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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **EFFICACY OF NATIONAL GREEN TRIBUNAL** **AND ITS ACCESSIBILITY**

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## **Abstract:**

The National Green Tribunal was constituted in the year 2010 with an aspiration to assure speedy remedy to affected parties of environmental damage therefore, the Tribunal is mandated to dispose the matter within six months from the date of institution of any application. The Tribunal constitutes of judicial as well as expert members of that particular field as the issues dealt by the Tribunal would be multi-dimensional, especially with regard to the environmental science. The National Green Tribunal Act, 2010 directs that the Tribunal must consist of a minimum of ten judicial members and ten expert members to assure that the Tribunal has enough strength to deliver the speedy justice. In addition to that the Act ensures that the Tribunal is effortlessly reachable for any potential applicant and that is the reason why, it authorizes the Central Government to establish numerous Benches of the Tribunal as per the requirements of the places in India. On records, the legislation of India is in compliance with the resolution passed at the conferences of the United Nations on environment at periodical intervals which includes the Sustainable Development Goals signed in the year 2015. In view of the above, it is vital to reconnoiter how the policies of the State Executive is effectively practicing the legislative policy and its mandate, and how far the Tribunal has prospered in achieving the objectives of the Act. While so, this research paper discovers the working strength of the Tribunal for the past fourteen years with the intent to find out whether the Tribunal has accomplished in complying with the legal mandate. Furthermore, it explores the accessibility of the Tribunal, with respect to distance, since India has agreed upon to the United Nations that the redressal forums would be easily accessible without a hitch.



**Keywords:**

National Green Tribunal

Accessibility

Sustainable Development Goals

Environmental Damage

Victim of Environmental Damage

## INTRODUCTION

The National Green Tribunal, for brevity hereinafter referred as “the Tribunal”, was constituted in October, 2010 under the National Green Tribunal Act, 2010, for brevity hereinafter referred as “the Act”. The Tribunal has entrenched a mechanism for efficient and speedy disposal of civil disputes with regard to environmental issues relating to, inter alia, forests and such other natural resources. The objective of the mechanism established by the Tribunal is to provide damages and compensation for damage caused to any individual person and property ascribed to environmental damage eventually sustained by the act of any person or of an entity. The Tribunal is a body consisting of judicial officers and environmental experts in that particular field, who gives a better perspective to deal with multi-faceted issues. It is authorized to prescribe and set down its own Rules of procedure abiding the principles of natural justice and it is not bound by the procedures established under the Code of Civil Procedure, 1908. The Parliament of India has enacted the Act since India had agreed upon to the United Nations to establish a specialized body empowered to dispose the civil disputes relating to the environmental issues within period of limitation fixed for the same and further agreed upon that the accessibility of the forum to be more convenient to the affected parties of environmental damage. In addition to that, India agreed upon that the legislation would be enacted to achieve the accomplish the aforesaid objectives. In the year 1972, it was the initiative of the United Nations to collaborate with all its member nations to address the dispute of environmental damage. It is pertinent to note that all the member nations had recognized the importance of protecting the environment from the damage as the environmental damage is neither distraught by political conditions leading to war between the nations nor its boundaries

In the year 1972, the U.N. Conference on the Human Environment, which was held at Stockholm, an alarm was raised by the United Nations calling upon all its member nations to take precautionary steps to safeguard and protect the environment. In the year 1992, the U.N. Conference on



Environment & Development, which was held at Rio de Janeiro, the United Nations called upon all its member nations to have an effective redressal proceedings viz judicial and administrative by way of enacting proper legislations to provide compensation for the affected parties of environmental damage. Obligated by the Resolutions passed in the UN Conferences and in order to perform its part of the agreement, India established a specialized body empowered and authorized to deal with the environmental issues, and in order to regulate the same the Act was enacted, eventually the Tribunal, with its Principal Bench at New Delhi, was established in October, 2010.

The Tribunal constituted with Judicial Members and Expert Members specialized in the filed of Environment, to decide and dispose of the matters instituted with regard to the Environmental disputes. The Tribunal exclusively established for the purpose of deciding disputes that more specifically deals with Environmental Damage and to pass orders as to compensation or restitution and not otherwise. Currently, the Tribunal consists of five Benches namely:

1. The Principal Bench at New Delhi
2. The Central Zone at ,Bhopal
3. The Western Zone at Pune -
4. The Eastern Zone at Kolkata and
5. The Southern Zone at Chennai

In the year 2015, the United Nations, with the consent of all its member nations, passed a Resolution as to the Sustainable Development Goals - 2030 (SDGs), to which the States agreed, signed and committed. Among the members of the United Nations, India had also signed the SDGs and had agreed to accomplish by the year of 2030, all the 17 goals under the SDGs. The 17 goals precisely deals with reducing poverty, promoting good health and well being, securing good quality education and gender equality, Sanitation, sustainable cities, climate action and last but not the least peace, justice and strong institutions. The vital goal, which is relevant to our subject matter, viz. Goal No. 16, which aims at securing equal opportunity of justice for all' and establishing redressed Forums to deal with the environmental issues <sup>1</sup>In the year 2010, the National Green Tribunal is established in India under the National Green Tribunal Act, even before India agreed upon to achieve the objectives of SDGs, and thus after the SDGs, India has to thrive to accomplish the policy framework and its execution in order to assure that the said judicial forum becomes effective & self serving and it is operating with

its full strength. Eventually, upon complying the same, the accessibility and accountability of the Tribunal towards the citizens would be improved.

### **Formation of Benches of the Tribunal across the Nation**

The Central Government of India, as provided under Section 4(3)3 of the Act, has established five Benches of the Tribunal across the territory of India, either for a State or for two or more States, by establishing its jurisdiction, viz.,

1. Delhi, Punjab, Haryana, Himachal Pradesh, Uttar Pradesh, Uttarakhand, and the U.Ts of Chandigarh, Jammu & Kashmir, and Ladakh falls under the jurisdiction of Principal Bench;
2. The States of Madhya Pradesh, Rajasthan, & Chhattisgarh under the jurisdiction of the Bhopal Bench;
3. The States of Maharashtra, Gujarat, Goa, and U.Ts of Daman & Diu, & Dadra & Nagar Haveli under the jurisdiction of Pune Bench;
4. The States of Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Telangana, and U.Ts of Puducherry, & Lakshadweep under the jurisdiction of Chennai Bench; and
5. The States of West Bengal, Odisha, Jharkhand, Sikkim, Assam, Manipur, Meghalaya, Arunachal Pradesh, Mizoram, Nagaland, Tripura, and the U.Ts of Andaman & Nicobar islands under the jurisdiction of Chennai Bench.<sup>2</sup>

Although the Act permits for encumber of establishment of Benches, it was restricted to five Benches which was already established in the year 2011 and since then there had been no new Bench established. In view of the above, the effective functioning of the Benches with respect to speedy disposal of the matters and accessibility of the Benches to victims are to be taken into consideration.

### **Full Quorum of the Tribunal**

The Tribunal shall consist of one full time Chairperson as provided under Sec. 4(1)(a) of the Act; there shall be not less than ten but subject to maximum of twenty judicial members as provided under Sec. 4(1)(b) of the Act; there shall be not less than ten but subject to maximum of twenty expert members as provided under Sec. 4(1)(c) of the Act. Therefore, the prescribed Quorum of the Tribunal is that there shall be not less than ten judicial members and ten expert members at the National Green Tribunal.

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<sup>21</sup> Central Government Notification No. SO-1908E, dt. 17/08/2011, as mentioned in notification No. NGT/PB/RG/2020/6/170 dt. 28.02.2020 issued by the N.G.T. available at [www.ngt.nic.in](http://www.ngt.nic.in).

In the past 11 years, the Tribunal has had four chairpersons, namely:

1. Hon'ble Mr. Justice Prakash Shrivatasava from the period 2023;
2. Hon'ble Mr. Justice Adarsh Kumar Goel from the period 2018 to 2023
3. Hon'ble Mr. Justice Swatanter Kumar from the period 2012 to 2018
4. Hon'ble Mr. Justice Lokeshwar Singh Panta from the period 2010 to 2011.

Totally the Tribunal had 22 judicial members so far and out of which 6 judicial members are imperative judicial members. Further, the Tribunal totally had 20 expert members so far and out of which 5 expert members are imperative. However, in view of above stated facts, it is requisite to laborately discuss as to whether the Tribunal had previously operated with the mandatory quorum or it had functioned with the available member falling short of the requisite Quorum, which was legally mandated.

With the facts in hand, certainly it is a noticeable factuality that the number of judges of the Supreme Court of India and all the High Courts of India, who would retire every year crosses more than 100 on an average, The Judicial Member of the Tribunal, as provided under Sec. 5<sup>3</sup> of the Act, shall be appointed on the basis that the member must either be a retired judge of the Supreme Court of India or of the High Courts and not otherwise. Therefore, the authority who appoints such Judicial members will always have sufficient retired judges for the appointment.

### **JURISDICTION OF THE TRIBUNAL**

The National Green Tribunal is mandated to exercise both Original as well as Appellate jurisdiction. The victim may prefer an application before the Tribunal under Section 14 of the Act where the dispute may be categorized under either of the statutes mentioned in Schedule I of the Act. Against the decision of the order passed under either of the Statutes in Schedule I of the Act, the victim may also prefer an appeal under Section 16 of the Act. Any Application or Appeal may be preferred before the Registrar of the Tribunal and the procedures for the same are envisaged under Rule 08 of the

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<sup>3</sup> Sec 5. Qualifications for appointment of Chairperson, Judicial Member and Expert Member.—

(1) A person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court: Provided that a person who is or has been a Judge of the High Court shall also be qualified to be appointed as a Judicial Member.



National Green Tribunal (Practice and Procedure) Rules, 2011. Form I of the said Rules provides for the format in which the Memorandum of Application / Appeal is to be preferred; Form II of the Rules provides for the format in which the Application for relief and compensation is to be filed.

The Tribunal may exercise suo-motu power, apart from the original and appellate jurisdiction. In order to deliver complete justice, the Hon'ble Apex Court of India authorized the Tribunal to exercise suo-motu power as well, and the same was held in *Municipal Corporation of Mumbai v. Ankita Sinha & Ors.*<sup>4</sup> that:

“The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament’s intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT’s fabric. The NGT must be seen as a not unus multorum, sui generis institution and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.”

Furthermore, the Apex court by way of its ruling held that: “In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord.”

#### Accessibility of Tribunal

The objective enshrined in the Preamble of the Act<sup>5</sup> is to improve the accessibility of the redressal process so as to enhance the convenience of the victims of environmental damage. Although the Central Government is <sup>6</sup>empowered by the Act<sup>7</sup> to establish required number of Benches of the Tribunal, the number of Benches has not increased and the established number of Benches remain the same. The Tribunal should be more accessible and approachable to any prospective applicant with

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<sup>4</sup> Civil Appeals No. 12122-12123 of 2018; available at [www.sci.nic.in](http://www.sci.nic.in)

<sup>5</sup> AND WHEREAS decisions were taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage;

<sup>6</sup> Sec. 4 (3) of the National Green Tribunal Act, 2010: The Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting.

<sup>7</sup> Sec. 4 (3) of the National Green Tribunal Act, 2010: The Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting.

regard to distance as it exercises original jurisdiction. As a matter of fact, each Bench covers the jurisdiction of around four-five states making it challenging for any potential applicant having cause of action falling in state other than the state in which Bench has a seat. In view of this, it is vital to find out that how many cases have been filed before the Tribunal having Bench in the state other than the state having seat of the Bench. It is pertinent to note that each five Benches cover the districts having distance of approximately 700/800 km from their concerned seats. The Principal Bench in Delhi covers the state of Uttar Pradesh having districts Varanasi, Mirzapur, Azamgarh, Ghazipur, Kushinagar, and Gorakhpur that are around 800 kms. away from Delhi. Apparently, the Central Zone Bench at Bhopal covers the districts of Alwar, Jhunjhunu, Sikar, & Churu that are around 700 kms away from Bhopal. Ironically, the Principal Bench at Delhi is around 200 kms away from the said districts however, it does not possess territorial jurisdiction over the said districts. It has further been found that the districts of Gondiya, Bhandara, Nagpur, Wardha, & Gadchiroli in Maharashtra are around 700 kms. away from the Bench at Pune that has territorial jurisdiction over the said districts. The districts of Srikakulam, Vijainagaram, Vishakhapatnam, East Godavari, West Godavari in Andhra Pradesh & Telangana are around 800/900 kms away from Chennai having seat of the Bench that exercises jurisdiction over the said districts.

The Bench at Chennai covers the states of Karnataka and Kerala that have districts, viz., Bidar, Gulbarga, Bizapur, Yadgir, & Bagalkot in Karnataka and Kasarkod, Wayanad, & Kozhikode in Kerala, around 800 kms. away from Chennai.

it is concluded that distance of the subject matter from the place where Bench of the Tribunal is situated matters a lot. It is concluded that breaking down the barrier of distance will increase possibility of more no. of victims approaching the Tribunal as it makes the system more accessible to any prospective applicant.

### **Duration of THE DISPOSAL**

In accordance with the Acts mandate, the Tribunal must resolve disputes and issue rulings within six month of the case's initiation. Given this legal mission, it is worth investigating whether the Tribunal is able to carry out its duty and resolve disputes including rendering a final verdict within the allotted six months. The information on the Tribunal website indicates that cases that were resolved were found to have been resolved more than a year after they were first brought before the Tribunal. Based

on this data, it is determined that the central Government, or State executive failed to ensure that the cases that were disposed of by the Tribunal were done so more than a year after they were brought before the Tribunal.

## **CONCLUSION**

This paper's conclusion notes that India's executive policies and practices to guarantee that its commitment to the SDGs and the legal mandate outlined in the National Green Tribunal Act, 2010 are followed have largely failed. The National Green Tribunal has consistently been determined to have just two thirds of the necessary number of judicial members and one-fourth of the necessary number of expert members, which slows down the system's ability to deliver justice. One consequence of this failure is that in over one-third of cases it handles, the Tribunal does not resolve the disputes in accordance with the legal mandate to do so within six months of its establishment. Furthermore, by limiting the number of Tribunal seats to five, the administration has failed. Given that the Tribunal is a venue of original jurisdiction, all potential applicants and appellants should be able to reach it from a distance. Given that each of the five Benches has a 600–900 km radius, it is unreasonable to expect a victim of environmental damage to go that far to seek remedy from the Bench. The Tribunal receives considerably fewer applications and appellants than it otherwise may have due to this failing, among other ramifications. This results in the executive policy's inability to meet the pledge made to the UN while signing the Sustainable Development Goals. It is just a question of the appointing body acting quickly to nominate members at the Tribunal; as this paper has established, there is no shortage of judges and experts who are qualified to be appointed as judicial members or expert members. Increased Tribunal strength will inevitably result in quicker case resolution, enabling the Tribunal to fulfill its legislative obligation to conclude cases within six months.

This paper concludes with the suggestion that the Tribunal's seat be established at the district level to make the environmental justice dispensation system most accessible to victims of environmental damage, since the number of cases from states other than the state having the Bench's seat has increased when the filing and proceeding mechanism is made more accessible.