of property etc. Such relief/compensation/restitution shall be paid by the virtue of Public Liability Insurance Act, 1991<sup>16</sup>.

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<sup>7</sup>*Ibid* s. 6.

<sup>8</sup>*Ibid* s. 7.

<sup>9</sup>*Ibid* s. 4(3).

<sup>10</sup>*Ibid* s. 4(4).

<sup>11</sup>*Ibid* s. 5(1).

<sup>12</sup>*Ibid* s. 5(2) (a).

<sup>13</sup>*Ibid* s.5 (2) (b).

<sup>14</sup>*Ibid* s.14 (1).

<sup>15</sup>*Ibid* s. 14 (3).

<sup>16</sup>*Ibid* s. 15(1) and (2).

The limitation period in granting compensation or restitution shall be five years from the date it first arose. It is up to the discretion of the Tribunal to further extend it to sixty days<sup>17</sup>.

Tribunal has also been empowered to determine liability of persons to pay compensation/ relief in cases where death or injury is suffered by any person or property or environment has been damaged as a result of any accident or adverse impact of any activity or operation<sup>18</sup>. It applies “no fault” principle in case of death or injury suffered by a person from any accident.<sup>19</sup>

The Act prescribes the procedure to be followed by NGT. In adjudication of disputes, the principle of natural justice shall be a guiding principle which must be adopted by the virtue of the procedure guided under Code of Civil Procedure 1908.<sup>20</sup> The Tribunal, in conducting the proceedings, is not bound by the rules of evidence laid down under the Indian Evidence Act, 1872<sup>21</sup> and is empowered to regulate its own procedure<sup>22</sup>. In certain matters like summoning, receiving evidence on affidavits, issuing of commissions, discovery and production of documents, the Tribunal has been given the same powers as that of the civil court. It has power to review its decision, decide an application *ex parte*, pass injunction and other interim orders and issue cease and desist order in certain cases of violation of enactments laid down under Schedule I<sup>23</sup>. The decision/order/award passed by the Tribunal can be challenged in the Supreme Court within a period of 90 days from the date of communication of such decision/order/award<sup>24</sup>. Tribunal is also empowered to order costs in case of false and vexatious claims<sup>25</sup>.

The Act lays down the power of NGT to impose penalty. The Tribunal is empowered to impose penalty in the form of imprisonment and fine for non-compliance of its decision/order/award. An imprisonment up to three years and a fine up to ten crores rupees may be awarded in case of failure to comply. Such fine may extend to twenty-five crore rupees if non-compliance is by any company<sup>26</sup>. Every offence under this Act is deemed to be a non-cognizable offence<sup>27</sup>. Government Department can also be penalized for non-compliance of order/decision/award of the Tribunal under this Act<sup>28</sup>. It lays down certain miscellaneous provisions. The Act bars civil court’s

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<sup>17</sup>*Ibid* s. 15 (3).

<sup>18</sup>*Ibid* s. 17.

<sup>19</sup>*Ibid* s. 2(1) (a) defines accident.

<sup>20</sup>*Ibid* s. 19 (1).

<sup>21</sup>*Ibid* s. 19(3).

<sup>22</sup>*Ibid* s. 19 (2).

<sup>23</sup>*Ibid* s. 19(4).

<sup>24</sup>*Ibid* s. 22.

<sup>25</sup>*Ibid* s. 23(2).

<sup>26</sup>*Ibid* s. 26 (1).

<sup>27</sup>*Ibid* s. 26 (2).

<sup>28</sup>*Ibid* s. 28.

jurisdiction in the settlement of any dispute or claim pertaining to issues on which jurisdiction lies with the Tribunal. It also excludes civil court's jurisdiction from entertaining any appeal with reference to any matter, which the Tribunal is empowered to deal<sup>29</sup>. The Act gives protection to employees of Central Government, State Government, and any statutory authority, against any action or legal proceedings for any act done in good faith or done in pursuance of the provisions of the Act<sup>30</sup>. Same protection has been given to the Chairperson and other Judicial and Expert members of the Tribunal<sup>31</sup>. Lastly, the Members of the Tribunal and the Chairperson are deemed to be public servants as is provided under Section 21 of the Indian Penal Code<sup>32</sup>.

## CLIMATE CHANGE

In 1992, the United Nation Conference on Environment and Development was held at Rio was known as the *Rio Declaration*<sup>33</sup> defining the rights and responsibilities of the states, an action plan, protection of forests and bio-diversity which were signed by more than 150 countries. In 1997 the Kyoto protocol<sup>34</sup> was adopted providing for binding targets for green house gas in 37 industrialized countries from 2008 to 2012. It proposed to bringdown the emissions by 5.2% from 1990 levels. The Convention basically provides for principles for conservation of biological diversity, ecological consumption of its constituents and equal sharing benefits from genetic resources. The imperative needs to have a framework to start work on climate change led to faster international agreement and was ready at the Earth Summit (Formerly known as 1992 United Nations Conference on Environment and Development in Rio de Janerio). The Convention was signed at the Rio Declaration in 1992. The International response was such that it calls for the international cooperation. The Polluter Pays Principle and Precautionary Principle are two important principles enunciated by Earth Summit (Formerly known as 1992 United Nations Conference on Environment and Development in Rio de Janerio) for the purpose of tackling climate change.

The Economic Cooperation and Development (OECD) developed a principle at Earth Summit called *Polluter Pays Principle*. In 1974, the Council of OECD adopted the recommendation on Polluter Pays Principle. The understanding of the principle was that the producer shall be responsible for all damages and shall bear the cost of restoration. This includes environmental cost

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<sup>29</sup> *Ibid* s. 29.

<sup>30</sup> *Ibid* s. 32(1).

<sup>31</sup> *Ibid* s. 32(2).

<sup>32</sup> *Ibid* s. 31.

<sup>33</sup> Available at: <http://www.un.org/esa/sustdev/document/index.htm> (last visited on 25 Sep. 2021).

<sup>34</sup> Available at: [http://unfccc.int/Kyoto\\_protocol/items/2830.php](http://unfccc.int/Kyoto_protocol/items/2830.php) (last visited on 03 March, 2020).

plus the direct cost to the property or people. The cost includes full environment cost. The principle was based on the idea that '*prevention is better than cure*'. It encourages the developers to invest in preventive, restorative or compensatory measures.

Another important principle evolved with Rio Declaration was Precautionary Principle. The principle was based on sustainability of developmental process. It means that if the developmental activity is causing serious and irreversible environmental damage then it must be stopped and prevented. This principle gave a momentum to the advancement of environmental jurisdiction in India. Hence "*threat of serious and irreversible damage*", and also consideration to the cost by the words "*cost-effective measures*", both can be solved by the virtue of Rio Declaration adopted principles - Precautionary Principle and Polluter Pays Principle. The Indian Apex Court adopted both these principle for administration of justice through various environmental jurisprudences to tackle climate change.

#### **JURISPRUDENTIAL DEVELOPMENT TO RECOMPENSE CLIMATE CHANGE**

NGT has played an important role in improving the environmental rule of law and providing access to speedy justice on environmental matters in India. The tribunal has turned out to be extremely useful in satisfying the growing needs of environment protection and sustainable development. An analysis of recent judgements delivered by NGT will highlight that it has been effective in dealing with diverse environmental issues. Over the years, it has dealt with a variety of issues like industry operations, mining operations, cleaning of rivers/lakes, solid waste management, plastic waste management, noise pollution, environmental compensations and so on. Some latest judgements, under various heads, can be analyzed to understand the increasing dependence and trust of people in NGT for accessing environmental justice.

In *W. Edwin Willson v. Union of India*<sup>35</sup>, NGT passed an order to ensure that political parties are restrained from using plastic banners or hoardings during elections. The Tribunal directed Chief Electoral Officers of all States, Election Commission of India and Central Pollution Control Board to issue advisories to all the political parties to abstain from using plastic banners/hoardings during elections.

In *Residents of AntrikshKanball 3G, Sector-77, Noida v. State of Uttar Pradesh & Ors.*<sup>36</sup>, the residents of AntrikshKanball filed an application complaining about the environmental norms' violation by the proponent of the housing project M/s AntrikshKanball, Noida. Applicants alleged

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<sup>35</sup> Execution Application no. 32/2019 in O.A. No. 05/2019, Date of hearing: 08-11-2019.

<sup>36</sup> Original Application No. 889/2019.

discharge of effluents in the green belt and storm water drain, and illegal extraction of groundwater by the housing project. An inspection in this reference was done by the State Pollution Control Board and Central Ground Water authority (CGWA). The report submitted by them noted several violations in the housing project such as, no sewage treatment plant was installed in the project building, appropriate environmental clearance was not taken, no NOC was obtained for establishing the project from Uttar Pradesh Pollution Control Board (U.P.PCB), etc. Ultimately, the tribunal directed the U.P.PCB to recover assessed environment compensation of ₹ 3,28,50,000/-.

In *Social Action for Forest and Environment (SAFE) v. Union of India &Ors.*<sup>37</sup>, tribunal asked CPCB to issue appropriate guidelines for management of ‘End-of-life Tyres’/ ‘Waste Tyres’, impose restriction on its import, and check its use by the Pyrolysis industry operating in the country. In *Shailesh Singh v. State of Haryana &Ors.*<sup>38</sup>, NGT made a remarkable observation that industrial development cannot be done at the cost of human lives and by compromising the air and water quality. The observation was made while issuing direction to the Haryana Government asking it to shorten the period of mandatory inspection of highly polluting 17 categories industries. Further, it directed CPCB, to follow the order on revised period of inspections, in other states as well. In *M/s India Glycols Limited v. Central Ground Water Authority &Ors.*<sup>39</sup>, while dealing with an appeal against the order of Central Ground Water Authority, stopping groundwater withdrawal, the tribunal said that groundwater is scarce and limited. Therefore, there is no guaranteed right to continue ground water extraction for commercial purposes without any permission. It, therefore dismissed the appeal.

NGT has also taken *suo motu* cognizance in certain cases. In a case<sup>40</sup>, NGT took cognizance on a news article published in “The Hindu”, titled “More river stretches are now critically polluted: CPCB” authored by Shri Jacob Koshy<sup>41</sup>. The principal bench of NGT issued direction to all the States and Union territories to ensure hundred percent sewage water treatment before it reaches the rivers. It directed in-situ remediation of sewage water which is drained into the rivers across the country to be done by 31.03.2020. Further, it issued a warning to fix liability, in case of River Ganga, for payment of compensation by local bodies of the concerned departments of the

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<sup>37</sup> Original Application No. 400/2019.

<sup>38</sup> Original Application No. 639/2018.

<sup>39</sup> Appeal No. 98/2019 with Appeal No. 99/2019.

<sup>40</sup> Original Application No. 673/2018, Date of hearing: 29-11-2019.

<sup>41</sup> Available at: <https://www.thehindu.com/news/national/more-river-stretches-critically-polluted-cpcb/article24962440.ece> (last visited on 10 March, 2020).



State/UTs, in case of non-compliance. It fixed ₹ 5 lakhs per month per drain, for default in in-situ remediation, and ₹ 5 lakhs per sewage treatment plant for failure to set up such plant.

*In Re: Water Pollution by Tanneries at Jajmau, Kanpur, Uttar Pradesh with In Re: Water Pollution at Rania, Kanpur Dehat & Rakhi Mandi, Kanpur Nagar, Uttar Pradesh*<sup>42</sup>, NGT dealt with two complaints, one relating to contamination of underground water due to chromium dumping which resulted in colored and toxic drinking water, and, other related issues pertaining to pollution into the River Ganga. The tribunal directed the State of Uttar Pradesh to ensure supply of potable water in the affected areas and take other remedial measures as are appropriate. Further, direction was issued to warrant not to discharge untreated sewage into the river Ganga.

Another similar case where NGT took cognizance on news article relates to installation of Ambient Air Quality Monitoring Stations in various cities. The above-mentioned news article was published in the “Times of India” under the title “NCAP with multiple timelines to clean air in 102 cities to be released around August 15<sup>43</sup>”, authored by Shri Vishwa Mohan. It was along with an application filed by Dr. Gautam Ghosh that NGT passed the present order.<sup>44</sup> It was directed by the tribunal that the States/UTs of the concerned cities where the Ambient Air Quality is not as per the norms, must install within one year, assessed Ambient Air Quality Monitoring Stations (AAQMS), which would be connected to a server of Central Pollution Control Board (CPCB) and will display data on the national-portal on real-time basis.

*In Sundr v. Ministry of Environment & Forest & Ors.*<sup>45</sup>, NGT considered the issue of violation of environmental norms by poultry farms in terms of odor pollution, solid waste management and management of waste-water discharge. It directed the State PCB to stop pollution causing activities and recover compensation on “Polluter Pays” principle from the poultry farms being run illegally in the District Shamli. It also asked the concerned authority to file the compliance report.

In another recent case, the principal bench of NGT issued direction to the Punjab Pollution Control Board, to take strict steps for curbing illegal pollution causing activities by the motor scraping

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<sup>42</sup> Original Application No. 985/2019 with Original Application No. 986/2019, Date of Order: 27-09-2019.

<sup>43</sup> Available at: <https://timesofindia.indiatimes.com/india/ncap-with-multiple-timelines-to-clean-air-in-102-cities-to-be-released-around-august-15/articleshow/65254122.cms> (last visited on 11 March, 2020).

<sup>44</sup> Original Application No. 681/2018 (I.A. No. 411/2019) with Original Application No. 10/2019 (EZ), News item published in the “Times of India” authored by Shri Vishwa Mohan titled “NCAP with multiple timelines to clean air in 102 cities to be released around August 15”, with *Dr. Gautam Ghosh v. State of West Bengal & Ors.*, Date of Order 20-11-2019.

<sup>45</sup> Original Application No. 501/2019.

units in Mandi Gobindgarh, Punjab. Further, it directed recovery of compensation on “Polluter Pays” principle in addition to any other statutory action.<sup>46</sup>

While, on one hand, NGT has been strict on holding erring industries and statutory authorities liable for compensation, on the other hand, it has been instrumental in ensuring a greener and safer year of 2020. Few judgements can be analyzed to support this statement. In *Nuggehalli Jayasimha v. Government of NCT of Delhi*<sup>47</sup>, tribunal dealt with environmental norm violations by the diaries in Delhi. It was alleged that the generated waste was dumped into the drains which were meeting the river Yamuna and thereby contaminating its water. The Tribunal directed that the source of methane was the livestock’s, which results in increase of surface temperature. NGT directed Delhi Pollution Control Committee to comply by its legal obligation by stopping pollution causing actions through indicting the polluters, and providing compensation as per law. Central Pollution Control Board was also directed to formulate appropriate guidelines to ensure environmental norm compliance by diaries in India. Both were asked to furnish their report to the tribunal.

The tribunal addressed the issue of management of E-waste in the case of *Shailesh Singh v. State of U.P. &Ors.*<sup>48</sup>. A complaint was filed against the burning, selling and unscientific disposal of E-waste in clear violation of E-waste (Management) Rules, 2016. It was causing ground water contamination, air pollution and soil acidification. It directed the State Pollution Control Boards to furnish report regarding the status of implementation, with reference to disposal of e\_waste, recycling of e-waste etc.

In *Shailesh Singh v. Hotel Holiday regency, Moradabad &Ors.*<sup>49</sup>, the matter pertains to illegal extraction of ground water and contaminating it by the virtue of over exploitation of resources. The Tribunal noted that India extracts more than 25% of ground water available globally. This over exploitation is increasing the depletion level of underground water, resulting in soil salinity, and is creating water crisis in the absence of adequate surface water in certain areas with drought conditions. It is also affecting the E-flow in rivers. The tribunal directed MoEF& CC to constitute an expert Committee, to explore the steps required for prevention of groundwater depletion, development of a monitoring mechanism to check unauthorized extraction of ground water and to monitor conditions laid down for groundwater extraction.

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<sup>46</sup> *Neeraj Goyal v. State of Punjab*, Original Application No. 924/2019.

<sup>47</sup> Original Application No. 46/2018, Date of order: 08-07-2019.

<sup>48</sup> Original Application No. 512/2018, Date of order: 02-09-2019.

<sup>49</sup> Original Application No. 176/2015, Date of order: 10-10-2019.

In *Smt. Ganga Lalwani v. Union of India &Ors.*<sup>50</sup>, tribunal addressed the issue of crop burning/stubble burning causing pollution, especially in the NCR region. It has been a matter of consideration before NGT for more than six years. It found that the steps taken for ground checking and extinguishment of illegal fires were inadequate. Also, the preventive measures, in the form of informing the farmers about the disadvantages of stubble burning were unsatisfactory. In the light of these observations, NGT issued directions to the Central and State Governments to take steps to monitor the situation continuously, such as putting on their respective websites the data of fire incidents, names of officers responsible for the concerned area, and action taken for failures on daily basis.

In *Chandra Bhal Singh v. Union of India &Ors.*<sup>51</sup>, In this case Bio-Diversity Act 2000 and Bio-Diversity Rules 2004 were not followed in letter spirit and the issue was dealt by the tribunal. It was noticed by the tribunal under S.41 of the Biodiversity Act, Biodiversity Management Committees was not constituted and even Peoples Biodiversity Register were not kept as per Rule 22(6). It was also found that because of the non-availability of register, people of the region are not informed that they may not be able to harvest in the region which was required for overall social and economic development. Keeping in mind this serious non-compliance for 16 years, the tribunal directed all States to call monthly meeting. The Tribunal hold that in case of non-compliance, the States will have to pay Rs, 10 lakhs each month from 01-02-2020 and were directed to file status report.

In *Central Pollution Control Board v. State of Andaman & Nicobar &Ors.*<sup>52</sup>, The substantial question of law before the tribunal was the proper implementation of Plastic Waste Management Rules, 2016. The tribunal directed for the framework and asked MoEF& CC to submit report regarding this. Further, it directed CPCB to submit report on its compensation regime. It directed the Government to regulate unregistered plastic manufacturers and recycling units to stop manufacturing as well as plastic bags of composition which should be 50 microns and less than that to be stocked /manufactured /sold or consumed. It also direct not to burn plastic waste in open failing which the States to submit their compliance report, failing which they have to pay ₹ 1 lakh as penalty.

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<sup>50</sup> Original Application No. 666/2018, Date of order: 15-10-2019.

<sup>51</sup> Original Application No. 347/2016, Date of order: 09-08-2019.

<sup>52</sup> Execution Application No. 13/2019, Date of order: 06-12-2019.

In *Court on its own motion v. State of Karnataka*<sup>53</sup>, tribunal dealt with the issue of pollution in lakes. It considered the contamination of Varthur lakes, Agara and Bellandur lake in Bengaluru, caused due to release of untreated sewage effluents and water by residential, commercial, and industrial buildings, in violation of the Water (Prevention and control of Pollution) Act, 1974, especially Section 25. It noticed breach of duties by the concerned Authorities resulting in unchecked continuation of such activities. Tribunal directed formation of a Monitoring Committee, to review the progress with respect to compliance to its directions, till 31-03-2020.

The cases mentioned above clearly show that access to justice mechanism under NGT Act, 2010 is strong as it caters to a larger perspective. The environmental jurisprudence will not develop in the absence of broad and expanding jurisdiction of Green Courts. NGT has full jurisdiction to try environmental matters and while doing so, it is empowered to regulate its own procedure, and is not bound by the procedure laid down in Code of Civil Procedure. This prevents delay and ensures expeditious delivery of justice, which in turn is an essential part of access to justice mechanism. The above cases highlight the vigilance on the part of NGT as it has taken *suo motu* cognizance on newspaper articles. At the same time, it shows easy accessibility to the forum by common people, by filing of a simple application. The quantum of compensation awarded, and penalty levied by the NGT in the above cases, depict its power to initiate deterrent effect. For delivering qualitative justice, an adjudicatory body must have a strong access to justice mechanism, and, from the above cases, it can be inferred, that it lies with the NGT. Hence, “the pre-requisite of administration of justice is easy access to justice” seems to be fulfilled here.

### **THE IMPACT OF COVID-19 ON ENVIRONMENT**

The outbreak of COVID-19 pandemic has severely affected the different aspects of human life and the world economy. The horror of innumerable deaths caused by the virus will haunt the souls of the survivors till eternity. The deadly nature of the virus and its constant mutations posed a huge problem for the medical community and the government. The level of impact of COVID-19 in different countries varied and the interventions adopted by the world’s governments also varied depending upon their country-specific situation and capacity. One of the common and obvious measures taken by the countries to contain this contagious disease was partial or complete lockdown. This preventive effort had a huge impact on the environment. Since major contributing factors of pollution include biomass burning, road dust resuspension, construction activities, industries, transport, power plants and residential activities. Other than these, waste produced by

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<sup>53</sup> Original Application No. 125/2017, Date of order: 18-12-2019.

restaurants, landfill fires, etc also cause pollution. As a result of the lockdown, the transport services were completely suspended and the educational institutions, work buildings, industrial establishments, etc were also shut down. Due to such suspensions and closing down of establishments and industries, there was almost zero emission of green-house gases into the environment. The use of conventional sources and fossil fuels are also decreased. This in turn led to the significant improvement of the air quality which was noted in different towns and cities. Ecosystems also recovered to a considerable extent and most importantly the pollution level at the tourist attractions such as beaches, hilly areas, forests, etc also lowered down.

As mentioned earlier, lockdown during COVID-19 pandemic not only improved the air quality but also positively affected the water quality. The Central Pollution Control Board (CPCB) has observed in its analysis of 115 Indian cities that the concentration of Sulphur Dioxide (SO<sub>2</sub>), Nitrogen Dioxide (NO<sub>2</sub>) and Particulate Matter (PM) emissions reduced noticeably in the lockdown period. The air quality index (AQI) of around 78% cities was 'satisfactory' and 'good' as compared to the 44% cities before the lockdown. As per CPCB, restricted vehicular movement, reduced road dust suspension, halt on construction activities and industrial activities were the major factors for such improvement. Progress was reported from specific States also, such as in Uttar Pradesh, the river Ganga's was booming with less nitrate and dissolved oxygen. Similar positive developments were noted in the river Yamuna also. The lockdown also significantly reduced municipal solid waste (MSW) generation. Chennai's daily by 28%, Nagpur's by 25% and Pune's daily tonnage of MSW fell by twenty nine percent.<sup>54</sup>

After discussing the positive impact, it now becomes crucial to address the horrific negative effect caused on the environment due to COVID-19. The corona virus pandemic caused lakhs of deaths not only in India but also across the globe. The entire global health care system collapsed during the peak of this pandemic. Since it is a highly communicable disease, the waste generated in treating of COVID-19 is also highly contagious. The bio-medical waste management became a pressing issue in India. It became a nightmare to dispose of the infected dead bodies. Due to financial incapacity and shortage of wood, many people dumped the bodies in rivers or buried them in the sand of the river. The matter of bodies resurfacing and floating on the river Ganges<sup>55</sup> thereby poisoning the water for local consumption was reported massively by the newspapers. Due

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<sup>54</sup> Available at:

<https://cpcb.nic.in/openpdffile.php?id=UmVwb3J0RmlsZXMvMTI0M18xNjE2NTYxOTAxX21lZGlhcGhvdG8xMTgzNi5wZGY> (last visited on 22 November, 2021).

<sup>55</sup> "Prayagraj: As Ganga's Water Level Rises, More Dead Bodies Begin to Emerge", The Wire, 25-06-2021, available at: <https://thewire.in/rights/prayagraj-ganga-water-level-rise-dead-bodies-covid-19> (last visited on 22 November, 2021).

to lack of space and long queues at the crematoriums, people started using local parks in their residential colonies for burning their loved ones.

The National Green Tribunal (NGT) has played an important role in addressing the above-mentioned situation. It dealt with issue of effective compliance of the Bio-Medical Waste Rules, 2016 (BMW Rules), as applicable for disposal of BMW arising out of handling COVID-19 disease.<sup>56</sup> NGT has also considered the remedial action necessary for providing immunity to the public health as well as the environment in the light of potential adverse effect of such contagious waste on health workers working on the ground, professionals, and other concerned workers. In its order dated 20-07-2020, NGT gave the following directions:

- a. The exclusion of COVID-19 waste from the overall waste must necessarily be done and additional load on CBWTF<sup>57</sup> incinerators must be avoided.
- b. The rules in regard to treatment and disposal of COVID-19 waste must be complied with strictly.
- c. In cases where waste was not through the process of deep burial system, incinerators etc, properly handled and preserved to protect the environment against any harm.
- d. Appropriate awareness initiatives must be taken by the CPCB such as programmes on national channels and radios.
- e. The appropriate authorities must regularly monitor the status with coordination by the CPCB.

Earlier, NGT had issued guidelines on a variety of issues associated with COVID-19 such as:

- a. More Isolation wards are required for better facilities with precaution for COVID-19 patients,
- b. Proper management of samples taken from Covid Patients are required for collection process.
- c. Proper management of home-care facilities or quarantine camps/homes. Responsibility must be ascertained on concerned person.
- d. duties of urban local bodies in regard to collection and disposal of bio-medical waste,
- e. management of wastewater from health care facilities/isolation wards.

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<sup>56</sup> In Re: Scientific Disposal of Bio-Medical Waste arising out of COVID-19 treatment- Compliance of BMW Rules, 2016”, Original Application No. 72/2020.

<sup>57</sup> Common Bio-medical Waste Treatment and Disposal Facility.

Further, follow-up actions were also done to check that the guidelines issued by the NGT were being implemented by the States.

## CONCLUSION

The National Green Tribunal endeavored to play a yeoman role in administration of justice by resolving environmental disputes in 2019 with cleaning river Ganga and Yamuna and held that “*every drop of pollution in Ganga is a matter of grave concern*”. The tribunal sensitizes government machinery and asks them to identify key environmental concerns and act steady and fast to intensify its surveillance and cautious apparatus. The National Green Tribunal adjourning matters on many dates due to unresponsive attitude of government some times and bestowed the process of refereeing complaints and petitions filed before its jurisdiction for seeking comments.

The Tribunal expedite its administration of justice by starting online registration of complaints and petitions by tendering a fee of ₹1000/-without hiring an advocate. It also accepts mails and letters received by it and admitted them as petitions. These going years of jurisprudence before National Green Tribunal has shown imposition of heavy fines and environmental compensations on public authorities for non-compliance of their statutory duty and corporate houses for damaging the environment and ecology. The National Green Tribunal is playing a pivotal role in speedy disposal of environmental matters. In this regards National Green Tribunal is constituting committees of experts from academic institutions across India for better administration of justice.

Some of the researches on Covid-19 and Air Pollution have shown direct link between the two. They say that exposure of Covid-19 patient with particulate matters in the atmosphere have a direct link with Air Pollution. Journal *Cardiovascular Research*, found that 15% deaths of global Covid-19 patients are because of mix of chemicals that comes from sources like smokestacks and fire that results in particulate matter. The results shows that more than 50% of deaths are because of burning of fossil fuel in Covid-19, which was part and parcel of air pollution.<sup>58</sup>

The most important issue which is matter of concern is some of the statutory intentions of legislature like Scheduled Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Wildlife (Protection) Act, 1972 was kept out of the purview of National Green Tribunal jurisdiction. It further hampers administration of justice with respect to crucial issues pertaining to forest rights and henceforth National Green Tribunal becomes toothless. As jurisdiction of High Court by the virtue of the Constitution of India is more significant than the

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<sup>58</sup> Available at: [Climate's Impact on India's COVID-19 Crisis | Time](#) (last visited on 05 January, 2022).

National Green Tribunal, which is more often a statutory body and quite less effective in front of High Court's jurisdictions. This direct clash of jurisdiction and superiority clause is making National Green Tribunal's jurisdiction less productive than it could be.

As a matter of statutory recognition, the appeal from National Green Tribunal lies before Supreme Court. Most of the time the decision of National Green Tribunal had been criticized and challenged because of economic interests. The absence of formula for determining compensation mechanism brought criticism to National Green Tribunal. Due to the lag in resources both human as well as financial led to piling up of cases in the National Green Tribunal, which ought to deliver justice in six months puts a serious question mark. Limited numbers of regional benches make it more vulnerable to administration of justice. National Green Tribunal requires more autonomy for better and effective administration of justice.

In a recent incident on 7<sup>th</sup> May, 2020, a gas leak happened in Vizag (Andhra Pradesh) which led to loss of human life as well as put adverse effect on 3-kilometer radius to environment as a whole. Thousands of lives were affected by the leakage. The National Green Tribunal principle bench headed by its Chairperson Justice A.K.Goel directed South Korean Company LG Polymers, which was responsible for the gas leakage occurred to immediately deposit an initial amount of ₹50 crores taking note of damages caused due to the incident. It took *suo-motu* cognizance on the leakage of hazardous gas and the National Green Tribunal directed that the authorities that they did not comply with statutory implications in the true spirit of law and that is why it prompted this jurisdiction to look into the matter and therefore the Tribunal noted that it attracts '*strict liability*'. The Supreme Court of India refuses to interfere with NGT orders and direct LG Polymers to deposit ₹50 Crore. This shows NGT is doing a yeoman work in dispensing justice to the '*have-nots*'.

Therefore, it shows an example whereby the inherent issues can be resolved by learning from various versions of precautionary principle and polluter pays principle which can be accepted internationally and nationally as a customary principle of environment law and thus apply to any place, date or time. The fifth assessment report of the IPCC has highlighted that climate change can be severe and irreversible and therefore the time to act is now.

Hence it can be said that this National Green Tribunal is making milestones in proper handling of environmental jurisdictions and making a proper balance between economic interest and environment.