

# The Role of the National Green Tribunal in furthering the object of Environment Protection

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## ABSTRACT:

Since the beginning of the 1990s, there had a global boom in environmental law. Environmental Jurisprudence has developed to a considerable extent since then. The Supreme Court had suggested the institution of environmental courts in a number of judgments. The National Green Tribunal was brought into existence on the 18th of October in the year 2010. It was meant to be a specialized body to deal with matters which were multi-disciplinary in character. At present, the tribunals have developed into mechanisms that have surpassed their initial defects. This paper seeks to analyse the formation of the National Green Tribunal as well as the jurisprudence and reforms it has brought to light since its inception. This paper will cover the analysis of several orders passed by the tribunal and also delve into the limitations which have restricted the objective of the Tribunal. There are currently over twelve hundred environmental courts worldwide concentrated on resolving environmental matters. Good governance and enforcement are essential to achieving the 2030 Agenda for Sustainable Development and India too has taken a step forward towards the same.

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## I. INTRODUCTION

The judicial system in India has been overburdened with a huge backlog of cases for a long time. The need arose for the establishment of a separate environmental court to reduce the burden of case load on the existing judiciary. The creation of the National Green Tribunal came into being after following an extensive procedure and was determined on the basis of various factors. The first factor to be taken into account was the Constitutional background. There had been a steady development in the Constitution from having lack of provisions for environment protection to containing a number of provisions concerning the environment with the insertion of the 42<sup>nd</sup> Amendment Act. The second factor to be considered was the international conferences and conventions that India was a party to. The Stockholm Declaration 1972 which focused on the global necessity for appropriate measures for betterment of the environment has been usually defined as the International 'Magna Carta' of the environment. After this, the Article 48A was included in the Constitution and several legislative enactments were passed by Parliament. During the United Nations conference on Environment and Development, India obliged to deliver remedies and solutions to the persons affected by pollutants and other environmental degradation. The necessity for constituting special courts to deal with environmental concerns and cases was also brought to light by the apex court in the Oleum Gas Leak case.<sup>1</sup> Justice P.N Bhagwati in the Oleum Gas Leak Case appointed expert committees for analysing the extent to which the environment had been degraded. It was the foremost case which advocated the need for a 'neutral

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<sup>1</sup>Rishu Mala, Role of NGT in Environment Protection, *available at* <https://www.slideshare.net/RishuMala/role-of-ngt-in-environment-protection>

scientific expertise' for supplementing informed judgments. These courts which were suggested would have the technical know-how and expertise to decide matters of environment protection in a proper manner. Even though Parliament enacted the National Environmental Tribunal Act, 1995 to address the need for special courts to deal with environmental matters, the act was never implemented. The subsequent enactment of the National Appellate Authority Act, 1997 had its own limitations such as the restricted mandate and important vacancies in the composition which were not duly filled. The idea to constitute environmental courts was supplemented by two subsequent cases, namely the Indian Council for Enviro-Legal Action v Union of India and AP Pollution Control Board case. The court opined that the environmental courts would gain an advantage from the advice of environmental scientists and person with technical know-how as they would be part of the process. To reduce the burden of the case load in the Indian Judiciary, the need arose for a separate body which could deal with matters related to the environment. In the Indian Council for Enviro-Legal Action case, the Supreme Court brought to the forefront, the suggestion of setting up of environment courts.<sup>2</sup> The Court opined that in view of proceedings in criminal courts with respect to the Water and Air Act never reaching their conclusion, either due to the workload or due to non-appreciation of the significance of environment matters, the setting up of environmental courts would be useful.

In the year 2009, It was approximated that almost 42 countries had decided to constitute specialist tribunals to better enforce their environmental laws.<sup>3</sup> The decision to establish a specialized environmental court in India was taken while considering environmental courts in New Zealand as well as by taking from provisions of the Court in New South Wales, Australia. The National Green Tribunal Bill was introduced in the year of 2009 in the Lok Sabha where extensive debate took place on the bill. It received various critiques, which were focused mainly on the promotional nature of the bill and its limited scope. An example of this is the report on behalf of the Access Initiative India which pointed out the limited area of jurisdiction and the limitations on the matters which could be adjudicated upon. There were major changes made during the course of these debates in Parliament. These changes included widening the scope of the powers of the tribunal with respect to matters which could be litigated before it and guaranteeing appeal to the apex court against its orders. Consequent to this, Parliament, in its endeavour to be in harmony with, and fulfil its obligations towards the Stockholm Declaration, 1972 of which India was a part, enacted the National Green Tribunal Act, in accordance with Article 253 of the Constitution.

## II. THE NATIONAL GREEN TRIBUNAL

The establishment of NGT was with the objective of providing expeditious and efficient disposal of cases

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<sup>2</sup> 1996 AIR 1446

<sup>3</sup> Gitanjali Nain Gill, A Green Tribunal for India, *available at*[https://www.jstor.org/stable/44248749?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/44248749?seq=1#page_scan_tab_contents)

relating to environment conservation. One of the advantages of the National Green Tribunal is that there is a very simple procedure for instituting a case for compensation for harm done to the environment or for filing an appeal against a decision of the government.<sup>4</sup> The Tribunal also does not have to function in accordance with the procedure laid down under the Code of Civil Procedure but is guided by the principles of natural justice. Neither are the rules of evidence as laid down in the Indian Evidence Act, 1972 applicable to the Tribunal. This makes it simpler for conservation groups to approach and present the relevant facts in front of the Tribunal as well as making it easier for the parties to point out the flaws and any harmful impact a project can have on the environment. This also provides flexibility to the NGT in exercising its functions for the grant of remedies to the concerned person. A person does not even need legal counsel to represent himself in a case before the NGT as he can present the matter himself if acquainted with the facts of the case and if he is adequately informed about the law and procedures. Every decision of the tribunal is binding on all the parties, except in circumstances where the Supreme Court is approached and the order is stayed or reversed.<sup>5</sup>

With the principal bench being in Delhi, the tribunal has constituted four regional benches as well which include benches in the cities of Kolkata and Pune amongst others. The highlight of these benches is that they can be termed as co-equal benches.<sup>6</sup> This means that the principle bench is not superior to these benches in the judicial hierarchy. The tribunal is vested with original jurisdiction along with appellate jurisdiction with respect to implementation of seven environment enactments.<sup>7</sup>

As per legislation, the Tribunal is required to dispose of an application within a period of six months from the date of filing of the same. The Tribunal while adjudicating disputes is to follow globally recognized principles which include the Precautionary Principle and the Polluter Pays Principle. It is the first agency of its type where the parent statute imposes upon it the obligation to apply the polluter pays principle. Section 20 is amongst the most unique characteristics of the Act. It mandates the Tribunal for the application of the principle of sustainable development while passing any decision.<sup>8</sup>

The Judiciary has played a pivotal role in developing a large body of environmental jurisprudence. That being a fact, policy enforcement has still been seen to be one of the weaker areas.<sup>9</sup> The primary purpose of the National Green Tribunal is to be dedicated solely to the cause of environment conservation and apply all the powers

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<sup>4</sup>Praveen Bhargav, Everything you need to know about the National Green Tribunal (NGT), *available at* [www.conservationindia.org/resources/ngt](http://www.conservationindia.org/resources/ngt)

<sup>5</sup>Shibani Ghosh, Understanding the National Green Tribunal, *available at* [www.cprindia.org/news/5400](http://www.cprindia.org/news/5400)

<sup>6</sup>ibid

<sup>7</sup>The National Green Tribunal Act, 2010, *available at*, [www.greentribunal.gov.in/FileDisplay.aspx?file\\_id=hp6pqcrv0hY1hc2OYg8Sk8xCffwF7gv7AbtSt83%2FRxrgXufTbWXFcg%3D](http://www.greentribunal.gov.in/FileDisplay.aspx?file_id=hp6pqcrv0hY1hc2OYg8Sk8xCffwF7gv7AbtSt83%2FRxrgXufTbWXFcg%3D)

<sup>8</sup> Section 21 of the NGT Act

<sup>9</sup> National Green Tribunal, Its Functioning and Effectiveness Vis-a-vi National Green Tribunal Act, 2010, *available at* [shodhganga.inflibnet.ac.in/bitstream/10603/97864/13/13\\_chapter%207.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/97864/13/13_chapter%207.pdf)

vested in it to minimize the adverse impact to the environment and provide remedy and compensation for the same. As the policy enforcement has been weak in the country, the setting up of the National Green Tribunal was with a view to aid in strengthening the enforcement of environmental law in India.<sup>10</sup> It is not only India which has taken a step towards providing special courts which deal exclusively with environment protection matters.

The NGT has been constituted as an independent statutory panel consisting of experts from a plethora of fields. The involvement of experts from a variety of field is to further the interests of the environment protection and development by looking beyond the cost-profit perspective of a project. The tribunal has been given powers to prohibit and declare illegitimate any action which is administrative in nature and is in contravention of environment legislative enactments. The NGT has come a long since its constitution by displaying a proactive attitude towards the protection of the environment.

The National Green Tribunal has jurisdiction to entertain all civil cases relating to environmental matters and question concerning the legislations provided in Schedule 1 of the National Green Tribunal Act. The Act gives the Tribunal the power to adjudicate disputes where a substantial question related to environment is raised.<sup>11</sup> There are strict safeguards which have been put in place for non-compliance or the order of the tribunal. This will ensure the implementation of the order passed by the Tribunal. The NGT can be termed to be a Quasi- Judicial body. It is unlike a normal court. This implies that unlike courts having the power to adjudicate all types of disputes, the tribunal has the power of enforcing legislation upon administrative agencies.

Specialized environment courts and tribunals are better equipped to come up with innovative resolutions and comprehensive remedies to problems concerning the environment by adopting a flexible approach in resolving disputes. Academic experts such as Warnock refer to the NGT as one of the most progressive Tribunals around the world and describe the remedies and solutions as given by the Tribunal as notable. Judge Rajan Gogoi of the Apex Court has also observed that the Tribunal, being one of the foremost environmental courts around the world, has a comprehensive jurisdiction.<sup>12</sup> The appointment of technical experts was essential to the proper functioning of the Tribunal as it came to be one of the most significant elements of the Tribunal's normative structure.

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<sup>10</sup>Sunil Kumar Agarwal, Establishment of National Green Tribunal in India : End of Road for Public Interest Litiagation, *available at*[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1878446](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1878446)

<sup>11</sup>Supra note 8

<sup>12</sup>Gitanjali Nain Gill, Mapping the Power Struggle of the National Green Tribunal of India: The Rise and Fall?, *available at*[https://www.cambridge.org/core/services/aop-cambridge-core/content/view/CB60E6258D273938062a5898BD997B7/S2052901518000281.a.pdf/mapping\\_the\\_power\\_struggle\\_of\\_the\\_national\\_gree\\_tribunal\\_of\\_india\\_the\\_rise\\_and\\_fall.pdf](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/CB60E6258D273938062a5898BD997B7/S2052901518000281.a.pdf/mapping_the_power_struggle_of_the_national_gree_tribunal_of_india_the_rise_and_fall.pdf)

### III. SIGNIFICANT ORDERS OF THE TRIBUNAL

The number of judgments delivered by the NGT every year has been on a rise ever since its inception. A total number of 821 orders were given in the year 2015 in comparison to a total number of 28 orders delivered in 2011. This denotes the increasing environmental concerns in a developing nation such as India.<sup>13</sup> NGT is also known for giving fast-track judgments. It has passed orders to several authorities which include orders against noise pollution in Delhi, conservation of biodiversity in the Western Ghats, protection of wildlife in Assam and the like.

The order of deregistering of diesel vehicles which had surpassed a period of ten years was a win for the citizens of Delhi as it brought with it the possibility of reducing pollution to a large extent. The National Green Tribunal in the exercise of its powers has stayed the sanctions for various projects. In the POSCO case, the NGT requested the Ministry of Environment to reconsider and review the approvals after a few local villages denied consent to the project in accordance with the Forest Rights Act, 2006.<sup>14</sup>

It has come down heavily upon big corporations as well as the government for not being in consonance with the relevant environmental laws.<sup>15</sup> In the case of *Adivasi Majdoor Kisan Ekta Sangathan v. Ministry of Environment and Forests*, The Tribunal pointed out that the public hearing held in the case of granting environment clearance to the Jindal Steel and Power's Mining Project was in clear violation of the principles of natural justice and was hence declared invalid.<sup>16</sup> The accountability of any agency in pursuance of any order passed by the NGT needs to be ensured. The order should be followed through to verify whether the Agency has complied with the instructions of the NGT or not.

In recent years, there have been some forceful and dynamic judgments passed by the NGT which have improved the procedures relating to obtaining environmental clearances. In the case of *Vardhaman Kaushik v. Union of India*, the Tribunal took notice of the increasing pollution levels in Delhi. It issued instructions to a committee for the preparation of an action plan and directed for prohibition of burning of plastics, and for the installation of air purifiers and automatic sensors at proper places among other directions issued by it.<sup>17</sup>

The National Green Tribunal is empowered to take and has even taken in the past, *Suo moto* cognizance of environmental matters and initiated proceedings. An example of this is the case of *NGT vs State of HP* and

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<sup>13</sup> Sridhar Rengarajan, Divya Palaniyappan, National Green Tribunal of India-an observation from environmental judgments, available at <https://link.springer.com/article/10.1007/s11356-018-1763-2>

<sup>14</sup> V. Venkatesan, The National Green Tribunal's decision to suspend the environmental clearance given to POSCO vindicated the project's critics, available at <https://frontline.thehindu.com/static/html/fl2908/stories/20130504290803500.htm>

<sup>15</sup> Armin Rosencraz & Geetanjoy Sahu, Assessing the National Green Tribunal after Four Years, available at <https://docs.mahupatra.in/newslines/articles/Upload/0f0228AB-83C3-4B64-9F8E-2E3FABEB20A6.pdf>

<sup>16</sup> M.A. No. 36 of 2011

<sup>17</sup> Kaleeswaram Raj, Decentralising Environmental Justice, Debating the National Green tribunal, available at <https://www.epw.in/journal/2014/48/web-exclusives/decentralizing-environmental-justice.html>

Ors., where the NGT observed that the ever-increasing vehicular traffic in the state of Himachal Pradesh was leading to depletion of the natural habitat. The tribunal issued instructions for the starting of a plan for scientific forestation to conserve the environment.<sup>18</sup> Moreover, the Court directed government to collect fees from the vehicle owners which was to be put in the Green Tax Fund for implementation of restoration plans. The Tribunal also on its own motion showed concern with regard to the dolomite mining in the tiger reserve forest in Madhya Pradesh. The Tribunal directed the Moef and the respective departments of the State Government to take the required steps.<sup>19</sup> Since the Inception of the Tribunal in 2010, it has triumphantly upheld its mandate.<sup>20</sup>

Another case was taken up Suo moto by the NGT after taking cognizance of an article mentioning the felling of trees for the construction of a cricket stadium. An interim order was passed by the Tribunal whereby the Tribunal directed to the Forest Department officials that there would be no more felling of trees by any person in that vicinity.

Until 2014, approximately 35 percent of cases brought before the Tribunal were related to environmental impact assessments. A high number of these cases were filed against the state claiming that due diligence had not been exercised while granting environmental clearances. The draft of any EIA report on a potential project had to be placed before the public and published in the local newspapers. The objections of the public, if any were to be recorded and sent to the expert appraisal committees. The system of the EIA was turning out to be insufficient. It was contended by the activists and local residents that the objections which were noted at the public hearings before granting the environmental clearance were not included in the final assessment report.<sup>21</sup>

After the National Green Tribunal was set up, even the Supreme Court started to assess its own case load. In a surprising move, the Supreme Court in the case of Bhopal Gas Peedith Mahila Udyog Sangathan and Ors. V Union of India transferred all the cases relating to the environment to the Tribunal with the objective of speedy and effective disposal of these cases.<sup>22</sup> The Court in very clear terms stated that all the cases initiated after coming into effect of the NGT Act and which were covered under the significant provisions of the Act, would be shifted to the Tribunal and could only be initiated before the Tribunal. More than three hundred cases were transferred to the Tribunal by the Supreme Court in the year of 2015. It was the green bench which took this initiative to endure swift disposal of these cases. The National Green Tribunal also elucidated upon the term 'aggrieved person' in the case of Samir Mehta v. Union of India and stated that the term included an individual

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<sup>18</sup>Swapan Kumar Patra & V.V. Krishna, National Green Tribunal and Environmental Justice in India, *available* at [nopr.niscair.res.in/bitstream/123456789/34715/1/IJMS%2044%284%29%20445-453.pdf](http://nopr.niscair.res.in/bitstream/123456789/34715/1/IJMS%2044%284%29%20445-453.pdf)

<sup>19</sup> *ibid*

<sup>20</sup> *ibid*

<sup>21</sup> Rita Brara, *Courting Resilience, The National Green Tribunal, India, available* at [www.unrisd.org/80256BC00BCCF9/httpNetITFramePDF?ReadForm&parentunid=9C68A7069F995E31C125825700529671&parentdoctype=paper&netitpath=80256B3C005Bccf9/\(httpAuzPages\)/9C68A7069F995E31C125835700539671/\\$file/Brara.pdf](http://www.unrisd.org/80256BC00BCCF9/httpNetITFramePDF?ReadForm&parentunid=9C68A7069F995E31C125825700529671&parentdoctype=paper&netitpath=80256B3C005Bccf9/(httpAuzPages)/9C68A7069F995E31C125835700539671/$file/Brara.pdf)

<sup>22</sup> (2012) 8 SCC 326

and even a juridical person in any form. The Tribunal observed that the Environment is not a subject which is focused on only one person but which had the society at the centre of it. This widened the scope of the word 'aggrieved person' and brought within ambit of the definition, NGO's as well as the other persons who were either directly or indirectly affected by a project.<sup>23</sup> The NGT has been consistent in its decisions regarding cases where the party tried to speed up a developmental project or obtain clearances by brushing to the side environment protection procedures. That being so, NGT has clarified its position of not being against economic development. That said, the Tribunal has noted that economic development should be subject to the regulations imposed for the growth and for the development to be under the legislative framework of sustainable development.<sup>24</sup>

The application of the Polluter Pays Principle was observed by the Tribunal in the case of Krishna Kant Singh v National Ganga River Basin.<sup>25</sup> There were excessive pollutants being discharged in the River Ganga which was not only degrading the River Ganga but was also harmful to the aquatic life such as Dolphins, Turtles and other aquatic life. In the case, the Simbhaoli sugar and distillery unit was seen to be a major polluter and as a result of this, was held liable to pay heavy compensation amounting to rupees five crore for restoration of various water bodies. The said decision was completely based on the polluter pays principle. The compensation was to be paid to the Uttar Pradesh Pollution Control Board which was to utilise it for cleaning of the Syana Escape Canal and prevention of ground water pollution among other measures.<sup>26</sup>

The Tribunal has in a number of cases imposed a fine on persons carrying on development projects after observing that they were in clear contravention of the statutory requirement which thereby affected the environment. In some of these cases, the penalty imposed was estimated to be five percent of the total cost of the project. This was established in the case of Shivani Constructions vs Union of India.<sup>27</sup> In other cases, the Tribunal set up Committees to determine the amount which was to be paid by the developers.

The decision by the Tribunal on matters concerning air pollution and pollution from water bodies has been encouraging to the extent that the Tribunal is seeking long term measures to internalize the total cost of pollution control by putting responsibility on the polluter.<sup>28</sup>

The matter of Coastal Regulation Zones was adjudicated by the Tribunal in the year 2016 extensively. The NGT passed approximately seventeen judgments in respect to Coastal Regulation Zones. The observations of

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<sup>23</sup>M.A No. 129 of 2012

<sup>24</sup>Supra note 13

<sup>25</sup>Original Application No. 299 of 2013

<sup>26</sup>ibid

<sup>27</sup>Original Application No.310 of 2016

<sup>28</sup>Chandra Bhushan, Shreshta Banerjee, and IkshakuBezbaroa, Green Tribunal, Green Approach: The Need for Better Implementation of the Polluter Pays Principle, *available at* [www.indiaenvironmetportal.org.in/file/file/green-triunal-approach-report.pdf](http://www.indiaenvironmetportal.org.in/file/file/green-triunal-approach-report.pdf)

the Tribunal included making public hearing mandatory before finalizing a CRZ plan. In a few cases, the Tribunal also withheld the clearances until some action was taken by the proper authorities relating to coastal zone management.<sup>29</sup> It is also to be pointed out that in a few cases such as the case where a ban was imposed on Rat Hole Mining in East Jaintia Hills, people's livelihood was affected as they were dependent on coal mining for their sustenance. In such cases the Tribunal should have brought the ban to the notice of the people who were dependant on coal mining for their livelihood beforehand so as to offer them time to find other work.<sup>30</sup>

The National Green Tribunal is the apex environmental body in the country. The Tribunal has also declared a fine of ten thousand rupees on persons found throwing waste in public areas while observing that Municipal Solid Waste constituted one of the major pollutants of the country.<sup>31</sup>

In the case of Hindustan Coca Cola Beverage Pvt Ltd v West Bengal Pollution Control Board, the NGT imposed stringent orders in response to the water pollution caused by the one of the largest beverage corporations in the country. The NGT specifically stated that the Polluting entity must cover the costs of the reduction of pollution and that it was their obligation to compensate for the pollution in order to restore the environment. The Tribunal handed over the responsibility in this case to the West Bengal Pollution Control Board to assess the extent of damage to the environment and the amount which would be needed for its restoration. It is to be noted that it is in cases such as these, where the NGT has transferred to the government authority the role of awarding damages which are indicative of change. This constitutes a change, where the role of awarding costs previously reserved for the Court, has now been shifted to the government body.<sup>32</sup>

In the case of N. Challamuthu v. District Collector, the Tribunal revoked the environment clearance granted to the Municipal Solid Waste processing plant in Chennai for providing wrong information in the EIA reports. In another case, in Hussain Saleh Mahmud Uman Bhai Kara v. Gujarat State Level EIA Authority and others, the NGT suspended clearance sanctioned to Scania Steel and Power Ltd for not adhering to the procedural requirements such as the holding of the public hearing.<sup>33</sup>

In the Volkswagen case, the Tribunal levied a fine of Rs 500 cr. on the German Company for degrading the environment through the utilization of "cheat devices" in diesel vehicles in the country. The auto company was directed to pay the amount within two months. The bench also stated that the Monitory Body in cases of pollution may contemplate using the amount for betterment of the air quality in the National Capital Region and

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<sup>29</sup>Supra note 15

<sup>30</sup>Lana I Ka Pasa, A Study on the Impact of livelihood due to National Green Tribunal Ban on Rat Hole Mining in East Jaintia Hills, *available at* 14.139.209.82.8080/smlui/bitstream/handle/123456789/31/lan%20final%20research.pdf?sequence=1&isAllowed=y

<sup>31</sup>Ruchi Singh, National Green Tribunal: A Road to Environmental Justice, *available at* www.raijmr.com/irjhs/wp-content/uploads/2017/11/IJRHS\_2016\_vol04\_issue\_05\_02.pdf

<sup>32</sup>Appeal No. 10 of 2011

<sup>33</sup>Rohini Attri, Green Benches in India: The Anatomy of the National Green Tribunal Act, 2010, *available at* [arjjar.org.in/stuff/issues/v3-i4\(2\)-a017.pdf](http://arjjar.org.in/stuff/issues/v3-i4(2)-a017.pdf)

other immensely polluted areas. The excessive nitrogen oxide emissions by the company led to the Tribunal's decision. The Tribunal had established a team of representatives from the Ministry of Heavy Industries, Automotive Research Association and CPCB among others.<sup>34</sup> There was admission on the part of the automobile company for the use of the 'defeat device' in around a million diesel engine cars sold in other global markets. The expert committee in its report had evaluated that the Volkswagen vehicles released around 48.678 tonnes of Nitrogen oxide in the year of 2016 in the national capital region. Earlier, the Tribunal had suggested a penalty of Rs.171.34 crore on the automobile manufacturer but the Tribunal increased the amount as a method for implementing deterrence. A cheat device is a software which is inserted in diesel engines to defeat the emission tests by altering the performance of the car. As per the bench passing the order, Sustainable development was the guiding principle in passing the order.<sup>35</sup>

NGT has passed favourable orders for certain projects which prove that NGT is not unfavourable to economic development. In the case of Vedanta Ltd., the Tribunal set aside the respective government's direction to shut down Sterlite Copper's 250000-tonne plant. To ensure measures for environment protection are implemented, the Tribunal also issued instructions to the Vedanta's subsidiary to spend Rs 100 crore for welfare of persons residing in the area. The bench directed the Tamil Nadu Pollution Control Board to sanction the opening of the smelter within the stipulated time period. The order came with certain precautionary conditions which were to be followed by the plant such as setting up a website for submission and redressal of complaints of the stakeholders in the vicinity and updating the report on ground water quality on the website of the company<sup>36</sup>

#### IV. LIMITATIONS OF THE NATIONAL GREEN TRIBUNAL

The National Green Tribunal is the primary regulatory agency in India for conservation and protection of the environment in the country. As per the Finance Act of 2017, the criteria and conditions for appointment of the board members of the NGT has been left to the government to choose. However, there have been some points which were in contention concerning the credibility of the NGT. It is not mandatory for the board members to be judges of the Supreme Court or even of the High Court which has raised questions regarding the capability as well as the credibility of the appointed NGT board members, the power to appoint being with the government. The judgments of the NGT have also come to be challenged in several high courts under Article 226 which has undermined the power of the NGT in some matters.<sup>37</sup>

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<sup>34</sup> Emission fiasco: NGT slaps Rs 500 crore fine on Volkswagen, *available at* <https://www.thehindubusinessline.com/companies/emission-fiasco-ngo-slaps-rs-500-crore-fine-on-volkswagen/article26454604.ece>

<sup>35</sup> *ibid*

<sup>36</sup> Arpan Chaturvedi, NickeyMirchandani, National Green Orders Reopening of Vedanta's Sterlite Copper Plant In Tuticorin, *available at* <https://www.bloombergquint.com/law-and-policy/national-green-tribunal-orders-reopening-of-vedantas-copper-plant-in-tuticorin>

<sup>37</sup> Sriroop Chaudhuri, Mimi Roy and Armin Rosencraz, What India Can Learn from China's Environment Protection Reforms, *available at* <https://thewire.in/environment/what-india-can-learn-from-chinas-environment-protection-reforms>

One of the drawbacks with tribunalization is the effect it has on access to justice. The report of the Law Commission originally included the provision of there being at least one court in every state to provide for easy access to the citizens, since the concept of green litigation was prevalent throughout the country. Prior to the coming of the NGT Act, most civil courts as well as High Courts had the jurisdiction to entertain environmental matters. With the establishment of the National Green Tribunal, no other court has the power to hear applications for which the Tribunal has been granted jurisdiction. This has restricted the right of the citizens to easy access as the Tribunal has a limited number of benches which amount to only five all over the country. Even though the Tribunal has achieved a great leap towards establishing major environmental decisions, it has been subject to criticism by the affected parties.<sup>38</sup> The Tribunal's jurisdiction on several occasions has been termed as amounting to 'judicial overreach' as it has taken stringent action against big corporations and the like. There is no provision for public interest litigation in relation to the Tribunal. The exercise of PIL has had a major role to play in developing the environmental jurisprudence in India. This is one of the aspects which needs to be addressed regarding the jurisdictional limits of the NGT. In the case of *Cavelossim Villagers Forum v Shree Balaji Concepts and Ors.*, the Bombay High Court requested the tribunal to elucidate the concept of "aggrieved person" and also consider whether the NGT could entertain an application which is under the scope of Public Interest Litigation.<sup>39</sup>

As there are multiple source of pollution in the cities today, it has become tough to identify particular entities who would be responsible for the pollution caused. There has also been no standard formula developed for the computation of damage to be awarded to parties claiming relief for the pollution caused. NGT has invited criticism on several aspects. The limitation period for claiming compensation has been termed as being arbitrary. The Central Government has been given control in the current legislation where it can interfere in the functioning of the tribunal which needs to be prevented.<sup>40</sup>

Section 24 of the Act mentions the manner in which the sum payable for the damage to the environment should be deposited and utilised.<sup>41</sup> As per the provisions of the act, amount should be credited to a Fund known as the Environment Relief Fund. The amount has to be deposited to the ERF within thirty days of the passing of the order. Even though the Act envisages such a provision, a review of the cases of the NGT point to the fact that the Tribunal has not directed for the payment to be made to the ERF in a majority of the cases. In approximately forty percent of the cases, the payment was told to be made to the State Pollution Control Boards

<sup>38</sup>Sumbal Fatima, National Green Tribunal: A New Dimension of Environmental Jurisprudence, *available at* [www.iosrjournals.org/iosr-jhss/papers/Vol%2022%20Issue11/Version-9/G2211094453.pdf](http://www.iosrjournals.org/iosr-jhss/papers/Vol%2022%20Issue11/Version-9/G2211094453.pdf)

<sup>39</sup>Ashok Kini, Can NGT Entertain An Application Which Is In The Nature of PIL, SC Asks NGT To Decide, *available at* <https://www.livelaw.in/can-ngt-entertain-an-application-which-iin-the-nature-of-pil-sc-asks-to-decide-the-read-order>

<sup>40</sup>Mr. Jayashree Khandare, Role of National Green Tribunal in Protection Environment, *available at* [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2713728](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2713728)

<sup>41</sup> Section 24 of the NGT Act

while in only a meagre twelve percent of the cases, the payment was to be made to the ERF. Even though the Act has made provisions for a centralized fund for compensatory orders, there is no system in place to make sure that the orders of the Court are complied with. The process is arbitrary in nature.<sup>42</sup>

The ambiguity related to whether the High Court can entertain appeals of the Tribunal as per Articles 226 and 227 has to be removed. Clarification is needed in this aspect as the Madras High Court held that the High Court has the power to hear appeals against the orders of the NGT.<sup>43</sup>

One of the major limitations of the Tribunal is the time limit under which the application is to be made. The applications to be made to the Tribunal are to be made within a period of six months from the date of the cause of action. The provision concerning application for grant of compensation or relief still provides some relaxation with the time limitation period for the application being five years.<sup>44</sup>

## V. CONCLUSION

The history of the NGT itself suggests that the constitution of the new Tribunal was not a reform which was imposed upon the judiciary. In fact, it was suggested by the apex Court itself. This would imply that the reform would not be disallowed by the already active judiciary and that the new judges would merge themselves with other authorities without any serious confrontations. The Supreme Court with respect to the Tribunal acts in a supervisory capacity to ensure that environmentalist judges are not in conflict with judges or the principles as laid down by the Constitution<sup>45</sup> It is a fact that the NGT is not a remedy for all environmental concerns but it will surely lead the way to providing innovative resolutions to the problems faced by environmental activists as well as people of the country in relation to the environment.<sup>46</sup> The NGT has passed orders in matters concerning pollution, waste management and for conservation of biodiversity to name a few. It remains to be seen whether will continue to uphold its mandate. The need of the hour is framing strict enforcement measures rather than just putting a price on environmental pollution. The NGT needs to keep this in perspective for the effective restoration of the environment.

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<sup>42</sup> Supra note 30

<sup>43</sup> Role of National Green Tribunal in the Prevention and Control of Environment Pollution, *available at* <https://racolblegal.com/role-of-national-green-tribunal-ngt-in-the-prevention-and-control-of-environmental-pollution/>

<sup>44</sup> Dominico Amirante, Environmental Courts in Comparative Perspective: Preliminary Reflection on the National Green Tribunal of India, *available at* <https://core.ac.uk/download/pdf/46710864.pdf>

<sup>45</sup> Mrinalini Shinde, The Polluter Pays Principle in Effect at the National Green Tribunal in India, *available at* [thee-journal.uni-koeln.de/sites/hee-journal/user\\_upload/Shinde\\_2017](http://thee-journal.uni-koeln.de/sites/hee-journal/user_upload/Shinde_2017)

<sup>46</sup> Supra note 20