

COUNTRY REPORT: INDIA

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Introduction

2014 saw some interesting changes in Indian politics, and this was reflected in the prospects for and implementation of environmental law in the country. The national elections in the country saw a new political party coming into power with an overwhelming majority, and immediately there were talks about diluting/relaxing environmental regulations to allow faster industrial growth. The government changed the name of the environment ministry; 'Ministry of Environment and Forests' became 'Ministry of Environment, Forests and Climate Change' (MoEF&CC). A high-level committee was also constituted to review all major environment-related laws in the country: *the Environment (Protection) Act, 1986*; *Forest (Conservation) Act, 1980*; *The Wildlife (Protection) Act, 1972 (WPA)*; *The Water (Prevention and Control of Pollution) Act, 1974 (Water Act)*; *The Air (Prevention and Control of Pollution) Act, 1981 (Air Act)*; and *the Indian Forest Act, 1927*. The Committee will assess the status of implementation of the Acts against their objectives and recommend and draft specific amendments. While the government planned to change the laws, the National Green Tribunal (NGT) and the Supreme Court of India came out with strong decisions with regard to protection and conservation of the country's environment.

Judicial Bodies and Case Law

National Green Tribunal¹

The NGT gave many important decisions during the period, on a variety of environmental issues, including biodiversity protection, wildlife conservation, pollution, mining and the role of local communities in forest management.

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¹A specialized national body with expertise and jurisdiction over cases relating to environment, including conservation of forests and natural resources. The Forest Bench of the Supreme Court also deals with forest and wildlife cases.

Biodiversity Conservation: Protection of the ecosystems in Western Ghats, a Biodiversity Hotspot and a World Heritage Site, has been in debate in the country for a long time. Despite two expert-panel reports and many deliberations with multiple stakeholders, the Government of India has been indecisive regarding the conservation of the region's ecosystems. Acting on a plea filed by non-governmental organizations seeking to restrain the authorities from permitting new projects in the region, the Tribunal directed² MoEF&CC to expeditiously decide on the Ecologically Sensitive Areas (ESA) in Western Ghats and to stop issuing fresh Environmental Clearance (EC) or permissions to projects, till it issued the final ESA notification. NGT held that an earlier (November 2013) direction to provide immediate protection to the region would apply.

Environmental Clearances: A plea³ was filed in the NGT regarding publication of complete EC's [by project proponents] provided by the government to various projects. The Environment Impact Assessment Notification 2006 made it mandatory for project proponents of projects to make public the EC granted for their project by advertising it in newspapers; by permanently displaying it on its website; and by providing copies to local self-governments and other relevant bodies. Acting on the plea, NGT said that project proponents cannot bypass the Notification, and that it expects better compliance from the proponents.

In another case,⁴ the Tribunal made invalid the EC granted (by MoEF&CC) to a power company. It directed the proponent to conduct a new Cumulative Impact Assessment Study of the project, after collecting baseline data relevant to the project and comparing it with national standards; assess the possible impacts using appropriate mathematical models and suggest management of the impacts. The study report is to be submitted to the Expert Appraisal Committee (EAC), who should decide on the need for a comprehensive study. The Committee could carry out the appraisal of the study (or the comprehensive study) and recommend/deny EC. The Ministry was asked to consider the EAC's recommendations and decide in accordance with law.

² Decision Accessed online at URL:

[http://www.greentribunal.gov.in/Writereaddata/Downloads/26_2012\(App\)_25Sept2014_final_order.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/26_2012(App)_25Sept2014_final_order.pdf)

³ Pushp Jain vs. Union of India & others (Original Application No. 172/2014); Accessed online at [http://www.greentribunal.gov.in/Writereaddata/Downloads/172-2014\(PB-II\)OA-14-11-2014.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/172-2014(PB-II)OA-14-11-2014.pdf))

⁴ T. Muruganandam & others vs. MoEF and others (Appeal no. 50/2012); Accessed online at URL: [http://www.greentribunal.gov.in/Writereaddata/Downloads/50-2012\(PB-I\)\(APL\)-10-11-2014.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/50-2012(PB-I)(APL)-10-11-2014.pdf)

In another judgment,⁵ the Tribunal set aside an order from MoEF&CC, recommending Forest Clearance (FC) and consequent final approval order from the State of Chhattisgarh for clearing nearly 1,900 hectares of forests for coal mining. The proposal, which was (thrice) rejected by the Forest Advisory Committee (FAC), was cleared after the Union Minister for Environment overruled the committee's decision. The Tribunal found that even the FAC failed to examine all relevant facts and circumstances and that the Minister acted arbitrarily in rejecting FAC's advice.

In a significant decision,⁶ the NGT Chennai Bench suspended the EC granted by MoEF&CC to a private company to establish a coal-based power plant in Andhra Pradesh. The Tribunal found that the EAC of the ministry failed in its appraisal of the project, and that it violated the Precautionary Principle and the Principle of Sustainable Development. The Tribunal found that the approval was given in "a cursory and arbitrary manner" without considering "the implication and importance of environmental issues". After suspending the clearance for six months, the Tribunal directed the authorities to redo the process. It directed the EAC to discuss in detail the hydrology of the area; the ecology of adjacent riverine systems and impose needed engineering interventions and conditions to be followed by the proponent.

Pollution: In another judgement,⁷ the Tribunal imposed fines of Rupees⁸ 50 million on Simbhaoli Sugar Mill and Distillery unit for discharging toxic effluents into the Ganga River (Ganges), whose aquatic life was adversely affected. The company had taken none of the precautions mandated by law, and had caused surface and ground-water pollution. Moreover, it functioned without the required licenses during 1974-1991, and has been noncompliant, since. It was held that the fine amount should be used to remove the pollutants and prevent ground-water pollution. A second company, Gopalji Dairy, was also proven to be discharging effluents into the river, and was fined Rupees 2.5 million. In another case⁹ in Rajasthan, NGT directed that all industrial units operating without the

⁵ [http://www.greentribunal.gov.in/Writereaddata/Downloads/73_2012\(Ap\)_24Mar2014_final_order.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/73_2012(Ap)_24Mar2014_final_order.pdf)

⁶ APPEAL No. 9 of 2011 (NEAA APPEAL No. 10 of 2010). Decided in December 2013;
[http://www.greentribunal.gov.in/Writereaddata/Downloads/92011\(SZ\)\(Ap\)_13Dec2013_final_order.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/92011(SZ)(Ap)_13Dec2013_final_order.pdf)

⁷ [http://www.greentribunal.gov.in/Writereaddata/Downloads/879_2013\(MApp\)_16Oct2014_final.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/879_2013(MApp)_16Oct2014_final.pdf)

⁸ The exchange rate, at the time of writing this report, is about Rupees 62 for one US Dollar.

⁹ Laxmi Suiting versus State of Rajasthan and Others (clubbing 62 appeals/applications);

[http://www.greentribunal.gov.in/Writereaddata/Downloads/451_2013\(THC\)\(App\)_1May2014_final_order.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/451_2013(THC)(App)_1May2014_final_order.pdf)

consent of the State Pollution Control Board will be fined Rupees 500,000 each for causing pollution and failing to establish anti-pollution systems, as specified by law. The Tribunal found that not only were the applicant companies established without permits, but also that they were non-compliant and polluting against *the Water Act*. It directed the authorities to devise a plan for wastewater collection, treatment and reuse to achieve zero discharge.

In another case¹⁰ regarding polluting farmlands, the NGT Pune Bench invoked 'polluter pays' principle to fine Rupees 2.52 million to be paid by Jubilant Industries—which polluted water-bodies by discharging untreated effluents. The government was asked to evaluate loss to the affected farmers, who would be compensated from the deposited amount. In Maharashtra, the Pune Bench found that a company, Lloyds Metal and Engineering Ltd, was not complying with the government's repeated orders for controlling air pollution. The company was fined Rupees 1 million, which would be used for environmental remediation. It also found that the air emissions of certain companies exceeded allowed limits and their pollution-control systems were inadequate. Rebuking the authorities for not making any efforts according to the provisions of *the Air Act* to take remedial measures or to recover cost for remedial measures, NGT ordered them to frame and publish an 'enforcement policy' within 12 weeks from the judgment.

Community-Participation in Forest-Land Use: In May, NGT Bhopal Bench decided¹¹ on a Public Interest Litigation¹² regarding the functioning of the Madhya Pradesh Forest Development Corporation (MPFDC) and the State Forest Department (FD), with regard to handing over forest land to the Corporation to raise plantations and involving local communities in the process. The petitioner has sought to stop MPFDC from cutting trees in the forest. The Tribunal asked the State Government and FD to avoid conflicts with local communities in future and involve them in the activities of MPFDC. It found that the working

¹⁰ Janardan Pharande and others versus MoEF, Jubilant Industries and others (Application no. 07(THC)/2014(WZ) on dated 16th May, 2014; Accessed online at URL: [http://www.greentribunal.gov.in/Writereaddata/Downloads/7_2014\(THC\)\(App\)\(WZ\)_16May2014_final_order.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/7_2014(THC)(App)(WZ)_16May2014_final_order.pdf)

¹¹ Jagat Ram Chicham Versus the State of Madhya Pradesh and others (Original Application No. 44/2014 (CZ); Accessed online at URL: [http://www.greentribunal.gov.in/Writereaddata/Downloads/44_2014\(App\)\(CZ\)_8May2014_final_order.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/44_2014(App)(CZ)_8May2014_final_order.pdf)

¹² Originally filed before the High Court of Madhya Pradesh Principal Seat at Jabalpur in Writ Petition No. 3219/2013

relationship between the FD and MPFDC had not been renewed/reviewed since 1979. The government also failed to provide guidelines based on key laws formed since 1979, including amendments to WPA 1972; *Biological Diversity Act, 2002*; and *the Corporate Social Responsibility (CSR) regulations under the Companies Act, 2012*. The Tribunal asked the government to convene a stakeholder-meeting; review the existing provisions; update and revise the guidelines; and to encourage community-participation in afforestation and joint forest management (JFM). It also found that the current guidelines to identify and transfer forest areas to MPFDC did not address the interests of local communities. NGT asked the government to revise it to ensure involvement of JFM Committees, so that the land-use is compatible to the needs of local communities. The Tribunal specified that 3-5% of the forest area should be kept aside for biodiversity conservation and planting NTFP-species preferred by the communities and another 3-5% for wildlife-management. It directed MPFDC to create an 'Autonomous Fund' using a part of their profits to maintain wildlife corridors within or adjacent to the handed-over land.

Mining in Forest Areas: In another judgment,¹³ the Bhopal Bench observed that mining was to be taken up only if it was compatible with the objective of protecting the environment. The case was taken up *suo-moto* by the Bench, based on a newspaper article on mining affecting tiger habitats.¹⁴ It asked the government to initiate penal action against mining-lease holders found violating the provisions of *the Water Act; Air Act; Forest Act* and the mining-lease conditions and to examine the need for a cumulative EIA study and then granting the EC under a cluster approach as envisaged in the EIA Notification 2006. Meanwhile, vehicle-movement and mining were to be regulated so as to avoid disturbance to wildlife. Finding serious lack of coordination between relevant departments, NGT directed the government to put an end to this, and to seriously deal with all the mines found violating environmental laws.

Government apathy: In a significant decision regarding continuing government apathy on environmental matters, NGT imposed fine of Rupees 25,000 to be recovered from the

¹³ Tribunal at its own motion v. Ministry of Environment and Others; Original Application No. 16/2013 (CZ); Accessed online at URL: [http://www.greentribunal.gov.in/Writereaddata/Downloads/16_2013\(App\)\(CZ\)_4Apr2014_final_order.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/16_2013(App)(CZ)_4Apr2014_final_order.pdf)

¹⁴ Naveen P. (2013), "Dolomite mining a threat to Tiger corridor in Kanha"; Times of India; Published April 10, 2013; Accessed online at URL: <http://timesofindia.indiatimes.com/city/bhopal/Dolomite-mining-a-threat-to-tiger-corridor-in-Kanha/articleshow/19469163.cms>

salaries of the concerned MoEF&CC officers, as the Ministry's Counsel was absent in four part-heard cases. It had warned the ministry that in case it failed to ensure the presence of a Counsel, it would be compelled to pass Orders against the Ministry, including imposing heavy cost for adjournment of the matters without justification. Another case¹⁵ was filed against the MoEF&CC appointing people lacking the requisite expertise on relevant environmental aspects as members and chair of the State and Central EAC. In July, the NGT directed the Ministry not to appoint experts as members of EAC (State and Central) unless their expertise is directly relatable to the various fields of environmental jurisprudence. It also asked the ministry to provide eligibility criteria and specific requirements for the chairmanship of the committees, within one month from the decision.

Supreme Court of India

Similar to 2013, one of the most important environment-related judicial decisions of the year came from the Supreme Court of India,¹⁶ when it banned *Jallikkattu* (a bull-taming sport played in the State of Tamil Nadu) and other bullock-cart races in the country, while ruling on cases separately filed by the Animal Welfare Board of India¹⁷ (2007), PETA¹⁸ and others. AWBI's investigators had provided detailed reports on the matter, which made it clear that during *Jallikkattu*, bulls were forced to participate and were deliberately taunted, tormented, mutilated, stabbed, beaten, chased and denied even their most basic needs, including food, water and sanitation. The Tribunal examined the cases, "primarily keeping in mind the welfare and the well-being of the animals" and the standard it used was the "Species Best Interest". After finding that the aforementioned events were violating the *Prevention of Cruelty to Animals Act 1960* (PCA), NGT ordered that bulls cannot be used as performing animals in the country for *Jallikkattu*, bullock-cart races and other events. It declared that the rights guaranteed to the bulls under *the PCA Act*, along with the five freedoms recognized in Chapter 7.1.2 of the World Organization for Animal Health (OIE) guidelines such as freedom from: (i) hunger, thirst and malnutrition; (ii) fear and distress; (iii) physical and thermal discomfort; (iv) pain, injury and disease; and (v) freedom to express normal patterns of

¹⁵ Kalpvriksh & others vs Union of India (Application no. 116 (THC) of 2013)

¹⁶ Civil Appeal No. 5387 OF 2014 (@ Special Leave Petition (Civil) No.11686 of 2007); Accessed online at URL: <http://supremecourtfindia.nic.in/outtoday/sc1168607.pdf>

¹⁷ A statutory Board, established under Section 4 of the Prevention of Cruelty to Animals Act 1960 (PCA Act) for the promotion of animal welfare and for protecting the animals from being subjected to unnecessary pain or suffering

¹⁸ Writ Petition No. 145 of 2011 challenging the validity of Tamil Nadu Regulation of Jallikkattu Act 2009

behavior; are to be protected and safeguarded by the government. It directed the government to take appropriate steps to ensure the well-being of animals; prevent the infliction of unnecessary pain or suffering; and to take action against erring officials. It also held the *Tamil Nadu Regulation of Jallikattu Act 2009* as constitutionally void.

Statutes: Notifications and Draft Rules

The MoEF&CC's Draft Policy for Sustainable Utilisation of Agar Wood 2014,¹⁹ aims to ensure sustainable utilization of an aromatic tree native to Northeast India, agarwood (*Aquilaria malapcensis*), which has become threatened in the wild, due to illegal, indiscriminate felling, owing to its high prices. The species is protected under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), to which India is a signatory. The draft policy suggests, among others, a comprehensive framework for conservation of wild agarwood populations, including a Non Detrimental Findings Study of the species by the CITES Management Authority of India to ascertain its availability and sustainable harvesting.

Regarding the EC guidelines for coal mining, after considering a request from the Ministry of Coal, MoEF&CC decided²⁰ that for one-time capacity expansion proposals of existing coal-mining projects with production capacity exceeding 16 million tons per annum (MTPA), the EAC could consider exempting public-hearing, subject to a ceiling of additional production up to 5 MTPA. The Ministry had earlier (2012) provided an exemption ceiling of 2 MTPA for one-time capacity expansion of up to 25% in the existing mining operation. The ministry also uploaded a detailed project report on electronic filing of forest-clearance applications, so as to expedite the process. It also brought out a *Revised Draft Policy on Inspection, Verification, Monitoring and the Overall Procedure Relating to the Grant of Forest Clearances and Identification of Forests*. Through another order,²¹ MoEF&CC extended a current relaxation of guidelines on compensatory afforestation against forest land diverted for Central government projects to all strategic defence projects (including infrastructure and road projects) in border areas. The Ministry also brought out a *Draft Guidelines for Liberalizing Felling and Transit Regime for Tree Species Grown on Non-Forest/Private*

¹⁹ No.5-1/2013-SU

²⁰ No. J-IIOI5/30/2004-IA.11 (M)

²¹ No.11-24q2014FC

*Land*²² and a *Draft Guidelines for conservation, development and management of Urban Greens*.²³

Conclusion

By 2014, it can be observed that NGT has grown into a strong system for legal redress regarding environmental issues in India. While concerns mount regarding the fate of India's environment, especially, after the recent political developments in the country were observed as favouring relaxation of environmental laws²⁴ to aid unbridled economic growth, the Tribunal can be seen as emerging as a custodian of the natural resources and biodiversity of the country. Its active role in protecting the existing environmental laws and in holding the principles of sustainable development, precaution, etc., high could have even forced the government to rethink²⁵ about its role, as reported in the media.

In the case of protecting Western Ghats, it took active steps and *suo-moto* cases to protect the endangered tiger and its habitats. It also came down heavily at industries polluting the environment; illegal mining operations destroying forests; and on lackadaisical government systems, which fail to prevent environmentally destructive activities. While making one of the significant judgments²⁶ of the year, the Tribunal took up the issue of transparency of government systems giving clearances to various development projects. After going through several meeting-minutes documenting the clearance committee discussions, NGT found that the documents were 'generic', 'routine' and 'stereotyped'; they lacked clarity and details of discussions went unrecorded or omitted. It directed that "the EAC should record and maintain the details of technical discussion amongst its members... In order to demonstrate

²² F.No.8-14/2004-FP (Vol. 2)

²³ F. No. 1-2/2004-FP

²⁴ Sethi, N. (2014), "NDA govt to dilute environment rules for projects", Live Mint; Published June 6, 2014;

Accessed online at URL: http://www.livemint.com/Politics/7GH72uyKdZnrIxBcgfgYQM/NDA-govt-to-dilute-environment-rules-for-industry.html?utm_source=copy

²⁵ Sethi, N. (2014), "Government planning to clip National Green Tribunal's wings", Business Standard; Published August 6, 2014, Accessed online at URL: http://www.business-standard.com/article/economy-policy/government-planning-to-clip-national-green-tribunal-s-wings-114080600015_1.html

²⁶ APPEAL No. 9 of 2011 (NEAA APPEAL No. 10 of 2010). Decided in December 2013; Accessed online at URL:

[http://www.greentribunal.gov.in/Writereaddata/Downloads/92011\(SZ\)\(Ap\)_13Dec2013_final_order.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/92011(SZ)(Ap)_13Dec2013_final_order.pdf)

threadbare nature of discussions while considering a project for giving its recommendation, it is essential that the views, opinions, comments and suggestions made by each and every member of the committee are recorded in a structured manifest/ format."