

Anatomisation of the Recent Trends in the Role of NGT in Fostering Sustainability and Environmental Justice in India: Challenges and Implications

ABSTRACT

The Indian judiciary has contributed much to the environmental law doctrine. Its response towards the international law doctrine was laudable and it has contributed seriously to the development of Indian environmental law jurisprudence. Apart from this it incorporated almost all international law doctrines into the Indian legal system like precautionary principle, polluter pays principle, sustainable development and public trust doctrine. Basically this contribution was made by the Supreme Court of India and various High Courts in the country.

By the very constitution of National Green Tribunal in last decade, the law on environment and development was mainly dealt by the tribunal. It is almost a decade since the functioning of National Green Tribunal. There are many conflicting opinion about the productiveness of the tribunal. The tribunal at times seems to exercise similar power as that of the Supreme Court of India. In this context it is high time to make an analysis of the functioning and effectiveness of National Green Tribunal.

National Green Tribunal seems to be an effective mechanism in dealing with many crucial questions relating to the environment; especially the question of environment and development. The environmental conservation being the primary purpose of the Green Tribunal, it at times causes threat to some vital developmental activities. In that sense there requires some appropriate measures for dealing with the power of the Tribunal; if it trespasses the limits.

The analysis in this respect about the National Green Tribunal will be the major premise of this paper. Eventually it also looks into the impact of Tribunal's judgment on developmental activities. The research will be conducted chiefly focusing on the judgments pronounced by the National Green Tribunal. The effectiveness of National Green Tribunal in assuring environmental conservation and the sustainable development will be the key focus of research problem in this conference paper. The hypothesis is that NGT is partially succeeding in its goal of conserving environment and promising sustainable development.

Keywords: National Green Tribunal, Sustainable Development, Environment, National Environmental Policy.

1. INTRODUCTION

The Indian judiciary has contributed much to the environmental law doctrine. Its response towards the international law doctrine was laudable and it has contributed seriously to the development of Indian environmental law jurisprudence. Apart from this it incorporated almost all international law doctrines into the Indian legal system like precautionary principle; polluter pays principle, sustainable development and public trust doctrine. Basically, this contribution was made by the Supreme Court of India and various High Courts in the country.

By the very constitution of National Green Tribunal in last decade, the law on environment and development was mainly dealt by the tribunal.¹ There are many conflicting opinions about the productiveness of the tribunal. The tribunal at times seems to exercise similar power as that of the Supreme Court of India. In this context it is high time to make an analysis of the functioning and effectiveness of National Green Tribunal. This analysis reflects the economic and developmental goals of the country.

National Green Tribunal seems to be an effective mechanism in dealing with many crucial questions relating to the environment; especially the question of environment and development. The environmental conservation being the primary purpose of the Green Tribunal, it at times causes threat to some vital

developmental activities. In that sense there requires some appropriate measures for dealing with the power of the Tribunal; if it trespasses the limits.

The analysis in this respect about the National Green Tribunal will be the major premise of this paper. Eventually it also looks into the impact of Tribunal's judgment on developmental activities. The research will be conducted chiefly focusing on the judgments pronounced by the National Green Tribunal. The effectiveness of National Green Tribunal in assuring environmental conservation and the sustainable development will be the key focus of this paper. The hypothesis will be that the National Green Tribunal is partially succeeding its goal of conserving environment and promising sustainable development.

2. NATIONAL GREEN TRIBUNAL ACT, 2010: IT'S CONSTITUTION & FRAMEWORK

National Green Tribunal Act, 2010 (hereinafter mentioned as NGT Act) is an enactment made by Indian Parliament to deal expeditiously with the litigations relating to various environmental issues.² The NGT Act actually intends to fulfil Indian obligation to comply with the norms of international conventions on human environment held at *Stockholm* and *Rio de Janeiro* as indicated in its Preamble.³ In addition to these obligations, the Indian Supreme Court also considered the right to fair environment as a fundamental constitutional guarantee through many decided case-laws.⁴ These obligations in its entirety demands to have effective mechanism to deal with the litigations on various issues relating to environment and for which the NGT Act has been enacted by the Indian Parliament. Thus, NGT is identified as a multidisciplinary body to deal with the issues faced by the environment in India.

The structure and constitution of the tribunal is made by the central government.⁵ By the very nature of the body, it seems to be an expert body constituting members with legal and subject expertise. The term expert member is defined by the NGT Act.⁶ Expert member will have wide knowledge in the area of science or have long experience regarding various matters relating to environment. Presence of an experienced judicial member and expert member will give a comprehensive solution to the problem relating to environment and the same is envisaged by the enactment. The presence of expert member and judicial member reflects the norm or concept of sustainable approach towards the environment. This also carries the message of handling environment issues with the involvement of concerned citizens and using enough scientific as well as technological expertise.⁷

The framework that is envisaged in the NGT Act for dealing with the cases relating to environment is an appreciable one in the context of sustainable development. The international law mandates for the conservation of environment and sustainable development like community participation and environmental impact assessment (EIA) will be well served through a mechanism like that of NGT. The term environment is defined by the NGT Act as air, water and land and the interrelationship exist among and between water, air and land and human being other creatures and property.⁸ This definition carries the same meaning given to the environment under the Environment Protection Act, 1986 (hereinafter mentioned as EPA) and is structured alike. As per the enactment, NGT is empowered to discuss substantial question relating to environment. The phrase "substantial question relating to environment" is defined by the NGT Act. According to this the NGT will hear complaints relating to direct violation of any statutory environment obligation.⁹ Apart from the violation of the obligation, it shall also result in environmental consequences to the community at large or cause substantial gravity of damage to the property or result in broad damage to the public health. Thus, the complaint relating to any major damages to the environment and public health at large can be regulated by the NGT. The constituent enactments of which the obligations are considered under the NGT is specified in the schedule I of the NGT Act and which includes seven important legislations.¹⁰ The substantial question relating to environment thus implicates the violation of any of the obligations placed by the Scheduled enactments.

The Principal Bench of the National Green Tribunal considered the alarming situation arisen post *Kumbh* at Allahabad.¹¹ It can be seen that the tribunal gave an order on the control of pollution of river Ganga on the basis of site visits by the Committee appointed by the tribunal to oversee the implementation of the NGT order dated 10.12.2015. The NGT was of the opinion that there is an urgency for restoration work for sewage treatment and solid waste processing and therefore the State of Uttar Pradesh was directed to further with the restoration process in consultation with a committee headed by Justice Arun Tandon. In an interim report submitted by the committee, it was revealed that large number of toilets were constructed in various camps disproportionate to the sewage capacity of Rajpur drain. Only half portion of the sewage could be treated through Geo- tube. The remaining part was being permitted to enter the river without

treatment. The committee further found that approximately 2000 MT of unsegregated solid wastes from the *Kumbh* area were shifted to the non-operational Baswar Solid waste Management Plant which by itself was gross violation of NGT order and Solid Waste Management Rules, 2016. Further, over thirty-six temporary ponds were constructed without lining by completely disregarding the NGT orders. It was found that there has been a blatant violation of various rules and regulations on the part of administrative authorities despite repeated interference being made by the tribunal. This is a clear indication of how the laws regarding public health is ineffective and futile. The tribunal insisted to bring in more accountability towards cleaning river Ganga. The tribunal directed the Chief Secretary of U. P to constitute an appropriate mechanism of fixing accountability of ground level officers at the earliest and to appear before the tribunal in person for the next hearing. The entire hazardous situation had previously forced the tribunal to declare an area of 100 meters from the edge of Ganga between Haridwar and Unnao as a 'no development zone.' Additionally, the tribunal prohibited any kind of dumping or land filling irrespective of any technology for an area of 500 meters from the edge of river Ganga or its tributaries.¹²

The proceedings before the NGT will be treated as judicial proceedings and will be prominently guided by the principles of natural justice.¹³ The appeal against the order or decision of the NGT will be entertained by the Supreme Court of India.¹⁴ The NGT Act also makes order to make payment of compensation to the Environment Relief Fund which can be used for the purposes relating to the environment conservation. By the constitution of NGT, the then existed National Environment Tribunal Act, 1995 was abolished. In short, the constitution of the new body for dealing with the violation of environmental protection laws can handle the issue of environment and development thoughtfully. It is now five years since the functioning of NGT and the analysis of the decisions of NGT will help us indicate the effectiveness of NGT in tactfully dealing with the issue of environment and development.

3. ENVIRONMENTAL SOCIOLOGY & ENVIRONMENT CONSERVATION IN INDIA

Sociology as a branch of study in many manners is related to the human environment. Environmental law can be explained in the context of conventional theories of sociology. The very concept of sustainable development can be read out from the jural postulates of Roscoe Pound and it favours the concept of sustainable development.¹⁵ Apart from conventional approach of sociology towards environment, environmental sociology is a recent branch of sociology. In short environmental sociology is the study of society and its interrelationship with the environment. This is a branch of study inspired by the writings of many environmentalists during the second half of twentieth century.¹⁶ The book *Silent Spring* by Rachel Carson is hold as the prominent among those writings. Professor Riley Dunlap seems to be the major contributor of the term environment sociology and he describes environmental sociology as that branch of sociology that deals with the *man-environment* relationships.¹⁷ Thus the context of discussing environmental sociology is its relationship with the doctrine of sustainable development. The discipline of environmental sociology is capable of developing various interrelationships happening between environment and development like industrial society and its biophysical environment, society's responses towards issues like power crisis, climate change, deforestation, global warming etc.

One important aspect to be discussed in this context is the nexus a similar discipline of environmental sociology called sociology of natural resources. There is a debate about these two disciplines yet in the context of sustainable development both synchronises on many aspects.¹⁸ The distinctions even that can be made are too irrelevant in the context of sustainability doctrine. The essence of an environment sociological approach can be well traced from the international documents on environmental protection. It always tries to take up the matter of environment considering the developmental needs into concern. Public participation in the environmental decision-making process is a good example for the application of environmental sociology to achieve the ends of sustainability.¹⁹

The basic task of environment sociology is to deal with the question of human influence on the environment. It mainly speaks about the interdependence in changes caused by human beings to the physical environment and how far those environmental changes are going to influence the human existence.²⁰ The learning of environment from the context of environmental sociology will thus become a process of interactive learning. Here the role played by the public in deciding the developmental activities, environmental impact assessment process, expert opinion etc will be thus an output of these interactive responses on environmental issues. Sociologists are of the opinion that the effectiveness of social impact assessment of environmental issues is a difficult procedure. Still the Indian judiciary and its responses keep a constant communication with concerns of environmental sociology during its decision-making process. The same can be revealed through the forthcoming discussion.

The Indian judicial response towards environmental conservation was evident in many judgments and the approach was to a greater extent in complementary with the international yardsticks on environmental conservation. Prima facie the approach of Indian judiciary reflects to be more parallel with the concept of sustainable development. But those sustainability concepts are actually featured in the context of Indian society and its interaction with the environment which in turn is an approach based on environmental sociology. This aspect has been rightly remarked by the apex court as follows:²¹

“Today society’s interaction with nature is so extensive that the environmental question has assumed proportions affecting all humanity.”

The court also emphasised that the obligation under the Indian Constitution to protect and improve environment and to safeguard forest and wildlife of the country is of equal significance as the activities for the development of humanity.²² It is a long-approved policy of Indian government to resort to public participation in the environmental decision-making process. This public participation in environment decision making process will have two components within it. One is to facilitate informed choices among the public and other the extension of environment education to all.²³ The principles for environmental protection also have considerable nexus with the concerns of environmental sociology.

The *polluter pays principle* is one of the doctrines to mitigate the impact caused by the environmental pollution especially in industrialised societies. The rule suggests the polluter to bear the cost of pollution and to lessen the impact of pollution rather than burdening the forthcoming generations to get spoiled by the pollution and its ill impacts. The doctrine developed internationally was adopted by the Indian Supreme Court in many leading judgments.²⁴ The doctrine of *precautionary principle* also has the same potential of enduring protection to the populations under the threat of environmental changes. Here the doctrine attempts to foresee and assess the environmental risks and tries to develop mechanisms to resolve the threats posed by the environmental changes. This doctrine is also incorporated into the Indian legal system.²⁵ Another acceptable environmental law norm; the Environmental Impact Assessment (EIA) is also well accepted principle now in India. This principle is mostly now used in the big projects to analyse the economic worthiness of the project in the context of sustainability. The long list of litigations relating developmental activities from *Silent Valley case* to *Narmada Bachao Andolan* will reveal the nature and scope of EIA in determining the question of sustainability.

All the above doctrines should be understood as the salient features of the concept of sustainable development. This actually helps to develop a norm regulating the issues relating to environment in balanced manner. The use of these tools itself may be biased in nature. The centralization of EIA is highlighted as an example. This can be settled by the constitution of environmental courts.²⁶ In addition to this, public participation in the environmental decision-making process will add on to the perfection of the doctrine of sustainable development. Public participation in the environment decision making process will bridge the gap between the environmentalist and public at large, it also improves the decision quality of decisions and ultimately it will gather public confidence in environmental decisions. The role played by the NGT is thus relevant in instituting the environmental law of the recent times in India focusing on the doctrine of environmental sociology and sustainable development.

4. NATIONAL GREEN TRIBUNAL: ROLE IN ENDURING SUSTAINABILITY

The environmental law in India is much developed through judicial pronouncements and legislative measures truly catered the purpose too. Major part of the law was developed through Supreme Court judgments. Now it is time to analyse whether NGT is fit to take up this responsibility which was earlier achieved through the apex court of the country. There are multiple reasons that resulted in the constitution of the NGT. Burden of environment cases in Supreme Court, drawbacks of National Environment Appellate Tribunal, Bhopal tragedy, need for expertise to deal with environment cases etc are few among them. NGT has got wide powers; even the cases pending before other courts can be transferred to the NGT on its constitution. Recently the Supreme Court directed the aggrieved party to contest the environmental issues relating to Bhopal tragedy before the NGT.²⁷ The need for constituting more expert bodies for deciding environmental issues is a matter widely debated by judicial bodies itself.²⁸ The environmental law doctrines like *precautionary principle*, *polluter pays principle*, EIA etc requires for scientific evidence. The constitution of NGT is one which satisfies the above concerns. This is one of the prominent factors that help to advance the sustainability concept in environment conservation.

An application was filed before Western Zone bench of the tribunal seeking direction prohibiting the respondents from production, commerce, stocking, distribution, sale and use of artificial plants and flowers by applying *precautionary principle*.²⁹ There has been an increase in use of artificial flowers and plants for various celebrations and festivals due hike in prices of natural plants and flowers. These artificial flowers are made up of polythene. Consumers often discard these flowers and plants due to its short shelf life. As these items can neither be recycled nor decomposed, adversely affects the environment in a long run. While considering these arguments the NGT found two conflicting views pointed out by both Central Pollution Control Board (hereinafter referred as CPCB) and the Maharashtra State Pollution Control Board (hereinafter referred to as MPCB). According to CPCB artificial flowers and plants does not come within the purview of *single use plastics* which has to be phased out.³⁰ However, MPCB was of the opinion that the artificial plants and flowers falls under the category of banned single use product³¹ and hence it has to be banned and has also realised fine from the defaulters. Though NGT inclined towards view taken by the CPCB, it directed the CPCB to consider the case of artificial flowers and plants before the committee and submit the report within two months.

In addition to the constitution of the tribunal, the active involvement of the tribunal in various matters reflects its initiative for enduring sustainability in environmental matters. In *Goa Foundation v. Union of India*³², examine the jurisdiction and power of the NGT in detail and expressly held the role of NGT in determining all civil cases relating to environment as well as dealing with the environmental rights. The role played by the NGT in monitoring the administrative activities relating to environment clearance and EIA is commendable. There are many orders from NGT rectifying false environment clearances. The decisions in *M. P. Patel and Adivasi Majdoor Kissan Ekta Sanghadhan* are good examples for the same.³³ In these judgments the tribunal ordered to have new environment clearance certificate and EIA documents as the existing one were obtained fraudulently and without impartial and fair public participation. These decisions itself will be evident enough to show the potential of NGT in assuring sociological approach in environmental decision-making process. Similar was the approach taken by NGT in the matter of mining and quarrying and suggested to have balanced approach in economic and social needs of the society against the environmental concerns.³⁴ There are many more examples for crucial interferences from NGT ensuring the concerns over environmental conservation. NGT had even interfered with huge investment projects with foreign collaborations demanding expanded criteria for environment clearances.³⁵ Such interferences in the very initial stages of the project installation will have dual benefits; one of assuring environmental stability and other preventing investors from falling into unwanted legal deadlocks.

In the case of *Junaid Ayubi v. State of Uttarakhand*³⁶ the NGT took a striking approach against mining and directed for closure of a mine project falling within the Doon Valley Eco- Sensitive Area. The tribunal relied upon the decision of the Supreme Court in *Rural Litigation and Entitlement Kendra v. State of U. P and Ors*³⁷ where the apex court prohibited mining in the said region.

Inherent loopholes will be there with any novel ideology and so is the case with NGT. NGT and its constitution are challenged on the grounds of natural justice and under the Indian Constitution. Mr. Naveen Kumar, a law student from Tamil Nadu challenged the constitutional validity of NGT Act for ousting the jurisdiction of Civil Courts and impliedly the Writ Jurisdiction of High Courts and still the matter is pending before the Court. It is true that there is a tendency for the present legislation to be influenced by the administrative people and which will be against the spirit of having free and fair judiciary. The same issue with tribunals and the need to make tribunal free from the clutches of Ministry and their people was highlighted by the Supreme Court in *R. Gandhi's Case*.³⁸ Despite this lapse the presence of an expert member will be ideal in making more justful conclusions in relation to the issues on EIA, environment clearance etc. The presence of expert members (non-judicial members) is vital part of tribunal system also. Internationally there are examples for similar systems and also authorities similar to NGT can also be identified.³⁹ Having said so, the reality is the inertness of the Union Government in proper appointment of expert members and judicial members by dragging to notify their appointments.⁴⁰ It is indeed true that the mechanism of the NGT is similar to that of an expert panel requiring immense knowledge in the environmental related aspects. In addition to that the most important aspect should be that their working and decisions should be independent of any external agencies. This is because the matters dealt by the tribunal will have far reaching implications and there will be lots of stakes attached to it. Thus, independence of the tribunal should be ensured to attain the major object of environmental justice. However, this seems to be far from reality. The amendment to the Central Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and Other Conditions of Service of Members) Rules in 2017 has attracted numerous controversies and the apex court stayed the amendment.⁴¹ The controversy was elevated when

the Union Government appointed two of its serving officials as the expert members of the NGT for a period of three years until further orders, '*whichever comes earlier*'. This phrase by itself has hampered the independence of the NGT as it indirectly implies that they have to work at the pleasure of the Union Government. At the time of inception of NGT in 2010, there were no bureaucrats as expert members, however over the period of time the environment scientists and professors were replaced by the members of the bureaucracy. The uproars were not limited to expert members alone, it accounts equally to the appointments of judicial members as well. Appointments of judges as chairperson or members of the tribunal just after few months of their retirement has also made the system unscrupulous.⁴²

Thus, it is insignificant to derail the NGT mechanism on the above causes and better screening in selection of expert members can be introduced for meeting the principles of fairness and reasonableness in its functioning.

5. INFLUENCE OF NGT ON ENVIRONMENTAL LITIGATION

The NGT took a strong stand where provisions relating environmental clearance (E.C) was compromised by the parties. The tribunal pointed out that the economic benefits of a project should be ignored in the cases where project involves continuing and excessive degradation to the environment.⁴³ Any EC passed by the Ministry of Environment and Forest (MoEF) shall pass the principle of proportionality. Another important facet of E.C is the public hearing envisaged under EIA Notification 2016. The tribunal condemned the process of public hearing which took place in the case *Adivasi Majdoor Kisan Ekta Sangthan v Ministry of Environment and Forests*.⁴⁴ It was found that the case was not limited to mere insignificant procedural lapses rather went on to the extent of violation of basic principles of natural justice and thus, declared the public hearing to be illegal and invalid. Recently an EC was challenged before the Southern Zone Bench of NGT in *K. Rukumangada Reddy v. Union of India*⁴⁵ for violating the norms relating to public survey, public hearing and notification of EIA. The tribunal observed that since the statute mandates a public hearing within forty-five days, non-compliance of which will lead to cancellation of EC.⁴⁶ Regarding publication of EC is a statutory requirement in cases of Category B Projects⁴⁷ and such communication should be made to the public by methods of mass communication such as newspaper, websites and satellites. Moreover, the communication shall include sufficient information regarding basic facts constituting the grounds for an order.⁴⁸

The case of *M. Haridasan v State of Kerala*⁴⁹ can be cited as a very good example in indicating the proactive role of NGT especially in the light of *precautionary principle* and the right of the inhabitants. The decision was in the backdrop of a report submitted by CPCB recommending to maintain longer distances for siting stone quarries. Aggrieved by such an order the project proponents filed miscellaneous applications in the instant case impleading that the distance prescribed by the mining department and the Kerala State Pollution Control Board should not be interfered with. Following which NGT constituted a joint committee for an expert study on the subject of 'safe distance for mining from inhabitations' and on the impact of blasting using NONEL detonator technology in stone quarries. One of the key aspects of the committee's discussion was in relation hearing the stakeholders. Few members opined for having online survey in English and vernacular language. But few reminded about the concerns of the general public who were not computer savvy and insisted on physical sitting for hearing the stakeholders.⁵⁰

The case of *M.P Patil v. Union of India*⁵¹ forms a significant part in the discussion pertaining to NGT. It was in this case the Rehabilitation and Settlement Policy received an adequate consideration. The tribunal expanded the scope of the beneficiaries under the policy by not restricting it to mere land owners in the region. The tribunal also fixed the liability upon the proposer of the project that the project goals is in consonance with sustainable development goals. Another important decision of the tribunal was with respect to its take on matters involving wildlife.⁵² It was argued that the issues relating to wildlife should be kept outside the purview of the Tribunal. The tribunal was of the opinion that the wildlife is part and parcel of environment and any threat or damage to the wildlife will be considered on equal footing as that of damage to the environment. In *Wildlife Society of Orissa v State of Odisha*⁵³ while considering the execution application⁵⁴ the Eastern Zone Bench of the NGT expressed its displeasure in non-compliance of its order made in 2021 directing the State Government to notify the elephant corridors under section 3 of the Environment Protection Act, 1986. The tribunal gave an ultimatum of one month time for complying with the same or else the authorities concerned shall be made liable as per the provision of the NGT Act, 2010.⁵⁵

The Principal Bench of the NGT intervened in the issue relating to prevention of unscientific dumping of waste and encroachment of Hokersar Wetland in the case of *Raja Muzaffar Bhat v State of Jammu and*

Kashmir.⁵⁶ It was found that the conservation of wetlands is a significant part of environment protection and is equally guided by the principles of sustainable development and precautionary principles that has been sprouted out as part of right to life and statutory envision under NGT Act 2010. The non-compliance of scientific waste management in wetlands, lakes and other water bodies were felt necessary even by the Apex Court and various guidelines made in this regard ended up to be futile.⁵⁷ Hence, the tribunal directed National Wetlands Committee to compile data of status of compliance of environmental norms in all significant wetlands in the country for ensuring remedial action.

6. SUPREME COURT V. NGT

There have been multiple instances where there had been a tug of war between the Supreme Court of India and the NGT. One of the recent in the list would be the decision of the apex court against the order of NGT (Delhi) in the case of State of U.P v. Uday Education and Welfare Trust.⁵⁸ The Supreme Court affirmed that the NGT Act directs the tribunal to apply principles of sustainable development, precautionary principle and polluter pay principle.⁵⁹ However, one principle cannot be applied by keeping others in isolation. The court while setting aside the order of NGT the notice issued by the State Government for establishing new WBI's referred to the observations made by the apex court in Indian Council for Enviro- Legal Action v. Union of India⁶⁰ :

“While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words there should not be development at the cost of environment.”

The court observed that several doctrines such as intergenerational equity, sustainable development, precautionary principle and polluter pay principles are part and parcel of Article 21 of the Constitution.⁶¹ However, these principles shall not be a stumbling block for developments. In the case of permitting felling of trees of the prohibited species the State Government shall make sure that the notification dated 7th January 2020 issued by the Government of Uttar Pradesh is complied with.

NGT and the Jurisdiction of the High Court

The Indian Supreme Court in the case of Madhya Pradesh High Court Advocates Bar Association (MPHCABA) v. Union of India⁶² confronted with four issues. One of the major issues was whether NGT ousts the writ jurisdiction of the High Courts according to section 14 read with section 22 of the NGT Act, 2010. The apex court referred to the decision taken in L. Chandra Kumar v. Union of India⁶³ where the apex court affirmed the judicial review of the High Court under Articles 226 and 227 of the Constitution as a basic structure. Furthermore, the High Court's power of judicial superintendence over the decisions of the courts and the tribunals also comes within the scope of basic structure doctrine. It is the discretion of the High Courts to allow or dismiss a writ petition.⁶⁴ Moreover, the NGT Act does not oust the prerogative writ jurisdiction of the High Courts under Articles 226 and 227 of the Constitution, thus making the judicial review intact and unaffected.

Another concern of the petitioners was absence of provision of appeal against the order of NGT to the High Court. The Act provides for appeal to the Supreme Court⁶⁵ which according to the petitioners is inadequate, unaffordable and therefore inaccessible. However, the court was of the opinion that the appeal before a High Court is only a statutory creation and not an inherent right *per se*. The court made it clear that the appeal to the Supreme Court under section 22 of the NGT Act is of a limited scope as far as a litigant is concerned. Moreover, the litigant still has unextinguished right to approach High Court under Articles 226 and 227 of the constitution where the scope is wider which includes jurisdictional matters as well the matters on the basis of *Wednesbury principles*.⁶⁶ Additionally, the litigant will have opportunity to approach Supreme Court exercising SLP under Article 136 of the Constitution. The issue with regard to Supreme Court being the first appellate court has been dealt in earlier occasions also and a direction was given to the Union Government to study the effect of such direct appeals.⁶⁷ Since, there is no positive intervention from the legislature to this matter, it is prudent to go with the existing regime as these matters comes within the policy matters of the government. Moreover, provisions enabling direct appeals to the Supreme Court is not unconstitutional⁶⁸ and hence section 22 of the NGT Act is not *ultra vires*.

It would be very much inappropriate to understand that the views of the NGT and the Supreme Court were always not in the same line. One of the recent decisions of the Supreme Court which has boosted the functioning of the NGT would be recognising the *Suo motu* jurisdiction of the NGT in discharge of its function

under NGT Act, 2010 in *Municipal Corporation of Greater Mumbai v Ankita Sinha*.⁶⁹ In this case the NGT took *Sup motu* cognizance on the basis of an article titled '*Garbage Gangs of Deonar: The kingpins and their Multi-Crore Trade*' in the online portal 'The Quint'. The article heavily criticized the mismanagement of solid waste and its adverse impact on the environment, public health and lives of individuals living in the vicinity of the dumping ground in Mumbai City. Followed by the steps taken by the NGT such as inspection of the dumping site and based on the report it was found that the landfill site miserably failed to comply with the provisions of Solid Waste Management Rules, 2016 and ordered Mumbai Municipal Corporation to pay compensation of rupees five crores. The apex court observed that the role of NGT should be drawn from the wider spectrum by considering the provisions of Act, Rules along with India's commitment towards international commitments arising out of Rio and Stockholm conventions and protection of environmental rights intertwined with right to life under Article 21 of the Indian Constitution. Moreover, NGT is a specialized mechanism and therefore it is obvious for it take preventive actions other than settling and adjudicating disputes. The *Suo motu* jurisdiction of the NGT should not be confused with that of the Supreme Court and the High Courts, as the latter exercises such jurisdiction out of the constitutional mandate whereas the former is only a statutory functionary. The *Suo motu* actions of NGT shall be legal and rightful as long as they are confined within the environmental domains referred by the Act. Therefore, the NGT must act in cases of exigencies without indefinitely waiting for an application from any party to act in consonance with the object and scheme of the NGT Act, 2010.⁷⁰

7. CONCLUSION

It is difficult to define the word environment as once observed by the Honourable Supreme Court of India⁷¹ and it is further difficult to narrate what all constitutes environmental sociology and extremely perplexing to develop a standard norm for analysing sustainable development. It is thus ideal to quote the view of Albert Einstein on environment that '*environment is everything that isn't me*'.⁷² So contextually one's every interaction with the surroundings does have an environmental aspect involved in it and is regulated by the environmental legislations. Moreover, this very interaction is matter of analysis for the branch of learning called environmental sociology. This signifies the need for a comprehensive and social oriented approach in the environmental decision-making process. The branch of law and sociology becomes highly interdisciplinary at this juncture. The concept of intergenerational equity seems to be a sociological doctrine yet it has tough legal basis. It is exactly a socio-legal principle as designed by John Rawls in his *A Theory of Justice*.⁷³ Similar principles reflect the interdisciplinary scope of various environmental topics. This interdisciplinary approach is not something anomalous to judicial system and decision-making process. NGT and its functioning should be read in that context.

The role played by NGT in ensuring the environment conservation is not fully evident as the implementation of the Act is still in its infant stage. But from the context of environmental sociology and its principles, the very structuring of NGT facilitates the interaction between human beings and environment in better means. NGT can better analyse the sociological responses in environmental decision-making process. Better guarding of sustainability in developmental activities can be envisaged by the proper functioning of NGT. More benches should be constituted for the need of better access to these forums by the public. Appropriate application of EIA before the commencement of a project can also be visualized. Thus, NGT is content with a proper mechanism for keeping the international and national promises on environment and development.

References

¹ The National Green Tribunal Act, 2010, No. 19, Acts of Parliament, 2010 (India). (Hereinafter referred to as NGT Act, 2010)

² See the Preamble of the NGT Act, 2010

³ United Nations Conference on the Human Environment, 1972 (hereinafter mentioned as Stockholm Declaration) and the United Nations Conference on Environment and Development, 1992 (hereinafter mentioned as the Earth Summit)

⁴ *M C Mehta v. Union of India*, 1987 S.C.R. (1) 819 (India), *Subhash Kumar v. State of Bihar* (1991) 1 S.C.C. 598 (India), *M C Mehta v. Kamal Nath* (1997) 1 S.C.C. 388 (India), *Narmada Bachao Andolan v. Union of India* A.I.R. 1999 S.C. 3345 (India), *T N Godavarman Thirumulpad v. Union of India* (2000) 1 S.C.C. 1636 (India).

⁵ NGT Act, 2010 §§ 3, 4

⁶ NGT Act, 2010, §§ 2 (1) (d), 5 (2)

⁷ See Principles 9, 10 & 11 of Earth Summit, 1992

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- ⁸ NGT Act, 2010 § 2 (1) (c)
- ⁹ NGT Act, 2010, § 2 (1) (m)
- ¹⁰ See Schedule I, NGT Act, 2010. These enactments are The Water (Prevention and Control of Pollution) Act, 1974, No. 06, Acts of Parliament, 1974 (India), The Water (Prevention and Control of Pollution) Cess Act, 1974, No. 06, Acts of Parliament, 1974 (India), The Forest (Conservation) Act, 1980, No. 69, Acts of Parliament, 1980 (India), The Air Prevention and Control of Pollution Act, 1981, No. 14, Acts of Parliament, 1981 (India), The Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India), The Public Liability Insurance Act, 1991, No. 06, Acts of Parliament, 1991 (India) and The Biological Diversity Act, 2002, No. 18, Acts of the Parliament, 2003 (India)
- ¹¹ M C Mehta v. Union of India, Consideration of Report dated 10.04.2019 in OA No. 200/2014 dated 22.04.2019
- ¹² Sithara (CEL NUALS), *NGT Case Note: M C Mehta v. Union of India & Others (2017): NGT Case Note*, NGT Case Note: M.C. Mehta v. Union of India & Others (2017): NGT Case Note (linkedin.com)
- ¹³ NGT Act, 2010, § 19
- ¹⁴ NGT Act, 2010, § 22
- ¹⁵ J. W. Harris, *Legal Philosophies* 234-6 (2nd Ed. Butterworths, London, 1997)
- ¹⁶ John Hanningan, *Environmental Sociology* 11 (2nd ed. Routledge, London, 2006)
- ¹⁷ Joan David Tabara & Daniel Polo, *A Passion for Environmental Sociology: Exploring Links Between Social Environmental Sciences*, <https://ddd.uab.cat/pub/papers/02102862n82/02102862n82p169.pdf>, (last visited July 6, 2023).
- ¹⁸ Frederick H. Buttel, *Environmental Sociology and the Sociology of Natural Resources: Institutional Histories and Intellectual Legacies*, <http://people.wku.edu/douglas.smith/Buttel.pdf>,
- ¹⁹ Article 6, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998.
- ²⁰ Riley E. Dunlap, William R. Catton, *Environmental Sociology*, 5 ANNU. REV. SOCIAL. 243, 243-73 (1979)
- ²¹ Sachidanand Pandey v. State of West Bengal, A.I.R. 1987 S.C 1109 (India)
- ²² INDIA CONST. art. 48A.
- ²³ Ministry of Environment and Forests, Government of India, *Policy Statement for Abatement of Pollution, 1992*. Also see Shyam Divan & Armin Rosencranz, *Environmental Law And Policy In India* (2nd edn Oxford University Press, New Delhi, 2002)
- ²⁴ The Indian Council for Enviro-Legal Action v. Union of India, A.I.R. 1996 S.C 1446 (India). Also see Vellore Citizens Welfare Forum v. Union of India, A.I.R. 1996 S.C. 2715 (India)
- ²⁵ Vellore Citizens Welfare Forum v. Union of India, A.I.R. 1996 S.C 2715 (India)
- ²⁶ See the discussion relating to EIA in P. Leelakrishnan, *Environmental Law In India* (3rd edn. Lexis Nexis Butterworths Wadhwa, New Delhi, 2008)
- ²⁷ Bhopal Gas Peedith Mahila Sangathan v. Union of India, (2012) 8 S.C.C. 326 (India)
- ²⁸ A.P. Pollution Control Board v. Prof. M.V. Nayudu, (1999) 2 S.C.C. 718 (India)
- ²⁹ Rahul Popat Pawar v. MOEF and CC, 2023 (13) F.L.T. 251 (India)
- ³⁰ See Directions issued by CPCB under Section 5 Environment Protection Act, 1986 *vide* letter dated 01.02.2022
- ³¹ See Maharashtra Non- Biodegradable Garbage (Control) Act, 2006 and Maharashtra Plastic and Thermocol Products (Manufacture, Usage, Sale, Transport, Handling and Storage) Notification dated 23.03.2018
- ³² Decision of NGT Principal Bench in Appl. No.20 of 2012 Decided on 18th July 2013.
- ³³ M.P. Patel v. Union of India, Appeal No.12 of 2012 Decided on 13-03-2014 and Adivasi Majdoor Kissan Ekta Sanghadhan v. Ministry of Environment and Forest, Appeal No.3 of 2011 (NEAA) 26 of 2009 Decided on 24-04-2011
- ³⁴ Kollidam Aaru Padhuokappul Nala Sangam v. Union of India, Appeal No.64 of 2013 Decided on 24th Feb.2014.
- ³⁵ Prafulla Samanthy and Biranchy Samanthy v. Union of India and Others, Appeal No.8 of 2011 Decided on 30-03-2012
- ³⁶ 2023 (13) F.L.T. 256 (India)
- ³⁷ 1989 (Supp) 1 SCC 504
- ³⁸ Union of India v. R. Gandhi, [2010] 6 S.C.R. 857 (India)
- ³⁹ Similar systems are there in New Zealand and South Wales. In New Zealand the Environmental Court in New Zealand under the Amendment Act of 1996 is an independent specialist Court consisting of Environment Judges who are at the level of the District Judge and the Environment Commissioners who are equal to technical experts. Land and Environment Court Act 1979 of New South Wales also constitutes

similar court here the Court is not strictly bind by the rules of evidence and have the power to call for any experts for discussing the matter under concern.

⁴⁰ Bhadra Sinha, 'NGT needs full house of 20 members to properly function, but has been running on just 6' *The Print* (New Delhi 31st October, 2020)

⁴¹ Ikshaku Bezbaroa, *Supreme Court Stays Centre's amendment to NGT appointment rule*, DOWN TO EARTH (New Delhi 12th February 2018)

⁴² The Wire Staff, *New Appointments May Seriously Hamper National Green Tribunal's Independence* THE WIRE (New Delhi 11th October 2019)

⁴³ Amlanika Bora, *National Green Tribunal and Environmental Justice in India* 6(11) I.J.S.R. 2089 (2017), <https://www.ijsr.net/archive/v6i11/ART20178372.pdf>, see Jeet Singh Kanwar v. Union of India, Appeal No. 10/2011 Before the NGT (Principal Bench) decided on 16th April, 2013

⁴⁴ Appeal No.3 of 2011 (NEAA) 26 of 2009, Before NGT (Principal Bench) New Delhi, Decided on 24-04-2011

⁴⁵ Appeal No 49 of 2022, NGT (Southern Zone Bench), decided on 14th January, 2023

⁴⁶ Sreeranganathan K P v Union of India, (2014 Online NGT 15)

⁴⁷ EIA Notification, 2006 para 10(i)(b) and para 10(i) (d)

⁴⁸ M/s. Medha Patkar v MoEF & CC (2013 SCC Online NGT 63)

⁴⁹ OA 304/2019, NGT (Principal Bench) New Delhi, decided on 28th February, 2020

⁵⁰ /Annexure VIII- Meeting of the Joint Committee constituted as per the directions of Hon'ble NGT, Principal Bench, Delhi's order dated 09-12-2021 in the matter of OA No. 304/2019

⁵¹ Appeal No 12/ 2012 before NGT (Principal Bench) decided on 13th March, 2014

⁵² Tribunal at its Own Motion v. Ministry of Environment and Forests, OA No. 16/2013, NGT Central Zone, decided on 4th April 2014

⁵³ OA 129/2016/EZ, also see Wildlife Society of Orissa (Elephant Corridors) v State of Odisha I.A. No. 70/2020/EZ in OA No. 129/2016/EZ decided on 17th August 2021

⁵⁴ Execution Application No. 3/2022/EZ in Wildlife Society of Orissa v State of Odisha, also see Aiman J. Chishti, 'NGT Warns Odisha State Authorities to Notify Elephant Corridors or Face the Consequences' LIVE LAW (India 17th April 2023), [NGT Warns Odisha State Authorities To Notify Elephant Corridors Or Face The Consequences \(livelaw.in\)](#)

⁵⁵ NGT Act, 2010, § 26

⁵⁶ OA No. 351/ 2019, NGT (Principal Bench) New Delhi, decided on 12th August, 2022

⁵⁷ M K Balakrishnan v. Union of India (2017) 7 S.C.C. 805 (India)

⁵⁸ 2023 (13) F.L.T. 162 (India)

⁵⁹ NGT Act, 2010, § 20

⁶⁰ (1996) 5 S.C.C. 281 (India)

⁶¹ T. N Godavarman Thirumulpad v. Union of India A.I.R. 1997 S.C. 1228 (India)

⁶² 2023 (13) F.L.T. 14 (India)

⁶³ A.I.R. 1990 S.C. 2263(India)

⁶⁴ Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 S.C.C. 1 (India)

⁶⁵ NGT Act, 2010, § 22

⁶⁶ Associated Provincial Picture Houses Limited v. Wednesbury Corporation (1948) 1 K.B 223

⁶⁷ R. K Jain v Union of India (1993) 5 S.C.C. 119 (India), Rojer Mathew v. South Indian Bank (2020) 6 S.C.C. 1 (India)

⁶⁸ Rojer Mathew v South Indian Bank (2020) 6 S.C.C. 1 (India)

⁶⁹ L.L 2021 S.C. 549

⁷⁰ 'NGT vested with suo motu power in discharge of its function, says SC' THE ECONOMIC TIMES (India 7th October, 2021), [NGT vested with suo motu power in discharge of functions, says SC - The Economic Times \(indiatimes.com\)](#).

⁷¹ K. M. Chinnappa v. Union of India, A.I.R. 2003 S.C. 724 (India)

⁷² As observed in P. Leelakrishnan, Environment Law Case Book 5 (Lexis Nexis, New Delhi, 2004)

⁷³ John Rawls, A Theory Of Justice 15 (Revised edn. Harcard University Press, 1999). Also see discussion at Gail E. Henderson, *Rawls and the Sustainable Development*, 7. 1. McGill JSDLP 1, 1-33 (2011)