

How Green Will be the Green Tribunal?

Concerns and Suggestions

on

the National Green Tribunal Bill, 2009

The
 **Access**
Initiative

The present critique is a joint effort of members of '**The Access Initiative – India' Coalition [TAI-India]** comprising of over 30 individuals and NGO's from across the country. TAI-India is part of the global TAI Coalition comprising of over 150 civil society groups which works for effective enforcement of Principle 10 of the Rio Declaration i.e., Access to Information; Public Participation; and Access to Justice, in matters concerning the environment.

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Caveat

- The authors of this critique strongly underscore an urgent need for a wider consultation in a transparent manner, of the provisions of the draft Bill, which for reasons best known to the state authorities and the champions of the Bill, is being deliberately short circuited. This fact is in sharp contrast to the track record of the Ministry of Environment and Forest in most recent legislative and regulatory initiatives like the EIA amendments, CRZ amendments, Bt Brinjal debate etc where the Ministry of Environment and Forest has shown welcome eagerness to engage all the concerned before finalisation.
- It is incomprehensible as to why the Government is not investing its time and energies in rather making the existing relevant statutes namely the National Environment Tribunal, and the National Environment Appellate Authority (NEAA) fully functional, than trying to create another legal instrument to replace them? If there are shortcomings in the two existing statutes then they could easily be addressed through making suitable amendments in them.

INTRODUCTION

The National Green Tribunal Bill, 2009 ['Green Tribunal' for short] was introduced in the Lok Sabha by the Environment and Forest Minister, Sri Jairam Ramesh on July 29 2009.

The decision of the Ministry of Environment and Forests to set up a Green Tribunal is considered to be one of the long awaited requirements to deal with a flurry of environmental litigations happening across the country. Pursuant to the observations of the Supreme Court of India in four landmark judgments, namely, *M.C. Mehta vs. Union of India*¹; *Indian Council for Environmental-Legal Action Vs Union of India*²; *A.P. Pollution Control Board Vs M.V. Nayudu*³ and *A.P. Pollution Control Board Vs M.V. Nayudu II*⁴., the Law Commission in its 186th Report had recommended to set up “multi-faceted” Environmental Court in each state of India, with judicial and technical/scientific experts, as they exist in Australia, New Zealand and other countries. Having regard to the complex issues of fact of science and technology which arise in environmental litigation and in particular, in the elimination of pollution in air and water, it is now recognized in several countries that the Courts must not only consist of Judicial members but must also have a statutory panel of members comprising Technical or Scientific experts. The Supreme Court had in *M.V. Nayudu* cited the example of the *Land and Environment* Court of New South Wales as a model which could be followed.

The draft of the present Bill claims that the proposed Green Tribunal will have the same powers as a civil court. And that it “*provides for the establishment of a 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 with it*”. Clearly this language of the Bill's preamble is affirmative in its intent in respect of protecting the nation's natural environment including conserving its forests and natural resources.

¹1986 (2) SCC 176

²1996(3) SCC 212

³1999(2) SCC 718

⁴2001(2) SCC 62

This critique is offered because there are serious reasons for concern about the content and effect of the “Green Tribunal” Bill. Despite a multitude of serious flaws, the Bill may be gaining public support and credibility on the basis of little more than its promotional title and peoples' legitimate longing for remedies that may help stem the increasing environmental damage generated by uncontrolled activities in the name of 'development' and faster 'economic growth'. Howsoever legitimate the motives that prompted the authors of the Bill, good intentions can still do grave and even irreparable damage when the results threaten to defeat the very goals generating the public support.

Many provisions of the Green Tribunal Bill contain crippling limitations on the claims that can be litigated, as well as unacceptable drafting errors. Enactment of the Bill in its present form could produce results far worse than no legislation at all.

Of particular concern are the narrow and limited scope of jurisdiction, and the narrow scope of remedial orders, that would confine the Tribunal's powers.

It should also not be forgotten that the existing Authority i.e., the National Environment Appellate Authority and the National Environment Tribunal have been dysfunctional largely because of the apathy shown by the Ministry of Environment and Forest itself. The National Environment Tribunal was not operationalised despite a lapse of 15 years of its enactment. As far as the NEAA is concerned, the lesser said the better: Filled with retired bureaucrats with little experience in either law or the Environment Impact Assessment (EIA) process, the NEAA has dismissed every single Appeal filed before it in the last 12 years, and its service conditions were so downgraded that no retired Judge would accept the post of its Chairman. It remains amongst the darkest chapters in the saga of the evolution of India's environmental law.

It is our sincere hope that the concerns raised in this discussion paper would serve as a timely reminder and motivate the MoEF to encourage wider discussion on it, leading to its refinement in a manner so that it becomes an effective judicial forum for the protection of environment and acts as the upholder of the legal rights of the people who depend on the environment.

SUMMARY OF KEY CONCERNS WITH THE GREEN TRIBUNAL BILL

The key concerns with the Green Tribunal Bill relates in particular to the following portions in the draft of the Bill:

CLAUSE 1 (1) – TITLE OF THE BILL

The title of the Bill should be 'The National Environment Tribunal Bill, 2009' and not a subjective, vague and loaded term like a 'Green' Tribunal. This is to reflect clearly the object and purpose of the proposed Tribunal. This also shall be necessary in the light of a need for universal understanding of the title, when it shall require translation and appreciation at the local and village levels.

CLAUSE 2 (1) (m) – “SUBSTANTIAL QUESTION RELATING TO ENVIRONMENT”

The Bill as drafted limits its jurisdiction to “*substantial questions relating to environment*” i.e., situations where the damage to public health is '**broadly measurable**', or '**gravity of damage**' to environment is '**substantial**' or relates to '**point source of pollution**'. The environmental questions cannot be left to the subjective assessment of an individual to judge as to what is 'substantial' or not? Similarly the "environmental consequences" cannot be restricted to either "specific" activity or to a "point source of pollution" as is being proposed in the Bill because non-point sources of pollution and a bundle of industrial activities leading to cumulative impacts on the environment require as much adjudication as specific activities with obvious impacts.

The Bill as it exists is regressive since it only includes instances where the “community at large” is affected or is likely to be affected—but excludes 'individuals' or 'groups of individuals' [**Clause 2 (1) (m) (i) (A)**]. This is contradictory to the settled principle of locus standi where the courts have emphasised on liberal approach to be followed when environmental matters are concerned. Environmental impact and conflict need not be only limited to the “community at large” but may also affect groups of individuals and individuals—who deserve as much protection—in equal measure as the “community at large” a term, which itself has been left undefined in the Bill.

CHAPTER II – INSTITUTIONAL STRUCTURE

The Bill unfortunately seems to follow the 'tried, tested and failed technique' of appointing retired bureaucrats and irrelevant technocrats as 'technical members'. The Bill considers higher degree in Science, Engineering, Technology and Administrative experience only as technical qualifications. There is no provision for ecologists, sociologists, environmentalists and civil society / NGO's who have been active in the field of environment protection.

Moreover the appointment and short listing of candidates will be done by the Ministry of Environment and Forests alone which is unlikely to select and appoint any person who could be considered to have been tough on the Ministry.

Thus there is need of:

- A proper transparent process of appointment of Chairperson and members
- Stipulating that a practicing Lawyer/ Jurist/ Law Professor specializing in environmental and public interest matter could also be considered for appointed as a Judicial Member.
- No appointment of bureaucrats as Expert members unless it is shown that the person concerned has exceptional specialised knowledge, experience and interest in environmental issues.
- Expert members need not be confined to physical and life Science and Technology alone but also include disciplines from the social sciences including practical experience in dealing with R&R and related issues.

CHAPTER III – JURISDICTION, POWERS, AND PROCEEDINGS OF THE TRIBUNAL

The National Green Tribunal Bill states that it will have “*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 enactments specified in Schedule I.* [Clause 14 (1)]. **This must be a drafting error.** It is not the *implementation* (which is what the state is mandated to perform) but a *violation* of the enactments listed in Schedule I which is of substance. It is the current or future activity which is or may cause the environmental damage and *violate* the provisions of various Acts listed in Schedule I, which creates the substantial question relating to the environment.

The focus merely on individual compensation and restitution of property and

environment in clause 15 will inevitably make the tribunal ineffective and helpless in stopping environmental damage. [CLAUSE 15 (1) (a), (b), (c)]

Even if the Tribunal is effective in obtaining individual compensation and restitution of damaged environment (the term 'restitution' remains undefined), the costs of damaging the environment are likely to be less than the profits made by corporations by damaging the environment.

DEFINING OF AN AGGRIEVED PERSON [CLAUSE 16]

The Bill inexplicably expands the definition of an 'aggrieved person' who can approach the Tribunal, to include any person aggrieved by an order 'refusing the grant of environmental clearance'. [Clause 16 (i)] It has to be clearly ensured in the Bill that only those affected adversely by grant of approval orders under enactments mentioned in Schedule I which impact their environment (including forests and biodiversity) can approach the Tribunal.

This is because the Tribunal is meant for the protection of environment. Hence it must redefine an aggrieved person to mean a 'person' who has been wronged through damage to the person's natural environment or suspects (on valid grounds) that such damage is likely to happen unless prevented. Thus Clause 16 (i) should be deleted as being misplaced in a bill devoted to environmental protection. Provision of appeal if any, against refusal to grant environmental, forest or biodiversity clearances / approval under the enactments mentioned in schedule I, should lie elsewhere, than this Tribunal.

CLAUSE 22 (2) – IMPOSITION OF COST

The issue of costs to be awarded against a losing party will be a clear deterrent against affected persons approaching the Tribunal to protect their environment. The Bill seems to indicate that costs will only be awarded against litigants who bring claims that are not maintainable, false or vexatious. This is a serious aspect and will greatly discourage people from approaching the proposed Tribunal since the Tribunal may find a claim not maintainable purely on technical grounds.

QUESTIONABLE TIME FRAMES

The Bill prescribes differential time frames for approaching the Tribunal. It is

- a) 30 days for challenging an order under the Tribunal's appellate jurisdiction [Clause 16] ;
- b) Six months on disputes of substantial questions related to environment [Clause 14 (3)] and
- c) Five years for seeking compensation and relief. (Clause 15 (3))

Such arbitrary and limited time frame defeats the whole purpose of the Bill since many adverse environmental impacts especially from dealing or exposure to hazardous substances/industries such as asbestos, silicosis, radiation etc takes years to manifest them. This Tribunal will thus not then have jurisdiction over such claims if made beyond five years?

FRAMEWORK FOR ANALYSING THE GREEN TRIBUNAL BILL

Recognizing that the Green Tribunal Bill is intended, in part, to replace the legislation that created the ineffectual National Environmental Appellate Authority (NEAA), it is essential to ask whether the new Bill will remedy the key failures of its predecessor. Specifically, remedying the inadequacies of the earlier arrangements requires that, upon enactment, the Tribunal will --

- Actually be established and adequately funded to provide for appointment of the prescribed Members of the Tribunal having the background and skills, with support staff and resources, in order to perform its assigned functions.
- Have protected independence, enabling Members to interpret and apply legal requirements and make factual determinations without any favor for institutional or financial interests whose actions and projects come before them for adjudication.
- Operate under broad grants of jurisdiction and authority which empower it to question and overturn decisions and actions by government and private entities taken in violation of law, or in disregard of facts endangering the natural environment.
- Have full authority to apply standards consistent with Precautionary Principles - before environmental and human consequences are suffered -- as well as to remedy those consequences that may not have been prevented.
- Avoid application of hyper technical concepts of “standing” and other door-closing limitations that preclude consideration of the merits of cases presented by petitioners.
- Reach decisions grounded in careful insistence on compliance with legal requirements, including adequate opportunity for development of factual elements essential to determine the applicability of legal requirements.
- Be guided in complying with these goals by legislation whose organization and specific terms are drafted with sufficient clarity, directness and internal consistency that the Tribunal can readily understand and fulfill its functions and obligations.

These criteria, as well as many specific problems in the design and effect of the Green Tribunal Bill, demand fundamental reconsideration and revision of the Bill. **As currently drafted, the Bill is (at best) unclear about its goals, and is dominated by inconsistent objectives or requirements, drafting ambiguities and basic lack of clarity.** As a result, the Bill fails to express and organize its purposes and requirements in terms that will achieve what are claimed to be its intended and desirable purposes. In fact, based on the current draft, it could be contended that the Bill presents a virtual decoy or “false front” – represented as providing badly needed remedies, while likely to produce only superficial, contradictory or self-defeating results.

Yet no such ulterior motive is suggested by the following criticisms. Rather, the topics addressed by the Bill as well as the circumstances of its tabling suggest legitimate motives. But for that reason, it is even more essential that the organization and specific provisions of Bill be fully reconsidered and redrafted with organization and text that will actually fulfil its intended purposes.

Thorough attention to the effect of this Bill is essential because real legal remedies are badly needed to improve/replace the current grossly inadequate fora in which improper environmental decision making could be challenged.

INSTITUTIONAL STRUCTURE OF THE GREEN TRIBUNAL

The Tribunal is envisaged as a multi member Expert Adjudicatory body on environmental issues. Chapter II of the Bill deals with the qualification, terms of service and process of removal of members of the Tribunal. This section is important given the fact that the Government of India has not been able to put in place a functioning Environmental Tribunal in the last 15 years. Thus the National Environment Tribunal Act was passed by Parliament in 1995 and was never set up while the National Environment Appellate Authority (NEAA) has been a limping authority ever since the last 10 years. The establishment of the Authority is thus of crucial significance. However, what is important is the willingness of the Government to make it functional. As the experiences with both the National Environment Appellate Authority and the National Environment Tribunal show, even when the statutory provisions existed the Government of the day was completely oblivious to the need to make it effective.

The Law Commission in its 186th report proposed that the Tribunal would be assisted by a statutory panel of technical/scientific personnel called Commissioners. This was in tune with the Judgement of the Supreme Court in *Sriram Gas Leak Case [M.C Mehta Vs Union of India, 1987]* wherein the Court emphasised on the need for an Ecological Sciences Research Group to assist the Court with respect to environmental matters. These would be an advisory panel who would not be present during court hearings but would independently advise and assist the Tribunal in analysing and assessing scientific and technological issues. It would clearly make sense that a nationwide panel of experts be formed. Individual regional Tribunals can therefore call upon the expertise of a Commissioner when necessary.

COMMENTS AND SUGGESTIONS ON COMPOSITION AND RULES AND PROCEDURE [Chapter II]

- The Bill needs to explicitly state that the Rules and Procedure will be simple: It is necessary to stipulate in the Bill itself that the Rules and Practice should be made in such a manner so as to be simple and understandable and not be bound by procedural technicalities. Further, filing of Appeals etc should be in a manner similar to that of the Right to Information Act, 2005 specially when the poor affected persons are approaching the Tribunal.

- The Bill should clearly stipulate that the Tribunal cannot be considered as functional unless it has a mix of technical and judicial members including the Chairperson.
- Inviting Experts to give opinion. This need not be limited to Individuals only but also to expert National as well as International institutions.

COMMENTS AND SUGGESTIONS ON QUALIFICATION OF CHAIRPERSON AND MEMBERS [Section 5]

- **Judicial Member can be an Advocate/ Jurist/ Professor:** With respect to Judicial Member there is no need to limit the same to only a Judge of the High Court. Even the Constitution of India allows for appointment of lawyers directly as Judges of Supreme Court. In such case, the Bill should make it clear that lawyers with about 15 years of practice in the field of environment and public interest law will be eligible for appointment as Judicial member.
- **Expert Members Qualifications need not be confined to Science, Engineering and Technology:** With respect to Expert Member there is no logic in limiting the appointment to only those with Masters in Technology, Sciences and Engineering. Environmental issues are broad and the issue with respect to 'substantial questions with respect to the environment' cannot be regarded as the sole domain of the Technologists and engineers. In this respect, it is suggested that the criteria for selection be broadened to include social scientists and specifically sociologists, qualified social workers, ecologists and environmentalist. The criteria used for selection of non official members to the Forest Advisory Committee (FAC) may be adopted. It should specifically mention disciplines such as Hydrologist, Ecologist, Wildlife Scientist etc.
- **Inclusion of NGO's:** The word 'reputed National level institution' [Section 5 (2) a,b] is highly subjective. It effectively keeps out various NGO's and other institutions which need not necessarily be regarded as reputed National Level Institution. In such circumstances, either this word be deleted or defined broadly to include NGOs and other CSO's (Civil Society Organisations).
- **Ensuring that as far as possible no Bureaucrats are appointed as Expert Members:** Sub Clause 5 (b) provides a window for bureaucrats to be appointed as Expert Members. Similar to other Committees of the Ministry of Environment and Forests, it will open the way for appointing retired IAS and IFS officers as Expert Members thus defeating the purpose of the specialised body. This has happened with the NEAA as well as the Information Commissions and is likely to happen with this Tribunal. Clearly, administrative experience is not needed in the Green Tribunal. If issues

related to Centre – State relationship or administrative challenges need to be adjudicated, the Green Tribunal can invite specific officers for expert advice. Thus this sub clause needs to be deleted. However, the only exception can be a bureaucrat who due to special training and interest (and not by virtue of a post held) has an in-depth understanding of issues related to environment. As a last option a post of Member (Administrative) could be added with a rider that the Member (Administrative) cannot decide on scientific and technical aspects with respect to the issues under dispute.

- The rule should also stipulate that any person who has been working at the MoEF or any authority whose decisions are subject matter before the Tribunal cannot be made an Expert Member.

SUPREME COURTS OBSERVATION ON ENVIRONMENT TRIBUNALS

A.P Pollution Control Board Vs Prof M.V Nayudu [1999 (1) SCALE 140],

' It appears to us from what has been stated earlier that things are not quite satisfactory and that there is an urgent need to make appropriate amendments so as to ensure that at all times, the appellate authorities or tribunals consist of Judicial and Technical personnel well versed in environmental laws. Such defects in the constitution of these bodies could certainly undermine the very purpose of those legislations. ...the Land and Environment Court of New South Wales in Australia established in 1980 could be ideal. It is a Superior Court of record and is composed of four judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such composition in our opinion is necessary and ideal in environmental matters. [Para 42 and 43].

The Government of India should in our opinion, bring about appropriate amendments in the environmental statutes, Rules and notifications to ensure that in all Environmental Courts, Tribunals and Appellate Authorities there is always a Judge of the rank of a High Court Judge or a Supreme Court Judge –sitting or retired – and Scientists of high ranking and experience so as to help in proper and fair adjudication of disputes relating to environment and pollution. [Para 46]

Vellore Citizens Welfare Forum Vs Union of India [1996 (5) SCC 647]

Justice Kuldeep Singh observed that 'the Central Government should constitute an Authority under Section 3 (3) of the Environment Protection Act' headed by a retired Judge of the High Court and it may have other members preferably with

expertise in the field of pollution control and environment protection – to be appointed by the Central Government'.

M.C Mehta Vs Union of India and Shriram Foods and Fertilizer [1986 (2) SCC 176]

*'We would also suggest to the Government of India that since cases involving issues of environmental pollution, ecological destructions 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 Environmental Courts on a 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 adjudication. **There would of course be a right of appeal to this court from the decision of the Environment Court'.***

COMMENTS AND SUGGESTION ON PROVISIONS RELATING TO THE APPOINTMENT OF CHAIRPERSON AND MEMBERS

- It is essential that since the MoEF is an interested party, the process of selection of Chairperson should involve the Ministry of Law and Justice, MoEF and at least two Judges of the Supreme Court including the Chief Justice as also the leader of the Opposition in the Lok Sabha.
- Section 11 allows the executive to appoint a temporary Chairperson if the current one dies, resigns etc. Since the Chairperson is appointed in consultation with the Chief Justice [section 6(2)], temporary appointments must also be done in consultation with the Chief Justice of India - otherwise there will be a period in which an appointee of the executive (without judicial concurrence) runs the tribunal.
- A clear process of appointment should be in place so as to minimise the scope of arbitrariness. Specifically, the Selection Committee should be constituted for the Chairperson as well as Judicial Members and Expert Members alike and should be transparent. The Selection Committee should be a multi disciplinary body with ecologist and environmentalist as members so far as selection of expert members are concerned.

JURISDICTION OF THE TRIBUNAL

Environmental Tribunals should have a broad range of jurisdiction which can be used in relation to environmental violations. These would include injunctions (which are generally temporary, but could also be permanent), declaratory relief clarifying the legal rights, duties and relationship of the parties and administrative review of government decisions. The Law Commission stated that the new Environmental Tribunal should have all the powers currently included in the Bill, but also the ability to pass injunctions (temporary, permanent and mandatory)⁵

In the Draft Bill the powers of the Tribunal are dealt at Section 14 to 16 in Chapter III.

14. (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.*

(2) *The Tribunal shall hear the disputes arising from the questions referred to in Subsection (1) and 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.

'Substantial question relating to environment' is defined in Section 2 (m) (i) :

(m) *“substantial question relating to environment” 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*

⁵ Law Commission Report, *ibid*, page 167.

(C) the damage to public health is broadly measurable;

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

Clause 16 provides for an aggrieved person to inter alia challenge water and air pollution and prospectively the granting or refusal to grant environmental clearance. Curiously, the Tribunal would under the present proposals have no clear jurisdiction, nor the power under section 15 to order that environmental clearance should or should not be granted. Clause 15 provides as follows:

15. (1) 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,

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991.

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief 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.

COMMENTS AND SUGGESTIONS

Environmental impact and conflict need not be only limited to the “community at large” but may also affect groups of individuals and individuals who deserve as much protection in equal measure as the “community at large” or “group of Individuals”, which itself is not defined.

The most serious jurisdictional problem arises from the provision of Section 14 that grants jurisdiction only for claims that present a “substantial question relating to environment.” It limits the jurisdiction to “*substantial questions relating to environment*” which only includes instances where the community at large is affected or likely to be affected—but excludes individuals or groups of individuals. It is, therefore, unclear whether this law only seeks to promote class actions. If this is the case, such a structure would be undesirable. Environmental impact and conflict need not be only limited to the “*community at large*” but may also affect groups of individuals and individuals—who deserve as much protection—in equal measure as the “*community at large*” or “*group of Individuals*”, which itself is not defined. This

portion of the Bill should simply be deleted, before it heads inevitably towards a Constitutional challenge in the Supreme Court. Moreover, since the courts have recognized that the environment falls within the purview of Article 21, it is clear that all persons have a duty to protect the environment and a corresponding right to question the adverse impact on environment and human health. But the Bill ignores this principle. Particularly troubling is the prospect that the Tribunal can decide that a significant collection of individuals – such as the Dongria Kond tribal people at Lanjigarh, Orissa or the Idu Mishmi in Arunachal Pradesh – is not large or broad-based enough to invoke the Tribunal's jurisdiction, despite their established cultural identity and severe potential damage from environmental violations. It would mean that though the statutory environmental obligation is violated but still no action can be taken because it has not affected the community at large.

- **Liberal use of words which can lead to varied and subjective interpretation:** The Bill uses the following criteria to determine whether there is “substantial question relating to environment”:
- *the gravity of damage to the environment or property is **substantial**; or*
- *the damage to public health is **broadly measurable**;*
- *the environmental consequences relate to a specific activity or a **point source of pollution***

There is no tangible method by which the 'gravity of the damage to environment' and public health can be either “broadly measured” or termed as 'substantial' in general. The environmental questions cannot be left to the subjective assessment of an individual to judge what is 'substantial' or not.

The "environmental consequences" cannot be restricted to either "specific activity or to a point source of pollution" as is being proposed in the Bill because non-point source of pollution and a bundle of industrial activities including cumulative impact assessment are also a major contributor of pollution load. **Therefore, the definition of 'environmental questions' and the 'aggrieved person' must be suitably amended.**

- **Implementation of Enactments in Schedule I**

The National Green Tribunal Bill states that it will have "*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 enactments specified in Schedule I.*" This must be a drafting mistake. The implementation of

the enactments has been ostensibly done to regulate an activity which may damage the environment. Consequently, what is meant (or should be meant) is that the "substantial question relating to the environment" must arise out of an activity which infringes, or may in the future infringe, the requirements contained in the enactments in Schedule I. The Bill should be drafted more clearly to reflect its intent.

- **The focus just on individual compensation and restitution of property and environment in Clause 15, will inevitably make the Tribunal impotent in stopping environmental damage.** Even if the Tribunal is effective in obtaining individual compensation and restitution of damaged environment (the term 'restitution' remains undefined), the costs of damaging the environment are in some cases, likely to be less than the profits made by corporations by damaging the environment. Mining is a good example of this. There are huge profits to be made by mining that breaches the environmental laws. Even if it should be shown that the environmental damage was caused by mining in breach of the environmental laws, the Tribunal would have no power to stop it. Further, it is unlikely that the threat of having to compensate individuals or to restitute the environment would be sufficient deterrent against environmental damage under a cost-benefit analysis.

It cannot be the implementation ... of the enactment in Schedule I (the environment acts) which creates the "substantial question relating to the environment". It is the current or future activity which is or may cause the environmental damage which creates the substantial question relating to the environment.

- **Application to all Rules issued under the respective Acts:** There is reference to the Environment (Protection) Act but not to the rules made there under. Therefore, the Bill should explicitly mention that it applies as much to all rules made under the Environment (Protection) Act, 1986 such as those for Coastal regulation Zone, Hazardous and Municipal Solid wastes, Ecologically Sensitive areas, Environment Impact Assessment, Biomedical waste, Fly ash and radioactive waste, etc.
- **The Bill should specifically mention that issues concerning to non implementation/ compliance of approval conditions would also be a subject matter of the Tribunal.** This is essential in view of the fact that although large number of approvals are granted by the Ministry of Environment and Forests as well as other government authorities and there is an acceptance of the fact that the compliance mechanism of the Ministry of Environment and Forest is extremely poor, no avenue is available for the affected and concerned people other than taking the route of Public Interest Litigation.

..... the Green Tribunal Bill should explicitly provide that instances of non compliance would be appealable before the Green Tribunal..
- **Failure to Specifically Include Prospective Activity which may Cause Environmental Damage in the Future.** It is at best unclear from the statutory wording of the Bill as to how the proposed Green Tribunal could have jurisdiction over prospective, as opposed to retrospective, activity which may cause environmental damage. The whole tenet of the Bill, in particular the clauses on jurisdiction and powers, tends to indicate that the jurisdiction and powers of the Tribunal will be limited to an activity that is presently occurring which is causing environmental damage, or is likely to cause environmental damage. There appears to be no jurisdiction or powers to stop environmentally-damaging activities before they begin. This therefore is not only a major lacunae in the jurisdiction and powers of the proposed Tribunal, but also goes against much of the current international and domestic case law, in particular “the precautionary principle” which was extensively quoted in the Law Commission's Report. Indeed, the Law Commission explicitly recognised that prevention was better than compensation, it stated:

“The Prevention Principle takes care of reckless polluters who would continue polluting the environment in as much as paying for pollution is a small fraction of

the benefits they earn from their harmful acts or omissions. Prevention of pollution must therefore take priority over compelling the polluter to cough up”⁶.

- **Direct Violation of a Specific Statutory Obligation by a Person.** The draft Bill requires that there be a “*direction violation of a specific statutory obligation by a person*” [2 (M) (i)]. However, it may be difficult to identify what the specific statutory obligations are in any given statute(s), notification(s) and/or rule(s) of which Indian environmental law is comprised. Whilst there are specific procedural or other requirements in Indian environmental law that might be violated, the majority of environmental violations are construed when fact-sensitive cases, including particular scientific data, are measured against some statutory standard. The nodal statutory authority is required to apply its mind and give a judgement as to whether there is a violation. This will involve obtaining, developing and considering important facts. It may be difficult therefore to show that notwithstanding an environmental violation, that this involved a *direct violation of a specific statutory obligation*.
- **The Tribunal must have affirmative jurisdiction in favour of environmental protection to review a statutory authority's exercise of judgement.** Thus for example, the Bill in its current version provides limited or no scope for challenging the wrong judgement or lack of 'application of mind' by members of the Expert Appraisal Committee (EAC) or the Forest Advisory Committee (FAC) in granting an approval to a project. This is akin to a judicial review of a statutory act or decision in the High Court. The Court in such circumstances can ask itself whether, an act or decision was inter alia rational, unreasonable, disproportionate or procedurally improper. Such grounds of review must also be open to the Green Tribunal if it is to be effective. The more damaging

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⁶ Law Commission Report, *ibid*, page 129.

problems arise because a government entity used poor judgment or simply failed to exercise judgment. It may have failed to give appropriate weight to important environmental concerns; or disregarded significant information; or relied on inadequate information; or failed to obtain, or develop, or consider adequate information; or complied only technically (but not meaningfully) with essential procedures designed to generate sound judgment. Such errors involve unacceptable failure to fulfill the goals of fact-gathering, analysis, and informed judgment intended by the environmental laws. Yet it may be difficult for parties or for the Tribunal to show that these failures involve a “direct violation” of a “specific statutory environmental obligation” – as required by the “substantial question” definition in order to support jurisdiction. For these reasons, it is crucial that the Bill be amended to ensure that jurisdiction is granted for review of these types of decision, perhaps by authorizing review for “abuse of discretion” or for failure of “application of mind.” Opportunity for such review is essential to correct the fundamental pattern of environmental disregard that has overwhelmingly dominated government clearances and non enforcement. Yet this analysis makes clear that, as presently drafted, the Bill closes that door.

- **Power to Pass orders but not to quash any clearance granted:** Among the most problematic part of the Green Tribunal is that it will not have the power to quash an approval granted. Thus it will be completely devoid of power so far for quashing any order is concerned. One may repeat by stating that Clause 16 provides for an aggrieved person to *inter alia* challenge water and air pollution and prospectively the granting or refusal to grant environmental clearance. Curiously, the Tribunal would under the present proposals have no clear jurisdiction, nor the power under section 15 to order that environmental clearance should or should not be granted. Clause 15 provides as follows:

Among the most problematic part of the Green Tribunal is that it will not have the power to quash an approval granted. Thus it will be completely devoid of power so far for quashing any order is concerned.

15. (1) *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,

Therefore even, if an aggrieved person has an ability to lodge an appeal to the Tribunal, against a polluting industry, destruction of bio-diversity, or an environmental clearance of any industrial project that would be likely to cause damage to the environment, the Tribunal may not have jurisdiction or power under the Act to do anything about it.

- **There is an avoidable mismatch between the cases for which “jurisdiction” is granted by section 14 and kinds of cases and remedies for which “orders” may be entered by the Tribunal under section 15**

The above jurisdictional problems – especially the requirement of showing effects on “the community at large” – are rendered even more restrictive because Section 15 appears to limit the orders that may be issued solely to individual compensation or restitution for specific individual or property injuries that have already been suffered. Strangely, that limitation involves effects that are virtually the exact opposite of the kinds of broad “community” effects that qualify as the basis for a “substantial question” that can support the jurisdiction granted by Section 14. Thus, Specifically, Section 15 narrowly limits the remedies that the Tribunal may order, confining them solely to compensation or restitution for specific victims or property damage. **Thus, although Section 14 [incorporating Section 2(m)] grants jurisdiction to address a “substantial question relating to environment” involving damage to broad community interests, the orders permitted by Section 15 cannot address the activities causing broad injury.** Rather, the Tribunal's orders are limited to individualized compensation – apparently for those same persons whose narrower individual interests actually bar them from raising the “substantial questions.” These limitations seem to guarantee that expanding environmental degradation will be accompanied by round after round of expensive lawsuits narrowly confined to compensation issues, but never addressing the fundamental problems.

LOCUS STANDI TO APPROACH THE TRIBUNAL

The vast majority of environmental litigation in India is done under Public Interest Litigation under Article 226 and 32 of the Constitution. These are the kind of Litigation where the Petitioner is not necessarily affected by the environmental damage but takes action in the public interest. Many of these individuals may have no connection with organisations functioning in the field of environment. In our view, the limited approach to locus standi adopted in the Bill will necessarily mean that there will be less environmental litigation taken and therefore the object of the Bill, to ensure better enforcement of environment regulation will be largely defeated. The Bill must therefore reflect this reality and widen locus standi to those who may not be part of any organisation functioning in the environmental field but yet wish to promote environmental protection. This was also the recommendation of the Law Commission when it stated⁷:

“So far as locus standi before the proposed Court in original petitions is concerned, it must be as wide as it is today before High Courts/Supreme Court in the writ jurisdiction in environment matters. This is the position in Australia and New Zealand also. Any person or organization who or which is interested in the subject matter or in public interest must be able to approach the Court”.

At first glance, Section 16 of the Bill seems to grant broad standing for appeals. The section provides opportunity for any “person aggrieved” to “prefer an appeal” to the Tribunal from orders, decisions, directives or determinations entered by agencies administering ten (10) different laws or regulations. While the Tribunal might treat Section 16 as a broad jurisdictional grant, it might instead view the limited provisions on “jurisdiction” and “orders” as narrowly confining the appeals authorized by Section 16. Problem arises in view of the fact that although Section 16 authorizes “persons aggrieved” to appeal agency decisions to the Tribunal, the conflicting provisions governing Tribunal “jurisdiction” and “orders” leave appeal remedies in serious doubt. Thus while Section 16 grants a right to “aggrieved persons” to “prefer

⁷ Law Commission Report, *ibid*, page 150.

an appeal” from orders or decisions by ten (10) significant government statutes, however, the provision offers no explanation of its relationship to the serious limitations on Tribunal jurisdiction and remedial powers reflected in Sections 14 and 15. While an appellant may claim the right to invoke the full scope of appellate authority, the appeal is likely to be met by arguments that the appellate jurisdiction is subject to all or some of the specific limitations which the Act imposes on jurisdiction and remedial orders.

Clause 18 designates 'who may file an “application for grant of relief” of “compensation or settlement.”

18. (1) *Each application under sections 14 and 15 or an appeal under section 16 shall be made to the Tribunal in such form, contain such particulars and shall be accompanied by such documents and such fees as may be prescribed.*
- (2) *Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by—*
- (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 representative body or organisation functioning in the field of environment, with permission of the Tribunal; 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, with the permission of the Tribunal:*

COMMENTS AND SUGGESTIONS

- There is a danger that the Tribunal could also easily interpret the above provision under Section 18 to conclude that “any representative body” refers solely to organizations that act as personal “representatives” for persons who fit the first four categories under that Section – that is, persons who suffered personal or property injury. That, of course, would rule out challenges to unlawful clearances or other unlawful authorizations.

- It must redefine an 'aggrieved person' to mean a 'person' who has been wronged through damage to the person's natural environment or suspects (on valid grounds) that such damage is likely to happen unless prevented. Thus Clause 16 (i) should be deleted as being misplaced in a bill devoted to environmental protection. Provision of appeal if any, against refusal to grant environmental clearances / approval should lie elsewhere, than this Tribunal.

RECENT COURT DECISIONS ON STANDING BEFORE ENVIRONMENT TRIBUNAL

In Vedanta Alumina Ltd Vs Prafulla Samantara LPA 277/ 2009, the Delhi High Court explained the concept of aggrieved person so far as environmental issues are concerned. Justice A.P Shah held :

Association of persons, particularly an incorporated association, cannot be said to be affected in the manner traditionally understood. Moreover, in environmental cases the damage is not necessarily confined to the local area where the industry is set up. The effect of environmental pollution or environmental degradation might have far-reaching effects going beyond the local area and might have national or global effects. For example, the destruction of forests is said to be one of the causes leading to global warming. Therefore, the aggrieved person need not be resident of the local area. Such an interpretation would also result in defeating the very objective of this enactment in terms of access to justice. As per the learned single Judge: "...India, even today, lives largely in its villages. A project or scheme, which is likely to affect or impact a remote community, that may comprise even a cluster of villages, may or may not have an "association of persons" who work in the field of environment. The villagers, like most others, are unlikely to know about the project clearance, or possess the wherewithal to question it, through an appeal. If the third respondents' contention, and the authority's impugned order were to be accepted, and upheld, such community's right to appeal, meaningfully, would be rendered a chimera, an illusion. In their case, the Act would be a cruel joke, paying lip service, while promising access to justice, but in reality depriving such a right...." 16. The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged (See J.M. Desai v. Roshan Kumar, AIR 1976 SC 578). In Bar Council of Maharashtra v. M.V. Dabholkar & Ors., (1975) 2 SCC 702, the Court held that the words "person aggrieved"

are found in several statutes and the meaning will have to be ascertained with reference to the purpose and the provisions of the statute. It has been noticed in Ghulam Qadir v. Special Tribunal & Others, (supra) that the orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change and the constitutional courts have been adopting a liberal approach in dealing with the cases or the claims of litigants cannot be dislodged merely on hypertechnical grounds.

Prafulla Samatara Vs Union of India and ors, (W.P 3126 of 2008) the Delhi High Court held :

“The world as we know is gravely imperiled by mankind's collective folly. Unconcern to the environment has reached such damaging levels which threatens the very existence of life on this planet. If standing before a special tribunal, created to assess impact of projects and activities that impact, or pose potential threats to the environment, or local communities, is construed narrowly, organizations working for the betterment of the environment whether in form of NGOs or otherwise, would be effectively kept out of the discourse, that is so crucial an input in such proceedings. Such association of persons, as long as they work in the field of environment, possess a right to oppose and challenge all actions, whether of the State or private parties, that impair or potentially impair the environment. In cases where complaints, appeals etc. are filed bona fide by public spirited interested persons, environmental activists or other such voluntary organisations working for the betterment of the community as a whole, they are to be construed as “aggrieved persons” within the meaning of that expression under Section 11 (2) (c) of the Act. As a native American proverb goes, “We do not inherit the earth from our ancestors, we borrow it from our children”; denial of access to meaningful channels to communities who can be affected by proposed projects would only leave them remediless, on the one hand, and allow unchallenged indiscriminate drawings from the future generations' rights with impunity.... [Justice Ravindra Bhat]

IMPOSING COST ON LITIGANTS

The issue of costs to be awarded against a losing party is also a deterrent against taking litigation to protect the environment. The Bill seems to indicate that costs will only be awarded against litigants who bring claims that are not maintainable, false or vexatious. This is a serious aspect and will greatly discourage affected persons from approaching the Green Tribunal.

Clause 22 deals with this aspect:

22. (1) While disposing of an application or an appeal under this Act the Tribunal shall have power to make such order as to costs as it may consider necessary.
- (2) *Where the Tribunal holds that a claim is not maintainable, or is false or vexatious, and such claim is disallowed, in whole or part, the Tribunal may, if it so thinks fit, after recording its reasons for holding such claim to be false or vexatious, make an order to award costs, including lost benefits due to any interim injunction.*

COMMENTS AND SUGGESTIONS

Section 22 appears to allow the tribunal to impose a costs order merely because it concludes that a claim was “not maintainable.” That appears to permit such an order just because the tribunal decides against the claimant on the merits, no matter how credible the case that was brought.

The Law Commission however only recommended that exemplary costs be awarded where the application or appeal was frivolous or vexatious⁸. A frivolous

or vexatious claim is a very threshold and simply a claim which is subsequently found to be false or which subsequently loses, and which the Sections 21 and 22 of the Bill empower the tribunal to impose an order to pay the costs of litigation can be extremely debilitating. Such authority may not necessarily be inappropriate in those few cases where suits are brought in bad faith, or without credible legal basis. But costs might easily be imposed merely because the Tribunal reaches a different interpretation of

⁸ Law Reform Commission Report, page 145.

law or fact than that presented by the advocate – no matter how much good faith may have been involved in bringing the claim.

The majority of the environmental litigation in India is neither frivolous nor vexatious, but brought in a genuine and sincere understanding that the environmental damage is caused by the complained activity. Therefore, any provision to prevent vexatious claims through costs should be used sparingly and only if there is incontrovertible evidence that indicates that there was no genuine belief that the facts on which the claim is founded were true.

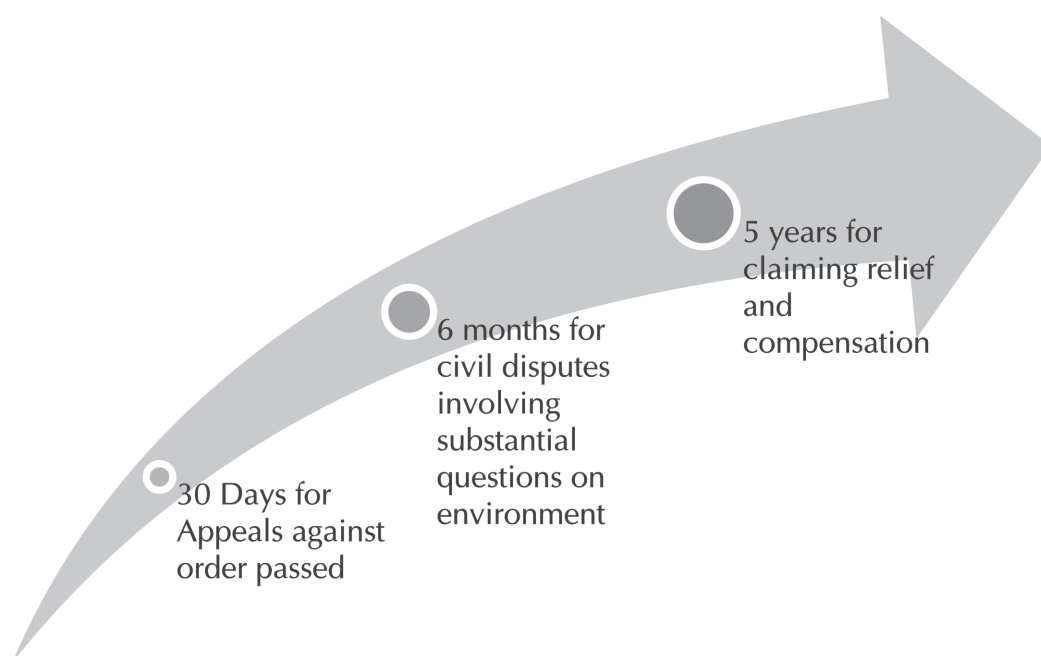
Further, ordering costs against impoverished litigants who bring genuine claims but which are disallowed by the Tribunal as non maintainable, will simply dissuade them from bringing claims in the future. Costs orders against such individuals, or against groups working in the field of the environment protection should be used sparingly.

The provision with respect to imposition of costs on litigants should be limited only in instances where it is proved that the litigation was done at the instance of an interested party.

TIME FRAME FOR APPROACHING THE TRIBUNAL

The Bill stipulates the following time frame:

- For Filing Appeal against any order passed by the Authorities as stipulated in Section 16 within a period of **30 days** and by explaining sufficient cause within the next 60 days thereafter. [Proviso to Clause 16]
- On matters concerning civil disputes on 'Substantial questions on environment' within a period of **six months** from the date on which the cause of action first arose. [Proviso to Clause 14]
- With respect to grant of any compensation and relief or restitution or property within a period of **five years** from the date on which the cause of relief or compensation first arose. [Clause 15(3)]



COMMENTS AND SUGGESTIONS

The Bill stipulates arbitrary timeline for approaching the Tribunal. Thus the time ranges for 30 days for challenging an order passed, to six months on matters

concerning substantial questions on environment to about 5 years for claiming compensation.

- The time frame of 30 days for challenging an order as stipulated in Clause 16 is impractical in view of the fact that environmental and forest clearance is generally granted in areas which are remote and approaching the tribunal requires time and resources. The further period of 60 days also does not help much since it is not easy for the affected communities to understand the Clearance orders, its implication and also the grounds for challenge. Consultation with relevant people and consensus within the groups and among the villagers need to be formed which does take some time. **In view of it a minimum time of six months with a further period of three months, is essential.**
- **It is extremely difficult to locate as to when the cause of action with respect to civil disputes on substantial questions on environment first arose.** Again an arbitrary time frame of 6 months has been prescribed. This will leave a lot of discretion on the Tribunal. It will be extremely difficult to prove as to exactly when the cause of dispute arose with mathematical precision. Although, it can be argued that the Green Tribunal could take a liberal approach, yet such issues cannot be left to the discretion of the members of the Tribunal.
- For claiming compensation and relief, a limitation of five years has been stipulated. The effect of silicosis, asbestosis, radiation etc may take more than five years to manifest them. Given the fact that environmental damage is a continuous process, no time period can be fixed when the question is raised with regard to the same because its impact also affects the quality of life under Article 21 of the Constitution.

CONCLUSION

It has been highlighted that the Bill in its current form is unlikely to become the much awaited legal instrument of any great utility for either protecting the environment or upholding the rights of the communities and the people affected by the damage caused (or likely to be caused) to their environment. The whole Bill thus needs to be reassessed and redrafted in a transparent manner and through a much wider consultation process so that it actually becomes an agent for securing environmental justice as well as to provide voice and relief to those who are affected by environmental degradation of their environment.

It is painfully clear that a major exercise in rewriting of the Bill is essential. Reconsideration must deal with both the objectives and with drafting problems --- to ensure the accuracy, clarity and consistency in drafting that is essential in any competent legislative process. What this Bill seeks could readily enhance the existing framework of environmental laws; but it is not easy to conceptualize or to draft. The current version provides a starting point, but the draft requires further thought and careful redrafting.

APPENDIX I

AS INTRODUCED IN LOK SABHA
Bill No. 63 of 2009

THE NATIONAL GREEN TRIBUNAL BILL, 2009 ARRANGEMENT OF CLAUSES

CHAPTER I PRELIMINARY

CLAUSES

1. Short title and commencement.
2. Definitions,

CHAPTER II ESTABLISHMENT OF THE TRIBUNAL

3. Establishment of Tribunal.
4. Composition of Tribunal.
5. Qualifications for appointment of Chairperson, Judicial Member and Expert Member.
6. Appointment of Chairperson, Judicial Member and Expert Member.
7. Term of office and other conditions of service of Chairperson, Judicial Member and Expert Member.
8. Resignation.
9. Salaries, allowances and other terms and conditions of service.
10. Removal and suspension of Chairperson, Judicial Member and Expert Member.
11. To act as Chairperson of Tribunal or to discharge his functions in certain circumstances.
12. Staff of Tribunal,
13. Financial and administrative powers of Chairperson.

CHAPTER III JURISDICTION, POWERS AND PROCEEDINGS OF THE TRIBUNAL

14. Tribunal to settle disputes.
15. Relief, compensation and restitution.

16. Tribunal to have appellate jurisdiction.
17. Liability to pay relief or compensation in certain cases.
18. Application or appeal to Tribunal.
19. Procedure and powers of Tribunal.
20. Decision to be taken by majority.
21. Finality of order.
22. Cost.
23. Deposit of amount payable for damage to environment.
24. Execution of award or order of Tribunal.

CHAPTER IV **PENALTY**

25. Penalty for failure to comply with orders of Tribunal.
26. Offences by companies.
27. Offences by Government Department.

CHAPTER V **MISCELLANEOUS**

28. Bar of jurisdiction.
29. Cognizance of offences.
30. Members and staff of Tribunal to be public servants.
31. Protection of action taken in good faith.
32. Act to have overriding effect.
33. Power to amend Schedule I.
34. Power to make rules.
35. Amendment of certain enactments.
36. Power to remove difficulties.
37. Repeal and savings.

SCHEDULE I.

SCHEDULE II.

SCHEDULE III.

AS INTRODUCED IN LOK SABHA

Bill No.63 of 2009

THE NATIONAL GREEN TRIBUNAL BILL, 2009

A BILL

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.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows: -

CHAPTER I
PRELIMINARY

SHORT TITLE AND COMMENCEMENT.

1. (1) This Act may be called the National Green Tribunal Act, 2009.
- (2) It shall come into force on such date or dates as the Central Government may, by notification, appoint, and different dates may be appointed for different States and any reference in any provision of this Act to the commencement of this Act shall be construed in relation to any State or part thereof as a reference to the coming into force of that provision in that State or part thereof.

Definition:

2. (1) In this Act, unless the context otherwise requires,—
 - (a) "accident" means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance or equipment, or plant, or vehicle resulting in continuous or intermittent or repeated exposure to death, of, or, injury to, any person or damage to any property or environment but does not include an accident by reason only of war or civil disturbance;
 - (b) "Chairperson" means the Chairperson of the National Green Tribunal;
 - (c) "environment" includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;
 - (d) "Expert Member" means a member of the Tribunal who is appointed as such holds qualifications specified in sub-section (2) of section 5 and is not a Judicial Member;
 - (e) "handling" in relation to any hazardous substance means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance;
 - (f) "hazardous substance" means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986, and exceeding such quantity as specified or may be

specified by the Central Government under the Public Liability Insurance Act, 1991; (29 of 1986 and 6 of 1991)

- (g) "injury" includes permanent, partial or total disablement or sickness resulting out of an accident;
- (h) "Judicial Member" means a member of the Tribunal who is qualified to be appointed as such under sub-section (1) of section 5 and includes the Chairperson;
- (i) "notification" means a notification published in the Official Gazette;
- (j) "person" includes—
 - (i) an individual,
 - (ii) a Hindu undivided family,
 - (iii) a company,
 - (iv) a firm,
 - (v) an association of persons or a body of individuals, whether incorporated or not,
 - (vi) trustee of a trust,
 - (vii) a local authority, and
 - (viii) every artificial juridical person, not falling within any of the preceding sub-clauses;
- (k) "prescribed" means prescribed by rules made under this Act;
- (l) "Schedule" means Schedules I, II and III appended to this Act;
- (m) "substantial question relating to environment" 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;

- (n) "Tribunal" means the National Green Tribunal established under section 3;
- (o) "workman" has the meaning assigned to it in the Workmen's Compensation

Act, 1923. (8 of 1923)

- (2) The words and expressions used in this Act but not defined herein and defined in 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 and other Acts relating to environment shall have the meaning, respectively, assigned to them in those Acts.

06 of 1974

36 of 1977

69 of 1980

14 of 1981

29 of 1986

06 of 1991

18 of 2003

CHAPTER II

ESTABLISHMENT OF THE TRIBUNAL

- 3. The Central Government shall, by notification, establish with effect from such date Establishment as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act

Composition of Tribunal.

- 4. (1) The Tribunal shall consist of—
 - (a) a full time Chairperson;
 - (b) such number of full time Judicial Members as the Central Government may, from time to time, notify;
 - (c) such number of full time Expert Members, as the Central Government may, from time to time notify.

- (2) The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialised knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.
- (3) The Tribunal shall sit at such place or places, as the Central Government may, by notification, specify.
- (4) The Central Government may, in consultation with the Chairperson of the Tribunal, make rules regulating generally the practices and procedure of the Tribunal including —
 - (a) rules as to the persons who shall be entitled to appear before the Tribunal;
 - (b) rules as to the procedure for hearing applications and appeals and other matters pertaining to the applications and appeals;
 - (c) the minimum number of members who shall hear the applications and appeals in respect of any class or classes of applications and appeals.

Qualification for appointment of chairperson, judicial Member and Expert Member.

5. (1) A person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court:
Provided that a person who is or has been a judge of the High Court shall also be qualified to be appointed as a judicial member.
- (2) A person shall not be qualified for appointment as 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 and 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.

- (3) The Chairperson, Judicial Member and Expert Member of the Tribunal shall not hold any other office during their tenure as such.
- (4) The Chairperson and other Judicial and Expert Members shall not, for a period of one year from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956. (1 of 1956.)

Appointment of chairperson, judicial Member and Expert Member

6. (1) Subject to the provisions of section 5, the Chairperson, Judicial Members and Expert Members of the Tribunal shall be appointed by the Central Government.
- (2) The Chairperson shall be appointed by the Central Government in consultation with the Chief Justice of India.
- (3) The Judicial Members and Expert Members of the Tribunal shall be appointed on the recommendations of such Selection Committee and in such manner as may be prescribed.

Term of office and other conditions of service of Chairperson, Judicial Member and Expert member

7. The Chairperson, Judicial Member and Expert Member of the Tribunal shall hold office as such for a term of five years from the date on which they enter upon their office, but shall not be eligible for re-appointment:
Provided that in case a person, who is or has been a Judge of the Supreme Court, has been appointed as Chairperson or Judicial Member of the Tribunal, he shall not hold office after he has attained the age of seventy years.
Provided further that in case a person, who is or has been this Chief Justice of a High Court, has been appointed as Chairperson or Judicial Member of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years.

Provided also that in case a person, who is or has been a Judge of a High Court, has been appointed as Judicial Member of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:

Provided also that no Expert Member shall hold office after he has attained the age of sixty-five years.

Resignation

8. The Chairperson, Judicial Member and Expert Member of the Tribunal may, by notice in writing under their hand addressed to the Central Government, resign their office.

Salaries, allowances and other terms and conditions of service

9. The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Judicial Member and Expert Member of the Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson, Judicial Member and Expert Member shall be varied to their disadvantage after their appointment.

Removal and suspension of Chairperson, Judicial Member and Expert Member

10. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office of the Chairperson or Judicial Member of the Tribunal, who,—
 - (a) has been adjudged an insolvent; or
 - (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
 - (c) has become physically or mentally incapable; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest.
- (2) The Chairperson or Judicial Member shall not be removed from his office except by an order made by the Central Government after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Judicial Member has been informed of the charges

against him and given a reasonable opportunity of being heard in respect of those charges.

- (3) The Central Government may suspend from office the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the Supreme Court under sub-section (2), until the Central Government passes an order on receipt of the report of inquiry made by the Judge of the Supreme Court on such reference.
- (4) The Central Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).
- (5) The Expert Member may be removed from his office by an order of the Central Government on the grounds specified in sub-section (1) and in accordance with the procedure as may be notified by the Central Government:

Provided that the Expert Member shall not be removed unless he has been given an opportunity of being heard in the matter.

To act as Chairperson of Tribunal or to discharge his functions in certain circumstances.

11. In the event of the occurrence of any vacancy in the office of the Chairperson of the Tribunal, by reason of his death, resignation or otherwise, such Judicial Member of the Tribunal as the Central Government may, by notification, authorised in this behalf, shall act as the Chairperson until the date on which a new Chairperson is appointed in accordance with the provisions of this Act.

Staff of Tribunal.

12. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions.
- (2) The recruitment of the officers and other employees of the Tribunal shall be made by the Chairperson in such manner as may be prescribed.
- (3) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Chairperson.
- (4) The salaries and allowances and conditions of service of the officers

and other employees of the Tribunal shall be such as may be prescribed.

Financial and administrative power of chairperson

13. The Chairperson of the Tribunal shall exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government:

Provided that the Chairperson may delegate such of his financial and administrative powers, as he may think fit, to any Judicial Member or Expert Member or officer of the Tribunal subject' to the condition that the Member or such officer, while exercising such delegated power, continues to act under the direction, control and supervision of the Chairperson.

CHAPTER-III

JURISDICTION, POWERS AND PROCEEDINGS OF THE TRIBUNAL

Tribunal to settle disputes

14. (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.
- (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (/) and 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.

15. (1) The Tribunal may, by an order, provide,—

Relief, compensation and restitution

- (a) relief and compensation to the victims of pollution and other environmental

damage arising under the enactments specified in the Schedule 1 (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.
- (2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991. (6 of 1991)
- (3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief 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.

- (4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation payable under separate heads specified in Schedule II so as to provide relief to the claimants and for restitution of the damaged property or environment, as it may think fit.
- (5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, relief received from, any other court or authority.

Tribunal to have appellate jurisdiction

16. Any person aggrieved by,—
- (a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2009, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974; (6 of 1974.)
 - (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2009, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974; (6 of 1974.)
 - (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2009, by a Board, under section 33 A of the Water (Prevention and Control of Pollution) Act, 1974; (6 of 1974.)
 - (d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2009, by the appellate authority under section 13 of

the Water (Prevention and Control of Pollution) Cess Act, 1977; (36 of 1977.)

- (e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2009, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980; (69 of 1980.)
- (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2009, of the Appellate Authority under section 31 the Air (Prevention and Control of Pollution) Act, 1981; (14 of 1981.)
- (g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2009, under section 5 of the Environment (Protection) Act, 1986. (29 of 1986)
- (h) an order made, on or after the commencement of the National Green Tribunal Act, 2009, 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 safe guards under the Environment (Protection) Act, 1986; (29 of 1986.)
- (i) an order made, on or after the commencement of the National Green Tribunal Act, 2009, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986; (29 of 1986.)
- (j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2009, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002, (18 of 2003.)

may, within a period of thirty days from the date on which the order or decision or direction is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

Liability to pay relief of compensation in certain cases

17. (1) Where death of, or injury 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 activity or operation or process, under any enactment mentioned in Schedule I, the person responsible shall be liable

to pay such relief or compensation for such death, injury or damage, under all or any of the Heads specified in Schedule II, as may be determined by the Tribunal.

- (2) If the death, injury or damage caused by an accident or the adverse impact of an activity or operation or process under any enactment specified in Schedule I cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operation and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis.

Application or appeal to Tribunal

18. (1) Each application under sections 14 and 15 or an appeal under section 16 shall be made to the Tribunal in such form, contain such particulars and shall be accompanied by such documents and such fees as may be prescribed.
- (2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by—
 - (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 representative body or organisation functioning in the field of environment, with permission of the Tribunal; 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, with the permission of the Tribunal:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief

or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application:

Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under section 16.

- (3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

Procedures & Powers of Tribunal

19. (1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. (5 of 1908.)
- (2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.
- (3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872. (1 of 1872)
- (4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— (5 of 1908)
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) subject to the provisions of sections 121 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office; (1 of 1872)

- (e) issuing commissions for the examination of witnesses or documents;
 - (f) reviewing its decision;
 - (g) dismissing an application for default or deciding its ex parte;
 - (h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
 - (i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;
 - (j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;
 - (k) any other matter which may be prescribed.
- (5) All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian. Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. (45 of 1860 & 2 of 1974)

Decision to be taken by Majority.

20. The Decision of the Tribunal by majority of members shall be binding.

Finality of order.

21. Every order of the Tribunal under this Act shall be final.

Cost

22. (1) While disposing of an application or an appeal under this Act the Tribunal shall have power to make such order as to costs as it may consider necessary.
- (2) Where the Tribunal holds that a claim is not maintainable, or is false or vexatious, and such claim is disallowed, in whole or part, the Tribunal may, if it so thinks fit, after recording its reasons for holding such claim to be false or vexatious, make an order to award costs, including lost benefits due to any interim injunction.

Deposit of Amount Payable for damage to Environment

23. (1) where any amount by way of compensation or relief is ordered to be paid under any award or order made by the Tribunal on the ground of any damage to environment, that amount shall be remitted to the authority specified under sub-section (3) of section 7A of the Public Liability Insurance Act, 1991 for being credited to the Environmental Relief Environment Fund established under that section. (6 of 1991)
- (2) The amount of compensation or relief credited to the Environmental Relief Fund under sub-section (1), may, notwithstanding anything contained in the Public Liability. Insurance Act, 1991, be utilised by such persons or authority, in such manner and for such purposes relating to environment, as may be prescribed.

Execution of award or order of Tribunal.

24. (1) An award or order or decision of the Tribunal under this Act shall be executable by the Tribunal as a decree of a civil court, and for this purpose, the Tribunal shall have all the powers of a civil court.
- (2) Notwithstanding anything contained in sub-section (1), the Tribunal may transmit any order or award made by it to a civil court having local jurisdiction and such civil court shall execute the order or award as if it were a decree made by that court.
- (3) Where the person responsible, for death of, or injury to any person or damage to any property and environment, against whom the award or order is made by the Tribunal, fails to make the payment or deposit the amount as directed by the Tribunal within the period so specified in the award or order, such amount, without prejudice to the filing of complaint. for prosecution for an offence under this Act or any other law for the time being in force shall be recoverable from the aforesaid person as arrears of land revenue or of public demand.

CHAPTER IV

PENALTY

Penalty for failure to comply with orders of Tribunal.

25. (1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with

imprisonment for a term which may extend to, three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention ;

Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code. (2 of 1974.)

Offences by companies

26. (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by the company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. — For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm.

Offers by Government Department

27. (1) Where any Department of the Government fails to comply with any order or award or decision of the Tribunal under this Act, the Head of the Department shall be deemed to be guilty of such failure and shall be liable to be proceeded against for having committed an offence under this Act and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER V MISCELLANEOUS

Bar of Jurisdiction

28. (1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.
- (2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment which may be adjudicated upon by the Tribunal; and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or

compensation or restitution of property damaged or environment shall be granted by the civil court.

Cognizance of Offences

29. (1) No court shall take cognizance of any offence under this Act except on a complaint made by—
- (a) the Central Government or any authority or officer authorised in this behalf by that Government; or
 - (b) any person who has given notice of not less than sixty days in such manner as may be prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.
- (2) No court inferior to that of a Metropolitan Magistrate or, a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Members and Staff of Tribunal to be Public Servant

30. The Chairperson, the Judicial and Expert Members, officers and other employees of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. (45 of 1860.)
31. (1) No suit or other legal proceeding shall lie against the employees of the Central Government or a State Government or any statutory authority, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.
- (2) No suit, prosecution or other legal proceeding shall lie against the Chairperson or, Judicial Member or Expert Members of the Tribunal or any other person authorised by the Chairperson or Judicial Member or the Expert Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Act to have overriding effect

32. The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Power to amend Schedule I

33. (1) The Central Government may, by notification, amend the Schedule I by including therein any other Act, enacted by Parliament having regard to the objective of environmental protection and conservation of natural resources, or omitting therefrom any Act already specified therein and on the date of publication of such notification, such Act shall be deemed to be included in or, as the case may be, omitted from the Schedule I.
- (2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

Power to make rules

34. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
- (a) rules as to the persons who shall be entitled to appear before the Tribunal under clause (a) of sub-section (4) of section 4;
 - (b) the procedure for hearing applications and appeals and other matters pertaining to the applications and appeals under clause (b) of sub-section (4) of section 4;
 - (c) the minimum number of members who shall hear the applications and appeals in respect of any class or classes of applications and appeals under clause (c) of sub-section (4) of section 4;
 - (d) such selection committee and the manner of appointment of the Judicial Member and Expert Member of the Tribunal under sub-section (3) of section 6;

- (e) the salaries and allowances payable to, and other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Judicial Member and Expert Member of the Tribunal under section 9;
 - (f) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 10;
 - (g) the recruitment of officers and other employees of the Tribunal under sub-section (2) section 12; and the salaries and allowances and other conditions of service of the officers and other employees of the Tribunal under sub-section (4) of that section;
 - (h) the financial and administrative powers to be exercised by the Chairperson of the Tribunal under section 13;
 - (i) the form of application or appeal, the particulars which it shall contain and the documents to be accompanied by and the fees payable under sub-section (I) of section 18;
 - (j) any such matter in respect of which the Tribunal shall have powers of a civil court under clause (k) of sub-section (4) of section 19;
 - (k) the manner and the purposes for which the amount of compensation or relief credited to the Environment Relief Fund shall be utilised under sub-section (2) of section 23;
 - (l) the manner of giving notice to make a complaint under clause (b) of sub-section (I) of section 29;
 - (m) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.
- (3) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Amendment of certain enactments

35. The enactments specified in the Schedule III to this Act shall be amended in the manner specified therein and such amendments shall take effect on the date of establishment of the Tribunal.

Power of remove difficulties

36. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government, may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and savings

37. (1) The National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 are hereby repealed (hereinafter referred to as the repealed Act). (27 of 1995.) (22 of 1997.)
- (2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act. (22 of 1997.)
- (3) The National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997, shall, on the establishment of the National Green Tribunal under the National Green Tribunal Act, 2009, stand dissolved. (22 of 1997.)
- (4) On the dissolution of the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997, the persons appointed as the Chairperson, Vice-chairperson and every other person appointed as Member of the said National Environment Appellate Authority and holding office as such immediately before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2009, shall vacate their respective offices and no such Chairperson, Vice-chairperson and every other person appointed as Member shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

- (5) All cases pending before the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997 on or before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2009, shall, on such establishment, stand transferred to the said National Green Tribunal and the National Green Tribunal shall dispose of such cases as if they were cases filed under that Act. (22 of 1997).
- (6) The officers or other employees who have been, immediately before the dissolution of the National Environment Appellate Authority appointed on deputation basis to the National Environment Appellate Authority, shall, on such dissolution, stand reverted to their of parent cadre, Ministry or Department, as the case may be.
- (7) On the dissolution of the National Environment Appellate Authority, the officers and other employees appointed on contract basis under the National Environment Appellate Authority and holding office as such immediately before such dissolution, shall vacate their respective offices and such officers and other employees shall be entitled to claim compensation for three months' pay and allowances or pay and allowances for the remaining period of service, whichever is less, for the premature termination of term of their office under their contract of service.
- (8) The mention of the particular matters referred to in sub-sections (2) to (7) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal. (10 of 1897).

SCHEDULE I

[See sections 14(1), 15(1), 17(1), 17(2), 9(4)(j) and 33(1)]

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.

APPENDIX II

PROPOSED AMENDMENTS TO THE NATIONAL GREEN TRIBUNAL (NGT) BILL

The NGT Bill was considered by the Department Related Parliamentary Standing Committee on Science and Technology, Environment and Forests following which they made certain recommendations in their report dated 24th November 2009. A summary of the recommendations made and proposed to be accepted by the Ministry of Environment and Forests is as follows:

Section	Original Bill	Proposed Amendment
Section 1(2) All of Act to Come into Force Simultaneously	In the original Bill, this section vested the Central Government with discretion to allow for different dates for different sections to come into force.	The Amendments now state that the Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. This shall apply to the Act in toto. In other words, the entire Act will come into force at once and not separately in pieces
Section 4(1)(b) Number of Members (Judicial/Expert) Specified	The original Bill was silent on the number of Judicial/Expert members to be appointed to the Tribunal allowing the Central Government the flexibility to decide (“such number of full time Judicial/Expert members as the Central Government may, from time to time notify”)	The Amendments rectify the same stating that the minimum number of full time Judicial Members and Expert Members shall be not less than ten but subject to a maximum of twenty each.

<p>Section 4(3) Place of Sitting</p>	<p>The original Bill did not specify the territorial jurisdiction of the Tribunal stating only that the Tribunal “shall sit at such place or places, as the central Government may, by notification, specify”.</p>	<p>The Amendments add to the clause with the following text “The Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place.</p>
<p>Section 4(4) Expansion of Rules to include Circuit Procedure, transfer of cases etc.</p>	<p>In the original Bill, this section elaborated on the Rule making power of the Central Government, in consultation with the Chairperson of the Tribunal</p>	<p>In the amendments the rule making power has been further defined to include the following: (i) The procedure for hearing applications and appeals and other matters including the circuit procedure, for hearing at a place other than the ordinary place of its sitting falling within the jurisdiction. (ii) The minimum number of members who shall hear the applications and appeals in respect of any class or classes of applications and appeals. The number of Expert members hearing an application or appeal, shall be equal to the number of Judicial members hearing such</p>

		<p>application or appeal.</p> <p>(iii) Rules relating to transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting to the other place of sitting.</p>
<p>Section 5(4) Post Tenure Debarment</p>	<p>The original Bill provided that no member, judicial or expert, could take employment with the management or administration of any company or undertake such activity for any person, who had been a party to a dispute before the Tribunal, for a period of one year.</p>	<p>The Amendments increase the period for which a member, Judicial or Expert, cannot take up employment with any organisation that has been a party to a suit before the Tribunal from a period of one year to a period of two years.</p>
<p>Section 18 (2)(e) Expansion of Definition of Person Aggrieved</p>	<p>The original Bill, in this clause, provided that any representative body or organization functioning in the field of environment could being an application for relief. It was silent on the aspect of whether any person affected (other than the person suffering the injury) could approach the Tribunal.</p>	<p>The Amendments clarify the original position by stating that any person aggrieved, including any representative body or organization can file an application for the grant of relief or compensation and for the settlement of disputes.</p>

<p>Section 19A Principles to be Applied</p>	<p>New Section</p>	<p>It has been made mandatory for the Tribunal to apply the principles of sustainable development and the precautionary principle along with the polluter pays principle while passing any order, decision or award.</p>
<p>Section 20 Power of Chairperson/Other Member to hear in case of a deadlock</p>	<p>The original Bill provided that the decision taken by a majority of the members shall be final and binding</p>	<p>The Amendments expand the section by inserting a proviso to the effect that in case there is a difference of opinion between the members hearing the application and the opinion is equally divided, then the Chairperson (if he has not been part of the hearing) will hear the matter on appeal and decide.</p> <p>If the Chairperson has been a part of this bench where the opinion is so equally divided then he shall refer the matter to another member of the Tribunal who shall hear the application and decide</p>

<p>Section 21 Appeal to Supreme Court</p>	<p>The original Bill made any decision taken/award or order passed by the Tribunal Final and Binding on the parties</p>	<p>The Amendments provide for an appeal by any person aggrieved by the order/award passed within 90 days from the date of communication of the order/award on one or more of the grounds specified under section 100 of the Code of Civil Procedure 1908.</p> <p>The proviso to the section provides that the Supreme Court may allow an appeal even after 90 days if it is satisfied that sufficient cause exists.</p>
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