



Assessing Environmental Jurisprudence in India: An Analysis of the National Green Tribunal's Judicial Structure and Institutional Effectiveness

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Abstract: This article assesses the judicial structure of the National Green Tribunal (NGT), specifically focusing on the western bench, and its role in providing access to environmental justice in India. It highlights the loopholes and deficiencies in the functioning of the NGT, which hinder its effectiveness in addressing environmental problems. The analysis of recent environmental cases demonstrates contradictions and gaps in the institutional mechanisms, resulting in ineffective implementation of legislation. The lack of clarity in calculating compensation values, selective action against violators, and inadequate penalties are some of the issues identified. The article also points out the absence of a centralized monitoring mechanism for NGT orders and the inefficient utilization of collected fines. To improve the NGT's effectiveness, several recommendations are proposed. These include strengthening infrastructure, ensuring timely appointments of qualified personnel, providing specialized training, promoting collaboration and coordination among stakeholders, raising public awareness and participation, implementing effective case management practices, encouraging alternative dispute resolution, strengthening enforcement, fostering research and expertise, and advocating for legislative reforms. By addressing these recommendations, the NGT can enhance its capacity to handle environmental cases, expedite the resolution process, and uphold the principles of sustainable development, precautionality, and the Polluter Pays Principle. Collaboration and open dialogue among authorities, along with constructive approaches, are emphasized as crucial for addressing environmental challenges effectively.

Keywords: National Green Tribunal, Environmental Justice, Institutional Structure, Access to Justice, Compensation, Monitoring, Environmental Law

1. Introduction

Environmental problems are complex, technical, and polycentric. Hence, there is no 'one-size fit all' solution. In India, pro-active judiciary has already established and promoted the fundamental principles of 'Precautionality', 'Polluter Pays', and 'Sustainable Development', but the implementation is not done effectively.

The provision of Public Interest Litigation within the constitutional mandate has provided for effective environmental jurisprudence, but contradictions and gaps in institutional mechanisms have resulted in ineffective execution of the legislation [13]. This paper aims to assess

the judicial structure (mainly the western bench of the National Green Tribunal), which offers access to environmental justice in India.

2. Assessment of Judicial Structure of NGT: Analysis of Landmark Cases

The state of Environmental Jurisprudence in India and the effectiveness of the judgements and compensations awarded can be assessed best by studying some of the landmark cases

in this domain.

2.1. Case 1: *M/S. Goel Ganga Developers India... vs Union of India*

In a recent case of *M/S. Goel Ganga Developers India... vs Union Of India*, the value of Rs. 100 crores was to be paid by the project proponent as compensation. Also, an additional charge of Rs 5 crores was filed for violating several environmental laws. No calculation was shown as to how the court reached both of these values.

The developer has been granted six months' time to deposit the amount. "In case the developer does not deposit the amount within six months, then all the assets of M/s Goel Ganga Developers India Pvt Ltd, as well as its directors, should be attached and the amount of damages should be recovered by sale of those assets.¹ There is no data available regarding the stage of compliance.²

2.2. Case 2: *Dombivli Common Effluent Treatment Plant (DCEPT) Vs. Maharashtra Pollution*

In *Dombivli Common effluent Treatment Plant (DCEPT) Vs. Maharashtra Pollution Control Board*³, the expert joint committee recommended that the DCEPT should have the necessary arrangements to treat, segregate, and dispose of the waste on the site. Effluent should be transported from the member industries, and there should be proper arrangements for the same. Furthermore, they should submit a concrete proposal for collection of effluent using GPS with a decided timeline and budget. These recommendations were accepted by the respondents.

The court took action against only one Common Effluent Treatment Plant (CETP) which is getting feed from sump 2, and has conveniently ignored the other 29 member industries. It has avoided taking action against industries in industry catchment areas of sump 2 phase 2- (these include 90 chemical industries and 34 textile industries). The court directions are not clear as to why 29 industries sending effluent to other CETP are closed.

Dombivli Better Environment System Association (DBESA) was also not performing as per standards, but no action was taken. The reason given for this was that the scope of this proceeding is very limited. [As held in *Mumbai Kamgar Sabha v Bulbhai Faizullabhai*⁴ - Procedural prescriptions are handmaidens, not mistresses, of justice. Failure of Fair play is the spirit in which courts must view

procedural deviances. Hence the court should not restrict its scope of preventing environmental degradation just because it doesn't come in the ambit of the proceedings.]

The reason given by the court for not closing down the CETP was that it affects the livelihood of the dependants (workmen). Hence it asked the board to come up with a CETP improvement and upgradation program. Since 1 year, no concurrence for upgradation has been seen.

The court subsequently imposed a fine of Rs. 10 Lakhs (which was less than 4% of the total project cost of Rs. 262 lakhs), and directed the MPCB to devise a holistic action plan for effluent management. No data is available regarding the DECPT action plan.

2.3. Case 3: *Aryavart Foundation Vs. Vapi Green Enviro Ltd. and Ors.*

In the case of *Aryavart Foundation Vs. Vapi Green Enviro Ltd. And Ors.*⁵, pollution was caused due to 500 industrial units. The Committee report specified the GPCB failure, and that no conviction was reported, in spite of severe pollution. There was an increase in the concentration of pollutants, but Polluters were not prosecuted. The cost of restoration was calculated to be Rs. 751 crore. Using recent 6 years data and employing 2 alternate methods, yearly average economic damages came to: 6.93cr/yr and 11.17 cr/yr using two alternative methods respectively.

The Committee has assessed compensation for only 55 industries when there are more than 500 industries. GPCB hasn't submitted a list of erring industries.

Though Interim compensation has been given by the industries, as per the report, CETP was still not meeting the standards. Compensation from individual industry members came to be Rs. 25.36 crores and from CETP Rs. 92.36 crores. Cumulating the figures, the total environmental compensation came to be Rs 117.72 crore, but no data is available regarding how the committee arrived at this figure.

The tribunal directed a performance audit. All the vacant positions in SPCB/PCCs were to be filled within 4 months.

As per the report of CPCB, there are serious deficiencies and undue delay in recruiting the sanctioned manpower, adequacy and upgradation of laboratories and performance, which requires remedial measures. 46% of posts were vacant. SPCBs are not submitting annual reports, and have not complied with the rules. Out of the total 316 non-complying industries, mostly located in Gujarat (97), Maharashtra (40), UP (25), West Bengal (24) and Rajasthan (20). There were only 6 legal cases filed by States, 4 by Telangana, while 105 units were issued closure directions and 174 were issued Show Cause Notices (SCNs). Only three legal cases are filed against the non-complying units, two in Jharkhand and one in UP. Legal cases were filed against 6 units, while action was pending for the remaining 164 industries. According to Jairam Ramesh, the former Minister of Environment and Forests, Indian Parliament, "a circuit approach would be

¹ <https://indianexpress.com/article/cities/pune/sc-reduces-damages-to-be-paid-by-goel-ganga-asks-it-to-pay-rs-105-crore-in-six-months-5301385/>, last seen on 7/7/2023

² *M/S. Goel Ganga Developers India... vs Union Of India*, (2018), available at [https://indiankanoon.org/doc/63473709/#:~:text=It%20was%20prayed%20that%20the,\(EIA\)%20Notification%2C%202006%3B,,](https://indiankanoon.org/doc/63473709/#:~:text=It%20was%20prayed%20that%20the,(EIA)%20Notification%2C%202006%3B,,) Last seen on 7/7/2023

³ *Dombivli Common effluent Treatment Plant (DCEPT) Vs. Maharashtra Pollution Control Board*, (2016), Available at <https://www.casemine.com/judgement/in/5b17d5644a9326780100738f>, last seen on 7/7/2023

⁴ *Mumbai Kamgar Sabha v Bulbhai Faizullabhai*, (1976), Available at <https://indiankanoon.org/doc/191016/>, last seen on 7/7/2023

⁵ *Aryavart Foundation Vs. Vapi Green Enviro Ltd. And Ors.*, (2019), available at <https://indiankanoon.org/doc/19612811/>, last seen on 7/7/2023

followed to enable access for people. The court will go to the people. People would not come to the court. I assure you this.” Hence, the court should take efforts to adhere to this goal.

The expert committee recommended the recruitment of officers, outsourcing professional services wherever there are internal shortcomings, and preparing state environmental status. The tribunal directed to fill in vacant posts, upgrade the labs, and submit an annual performance audit. No data regarding the stage of compliance is available.

Despite the ruling of the Supreme Court against the dumping of untreated effluents, the Vapi Industrial Association (VIA) has openly demanded that these orders de facto not be implemented, giving the excuse of the lockdown. The lockdown was used as an excuse not only to circumvent, but abolish the laws altogether.

The issue of pollution in Vapi Industrial cluster is adjourned sine die, and is still pending in Supreme Court. Industries want exemption due to the lockdown- shortage of personnel.

In *Mahesh Industries Vs. State of Gujarat*⁶, where the respondent was discharging acidic effluent into the water body, no sample was taken as specified in the procedure. A fine of Rs. 25 lakhs was slapped, but the quantum of compensation was arbitrary. The compliance report is yet to be made available.

3. Loopholes in the Institutional Structure and Administration of NGT

Various concerns are raised by the affected parties which include scientific contradictions, lack of evidentiary value, and the statutory obligation of the executive being diluted. The root of all these problems are the loopholes in the basic institutional structure and functioning of the NGTs.

3.1. Committee Culture and Delay in Proceedings

The increasing number of committees being formed (Committee culture), the huge time frame given to them for producing interim-reports, and on-going re-evaluation of the reports slows down the entire process⁷. The statutory requirement of disposing the case within 6 months has taken a back seat, and the very purpose of NGT to speed up the judicial process is lost. [6]

In an attempt to appease the developmental agenda, the committees have started to self-contradict themselves.

3.2. Conflict of Interest and Political Agenda

NGT is under the Ministry of Environment, Forest, and Climate Change. Currently, The Minister of Environment, Forest and Climate Change is Mr. Prakash Javadekar, who, ironically, is also the Minister of Heavy Industries and Public

Enterprises. Hence there is an inherent conflict of interest, which makes it difficult to give an unbiased verdict. [2]

3.3. Inadequate Staffing and Capacity

Under the National Green Tribunal Act, 2010, the tribunal is to have a full-time chairperson and up to 20 judicial and expert members each. According to the Act, the tribunal is not supposed to have less than 10 of either. The principle and regional benches of NGT currently comprise of a chairperson, 4 judicial members and 3 expert members in totality. Currently, (as of 16th May 2021) over 2488 cases are pending, and new cases continue to be received every day.

3.4. Subjectivity in the Application of Principles

There is a lack of consistency, and a lot of subjectivity (based on individual inclinations) in the application of the Polluter Pays Principle. [3] For example, in the Art of Living Foundation case⁸ (*Manoj Misra vs Delhi Development Authority & Ors*⁹), though interim compensatory charges of 5 crore were filed, the program was still given a green signal under the label of ‘fait accompli’. In a similar case in Bangalore (*Forward Foundation v State of Karnataka*¹⁰), fait accompli was not applied, and a compensatory value of 15 lakhs was charged. This proves that NGT works on political mandate, instead of public one. There are powerful interests vested by politically influential parties.

Instead of “sale proceeds” as cited in the apex court judgment, NGT has taken “project cost” as the basis of imposing penalties. From 10%, as held by the Supreme Court, NGT has further lowered the penalties to 5% arbitrarily, which is not followed in several cases, and appears to be even lesser.¹¹

3.5. Arbitrary Calculation of Compensatory Fines and Penalties

The compensatory reliefs/penalties are meagre as compared to the project costs, and hardly have any deterrence effect. For example, in *The Simbhaoli Sugar Mills Ltd. vs Union Of India & Ors*.¹², where the turnover is over Rs. 953 crores, a penalty of less than 0.6 percent was charged. In another case of *Hazira Macchimar Samiti v UOI* (2016)¹³, a penalty of 2.5 crores was imposed which constitutes less than 1.4 percent of the total project cost. In *Krishan Kant Singh v*

⁶ Mahesh Industries Vs. State of Gujarat, (2021), available at <https://indiankanon.org/doc/175237026/>, last seen on 7/7/2023

⁷ <https://www.downtoearth.org.in/coverage/governance/tribunal-on-a-tightrope-60224>, last seen on 7/7/2023

⁸ <https://indianexpress.com/article/india/india-news-india/art-of-living-ngt-sri-sri-ravi-shankar-fine-world-culture-festival/>, last seen on 7/7/2023

⁹ Manoj Misra vs Delhi Development Authority & Ors, (2020), available at <https://indiankanon.org/doc/146778225/>, last seen on 7/7/2023

¹⁰ Forward Foundation v State of Karnataka, (2014), available at <https://www.casemine.com/judgement/in/5b17d55d4a932678010055e6>, last seen on 7/7/2023

¹¹ <http://www.indiaenvironmentportal.org.in/files/file/Vapi-pollution-environmental-regulators-NGT-order-Feb05-2021.pdf>, last seen on 7/7/2023

¹² The Simbhaoli Sugar Mills Ltd. vs Union Of India & Ors., (1992), available at <https://indiankanon.org/doc/101981/>, last seen on 7/7/2023

¹³ Hazira Macchimar Samiti v UOI (2016), available at <https://indiankanon.org/doc/110325850/>, last seen on 7/7/2023

*National Ganga River Basin Authority*¹⁴ a fine of 5 crores was imposed. "It does not matter whether the penalty amount is big or small," says environmental lawyer Ritwik Dutta. It should instigate a sense of embarrassment/repentance in the erring parties.

Also, the acquired compensatory amount is in no way, enough to restore the damage done to the environment [8]. Moreover, The money collected as compensation is not used for the corresponding cause efficiently, and delay is caused. Statistically, only 28.5% of polluters pay, and only 0.12% of the collected fund is actually being spent on environmental rejuvenation.

Reports show that payments are rarely deposited in the Environment Relief Fund. In fact, in a majority of cases, NGT directs the money to be paid to various other administrative authorities, including state- and district-level bodies like pollution control boards, environment and forest departments and district collectors (and not to the centralized fund account set up for this purpose). [5]

The penalty or the compensatory value reflects the seriousness of the violation, and hence, the precision with which it is calculated is of utmost importance. [12] NGT rarely provides the parameters and detailed calculations of how this value was reached, and often relies on 'guesswork' (as mentioned in the judgments). For example, in *Krishan Kant Singh v M/S Triveni Engg Industries Ltd.*, where the groundwater and air was being polluted, the tribunal slapped a fine of Rs 25 lakh. "At this stage it is not possible to determine with certainty the extent of pollution caused and consequences of the violations committed by the industry and therefore some kind of guesswork has to be applied by the Tribunal to direct payment of environmental compensation," it said, while delivering the verdict. This parallel scenario has been seen in many other cases like *M/S DSM Sugar Distillery Division, Asmoli v Shailesh Singh & Ors*¹⁵, etc. [16]

There is no centralized mechanism for monitoring the ground implementation of NGT, let alone the utilization of the compensation money. [13] The pursuit is completely on a case to case basis, by forming new committees.

3.6. Ignoring Committee Reports and Questionable Data Presentation

The Reports by committees are often ignored. [Hassan, 2014] In a recent case (*Yellappa Reddy v Standing Committee of National Board of Wildlife*), the court completely ignored the reports submitted by the expert body (National Tiger Conservation Authority), and the warnings given by them, and continued to give clearance to the Indian Railways for adding a second track to the railway line connecting Karnataka and Goa¹⁶.

Many times, the reports themselves are not conclusive and comprehensive, and don't cover all the aspects and the entire dataset. Hence the estimated damage is far less than was perceived. There have been repeated instances of questionable data being presented by CETPs and State Pollution Control Boards (SPCB).

This can be a result of either incompetency, or excessive political influence. This is the case in an ongoing matter of a major township project in Great Nicobar¹⁷ [17]. The project report has completely ignored the impact of the project on the nesting sites of the Great Leatherback turtle, the Megapodes, and the corals. Still, the Union environment ministry's Expert Appraisal Committee (EAC) has recommended it for grant of terms of reference (TOR), which is the first step in the environmental clearance process.

4. Recommendations for Strengthening Environmental Jurisprudence in India

If the current situation of the National Green Tribunal continues without any constructive steps taken by the Government, there is a high risk of it being redundant and ineffective. To prevent miscarriages of justice, and to ensure administrative accountability, urgent change needs to be done in the internal institutional structure. The relations between the judiciary and the government should be strengthened, so that none of them, advertently or otherwise, pull the other one down.

The first step is to strengthen the capacity of judges, legislators, and experts on the board. It is imperative to have full, and diverse benches. 3 of the 4 board members appointed in dec 2020 were from the Forest department.

Centralised mechanism should be established to review timely implementation of the orders, and the compliance status [4]. Polluter Pays Principle should be implemented effectively, and objectively.¹⁸ The money collected through fines should be disbursed and utilized efficiently. There should be a standard operating procedure. The guidelines and parameters to calculate the compensatory fines should be established and subsequently used.

Here are some actionables to be considered:

Here are some recommendations:

- 1) Strengthening Infrastructure: Ensure that the NGT has adequate resources, including funds, staff, and physical infrastructure, to efficiently handle the increasing workload. This includes expanding the number of benches and establishing regional branches to improve accessibility.
- 2) Timely Appointments: Expedite the process of appointing qualified and experienced judges and

¹⁴Krishan Kant Singh v National Ganga River Basin Authority, (2014), available at <https://indiankanoon.org/doc/95195691/>, last seen on 7/7/2023

¹⁵M/S DSM Sugar Distillery Division, Asmoli v Shailesh Singh & Ors, (2015), available at <https://www.casemine.com/judgement/in/574989b8e56109100ce98746>, last seen on 7/7/2023

¹⁶ <https://science.thewire.in/environment/centre-ignored-ntca-warning-sagarmala->

<plan-western-ghats-biodiversity-tiger/>, last seen on 7/7/2023

¹⁷ <https://www.hindustantimes.com/environment/major-township-project-in-great-nicobar-to-impact-turtle-nesting-sites-corals-101620795630587.html>, last seen on 7/7/2023

¹⁸ <https://www.downtoearth.org.in/news/pollution/ngt-makes-polluters-pay-nearly-double-so-far-this-year-than-whole-of-2018-63927>, last seen on 7/7/2023

members to the NGT. Vacancies in the tribunal should be filled promptly to prevent delays in case hearings and disposal.

- 3) **Specialized Training:** Provide specialized training programs to NGT judges and members on environmental law, ecological science, and related fields. This will enhance their understanding of complex environmental issues and enable them to make well-informed decisions. [9]
- 4) **Collaboration and Coordination:** Promote effective coordination and collaboration between the NGT, government agencies, and other stakeholders involved in environmental governance. Encourage regular communication, information sharing, and joint efforts to address environmental challenges.
- 5) **Public Awareness and Participation:** Raise awareness about the NGT's role and functions among the general public [14]. Facilitate public participation in the decision-making process by conducting public hearings, soliciting public opinions, and encouraging NGOs and civil society organizations to engage with the NGT.
- 6) **Case Management:** Implement effective case management practices to expedite the resolution of cases. This includes setting strict timelines for filing and disposing of cases, adopting digital platforms for case management, and prioritizing cases with significant environmental implications.
- 7) **Alternative Dispute Resolution:** Encourage the use of alternative dispute resolution mechanisms, such as mediation and arbitration, to resolve environmental disputes. This approach can help reduce the burden on the NGT and promote amicable settlements. [10]
- 8) **Strengthening Enforcement:** Collaborate with relevant authorities to ensure effective enforcement of NGT orders and judgments. Monitor compliance with NGT directives and take appropriate action against non-compliant entities to uphold the credibility of the tribunal's decisions.
- 9) **Research and Expertise:** Promote research and knowledge sharing on emerging environmental issues. Collaborate with research institutions, universities, and experts to develop a robust scientific and technical database that can inform NGT's decision-making processes. [15]
- 10) **Legislative Support:** Advocate for legislative reforms to strengthen the NGT's powers and jurisdiction. Periodically review and update relevant laws to address emerging environmental challenges effectively. [4]

Hence the NGTs should focus on embracing a constructive approach, and new strategies should be appointed. To solve the problems, all the authorities have to work symbiotically, through open dialogue and consultation. Confrontation is not the way forward. Rather, communicating and facilitating involvement through a dialogue should be prioritised.

5. Conclusion

The National Green Tribunal (NGT) plays a crucial role in providing access to environmental justice. However, it is evident that there are numerous challenges and loopholes in the functioning of the NGT, leading to ineffective execution of environmental legislation. [11]

In the larger context, it becomes evident that the NGT's challenges underscore the need for a cohesive and concerted effort involving all stakeholders - the judiciary, government, civil society, and the public. Collaboration, transparency, and open dialogue are key to addressing the complexities of environmental issues and securing a sustainable future for India. [1] Additionally, the establishment of a centralized mechanism for monitoring and reviewing compliance, delineating precise guidelines for calculating compensatory fines, and emphasizing alternative dispute resolution mechanisms can augment the NGT's efficiency. By adopting a constructive and cooperative approach, the NGT can emerge as a formidable institution in safeguarding the environment and promoting sustainable development for generations to come.

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