

# EFFICIENCY AT THE NATIONAL GREEN TRIBUNAL AND ITS ACCESSIBILITY: AN EMPIRICAL STUDY

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## *Abstract*

*The National Green Tribunal was established in the year 2010 with the objective of ensuring speedy remedy to victims of environmental damage; that's why the Tribunal is mandated to dispose the matter within six months of its institution. The Tribunal is established with composition of judicial as well as expert members as the matter under its consideration would be dealing with multi-disciplinary issues, especially the environmental science. The National Green Tribunal Act, 2010 mandates that there must be minimum ten judicial members and ten expert members that ensures that the Tribunal has adequate strength to deliver the justice speedily.*

*Further, the Act has ensured that the Tribunal is easily accessible for any prospective applicant, that's why it has empowered the central government to establish as many Benches of the Tribunal as required at any place situated in India. On paper, legislative enactment is in line of the commitments that India has made at the United Nations while attending its conferences on environment from time to time, including signing the Sustainable Development Goals in the year 2015.*

*In light of the above, it is important to explore how the legislative policy and the mandate is practiced in policies of the state executive, and to what extent the Tribunal has succeeded in attaining the objectives that the Act has framed and envisaged. This research paper explores the working strength of the Tribunal during its history of twelve years that further sets the tone to find out if the Tribunal has succeeded in complying with the legal mandate. It further explores the question of accessibility, distance-wise, of the Tribunal as India has committed to the United Nations that it would make all the redressal forums easily accessible. Statistical data has been used to lay down the findings that further have been used to make suggestions at last of the paper.*

**Keywords:** National Green Tribunal, Accessibility, SDGs, Environmental Damage, Victim of Environmental Damage

## INTRODUCTION

The National Green Tribunal, hereinafter mentioned as Tribunal, was established in October, 2010 under the National Green Tribunal Act, 2010, hereinafter mentioned as Act. It has established a mechanism for effective and speedy disposal of civil disputes relating to environmental issues, including those of forests and other natural resources. The mechanism established through the Tribunal aims at giving relief and compensation for damages caused to persons and property due to environmental damage caused by act of a person or of an entity. It is a body that consists of judicial officers and environmental experts that gives a wider and better scope to deal the issues with multi-

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dimensional perspectives. It has power to lay down its own Rules of procedure that are guided by principles of natural justice and it is not bound by the procedure laid down under the Code of Civil Procedure, 1908.

The Act was enacted by the Parliament of India as India had already committed to the United Nations that it would establish a specialized body that shall be empowered to settle the civil disputes on environmental issues within time frame; it was also committed that the forum to be established shall be more accessible to the victims of environmental damage. Further it was committed that necessary legislative enactment would be brought to fulfill the said commitments. It was in 1972 that the United Nations had taken initiatives to have coordinated efforts at international level to deal with the issue of environmental damage. It shows that it was realized at the international level that the environmental harms don't not understand geo-political boundaries and it does not understand language of politics too.

The U.N. Conference on the Human Environment was held at Stockholm in June, 1972 in which all the States were called upon to take appropriate steps for the protection and improvement of the human environment. In the U.N. Conference on Environment & Development, which was held at Rio de Janeiro in 1992, all the States were called upon to provide effective access to judicial and administrative proceedings, including having appropriate laws so as to ensure compensation for the victims of environmental damage. It was considered expedient by India to have a specialized body having power, experience, and expertise to deal with the environmental issues, hence, the Act was enacted subsequent to which the Tribunal was established in October, 2010 with its Principal Bench at New Delhi.

The Tribunal consists of Judicial Members and Expert Members, both, who sit together to hear and decide the disputes instituted before itself. The dispute that the Tribunal can entertain and settle must be dealing with the issue of environmental damage and the Tribunal can pass order of relief, compensation, &/or restitution. At present, there are five Benches of the Tribunal, viz., New Delhi (Principal Bench), Bhopal (Central Zone), Pune (Western Zone), Kolkata (Eastern Zone), and Chennai (Southern Zone). Since establishment of the Tribunal till April, 2022, three Chairpersons, twenty-one judicial members, and twenty expert members have ever been appointed.

With continued efforts at international level, all the nation states at the United Nations sat together once again to agree, sign and commit themselves for the Sustainable Development Goals - 2030 (SDGs) in the year 2015. India is one of the signatory nations to the SDGs and has committed itself

to achieve all the seventeen goals under the SDGs by the year 2030. One of the SDG, Goal No. 16, aims at providing ‘access to justice for all’ and ‘to build effect, accountable & inclusive institutions at levels’.<sup>2</sup> In India, Judicial forum in the name of National Green Tribunal was already established when India committed itself to achieve the SDGs, now it was a matter of policy framework and its execution to ensure that the said judicial forum becomes efficient & self-sufficient and it is functioning with its full strength. It would make the Tribunal more accessible as well as accountable for its duties towards the citizens. .

### **Establishment of Benches of the Tribunal**

As empowered u/s 4(3)<sup>3</sup> of the Act, the Central Government has established five Benches of the Tribunal each covering one or the other state bringing whole of the territory of India under its jurisdiction, like, the Principal Bench covers Delhi, Punjab, Haryana, Himachal Pradesh, Uttar Pradesh, Uttarakhand, and the U.Ts of Chandigarh, Jammu & Kashmir, and Ladakh. The Bhopal Bench covers the states of Madhya Pradesh, Rajasthan, & Chhattisgarh; Pune Bench covers the states of Maharashtra, Gujarat, Goa, and U.Ts of Daman & Diu, & Dadra & Nagar Haveli; Chennai Bench covers the states of Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Telangana, and U.Ts of Puducherry, & Lakshadweep; and Calcutta Bench covers the states of West Bengal, Odisha, Jharkhand, Sikkim, Assam, Manipur, Meghalaya, Arunachal Pradesh, Mizoram, Nagaland, Tripura, and the U.Ts of Andaman & Nicobar islands.<sup>4</sup>

Though the Act provides for establishment of any no. of Benches but there has been no increase in their numbers since 2011 when all the five Benches were established. In light of above stated executive power. It would be interesting to explore how effective the five Benches have been performing with respect to speedy disposal of the matters as well as with respect to accessibility of the Benches to a claimant.

### **RESEARCH METHODOLOGY**

This research paper is purely empirical in nature as it has used statistical data released by the government agencies and available at websites of the said agencies has been used, and the same has

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<sup>2</sup> Available at: <https://sdgs.un.org/goals/goal16> (visited on 30/04/2022)

<sup>3</sup> Sec. 4 (3) of the National Green Tribunal Act, 2010:

*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 of sitting.*

<sup>4</sup> Central Government Notification No. SO-1908E, dt. 17/08/2011, as mentioned in notification No. NGT/PB/RG/2020/6/170 dt. 28.02.2020 issued by the N.G.T. available at [www.ngt.nic.in](http://www.ngt.nic.in).

been laid down in this paper. A brief observation was made of the data made available by the Tribunal at its web-site to identify the research issues that were narrowed down to frame the research questions. Preliminary findings were read & understood in light of the relevant legal provisions to frame the hypotheses. Then, extensive data collection was done from websites of the Tribunal and the National Crime Record Bureau.

### **Research Issues**

in light of the preliminary data collection, following research issues were identified:

- Working strength of the Tribunal in light of the legal mandate laid down in the Act;
- Work efficiency (disposal / pendency) of the Tribunal in light of the legal mandate laid down in the Act;
- Work sufficiency (institution of application / appeal) at the Tribunal in light of the extent of environmental offences committed in India;
- Accessibility (distance-wise) of the Tribunal for any prospective applicant / appellant.

*Kindly note: during preliminary research, one of the researches framed was COVID & its impact on functioning of the Tribunal; accordingly, research questions were framed. But, during data collection it was found that few essential variables in respect of the said issue can't be identified due to non-availability of the same, hence, the said issue & the question, both, were dropped while writing this paper.*

### **Research Questions**

in light of the above stated Research Issues, following Research Questions were framed:

- i. Has the state executive always ensured that it complies with the legal mandate of the Tribunal having minimum strength of Judicial Members and the Expert Members?
- ii. Does the Tribunal succeed in complying with the legal mandate of disposing the matter within six months of their institution? If no, what are the reasons for the same?
- iii. Do the Tribunal receive sufficient no. of cases, application as well appeal, to settle the disputes that otherwise have arisen and recorded somewhere else in the justice delivery system? If no, what are the reasons behind that?
- iv. Has the state executive ensured that the Tribunal is accessible, distance-wise, for any prospective applicant/appellant?

### **Hypotheses**

in light of the above stated Research Questions, following hypotheses have been framed:

- i. The state executive has failed to ensure that the Tribunal is always full of minimum strength as mandated under the Act;
- ii. The Tribunal succeeds in complying with the legal mandate and dispose all the matters within six months of their institution;
- iii. The Tribunal does not receive majority of cases that otherwise were recorded by the justice delivery system somewhere else and could have been instituted before the Tribunal also;
- iv. The state executive has failed to ensure that the Tribunal is accessible, distance-wise, for any prospective applicant / appellant.

### **Research Methods**

Two-fold strategy was adopted for the purpose of data collection work. Sample population consists of data available on website of the Tribunal which contains data on following aspects:

- i. No. of Judicial Members & their tenure at the Tribunal - former & incumbent (November, 2010 - April, 2022)
- ii. No. of Expert Members & their tenure at the Tribunal - former & incumbent (November, 2010 - April, 2022)
- iii. No. of orders passed by the Tribunal and their 'nature' (final or interim) and the Nature of jurisdiction (original / appellate) exercised by the Tribunal in such orders (2017 - 2019, 04/2020-03/2021, & 04/2021 - 03/2022)
- iv. Orders passed by the Tribunal - No. of months in which final order was passed (2017 - 2019, 04/2020-03/2021, & 04/2021 - 03/2022)
- v. Case details - place where subject matter has arisen and the Bench before which case was instituted (2017 - 2019, 04/2020-03/2021, & 04/2021 - 03/2022)

**Kindly note:** where sampling technique was used in data collection work, segregation of data collection period was done year-wise except for the years 2021 & 2022. This was so done keeping one of the research issue in mind, i.e., COVID & its impact on functioning of the Tribunal. With the onset of lockdown imposed by the government due to spread of COVID, functioning of the Tribunal was firstly stopped and then re-started via on-line during intervening period of March - April, 2021, segregation of data collection was done accordingly during the said two years.

### **Sampling of the Population**

No sampling technique was used while collecting data for the above mentioned point no. (i) & (ii); cent percent of the sample population (no. of members at the Tribunal and their tenure) was covered

in data collection on the same. Similarly, cent percent of the sample population (no. of order passed by the Tribunal during last five years) was covered in data collection while exploring one of the subset of above mentioned point no. (iii). Sampling technique used in respect of point no. (iii), (iv), & (v) is explained herein below.

#### **Sample size & Sampling Technique-**

- Limited to max. 500 cases per Bench per year to explore ‘nature of jurisdiction exercised by the Tribunal’
- Limited to max. 100 cases per Bench per year to explore ‘accessibility of the Bench in light of the place where subject matter has occurred’

#### **Stratified Sampling:**

- Period of 05 years (2017, 2018, 2019, 04/2020 - 03/2021, & 04/2021 - 03/2022) was divided into 60 months with purpose of collecting details from 09/02 cases (09 cases where sample size was 500, 02 cases where sample size was 100)

#### **Random Sampling**

- Data was collected from each strata randomly; month-wise selection can be made at website of the Tribunal while collecting data and the same was done at the first step. The second step involves selecting the case/order randomly within each selected month.
- This way, two-step sampling technique was used in data collection process for the purpose of writing this research paper.

#### **Tabulation & Data Interpretation:**

- Data collected was presented in tables laid down in this paper and the same was interpreted with literal meaning firstly. Then, the same was read & observed in light of the research questions and the hypotheses to get answers of the same.

## **1. STRENGTH OF THE TRIBUNAL**

As per Sec. 4(1)(a) of the Act, there shall be one full time Chairperson; as per Sec. 4(1)(b) of the Act, there shall be not less than ten but subject to maximum twenty judicial members; as per Sec. 4(1)(c), there shall be not less than ten but subject to maximum twenty expert members. Mandate of the law is clear that there must be at-least ten judicial members and ten expert members at the N.G.T. at any given time.

In eleven years of its history, the Tribunal has had three chairpersons, viz., Hon'ble Mr. Justice Adarsh Kumar Goel (incumbent since 2018), Hon'ble Mr. Justice Swatanter Kumar (2012-18), and Hon'ble Mr. Justice Lokeshwar Singh Panta (2010-11). Till date, the Tribunal has had 21 judicial members out of which 06 judicial members are incumbent judicial members. And, the Tribunal has had 20 expert members out of which 06 expert members are incumbent. In light of above stated legal mandate and the facts laid down herein above, it is important to explore that does the Tribunal has history of functioning with its full strength or it is usual to find that the Tribunal is short of mandated strength.

The total no. of members at the Tribunal, including former and the incumbent, does not seem to be sufficient to presume that the Tribunal has always been working with its full strength; before drawing any concrete conclusion on the same, it is essential that tenure of the each member is counted. This paper has explored the said question while framing a method to find out the working strength of the tribunal at any given time. Since November, 2010, the first complete month post establishment of the tribunal, till April, 2022, there were 150 complete months which means the tribunal should have 1500 working months each per judicial member and the expert member. Kindly take notice of the following:

<b>Table I Total Working Months at the Tribunal (Judicial Members &amp; Expert Members)</b>	
<b>Duration</b>	<b>No. of Months</b>
November - December, 2010	02 Months
January, 2011 - December, 2021	144 Months
January, 2022 - April, 2022	04 Months
<b>Total</b>	<b>150 Months</b>
Working Month for 01 Judicial Member / Expert Mem	01 Working Month
Working Months for full strength of the N.G.T. per mo	10 Working Months
<b>Working Months for full strength of the N.G.T. fo period November, 2011 - April, 2022</b>	<ul style="list-style-type: none"> <li>• <b>1500 Working Months for Judicial Members</b></li> <li>• <b>1500 Working Months for Expert Members</b></li> </ul>

As per the information available at website of the tribunal, details of the judicial members (former as well as the incumbent as on May, 2022) and the expert members are following.

<b>Judicial Members at N.G.T. for Period November, 2011 - April, 2022</b>			
<b>Sl. N</b>	<b>Name of the Judicial Member</b>	<b>Tenure at N.G.T. (Month of Appointment - Month o Leaving the N.G.T.)</b>	<b>Working Mo at N.G.T.</b>
<b>Judicial Members (Incumbent) as on April, 2022</b>			
1	Hon'ble Mr. Justice K. Ramakrishnan	11/2018 - 10/2022	48

2	Hon'ble Mr. Justice S.K. Singh	03/2020 - 01/2024	46
3	Hon'ble Mr. Justice Sudhir Agarwal	04/2021 - 04/2025	48
4	Hon'ble Mr. Justice B.A. Sthalekar	04/2021 - 12/2025	57
5	Hon'ble Mr. Justice Arun Kumar Tyagi	03/2022 - 08/2026	53
6	Hon'ble Mr. Justice Dinesh Kumar Singh	04/2022 - 06/2026	51
7	Hon'ble Ms. Justice P. Sathyanarayana	03/2022 - 02/2027	60
<b>Former Judicial Members - As on April, 2022</b>			
8	Hon'ble. Mr. Justice A.S. Naidu	05/2011 - 01/2013	21
9	Hon'ble. Mr. Justice V. Ramulu	05/2011 - 09/2012	17
10	Hon'ble. Mr. Justice S.N. Hussain	07/2013 - 10/2014	16
11	Hon'ble. Mr. Justice B.S. Reddy	09/2013 - 10/2013	02
12	Hon'ble. Mr. Justice V.R. Kingaonkar	08/2012 - 01/2016	42
13	Hon'ble. Mr. Justice P.K. Ray	09/2014 - 06/2016	22
14	Hon'ble. Mr. Justice P. Jyothimani	12/2012 - 11/2017	60
15	Hon'ble. Mr. Justice Dalip Singh	07/2013 - 11/2017	53
16	Hon'ble. Mr. Justice M.S. Nambiar	10/2013 - 01/2018	52
17	Hon'ble. Mr. Justice U.D. Salvi	02/2013 - 01/2018	60
18	Hon'ble. Mr. Justice Jawad Rahim	02/2016 - 09/2019	44
19	Hon'ble. Mr. Justice R.S. Rathore	01/2016 - 07/2020	43
20	Hon'ble. Mr. Justice S.P. Wangdi	01/2016 - 10/2020	58
21	Hon'ble. Mr. Justice M. Sathyanarayanan	04/2021 - no detail	60 (Presumed Max.)
22	Hon'ble Mr. Justice Brijesh Sethi	04/2021 - 02/2022	11
<b>Total Working Months (Nov., 2010 - April, 2022)</b>			<b>924</b>

Table	<b>Expert Members at N.G.T. (Former &amp; Incumbent as on April, 2022)</b>		
Sl. N	Name of the Expert Member	Tenure at N.G.T. (Month of Appointment - Month of Leaving the N.G.T.)	Working Months at N.G.T.
<b>Expert Members (Incumbent) as on April, 2022</b>			
1	Mr. Saibal Dasgupta	11/2019 - no detail	60 (Presumed Max.)
2	Dr. A. K. Verma	04/2021 - no detail	60 (Presumed Max.)
3	Dr. Satyagopal	04/2021 - no detail	60 (Presumed Max.)
4	Dr. Vijay Kulkarni	No details	60 (Presumed Max.)
5	Dr. A. Senthil	01/2022 - no detail	60 (Presumed Max.)
6	Dr. Afroz Ahmad	01/2022 - no detail	60 (Presumed Max.)



<b>Former Expert Members at N.G.T. (November, 2010 - April, 2022)</b>			
7	Mr. Vijai Sharma	No details	<b>60</b> (Presumed Max.)
8	Dr. R. C. Trivedi	02/2013 - 12/2014	<b>23</b>
9	Dr. G. K. Pandey	05/2011 - 01/2015	<b>45</b>
10	Dr. D. K. Agarwal	05/2011 - 05/2016	<b>60</b>
11	Prof. (Dr.) R. Nagendran	05/2011 - 04/2016	<b>60</b>
12	Prof. A.R. Yousuf	11/2012 - 08/2016	<b>44</b>
13	Mr. Rajan Chatterjee	01/2013 - no detail	<b>60</b> (Presumed Max.)
14	Mr. P.S. Rao	11/2012 - no detail	<b>60</b> (Presumed Max.)
15	Prof. Dr. P.C. Mishra	11/2012 - no detail	<b>60</b> (Presumed Max.)
16	Dr. Ajay A. Deshpande	03/2013 - no detail	<b>60</b> (Presumed Max.)
17	Mr. B.S. Sajwan	01/2013 - no detail	<b>60</b> (Presumed Max.)
18	Dr. S.S. Garbayal	01/2016 - no detail	<b>60</b> (Presumed Max.)
19	Dr. Nagin Nanda	03/2017 - no detail	<b>60</b> (Presumed Max.)
20	Mr. Sidhanta Das	01/2020 - no detail	<b>60</b> (Presumed Max.)
<b>Total Working Months (Nov., 2010 - April, 2022)</b>			<b>1132</b>

As per Table I, since November, 2010 till April, 2022, the Tribunal. must had have 1500 Working Months each for Judicial Members and the Expert Members. As per Table II, the Tribunal had maximum 924 Working Months for Judicial Members which means it fell short of 576 Working Months. It may be concluded that the Tribunal has been working with only 2/3<sup>rd</sup> of its judicial officers' strength as total Working Months fall short of 38.4% of its mandated Working Months. Similarly, Table III shows that the Tribunal had maximum 1132 Working Months for Expert Members which means it falls short of 368 Working Months. It may be concluded that the Tribunal has been working with only 3/4<sup>th</sup> of its expert members' strength as total Working Months fall short of 24.5% of its mandated Working Months.

As per the information available at websites of the Supreme Court of India and all the High Courts of India, more than 100 judges get retire every year. As per Sec. 5<sup>5</sup> of the Act, any retired judge of the Supreme Court of India or of the High Court may be appointed as Judicial Member of the Tribunal.

<sup>5</sup> Sec 5. *Qualifications for appointment of Chairperson, Judicial Member and Expert Member.—*

*(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.*

It means the appointing authority always have sufficient no. of persons who are eligible to become Judicial Member at the Tribunal.

### **STATUS IN R/O FILING OF SUIT AND ITS DISPOSAL/PENDENCY AT THE TRIBUNAL**

The Act has a mandate that a civil dispute may be filed before the Tribunal in respect of any environmental offence. Victim or any representative of a victim is given the right under Ss. 14, 15, & 16 of the Act to file an application / appeal before the Tribunal. And, Sec. 15 (1)<sup>6</sup> of the Act, has empowered the Tribunal to pass an order of relief, compensation and restitution in case of pollution and other environmental damage that have arisen under either of the Acts, like, the Water Pollution Act, the Air Pollution Act, the Environment Protection Act, & other similar environmental enactments.<sup>7</sup>

In light of the said legal provisions, it becomes important to explore that how many environmental related offences having possibility of getting remedy under the Act are committed across India during any given year. For the said purpose, data released by the National Crime Records Bureau (NCRB) in its annual report, i.e., Crime in India along-with no. of applications filed before the Tribunal has been used in this paper. The following table presents the data on environmental offences during last 04 years.

<b>Table IV</b>		
<b>Environmental Offences Across India (As per Crime in India Report)<sup>8</sup></b>		
Sl. No.	Year	Offences (Reported)
1	2017	42143
2	2018	35196
3	2019	34676
4	2020	61767
5	2021	Yet to be released

The above Table IV shows that total 42143, 35196, 34676, & 61767 environmental offences were reported across India during the years 2017, 2018, 2019, & 2020. The latest report for the year 2021

<sup>6</sup>Sec. 15. Relief, compensation and restitution.—

(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);

<sup>7</sup> List of the statutes under Schedule I: 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; & The Biological Diversity Act, 2002.

<sup>8</sup> Tables 11.1 in Crime in India, 2019, and Crime in India, 2020, by N.C.R.B.; (available at [www.ncrb.nic.in](http://www.ncrb.nic.in))

is yet to be released by the NCRB. Though reporting of the environmental offences in the said Report includes environmental offences committed under the Noise Pollution Act, and the Cigarette & Other Tobacco Product Act that are not covered under the Act, still this data gives an idea that how many environmental offences are committed across India in respect of which the Tribunal may have jurisdiction to settle the dispute.

Data shared in Table IV is hereby compared with the data on total no. of applications filed before the Tribunal that will give us a fair idea on a question of fact, i.e., has the mechanism laid down under the Act ensured that the Tribunal deals & settles almost all the disputes that may have arisen out of any environmental offence. Following table shares the data on total no. of cases instituted and disposed at the Tribunal.

Table V	Total No. of Cases Instituted, Disposed, & Pending before the Tribunal					
	April, 2021 - March, 2022			October, 2010 - March, 2022		
Seat of the Bench	Instituted	Disposed	Cases Pendi	Instituted	Disposed	Cases Pendi
Principal Bench	1061	1050	655	--	--	--
Southern Zone Bench	527	545	509	--	--	--
Central Zone Bench	299	386	104	--	--	--
Western Zone Bench	336	355	691	--	--	--
Eastern Zone Bench	390	369	390	--	--	--
<b>Total</b>	<b>2613</b>	<b>2705</b>	<b>2349</b>	<b>37496</b>	<b>35147</b>	<b>2349</b>

As per the information available at website of the Tribunal, total 37496 cases have been filed before the Tribunal since its establishment till March, 2022; it further says that total 35147 (93.7%) cases have been disposed during the said period which means only 2349 (6.3%) cases are pending. It further shows that total no. of disposal (2705) during the period April, 2021 - March, 2022 outnumbers the total no. of cases instituted (2613).

When the data shared in Table V is read in light of the data shared in Table IV, it may be concluded that very less no. of disputes emanating from environmental offences reach to the Tribunal which means the Tribunal is yet to be challenged to settle the disputes in maximum possible numbers.

#### **NATURE OF JURISDICTION EXERCISABLE BY THE TRIBUNAL**

The Tribunal is empowered to exercise original as well as appellate jurisdiction. If a dispute falls under either of the statutes mentioned in Schedule I<sup>9</sup> of the Act, aggrieved person may file an

<sup>9</sup> List of the statutes under Schedule I: 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; & The Biological Diversity Act, 2002.

application before the Tribunal under Section 14 of the Act. Further, an appeal u/s 16 of the Act may be filed against a decision taken or order passed by competent authorities under either of the above cited statutes. The procedure for filing an application or appeal is laid down under Rule 08 of the National Green Tribunal (Practice and Procedure) Rules, 2011. The said Rule says that an application or appeal may be filed before the Registrar of the Tribunal. in Form I which is attached with the said Rules; application / appeal needs to be filed in Form II, if the applicant / appellent claims relief and / or compensation.

Besides the original and appellate jurisdiction, the Tribunal may exercise *suo-motu* power as well. The Hon'ble Supreme Court of India has empowered the Tribunal to exercise *suo-motu* power so as to deliver the complete justice. It was held by the Supreme Court in *Municipal Corporation of Mumbai v. Ankita Sinha & Ors.*<sup>10</sup> that:

*“The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament’s intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT’s fabric. The NGT must be seen as a not unusmultorum, sui generis institution and and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.”*

It was further held by the Supreme Court that:

*“In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord.”*

In view of above, it is interesting to explore the statistics on exercise of right bestowed upon victims of environmental offences under above mentioned provisions of the Act. As per Table VI, out of 2500 orders passed during the year 2017, 81.2% orders were passed by the Tribunal while exercising its original jurisdiction; the same figure during next four years (2018, 2019, 04/2020-03/2021, and 04/2021-03/2022) was 82.8%, 82.6%, 84.8%, & 85.8%. The said Table further shows that the same

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<sup>10</sup> Civil Appeals No. 12122-12123 of 2018; available at [www.sci.nic.in](http://www.sci.nic.in)

figure in respect to appellate jurisdiction as exercised by the Tribunal during the years 2017, 2018, 2019, 04/2020-03/2021, & 04/2021-03/2022 was 3.8%, 3.3%, 3.9%, 4.2%, and 3.4% respectively.

In light of the data shared herein above, it is concluded that the Tribunal exercises original jurisdiction in majority no. of cases, and very few appeal matters are settled by the Tribunal. As stated herein above in this paper, appeal can be filed against any order passed by the authorities, like, Central Pollution Control Board, established under the Acts having mention in Schedule I of the Act. Since, no data is available in respect of orders passed or decision taken by the authorities that fall under jurisdiction of the Act, it can't be explored if appeals in maximum in number are filed before the Tribunal or not. Still, the percentage of appeals at the Tribunal to total no. of cases dealt with by the Tribunal can be considered to conclude that appeal mechanism established under the Act remains under-utilized.

### **ACCESSIBILITY OF THE TRIBUNAL**

The Preamble to the Act<sup>11</sup> has a mention that one of the aims & the object of the Act is to make the redressal process more accessible to victims of environmental damage. Though the Act<sup>12</sup> has empowered the Central Government to establish as many Benches of the Tribunal, still total no. of Benches since establishment of the Tribunal has remained same.

Since the Tribunal is a forum that can exercise original jurisdiction, it should be more accessible, distance-wise, to any prospective applicant; but the fact is that each Bench covers around four-five states making it difficult for any prospective applicant having subject matter falling in state other than the state in which Bench has a seat. In light of this, it is interesting to explore that how many cases have been filed before the Tribunal having Bench in the state other than the state having seat of the Bench.

It is interesting to note that each five Benches cover the districts having distance of more than 700/800 km from their respective seats. The Principal Bench in Delhi covers the state of Uttar Pradesh having districts Varanasi, Mirzapur, Azamgarh, Ghazipur, Kushinagar, & Gorakhpur that are around 800 kms. away from Delhi. Similarly, the Central Zone Bench at Bhopal covers the districts of Alwar, Jhunjhunu, Sikar, & Churu that are around 700 kms away from Bhopal. Ironically, the

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<sup>11</sup>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;

<sup>12</sup> Sec. 4 (3) of the National Green Tribunal Act, 2010:

*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 of sitting.*

Principal Bench at Delhi is around 200 kms away from the said districts but it does not have territorial jurisdiction over the said districts.

It has further been found that the districts of Gondiya, Bhandara, Nagpur, Wardha, & Gadchiroli in Maharashtra are around 700 kms. away from the Bench at Pune that has territorial jurisdiction over the said districts. The districts of Srikakulam, Vijainagaram, Vishakhapatnam, East Godavari, West Godavari in Andhra Pradesh & Telangana are around 800/900 kms away from Chennai having seat of the Bench that exercises jurisdiction over the said districts. The Bench at

Table VI		Jurisdiction of Matter before the N.G.T.																			
Name of the Bench	01/2017 - 12/2017				01/2018 - 12/2018				01/2019 - 12/2019				04/2020 - 03/2021				04/2021 - 03/2022				
	Or.	Appl.	Ors.	T.	Or.	Appl.	Ors.	T.	Or.	Appl.	Ors.	T.	Or.	Appl.	Or.	T.	Or.	Appl.	Ors.	T.	
PB	405	17	78	500	420	14	66	500	395	19	86	500	415	21	64	500	435	15	50	500	
SZ	395	15	90	500	415	16	69	500	405	18	77	500	425	22	53	500	445	17	38	500	
CZ	405	19	76	500	410	13	77	500	420	21	59	500	425	20	55	500	410	14	76	500	
WZ	430	21	49	500	420	20	60	500	430	22	48	500	425	19	56	500	435	19	46	500	
EZ	396	23	81	500	405	19	76	500	415	17	68	500	430	23	47	500	420	21	59	500	
Total	203	95	374	250	207	82	348	250	206	97	338	250	212	10	27	250	214	86	269	250	
	81.2%	3.8%	14.9%	100%	82.8%	3.3%	13.9%	100%	82.6%	3.9%	14.3%	100%	84.8%	4.2%	1.1%	100%	85.8%	3.4%	1.07%	100%	

- Or. = Original, Appl. = Appeal, Ors. = Other matters, like, Execution Application, Review, etc.. T = Total
- Name of the Bench: PB = Principal Bench, SZ = Southern Zone Bench, CZ = Central Zone Bench, WZ = Western Zone Bench, & EZ = Eastern Zone Bench

Table VI		Territorial Jurisdiction of the Dispute before the NGT															
Name of the Bench	01/2017 - 12/2017			01/2018 - 12/2018			01/2019 - 12/2019			04/2020 - 03/2021			04/2021 - 03/2022				
	State where Bench Seated	Beyond State where Bench is Seated	Total	State where Bench Seated	Beyond State where Bench is Seated	Total	State where Bench Seated	Beyond State where Bench is Seated	Total	State where Bench Seated	Beyond State where Bench is Seated	Total	State where Bench Seated	Beyond State where Bench is Seated	Total		
PB	26	74	100	35	65	100	29	71	100	33	67	100	30	70	100		
SZ	38	62	100	41	59	100	36	64	100	32	68	100	28	72	100		
CZ	54	46	100	58	42	100	55	45	100	49	51	100	44	56	100		
WZ	29	71	100	23	77	100	32	68	100	38	62	100	37	63	100		
EZ	19	81	100	22	78	100	16	84	100	18	82	100	16	84	100		
Total	166	334	500	179	321	500	168	332	500	170	330	500	155	345	500		
	33.2%	66.8%	100%	35.8%	64.2%	100%	33.6%	66.4%	100%	34%	66%	100%	31%	69%	100%		

Table VI		Nature of Orders (Final Judgment or Interim Order)																		
	01/2017 - 12/2017				01/2018 - 12/2018				01/2019 - 12/2019				04/2020 - 03/2021				04/2021 - 03/2022			
	F.O.		I.O.		F.O.		I.O.		F.O.		I.O.		F.O.		I.O.		F.O.		I.O.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%

PB	12995	83.2	262	156	877	81.6	198	1075	56	86.5	87	649	269	90.2	29	298	219	76.8	66	285
SZ	3170	82.6	66	383	133	69.6	59	194	36	84.7	63	42	284	79.8	72	356	474	68.9	214	688
CZ	2247	82.6	38	263	368	80.3	90	458	63	83.7	20	83	63	78.8	17	80	124	65.9	64	189
WZ	2306	74.3	79	310	602	68.5	27	878	29	79.7	76	37	76	78.1	21	98	810	68.9	36	117
EZ	1165	68.7	53	169	246	80.6	59	303	45	81.7	10	55	60	77.6	17	78	105	66.9	52	158
<b>Total</b>	<b>21883</b>	<b>81.3</b>	<b>500</b>	<b>2685</b>	<b>1012</b>	<b>80.4</b>	<b>240</b>	<b>1255</b>	<b>730</b>	<b>84.7</b>	<b>132</b>	<b>868</b>	<b>754</b>	<b>82.7</b>	<b>152</b>	<b>911</b>	<b>1005</b>	<b>69.8</b>	<b>433</b>	<b>1439</b>

- F.O. = Final Order, I.O. = Interim Order, T = Total

Table IX		Time (Month-wise) Taken by the Tribunal in Disposal of the Cases																						
		2017				2018				2019				2020				2021						
		Disposed Case				Disposed Cases				Disposed Cases				Disposed Cases				Disposed Cases				Pending Cases		
	Withi mon	7 <sup>th</sup> - mon	Abov mon	To	Withi mon	7 <sup>th</sup> - mon	Abov mon	To	Withi mon	7 <sup>th</sup> - mon	Abov mon	To	Withi mon	7 <sup>th</sup> - mon	Abov mon	To	Withi mon	7 <sup>th</sup> - mon	Abov mon	To	Withi mon	7 <sup>th</sup> - mon	Abov mon	To
F	40	49	11	10	39	47	14	10	35	51	14	10	23	56	21	10	24	30	18	7	14	04	08	2
S	39	52	9	10	38	5	11	10	38	49	13	10	29	54	17	10	30	36	16	8	09	04	03	1
C	38	50	12	10	37	56	12	10	37	54	14	10	23	59	18	10	29	36	14	7	10	04	07	2
V	45	47	8	10	40	49	11	10	39	48	13	10	31	54	15	10	27	33	17	7	11	03	07	2
E	38	51	11	10	35	52	13	10	36	54	12	10	27	59	19	10	24	29	19	7	16	04	06	2
	<b>20</b>	<b>24</b>	<b>5</b>	<b>5</b>	<b>18</b>	<b>25</b>	<b>6</b>	<b>5</b>	<b>18</b>	<b>25</b>	<b>6</b>	<b>5</b>	<b>12</b>	<b>28</b>	<b>9</b>	<b>5</b>	<b>13</b>	<b>16</b>	<b>8</b>	<b>3</b>	<b>6</b>	<b>23</b>	<b>3</b>	<b>1</b>
	<b>40</b>	<b>50</b>	<b>10</b>	<b>5</b>	<b>37</b>	<b>51</b>	<b>12</b>	<b>5</b>	<b>36</b>	<b>51</b>	<b>13</b>	<b>5</b>	<b>26</b>	<b>56</b>	<b>18</b>	<b>5</b>	<b>35</b>	<b>43</b>	<b>22</b>	<b>3</b>	<b>51</b>	<b>21</b>	<b>28</b>	<b>1</b>



Chennai covers the states of Karnataka and Kerala that have districts, viz., Bidar, Gulbarga, Bizapur, Yadgir, & Bagalkot in Karnataka and Kasarkod, Wayanad, & Kozhikode in Kerala, around 800 kms. away from Chennai.

The Table VII shows that during the year 2017, around 66.8% of the cases filed before the Tribunal across five Benches were having subject matter beyond the state in which the Bench had its seat. This figure is found 64.2%, 66.4%, 66%, and 69% during the years 2018, 2019, 04/2020 - 03/2021, & 04/2021 - 03/2022.

It is observed that a big no. of cases, though not majority in numbers, filed before the Tribunal are from the state having seat of the Bench. The data shows that around 1/3<sup>rd</sup> cases filed before each Bench of the Tribunal are from one state, i.e., state having seat of the Bench, and rest of the 2/3<sup>rd</sup> of total number of cases instituted at the Tribunal are from states other the state having seat of the Bench that numbers up-to 4/6 states. The information shared herein above shows that how many a districts falling under jurisdiction of one or the other Bench are at a distance of around 600-800 kms that could be a major factor for having less no. of cases being instituted from states other than the state having Bench of the Tribunal.

It is also observed that, during the period 04/2021 - 03/2022 when the Tribunal was having on-line proceeding system, no. of cases from states other than the state having seat of the Bench has increased; there was similar increase during the period 04/2020 - 03/2021 also but it was very marginal. As a matter of fact, it is stated here that the Tribunal had started its proceedings via ON-LINE mode from April, 2020 due to COVID related lockdown that was imposed by the government. As of now in April, 2020, though there is no restriction being imposed by the government in respect of COVID, still the Tribunal has continued with conducting ONLINE proceedings as it runs optional HYBRID proceedings. This decision of the Tribunal has made itself more accessible for any prospective applicant/appellant.

In light of above made both the observations, it is concluded that distance of the subject matter from the place where Bench of the Tribunal is situated matters a lot. It is concluded that breaking down the barrier of distance will increase possibility of more no. of victims approaching the Tribunal as it makes the system more accessible to any prospective applicant.

#### **NATURE OF ORDER: FINAL ORDER OR INTERIM ORDER?**

Here, 'nature of order' is meant as if the daily order passed by the Tribunal is final or interim. Any information on the same will be used to draw a conclusion on disposal rate at the Tribunal. It is

presumed that higher rate of final order in respect of daily orders passed by the Tribunal leads to higher disposal rate. The Table VIII shows that the Tribunal, including all five Benches, had passed total 26980, 12593, 8689, 9114, & 14393 during the years 2017, 2018, 2019, 04/2020 - 03/2021, & 04/2022 - 03/2021. It further shows that out of said orders, 81.3%, 80.4%, 84.7%, 82.7%, and 69.8% of total orders were final orders during said years respectively.

In light of the data shared herein above it is concluded that disposal rate at the Tribunal is high as around 4/5<sup>th</sup> of daily orders passed are found to be final judgment of the Tribunal. It is surprising to take notice that number of total orders passed in the years 2019 & 2020 were quite low in comparison to total no. of orders passed by the Tribunal. Though reason behind slow rate of total disposal rate during the years 2019 & 2020 is not explored, still COVID may be considered the reason for the year 2020. With the things related to the COVID started settling down, judicial forums started functioning with full strength, there has been increase in the said numbers during the year 2021.

#### **TIME TAKEN IN THE DISPOSAL**

As per the mandate laid down in the Act, the Tribunal is expected to settle the disputes and deliver its orders within six months of institution of the matter.<sup>13</sup> In light of this legal mandate, it is interesting to explore that does the Tribunal succeed in complying with the said mandate and settle the disputes, including delivering the final verdict, within six months or not.

The Table IX shows that, out of 500 cases that were disposed by the Tribunal during the year 2017, only 40% cases were found to have been disposed within 06 months of institution of the said cases; and 10% of the said cases were found to have been disposed beyond 12 months from the date of their institution at the Tribunal. It further shows that, out of 500 cases that were disposed during the years 2018, 2019, & 04/2020 - 03/2021, only 37%, 36%, & 26% of the said disposed cases were found to have been disposed with 06 months of institution of the said cases during respective years; and, 12%, 13%, & 18% of the said disposed cases were found to have been disposed beyond 12 months from the date of their institution at the Tribunal.

Data for the year 04/2021 - 03/2022 shows that, out of 382 disposed cases, only 35% cases were found to have been disposed within 06 months from the date of their institution, and 22% cases were

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<sup>13</sup> Sec. 18 (3) of the National Green Tribunal Act, 2010:

*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.*

found to have been disposed beyond 12 months from the date of their institution. It further shows that out of 118 pending cases, 51% cases were found to have been pending for less than 06 months and 28% cases were found to have been pending for more than 12 months from the date of their institution at the Tribunal.

It means, till the year 2020, only 1/3<sup>rd</sup> of the total disposed cases are disposed within six months of their institution and rest of the 2/3<sup>rd</sup> of the total disposed cases are disposed beyond six month which includes 1/10<sup>th</sup> of said cases that are disposed beyond one year. It is further observed that post-covid no. of cases disposed beyond one year has increased from 1/10<sup>th</sup> to 3/10<sup>th</sup> though maintaining the rate of disposal of cases within legal mandate of six month. The reason for this increased no. of cases in the third group, i.e., disposal of case beyond one year, is affect of the COVID on judicial process.

In light of the data shared herein above it is concluded that the Tribunal has failed to comply with the legal mandate to dispose the matter within six months of its institution as 2/3<sup>rd</sup> of disposed matters get disposed beyond legal mandate of six months. When this finding is read in light of the finding laid down in this paper on 'strength of the members at the Tribunal' it is concluded that reason behind this failure of the Tribunal is failure of the state executive, i.e., Central Government, in ensuring that the Tribunal is never short of minimum strength as mandated by the Act.

### **CONCLUSION**

This paper concludes with the observation that executive policy & practices in India to ensure compliance of its commitment towards the SDGs as well as the legal mandate laid down in the National Green Tribunal Act, 2010 has failed to a great extent. The National Green Tribunal has always been found with only 2/3<sup>rd</sup> of required strength of judicial members and 1/4<sup>th</sup> of required strength of expert members which leads to slowing down the process of justice delivery system. One of the impact of this failure is that the Tribunal fails to comply with legal mandate of disposing the matters within six months of their institution in more than 1/3<sup>rd</sup> of cases handled by it.

Further, there is a failure on part of the executive by not establishing more than five seats of the Tribunal. Since the Tribunal is a forum of original jurisdiction which means it should be accessible, distance-wise, for all the prospective applicants/appellants. Since, all the five Benches cover radius of 600 kms - 900 kms, it is not reasonable expectation from the victim of an environmental damage to cover such a long distance to seek remedy from the Bench. One of the implication of this failure is that the Tribunal receives far less than applications/appellants that otherwise it could have received.

It leads to failure of the executive policy in complying with the commitment given to the United Nations while signing the SDGs.

As stated in this paper, there is no dearth of judges and the experts who are eligible to be appointed as judicial member or the expert member; it is a matter of swift action on part of the appointing authority to appoint members at the Tribunal. Greater strength of the Tribunal will automatically lead to speedy disposal of cases and the Tribunal will be able to comply with the legal mandate of disposing the matters within six months. As stated in this paper that percentage of cases from states other than the state having seat of the Bench has increased when the filing as well as the proceeding mechanism is made more accessible, this paper concludes with the suggestion that seat of the Tribunal is established at district level to make the environmental justice dispensation system most accessible to the victims of an environmental damage.