

# Review on the “Role of National Green Tribunal (NGT) in the Outline of Protection of Environment with Special Reference to Fundamental Rights in India”

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**Abstract:** *A pollution free environment is the basic need of every individual as well as the basic fundamental right under our constitution and other International instruments.*

*Day by day with the concept of globalisation and urbanisation and with the inventions of advanced technologies life of human being has been very comfortable and luxuries, but development and growth at the cost of environment, this creates un-equilibrium between development and environment protection. This existing un-equilibrium caused many problems like global warming, polluted air and water, acid rain, greenhouse effect, ozone depletion, loss of biodiversity and bad impact on Flora and Fauna. Whole universe has to pay for it .For that it is very essential to deal with this issue and to find out urgent solution.*

*Pollution free environment is fundamental right under Article 21 of the Indian Constitution present paper enlighten on important issues as ,Whether the existing constitutional and statutory provisions are enough to solve all the environmental problems ?or whether the development is permissible at the cost of environment or health? orwhether development and pollution free environment can exist together? With this questions in mind scholar analysis the role of national green tribunal in the protection of environment and handling of environmental issue.*

*The present study focus on the importance of environmental protection for the life of human being in present era and the role of national green tribunal in the protection of environment*

**Keywords:** Environment ,protection ,fundamental right ,national green tribunal.

## I. INTRODUCTION

In our Indian culture we always protect and nurtures nature and we as Indians, take pride in our strong cultural heritage. If we take a look at Indian culture, we worship the sun, wind, land, trees, plants, and water which is the very base of human survival. Likewise, we also respect conservation of wildlife, we also worshiped animals such as cows, buffalos, snake even birds like Garuda —are part of our cultural philosophy from centuries old. Our ancient texts can provide significant details regarding the close relation of our idol with nature and direct instructions dealing with biodiversity conservation. The Cultural multiplicity in the Indian society reflects close relationship between the existence of human life and nature including all other living creatures and non-living features. Conservation of environment, natural resources and biological diversity has been deeply rooted in the Indian tradition and culture. India is home-grown to inherent, species, and ecosystem biodiversity resulting from varied landforms and environments providing homes to life forms. However, it is also correct that excessive human interference in this wealth and a relative unawareness about its value is fast eating into our biological incomes. In spite of governmental efforts, degradation of environment by various ways is still continues at an alarming rate.

The environment is the most important factor for development to all kinds of animals, plants and others. It is the greatest gift of God to man and other living and non-living things. It's abiotic (non-countable) components like air,

water, light etc. and its biotic (countable) living components like plants, animals and human beings etc. They are responsible for the survival and continuance of life on this earth, so environment is most important factor for everything. Our environment consists of 'Panchtatva' viz earth or land, water, light or lustre, ether and air, which together responsible for our survival. If the equilibrium of Panchtatva disturbs the existence of human being, it will be dangerous. We obtained our survival element from all these Panchtatva, one need Pollution free air to breathe, uncontaminated water to drink, nutritious food to eat, hygienic condition to live and healthy environment to move. India has an old culture to worshipped nature as their India is a country with great culture. India is culturally rich diversified communities who live in their respective social structures completely depending on their environment to ensure their livelihood. These elements are 'Sine qua non' for the sound and healthy development of human personality. In the absence of Panchtatva human being can not develop themselves with fullest extent. Pollution free environment is basic need of every human being, but everyone has contributed in its pollution and in present day it has become universal Phenomenon. Healthy environment is essential for our existence in spite of that we are polluting and destroying our own environment and creating danger for us. The basic reason behind it is that we are taking advantage of development at the cost of health. In present era money become more essential for us than our life. Nature has to pay a great cost in the form of degradations of soil, pollution of air and water and deforestation which creates imbalance in natural ecology and have various dangerous effects on life of human as well as animals. Thus it the reality that environment has a vital role in the life of human beings, as it is the only home that humans have, and it provides air, water, food and other needs. Entire life support system of human being depends on the well-being of all the environmental factors. Human Life is dependent on the for clean air, water, food and all other essentials for human life. If these are polluted it would be a main cause of most of the diseases and life on earth may cease to exist or would be in danger. Therefore it is essential to protect our environment and ecosystem in order to preserve human life. The rise of living standard, urbanization leads to considerable exploitation of natural resources. In way of advance science and technology has disturbed ecological balance at International as well as National level. The effect of environment pollution has resulted on human beings but also life supporting system and living creatures. For that humans must learn to adapt to the environment. Climate change, global warming and natural disasters are a wake-up call to humanity that they should stop polluting the earth and the need of the hour is to strive a symbiotic relationship with the environment through sensitive and researched environmental management, adaptation, mitigation and risk reduction.

National Green Tribunal Act (NGT) was established in 2010, under India's constitutional provision of Article 21, which assures the citizens of India, the right to a healthy environment. The Tribunal itself, is a special fast-track court to handle the expeditious disposal of the cases pertaining to environmental issues. The National Green Tribunal is a special fast-track court for speedy disposal of environment-related civil cases. This is the first body of its kind that is required by its parent statute to apply the "polluter pays" principle and the principle of sustainable development. Proper institutional development of National Green Tribunal will significantly affect compliance. The National Green Tribunal (NGT) is a specialized body that was formed under the NGT Act, 2010 for effective and expeditious disposal of cases that are related to the protection and conservation of the environment, forests, and other natural resources. India has become the third country in the world after Australia and New Zealand, for setting up a specialized environmental tribunal and also the first developing country to do so. The National Green Tribunal has a total of five places of sittings namely: Bhopal, Pune, New Delhi, Kolkata, and Chennai, amongst which, New Delhi is the Principal place of sitting.

Article 21 of the Indian Constitution has been interpreted mean several things. One of such interpretations laid down by the court was that people do have a right to live in a healthy environment in Rural Litigation and Entitlement Kendra, Dehradun and Ors. v. State of U.P. and Ors.,<sup>1</sup> right to have the enjoyment of quality of life and living, in Chhetriya Pradushan Mukti Sangharsh Samiti v. State of U.P. and Ors.<sup>2</sup>, and right of enjoyment of pollution free water and air for full enjoyment of life, Subhash Kumar v. State of Bihar and Ors.,<sup>3</sup> Inspired from the constitutional provision under

<sup>1</sup>A.I.R. 1985 S.C. 652.

<sup>2</sup>A.I.R. 1990 S.C. 2060

<sup>3</sup>A.I.R. 1991 S.C. 420

Article 21, the National Green Tribunal through the National Green Tribunal Act, 2010 (Act 19 of 2010) came into being. National Green Tribunal (NGT) was established to fulfill some of the major objectives<sup>4</sup> like,

To provide effective and expeditious disposal of cases that are related to the protection and conservation of the environment, forests, and other natural resources.

To give relief and compensations for any damages caused to persons and properties.

To handle various environmental disputes that involve multi-disciplinary issues.

The environmental disputes are distinctive and complex in nature so it needs a capability in different fields (like biology, sociology, economics, administration, management and law etc.) to resolve the environmental matters in effective and expeditious manner which is not possible with a regular judicial and administrative set up in India.

National Green Tribunal is an institutional mechanism for enhancing access to environmental justice in India and work very well to fulfilled the real objectives of the establishment. It is true that the genesis of the National Green Tribunal (NGT) is itself what makes it different from the other tribunals in the country. There are many respectful quick decisions has been taken by NGT like :

- Decision on protection of Indian rivers ( Yamuna, Ganga etc),
- Slapping fine on Art of living for violating environmental laws,
- Cancellation of clearance of Coal blocks in Chattisgarh forest,
- Imposing fine on burning waste in Open,
- Highlighting Bellandur lake pollution and ,
- Ban of diesel vehicles more than 10 years

It was established under the weight of a constitutional mandate to implement the international obligations undertaken by India. The establishment of the tribunal was undoubtedly a noble step in addressing environmental disputes in Indian society. But every step comes with its own loopholes and challenges.

#### **Gap between the fulfilment of objects and implementation of NGT.**

The National Green Tribunal was established with pious object and is considered an outstanding example of an environmental court, functioning in the backdrop of a constitutional safeguard provided to the right to healthy environment as a fundamental right to life of all citizens enshrined under Article 21 of the Constitution of India. But in real picture, it create various question on its applicability and usefulness since from its inception. Which gives rise to various issues like whether green tribunal is effective to provide better remedy in case of environment issue?

As per artificial body, the NGT derives its jurisdiction and powers directly from the National Green Tribunal Act, 2010, and is allowed to operate within the boundaries of the Act only. Of late though, there are winds of change blowing through the Tribunal, with the NGT adopting a new 4-D approach to dealing with cases – ‘dismiss, dispose, delegate and de-reserve’, which appears to be a hugely regressive step taken in the fight for environmental justice.

By outright dismissal of petitions filed in the NGT, the current Chairperson had declared that no notices would be issued, and only cases which have an “important question relating to environment and ecology” shall be dealt with by the Tribunal. What is pertinent here is that while the NGT Act always envisaged the Tribunal to only deal with ‘substantial questions relating to the environment’, the method of dismissing cases in the first instance without providing due reasons seems to be a new stand taken by the NGT, curbing the right to access environmental justice. Even in cases where the final decision is to dismiss the matter, it is a settled principle that there cannot be prima facie non-application of mind and that such decision must reflect consideration of the issues on merit.

Dismissals notwithstanding, since July 2018, the Tribunal has in addition, disposed of over 700 cases, all at different stages of hearing, with largely generic orders directing the concerned authorities “to look into the matter and take appropriate action in accordance with law”. By merely re-emphasising the mandate and re-directing all cases to the executive authorities, who are themselves defaulters in most cases, this practice seems to undermine the very purpose of establishing the Tribunal.

<sup>4</sup> <https://greentribunal.gov.in>

There is an excessive delegation to committees, more commonly though, the NGT has constituted numerous external committees to look into various aspects of cases, to oversee and monitor the compliance of different environmental laws and rules, and to submit a report thereafter. There are more than 90 committees set up at present, of which nearly 37 committees are being headed by retired Judges of the Supreme Court or of various high courts, including even committees headed by former members of the Tribunal itself.

This method of delegating all of its essential powers and functions to external committees, with similar structure and composition as the Tribunal, gives the impression that the NGT is abrogating its own jurisdiction on cases pertaining to environmental protection. The higher courts of the country have long decried the practice of Tribunals delegating their vital role to executive authorities for their examination on merits, and thus, such excessive delegation by the NGT needs to be checked.

Moreover, the 'committee-raj' taking over the Tribunal also poses an undue burden on taxpayers' money, which is now being utilised towards payments made to the committee members. Such misuse of public money could be avoided and instead the money could be used for improving and restoring the environment. Further, the NGT at present, has also passed orders to re-hear 18 cases that had already been heard and reserved for judgment previously by different benches of the Tribunal, without providing any valid reasons for such an unprecedented move. Be that as it may, it is clear that the NGT is undertaking a paradigm shift to change the way that it is perceived as the environmental watchdog of the country. Of late, the Tribunal has shown a heavy preference towards taking suo-motu cognizance of issues originating from newspapers, letters and emails and admitting them as 'petitions'.

Between July 2018 to January 2019, the NGT received 1,691 letters/e-mails highlighting diverse environmental issues, of which 321 had been admitted as petitions, where authorities were directed to take appropriate action. Recently, the Tribunal has also clamped down heavily on polluters, both industries and State Governments, by imposing hefty fines under the polluter pays principle. In the past four months alone, the NGT has ordered for nearly Rs 800 crores to be paid as penalties for various violations, to be used towards environmental restoration. While this bold move is aimed to act as a deterrent for polluters, neither corporates nor governments seem inclined to pay these damages, and instead opt to challenge the orders of the NGT before the Supreme Court, which results in prolonged litigation, leaving the environment to be the real sufferer. On-ground implementation of the orders of the Tribunal proves to be a continued hindrance towards achieving environmental protection, and needs to be addressed at the earliest. By shutting down the redressal mechanism through court-room argumentation, the NGT seems to have limited its role to merely an oversight body, rather than a judicial forum. This has also contributed to a slow decline in public confidence in the Tribunal.

In the absence of proper hearings, there is no opportunity for petitioners to argue the case before the Judges, place evidence in support and to respond to the claims made by the respondent authorities. Since each environmental case is unique in the issues that it raises, set in the context of its specific facts, there is a greater need for proper adjudication in the presence of judicial and technical members appointed to the Tribunal.

## II. RESULT AND DISCUSSION

The process of financial development and expansion, though dynamic for any nation's progress, done at the cost of environmental deprivation through industrialization and urbanization— transportation, burning of fossil fuels and deforestation—has led to the emission of greenhouse gases into the stratosphere. These gases absorb the heat of solar rays, which results in the warming of the atmosphere, seas and oceans leading to floods, droughts, severe storms, melting of ice at the poles, receding of glaciers and rise in sea water levels. These issues have brought the concerns for environmental conservation and sustainable development to the forefront. To the environmental issue government of India established a special statutory forum of National Green Tribunal which is equipped with necessary expertise to handle environmental disputes. The presence of experts belonging to environment in NGT to decide environmental litigations has made it, more result oriented alternative environment dispute resolution mechanism

Right from its inception, the NGT has had its fair share of teething troubles and administrative roadblocks, mostly relating to the appointment of members, both technical and judicial, which has led to a subsequent lack of quorum to hear cases. While today regular hearings take place in the Principal Bench of the NGT at Delhi, there are still several posts vacant across the four zonal benches, forcing the principal bench to hear the bulk of these cases via video

conferencing. One could postulate that this may be the reason for adopting the method of delegating powers and functions to external committees, to share the load and reduce the pressure put on fewer members of the Tribunal.

There are repeated confrontations witnessed between the government and NGT related to the rulings of NGT and a subsequent conflict of interests arising out of these judgments. The Ministry of Environment and Forests has often accused the NGT of overstepping its jurisdiction by pronouncing decisions which are beyond its scope. One of the recent cases of conflict was with the Government of Goa wherein the NGT had imposed a ban on sand mining in the state. The government contends that NGT lacks legal mandate and it does not have a right to act suo motu on certain environment related disputes. There are increased questions that are raised on the method of manpower hiring by the NGT. Critics have pointed out that this method needs to be made more transparent and subject to review by various academicians, scholars and NGO's. In order to make the process more transparent, the process of hiring should be made public so that all possibilities of ambiguities are ruled out.

The tribunal has been facing a crunch in terms of the number of members appointed. The tribunal is working with only 7 members as opposed to a minimum limit of 10 members. Also, according to the recent data available for the year 2019, the regional benches of the tribunal have been vacant for 2 years and are operating through video conferencing. There is an urgent need for filling the vacancies that have been pending for two years now. The vacancies are not only leading to a halt in the redressal of environmental related disputes but also leading to lack of accountability and efficiency in the working of the tribunal.

The time limitation clause mentioned in Section 14(3) of the NGT Act, 2010 is very ambiguous and needs a change. Section 14(3) mentions that the complaint regarding environmental protection should be filed within 6 months when the cause of action arises and this time period can be extended for another 6 months only in exceptional cases. This provision fails to envisage the possibilities of long-term effects of environmental damage. It does not acknowledge that there are certain instances wherein the effects of environmental degradation take time to surface. The most relevant example of this can be the harmful effects of the use of radioactive substances. This section needs to be done away with.

However, despite various proactive support being taken by the tribunal the pollution levels have been continuously rising over the years. This is due to lack of effective support from government both at the center as well in states. Inefficiency and ineffective co-ordination of Central and State pollution control boards is another reason for it. This often causes delay in implementing the tribunal's decision. Without having adequate support from government side, NGT is unable to have a vigilance throughout the country due to its limited capacity and staff. The National Green Tribunal has not been vested with powers to hear any matter relating to Wildlife (Protection) Act, The Indian Forest Act, laws enacted by States relating to forests, tree preservation etc. The act has limited the jurisdiction of tribunal to "substantial question of environment" which is hard to be determined and not possible to be assessed by common people what is substantial or not. Also the jurisdiction is also confined to where community at large is affected excluding individuals and group of individuals who also deserves protection against environmental hazards.

In conclusion, it can be seen that a visible lack of political will to make appointments to the Tribunal coupled with a wave of new approaches adopted by the NGT for dealing with environmental cases, raises some serious questions on the functioning of the Tribunal, and its efforts to be a champion for the cause of the environment. Perhaps time will tell. Unfortunately, time is what we cannot spare in this larger fight to save the planet. It is true that present NGT Act established with great objective. But, still the present legislation is far from achieving the true object of the establishment of the Act. Environmental protection, enforcement and compliance. Hence it would be concluded that the fundamental right of healthy environment enshrined under article 21 of the Indian constitution not fully achieved by the NGT and still have to work for achieving true objective of the NGT Act and article 21 of the constitution.

After the deep interpretation and analysis of role of NGT in relation with Article 21 the researcher come to mention following of the recommendary suggestions

Suo motu jurisdiction has to be an integral feature of National Green Tribunal for effective and better functioning.

There is a need for the creation of an autonomous Environmental Protection Authority of India.

The clause "substantial question related to environment" shall be explained in detail rather than leaving it to individual reasoning.

The present act provides interference by central Government in the affairs and internal processes of the tribunal which should be avoided to give tribunal an unrestricted hand to decide the inherent matter as proceedings.

The Central and State government should work in collaboration with NGT to secure the environment with better, faster enforcement of NGT orders.

Other environment-related laws must also be included within NGT's ambit.

Sometimes decision of NGT has just restricted to imposing fine whereas harsher action should have been taken like in Art of Living case etc

NGT act allow for 20 expert and 20 judicial members but right now only strength of 10 is sanctioned, it can be increased to expedite the cases.

At the end it is said that, India is one of the nations in the world who give a high amount of importance to environmental conservation and its protection. There are already a number of legislations which have been passed by the Parliament to deal with the environment and forest conservation and their protection. The Green Tribunal adds another feather to this by specifically dealing with environmental issues. For a country that has faced one of the world's most horrifying industrial disasters i.e. the Bhopal Gas Tragedy, the setting up of a body like the National Green Tribunal obviously seems to be a brilliant idea. Although, the Act is still facing a lot of criticism, yet its basic framework appears reassuring and it is hard to say that it is not the step in the right direction.

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