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ABOUT US

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

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ROLE AND EFFECTIVENESS OF NATIONAL GREEN TRIBUNAL (NGT) IN ENVIRONMENTAL GOVERNANCE IN INDIA

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Abstract:

The National Green Tribunal (NGT) in India, established by the NGT Act in 2010, plays a pivotal role in environmental governance. It's designed to address environmental disputes, enforce laws, and expedite the resolution of cases related to environmental protection and conservation. By handling matters arising from key environmental legislations, it ensures a focus on issues impacting the environment. Its structure, with five places of sitting and a composition of Chairpersons, Judicial Members, and Expert Members, aims to expedite case disposals within six months of filing. The NGT's jurisdiction encompasses civil matters arising from acts like the Water and Air Pollution Control Acts, Forest Conservation Act, and others, allowing it to adjudicate on significant environmental issues. The NGT has significantly contributed to sustainable development by protecting forests, halting polluting activities, enforcing the "polluter pays" principle, providing a platform for environmental concerns, and awarding compensation for environmental damages. Balancing economic development with environmental conservation, the NGT conducts judicial reviews, oversees regulations, resolves disputes, enforces standards, promotes sustainable practices, and encourages public participation.

The NGT has handled landmark cases, setting precedents in environmental jurisprudence, such as those addressing workplace safety, industrial pollution, conservation near heritage sites, and the need for Environmental Impact Assessments. However, challenges like backlog, resource constraints, enforcement, and the complexity of cases exist. To address these, enhancing public awareness, strengthening enforcement mechanisms, employing technology for monitoring, and involving local communities or NGOs in oversight can improve compliance. Additionally, creating partnerships among stakeholders and streamlining resources might enhance the effective implementation of NGT

rulings.

Keywords:

Role and Effectiveness of NGT in Environmental Governance in India, NGT structure, function and impacts on environmental protection, environmental conservation with economic development, environmental jurisprudence in India.

Analysis of National Green Tribunal Act, 2010 *(1)

The National Green Tribunal (NGT)*(2) is a specialized judicial body in India dedicated to handling cases related to environmental protection and conservation. It addresses issues concerning the environment and the enforcement of laws aimed at safeguarding it. The NGT ensures the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. It was set up under the National Green Tribunal Act in 2010. Which was founded on 18 October 2010. (The Supreme Court in *M.C. Mehta v. Union of India**(3) observed that "environmental courts " must be established for expeditious disposal of environmental cases and reiterated it time and again. As a sequel to it the National Environment Tribunal Act,1995 and the National Environment Appellate Authority Act,1997 were passed by the Indian Parliament. But was a growing demand that some legislation must be passed to deal with the environmental cases more efficiently and efficaciously. Ultimately the Indian Parliament passed the National Green Tribunal Act ,2010*(4) to handle all the cases relating to environmental issues.). With the establishment of the NGT, India became the third country in the world to set up a specialised environmental tribunal, only after Australia and New Zealand, and the first developing country to do so.

Aims and Objects of the National Green Tribunal Act 2010. *(5)

India was participatory and signatory to international Conventions/declarations like the Stockholm Declaration of 1972, Rio de Janeiro Declaration of 1992, which have called 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.

The National Green Tribunal (NGT) has been created with an aim to check industrial pollution, and allow aggrieved persons to approach the Tribunal to claim civil damages for non-implementation of environmental laws. The NGT is likely to lessen the burden of the courts in the country as it would take over 5600 cases related to environment, as these cases would be transferred to NGT. Thus, India has become the third country in the world to have special courts for environmental issues.

Case law: The Bhopal Gas peedith Mahila Udyog Sangathan V. Union of India, 2012. *(6)

(The petition was filed under Article 32 of the Constitution. The petition was based on the rights of the victims of the Bhopal Gas Disaster. The petition requested that the Union of India and the State of Madhya Pradesh provide free and proper medical assistance to the victims). The excerpt discusses a petition related to the Bhopal gas leak disaster, where an organization represented victims seeking continued relief measures from the government. The relief scheme, initially intended for three years, provided interim financial aid to affected residents. The contention was whether the government should extend this scheme due to pending claims. The Union Government agreed to continue the relief but proposed changes, excluding certain groups from eligibility and seeking to fund the extended scheme from the accrued interest on the Settlement Fund. The court allowed the government to withdraw a sum for this purpose but outlined conditions, stating the government must replenish this amount when necessary. It also specified that reimbursing the government for interim payments made to eligible claimants would occur once claims were settled. Any payments made to ineligible claimants would not burden the Settlement Fund. The court allowed the government to recover relief payments from those ultimately found ineligible for compensation. The order concluded by permitting the government to continue the relief scheme from June 1, 1993, based on the outlined conditions and modifications. *(7) The Supreme Court has directed that the environmental issues and matters covered under the National Green Tribunal Act, 2010, Schedule 1 *(8) should be instituted and litigated before the National Green Tribunal.

Structure of National Green Tribunal *(9) has been created on the basis of Environmental law of India. There are following structure of NGT as follows; NGT is mandated to make disposal of applications or appeals finally within 6 months of filing of the same. *(10) The NGT has five places of sittings, New Delhi is the Principal place of sitting and Bhopal, Pune, Kolkata and Chennai are the other four. The Tribunal comprises of the Chairperson, the Judicial Members and Expert Members. *(11)

They shall hold office for term of three years or till the age of sixty-five years, whichever is earlier and are not eligible for reappointment. The Chairperson*(12) is appointed by the Central Government in consultation with Chief Justice of India (CJI).A Selection Committee shall be formed by central government to appoint the Judicial Members and Expert Members. There are to be least 10 and maximum 20 full time Judicial members and Expert Members in the tribunal.*(13)The jurisdiction of the National Green Tribunal (NGT) is outlined in Section 14 of the NGT Act, 2010, which provides that the tribunal shall have jurisdiction over all civil matters where a substantial question relating to the environment arises out of certain specified acts. The acts listed in Section 14*(14) of the NGT Act, 2010, include:

1. Water (Prevention and Control of Pollution) Act, 1974.
2. Water (Prevention and Control of Pollution) Cess Act, 1977.
3. Forest (Conservation) Act, 1980.
4. Air (Prevention and Control of Pollution) Act, 1981.
5. Environment (Protection) Act, 1986.
6. Public Liability Insurance Act, 1991.
7. Biological Diversity Act, 2002.

Under these acts, if a substantial question relating to the environment, including the enforcement of any legal right related to the environment, arises, then the NGT has jurisdiction to hear and adjudicate on such matters. This jurisdiction is vital in ensuring that environmental matters are effectively addressed and adjudicated upon to uphold the principles of environmental protection and sustainability. The statement from the Bombay High Court reflects the broad scope of the definition of environmental obligations and consequences within the context of statutory regulations. It emphasizes that direct violations of specific statutory environmental obligations, as well as the environmental consequences associated with particular activities or sources of pollution, fall within the ambit of this inclusive definition. This interpretation underscores the comprehensive nature of environmental laws and regulations, which are designed to encompass a wide range of potential environmental impacts and obligations. By acknowledging the broad applicability of the definition, the Court highlights the importance of considering various environmental factors and statutory obligations in legal and regulatory decision-making within the context of environmental protection

and sustainable development.*(15)

The National Green Tribunal (NGT) of India has made significant contributions to sustainable development*(16) through its various interventions. Some of the ways in which the NGT has contributed to sustainable development include:

1. Protecting forests*(17): The NGT has been instrumental in protecting large areas of forest land by adjudicating on issues related to forest conservation and preventing unauthorized activities that harm forest ecosystems.
2. Halting polluting construction: The NGT has taken action to halt polluting construction activities in both large and small cities, thereby preventing damage to the environment and public health.
3. Enforcing the "polluter pays" principle: The NGT has played a key role in ensuring that the "polluter pays" principle is enforced, holding individuals and industries accountable for their environmental impact and requiring
 1. them to bear the costs of remediation and restoration.
4. Providing a venue for environmental concerns: The NGT has provided a platform for individuals and organizations to voice their concerns about the environment, enabling them to seek legal redress and demand compensation for environmental damages.
5. Providing compensation: The NGT has awarded compensation and relief for damages caused to people and property as a result of environmental degradation, thereby providing a mechanism for addressing environmental harm and securing justice for affected parties.*(18)

The NGT Contributions to Balancing Environmental Conservation

with Economic Development: The National Green Tribunal (NGT) plays a crucial role in ensuring a balance between environmental conservation and economic development in India. It provides a platform for addressing environmental issues and disputes, striving to uphold environmental laws while considering sustainable development. Through its interventions, rulings, and directives, the NGT aims to mitigate environmental damage caused by developmental activities, fostering a balance between economic growth and environmental protection. The National Green

Tribunal Act, has been instrumental in addressing environmental concerns while acknowledging the necessity of economic growth. It acts as a specialized judicial body focused solely on environmental matters, offering a quicker resolution of disputes related to environmental protection and conservation. The NGT contributes to balancing environmental conservation with economic development:

Judicial Review*(19): The NGT conducts a comprehensive review of activities that may impact the environment. It assesses projects, policies, and actions to ensure they comply with environmental regulations and sustainable practices.

Regulatory Oversight: It oversees the implementation of environmental laws and regulations, holding industries and authorities accountable for any violations. By doing so, it prevents or mitigates environmental damage caused by developmental projects.

Dispute Resolution: The NGT serves as a forum for resolving disputes between industries, government bodies, environmental activists, and affected communities. It aims to find solutions that consider both environmental concerns and developmental needs.

Enforcement of Standards: It sets and enforces environmental standards and guidelines for various sectors, ensuring that economic activities adhere to these norms without compromising environmental integrity.

Promotion of Sustainable Development: While addressing immediate environmental issues, the NGT encourages the adoption of sustainable practices. It often suggests eco-friendly alternatives or modifications to existing plans to minimize ecological impact.

Public Awareness and Participation: The NGT actively involves the public in environmental decision-making processes. It encourages participation from affected communities and stakeholders, amplifying the voices of those impacted by developmental projects. The NGT's role in India's environmental governance is vital, acting as a balancing force that considers both the need for economic development and the imperative of environmental conservation. Through its interventions

and directives, it strives to foster a harmonious relationship between growth and sustainability.

The National Green Tribunal (NGT) in India has handled several landmark environmental cases: Some notable ones include: *Vishaka v. State of Rajasthan* (1997)*⁽²⁰⁾: This case addressed the issue of sexual harassment at workplaces, including those within the environment sector, highlighting the right to a safe and secure work environment.

A.P. Pollution Control Board vs. Prof. M.V. Nayudu (2011): This case dealt with the environmental impact of industrial pollution and emphasized the responsibility of industries to adhere to environmental norms.

M.C. Mehta vs. Union of India (Taj Trapezium Case, 1996) *⁽²¹⁾: Focused on protecting the Taj Mahal from pollution, the NGT imposed regulations on industries and vehicles operating near the Taj Mahal to preserve its architectural beauty.

Subhash Datta vs. State of West Bengal (2012): Addressed the issue of unregulated construction and encroachment in ecologically sensitive areas, highlighting the need for proper environmental clearance and conservation measures.

These cases have played significant roles in setting precedents for environmental protection and conservation in India.

There are specific cases which have set important precedents and shaped environmental Jurisprudence in India.*⁽²²⁾

Indian environmental jurisprudence has been shaped by several crucial cases: *Oleum Gas Leak Case* (1986)*⁽²³⁾: Arising from a gas leak in a Delhi-based factory, this case highlighted the need for companies to adopt strict safety measures. It established the "Absolute Liability" principle, making industries responsible for any harm caused by hazardous substances they handle.

Vellore Citizens Welfare Forum vs. Union of India (1996): This case emphasized the "Precautionary

Principle," holding industries accountable for environmental degradation even in the absence of scientific certainty.

M.C. Mehta vs. Kamal Nath (Shriram Gas Leak Case, 1987): This case related to a gas leak in Bhopal and contributed significantly to the development of the concept of "Public Trust Doctrine."⁽²⁴⁾ It held that natural resources are held by the state as a trustee for the people and must be protected for public use.

Indian Council for Enviro-Legal Action vs. Union of India (1996): A case highlighting the importance of Environmental Impact Assessment (EIA) before initiating any developmental project. These cases have set essential precedents, introducing principles like absolute liability, precautionary measures, public trust doctrine, and the necessity of Environmental Impact Assessments, thereby shaping environmental jurisprudence in India.

The National Green Tribunal (NGT) in India faces both challenges and opportunities in its implementation:

Challenges: Backlog of Cases: There's a significant backlog of environmental cases, leading to delays in justice delivery. This can undermine the effectiveness of the NGT in addressing urgent environmental concerns.

Resource Constraints: The NGT often faces resource constraints, including insufficient infrastructure, staff, and funding, hindering its ability to handle cases efficiently.

Enforcement and Compliance: Despite its rulings, enforcement and compliance with NGT directives by various stakeholders, including industries and government bodies, remain a challenge.

Complexity of Cases: Environmental cases often involve complex scientific, technical, and legal aspects, making them challenging to adjudicate effectively.

Opportunities: Specialized Tribunal: The NGT's specialization in environmental matters allows for focused attention and expertise, fostering better understanding and resolution of environmental disputes.

Innovative Remedies: The NGT's rulings have introduced innovative remedies, such as compensation for environmental damage and the imposition of stringent regulations, setting precedents for environmental protection. **Policy Influence:** NGT's judgments influence policymaking, encouraging the formulation of more robust environmental regulations and practices. By addressing these challenges and leveraging its opportunities, the NGT can play a pivotal role in ensuring effective environmental governance and protection in India.

The practical difficulties in implementing NGT ruling and suggest ways to overcome these challenges: Implementing a ruling from the National Green Tribunal (NGT) can face several practical challenges. One major issue is enforcement, as ensuring compliance with environmental regulations often requires significant resources and monitoring. Lack of awareness or understanding among the public or stakeholders can also hinder effective implementation.

To overcome these challenges, improving public awareness through education campaigns could be beneficial. Additionally, strengthening enforcement mechanisms, utilizing technology for better monitoring, and involving local communities or NGOs in oversight could enhance compliance. Creating partnerships between government bodies, NGOs, and industry players might also help streamline efforts and resources toward effective implementation of NGT rulings.

Conclusion:

The National Green Tribunal (NGT) in India stands as a beacon for environmental justice, mandated to address critical environmental issues and ensure the enforcement of laws aimed at safeguarding the environment. Established under the NGT Act of 2010, its structure, jurisdiction, and contributions have significantly impacted India's environmental governance landscape. By swiftly adjudicating cases related to environmental protection and conservation, the NGT has made significant strides in balancing economic growth with environmental sustainability. Its role in safeguarding forests, curbing pollution, enforcing accountability through the "polluter pays" principle, and providing a platform for environmental concerns has been instrumental. Moreover, the NGT's landmark judgments have shaped environmental jurisprudence in India, setting essential precedents in workplace safety, industrial pollution, heritage site conservation, and the necessity of Environmental

Impact Assessments. Despite its successes, the NGT faces challenges such as case backlog, resource constraints, enforcement issues, and the complexity of environmental cases. Overcoming these hurdles requires a concerted effort involving public awareness campaigns, stronger enforcement mechanisms, technological advancements for monitoring, and increased stakeholder involvement. While the NGT has been a trailblazer in environmental governance, further measures are necessary to overcome obstacles and ensure the effective implementation of its rulings. With concerted efforts from all stakeholders, the NGT can continue to be a crucial force in India's journey towards sustainable development and environmental protection.

References

1. The Act became operational as the Supreme Court has lifted the ban imposed by the Madras High Court. See, Sunday Times of India, dt, 24-4-2011, 'National Green Tribunal may start next month '.
2. Section 2(n) of The National Green Tribunal Act, 2010.
3. (1987) SCC: 1987 SCC (L&S) 37.
4. It was passed on dt, 2-6-2010. The President of India gave its assent on dt. 2-6-2010. It has repealed the National Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997.
5. The National Green Tribunal Rules, 2011 have also been notified on dt.4-4-2011, consisting of 37 rules and formatted of VI forms.
6. (2012)8 SCC 326.
7. The Supreme Court of India May 28,1993.
8. Section 2(L) of The National Green Tribunal Act, 2010 Schedule means Schedule I , II and III appended to this Act.
9. Ministry of Law and Justice (the following Act of Parliament received the assent of the President on the 2nd June, 2010 and is hereby published for general information.
10. Section 14. of The National Green Tribunal Act, 2010.
11. Section 2(h) of the Act, Judicial Member means a member of the Tribunal who is qualified to be appointed as such under Sub-Section (1) of Section 5 and includes Chairman.
12. Section 2(b) Chairperson means the Chairperson of the National Green Tribunal.
13. Section.5, Qualification for appointment of Chairperson, Judicial Member and Expert

Member: 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.

14. Section.14 of NGT.

15. Central India Ayush Drugs Manufactures Assn V. State of Maharashtra, 2016 SCC.

16. Article 21 of the Indian Constitution.

17. The term " forest " is derived from a Latin word "Foris" which mean "outside " probably indicating outside the dwelling house.

18. Section 15 of the Act.

19. The Constitution of India provides for judicial review in the following articles: 13, 32, 131-136, 143, 226, 246.

20. AIR 1997 SC 3011
(1991) 2 SCC 353

21. The basic meaning of the term environmental jurisprudence is the protection of the environment with various legal enactment.

22. Article 51(A) of the Constitution of India makes protection of the environment a fundamental duty of every citizen of the Country.

23. AIR 1987 SC 965

24. The Doctrine of Public Trust, the State has a duty as a trustee under Article 48A of the Indian Constitution because it is the responsibility of the state to protect and improve the environment and safeguard the forest and Wildlife of the country.