

Original Article

# National Green Tribunal and Environmental Justice in India: An Appraisal

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**Abstract**

*The environment is the basis for all life's resources, the basis for many fundamental rights, and as human beings, we have the right to live in a clean and healthy environment, clean water and. The Indian judiciary has made significant contributions in the protection of the environment, ecology, and forest wildlife, etc. Despite its limited powers, the Court played an essential role in this regard. More importantly, from an environmental point of view, it is an eye on the future. A series of legislation has been adopted to protect the purity of air and water and to protect forest degradation, but the provisions of the various legislation have not been seriously implemented by the authorities. In this context, the Government of India has a great opportunity to re-enter into the establishment of the National Green Tribunal of India (NGT), taking into account the current situation of environmental protection, with the aim of using its wide range of powers to deal with environmental issues, such as orders, declarations, fines, imprisonment or rehabilitation orders. This research document attempts to examine the legal features of the NGT in relation to its jurisdiction and powers. Similarly, it was also discussed the leading role of the NGT in the protection of the environment and the judicial analysis of the NGT's judicial powers with the help of decisions.*

**Keywords:** statutory framework, environmental issues, restrictions, judges, administrative authorities, Sui Generis, Suo Moto powers, principles of justice, sustainable development, environmental courts, etc.

**Introduction**

'Environment' is a French word for 'environner'; it means 'to surround or to encircle'. It encompasses all natural resources that form the natural habitat of human and animal life.<sup>1</sup> Environmental law serves as a vital foundation for protecting the environment; however, after many years, its implementation remains inadequate in many parts of the world. The 21st century has seen a remarkable increase in the establishment of Environmental Courts and Tribunals. Currently, there are over 360 of these dedicated courts and tribunals specifically addressing environmental disputes.<sup>2</sup> Notable examples include those found in Sweden<sup>3</sup>, Australia,<sup>4</sup> New Zealand,<sup>5</sup> China,<sup>6</sup> and the Philippines.<sup>7</sup> The organization of these courts, along with their sensitivity to environmental issues and the national systems in place for accessing justice, has become essential for effectively enforcing both environmental laws and the principle of sustainable development. It has been rightly pointed out that while nearly all nations, including those that are developing, have basic environmental protection legislation, but there is a significant disparity between the written laws and the reality on the ground.<sup>8</sup> In the case of *M.C. Mehta v. Union of India*,<sup>9</sup> the Hon'ble Supreme Court observed that establishing regional courts dedicated to environmental law necessitates judges with prior knowledge in environmental matters as well as expertise in that domain. Similarly, in the *Indian Council for Enviro-Legal Action v. Union of India*,<sup>10</sup> the Supreme Court suggested the creation of separate civil and criminal environmental courts to expedite the resolution of cases concerning the environment.

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In 1992, during the United Nations Rio Conference, India committed to providing administrative and judicial remedies for those affected by pollution, leading to the formation of the National Green Tribunal (NGT). The NGT was officially established on October 18, 2010, under the National Green Tribunal Act, 2010. The aim of the Central Government was to create a specialized platform for the efficient and quick resolution of cases related to environmental protection, forest conservation, and compensation for damage to individuals or property resulting from breaches of environmental laws or conditions set forth in permissions.<sup>11</sup> This initiative was inspired by Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The judiciary has broadened its interpretation of this article to ensure that citizens have the right to a healthy environment and access to it.

### Purpose and Needs

NGT is a specialized institution with the expertise necessary for addressing environmental disputes that involve multi-disciplinary issues. The Tribunal's specific focus on environmental issues aims to deliver fast and effective environmental justice, thereby alleviating the load on higher courts. The Tribunal is tasked with resolving applications or appeals within six months of their submission. Initially, the NGT is proposed to be set up at five locations and will adopt a circuit approach to enhance accessibility. New Delhi will serve as the Principal Place of Sitting, with Bhopal, Pune, Kolkata, and Chennai as the other four locations.<sup>12</sup> India ranks as the third nation globally—after Australia and New Zealand—to establish such an authority for environmental cases.<sup>13</sup> The motivations behind the establishment of the NGT are as follows:

1. To settle disputes that involve substantial questions regarding the environment.<sup>14</sup>
2. To facilitate prompt and effective case resolution, serving two key purposes: providing litigant satisfaction and supporting sustainable development while ensuring environmental protection.
3. To offer affordable, easily accessible, and swift justice in matters concerning environment conservation and protection at the grassroots level.
4. To grant compensation, damages, fines, relief to individuals and property, and restoration of ecology in line with principles such as the polluter pays principle, precautionary principle, and other environmental doctrines.
5. To lessen the strain on higher courts.<sup>15</sup>
6. To handle any other environmental and ecological matters.<sup>16</sup>

### Statutory Framework Concerning Jurisdiction & Powers of the NGT

The NGT is empowered under the act to adjudicate all civil cases related to environmental issues and questions linked to the enforcement of laws specified in Schedule-I<sup>17</sup> of the NGT Act. This includes enforcing any legal rights connected to the environment.<sup>18</sup> If someone wishes to uphold their right to a healthy environment, they can approach the NGT. Any violations concerning the laws in Schedule-I or any governmental orders/decisions made under those laws can also be contested before the NGT. Importantly, the NGT cannot hear matters relating to the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927, or various state laws concerning forests, tree preservation, etc. Hence, significant matters related to these laws must be taken to the High Court or Supreme Court through a Writ Petition (PIL) or by filing an Original Suit in the appropriate court where the project in question that we intend to challenge is located.<sup>19</sup>

Chapter III covers the jurisdiction, powers, and proceedings of the Tribunal. Under the Act, the Tribunal has jurisdiction over all civil cases where a significant environmental question is involved, including the enforcement of any legal rights regarding the environment, arising from the implementation of the acts listed in Schedule I.<sup>20</sup> The NGT also has the authority to issue orders providing relief, compensation, and restitution, allowing for the restoration of damaged property and the environment as deemed appropriate by the Tribunal.<sup>21</sup> Affected individuals have thirty days from the date they receive the order or decision from authorities under the various acts in Schedule-I to appeal to the Tribunal.<sup>22</sup> If an accident or harmful impact from an activity has caused injury or damage to a person or environment, the Tribunal can order responsible parties to pay compensation or relief in certain situations.<sup>23</sup> The Act outlines who can file applications or appeals and in what form.<sup>24</sup>

The Tribunal has the authority to regulate its own procedures and the same powers as a civil court, with all proceedings regarded as judicial in nature.<sup>25</sup> While addressing issues, the Tribunal shall apply environmental principles such as sustainable development, the precautionary principle, and the polluter pays principle.<sup>26</sup> It can enforce its decisions as civil court decrees and possesses all civil court powers for that purpose.<sup>27</sup> Civil courts are barred from entertaining environmental matters covered by the Tribunal.<sup>28</sup> Notably, the NGT Act has a prevailing effect over other laws,<sup>29</sup> allowing the Tribunal to issue orders or directives necessary to implement its rulings, prevent process abuse, or secure the end of justice.<sup>30</sup> Another unique aspect of this environmental forum is its broad standing; any individual or organization with interest in the matter can approach the NGT.

#### **Judicial Perspectives on the Adjudicative Powers of NGT**

The provisions of the NGT Act and the accompanying rules indicate various roles for the NGT. The Tribunal possesses extensive power to provide relief appropriate to the circumstances of each case, regardless of whether such relief was explicitly requested.<sup>31</sup> However, while interpreting the statutory provisions of the NGT Act, courts must consider the overall provisions. The Supreme Court has consistently reminded the NGT of its restrictive and extraordinary role in environmental protection.

##### **• Restrictive Powers of High Courts against Tribunal Orders:**

In the case of *Municipal Corporation Of Gr. ... v. Ankita Sinha*,<sup>32</sup> the Supreme Court observed that *“although the Environment Court, acting as a Civil and appellate Court, might generally fall under the writ jurisdiction of the High Court, but in as much as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court.”* This omission of judicial review aimed to prevent High Court intervention in Tribunal orders before cases were escalated to the Supreme Court, effectively reducing the influx of litigation in higher courts and directing such matters to the NGT. Consequently, the NGT was freed from the constraints of evidentiary rules and enabled to establish its own

process for considering oral and documentary evidence and consulting experts.

##### **• Limitations on Adjudication:**

In *Windsor Realty Pvt. Ltd. v. Secretary, Ministry of Environment and Forest*,<sup>33</sup> a Division Bench of the Bombay High Court held that “Section 14 of the NGT Act cannot be so interpreted that it would arise from the date of knowledge of the original applicant of the alleged violation taking place, or from the date on which the Environmental Authorities were informed about the violation and the inaction on their part; the concept of continuous cause of action cannot apply to complaints filed before the NGT” The legislature clearly stated that the limitation for disputes is six months from when the cause of action first arose. If the cause of action were to begin when an applicant had knowledge about the alleged violation, or from the date on which Environmental Authorities did not take action after the violation was brought to their notice, a complaint can be filed by the aggrieved person potentially decades later—claiming a violation could occur anytime.

In *Raza Ahmad v. State of Chhattisgarh & Ors*, the Supreme Court<sup>34</sup> reiterated that Section 14 empowers the NGT to handle all civil cases involving substantial environmental questions arising from the implementation of acts in Schedule I. It states that applications for dispute resolution must be filed within six months of the cause of action arising. Moreover, it allows the NGT to accept appeals beyond the deadline for justified causes, up to sixty days. Section 16 affords the NGT appellate jurisdiction, indicating that an appeal may be filed regarding any order issued on or after the NGT Act commences, particularly concerning Environmental Clearance, and must be filed within thirty days of communication.

##### **• NGT's Authority to Restore the Environment:**

In *Mantri Techzone (P) Ltd. v. Forward Foundation*,<sup>35</sup> the Supreme Court indicated that Section 15(1)(c) of the NGT Act grants extensive powers to the NGT. Justice S. Abdul Nazeer held that:

*“Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been*

*embedded as bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment."*

- **NGT Cannot Delegate Adjudicative Power to Administrative Authorities:**

In **Hanuman Laxman Aroskar v. Union of India**,<sup>36</sup> the Supreme Court affirmed that the NGT functions as an expert adjudicatory body on environmental matters.

The court clarified that *"the NGT Act configures a tribunal comprising both judicial and expert members for the purpose of addressing questions that demand a combination of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment... NGT is an expert adjudicatory body on the environment."*

In **Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others V. State of Gujarat and Others**,<sup>37</sup> Supreme Court observed that the NGT's wide-ranging authority allows for compensation awards for pollution victims, property restitution, and environmental restoration. However, the NGT cannot delegate its essential adjudicatory responsibilities to administrative committees. Expert committees might assist the NGT in its fact-finding role but the adjudicatory power remains solely with the NGT.

In **Sanghar Zuber Ismail v. Ministry of Environment, Forests and Climate Change and Another**,<sup>38</sup> the Supreme Court ruled that the NGT must not refuse to examine challenges to Environmental Clearances, as outlined in Section 16(h) of the NGT Act, nor can it shift the adjudication process onto an expert committee. The NGT must address the substantive challenge grounds in its appellate authority. The existence of an expert committee does not absolve the NGT from its obligation to decide. The tribunal is recognized as an expert adjudicatory authority established by an Act of Parliament, and it cannot delegate its inherent functions to committees.

- **Suo Moto Powers of NGT to Address Environmental Issues:**

In **Municipal Corporation of Greater Mumbai v. Ankita Sinha & Ors**,<sup>39</sup> the Supreme Court assessed

whether the NGT can respond to press reports or seek information from government entities regarding environmental damage without a formal application. The Supreme Court affirmed that the NGT possesses suo moto authority to address environmental issues independently. It emphasized that the NGT cannot afford to remain a mute spectator when no one knocks on its door. The Bench added that the exercise of suo moto authority should adhere to natural justice principles, ensuring that affected parties have the opportunity to present their perspectives prior to adverse rulings.<sup>40</sup>

- **No Authority to Assess the Validity of Laws by NGT:**

In **Environment Support Group & Anr. v. National Biodiversity Authority & Ors.**,<sup>41</sup> the Supreme Court observed that the NGT does not have the power to examine or decide on the vires of laws. This was highlighted during a hearing regarding an application challenging a Karnataka High Court decision to transfer a plea under Section 40 of the Biodiversity Act to the Tribunal. Counsel for the petitioners cited the *Sterlite Case*<sup>42</sup> to demonstrate that the NGT cannot invalidate laws.

- **NGT and Its Unique Role:**

In **DG NHAI v. Aam Aadmi Lokmanch**,<sup>43</sup> the Supreme Court referred to the NGT as a distinctive forum, commends us to consider the concept of a sui generis role, for the institution.<sup>44</sup> Justice S. Ravindra Bhat elaborated on this concept, stating that a holistic review of Sections 14, 15, and the Schedules suggests the NGT has *circumscribed* jurisdiction over disputes, managing and directing measures like compensation payment where violations occur due to pollution or related infractions. However, this interpretation must not be overreaching. The powers granted to the NGT under Sections 15(1)(b) and (c) should not be solely restitutionary; they encompass preventive measures depending on the nature of the violation.

### **Principles of Justice Adopted by the NGT**

The NGT is not bound to follow the procedures set forth in the Code of Civil Procedure, 1908, but rather is guided by principles of natural justice. It is also not constrained by evidentiary rules found in the Indian Evidence Act, 1872. This offers conservation groups a simplified avenue to present facts and raise issues before the NGT,

including highlighting technical oversights in projects or recommending alternatives to mitigate environmental harm that may not have been considered. In issuing decisions, the NGT applies principles such as sustainable development, the precautionary principle, and the polluter pays principle. However, it should be noted that if the NGT determines that a claim is unfounded, it has the authority to impose costs for any interim injunction losses.<sup>45</sup>

### Conclusion

The NGT, one of the only specialized environmental courts, was established nearly 14 years ago on October 18, 2010. Over its decade-long existence, the NGT has delivered landmark rulings and significantly influenced environmental jurisprudence. It thus plays a vital role in providing swift environmental justice and relieving the burden on higher courts. The Tribunal is expected to endeavor to resolve applications or appeals within six months. While direct appeals to the Supreme Court against Tribunal decisions are permitted by statute, the option to approach the High Court under Article 226 or 227 still exists. Moreover, the appeal under Section 22 of the NGT Act is confined to the grounds specified in Section 100 of the CPC, meaning the Supreme Court does not function as a typical first appellate court. Throughout its analysis of the NGT Act's statutory framework, the Supreme Court has issued guidance to ensure the NGT maintains its effectiveness in addressing environmental issues. It is essential to recognize that the NGT's operation, including the placements of its benches, has been closely scrutinized by the Supreme Court. Currently, the NGT has successfully offered easier and more affordable access to justice, although there remains room for improvement in achieving higher litigant satisfaction and promoting sustainable development.

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### Conflicts of interest

There are no conflicts of interest.

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