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National Green Tribunal: A Conservator of Environmental Justice

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ABSTRACT

Environmental pollution has become one of the greatest quandaries in the modern world. Environmental damage caused by various human activities is leading to nothing short of a colossal catastrophe. Loss of biodiversity, ozone layer depletion, natural calamities, etc are just a few of the startling problems that will occur as a result of ecosystem destruction. Environment protection has become the need of the hour. If it is not treated seriously, it won't be long until the earth is annihilated. International organizations have been making ardent efforts to ensure environmental protection. The effort put forward by India in achieving the goals of environmental protection and restoration is praiseworthy. Various authorities are being set up by the Indian government at the national, state, and regional levels to ensure the same. The National Green Tribunal is a specialized body set up under the National Green Tribunal Act, 2010, for handling environmental disputes and ensuring environmental justice. This research article aims to study and analyse the National Green Tribunal in India, its historical development, objectives, composition, the concept of sustainable development and environmental rule of law, and the landmark decisions passed by the National Green Tribunal.

Keywords: Sustainable development, Environmental protection, National Green Tribunal.

I. INTRODUCTION

Environmental preservation and protection are of pivotal importance considering the current scenario. Environment legislation is an integral factor that contributes to environment protection. It cannot be implemented without the aid of environmental legislation. As an outcome of the Stockholm Conference in 1972, 26 principles and certain frameworks for tackling environmental challenges have been established. The Indian constitution has played a major role in strengthening environmental protection. Some of the major provisions include Article 21, dealing with the right to life, which includes the right to live in a healthy environment. The 42nd Amendment (g) of Article 51A of the Constitution of India provides for the protection and improvement of the environment. It includes wildlife, forests, etc. It also

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deals with having a sympathetic attitude towards living creatures. Article 48A of the Constitution provides that the state should safeguard the forest and wildlife of the country and also take necessary steps for the protection and improvement of the environment. Despite the existence of several laws, environmental protection is becoming a more arduous effort. Due to poor implementation and execution. It is necessary to strike a balance between legislation, administration, and jurisdiction for proper implementation.

Under the National Green Tribunal Act, 2010, the National Green Tribunal was established in India to resolve environmental issues. The Law Commission of India, in its 186th report in 2003, and the Supreme Court of India, in a number of judgments, have emphasized the necessity for the establishment of special environmental courts. Environmental matters pose issues that require expertise in the field, speedy resolution, and ongoing monitoring; as a result, these environmental cases should be adjudicated by special courts with the requisite knowledge and expertise.³

II. NATIONAL GREEN TRIBUNAL

The prevention and control of environmental pollution have resulted in the urge to have a separate court to decide matters concerning the environment without much delay, as enumerated even in the Stockholm Conference of 1972. The Second United Nations Conference on Environment and Development was held at Rio de Janeiro in 1992, of which India is also a signatory.

The right to a healthy environment has always been construed as part of the right to life under Article 21 of the Constitution of India. The National Green Tribunal is involved in the implementation of its decisions on multidisciplinary issues relating to the environment. Enacting the National Green Tribunal Act in the sixty-first year of the Republic of India.

The National Green Tribunal was established under Section 3 of the National Green Tribunal Act, 2010. It was constituted to provide prompt and efficient disposal of cases that is related to environment protection. National Green Tribunal is guided by the principles of natural justice and is not bound by the Code of Civil Procedure, 1908 nor the Indian Evidence Act, 1872. The tribunal is bound to adjudicate the dispute within a period of six months from the date on which the cause of action first arose.⁴

³ Jisha Garg, All About National Green Tribunal, iPleaders (April 10, 2021, 11:00 AM), <https://blog.iplayers.in/national-green-tribunal/>.

⁴ Vivek Dubey, The National Green Tribunal In Indian Perspective, Medcrave (September 11, 2019, 04:00 PM), medcraveonline.com/FRCIJ/the-national-green-tribunal-in-indian-perspective.html#_ftn4.

III. HISTORICAL DEVELOPMENT

Environment protection was considered to be of pivotal importance and in congruence with the above-mentioned necessity of environment protection, several legislations were passed. National Environment Tribunal Act, 1995 paved the way for the establishment of the National Environmental Tribunal, which was established for the purpose of speedy disposal of cases to provide compensation that arose out of strict liability. The tribunal was only conferred limited jurisdiction under the act and it was not established. In a later stage, a national environment appellate tribunal was established under the National Environment Appellate Authority Act, 1997 to hear the appeals so that the safeguards prescribed in the Environment (Protection) Act, 1986, could be ensured. The National Environment Appellate Authority Act was also not able to serve its purpose because of the narrow jurisdictional scope conferred on it. Both the National Environmental Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997, could not come into force, and therefore both the National Environment Tribunal and the National Environment Appellate Tribunal were not established. The significant requirement of a national tribunal to deal with environmental protection matters was firstly observed in the case of:

M.C. Mehta and Anr v. Union of India & Ors.⁵

The Supreme Court held that when an enterprise is engaged in hazardous activity and, due to the operation of such hazardous activity, it results in the escape of toxic gas, and if it has caused harm to anyone, then the enterprise will be strictly and absolutely liable to compensate each person who was affected by the accident. The Court further added that the right to live in a pollution-free environment is a part of the right to life under Article 21 of the Constitution.⁶

In the 186th report of the Law Commission of India, the inadequacies of appellate authorities, which were constituted under various environmental laws, were recognized. Various measures were reviewed to bring uniformity to the constitution of these authorities, and measures were also taken regarding their jurisdictional scope.

It was the law commission's recommendation to set up environmental courts in each state or group of states. It exercised all the powers of a civil court. It also has appellate judicial powers against the orders that were passed by the concerned authority under the Water (Prevention and

⁵ 1987 AIR 1086.

⁶ .Sannaya Gandhi, Introduction to Environmental Law in India, Legal Service India (June 5, 2019, 02:00PM), <https://www.legalserviceindia.com/legal/article-635-introduction-to-environmental-law-in-india.html>.

Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, etc.⁷

IV. OBJECTIVES OF NGT

The National Green Tribunal was established under the National Green Tribunal Act, 2010, with the intention of achieving the following objectives:

- To provide for effective and speedy disposal of cases related to environmental protection
- Ensure that environmental laws are complied with, and it serves as a guardian in the wake of any infringement or violations
- Ensure the safety of forests and forest animals, as well as their preservation.
- To provide compensation to the people who have experienced losses as a result of environmental deterioration and who are affected by it
- To repeal the "National Environmental Tribunal Act, 1995" and the "National Environment Appellate Authority Act, 1997"
- To spread awareness about the various environmental laws and relevant environmental issues that are currently plaguing society.⁸

V. COMPOSITION OF NGT

Chapter ii, Sections 3 to 13 of The National Green Tribunal Act, 2010 deals with the establishment of the NGT, qualifications for the appointment of the chairperson, members, etc.

Section 4 deals with the composition or constitution of the NGT :

- A full time chairperson (appointed by the central government in consultation with the Chief Justice of India)
- Minimum of 10 members and a maximum of 20 full time judicial members as prescribed by the Central Government(by the Selection Committee).
- Minimum of 10 members and a maximum of 20 full time expert members as prescribed by the Central Government (by the Selection Committee).

The chairperson may invite one or more persons with specialized knowledge and experience to provide necessary assistance in deciding cases before the tribunal. He may constitute a bench of two or more members, with at least one judicial member and one expert member.

⁷ H.N. Tiwari, *Environmental Law*,157-158(Allahabad Law Agency,2016).

⁸ Gurdip Singh, *Environmental Law*,51-52(Eastern Book Company,2021).

They are appointed for a period of 5 years and are not eligible for reappointment.

The central zone bench is situated in Bhopal, East Zone in Kolkata, South Zone in Chennai and West Zone on Pune.⁹

Effectiveness of NGT:

- Promoting sustainability and good governance.
- Judicial structure offering environmental justice in India.
- Advancement of Indian Green Jurisprudence.
- Commitment to environmental protection and the welfare of affected people.¹⁰

From the judgement pronounced by Dr. D.Y. Chandrachud J. in the case of **Citizens For Green Doon and Ors. v. Union of India and Ors**¹¹, in the Chardham Mahamarg Vikas Pariyojana the program of the Ministry of Road Transport and Highways to widen the roads of approximately 900 KM of National Highway for safe, smooth, fast traffic movement linking the Yamunothri, Kedarnath, Badrinath, and Kailash Manasaovar Yatra route shrine representing different traditions of Hindu Religion which had limited access till 1950s.

OA (OA No.99/2018) filed before the principal bench of the National Green Tribunal on February 27, 2018 in the public interest, i.e., developmental activity having a negative effect on the Himalayan Eco system (deforestation, excavation of the hills, dumping of muck, etc).. which is violating the EIA notification, the Forest (Conservation) Act, 1980, the Wildlife Protection Act, 1972, Environment (Protection) Act, 1986, , Articles 14, 21, and 48A of the Constitution of India. The National Green Tribunal directed the ‘Oversight Committee’ to monitor the execution of projects violative of the EIA Report. An appeal was filed challenging the order of NGT in September 2018.

A miscellaneous application was filed (MA No. 2180 of 2020), providing various submissions on:

- Issues concerning the functioning of High Powered Committee(HPC)
- Violation committed by Ministry of Road Transport and Highways of India
- Road width
- Security concerns etc.

⁹ Patil Amruta, National Green Tribunal (NGT) - Indian Polity Notes, Prepp (May 16, 2023, 07:00PM), <https://prepp.in/news/e-492-national-green-tribunal-indian-polity-upsc-notes>.

¹⁰ Gitanjali Nain Gill, *Environmental Justice in India: The National Green Tribunal* (Routledge, 2016)

¹¹ MA No. 2180 of 2020.

It was allowed considering the report submitted falling under the purview of 'oversight committee'.¹²

VI. SUSTAINABLE DEVELOPMENT AND ENVIRONMENT RULE OF LAW

Considering the principles of sustainable development and the Environment Rule of Law; sustainable development is the global policy from the Bruntland Report, 1987, defining it as "the development that meets the needs of the present generation without affecting the needs of the future" and adopting it as the sustainable development goals broadly focusing on the overall development of society in consonance with the protection of the environment for the present and future, having a multi-dimensional approach:

- Development of the economy
- Protection of individual rights
- Environment concern
- Inter and intra generation equity

It can be considered as a process of change wherein resources, exploitation, direction of investment, and all other factors are in harmony, and at the same time, it enhances both the current and future potential to meet the human needs.

The precautionary principle and the polluter pays principle have been recognized in almost all the international instruments adopted by the United Nations Environment Programme and various other international conferences. It was recognized as an integral part of sustainable development by the international community and incorporated as principle 16 of the Rio Declaration of Earth Summit, 1992. It was also included in the 1984 United Kingdom Royal Commission on Environmental Pollution Report.

The precautionary principle was first used during the 1970s in the German industrial sector as the "foresight principle", i.e., precautionary steps to prevent disaster. Environmental degradation can be prevented if timely precautions are taken, mainly in the installation of industry or hazardous undertakings. The main aim of the principle is to take necessary measures to protect the environment from a substance or activity causing environment pollution. The "polluter pays principle" has been recognized as fundamental objective of government environmental policy to prevent and control pollution. It is also recognized that the person who is guilty of causing pollution has to pay damages for the restoration of the environment and

¹² Citizens For Green Doon and Ors. v. Union of India and Ors. (MA No. 2180 of 2020).

ecology.

M. C. Mehta v. Kamal Nath¹³

There exist various other principles governing sustainable development other than the polluter pays principle and the precautionary principle. Namely:

- Inter-generation equity
- Use and conservation of natural resources
- Environment protection
- Principle of liability to help and cooperate
- Poverty eradication etc

India is one of the countries that is subjected to the problem of environmental degradation, due to reasons like population explosion, over exploitation of resources, depletion of resources, etc.

NGT has been playing an active and crucial role in environmental protection. It is found to have been using the internationally recognized principles of sustainable development, the polluter pays principle, and the precautionary principle while dealing with environmental issue-related cases.

Indian Council for Enviro-Legal Action v. Union of India¹⁴

In this case, the industrial units located in Bichhri Village in Udaipur were involved in producing certain chemicals like oleum and H-acid without obtaining the necessary clearances. The industrial units failed to use any kind of treatment equipment for the treatment of the highly toxic effluents discharged by them. When this toxic effluent was discharged, it percolated deep into the earth's bowels, causing the groundwater to be polluted, thus making the water unfit for drinking and irrigation purposes. A public-interest litigation was filed, alleging that environmental pollution was caused by the industrial units. The court directed the central government to determine the amount that may be required to carry out the remedial measures and directed that the respondent industrial units to pay for the amount that is required to carry out the remedial measures. In this case, the Supreme Court applied the "polluter pays principle" while giving the judgement, which is an essential principle of sustainable development.

¹³ (2000)4 SCC 213.

¹⁴ 1996 AIR 1446

M.C. Mehta v. Union of India¹⁵

In this case, public interest litigation was filed on the allegation that the use of coal and coke by the industries situated within the Taj Trapezium zone has led to environmental pollution and degradation of the Taj Mahal. The court applied the precautionary principle and directed all industries to use natural gas as a substitute fuel, and those industries that were not able to use natural gas must shift their operations to other industrial estates.

Essar Oil Ltd. v. Halar Utkarsh Samiti ¹⁶

Court referred Stockholm Declaration while elucidating the principle of sustainable development, which states that there should be harmony between development and the environment, i.e., concern should not be seen as a deadlock for it.

Rajeev Suri v. Union Of India¹⁷

The Court, while deciding on the permissibility of the central visa project, held that sustainable development incorporates the principle of development that is sustainable and not environmentally degrading.

Municipal Corporation of Greater Noida v. Ankita Sinha¹⁸

It was ruled on the power of the NGT under the National Green Tribunal Act, 2010, that environment justice or environment equity is a developing concept with disproportionate implications of environment harm on economically and socially marginalised groups from environmental harms, i.e., protection, including the application of principles of sustainable development.

The four pillars of sustainable development is provided in the Environment Rule of Law as:¹⁹

- Economic
- Social
- Environmental
- Peace

VII. INTERNATIONAL PERSPECTIVE OF NGT

The modern environment and its complex interaction with international law have led to the

¹⁵ JT 1998 (7) SC 275

¹⁶ (2004) 2 SCC 392

¹⁷ Rajeev Suri v. Union of India(2021 SCC Online SC 7)

¹⁸ 2021 SCC OnLine SC 897

¹⁹ Hanuman Laxman Aroskar v Union of India ([2019] 15 SCC 401).

development of Environment Courts and Tribunals. The developing nations have taken more promising action in building environment law more crucially than the developed nations.²⁰

The concept of the Environment Courts is widespread in Europe and the US, following the procedures of the traditional system of courts. Then came the concept of 'Green Benches', which consolidated the heavy judicial system's procedures further leading to the establishment of environment tribunals which provide speedy judgments, efficiency in performance, and several advantages. It is not implied that they are of separate existence but they co-exist. Sweden was the first nation to enact an environment code in 1999, where the decision-makers included non-lawyers and scientific-technical experts with full judicial powers.

In the Australian system, there exists an independent Environment Senate and a specialized Environment Court comprising ten judges and thirty-two legal specialists with limited jurisdiction.

The New Zealand Environment Court is of recent origin. Established under the Resource Management (Amendment) Act, 1996, defining itself as the 'Adjudicator of Sustainability'.²¹

VIII. RECENT DEVELOPMENTS IN NATIONAL GREEN TRIBUNAL

The National Green Tribunal (NGT) has developed in recent years in handling the critical issues of effective environmental governance and sustainable development. Over time, the NGT has played a major role in defining environmental policy and law, achieving national and worldwide acclamation. Its recent advancements have highlighted tremendous accomplishments. One of the most significant changes has been the expansion of the NGT's jurisdiction. Originally, the NGT was only empowered to hear cases related to air and water pollution, forest and wildlife protection, and the management of hazardous substances. However, in 2013, the NGT's jurisdiction was expanded to include cases related to climate change, coastal regulation, and the protection of wetlands.

This expansion has allowed the NGT to play a more active role in addressing a wider range of environmental issues. Another significant change has been the NGT's approach to environmental protection. In the early years, the NGT was often criticised for being too lenient on polluters. However, in recent years, the NGT has taken a more proactive approach to environmental protection, issuing a number of landmark orders that have led to the closure of polluting industries and the restoration of damaged ecosystems.

²⁰ Gitanjali Nain Gill, *Environmental Justice in India: The National Green Tribunal* (Routledge, 2016).

²¹ Domenico Amirante, *Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India*, 29 PACE ENVTL. L. REV. 441 (2012).

The NGT's increased focus on environmental protection has been welcomed by many environmental groups. However, some critics have argued that the NGT is overstepping its authority and that its orders are often arbitrary and inconsistent. Nevertheless, the NGT has undoubtedly played a major role in improving environmental protection in India over the past decade.

In 2017, the Central Government amended the National Green Tribunal (Practices and Procedure) Rules, 2011, allowing the chairman to form a single-member bench in unusual circumstances.²²

In 2022, The Supreme Court of India observed that a single-member bench of the national Green Tribunal cannot be constituted. One expert member shall be present on the bench at least, as it is mandated clearly in the proviso to Section 4 (4)(C) of the NGT act.

The Supreme Court of India decided in **Municipal Corporation of Greater Mumbai v. Ankita Sinha & Others**²³ that the National Green Tribunal (NGT) has the authority to take suo moto notice of environmental matters, despite the fact that the NGT Act does not expressly provide it with such authority. It further said that natural justice and fair play would apply to the NGT's suo moto authority

(A) Notable Recent Judgements by National Green Tribunal

In **the Art of Living Foundation case**, a three-day cultural event was set up in March 2016 at the Yamuna floodplains in New Delhi. A 7-acre stage was built for the event that could accommodate 35,000 people. The festival was to take place from March 11 to March 13, 2016. A petition was filed by Shri Manoj Mishra, a retired Indian Forest Service officer. The respondent parties in the case were the Delhi Development Authority, the Art of Living Foundation, the Ministry of Environment & Forest and climate change. An interim order was passed by the tribunal, wherein Art of Living was directed to pay Rs. 5,00,00,000 as compensation. The Delhi Development Authority was imposed a fine of Rs. 5,00,000 as a failure to perform their obligations. Art of Living was held liable for the damages caused to the Yamuna floodplains, which were under the jurisdiction of the Delhi Development Authority. It was also ordered that if any additional restoration works are required, then additional compensation can be taken from The Art of Living Foundation.²⁴

²² Saba, NGT (Practices and Procedure) Amendment Rules, 2017 notified., SCC Online (December 5, 2017, 12:00 PM), <https://www.sconline.com/blog/post/2017/12/05/ngt-practices-procedure-amendment-rules-2017-notified/>.

²³ Municipal Corporation Of Greater Mumbai V. Ankita Sinha & Ors. (Civil Appeal No. 12122-12223 Of 2018).

²⁴ Soumya Bhardwaj, Art of Living Case on Yamuna Flood Plain, JUDICATEME (September 16, 2021, 06:00 PM), <https://judicateme.com/art-of-living-case-on-yamuna-flood-plain/>.

Municipal Corporation of Greater Mumbai v. Ankita Sinha & Ors.²⁵

The National Green Tribunal (NGT) passed an order in 2018 to impose a cost of Rs. 5 crore on the Greater Mumbai Municipal Corporation. In March 2020, the NGT increased the minimum distance of quarries from residential areas from 50 to 200 meters. In May 2020, the NGT took suo moto cognizance of a gas leak in Vishakhapatnam. The NGT issued its final order in June 2020, recognizing its own suo moto powers under the NGT Act. The Supreme Court has not recognized the NGT's suo moto powers, but 16 petitions are pending. The appellants argue that there is no provision under the NGT Act, 2010, that explicitly allows the Tribunal to exercise suo moto powers. Senior Advocate Arvind Grover argued that the NGT had a wide jurisdiction under the Act, but this did not extend to suo moto powers. On October 7th, 2021, Judge Hrishikesh Roy gave the decision, and the bench held that the NGT may utilize suo moto powers to carry out its obligations under the National Green Tribunal Act, 2010.

Almitra H. Patel v. Union of India²⁶

Mrs. Almitra Patel and others filed a PIL to improve the treatment of municipal solid waste in India. The Supreme Court transferred the case to the National Green Tribunal, which found that the severity of the issue was immense and directed states and UTs to immediately enforce the 2016 Solid Waste Management Regulations and develop an action plan within four weeks. A guideline was released to ensure adequate segregation prior to waste production in power plants, and landfills can only be used for the deposition of inert waste and are subject to bio-stabilization within 6 months.

Samir Mehta v. Union of India²⁷

The M.V. Rak Carrier sank due to technical faults, causing environmental damage and marine pollution. The Indian Coast Guard stepped in and took measures to control the damage. A petition was filed before the National Green Tribunal, questioning environmental jurisprudence. The NGT Tribunal was presented with the important questions of whether it had jurisdiction to try this case, whether it had power to grant compensation in lieu of a lawful exercise undertaken by the Government of India (Indian Coast Guard), and on whom the liability should be fixed. The Tribunal held that it has jurisdiction to entertain the case because India's sovereignty over the natural resources extends to contiguous zones and exclusive economic zones under the Maritime Zones Act, 1976. The Tribunal also held that the ship sinking accident is said to have

²⁵ Civil Appeal No. 12122-12223 of 2018

²⁶ (2000(2) SCC 166)

²⁷ MANU/GT/0104/2016

led to pollution of the marine environment on three counts: dumping of the cargo on the ship, release of the fuel oil stored on board and the resultant oil spill caused by it, and wreckage of the ship itself. The Tribunal awarded compensation to the Delta Group and Adani Enterprises to be paid to the Ministry of Shipping under the Government of India.

IX. CONCLUSION

The National Green Tribunal has been successful in fulfilling the objective for which it was constituted. Strict assessment of cases and groundbreaking decisions given by the NGT in various cases are commendable. Most judgments provided by NGT are primarily concentrated on the principles of sustainable development, the polluter pays principle, and the precautionary principle. Even if NGT has been playing a major role in resolving environment-related issues, the administrative support provided by the government of India is quite a concern, as they have not been optimistic about NGT functioning as an efficient body. In the case of the environmental regulatory authorities, there is no assurance as to whether they are following the tribunal's orders. An institutional mechanism to check the same has not been implemented.

Environmental issues and cases relating to them are becoming more complicated. A high level of proficiency is required in handling these environmental cases, as they require vast knowledge in many areas. The unconcerned nature of the government in appointing expert members to address environmental problems is quite problematic. The improper enforcement of landmark orders of the National Green Tribunal like Ganga water pollution, illegal mining, etc. is also an alarming concern.

Despite facing such problems, the National Green Tribunal has been making appreciable efforts to ensure environmental protection. The government should try to support the NGT by providing them with the necessary financial aid and should also try to reconstruct the administrative and institutional mechanisms to strengthen the NGT's role. With proper support from the concerned authorities and the government, NGT will be able to create a revolution in the sphere of environmental protection.
