

# ACCESSING ENVIRONMENTAL JUSTICE THROUGH THE LENS OF THE NATIONAL GREEN TRIBUNAL IN INDIA

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*[Abstract: The concepts of environmental justice and equity focus on the noteworthy effects of environmental degradation. The extension of locus standi in public interest litigation by the judiciary was intended to rectify the power imbalances in the pursuit of social justice, encompassing environmental issues. The formation of the National Green Tribunal (NGT) was with the aim of intertwining human rights and environmental matters, granting it the jurisdiction to devise innovative approaches for environmental preservation. The primary objective of the NGT is to safeguard the environment, a mandate that resonates with the constitutionally protected entitlement to a healthy environment as an aspect of the right to life. In light of current legislative frameworks, this article investigates the function of National Green Tribunals (NGTs) in promoting environmental justice. The NGTs, which were created as specialist courts in a number of nations, have become important organizations for resolving environmental disputes and advancing sustainable development. This research investigates the ways in which NGTs interpret and implement environmental legislation in order to guarantee impacted populations justice. The tribunal's jurisdictional reach, procedural efficacy, and the influence of its rulings on environmental governance are among its principal themes. The research also assesses the potential and difficulties of using NGTs as tools to accomplish more general environmental justice objectives, highlighting the significance of institutional architecture and public involvement in forming efficient environmental adjudication.]*

**Keywords:** *Environmental Justice, Right to Health, National Green Tribunal, Indian Environmental Governance.*

## I

### **Introduction**

Environmental law has been paramount in ensuring global environmental justice. Environment as a concept found place in Kautilya's *Arthashastra* and one can derive the emergence of environmental jurisprudence in it. The rulers were bound to maintain and protect forests and its produce. Besides, individuals were also under duty to protect nature. Hence trees, animals, trees, water, air and land were treated as a divine power. *Rigveda* treats earth, water, air, fire and ether as five basic elements and foundation of all living creatures in the world. The *yajnas* performed by ancient men can be believed to be the biological revolution to protect the environment. These were performed to purify the environment and to bring prosperity in every walk of

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life. A close scrutiny of environmental jurisprudence in India depicts preservation, respect and love for the environment which can be traced back to Indus Valley Civilization.<sup>1</sup> Perhaps Manusmriti prescribed different punishments for causing injury to plants.<sup>2</sup> A pollution-free environment was a fundamental requirement for individuals. Consequently some measures were implemented not solely for the purpose of penalizing wrongdoers but also to restore equilibrium to the ecosystem. Within this endeavor, the historical manuscripts served as a unifying element bridging the entitlement to harness the environment and the obligation to preserve it. This principle is now universally acknowledged as the concept of 'Sustainable Development'.<sup>3</sup>

With the development of the society the concept of environmental justice also came out as a new version of justice linked with previous versions of justice. Environmental justice is a concept which includes theories of environment and justice, environmental laws and their implementations. It has become part of social justice.

The international community, operating under the umbrella of the United Nations Organization, has sanctioned numerous resolutions, conventions, and directives aimed at prompting member nations to promptly implement measures to safeguard and uphold environmental standards. The historical roots of environmental justice can be discerned through pivotal events like the Trail Smelter Arbitration of 1941, occurrences in Warren County, North Carolina, nuclear testing at Maralinga, early uranium mining, Australia<sup>21</sup>, saltwater intrusion into Dutch agricultural lands from potassium mines in Alsace, France, and various other noteworthy incidents. These environmental struggles expressed within a social justice and civil rights framework helped to create a pathway towards environmental justice.

The Stockholm Conference in 1972, often referred to as the Magna Carta of environmental protection, signified the culmination of prior endeavors leading up to the conference, aimed at officially incorporating environmental protection issues into the international policy and legal framework. This event marked the primary international initiative to address environmental protection challenges and enhance environmental conditions through global cooperation and agreements. Additionally, the Earth Summit in Rio de Janeiro in 1992, the International Conference on 'Sustainable Development' in 2002, and similar gatherings have endeavored to promote environmental safety by combating pollution.

The rapid progress of technology and industrialization has contributed significantly to environmental deterioration, with environmental pollution now posing a severe

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<sup>1</sup> P.B. Sahasranaman, HANDBOOK OF ENVIRONMENTAL LAW (2012) 1.

<sup>2</sup> Satish C. Shastri, ENVIRONMENTAL LAW (2012) 21.

<sup>3</sup> Justice Madan B. Lokur, *Environmental Law: Its Development and Jurisprudence*, II NGTIJE 5 (2014).

threat on a global scale. In India, the concept of environmental justice found its roots in ancient times. The population has demonstrated a profound consciousness regarding the conservation of the natural surroundings. The emergence of environmental justice in contemporary times garnered widespread recognition following the events of 1972. The 42nd Amendment to the Indian Constitution is remarkable in this regard which adds Article 48 A and 51 A (g) for the protection of the environment.

The environmental justice movement experienced a substantial surge in the United States throughout the 1980s. During 1982, inhabitants of Warren County, located in North Carolina and mostly of African American descent, demonstrated against the establishment of a PCB landfill within their locality. This occurrence is frequently referenced as a crucial juncture in the environmental justice movement. Subsequently, in 1991, the First National People of Colour Environmental Leadership Summit convened, bringing together leaders from diverse communities to confront environmental inequities, resulting in the formulation of the "Principles of Environmental Justice," which delineate the entitlements of communities and steer the movement.

## II

### **Indian Historical Instances towards Protection of Environment**

In India, the concept of environmental justice found its roots in ancient times. The population has demonstrated a profound consciousness regarding the conservation of the natural surroundings. The emergence of environmental justice in contemporary times garnered widespread recognition following the events of 1972. The 42nd Amendment to the Indian Constitution is remarkable in this regard which adds Article 48 A and 51 A (g) for the protection of the environment. Indian notion of environmental justice has garnered attention as a noteworthy social movement and policy priority in recent years. This notion aims to confront the unequal distribution of environmental challenges experienced by disadvantaged groups, especially in cases related to pollution, exploitation of resources, and deterioration of the environment. Throughout history, Indian societies coexisted harmoniously with the natural world, following traditional customs and knowledge systems.<sup>4</sup> Nevertheless, the intrusion of colonial powers resulted in the disturbance of these practices, causing widespread deforestation, exploitation of resources, and displacement of indigenous populations. Subsequent to gaining independence in 1947, India pursued a route of accelerated industrial growth and advancement, often to the detriment of the environment and local inhabitants. Large-scale projects like dams, mines, and industrial facilities brought about significant ecological and social upheavals.

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<sup>4</sup> P.B. Sahasranaman, HANDBOOK OF ENVIRONMENTAL LAW (2012) 27.

Environmental movement in India dates back to the Chipko movement of 1973, where residents of the Himalayan region embraced trees to impede their felling. This grassroots initiative underscored the intrinsic link between environmental preservation and the entitlements of nearby communities. Then the Bhopal Gas Tragedy in 1984 highlighted the significant gas leakage that occurred at a pesticide facility, drawing global scrutiny to the impact of industrial pollution and its severe consequences on nearby communities. This incident emphasized the necessity for rigorous environmental policies and responsible practices within corporations. The Narmada Bachao Andolan (NBA) of 1985 was a social movement led by activists such as Medha Patkar, which opposed the building of extensive dams on the Narmada River. These dams led to the displacement of numerous individuals and inflicted ecological damage. The NBA underscored the importance of the rights of displaced populations and the necessity for sustainable development.

The initiation of the national planning in India dates back to 1951, marked by the inception of the first five-year plan. This plan outlined strategies for advancing agriculture and industrialization, while also emphasizing environmental concerns such as sanitation, public health, nutrition, water supply, and housing. An important development in this realm was the introduction of the national tree planting festival known as 'Van Mahotsav' in 1950, aimed at enhancing public awareness regarding the significance of forests for human well-being.<sup>5</sup> Despite the Planning Commission's significant role in environmental preservation and human health protection against pollution, the landscape of environmental justice in India witnessed a notable shift starting from 1972. The Stockholm Declaration of 1972, in particular, led to various constitutional amendments. The 42nd amendment, incorporated environmental protection as a constitutional requirement. With the introduction of Article 48A and 51A (g) in Part IV and Part IV-A of the Constitution, efforts were made for the preservation and safeguarding of the environment. Article 48 A mandates that the State strive to protect and enhance the environment, as well as conserve the wildlife and forests within the nation. Part IV-A dictates that every individual has a fundamental duty to exert their best endeavors towards environmental conservation. Article 51 A (g) in this section places a similar obligation on citizens to protect and enhance the natural environment, encompassing lakes, forests, rivers, wildlife, and to exhibit compassion towards all living beings.<sup>6</sup>

The judiciary has raised the status of environmental protection to that of a fundamental right by incorporating it into Article 21, specifically the right to Life and Personal Liberty. The Supreme Court has provided a more extensive and profound interpretation, and in numerous instances, has stated that the "Right to a wholesome

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<sup>5</sup> Kailash Thakur, ENVIRONMENTAL PROTECTION LAW AND POLICY IN INDIA (1999) 114.

<sup>6</sup> The Constitution of India, 1950, Art. 141.

Environment is a Fundamental right." The Court has recognized various inherent freedoms that are suggested in Article 21 of the Constitution.<sup>7</sup>

### III

#### **Indian Legislative Mechanism and Environmental Justice**

India's legal framework concerning environmental justice is a robust system that encompasses constitutional provisions, statutory laws, and judicial decisions aimed at ensuring environmental protection and sustainability. The Constitution, through Articles 21, 48A, and 51A(g), establishes the entitlement to a sound environment. The Constitution also provides for express provisions for the protection of right under Article 32 and 226. Significant legislations comprise the Environmental (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Forest (Conservation) Act, 1980, and the Wildlife Protection Act, 1972. The establishment of the National Green Tribunal (NGT) through the National Green Tribunal Act, 2010, facilitates the prompt resolution of environmental disputes. The Indian judiciary has been proactive by permitting Public Interest Litigations (PILs) to tackle environmental concerns, as evidenced by landmark cases such as *M.C. Mehta vs. Union of India*<sup>8</sup> and *Vellore Citizens Welfare Forum vs. Union of India*<sup>9</sup>, which have set significant precedents. The formulation of policies like the National Environment Policy, 2006, and the presence of institutions such as the Central and State Pollution Control Boards are pivotal in the monitoring and regulation of pollution. At the international level, India demonstrates commitment to agreements like the UNFCCC and the Convention on Biological Diversity. However, challenges persist, including deficiencies in enforcement, limited public awareness, resource constraints, and the need to balance industrial development with environmental sustainability.

In addition to civil remedies, individuals may opt for criminal remedies, typically of a punitive nature, where penalties are enforced. Chapter XIV of the Indian Penal Code addresses offenses that impact public health, safety, convenience, and morals, spanning from Section 268 to 294A. Sections 269 to 271 specifically focus on negligent acts that may lead to the spread of disease, posing a threat to life. Provisions under sections 272 to 276 of the Code deal with the adulteration of food, beverages, and medications, while Section 277 can be utilized to prevent water pollution under certain circumstances. This particular provision stipulates that polluting water sources like public springs, wells, or pools, rendering them unsuitable for their intended purpose, is punishable.<sup>10</sup>

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<sup>7</sup> P.B. Sahasranaman, HANDBOOK OF ENVIRONMENTAL LAW (2012) 41.

<sup>8</sup> 1994 (3) SCC 717.

<sup>9</sup> (1996) 5 scc 647.

<sup>10</sup> Sukanta K Nanda, ENVIRONMENTAL LAW (2013) 67.

The Code of Criminal Procedure, 1973 contains significant clauses related to the preservation of public order and tranquility. Section 133 of this Act serves as an effective measure to mitigate public nuisances. It grants authority to the District Magistrate to issue interim orders for the elimination of public nuisances. Instances covered by this provision include unlawful nuisances, obstructions on pathways, rivers, or channels used by the public, activities in public places, construction projects, or the handling of substances that may cause explosions or fires. It also addresses trades, occupations, or the possession of goods that pose risks to public health or community comfort.<sup>11</sup>

## IV

### **Environmental Justice and National Green Tribunal**

Access to justice is crucial in enhancing government accountability as it allows the public to seek redress for environmental harm. The utilization of environmental justice serves as an effective tool in ensuring governmental responsibility and the enforcement of environmental laws. Traditional court systems for environmental justice were often costly, time-consuming, and inefficient due to the intricate nature of environmental legislation and scientific concepts. Consequently, there has been a recognized necessity, both nationally and internationally, for alternative forums to resolve environmental disputes. Lord Wolf in the United Kingdom emphasized the requirement for a comprehensive and proficient entity that could offer services currently dispersed across courts, tribunals, and inspectors in the environmental sector.<sup>12</sup> This proposed entity, functioning as a centralized hub, aims to expedite, reduce costs, and enhance the effectiveness of resolving environmental conflicts. Similarly, Sir Robert Carnwath, a Judge of the High Court Chancery Division, advocated for the establishment of a specialized body dedicated to environmental matters. In India, the concept of an environmental court was initially proposed by former Justice P.N. Bhagawati during the Oleum Gas Leak case<sup>13</sup>. The court highlighted the complexity of cases involving environmental pollution, ecological degradation, and disputes over natural resources, emphasizing the critical role of scientific expertise in the administration of justice. To address the intricate techno-scientific aspects of environmental litigation, the National Green Tribunal Act of 2010 was enacted.

In the realm of environmental jurisprudence, the environmental tribunals were established by the Indian Parliament pursuant to the National Environment Tribunal Act, 1995, and the National Environment Appellate Authority Act, 1997, aiming to

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<sup>11</sup> *Municipal Council, Ratlam v. Vardhichand*, AIR 1980 SC 1622 (India).

<sup>12</sup> Vinod Shanker Mishra, *National Green Tribunal: Alternative Environment Dispute Resolution Mechanism*, 52(4) JILI 525 (2010).

<sup>13</sup> *M.C.Mehta v. Union of India*, AIR 1987 SC 965 (India).

fulfill the commitments made at the Stockholm Conference in 1972 and the Rio Declaration in 1992. Regrettably, these efforts merely remained symbolic on paper and did not have a tangible impact on the environmental landscape in India.<sup>14</sup> To ensure Environmental Justice, the NGT Act necessitates the establishment of a National Green Tribunal, primarily to monitor industrial pollution and provide a platform for aggrieved individuals to seek legal redress for the non-implementation of environmental regulations. In common parlance, a court denotes a legal body established by state legislation overseen by a judge serving a specific term, whereas a tribunal encompasses both judicial entities and administrative hearing boards.

The National Green Tribunal was constituted under the National Green Tribunal Act, 2010, serving as an alternative forum to expedite and cost-effectively administer environmental justice. This specialized body possesses essential knowledge and skills to address disputes concerning the environment encompassing various interdisciplinary aspects. The concept of environmental courts was initially broached in pivotal judgments of the Supreme Court of India, advocating the establishment of "environment courts" for the swift resolution of environmental disputes.

Although the "National Environment Tribunal Act, 1995," and the "National Environment Appellate Authority Act, 1997," were legislated by the Indian Parliament, both statutes failed to gain traction and prompted calls for more effective legislation to handle environmental cases. Consequently, the National Green Tribunal Act, 2010 was enacted by the Indian Parliament to address all environmental-related disputes. The introduction of the National Green Tribunal Bill in 2009 aimed to establish a specialized tribunal devoted to the expeditious resolution of environmental protection and conservation cases.<sup>15</sup>

The establishment of the National Green Tribunal on October 18, 2010, marked a new chapter in India's endeavor to strike a balance between developmental pursuits and environmental preservation. This legislative initiative by the Indian Government propels the nation towards the ideals of Sustainable Development. The National Green Tribunal stands as a critical stride by the Indian authorities to combat industrial pollution and provide a legal recourse for those affected by environmental law violations. India has now joined the ranks of the few countries worldwide to have dedicated courts for environmental matters.<sup>16</sup> The Act comprises 38 sections organized into five chapters and three schedules.<sup>17</sup> The tribunal has four zonal benches including the one known as the principal bench.

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<sup>14</sup> Sudha Shrotria, *Environmental Justice: Is the National Green Tribunal of India Effective* ELR (2019) 172 available at <http://www.elj.sagepub.com> (Last visited on 22nd April 2022)

<sup>15</sup> Satish C. Shastri. ENVIRONMENT LAW ( 2012) 170.

<sup>16</sup> Sudha Shrotria, *Environmental Justice: Is the National Green Tribunal of India Effective* ELR (2019) 172 available at <http://www.elj.sagepub.com> (Last visited on 22nd April 2022).

<sup>17</sup> The National Green Tribunal, Act, 2010

<b>Zone</b>	<b>Place of Sitting</b>	<b>Territorial Jurisdiction</b>
North	Delhi (Principal Bench)	Uttar Pradesh, Uttarakhand, Punjab, Haryana, Himachal Pradesh, Jammu and Kashmir, NCT Delhi, UT of Chandigarh
West	Pune	Maharashtra, Gujrat, Goa, UT of Daman and Diu, dadra and Nagar Haveli
Central	Bhopal	Madhya Pradesh, Rajasthan, Chattisgarh
South	Chennai	Kerala, tamil Nadu, Andhra Pradesh, Karnataka, UT of Pudduchery and Lakshadweep
East	Kolkata	West Bengal, Odisha, Bihar, Jahrkhand, Seven sister states of North-Eastern region and Sikkim. Andman and Nicobar Islands

The introduction of the National Green Tribunal Act, 2010 elucidates the essentiality, extent, and purpose of establishing the tribunal. It is aimed at facilitating the efficient and prompt resolution of cases concerning environmental safeguarding and preservation of forests and other natural resources.<sup>18</sup> Moreover, it serves as an embodiment of both Indian Constitutional entitlements and International Agreements (International Environmental Law). These objectives have been partially realized through specific provisions in the structure and operation of the tribunal. The tribunal comprises proficient members tasked with addressing scientific queries and concerns. The procedures are streamlined and cost-efficient, rendering it more accessible in contrast to the formalities of regular courts.

The tribunal offers the advantage of feasible dispute resolution and expeditious delivery of justice. In contrast to other tribunals, the National Green Tribunal garners public trust. The core essence of the Green Court concept lies in the prompt

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<sup>18</sup> National Green Tribunal Act, 2010, Preamble.



dispensation of justice. When juxtaposed with conventional courts, the National Green Tribunal demonstrates an elevated rate of case resolutions. The introduction of an e-filing system by the NGT, although not widely embraced, is progressively evolving. All its initiatives are geared towards extending outreach to the general populace.<sup>19</sup>

## V

### **Jurisdiction, Power and Procedure of NGT**

The tribunal exercises original jurisdiction on matters concerning substantial questions related to the environment, particularly focusing on the impact on the affected community, public well-being, health, and negative consequences of various activities. The explanation provided is intentionally concise to allow the tribunal to address emerging and intricate environmental issues. Access to the tribunal is limited to personal grievances, and the tribunal may only hear individuals if significant environmental damage is involved. The tribunal possesses the authority to issue awards comparable to civil court orders and may transfer orders to a civil court with local jurisdiction if deemed necessary. Despite similarities in power with civil courts, the tribunal operates based on principles of natural justice rather than civil law. However one of the issues as regards jurisdiction of the tribunal is that the legislators have restricted the competency of the tribunal to decide matters relating to seven acts and they are:

1. The Water (Prevention and Control of Pollution) Act, 1974;
2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1986;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002.<sup>20</sup>

One challenge regarding the tribunal's jurisdiction is the legislative limitation to matters under seven specific acts, including those related to pollution control, forest conservation, and environmental protection. Notably, the tribunal also holds appellate jurisdiction over these acts, with decisions made by the majority of tribunal members being deemed final and binding. An individual disagrees with the tribunal's ruling, an appeal can be made to the Supreme Court within 90 days. Furthermore, the High Court retains jurisdiction to hear appeals against tribunal decisions, as clarified in Section 29 of the NGT Act 2010, which upholds the high court's authority under Article 226/227 despite limitations on civil court jurisdiction.

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<sup>19</sup> National Green Tribunal Act, 2010, Ss. 4 and 5,

<sup>20</sup> The National Green Tribunal, Act, 2010, Schedule I.

This interpretation was established by a division bench of the Madras High Court led by Justice N Paul Vasanthakumar and Justice P Devadass.

*Vikrant Kumar Tongad v. Environment Pollution Authority & Others*,<sup>21</sup> case pertains to the burning of agricultural residue in certain Northern Indian States. In its ruling, the court prohibited the burning of agricultural residue nationwide, specifically in Haryana, Delhi, Punjab, Rajasthan, Uttar Pradesh, etc. The court outlined directives regarding aiding in the extraction and utilization of agricultural residue as raw material for manufacturing boards, fuel, and other products, assigning the responsibility to State Governments to offer mechanical assistance, transport extracted residue, and identify consumption sources. Such aid should be provided either free of charge or at varying rates based on land ownership size.

In *Dr. Irfan Ahmad & Others v. Mr. Nawang Rigzin Jora Minister for Urban Development & Urban Local Bodies, J & K State, & Others*,<sup>22</sup> the tribunal mandated the Srinagar Municipal Corporation to remit Rs. 14 lakhs for its failure to undertake appropriate measures in the collection, deposition, and disposal of Municipal Solid Waste in Srinagar as per the Municipal Solid Waste (Management, handling & Disposal) Rules of 2000 based on the Polluters Pay Principle. It is imperative that every entity, be it individuals, industries, hotels, Government Departments, cinema halls, markets, or any other establishments, including all residents of Srinagar, contribute proportionally to cover the expenses designated as 'Environmental Charges'.

In *Animal Rescue Squad and others v. Goa Pollution Control Board and others*,<sup>23</sup> the tribunal instructed the Municipal authorities to maintain a comprehensive record of slaughtered animals, including pertinent details such as permissions and clearances obtained by slaughterhouses. This directive aligns with the precautionary and burden of proof principles established by the Apex Court. Immediate compliance with these instructions is mandated for the District Collector and Municipal Authorities. Furthermore, the Goa State Pollution Control Board (GSPCB), Collector, and Municipal Authority are tasked with ensuring that meat shops do not contribute to pollution and that any generated waste is managed in an organized manner.

*Dr. Arvind Gupta v. Union of India*,<sup>24</sup> case concerns the erection of towers in close proximity to residential zones, green spaces, and the potential health repercussions of radiation exposure. The Tribunal concluded that it lacks the authority to address applications related to the emission of electromagnetic waves from towers erected by the involved parties.

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<sup>21</sup> Original Application No. 118/2013.

<sup>22</sup> Original Application No. 277/2013.

<sup>23</sup> Application No. 30/2015.

<sup>24</sup> Original Application No. 61/2012 .

In the case of *Ravindra Bhusari v. Ministry of Environment and Forest & Others*,<sup>25</sup> the National Green Tribunal ordered regulatory bodies to conduct unscheduled visits to firecracker trading units to verify the presence of Chinese-manufactured firecrackers. If illegally imported without proper licensing, these firecrackers are to be sealed and confiscated. Additionally, if firecrackers exceeding permissible decibel levels are discovered, the entire stock is to be seized at the source.

Grand total of institution, disposal and pendency of the cases of NGT principal bench and all Zonal benches from the date of its inception till 30.04.2023<sup>26</sup>

Institution	Disposal	Pending
45111	41738	3373

## VI

### Major Impediments in the way of NGT

There exist copious environmentally friendly decisions by the National Green Tribunal (NGT). The efficacy of such rulings relies on the backing of the Apex Court and Government. Striking a balance between progress and safeguarding the environment is challenging and laborious. The pronouncements made by the NGT hold significant sway and are beneficial to the environment. In the case of *Ms. Betty C Alvares v. The State of Goa*,<sup>27</sup> the court unearthed illicit construction breaching the Coastal Regulation Zone (CRZ) norms by both governmental and private entities, as brought to light by a non-Indian applicant. The management of solid waste poses a critical issue for the country, leading the NGT to instruct the States and Union Territories to enforce the Solid Waste Management Rules of 2016 promptly.

Similarly, in *Srinagar Bandh Aapda Sangharsh Samiti v. Alaknanda Hydro Power Co. Ltd.*,<sup>28</sup> the tribunal invoked the polluter pays principle, directing a private firm to compensate the flood-affected populace with damages amounting to 9.26 crores due to excavation activities. The NGT underscored the significance of environmental jurisprudence in the case of *MC Mehta v. Union of India*<sup>29</sup>. In the instance of *Save Mon Region Federation v. Union of India*,<sup>30</sup> the NGT halted the environmental clearance granted by the Ministry for a hydro project, citing its proximity to the hibernation

<sup>25</sup> Application No. 98/2014.

<sup>26</sup> NATIONAL GREEN TRIBUNAL available at <https://www.greentribunal.gov.in/> (last visited on Oct. 23, 2022).

<sup>27</sup> NATIONAL GREEN TRIBUNAL available at, <https://www.greentribunal.gov.in/bench-wise-institution-disposal-and-pendency-cases-ngt-principal-bench-and-all-zonal-benches> (last visited on Sept.3, 2022).

<sup>28</sup> O.P No. 03/2014.

<sup>29</sup> O.P No. 24/2011, MA No 129/2012, MA Nos 557 and 737/2016.

<sup>30</sup> Appeal No. 36/2012.

grounds of endangered avifauna and other species. Another groundbreaking ruling by the NGT pertained to vehicular emissions, a decision subsequently upheld by the Apex Court.<sup>31</sup> The measures taken to shield the river Yamuna from contamination represented another pivotal judgment showcasing the Tribunal's unwavering commitment to environmental conservation. The marginalization of the tribunal stands as a primary obstacle to the flourishing of the NGT, as these bodies exist outside the mainstream judicial framework. Consequently, the execution of NGT's verdicts remains uncertain in numerous scenarios.

Another considerable hindrance is the issue of jurisdiction and legal overlap. The National Green Tribunal Act of 2010 expressly prohibits any court from entertaining offenses under the Act. With regards to the High Courts, the question of jurisdiction perpetually looms. "To comprehend the dynamic between High Courts and the NGT, one must examine its evolution in the broader context of tribunals. Essentially, the courts traditionally handle all judicial functions of a state. However, certain adjudicatory responsibilities are often delegated to tribunals, specialized in resolving particular disputes. Despite being distinct entities, tribunals and courts share some commonalities as well as disparities."<sup>32</sup> Analyzing the verdicts of both the Apex Court and High Courts, it becomes apparent that decisions of the tribunal are subject to challenge before the High Courts, thereby limiting the NGT's jurisdiction.

The National Green Tribunal Act was enacted to alleviate the burden on the judicial system. Despite possessing extensive discretionary authority, the determinations made by the tribunal are not ultimately conclusive. Appeals against the Tribunal's decisions may be brought before the Supreme Court. The Act defines the National Green Tribunal's jurisdiction on matters relating to "substantial questions related to the environment." Yet, it remains ambiguous as to what constitutes a consistent approach and the specific criteria for identifying such substantial environmental questions. The Act confines the jurisdiction to matters concerning substantial environmental questions, specifically those impacting the general population, while excluding the interests of individuals or smaller groups. Determining what qualifies as substantial in environmental matters cannot be left to the subjective judgment of an individual.

The legislation lacks provisions for preventing environmental pollution at its source. Individuals can only seek recourse from the Tribunal after an incident has occurred, with no provision for proactive measures. This absence of anticipatory powers implies that the tribunal can conduct investigations post-incident but is unable to

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<sup>31</sup> *Mustak Kadri v. State of Gujarat*, O. A No. 478 of 2019. and *Harvinder Sekhon v. Union of India*, O.A No. 21 of 2014, 95 of 2015 and 303 of 2015.

<sup>32</sup> Nupur Chowdhury and Nidhi Srivastava, *The National Green Tribunal in India : examining the question of jurisdiction*, 21 (2) APJEL 196 (2018).

avert such occurrences. Consequently, this represents a significant gap in the Tribunal's jurisdiction and authority, contravening international and domestic legal precedents, notably the "precautionary principle."

In accordance with the National Green Tribunal Act of 2010, an appointing committee comprising a chairman and other members is tasked with selecting NGT members. While the Act allows for a judge to serve as the committee's chairman, it does not delineate the qualifications required for other committee members. The government holds exclusive authority over their selection, effectively transforming the committee into an instrument of the state. This grants the government unchecked discretion in its actions. Additionally, a concerning trend has emerged wherein the government seeks to influence the National Green Tribunal's selection process, as evidenced by Section 182 of the Indian Finance Act 2017, granting the government significant control over the appointment, tenure, removal, and terms of service of NGT officials appointed after the specified date. Consequently, this provision further consolidates governmental influence in the selection process.

The delay in appointing members hinders the effective and expeditious operation of the Tribunal. Only through the efficient execution of rulings can the public trust be instilled, ultimately fostering the growth of environmental jurisprudence. Specialized courts and tribunals present both advantages and challenges, as their fragmentation has led to an inadequate workload. Moreover, issues such as fund allocation and judicial training are regarded as drawbacks within the system.

## VII

### **Conclusion and Suggestions**

Climate change and degradation represent a significant menace to humanity. Following the Stockholm Conference and the Paris agreement, numerous nations have implemented consistent measures to address this issue; however, a considerable amount of work remains. The National Green Tribunal (NGT) functions as a legal entity tasked with determining substantial legal matters concerning the environment and issuing directives for environmental protection and compensation for affected individuals. Its actions are primarily guided by the principle of sustainable development. A major obstacle lies in enforcement despite the presence of effective legislation and significant judicial rulings. Achieving full compliance necessitates widespread awareness, initiatives at various levels, and collaborative endeavors involving both citizens and the government, constituting an ongoing process. The judiciary must strive continuously to reduce the gap between laws and their enforcement.

It is evident that the operational efficiency of the National Green Tribunal (NGT) is noteworthy. However, despite progress, the NGT's discussion on sustainable

development is deemed somewhat precarious. As a tribunal, it faces jurisdictional constraints and limited executive compliance with its rulings. Despite existing limitations and obstacles, Environmental Courts hold significant sway in contemporary times. The study proposes increased governmental backing and emphasis in this domain. The inevitability of an independent system over fragmentation and seclusion is emphasized. The presence of specially trained personnel is also a crucial aspect to consider. Environmental conservation and protection are not merely subjects of debate; they represent the fundamental and inalienable rights of society. The incorporation of environmental rights within the realm of human rights should be executed accordingly.

Expanding the size of the National Green Tribunal (NGT) by appointing more judges and expert members is imperative to enhance the efficiency in managing the caseload. This extension is anticipated to alleviate the backlog of cases by facilitating timely hearings and resolutions for more cases. Proficiency in specialised knowledge plays a vital role in dealing with intricate environmental issues, and the presence of a diversified panel of expert members well-versed in ecology, environmental science, engineering, and law would augment the tribunal's efficacy. Furthermore, broadening the benches with adequate judges and experts would enhance the tribunal's geographical coverage and accessibility, enabling a broader populace to access justice without enduring lengthy travels. A higher count of judges and experts would also lead to a more equitable distribution of cases, thereby diminishing the burden on individual members and expediting the adjudication process. To accomplish this objective, recruitment campaigns should be orchestrated to draw in qualified candidates, and a transparent, merit-centric selection mechanism should be instituted to preserve the tribunal's credibility and proficiency. Thorough orientation sessions and continual professional development initiatives would ensure that all members fully understand NGT protocols and stay abreast of the latest advancements in environmental science, law, and technology. Providing competitive remuneration packages, perks, and delineated career advancement avenues would aid in attracting and retaining top-tier talent. Moreover, constituting a roster of retired judges and experts for interim or part-time roles, establishing additional permanent benches, constituting ad-hoc benches for specific cases, and enlisting scholars and industry professionals as visiting members or consultants would further fortify the tribunal's capabilities. The primary advantages of augmenting the human resources within the tribunal would encompass heightened efficiency, superior decision-making, and enhanced public confidence in the NGT's capacity to address environmental concerns.