



THE AFFAIRS OF THE NON-PROLIFERATION REGIME; INDIA'S CIVIL LIABILITY FOR NUCLEAR DAMAGE ACT & RULES & ENVIRONMENTAL LAWS AND NUCLEAR PROJECTS

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The AFFAIRS OF THE NON-PROLIFERATION REGIME:

NPT (NON-PROLIFERATION TREATY)¹ an outcome of quest for a disarmament instrument came as a result of momentum in favour of reductions, test ban and inhibiting acquisition of nuclear weapons in late 1950s and early 60s.

Zorin-McCloy talks

(US-Soviet Joint Statement on Agreed Principles for Disarmament Negotiations, September 1961) as starting point)

Ireland resolution

(November 1961) against transfer of nuclear weapons/tech to non-weapon states and undertaking not to produce them. Limited/Partial Test Ban Treaty (PTBT/LTBT) in 1962 banning all forms of nuclear testing except underground.

Eighteen Nation Disarmament Committee (ENDC)² - formed with West, East and NAM(Non-Aligned Movement) representation to negotiate disarmament instrument **Proposals for test ban, ending fissile material production as part of disarmament measures (proposals for phased reductions and disarmament) - in**

1964 Chinese nuclear test as turning point-threat of 'proliferation' Non-weapon states felt only a comprehensive disarmament treaty can prevent further proliferation: It majorly focused on vertical and horizontal proliferation.

Consensus (by 1965) at ENDC that a non-proliferation treaty should have following provisions:

- (a) Not to transfer nuclear weapons or technology (non-dissemination)
- (b) Non-use against those not possess them and safeguard against threat
- (c) Disarmament should include a test ban treaty, freeze on production of nuclear weapon and delivery means, reduction in existing stocks
- (d) Non-acquisition or manufacturing by non-nuclear weapon states.

Eight-nation memorandum leading to Resolution 2028 at UNGA with principles for the Treaty³:

- (a) should be void of loopholes,
 - (b) balance of mutual obligations and responsibilities,
 - (c) means to disarmament
- Disagreements on accessing nuclear energy resources (safeguards as hindrance); Peaceful Nuclear Explosion (PNE) and Security Guarantees - Alternate proposals (Fanfani) for a phased non-proliferation treaty in addition to it different drafts by US and Soviets with common goal of ensuring "no additional fingers on the trigger" or mitigating new weapon states. Demanded that commitment of non-weapon states not to produce weapons be simultaneous with renunciation by nuclear powers of their

¹<https://www.un.org/disarmament/wmd/nuclear/npt/>

² [https://fas.org/nuke/control/nwc/news/980608-
nuke8.htm](https://fas.org/nuke/control/nwc/news/980608-nuke8.htm)

³ [https://treaties.un.org/doc/source/docs/A_33_45-
E.pdf](https://treaties.un.org/doc/source/docs/A_33_45-E.pdf)



arsenals and further production NAM members wanted the treaty to fulfill Resolution 2028 obligations. Eventual NPT text was a joint US-Soviet (reconciled) draft particularly the text did not contain provisions for reductions of P-5's nuclear stockpiles and allowed expansion of arsenals (1 January 1967 cut-off). Uninhibited access to nuclear energy for all but subject to safeguards – voluntary for nuclear powers and full-scope for others. Disarmament was kept a common goal, not obligation of P-5. UNGA adopted treaty through Resolution 2373 (XXII) on 12 June 1968 by 95 votes in favour, 4 against and the remaining 21 abstaining. UNSCR 255 passed a day later that enshrined security guarantees for non-weapon NPT member states – implying any of the UNSC members could intervene if non-weapon states faces nuclear threat. Entry into Force in 1970; period of 25 year with Review every five years; Indefinitely extended in 1995 as Article VI goal remained unfulfilled.

The main areas of the Treaty text were:

- Article I** – NWS should not transfer or assist nuclear weapon acquisition;
- Article II** – NNWS should not seek or attempt to make nuclear weapons;
- Article III** – safeguards and restrictions on fissile materials and technology;
- Article IV & V** – inalienable right to access peaceful nuclear energy resources;
- Article VI** – negotiations for a treaty on general and complete disarmament;
- Article VI** – for negotiations in good faith for a treaty on general and complete disarmament kept as a common obligation for all states
- Article X** – Exit clause. North Korea became only member-state in 2006 to exercise this

option. Speculation on whether Iran will be next.

Touted as balance of three pillars – non-proliferation, disarmament and peaceful uses of nuclear energy. Treaty does not solemnize an end objective – of a world without nuclear weapons, or define non-proliferation – as either means or end! The text: "...calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons,... achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament... to achieve the discontinuance of all test explosions of nuclear weapons for all time as well as to facilitate the cessation of manufacture of nuclear weapons, liquidation of all existing stockpiles and elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control..." Cessation and elimination listed as PURSUANT to a disarmament treaty (following or in accordance with?) The preamble does not solemnize a single-point objective – of a world without nuclear weapons, total elimination or for delegitimizing nuclear weapons. Instead, it conceives the formulation of an agreement on the prevention of wider dissemination of nuclear weapons it only conceives of effective measures towards nuclear disarmament', with the calibrated steps leading to a Treaty on general and complete disarmament when read together, NPT demands a set of actions that will naturally culminate in a disarmament treaty. In practice, NPT provides for a conglomeration of measures to stop the spread of weapons and create ideal conditions for disarmament. Absence of an enshrined objective of



elimination and a time-frame to achieve this goal leaves NPT open-ended, Only 1995 NPT extension document list “ultimate goals of complete elimination and a disarmament treaty”.

NPT text does not conceptualize non-proliferation – either as means or the end

Two conflicting approaches have been expounded:

(a) Non-proliferation was to establish a global framework to inhibit the spread of nuclear weapons alongside a series of calibrated measures, pursued in a parallel and phased manner, together leading to disarmament;

(b) Non-proliferation could facilitate the progress towards a tipping point – a post proliferation world - from where proliferation no longer happens and sets conditions for disarmament measures to be initiated.

INDIA’S CIVIL LIABILITY FOR NUCLEAR DAMAGE ACT & RULES

Introduction:

In 2010, the Civil Liability for Nuclear Damage Act, 2010 (CLND Act)⁴ was enacted – came into effect on 11 November, 2011. The Civil Liability for Nuclear Damage Rules, 2011 (CLND Rules) were notified in 2011. India signed the 1997 Convention on Supplementary Compensation for Nuclear Damage (CSC) in 2010 and has ratified it in 2016, declaring the compliance of its national law with the CSC.

Preamble:

An Act to provide for civil liability for nuclear damage and prompt compensation to the victims of a nuclear incident through a no-fault liability regime channeling liability to the operator, appointment of Claims

Commissioner, establishment of Nuclear Damage Claims Commission and for matters connected therewith or incidental thereto.

Applicability (Section 1):

- It extends to the whole of India
- It applies to nuclear damage suffered-
 - In or maritime beyond territorial waters of India.
 - On board or by a ship
 - On board or by an aircraft
 - On or by an artificial island, installation or structure
- It applies only to the nuclear installation owned or controlled by the Central Government either by itself or through any authority or corporation established by it or a Government company.

Atomic Energy Regulatory Body to notify a nuclear incident (Section 3):

The AERB shall within a period of 15 days from the date of occurrence of nuclear incident, shall issue a notification as well as cause wide spread publicity. Provided that AERB is satisfied that the gravity of threat and risk involved in a nuclear incident is insignificant, it shall not required to notify such an incident.

Liability of Operator (Section 4):

Operator is liable for nuclear damage arising from a nuclear incident. The liability of the operator of the nuclear installation shall be strict and shall be based on the principle of no-fault liability. Where there are more than one operator liable then the liability of such operators shall be joint and several. Where several nuclear installations of one and the same operator are involved in a nuclear

⁴ <http://www.barc.gov.in/about/10.pdf>



incident, such operator shall, in respect of each such nuclear installation, be liable to the extent of liability specified.

Limitation of Liability (Section 6):

The maximum amount of liability in respect of each nuclear incident has been specified as the rupee equivalent of 300 million Special Drawing Rights (“SDR”) or such higher amount as may be notified by the Central Government.

Liability of the operator for each nuclear incident has been capped at:

- INR 1,500 crores** - nuclear reactors having thermal power equal to or above 10MW.
- INR 300 crores** - spent fuel reprocessing facilities
- INR 100 crores** - research reactors having thermal power below 10 MW, fuel cycle facilities other than spent fuel reprocessing plants and transportation of nuclear materials.

Insurance & Financial Security (Section 8):

■ INSURANCE REQUIREMENTS UNDER THE CLND ACT:

The operator, before commencing operation of its nuclear installation is required to obtain insurance policy or other financial security, or combination of both, to cover its capped liability. The operator is required to renew such policy or financial security from time to time, before the expiry of its validity period.

■ INDIAN NUCLEAR INSURANCE POOL (“INIP”):

Launched on 12 June, 2015 with corpus of INR 1,500 crore (approximately USD 211.65 million) by General Insurance Corporation of India (“GIC-Re”) along with several other Indian insurance companies. The INIP was formed as a risk transfer mechanism to cover

/ transfer the risks of operators’ and suppliers’ liability with the CLND Act (Section 6 (2) and Section 17, respectively) to INIP. It was instituted to address liability concerns of the suppliers and paves the way for Indian as well as foreign supplier’s to participate in the Indian nuclear power projects.

Liability of the Central Government (Section 7):

Central Government is liable for nuclear damage in certain situations, like certain force majeure events and where liability exceeds the amount of liability of an operator specified, to the extent such liability exceeds such liability of the operator. The Government shall establish a nuclear liability fund for the purpose of meeting part of its liability.

Claims Mechanism:

- Claims Commissioner (Chapter III)
- Nuclear Damage Claims Commission (Chapter V)

1. Claims Commissioner

The CG shall appoint one or more Claims Commissioners for the purpose adjudicating claims. Qualifications - is, or has been, a District Judge; or in the service of the Central Government and has held the post not below the rank of Additional Secretary to the Government of India or any other equivalent post in the Central Government. The CC shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908. The CC shall dispose of the application within a period of three months from the date of such receipt and make an award accordingly.

Extinction of right to claim



The right to claim compensation for nuclear damage shall extinguish, if such claim is not made within a period of –

- 10 years, in the case of damage to property;
- 20 years, in the case of personal injury to any person, from the date of occurrence of the incident.

Nuclear Damage Claims Commission:

Where the Central Government, having regard to the injury or damage caused by a nuclear incident, is of the opinion that it is expedient in public interest that such claims for such damage be adjudicated by the Commission instead of a Claims Commissioner

- There shall be not more than 7 members including in the Chairperson in the Nuclear Damage Claims Commission.
- They shall be appointed for a period of 3 years.

RIGHT OF RECOURSE AGAINST THE SUPPLIER:

Section 17 of the CLND Act provides for operators right of recourse against the supplier, after paying the compensation for nuclear damage in accordance with Section 6 of the CLND Act. The operator has a right of recourse against the supplier in the following instances: if this right is expressly provided in the contract in writing (Section 17(a)); If nuclear incident has resulted as a consequence of an act of supplier or his employee, which includes supply of equipment or material with patent or latent defects or sub-standard services (Section 17(b)); The nuclear incident has resulted from the act of commission or omission of an individual done with the intent to cause nuclear damage (Section 17(c)). The concern is that Section 17 (b) provides for an additional right of recourse. In order to clear

this ambiguity, (along with ambiguities related to various provisions of the CLND Act), the Ministry of External Affairs under the Indian Government had issued and published the ‘Frequently Asked Questions and Answers on Civil Liability for Nuclear Damage Act 2010 and related issues’ (“FAQs”). Relevantly, the FAQs state that:

- The situations identified in Section 17 (b) relate to actions and matters such as product liability stipulations / conditions or service contracts. These are ordinarily part of a contract between the operator and the supplier.
- According to the FAQs, operators right of recourse is to be read along with the contract between the operator and the supplier referred to in Section 17(a).
- Rule 24 of the CLND Rules states that the contract referred to in Section 17(a) “shall” include a provision for right of recourse:
 - For an amount not less than the (a) operator’s liability under the CLND Act (Rs. 1500 crores), or (b) contract value, whichever is less; and for a period of (a) initial license period under the Atomic Energy (Radiation Protection) Rules, 2004, currently 5 years, or (b) the product liability period, whichever is longer. Further, Product Liability Period is defined in Explanation I to Rule 24 as: "product liability period" means the period for which the supplier has undertaken liability for patent or latent defects or sub-standard services under a contract.

WHO IS A “SUPPLIER”????

The CLND Act does not define a “Supplier”. However, the CLND Rules, in clause (b) in Explanation 1 to Rule 24, defines supplier to include a person who:

- (i) Manufactures and supplies, either directly or through an agent, a system, equipment or



component or builds a structure on the basis of functional specification; or

(ii) Provides built to print or detailed design specifications to a vendor for manufacturing a system, equipment or component or building a structure and is responsible to the operator for design and quality assurance; or

(iii) provides quality assurance or design services.

CLAIMS UNDER OTHER LAWS – SECTION 46:

Section 46 of the CLND Act preserves applicability of other laws and states that:

“The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt the operator from any proceeding which might, apart from this Act, be instituted against such operator”.

Concerns have been expressed by suppliers, both domestic and foreign, that the first part of Section 46 may support third party claims directly against the supplier under other laws.

Overall scheme of CLND Act is to channel the liability to the operator and thus Section 46 should apply to operator – supported by:

- Long Title – channeling liability to the operator
- Statement of Objects and Reasons –law that deals with nuclear liability for nuclear damage in the event of a nuclear incident, to be compliant with the CSC and to join an international liability regime.
- The instrument of ratification for CSC submitted by India declared that “its national law complies with the

provisions of the Annex to the Convention”.

The FAQs published by the Government of India clarify the position of law in favor of the suppliers:

“...applies exclusively to the operator and does not extend to the supplier is confirmed by the Parliamentary debates at the time of the adoption of this Act. It may be noted that the CLND Bill was adopted by a vote. During the course of the vote on various clauses of the Bill, in the Rajya Sabha two amendments were moved for clause 46 that finally became Section 46 of the CLND Act that inter alia sought to include suppliers in this provision. Both these amendments were negated. A provision that was expressly excluded from the statute cannot be read into the statute by interpretation...”

Constitutionality of the CNLD Act:

Constitutionality of the CLND Act and the CLND Rules has been challenged in the Supreme Court of India.

The Kerala High Court in the case of *Yash Thomas Mannully and Ors. Vs. Union of India and Ors*⁵. Has upheld the constitutionality of certain provisions of the CLND Act (which has been challenged).

A separate writ petition was filed before the Supreme Court of India (*Common Cause & Ors. vs. Union of India & Ors.*⁶) which challenged the constitutionality of the CLND Act and is sub-judice.

Another petition inter alia challenging Rule 24 of the CLND Rules as being ultra vires the CLND Act was filed before the Supreme Court in the case of *Centre for Public*

⁵ WP(C).No. 27960 of 2011

⁶ (2018) 5 SCC 1



Interest Litigation & Ors. Vs. Union of India⁷.

Environmental Law and Nuclear Projects:

Key Legislation in India:

-2010 - The National Green Tribunal Act⁸ was enacted to pave the way for enactment of new Tribunal namely: National Green Tribunal to expeditiously address the civil matters pertaining to Environment

-1986- The Environment (Protection) Act⁹ authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industrial facility on environmental grounds.

-1981 - The Air (Prevention and Control of Pollution) Act¹⁰ provides for the control and abatement of air pollution. It entrusts the power of enforcing this act to the CPCB.

-1974 - The Water (Prevention and Control of Pollution) Act¹¹ establishes an institutional structure for preventing and abating water pollution. It establishes standards for water quality and effluent. Polluting industries must seek permission to discharge waste into effluent bodies. The CPCB (Central Pollution Control Board) was constituted under this act.

Statutory Consents under Indian Environmental Laws:

1. Costal Regulation Zone Approval
2. Prior Environmental Clearance under 2006 Notification
3. Consent to Operate

⁷ W.P.(C) 5235/2018, CM No. 34109/2018

⁸<http://cpcbenvi.nic.in/pdf/NATIONAL%20GREEN%20TRIBUNAL%20ACT,%202010.pdf>

⁹<http://legislative.gov.in/actsofparliamentfromtheyear/environment-protection-act-1986>

Introduction to Environmental Clearance-2006:

2006 Notification imposed certain restrictions and prohibitions on new projects and activities based on their potential Environmental impacts. Categorized all projects into Category 'A' and 'B' based on potential impacts on human health and natural & man-made resources. Mandated that all scheduled projects or activities shall require prior-EC from regulatory authority before any construction work or even preparation of land is started.

Why EIA is required?

Environment Impact Assessment¹² (EIA) is a formal process used to predict the environmental consequences of any development project. Environment Impact Assessment in India is statutory backed by the Environment Protection Act in 1986, which contains various provisions on EIA methodology and process.

EIA looks into various problems, conflicts and natural resource constraints which may not only affect the viability of a project but also predict if a project might harm to the people, their land, livelihoods and environment. Once these potential harmful impacts are predicted, the EIA process identifies the measures to minimize those impacts. Thus, the objective of the EIA is to:

1. Identify the environmental, social and economic impacts of a project prior to taking a decision on its implementation.

¹⁰<http://legislative.gov.in/sites/default/files/A1981-14.pdf>

¹¹http://municipaladm.gov.in/sites/municipaladm.gov.in/files/16._water_prevention_and_control_of_pollution_act_1974.pdf

¹² <https://www.cseindia.org/understanding-eia-383>



2. Mitigation of harmful impacts and maximizes the beneficial effects.

Once the assessment is complete, the EIA findings are communicated to all stakeholders viz. developers, investors, regulators, planners, politicians, affected communities etc. On the basis of the conclusion of EIA process, the government can decide if a project should be given environment clearance or not. The developers and investors can also shape the project in such a way that its harms can be mitigated and benefits can be maximized.

Types of project which require prior EC:

- a. Nuclear Power Projects/Thermal Power Plants
- b. Coal washeries
- c. Building /Construction projects/Area Development projects and Townships
- d. Airports
- e. Highways
- f. Petroleum refining industry
- g. Chemical Fertilizers
- h. Cement Plants,

Categorization of projects and activities under the 2006 notification

Projects requiring prior EC are broadly categorized into two categories:

- Category 'A'
- Category 'B'

Based upon the spatial extent of potential impacts and potential impacts on human health and natural and manmade resources. Link Regulatory Authority of Category 'A' Projects the Environment Clearance for Category – 'A' projects is granted at Central level by MoEFCC, after relying on the appraisal by the Expert Appraisal Committee (EAC) Regulatory Authority of Category 'B' Projects

The EC for Category 'B' is granted at State level by State Level Environment Impact Assessment Authority (SEIAA) on the recommendation of SEAC. For B2 projects pertaining to mining of minor minerals of lease area less than 5 hectare, granted by DEIAA on recommendations of DEAC.

Process to Obtain EC: **SCREENING**

This step is restricted only to Category 'B' projects. To examine whether the proposed project or activity requires further environmental studies for the preparation of an EIA for its appraisal prior to the grant of an EC depending upon the nature and location specificity of the project. Those projects requiring an EIA are further categorized as Category 'B-1' projects and remaining projects which do not require EIA are categorized as Category 'B-2' projects. The categorization is in accordance with the guidelines issued in this regard by the MoEFCC from time to time.

SCOPING

At this stage detailed and comprehensive TOR is determined for preparation of the EIA report, which addresses all relevant environmental concerns. Information furnished by the applicant in Form 1/Form 1A along with the proposed ToR form the basis for the preparation of the ToR. The ToR must be conveyed to the applicant within 60 days of the receipt of Form 1, failing which, the ToR proposed by the applicant shall be deemed as approved.

PUBLIC CONSULTATION

This stage involves the process by which the concerns of local affected persons are ascertained with a view of taking into account



all the material concerns in the project or activity design as appropriate.

This stage comprises two components:

(i) A public hearing at the site or in its close proximity – district-wise; and

(ii) Procurement of written responses from concerned persons having a plausible stake in the environmental aspects surrounding the project.

The detailed procedure is stipulated in Appendix IV.

APPRAISAL

This stage involves detailed scrutiny by the EAC or the SEAC of all the documents submitted by the applicant for the grant of EC. In appraisal process applicant shall be invited for furnishing clarification in person or through an authorized representative (Accredited Environment Consultant Organization). Appendix V stipulates that the detailed process and documents to be submitted to the regulatory authority.

Grant or Refusal of the Prior-EC

The Regulatory Authority shall consider the recommendations of the EAC or SEAC or DEAC as the case maybe before granting or refusing the proposal. The decision is to be accorded within 45 days of the receipt of the recommendations. The Regulatory Authority shall ordinary accept the recommendations, however, RA may disagree and send the proposal back for reconsideration to recommending, with grounds for such disagreement and with a copy to the applicant. If no decision is taken/communicated by the Regulatory Authority within 45 days, the recommendations would be considered as final.

For Category – ‘A’ projects the Regulatory Authority is MoEFCC.

For Category – ‘B’ projects the Regulatory Authority is SEIAA.

For Category – ‘B2’ projects the Regulatory Authority is DEIAA.

Validity of EC

Validity means the period from which EC is granted to the start of production operations by the project or completion of all construction operations in case of construction projects. Validity of Prior-EC may be maximum of 10 years in cases of river valley projects, 30 years for mining projects, and 7 years for all rest projects and activities. Period of validity may be extended by the concerned regulatory authority by a maximum period of 7 years. For extension of validity, an application has to be filed within the validity period along with updated Form-1The concerned regulatory authority may also consult EAC or SEAC or DEAC, as the case maybe, for grant of extension.

Post EC-Monitoring

For Category ‘A’ projects, PP has to advertise the EC granted (along with Environmental Conditions and safeguards) in 2 local newspapers where the project is located. These shall also be displayed in the PP’s website permanently.

For Category ‘B’ projects, the PP shall advertise in the newspapers that the Project has been accorded EC and the details of the MoEFCC website where it is displayed.

Copies of the EC would be displayed by Local Bodies and panchayats for 30 days PP shall submit half yearly (June & December) compliance reports of the conditions stipulated in the EC to the regulatory authority concerned. The Compliance reports submitted by PP are public documents.



Transferability

Prior-EC maybe transferred from the name of Project Proponent to the name of other legal person, entitled to undertake the project it may be applied by transferee or transferor along with a written NOC from transferor. It can only be transferred within the validity period. No change in validity and terms & conditions under which prior-EC was originally granted

Establishment of NGT:

Constituted vide - *The National Green Tribunal Act, 2010*. Constituted to expeditiously address the civil matters pertaining to Environmental concerns NGT consist of a Chairperson and Judicial & Expert members (not less than 10 and maximum 20). Chairperson is appointed by the Central Government in consultation with the Chief Justice of India the Judicial and Expert members are appointed on the recommendation of selection committee. The Tribunal shall not be bound by the procedure as laid down in the Civil Procedural Code but shall be guided by the Principles of Natural Justice. Tribunal has power to regulate its own procedure. Tribunal is not bound by the rules of Evidence as contained in the Indian Evidence Act. Tribunal shall have for the purposes of discharging its functions under the act the same powers as are vested in Civil Courts.

Objects and reasons of NGT Bill:

There were large number of Environmental cases pending in higher courts and there were involvement of multi-disciplinary issues in such cases. The right to healthy environment has been construed as part of Right to life under article 21 of the Constitution by the Courts Taking this into account Hon'ble

Supreme Court requested the Law commission of India to consider the need for constitution of Specialized Environmental Court. The law commission thereafter recommended the setting-up of Environmental Courts having both original and appellant jurisdiction relating to environmental laws. Accordingly, it was decided to enact a law to establish NGT for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment.

Original Jurisdiction of NGT:

The Tribunal has Jurisdiction over all civil matters where substantial question relating to Environment is involved, including enforcement of any legal right relating to environment. Issues relating to Implementation of the statutory enactments as mentioned in the Schedule – I of the NGT Act. Applications are to be filed within 6 months from the cause of action. The Tribunal can award relief and compensation to the victims of pollution and other Environmental damages. The tribunal may also impose penalty towards restitution of property and environment. The application for relief and compensation is to be made within 5 years from the occurrence of the incident. The tribunal is empowered under the act to condone the delay of upto 2 months, in filing of the above two applications. The tribunal may refer to Schedule II, to divide the compensation/relief into separate heads.

Appellate Jurisdiction of NGT:

The Tribunal has Appellate Jurisdiction to under certain enactments specified in section 16 of the Act including orders of EC granted or refused. The Tribunal is vested with the



limited powers of judicial review to examine the constitutional validity/vires of the subordinate or delegated legislation. (*SPEB Vs Union of India*) Period of limitation is prescribed as 30 days from the date of communication of such orders to the applicant. The tribunal is empowered under the act to condone the delay of up to 2 months, in filing of the appeals.

Environmental Principal followed by NGT:

The NGT Act makes it a requirement for the NGT to apply the Principle of Sustainable Development, the Precautionary Principle and the Polluter Pays Principle.

The Principle of Sustainable Development promotes inter-generational equity, i.e. better quality of life for present and future generations.

The principle of sustainable development envelopes within it the following two principles:

■ Polluter Pays Principle

The 'polluters pays' principle is the commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment. The Hon'ble Supreme Court of India in the judgment of *Indian Council for Enviro-Legal Action vs. Union of India*¹³ had incorporated the Polluter Pays Principle as being a part of the Environmental Law regime.

■ Precautionary Principle

Whereas traditional regulatory practices are reactive, precautionary measures are preventive and pre-emptive. In its simplest form, the precautionary principle (also known as PP) provides that if there is a risk

of severe damage to humans and/or the environment, absence of incontrovertible, conclusive, or definite scientific proof is not a reason for inaction. It is a better-safe-than-sorry approach, in contrast with the traditional reactive wait-and-see approach to environmental protection.

Bar of Jurisdiction on civil courts due to establishment of NGT:

The NGT is empowered to adjudicate the civil matters of Environmental matters, hence the Jurisdiction of Civil Courts to entertain the Matters pertaining to environment has been curtailed by the enactment of NGT Act.

The Bar of Jurisdiction includes the Appellate Jurisdiction as well as the Original Jurisdiction of the NGT

Further, no other civil Court can entertain and adjudicate upon the claims of relief or compensation or restitution of property or environment damaged except for NGT.

Important Decisions of NGT:

■ G. Sundarajan Vs. Union of India - 2016

- This matter pertains to the EC granted to the Kudankulam Nuclear Power Plant Units 3 – 6
 - Contentions for the challenges
1. EIA Consultant i.e. M/s Engineers India is not accredited consultant
 2. The EAC while recommending the KNPP noted that the requirement of fresh water would be met by the desalination plant already installed at the project site (desalination plant installed with Unit 1&2), however, NPCIL stated that separate desalination plant would be installed for the KNPP unit 3-6.

¹³ Writ Petitions No. 967 of 1989 with Nos. 94 of 1990, 824 of 1993 and 76 of 1994



3. The procedure of comprehensive EIA study in consultation with the state government as required under the CRZ notification was not followed properly.
- The defence pleaded that since the issues writ Unit 3-6 were also considered by the Hon'ble Supreme while upholding the EC granted to the Plants unit 1&2 NGT cannot reopen the decision rendered by the Supreme Court.
 - NGT upheld the defence pleas.

■ **Satendra Pandey Vs Ministry of Environment, Forest & Climate Change** - Original Application No. 186/2016 – Directing Ministry to carry out certain amendments

- Petitioner challenged the EIA amendment Notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 on the ground that the procedure for obtaining Environmental Clearance has been diluted by bringing mining of major minerals within B-2 category
- Exempting such category from Public Consultation, EIA and EMP which is in contravention of the judgment of the Hon'ble Supreme Court in *Deepak Kumar v. State of Haryana*¹⁴ The NGT held that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/SIEAA as well as for cluster situation wherever it is not provided.

■ **Vidhi Vidhut More and Ors. vs. Ministry of Environment, Forest and Climate Change and Ors.** - Appeal No. 11/2016 (WZ) – Appeal against grant of EC

Challenge on following grounds:

- Allegedly EC was granted by the authorities without considering the impact of the project on the existing Tarapur Atomic Power Station.
- That the impact of the project on the livelihood of fishermen community in that area.
- The additional pollution load that is likely to be caused on the sea on account of this project, is not considered while allowing the project
- The impact of the project on marine livelihood or habitat and on the ecological and environmental impact of the project in toto.
- While referring to the decision of *Sterlite Industries India Limited vs. Union of India*, where it was held by the Supreme Court that “the High Court has noticed some decisions of the SC on sustainable development, precautionary and polluter pays principles and public trust doctrine, but has failed to appreciate that the decision of the Central Government to grant of EC to the plants could only be tested on the principles of judicial review such as on the grounds of illegality, irrationality, Wednesbury unreasonableness or on the grounds of procedural impropriety. However, on the ground of procedural impropriety, the High Court can quash the EC only if it is satisfied that the breach was of a mandatory requirement in the procedure.” and found that the ruling of Bombay High Court upholding the Lease and NOC granted by Maharashtra Maritime Board, satisfy all the requirements as laid down by SC, hence, the grant of EC cannot be interfered by NGT.

● ¹⁴ : (2012) 4 SCC 629.