

## COUNTRY REPORT: INDIA

### A Busy Year of India's Courts and Law Makers

KAVITHA CHALAKKAL \*

#### Introduction

2012 will go in to the environmental history of India mostly for the legal interventions of the National Green Tribunal (NGT), which is starting to establish new benches for the faster settlement of environmental cases. The issue of the lack of scientific and proper Environmental Impact Assessments (EIA) dominated the court cases. While governments, corporations and media could be seen as still hesitant to consider EIA's as the most critical part of any project implementation, the NGT did emphasize its importance. The country did not see any considerable statutory reform this year. Many Bills with environmental implications, such as the *Biotechnology Bill* and the *Nuclear Safety Bill*, are still pending approval from the Indian Parliament. The debates and discussions on these are still continuing at various levels. It was a seemingly bad year for Indian wildlife, with cases of poaching, human-animal conflicts, train-hits and new linear and other infrastructural projects further pushing the limits. India did not move much ahead in its previous stances on matters such as climate change, emission reduction and related international commitments. It continued to emphasize on the need for "equitable burden sharing" with regard to commitments towards sustainable development.

#### Case Laws

##### *National Green Tribunal*

The Indian Government established<sup>1</sup> the National Green Tribunal (NGT) in October 2010, under the landmark legislation, the *National Green Tribunal Act* (2010). It is a specialized body for handling environmental disputes. As a specialized body with expertise to handle multidisciplinary issues, the NGT was expected to provide:<sup>2</sup>

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\* PhD Candidate, Jawaharlal Nehru University, New Delhi, India. Email: [Kavithachalakkal@gmail.com](mailto:Kavithachalakkal@gmail.com).

<sup>1</sup> *Special Order* (S.O.) 2570(E); the *Gazette of India*, 18 October 2010, New Delhi.

<sup>2</sup> *National Green Tribunal Act* (19 of 2010), the *Gazette of India*, 2 June 2010, New Delhi.

- Effective and expeditious disposal of cases relating to environment, including conservation of forests and natural resources;
- Enforcement of any legal right relating to environment; and
- Relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

The NGT has started functioning, and its 2012 judgments prove that this specialized body is dealing with environmental cases at fast rates. In 2012, the NGT gave its verdict on many cases. The cases were mostly regarding industrial and infrastructural development and their environmental impact assessments (EIA). The NGT has shown keenness to ensure that proper EIA's<sup>3</sup> are being done before the implementation of projects. In one verdict,<sup>4</sup> the NGT looked into multiple appeals against the establishment of a coal-based thermal power plant at Villages Golagandi and Baruva of Sompeta Mandal, Srikakulam District of Andhra Pradesh. The appeals raised issues such as: (a) the project site was a wetland and would cause environment hazards apart from ecological imbalance; (b) the Environment Assessment Committee (EAC) Report was incorrect, and was based on false data submitted by the project proponent; and (c) and that the public hearing was not conducted properly. The NGT found that the EIA Report had ignored "vital aspects," which gave an impression that "the matter was dealt with in a very casual manner without realising its importance." It emphasized that an "EIA Report is the key on which the EIA process revolves, it is important that EIA report prepared should be scientific and trustworthy and without any mistakes or ambiguity". In many other cases, the NGT clearly emphasized the need for development proponents to strictly follow EIA rules.

The case of *Prafulla Samantray and Biranchi Samantray vs Union of India and Others* resulted in a major decision by the NGT. The appeal was against the Environmental Clearances and EIA for a steel cum captive power plant project and a captive minor port project of POSCO India. The NGT asked the MOEF to "make a fresh review of the Project" and suspended the Ministry's final order on Environmental Clearances to the project. The NGT also suggested that it was "desirable that MOEF shall take a policy decision that in large projects like POSCO where MOUs are signed for large capacities and upscaling is to be done within a few years, the EIA right from the beginning, should be assessed for the full capacity and EC granted on this basis".

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<sup>3</sup> As stipulated by the *EIA Notification* dated 14 September 2006.

<sup>4</sup> Judgement on Appeal No. 23, 24, 25, 26/2011 (available at [http://www.greentribunal.in/orderinpdf/23-2012\(T\)\\_23May2012\\_final\\_order.pdf](http://www.greentribunal.in/orderinpdf/23-2012(T)_23May2012_final_order.pdf)).

In another case, *Rohit Choudhury vs Union of India and Others* (Application No. 38/2011), the NGT ordered the removal of 11 stone-crushing units, 33 brick kilns and some other establishments functioning within the No-Development Zone of the Kaziranga National Park. It also ordered 23 units working outside the zone to cease their operations. The NGT directed the MoEF and the Assam State Government to prepare a Comprehensive Action Plan and Monitoring Mechanism for implementation of the conditions stipulated in the 1996 Notification creating the “No Development Zone”.

In many cases, the NGT took strong decisions, setting aside the Environmental Clearances by various state environmental clearance agencies.

### *Supreme Court of India*

Although the NGT has been delegated the duty to deal with environmental cases, the Forest Bench of the Supreme Court,<sup>5</sup> which deals with forest and mining-related cases, is still active.

### Conservation of Asiatic Wild Buffalo

On 13 February 2012, the Court decided<sup>6</sup> a case involving the conservation of the endangered Asiatic Wild Buffalo (*Bubalis bubalis*) in Central India. The State of Chhattisgarh, which hosts a critically important population of the animal,<sup>7</sup> was heard in the case. The Apex Court asked the State to give effect to centrally sponsored wildlife schemes to save the wild buffalo from extinction, and to take immediate steps to stop interbreeding of wild and domestic buffaloes in order to maintain the genetic purity of the animal.

### Transfer of Cases to NGT

In the case of *Bhopal Gas Peedith Mahila Udith Sanghathan vs Union of India*, the Supreme Court directed that all environmental cases, which are covered under the schedule of the *National Green Tribunal Act (2010)*, must be transferred from various courts, including High Courts, to the NGT. The court emphasized that:

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<sup>5</sup> Constituted in 2010.

<sup>6</sup> *T.N Godavarman Thirumulpad vs Union of India & Others*; Civil Original Jurisdiction, I.A. Nos 1433 and 1477 of 2005 in Writ Petition (C) No. 202 of 1995.

<sup>7</sup> Chhattisgarh has declared the wild buffalo as its State Animal.

“We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.”

## Statutes

### *New Bills and Acts*

Many National Bills are pending decisions by the Indian Parliament, as mentioned in last year's Country Report. The *Agriculture Bio-security Bill* (2011) was cleared by the Union Cabinet in May 2012, and is yet to get the Parliament's nod to make it a law. While the *National Food Security Bill* (2011) is also pending, the State of Chhattisgarh came up with the *State Food Security Act*, the first such effort in the country. The controversial *Biotechnology Regulatory Authority of India Bill* (2011), *Draft Animal Welfare Bill* (2011) the *Mines and Minerals (Development and Regulation) Bill* (2011) are also pending approval from Parliament.

The *Land Acquisition, Rehabilitation and Resettlement Bill* (2011) has attracted controversy. In 2012, the Bill faced opposition in the Union Cabinet, and was referred to a Group of Ministers for review. The Bill aimed to replace the *Land Acquisition Act* (1894) and was later renamed the *Right to Fair Compensation, Resettlement, Rehabilitation and Transparency in Land Acquisition Bill* (2012). This was approved by the Union Cabinet in December 2012, and is all set to be tabled at the Parliament for approval.

Another Bill with environmental implications, the *Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill* (2011), was passed by the Kerala State Assembly in 2011. It is similarly still awaiting the nod from the President of India to become a law. The Bill aims “to provide for the establishment of a Special Tribunal for the expeditious adjudication of disputes and recovery of compensation for the victims from the Hindustan Coca-Cola Beverages Private Limited and matters connected therewith or incidental there to”.<sup>8</sup>

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<sup>8</sup> See further: <http://www.niyamasabha.org/bills/12kla/plachimada%20victims.pdf>.

## Notifications

### Reconstitution of the Coastal Zone Management Authorities

In 2012, various Coastal Zone Management Authorities (CZMAs) were reconstituted under the new *Coastal Regulation Zone (CRZ) Notification* (2011), which was promulgated to replace the *CRZ Notification* (1991). The notification, promulgated under the *Environmental Protection Act* (1986), reconstitutes these CZMAs that are entrusted with many vital functions for conservation of coastal ecosystems. The CZMAs will play a critical role in the issuing of clearances for activities in the regulated zone and they are also vested with the task of formulating Coastal Zone Management Plans for each coastal state. The objectives of *CRZ Notification* (2011) are: (1) to ensure livelihood security to the fishing communities and other local communities living in the coastal area; (2) to conserve and protect coastal stretches with its unique environment; and (3) to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming. The Central and State Governments were slow to respond to the *CRZ Notification* (2011) and it was only by late 2011, and in 2012, that they started reconstituting the CZMAs, which were originally formed in 1998, following the orders of the Supreme Court of India. Almost a year after the *CRZ Notification* (2011), on 19 April 2012, the Central Government reconstituted the National CZMA, the nodal agency for coordinating the functions of the state CZMAs. The CZMA of the State of Kerala was reconstituted in December 2011; and those of Gujarat, West Bengal, Odisha, Maharashtra, Tamil Nadu and of the Union Territories of Andaman-Nicobar and Puducherry in 2012.

### Eco-Sensitive Zones

Through its notifications, the Ministry of Environment and Forests (MoEF) declared five Protected Areas as Eco-Sensitive Zones: Bandipur National Park; Girnar Reserve Forest; Purna Wildlife Sanctuary; Vansda National Park; and the Narayan Sarovar Wildlife Sanctuary. The orders regulate or restrict human activities within the zones, and the state governments are mandated to prepare Zonal Master Plans, as specified under the *Wildlife (Protection) Act* (1972).

### Environmental Clearance

The Ministry also came out with four General Statutory Rules, under the name of the *Environment (Protection) Amendment Rules (2012)*, amending the environmental standards set for Petrochemicals (Basic and Intermediates), Integrated Iron and Steel Plants, Electroplating and Anodizing Industry, and Grain Processing, Flour Mills, Pulse Making or Grinding Mills.

### **International Agreements**

#### *Convention on Biological Diversity*

India hosted the 11<sup>th</sup> Conference of Parties (COP-11) to the *Convention on Biological Diversity (CBD)* and the sixth Meeting of Parties to the *Cartagena Protocol on Bio-safety* in October 2012. About 15,000 participants, including representatives of 170 nations, attended the biggest multilateral meeting held in India. India took over the presidency of the *Convention* for the next two years and during the Conference, India's Prime Minister, Manmohan Singh, declared the country's ratification of the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD*. He also declared the *Hyderabad Pledge*, according to which India will spend \$50 million in the two years of its *CBD* Presidency for strengthening the country's institutional mechanism and technical and human capabilities for biodiversity conservation in order to attain *CBD* objectives. The country will also promote capacity building in developing countries.

#### *World Heritage Convention*

The World Heritage Committee, in July 2012, listed the Western Ghats of India as a World Heritage (Natural) Site. Western Ghats is one of the world's recognized Biodiversity Hotspots, and it supports tremendous species and ecosystem diversity, along with dense human settlements.

### *MOU with Egypt*

In March 2012, the Government of India signed a Memorandum of Understanding (MOU)<sup>9</sup> with the Government of Egypt, in Cairo. The countries, wishing to strengthen cooperation regarding specific international conventions and in conformity with the World Summit on Sustainable Development, agreed to develop and promote co-operation in environmental protection, including transfer of technology and exchange of expertise. The countries will cooperate on waste-management, climate change, bio fuels, marine and coastal management, air and water quality, protection of biological diversity and wetlands, water conservation and afforestation. A joint Working Group on Environment has been set up to promote this cooperation.

### **Equitable Burden Sharing and Climate Change Mitigation**

India's 12th *Five-year Plan (2012-2017)* has a low-carbon growth strategy, "as one of its key pillars".<sup>10</sup> However, in 2012 the country did not realize its stance of adopting internationally binding commitments on the reduction of emissions and on mitigation actions. Emphasizing the unsustainable lifestyles of the industrial world, the Indian Prime Minister pitched for "equitable burden sharing" among nations at the UN Conference on Sustainable Development (Rio+20) held in Rio de Janeiro in June 2012. In a February-2012 Submission to the *UN Framework Convention on Climate Change (UNFCC)*, India emphasized that with regard to climate change mitigation efforts, the question of "the highest possible mitigation efforts by all parties" has to be addressed based on the COP-16 decision on "Enhanced action on mitigation". It informed the Convention that India has already put forward and is implementing its domestic mitigation goal in accordance with the *UNFCC* principles and provisions, and that this could be achieved only through the provision of support and enablement in terms of finance and technology. In a joint declaration of BASIC countries in February 2012, India welcomed the agreement on the 2<sup>nd</sup> commitment period of the *Kyoto Protocol*. In the statement, it firmly opposed the inclusion of international aviation in the European Union Emissions Trading Scheme (EU-ETS), stating that it violates international law and multilateralism. In 2012, India reiterated its commitment to addressing climate change through enhanced international cooperation under the *Durban Platform on Enhanced Action*.

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<sup>9</sup> See further: <http://envfor.nic.in/downloads/public-information/MoU-Egypt.pdf>.

<sup>10</sup> MoEF, *Executive Summary, India: Second National Communication to the United Nations Framework Convention on Climate Change (2012)* New Delhi: Ministry of Environment & Forests, Government of India.

## Conclusion

2012 has not been a particularly good year for India's environment. In 2012, death numbers of the country's national animal, the endangered Bengal tiger (*Panthera tigris*), reached an all-time high of 88.<sup>11</sup> National and provincial governments are still on an industrialization spree with the natural environment suffering, arguably, the worst impacts. Forested areas and even protected areas are threatened by infrastructural projects. A proposed North-South Transportation Corridor could cause serious damage to the country's wildlife, including cutting off scattered protected areas by destroying forest corridors, which maintain genetic connectivity of animal populations. Indian environment law should grow beyond pollution control,<sup>12</sup> in favour of landscape-level management and ignored biodiversity aspects such as scattered ecosystems, forest-corridors and non-charismatic endangered species such as amphibians, fresh-water fishes and insects. However, 2012 did not see any effort from the Indian lawmakers in strengthening the law for environmental protection and ensuring improved compliance and monitoring of the existing law.

Issues of coastal zone violations surfaced in many parts of the country in 2012. The country's new policies envisage the construction of a staggering number of new ports (some estimates find the number to be at least one port every 30 kilometres),<sup>13</sup> which could mean the end of the delicate coastal ecosystems, including mangroves, sand dunes, mudflats and coral reefs. The country still lacks a comprehensive law for the coastline. The current *CRZ Notification* (2011), which lacks proper institutional support, is proving to be inadequate.

Indian wildlife had a torrid time with increasing human-wildlife conflicts. Despite many organizations working on the issue, human-animal conflict has grown as one of the serious issues demanding specific legal intervention. Poaching continues to increase, mainly targeting tigers (the endangered national animal of the country) and other endangered animals such as asian elephant and the great one-horned rhino. Apart from these, poaching and trading is continuing in threatened species of ungulates, insects, reptiles and birds. Elephants, the devastating crop-raiders, continue to cause damage to both human property and life. Carnivores, mostly leopards and sometimes tigers, venture into human settlements, lifting cattle and occasionally mauling or killing human beings. Retaliatory killings, including

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<sup>11</sup> See further: <http://www.asianage.com/india/tiger-deaths-reach-all-time-high-88-165>

<sup>12</sup> Pollution Control Boards are the main custodians of Indian environment.

<sup>13</sup> See further: <http://www.downtoearth.org.in/content/fisher-people-pushed-edge>.

poisoning and putting pressure on governments to kill carnivores,<sup>14</sup> have been reported from many parts of the country. Train-hits and road-hits have caused the death of a number of wild elephants and smaller wildlife species. Strong legal intervention governing the unscientific and uncontrolled increase in road and rail networks through forested areas, the increase in number of vehicles, speeding and non-compliance, is needed.

The establishment of NGT has clearly been a positive move for environmental protection in the country. Probably the most notable step in 2012 towards better environmental protection could be said to be the Supreme Court of India's decision to move all pending environment-related cases in various courts to the NGT. This will however need to be accompanied by the faster establishment of regional benches of the Tribunal. The NGT panels have a balanced structure with a judicial member and a subject-matter expert. In many cases, the NGT has strongly emphasized the importance of precautionary principles, mainly EIA. In a country where corruption and malfunction of governmental systems are prevalent, it is generally considered normal to overlook environmental laws. In some cases, the NGT noted the callousness and carelessness in preparing EIAs, and rejected such reports. It has also directed the MoEF to make sure that EIAs are fool proof. The NGT has also asked the MoEF to proclaim the important wetlands and similar ecologically sensitive areas, so that they can be excluded when planning projects. At a time when fast-paced industrial development is causing a serious threat to the ecosystems of the country, such moves come as a relief. The declaration of another World Heritage Site (Western Ghats) in the country was also a welcome happening, bolstering legal protection for the declining biological wealth of the country.

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<sup>14</sup> See further: <http://www.dailypioneer.com/nation/113100-rules-shot-down-to-kill-wayanad-tiger-experts.html>.