

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

ABSTRACT

National Green Tribunal is a unique forum for adjudging matters relating to environmental protection, prior to which the same role was played by the higher judiciary exercising constitutional jurisdiction. Hence it is evident that to have a concern over the constitution of the Tribunal. The ability of the NGT to upkeep the constitutional right to safeguard the environment is to be experienced from its functioning. Crossing ten years, it is ideal for analyzing the effectiveness of NGT in achieving its mandate. Moreover, the right to the environment is a fundamental right and a basic human right inspired by the international community as well as the United Nations documents. Most of the jurisprudence evolved internationally for environmental protection is now incorporated by the Supreme Court into the Indian legal system. Monitoring these fundamental guarantees is also now a promise expected from NGT, and its members are expected to be reasonably competent to upkeep these promises. Analyzing this competency of NGT over this period is significant for numerous reasons.

Addressing the conflict between development and environmental protection is one of the most challenging exercises, either in administrative or judicial terms. On a close look at the NGT, it can be seen that the role in balancing development and environmental protection is mainly done now by the NGT. The success rate of NGT in drawing the balance will be analyzed in this work. Drawing a balance between development and environmental protection is designing this country's sustainable development concept. Thus, the role of NGT in this dimension also needs to be critically assessed.

In short, this article will try to conceptualize the effectiveness and pitfalls of making legislation like the NGT Act in India. This doctrinal research, with the aid of case laws of the Tribunal as well as the Constitutional Courts of India and research works and books of eminent scholars, can help understand the role played by the NGT in fostering sustainability and environmental justice in India, along with the challenges it faces.

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 has contributed seriously to the development of Indian environmental law jurisprudence. It incorporated almost all international law doctrines into the Indian legal system, including the 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 constitution of the National Green Tribunal in the last decade, the law on environment and development was mainly dealt with by the Tribunal.¹ There are many conflicting opinions about the productiveness of the Tribunal. The Tribunal sometimes seems to exercise similar power as that of the Supreme Court of India. In this context, it is high time to analyze the functioning and effectiveness of the 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 environment and development. The environmental conservation being the primary purpose of the Green Tribunal, it at times causes a threat to some vital developmental activities. In

that sense, there require 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 the 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 the National Green Tribunal in assuring environmental conservation and sustainable development will be the key focus of this paper. The hypothesis will be that the National Green Tribunal is partially succeeding in its goal of conserving the 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 intends to fulfil the Indian obligation to comply with the norms of international conventions on the 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 a fair environment a fundamental constitutional guarantee through many decided case laws.⁴ These obligations, in their entirety, demand an effective mechanism to deal with the litigations on various environmental issues and for which the Indian Parliament has enacted the NGT Act. Thus, NGT is identified as a multidisciplinary body to deal with the environmental problems in India.

The structure and constitution of the Tribunal is made by the central government.⁵ It seems to be an expert body comprising legal and subject expertise. The NGT Act defines the term expert member.⁶ Expert members will have broadscience knowledge or long experience in various environmental matters. The presence of an experienced judicial member and expert member will give a comprehensive solution to the environmental problem, and the enactment envisages the same. Expert and judicial members' presence reflects the norm or concept of a sustainable environmental approach. This also carries the message of handling environmental issues with the involvement of concerned citizens and using enough scientific and technological expertise.⁷

The framework envisaged in the NGT Act for dealing with environmental cases is palpable in the context of sustainable development. The international law mandates for the conservation of the environment and sustainable development like community participation and environmental impact assessment (EIA) will be well served through a mechanism like that of NGT. The NGT Act defines the term environment as air, water and land, and the interrelationship exists among and between water, air and land, and human beings, 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 questions relating to the environment. The phrase "substantial question relating to environment" is defined by the NGT Act. According to this, the NGT will hear complaints relating to a direct violation of any statutory environmental obligation.⁹ Apart from the breach of the commitment, it shall also result in environmental consequences to the community at large or cause substantial damage to the property or harmto public health. Thus, the complaint relating to any significant 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 are specified in Schedule I of the NGT Act and include seven essential legislations.¹⁰ The substantial question relating to the environment thus implicates violating any of the obligations placed by the Scheduled enactments.

The Principal Bench of the National Green Tribunal considered the alarming situation after *Kumbh* at Allahabad.¹¹ It can be seen that the Tribunal gave an order on the control of pollution of river Ganga based on on-site visits by the Committee appointed by the Tribunal to oversee the implementation of the NGT order dated 10.12.2015. The NGT believed there is an urgency for restoration work for sewage treatment and solid waste processing. 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 many toilets were constructed in various camps disproportionate to the sewage capacity of the Rajpur drain. Only half portion of the sewage could be treated through Geo-tube. The remaining part was 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, a gross violation of the NGT order and Solid Waste Management Rules, 2016.

Further, over thirty-six temporary ponds were constructed without lining by 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 indicates how the laws regarding public health are ineffective and futile. The Tribunal insisted on bringing in more accountability towards cleaning the river Ganga. The Tribunal directed the Chief Secretary of U. P to constitute an appropriate mechanism for 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 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 landfilling, irrespective of any technology, for an area 500 meters from the edge of the river Ganga or its tributaries.¹²

The proceedings before the NGT will be treated as judicial and prominently guided by natural justice principles.¹³ The Supreme Court of India will entertain the appeal against the order or decision of the NGT.¹⁴ The NGT Act also makes an order to make payment of compensation to the Environment Relief Fund, which can be used for environmental conservation purposes. By the constitution of NGT, the then-existing 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

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

One crucial aspect to be discussed in this context is the nexus of a similar discipline of environmental sociology called the sociology of natural resources. There is a debate about these two disciplines, yet both synchronise in many aspects of sustainable development.¹⁸ The distinctions that can be made are irrelevant in 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 an excellent example of applying environmental sociology to achieve the ends of sustainability.¹⁹

The primary task of environment sociology is to deal with 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 will influence human existence.²⁰ Learning the domain 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 believe the effectiveness of social impact assessment of environmental problems is difficult. Still, the Indian judiciary and its responses constantly communicate with environmental sociology concerns 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, complementary with the international yardsticks on environmental preservation. Prima facie, the course of the Indian judiciary is more parallel with sustainable development.

However, those sustainability concepts are featured in the context of Indian society and its interaction with the environment, which is an approach based on environmental sociology. This aspect has been rightly remarked on 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 the environment and safeguard the country’s forests and wildlife is of equal significance as the activities for the development of humanity.²² It is a long-approved policy of the Indian government to resort to public participation in environmental decision-making. This public participation in the environmental decision-making process will have two components. One is facilitating informed choices among the public, and the other is the extension of environmental 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 environmental pollution, especially in industrialised societies. The rule suggests that the polluter bear the cost of pollution and lessen the effect of pollution rather than burdening the forthcoming generations to get spoiled by the pollution and its ill impacts. The Indian Supreme Court adopted the doctrine developed internationally 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 now well-accepted in India. This principle is mainly now used in significant projects to analyse the economic worthiness of the project in the context of sustainability. The long list of litigations relating developmental activities from the *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 sustainable development. This helps to develop a norm regulating the issues relating to the environment in a balanced manner. The use of these tools itself may be biased. The centralisation of EIA is highlighted as an example. The constitution of environmental courts can settle this.²⁶ In addition, public participation in the environmental decision-making process will add to the perfection of the doctrine of sustainable development. Public involvement in the environmental decision-making process will bridge the gap between the environmentalist and the public, improve the decision quality, and ultimately gather public confidence in environmental choices. The role played by the NGT is thus relevant in instituting the environmental law of 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 cater to the purpose too. A significant part of the law was developed through Supreme Court judgments. Now it is time to analyse whether NGT can take up this responsibility, which was earlier achieved through the country’s apex court. Multiple reasons resulted in the constitution of the NGT. The burden of environmental cases in the Supreme Court, drawbacks of the National Environment Appellate Tribunal, the Bhopal tragedy, the need for expertise to deal with environmental issues etc, are a few among them. NGT has broad powers; even the pending cases 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 the Bhopal tragedy before the NGT.²⁷ Judicial bodies widely debate the need for more expert bodies to decide environmental matters.²⁸ The environmental law doctrines like the *precautionary principle*, *polluter pays principle*, EIA etc, require scientific evidence. The constitution of NGT 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 the 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 the *precautionary principle*.²⁹ There has been an increase in the use of artificial flowers and plants for various celebrations and festivals due to a hike in the prices of natural plants and flowers. These artificial flowers are made up of polythene. Consumers often discard these flowers and plants due to their

short shelf life. As these items can neither be recycled nor decomposed, adversely affects the environment in the long run. While considering these arguments, the NGT found two conflicting views pointed out by both Central Pollution Control Board (hereinafter referred to as CPCB) and the Maharashtra State Pollution Control Board (hereinafter referred to as MPCB). According to CPCB, artificial flowers and plants do not come within the purview of *single-use plastic* that must be phased out.³⁰ However, MPCB was of the opinion that artificial plants and flowers fall under the category of banned single-use products³¹. Hence, it has to be restricted and has also realised fine from the defaulters. Though NGT inclined towards the 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 on environmental issues. *Goa Foundation v. Union of India*³² examined the jurisdiction and power of the NGT in detail. It expressly held the role of NGT in determining all civil cases relating to the environment and dealing with 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 Sanghadhanare* are good examples of the same.³³ In these judgments, the Tribunal ordered new environment clearance certificates and EIA documents, as the existing ones were obtained fraudulently without impartial and fair public participation. These decisions will be evident enough to show the potential of NGT in assuring a sociological approach to environmental decision-making. Similar was the approach of NGT in mining and quarrying, which suggested having a balanced approach to the economic and social needs of the society against environmental concerns.³⁴ There are many more examples of crucial interferences from NGT ensuring the concerns over environmental conservation. NGT had even interfered with massive investment projects with foreign collaborations demanding expanded environmental clearance criteria.³⁵ Such interferences in the initial stages of the project installation will have dual benefits: assuring environmental stability and 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 the closure of a mining 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, as with NGT. NGT and its constitution are challenged on the grounds of natural justice and under the Indian constitution. Mr Naveen Kumar, a Tamil Nadu law student, challenged the NGT Act's constitutional validity for ousting the jurisdiction of Civil Courts and impliedly the Writ Jurisdiction of High Courts. Still, the matter is pending before the Court. There is indeed a tendency for the present legislation to be influenced by the administrative people, which is against the spirit of having a free and fair judiciary. The same issue with tribunals and the need to make the Tribunal free from the clutches of the 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 concerning the issues on EIA, environment clearance etc.

Expert members (non-judicial members) are also a vital part of the tribunal system. Internationally, similar techniques and authorities similar to NGT can also be identified.³⁹ Having said so, the reality is the inertness of the Union Government in the proper appointment of expert members and judicial members by dragging to notify their appointments.⁴⁰ Indeed, 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 crucial element should be that their work and decisions should be independent of any external agencies. This is because the matters dealt with by the Tribunal will have far-reaching implications, and lots of stakes will be attached. Thus, the independence of the Tribunal should be ensured to attain the significant 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 2017 has attracted numerous controversies, and the apex court stayed the amendment.⁴¹ The debate was elevated when the Union Government appointed two of its serving officials as the expert members of the NGT for three years until further orders, '*whichever comes earlier*'. This phrase has hampered the NGT's independence as it indirectly implies that they have to work at the pleasure of the Union Government. At the time of the inception of NGT in 2010, there were no bureaucrats as expert members; however, over time, the environment scientists and professors were replaced by the members of the bureaucracy. The uproars were

not limited to expert members alone; they accounted equally for judicial members' appointments. Appointments of judges as chairperson or members of the Tribunal just after a 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 selecting expert members can be introduced to meet the principles of fairness and reasonableness in its functioning.

5. INFLUENCE OF NGT ON ENVIRONMENTAL LITIGATION

The NGT took a firm stand where the parties compromised environmental clearance (EC) provisions. The Tribunal pointed out that the economic benefits of a project should be ignored in the cases where the project involves continuing and excessive degradation of the environment.⁴³ Any EC passed by the Ministry of Environment and Forest (MoEF) shall pass the principle of proportionality. Another essential facet of E.C. is the public hearing envisaged under EIA Notification 2016. The Tribunal condemned the public hearing process, 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; instead 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 will lead to EC cancellation.⁴⁶ The 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 newspapers, 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 perfect example in indicating the pro-active role of NGT, especially in the light of the *precautionary principle* and the inhabitants' rights. The decision was against the backdrop of a report submitted by CPCB recommending maintaining 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 this, NGT constituted a joint committee for an expert study on 'safe distance for mining from inhabitations' and the impact of blasting using NONEL detonator technology in stone quarries. One of the critical aspects of the Committee's discussion was hearing the stakeholders. Few members opined for having an online survey in English and vernacular languages. Nevertheless, few were reminded about the general public's concerns, who were not computer savvy and insisted on physically sitting to hear the stakeholders.⁵⁰

The case of *M.P Patil v. Union of India*⁵¹ forms a significant part of the discussion on NGT. In this case, the Rehabilitation and Settlement Policy received 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 align with sustainable development goals. Another important decision of the Tribunal was 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 wildlife is part and parcel of the 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 for complying with the same, or else the authorities concerned shall be made liable as per the NGT Act, 2010 provision.⁵⁵

The Principal Bench of the NGT intervened in the issue relating to the 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 environmental protection and is equally guided by the principles of sustainable development and precautionary principles that have been sprouted out as part of the right to life and statutory envision under the NGT Act 2010. The non-compliance of scientific waste management in wetlands, lakes and other water bodies was deemed necessary even by the Apex Court, and various guidelines were futile in this regard.⁵⁷ Hence, the Tribunal directed National Wetlands Committee to compile data on compliance with environmental norms in all significant wetlands in the country to ensure remedial action.

6. SUPREME COURT V. NGT

There have been multiple instances of a tug-of-war between the Supreme Court of India and the NGT. One of the recent in the list would be the apex court's decision 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 used by keeping others in isolation. The Court, while setting aside the order of NGT, the notice issued by the State Government for establishing new WBIs 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 the 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 to development. In the case of permitting the felling of trees of the prohibited species, the State Government shall ensure 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 India,⁶² confronted four issues. One of the significant 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 India,⁶³ 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 fundamental 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 the absence of a provision of appeal against the order of NGT to the High Court. The Act provides for a request 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 the unextinguished right to approach the High Court under Articles 226 and 227 of the Constitution, where the scope is broader, including jurisdictional matters and issues based on *Wednesbury principles*.

Additionally, the litigant can approach Supreme Court exercising SLP under Article 136 of the Constitution. The issue concerning Supreme Court being the first appellate Court has been dealt with on earlier occasions, and a direction was given to the Union Government to study the effect of such direct appeals.⁶⁶ Since there is no positive intervention from the legislature in this matter, it is prudent to go with the existing regime as these matters come within the government's policy matters. Moreover, provisions enabling direct appeals to the Supreme Court are not unconstitutional⁶⁷; hence, section 22 of the NGT Act is not *ultra vires*.

It would be very 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 the discharge of its function under the NGT Act, 2010 in Municipal Corporation of Greater Mumbai v Ankita Sinha.⁶⁸ In this case, the NGT took *Sup motu* cognisance based on an article titled 'Garbage Gangs of Deonar: The kingpins and their Multi-Crore Trade' in the online portal 'The Quint'. The report heavily criticised the mismanagement of solid waste and its adverse impact on the environment, public health and lives of individuals living near the dumping ground in Mumbai City. They were 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 broader spectrum by considering the provisions of the Act, Rules along with India's commitment towards international commitments arising out of Rio and Stockholm conventions and protection of environmental rights intertwined with the right to life under Article 21 of the Indian constitution.

Moreover, NGT is a specialised mechanism; therefore, it is evident that it takes 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. In contrast, 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 to by the Act. Therefore, the NGT must act in exigencies without indefinitely waiting for an application from any party to act following the object and scheme of the NGT Act, 2010.⁶⁹

7. CONCLUSION

It is difficult to define the word environment as once observed by the Honourable Supreme Court of India⁷⁰, and it is further challenging to narrate what constitutes environmental sociology and highly perplexing to develop a standard norm for analysing sustainable development. It is thus ideal to quote the view of Albert Einstein on the environment that '*environment is everything that is not me*'.⁷¹ So contextually, every interaction with the surroundings has an environmental aspect and is regulated by environmental legislation. Moreover, this very interaction is a matter of analysis for the branch of learning called environmental sociology. This signifies the need for a comprehensive and social-oriented approach to environmental decision-making. The extension of law and sociology becomes highly interdisciplinary at this juncture. Intergenerational equity seems to be a sociological doctrine but has a rigid legal basis. It is precisely a socio-legal principle as designed by John Rawls in his *A Theory of Justice*.⁷² Similar principles reflect the interdisciplinary scope of various environmental topics. This multidisciplinary approach is uncommon in the judicial system and decision-making process. NGT and its functioning should be read in that context.

The role of NGT in ensuring environment conservation is not fully evident as the implementation of the Act is still in its infant stage. However, from the context of environmental sociology and its principles, the very structuring of NGT facilitates the interaction between human beings and the environment in better means. NGT can better analyse the sociological responses in the environmental decision-making process. The proper functioning of NGT can envisage better guarding of sustainability in developmental activities. More benches should be constituted for the public's need for better access to these forums. Appropriate application of EIA before the commencement of a project can also be visualised. 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

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

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¹¹ M C Mehta v. Union of India, Consideration of Report dated 10.04.2019 in OA No. 200/2014 dated 22.04.2019

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¹⁴ NGT Act, 2010, § 22

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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>,

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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 Padhu Kappul Nala Sangam v. Union of India, Appeal No.64 of 2013 Decided on 24th Feb. 2014.

³⁵ Prafulla Samantray and Biranchy Samantray 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)

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- ⁴³Amlanika 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
- ⁴⁴Appeal No.3 of 2011 (NEAA) 26 of 2009, Before NGT (Principal Bench) New Delhi, Decided on 24-04-2011
- ⁴⁵Appeal No 49 of 2022, NGT (Southern Zone Bench), decided on 14th January, 2023
- ⁴⁶Sreeranganathan K P v Union of India, (2014 Online NGT 15)
- ⁴⁷EIA Notification, 2006 para 10(i)(b) and para 10(i) (d)
- ⁴⁸M/s. Medha Patkar v MoEF& CC(2013 SCC Online NGT 63)
- ⁴⁹OA 304/2019, NGT (Principal Bench) New Delhi, decided on 28th February, 2020
- ⁵⁰Annexure 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
- ⁵¹Appeal No 12/ 2012 before NGT (Principal Bench) decided on 13th March, 2014
- ⁵²Tribunal at its Own Motion v. Ministry of Environment and Forests, OA No. 16/2013, NGT Central Zone, decided on 4th April 2014
- ⁵³OA 129/2016/EZ, also see Wildlife Society of Orissa (Elephant Corridors) v State of Odisha.A. No. 70/2020/EZ in OA No. 129/2016/EZ decided on 17th August 2021
- ⁵⁴Execution 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 \(livelaw.in\)](#)
- ⁵⁵NGT Act, 2010, § 26
- ⁵⁶OA No. 351/ 2019, NGT (Principal Bench) New Delhi, decided on 12th August, 2022
- ⁵⁷M K Balakrishnan v. Union of India(2017) 7 S.C.C. 805 (India)
- ⁵⁸2023 (13) F.L.T. 162 (India)
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- ⁶⁰(1996) 5 S.C.C. 281 (India)
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- ⁶³A.I.R. 1990 S.C. 2263(India)
- ⁶⁴Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 S.C.C. 1 (India)
- ⁶⁵NGT Act, 2010, § 22
- ⁶⁶R. 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)
- ⁶⁷Rojer Mathew v South Indian Bank (2020) 6 S.C.C. 1 (India)
- ⁶⁸L.L 2021 S.C. 549
- ⁶⁹NGT 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 \(indiatimes.com\)](#).
- ⁷⁰K. M. Chinnappa v. Union of India, A.I.R. 2003 S.C. 724 (India)
- ⁷¹As observed in P. Leelakrishnan, Environment Law Case Book 5 (Lexis Nexis, New Delhi, 2004)
- ⁷²John 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)