

ACCESS TO ENVIRONMENTAL JUSTICE: A RESILIENT JOURNEY OF NATIONAL GREEN TRIBUNAL IN INDIA

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Abstract:

Access to environmental justice is the first step towards attaining environmental justice goals by defining legal standing for all impacted and interested parties in the language of equality; This paper documents genesis of green justice in India and the resilient journey of the National Green Tribunal of India (NGT). After Australia and New Zealand, only India has established an environmental tribunal, known as the "National Green Tribunal" (NGT), which was established under the National Green Tribunal Act of 2010. The NGT is a fast-track quasi-judicial body constituted with the aim of resolving environmental problems at the national level. The National Green Tribunal is formally defined as a "specialised body equipped with necessary expertise to handle environmental disputes involving multi-disciplinary issues"—A forum that encourages greater plurality for environmental justice in India. In the present study, NGT judgements were empirically analysed from their inception in October 2010 to March 2022. The study aims to analyse the responsiveness of the green tribunal to emerging Environmental Problems'. Despite the fact that the NGT legislation and its procedures have several issues, it could potentially be seen as a step in the right direction for environmental justice in India.

Key words: Environmental justice, National Green Tribunal, resilient, environmental disputes, Environmental Problems

1. Introduction

Globally, nations have set up independent "Green Courts," "Green Tribunals," or "Environmental Courts" to adjudicate environmental issues. India is the third nation after Australia and New Zealand to have an environmental tribunal. Amongst emerging nations, India was one of the forerunners in establishing the green court. The National Green Tribunal in India was created in 2010 in accordance with Article 21 of the Constitution of India. The Indian Constitution specifically guarantees its citizens' protection of their right to life and personal liberty. The government created this green tribunal in light of this fundamental right to handle exclusively environmental disputes.

The "National Green Tribunal" is a special fast-track quasi-judicial body to ensure speedy justice in cases involving the environment, making it a revolutionary judicial process. To ensure a speedy disposal of cases, the Tribunal is constituted of an equivalent number of judges and technical experts. The Green tribunal works on the principles of sustainable development, precautionary principle and the polluter pays principle. Also, Tribunal is not bound by the Civil Procedure Code of 1908 and works on the 'principles of natural justice.'

The Principal Bench of the tribunal is situated in New Delhi, the capital of India. The regional benches of the tribunal are located in Bhopal, Chennai, Kolkata, and Pune. Several regional benches have been set up across the nation with the intention of speedy adjudication of environmental disputes arising in India's farthest areas. This allows citizens from all over the nation to access the tribunal. The Green Tribunal's principal bench as well as regional benches are currently operational. Additionally, reducing the workload of litigation in the traditional judicial courts was a major goal of the establishment of green courts in various locations. With the cases in every court from lower to higher courts, Indian courts are already overworked.

This study, is exploratory in nature, examines the history and gradual development of National Green Tribunal. The history of environmental justice and the establishment of the National Green Tribunal in India are covered in the first section, which is followed by information on the structure of the NGT and its spheres of jurisdiction. The study is based on an examination of NGT decisions in the results section. The paper's conclusion is covered in the final section, which also analyses the limitations of NGT and suggestions for the way forward.

2. Environmental Justice: Indian perspective

This study builds on the theoretical insights of academics of law and development, including Trubek, who have challenged conventional notions of environmental justice that are based only on the principles of fairness in treatment and equity in the transmission of environmental risk.

Environmental justice refers to a concept that aims to ensure fair and equitable treatment of all individuals, regardless of their race, ethnicity, or socioeconomic status, when it comes to the distribution of environmental risks and benefits. According to a critical assessment of environmental movements, there are three primary elements of environmental justice: distributive justice, recognition justice, and procedural justice. Distributive justice refers to the equitable distribution of environmental risks and benefits, ensuring that no community is disproportionately burdened or deprived of environmental resources. Recognition justice recognizes the diversity of participants and experiences in impacted communities, acknowledging that different groups may have different needs and perspectives that must be taken into account in environmental decision-making. Procedural justice refers to providing opportunities for participation in legislative processes that establish and monitor environmental policy. This ensures that all affected communities have a say in decisions that impact their lives and the environment around them. Additionally, experts and practitioners have emphasized the importance of a fourth attribute: restorative justice, which focuses on addressing and remedying adverse environmental and social impacts that have already occurred, such as cleaning up polluted areas or providing resources to affected communities.

Overall, environmental justice seeks to ensure that all individuals and communities, regardless of their background, have equal access to clean air, water, and other environmental resources, and are not disproportionately burdened by environmental risks. Our analytical framework is based primarily on these inter - connected facets of environmental justice, but this research focuses particularly on procedural justice. The three pillars of environmental democracy outlined in the Aarhus Convention (United Nations Economic Commission for Europe Citation2019): access to information, access to justice, and access to participation in decision-making has served as research guidance in this regard. The effectiveness of environmental litigation can be assessed at three separate phases with regard to access to justice. The first includes having access to the courts, as well as having the knowledge information and knowledge, standing, the technical and legal support, and the ability to incur the consequences of litigation. The concept "middle stage" relates to the ability to access fair, effective, and cost-effective court proceedings. The final phase is having access to tools and enforcement remedies that can affect the court's judgement.

In 1982, the Supreme Court of India marked the beginning of an era of environmental activism by introducing public interest litigation, a mechanism for activists and organizations to approach the justice system and seek justice for society's most vulnerable groups. The Supreme Court then established an informal bench of judges of judges with technical knowledge to handle environmental cases more effectively. In nine high courts at the state level, green benches were additionally established.

A new age of environmental jurisprudence began in 2010 with the establishment of the quasi-judicial NGT, which came at a crucial period of strong economic growth accompanied with serious environmental deterioration and rising level of poverty nationwide.

The establishment of these specialised environmental organisations provided a significant chance to advance procedural justice and resolve conflicts resulting from debates over the environment versus development. Since the NGT continues to be in its formative years, its efficacy in settling environmental disputes is still not extensively evaluated. According to Section 15 of the NGT Act, the tribunal has the authority to issue orders granting relief or compensating parties who have suffered environmental harm as a consequence of decisions or orders made in accordance with seven federal environmental laws mentioned in the schedule. However, Critics have drawn attention to the NGT's constrained authority, and some have framed it within a historical context pointing on the inadequacy of quasi-judicial tribunals in India due to political interference.

3. Genesis and establishment of The National Green Tribunal

The National Green Tribunal (NGT) was established in India under the National Green Tribunal Act, 2010, with the objective of expeditious and effective disposal of cases relating to environmental protection and conservation of forests and other natural resources. The genesis of the NGT can be traced back to the growing concern about environmental degradation in

India. The idea of setting up an environmental court gained momentum after the Supreme Court of India, in a landmark judgment in the case of *M.C. Mehta v. Union of India* (1987), directed the establishment of special courts to deal with environmental disputes. The Indian government realized the need for a specialized court to deal with environmental disputes and to ensure effective implementation of environmental laws. The idea was also influenced by the success of similar institutions in other countries, such as the Environmental Protection Agency (EPA) in the United States. The origin of the NGT in India can be traced back to the recommendations made by the Law Commission of India in its 186th report on "Proposal for a Special Tribunal for Environment and Forests" in 2003.

In response to the Law Commission's recommendations, the Ministry of Environment and Forests, Government of India constituted a committee in 2009 to examine the feasibility of setting up such a tribunal. The committee submitted its report in the same year, recommending the establishment of a National Environment Appellate Authority (NEAA) with powers similar to that of a civil court.

However, the NEAA was not constituted, and instead, in 2009, the Ministry of Environment and Forests (MoEF) drafted a new bill to establish the National Green Tribunal. The bill was introduced in the Lok Sabha, the lower house of the Indian Parliament, in August 2009, but it lapsed due to the dissolution of the Parliament.

In July 2010, the bill was reintroduced in the Lok Sabha, and on August 26, 2010, it was approved. The bill was approved by the Rajya Sabha, the upper house of the Indian Parliament, on September 2, 2010. The National Green Tribunal Act of 2010 came into effect on October 18, 2010, after the President granted the legislation his approval on September 7, 2010. The Act calls for the creation of a specialized tribunal to handle environmental disputes and concerns and make sure that environmental laws and policies are effectively implemented across the nation.

The NGT was finally established on 18 October 2010 as a specialized court for environmental matters, with its headquarters in New Delhi five regional benches located in Bhopal, Pune, Kolkata, Chennai, and Delhi, each bench comprises a judicial member and an expert member. The judicial members are retired judges of the High Court or the Supreme Court of India, while the expert members are environmental experts with experience in fields such as ecology, hydrology, and environmental management.

The NGT has jurisdiction over all civil cases involving environmental disputes, including the enforcement of environmental laws, protection of forests and wildlife, prevention and control of pollution, and conservation of natural resources. Its decisions are final and binding, and the Tribunal has the authority to impose penalties and compensation for environmental damage.

The NGT consists of a chairperson and a certain number of judicial and expert members appointed by the central government. The chairperson must be a retired judge of the Supreme Court of India, while the judicial members must be retired judges of the high courts. The expert members must have specialized knowledge or experience in environmental matters. Since its establishment, the NGT has been instrumental in resolving a number of environmental disputes and enforcing environmental laws in India. It has also played a key role in promoting sustainable development and protecting the environment for future generations.

Overall, the establishment of the NGT was a significant step towards addressing the growing environmental concerns in India and ensuring a more effective implementation of environmental laws and policies.

4. The National Green Tribunal Act 2010: Interpretation and Application

The National Green Tribunal Act, 2010, is a comprehensive piece of legislation that establishes the National Green Tribunal (NGT), a specialised court for the speedy and effective resolution of cases involving environmental protection, the preservation of forests, and other natural resources.

NGT Act, 2010 comprises of 38 sections in 5 Chapters and 3 Schedules. The preamble of the National Green Tribunal (NGT) Act, 2010 outlines the rationale and objectives of the Act. It provides for the "establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other

natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.”

The preamble of the NGT Act, 2010 makes reference to the Stockholm Conference of the UN on the Human Environment, the Rio Conference of the UN on Environment and Development, and Article 21.

4.1 Composition, jurisdiction and power of the tribunal

Section 3 of the NGT Act deals with the composition of the Tribunal. It provides for the establishment of a National Green Tribunal with a Chairperson, judicial members and expert members. The Chairperson must be a sitting or retired judge of the Supreme Court and is appointed by the central government after consulting with the Chief Justice of India. The judicial members must have experience in dealing with environmental matters and must be either serving or retired judges of a High Court. The expert members must have a background in environmental sciences, management, or related fields, and must be appointed based on their expertise and experience. The number of members can be specified by the central government from time to time.

Section 4 of the NGT Act outlines the jurisdiction of the Tribunal. It provides that the Tribunal shall have jurisdiction over all civil cases relating to environmental issues and disputes arising from the implementation of laws listed in Schedule I of the Act. This includes cases related to the enforcement of any legal right relating to the environment, compensation for damages caused by violations of environmental laws, and disputes related to the interpretation of environmental laws. The Tribunal can also hear appeals against any order, decision, or award made by any regulatory authority under the relevant environmental laws.

Section 5 of the NGT Act deals with the powers of the Tribunal. It provides that the Tribunal shall have the same powers as a civil court while trying a suit under the Code of Civil Procedure, 1908. These powers include the power to summon and enforce the attendance of witnesses, the power to receive evidence on affidavit, the power to call for documents or electronic records, and the power to issue orders, directions, or injunctions as it deems fit. The Tribunal can also award compensation for damage caused to persons or property as a result of environmental violations. Additionally, the Tribunal can impose penalties or fines on individuals or organizations found guilty of violating environmental laws, and can also order the closure, prohibition, or regulation of any industry, operation or process that is causing or likely to cause environmental damage.

4.2 Underlining principles of the tribunal

The Act incorporates several principles of environmental law, including the principles of natural justice, sustainable development, the precautionary principle, and the polluter pays principle.

Sec 19 of the Act talks about the Procedure and powers of Tribunal which says NGT has equivalent powers as that of a civil court but is not bound by CPC, 1908 and is guided by principles of natural justice.

The principle of natural justice is a fundamental principle of law, which requires that parties be given a fair and just hearing before an independent and impartial tribunal. The NGT Act recognizes this principle by providing for a transparent and participatory process of adjudication.

The Act requires the NGT to give an opportunity to all parties to be heard and to present their case. This ensures that the principles of natural justice are followed while making decisions related to environmental protection.

Under section 20 the act binds the Tribunal to apply certain principles. The NGT applies these principles in its decisions and orders to ensure that environmental protection and conservation are given due consideration and that the rights and interests of all stakeholders, including the public and the environment, are safeguarded. In its proceedings, the NGT is guided by certain principles under the NGT Act, 2010, which include:

The principle of sustainable development is another important principle that is incorporated in the NGT Act. The Act recognizes the need to balance economic development with

environmental protection. This principle requires that decisions be taken in a manner that ensures the long-term well-being of both present and future generations. The NGT, while making its decisions, must take into account the principle of sustainable development to ensure that the environment is protected and conserved for future generations.

The precautionary principle is also incorporated in the NGT Act. This principle requires that in situations where there is scientific uncertainty about the potential environmental harm caused by an activity, measures should be taken to prevent harm to the environment. The NGT, while making its decisions, must take into account the precautionary principle to ensure that environmental harm is minimized.

The polluter pays principle is also incorporated in the NGT Act. This principle requires that those who cause pollution or environmental damage must bear the cost of remediation. The NGT can order those responsible for environmental harm to pay compensation or to take remedial measures to restore the environment. This principle ensures that the costs of environmental protection are borne by those who cause environmental harm, rather than by the general public.

In conclusion, the NGT Act incorporates several principles of environmental law, including the principles of natural justice, sustainable development, the precautionary principle, and the polluter pays principle. These principles ensure that decisions related to environmental protection are taken in a transparent, participatory, and equitable manner, and that the environment is protected and conserved for future generations.

4.3 Relief, compensation and restitution

Section 15 of the National Green Tribunal (NGT) Act, 2010 empowers the NGT to make orders for relief, compensation, and restitution in cases of environmental violations.

Relief refers to the immediate steps that need to be taken to prevent further damage to the environment or to mitigate the harm caused. This may include ordering the closure of an industry or a process causing pollution or directing the concerned authority to take urgent measures to clean up the polluted site.

Compensation refers to the monetary compensation that may be awarded to the affected parties for the loss or damage caused by the environmental violation. The NGT may order the polluter to pay the compensation to the affected parties or to deposit the amount in an environmental relief fund.

Restitution refers to the restoration of the environment to its original state as far as possible. This may include ordering the polluter to restore the polluted site to its original condition, such as replanting trees or removing pollutants from the soil or water.

Under Section 15 of the NGT Act, the NGT has wide powers to provide relief, compensation, and restitution to the affected parties in cases of environmental violations. The orders passed by the NGT are binding and enforceable, and failure to comply with the orders may result in penalties or imprisonment.

4.4 Sanctions and Penalties

Section 26 of the National Green Tribunal (NGT) Act, 2010 deals with the penalty for non-compliance with the orders of the NGT.

According to this section, if any person or entity fails to comply with an order or direction issued by the NGT, they may be punished with imprisonment for a term that may extend to three years or with a fine which may extend to ten crore rupees, or both.

If the non-compliance continues after the first conviction, the person or entity may be punished with imprisonment for a term that may extend to five years or with a fine which may extend to twenty-five crore rupees, or both. Additionally, the NGT may also issue an order for the compensation or restitution of the damage caused to the environment or the affected parties due to the non-compliance with its orders or directions.

The penalty under Section 29 of the NGT Act is a powerful tool to ensure compliance with the orders and directions issued by the NGT. The high amount of fine and imprisonment term shows the seriousness of the offence and the importance of compliance with environmental laws. It also acts as a deterrent against potential violators and ensures that the orders and directions of the NGT are enforced effectively.

5. Materials and methods

For the current study, all decisions made as of April 1, 2021 Data up to March 31, 2022, was compiled from the NGT website (www.greentribunal.gov.in). Each judgement included a thorough analysis of the particulars of the appellants and respondents, the main petition of the appellant, the background of the case, and the tribunal's ruling. The appellants' petition and the main point of the ruling served as the basis for categorizing and organizing the judgements into several environmental sectors. In addition, groups of judgements were created using India's zonal representations. In order to track any rising or falling tendencies, the NGT's judgements for each year between 2011 and 2022 were also counted from the NGT website.

6. Results and discussion

Since its formation, the NGT has handed down a rising number of environmental decisions, a trend that highlights the increasing environmental disputes in a developing nation like India. Based to an analysis of all NGT decisions made so far, the NGT (including zonal benches) delivered down a total of 38672 decisions for various environmental disputes across the country from its beginning in 2011 to the year 2022.

Figure 1 here shows the total number of instituted, disposed and pendency of the cases of NGT Principal Bench and all Zonal Benches from the date of its genesis till 31.03.2022. The graph clearly indicates the speedy disposal of environmental cases by the tribunal. As given in the figure 1 till date total of 40712 cases have been instituted in NGT of which 38672 and remaining of 2040 are pending. The data indicate the efficacy of the tribunal in handling environmental cases.

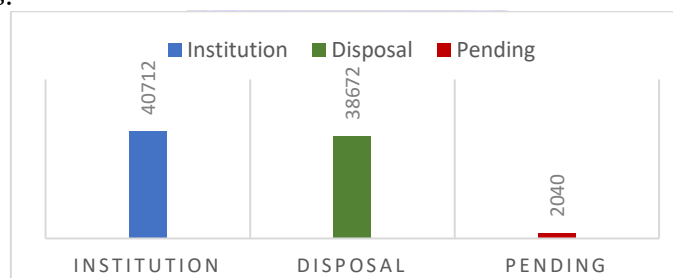


Figure 2

Total of institution, disposal and pendency of the cases of NGT Principal Bench and all Zonal Benches from the date of its inception till 31.03.2022

Figure 2 here shows the total number and of cases handled and disposed by of NGT Principal Bench & All Zonal Benches from 01/04/2021 To 31/03/2022 and also indicates the pending cases with each bench. The graph clearly indicates the majority cases are filled in the principal bench followed by the western zonal bench and eastern zonal bench.

Delhi Bench: 1,614 cases instituted, 1,353 cases disposed of, and 916 cases pending from 01/04/2021 To 31/03/2022. Chennai Bench: 445 cases instituted, 543 cases disposed of, and 349 cases pending from 01/04/2021 To 31/03/2022. Bhopal Bench: 227 cases instituted, 227 cases disposed of, and 104 cases pending. from 01/04/2021 To 31/03/2022. Pune Bench: 521 cases instituted, 662 cases disposed of, and 550 cases pending from 01/04/2021 To 31/03/2022. Kolkata Bench: 405 cases instituted, 667 cases disposed of, and 121 cases pending from 01/04/2021 To 31/03/2022.

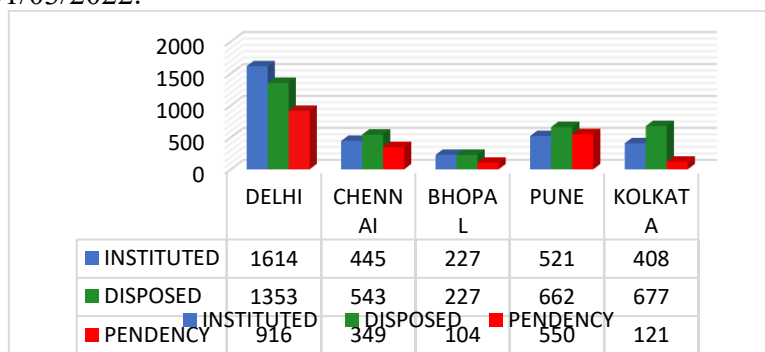


Figure 2

Both the figures clearly indicate the efficiency of National Green Tribunal (NGT) Principal Bench & All Zonal Benches in speedy disposal of the cases. Nevertheless, the tribunal is working tirelessly through various circuit benches which are the further sub division in the zonal benches to dispose the pendencies in environmental disputes. Still one might also consider other parameters of efficacy in which the national green tribunal such as the further appeal filed to the upper courts and the ratio of the appellant matters in the judgements of NGT are reversed.

7. The resilient journey of National green Tribunal and the Key challenges that still remains

The National Green Tribunal (NGT) is a specialized court in India that was established in 2010 under the National Green Tribunal Act, with the objective of expediting the resolution of environmental disputes and promoting the protection and conservation of the environment.

The journey of the NGT has been marked by various challenges and obstacles, but it has also demonstrated resilience and adaptability in the face of these challenges. Some of the key milestones and challenges in the journey of the NGT are:

Establishment and initial challenges: The NGT was established in 2010 with the objective of providing a specialized forum for environmental disputes. However, it faced several initial challenges, including delays in the appointment of judges, lack of infrastructure and resources, and resistance from some quarters.

Landmark judgments and orders: Despite these challenges, the NGT has delivered several landmark judgments and orders, which have had a significant impact on environmental protection and conservation. For example, it has banned diesel vehicles older than 10 years in the National Capital Region to curb air pollution, ordered the closure of industries polluting the Ganga river, and directed the cleaning up of toxic waste dumps in several states.

Expansion and decentralization: To improve access to justice and enhance its reach, the NGT has expanded its presence across the country, with regional benches in various states. It has also decentralized its functioning, with the appointment of expert committees to carry out site inspections and report on environmental violations.

Expedient disposal of cases: Despite its successes, the NGT has also faced criticism from various quarters, including from industry and some sections of the judiciary. Some have raised concerns about its effectiveness in delivering timely and effective justice, while others have questioned its jurisdiction and powers.

In conclusion, the journey of the National Green Tribunal has been marked by various challenges and obstacles, but it has also demonstrated resilience and adaptability in the face of these challenges. With its continued commitment to environmental protection and conservation, the NGT remains a vital institution in India's quest for sustainable development.

Conclusions and Suggestions

Some amendments that could be considered to improve the NGT Act, 2010 are:

- *Firstly, To Increase the number of judges and support staff:* The NGT has been facing a shortage of judges and support staff, which has resulted in delays in the delivery of justice. Amending the NGT Act to increase the number of judges and support staff would help to address this issue.
- *Secondly, To Expand the scope of the NGT's jurisdiction:* The NGT currently has limited jurisdiction and can only hear cases related to specific environmental laws. Expanding the NGT's jurisdiction to cover all environmental matters would help to ensure that all environmental disputes are heard and resolved in a timely and efficient manner.
- *Thirdly, To Enhance the powers and autonomy of the NGT:* The NGT currently does not have the power to enforce its orders and decisions, which has been a major challenge. Amending the NGT Act to provide the NGT with greater powers and autonomy would help to ensure that its orders and decisions are effectively implemented.
- *Fourthly, To Strengthen the NGT's infrastructure and resources:* The NGT currently faces challenges in terms of infrastructure and resources, such as the lack of regional

benches and expert committees. Amending the NGT Act to strengthen the NGT's infrastructure and resources would help to ensure that it is better equipped to carry out its mandate.

- *Fifthly To Inculcating Public Awareness:* Another suggestion would be to increase public awareness of the NGT and its role in promoting environmental protection and conservation. This can be achieved through media campaigns and outreach programs to increase awareness about the NGT and its jurisdiction.
- *Finally, To abide by the Application of certain principles:* it is important to ensure that the NGT continues to uphold its principles and values, such as the precautionary principle, the polluter pays principle, and the public trust doctrine, in all its decisions and orders. This will ensure that the NGT remains a vital institution in India's quest for sustainable development and environmental protection.

Overall, with the right support and measures in place, the NGT can continue to progress and make a significant impact in promoting environmental protection and conservation in India.

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