

ACCESS TO ENVIRONMENTAL JUSTICE IN INDIA THROUGH THE COURTS



FOREWORD

Environmental justice in the global south's developing countries, including India, involves addressing the challenge of poverty that includes environmental degradation. Unfortunately, economically and politically disenfranchised communities are denied equal opportunities in the fair distribution of environmental resources and involvement in environmental decision-making. Striking a balance between human needs, economic growth and the environment is required to create an inclusive development that improves people's well-being and capabilities for meaningful lives. Environmental justice promotes environmental sustainability and participatory mechanisms in the development process.

The Toolkit titled *Access to Environmental Justice in India through Courts*, created by Professor Gitanjali Nain Gill and based on her insightful research, presents fundamental and crucial information of significant practical value. It offers explanations and directions regarding the procedural dimensions governing access to environmental justice through the Indian courts. The Toolkit is a strong platform that helps aggrieved parties (including the marginalised and deprived sections of the society, NGOs, public-spirited citizens and para-legals) to access effectively judicial structures to redress environmental damage or harm and protect and enforce their fundamental and legal rights.

Let us not forget that the Indian Constitution imposes a fundamental duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The social obligation under Article 51A(g) has broadened the scope of 'citizen' to permit affected communities, public-spirited citizens, interested institutions and NGOs to file and advance public interest litigation for environmental protection.

In brief, the *Access to Environmental Justice in India through Courts* Toolkit provides a much needed and valuable voice that lays out the procedures for accessing environmental justice through Indian courts as a matter of both individual and collective concern.

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National Green Tribunal Judge (Former)
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This Access to Environmental Justice Toolkit is created to empower affected communities, NGOs, para-legals and interested citizens to access environmental justice in India through the Indian judiciary.

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Paryavaran Mitra is a Gujarat-based Ahmedabad non-profit organization working on socio-environmental issues. It was established in 1997 as an enviro-legal cell: the Center for Social Justice within JANVIKAS to advocate for human rights in the face of growing environmental degradation and pollution.

Paryavaran Mitra promotes environment education and awareness for all groups through various programmes, seminars, and training. It supports international initiatives through evolving systems and processes for sustainable development. The unique contribution of Paryavaran Mitra is in Public Interest Litigation for more than two decades ensuring support and presence in various litigations in Gujarat.

To learn more, visit <http://paryavaranmitra.org.in/>

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TOOLKIT PURPOSE

The fragile state of both the global and Indian environment requires the judiciary, the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national environmental laws. This will assist the present generation to enjoy and improve the quality of life of people while also ensuring that the inherent rights and interests of future generations are not compromised.

Equitable access to justice and legal empowerment initiatives are important to safeguard quality of life and the local environment.

This Toolkit summarizes access to justice through the Indian judiciary to redress environmental damage or harm and protect and enforce legitimate rights of citizens. It explains procedural mechanisms that offer redress of grievances and enforcement of legal rights and obligations through judicial institutions. This will lead to better results by addressing the impact of environmental degradation that affects India's poorest and most vulnerable.

The Toolkit includes:

- Access to environmental justice and the specialised judiciary
- Role of the Indian judiciary in promoting environmental justice
- The National Green Tribunal India
- Additional Notes

This Toolkit provides practical guidance including illustrative legal cases that identify strong procedural dimensions and outcomes. These fair, open, informed and inclusive judicial processes will advance environmental protection and human rights.

ACCESS TO ENVIRONMENTAL JUSTICE AND THE SPECIALISED JUDICIARY

Access to justice is a pillar of democratic governance. It promotes just and equitable outcomes thereby supporting the rule of law. The United Nations Development Programme defines access to justice as ‘the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards’.

Access rights in environmental matters include access to information and participation in decision-making processes and effective access to judicial and administrative proceedings and remedies. The role of the judiciary in championing and guaranteeing equitable access rights, environmental justice and legal empowerment initiatives is both critical and important. There is growing support for a strong and independent judiciary to play a central role in promoting access to environmental justice, protection of human rights and in achieving the UN Sustainable Development Goals.

There is growing recognition that a court with special expertise in environmental matters is best placed to promote sustainable development. The advantages attached to a specialised environmental judiciary include:

1. Specialised expertise in complex legal, scientific and technical matters
2. Freeing the regular courts of a significant and steadily increasing workload
3. Uniformity and consistency in decision-making processes
4. Greater resolution of environmental controversies and more efficient adjudication
5. More predictable environmental decision-making
6. Greater governmental accountability in environmental matters
7. Instilling public confidence and trust in the government and judicial system
8. Expanded notion of *locus standi* for effective public participation
9. Reduced litigation costs
10. Adoption of flexible rules of procedure

BOX 1- Global Resolutions on the Role of Judiciary and Environmental Protection

- The Johannesburg Principles on the Role of Law and Sustainable Development (Global Judges Symposium in Johannesburg 2002)
- United Nations Environment Programme *UNEP Global Judges Programme* (2005)
- The Rio+20 Declaration on Justice, Governance, and Law for Environmental Sustainability (2012)
- The Bhurban Declaration (2012)
- The World Declaration on the Environmental Rule of Law (Rio 2016)

ROLE OF THE INDIAN COURTS (SUPREME COURT AND HIGH COURTS) IN PROMOTING ENVIRONMENTAL JUSTICE

The Indian judiciary promotes environmental law and sustainable development by protecting human rights and individual dignity, alleviating poverty, and ensuring that the present generation enjoys a quality of life without harming future generations.



Supreme Court of India

BOX 2- *State of Uttaranchal v B S Chauhal* (2010) 3 SCC 402

“The scale of injustice occurring on the Indian soil is catastrophic. Each day hundreds of thousands of factories are functioning without pollution control devices. Thousands of Indians go to mines and undertake hazardous work without proper safety protection. Everyday millions of litres of untreated raw effluents are dumped into our rivers and millions of tons of hazardous waste are simply dumped on the earth. The environment has become so degraded that instead of nurturing us it is poisoning us. In this scenario, in a large number of cases, the Supreme Court intervened in the matter and issued innumerable directions.”

The courts (Supreme Court and High Courts) using Public Interest Litigation (PIL) have extended legal access to large sections of society previously excluded. PIL is a broad-based, people-oriented approach through judge-made processes and remedies. This development envisaged that those citizens traditionally excluded from the courts by their poverty, ignorance, isolation, fear or caste would be able to enforce their fundamental human rights through law either personally or via a court recognised ‘friend’.

The use of PIL in the interpretation of three constitutional provisions, namely, Articles 21, 48A and 51A (g) of the Constitution of India have promoted environmental justice of India.

BOX 3- Indian Constitutional Provisions and Environment

Article 21: No person shall be deprived of his life or personal liberty except according to the procedure established by law.

Article 48 A: State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 51A (g): It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures

Article 21 creates a fundamental right that guarantees the right to life. The Supreme Court held that life does not simply mean physical existence but extends to include quality of life. A hygienic and clean environment is an integral element of the right to a healthy life. It would be impossible to live with human dignity without a healthy environment. There is a constitutional duty on the State Government and the municipalities, not only to ensure and safeguard a proper environment but also to take adequate measures to promote, protect and improve both the man made and the natural environment.

The right to life includes:

The right to enjoy unpolluted air;

The right to wholesome and pure drinking water; Maintenance of health, preservation of sanitation and care of the environment;

The right to noise-free pollution; The right to information and community participation for the protection of the environment and human health.

Article 48A, a directive principle of state policy, mandates the state to protect and improve the environment and safeguard forests and wildlife. The policy prescription has assumed the legal status of imposing an obligation not only on government but also on courts to protect the environment.

Article 51A(g) imposes a fundamental duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Accordingly, the Supreme Court and High Courts have rendered environmental justice by resorting to Articles 32 and 226 of the Constitution of India which confers jurisdiction on the court to issue directions for the enforcement of fundamental rights and other legal rights.

BOX 4- Right to life includes right to environment (judicial decisions of the Supreme Court of India)

- *Chhetriya Pradushan Mukti Sangharsh Samiti v State of Uttar Pradesh* AIR 1990 SC 2060
- *Subhash Kumar v State of Bihar* AIR 1991 SC 420
- *MC Mehta v Kamal Nath* 20006 SCC 213
- *In re Noise Pollution v* AIR 2005 SC 3136
- *Delhi Jal Board v National Campaign for Dignity and Rights of Sewerage and Allied Workers* 2011 8 SCC 574
- *State of Uttranchal v Balwant Singh Chauhal* 2010 3 SCC 402
- *M C Mehta v Kamal Nath* AIR 2002 SC 1515
- *Susetha v State of Tamil Nadu* AIR 2006 SC 2893
- *Tripura Dying Factory Owners Association v Noyyal River Ayacutdars Protection Association* 2009 9 SCC 737
- *Vellore Citizen Welfare Forum v Union of India* AIR 1996 SC 2715
- *A P Pollution Control Board v Prof M.V. Nayudu* AIR 1999 SC 812
- *Narmada Bachao Andolan v Union of India* AIR 2000 SC 3751
- *M.C. Mehta v Union of India* (popularly known as the 'Ganga Pollution Tanneries Case' AIR 1988 SC 1037)- A PIL was filed by M.C. Mehta (a well-known, public-spirited citizen) against the tanneries to restrain them from releasing trade effluents into the holy river Ganges until they installed the necessary treatment plants to stop water pollution.

For several years, the tanneries were asked to take the necessary steps to establish primary treatment plants to prevent the flow of untreated waste water. The effluent discharged from a tannery is ten times more noxious than the domestic sewage water that flows into the river. The court ordered the closure of those tanneries that failed to take steps to establish primary treatment plants as it violated right to life under Article 21 of the Constitution of India.

To promote environmental justice, the Indian judiciary has thus expanded the constitutional provisions, and combined human rights and the environment in order to protect human dignity and the environment. It has broadened the scope of 'citizen' and relaxed the rule of standing in PILs by permitting public-spirited citizens, institutions, NGOs and other parties to file petitions on behalf of those unable to act for themselves for environmental protection.

The rule of standing has been modified in two ways, namely through **representative** and **citizen standing**. Representative standing allows any person, acting bona fide, to advance claims against violations of human rights of victims who because of their poverty, disability or socially or economically disadvantaged position could not approach the Court for judicial enforcement of their fundamental rights. NGO's and environmental activists working on behalf of the poor and tribal people have entered the courts by exercising this procedure. The citizen standing provides a platform to seek redress for a public grievance: this affects society rather than an individual grievance.

BOX 5- Right to Constitutional Remedy

Article 32 (Supreme Court of India)- is a fundamental right which empowers the Supreme court to issue direction, order, and writs.

Article 226 (High Court of India)- is the constitutional right which empowers High court to issue a direction, order, and writs for enforcement of fundamental rights and other legal rights

THE NATIONAL GREEN TRIBUNAL OF INDIA



Importance of the National Green Tribunal (NGT)

The NGT is a specialised judicial body for the effective and speedy disposal of cases relating to environmental protection, conservation of forests and other natural resources, including enforcement of environmental legal rights, giving relief and compensation for damages to persons and property, and for matters connected or incidental.

In 2012, in a PIL case (*Bhopal Gas Peedith Mahila Udyog Sangathan v Union of India* (2012) 8 SCC 326, 347), the Supreme Court transferred all environmental cases, both active and prospective, to the NGT to make expeditious and specialised judgments and to avoid the likelihood of conflicts of orders between High Courts and the NGT. Further, the High Courts were advised by the Supreme Court, at their discretion, to transfer to the Tribunal those environmental cases filed and pending prior to the coming into force of the NGT Act.

Creation of the National Green Tribunal

The NGT is a creation of a statute the NGT Act 2010 and thus, its jurisdiction, powers and procedures are bound and controlled by the provisions of the statute. The NGT was established on 18 October 2010 and became operational on 5 May 2011 with New Delhi selected as the site

for the Principal Bench.

Due to the multi-disciplinary nature of the environmental cases, the Tribunal was established on the recommendations of the:

- Supreme Court of India (*M C Mehta v Union of India* (1986); *Indian Council for Enviro- Legal Action v Union of India* (1996); *P Pollution Control Board v M V Nayudu* (1999) and (2001));
- Law Commission of India (*Proposal to Constitute Environment Courts* 186th Report 2003); and
- India's international obligation to develop national laws on environment and implement effectively.

The Tribunal is established in five (05) zones:

- North Zone- The Principal Bench (New Delhi) is in North zone exercises jurisdiction in the states of Uttar Pradesh, Uttarakhand, Punjab, Haryana, Himachal Pradesh, National Capital Territory (NCT) of Delhi and Union Territory of Delhi.
- Central Zone- Bhopal is the central zone base and covers Madhya Pradesh, Rajasthan and Chattisgarh.
- West Zone- Pune is the western zone base and covers Maharashtra, Gujarat and Goa with Union Territories of Daman and Diu and Dadar and Nagar Haveli.
- East Zone- The Eastern zone, is based in Kolkata and is responsible for West Bengal, Orissa, Bihar, Jharkhand and the seven sister states of the north-eastern region, Sikkim, Andaman and the Nicobar Islands.
- South Zone- The southern zone is in Chennai and serves Kerala, Tamil Nadu, Andhra Pradesh, Karna- taka, Union Territories of Puducherry and Lakshadweep.

Composition of the NGT

The NGT is composed of both judicial and expert members. This reflects the specialist nature of environmental law and the multidisciplinary issues relating to the environment.

The NGT Act states that the minimum number of full-time judicial and expert members will not be less than 10 with a maximum of 20. The chairperson of the Tribunal is appointed by central government in consultation with the Chief Justice of India. Members are appointed on the recommendation of a Selection Committee in such manner as prescribed by Central Government.

Legislations covered by the NGT Act 2010 (Schedule 1)

The following legislations are covered in the Schedule 1 of the NGT Act 2010:

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

Who can approach the NGT? - Aggrieved Person

An 'aggrieved person' may approach the Tribunal to seek relief or compensation or settlement of environmental disputes. According to section 18(2) NGT Act 2010, an aggrieved person includes who:

- has sustained an injury;
- is the owner of the property to which damage has been caused;
- is the legal representative in the case of death resulting from environmental damage;
- is a duly authorised agent;
- represents a state agency; or
- any representative body or organisation such as NGOs.

The expression 'person aggrieved' is given a wide interpretation to include any person directly or indirectly affected or even interested. The person aggrieved does not have to show personal interest, damage or injury.

Box 6- Aggrieved Person

Jan Chetna v Ministry of Environment and Forests (Judgment 9 February 2012)

Goa Foundation v Union of India (Judgment 18 July 2013)

Amit Maru v MoEF (Judgment 1 October 2014)

“In environmental matters, the damage is not necessarily confined to the local area where the industry is established. The effects of environmental degradation might have far reaching consequences going beyond the local areas. Therefore, an aggrieved person need not be a resident of the local area. Any person whether he is a resident of that area or not, whether aggrieved or not, can approach this Tribunal.”

There are two-fold reasons for this liberal interpretation:

Uneducated and under-educated villagers may be unaware of environmental matters and possible negative consequences. In such situations, any individual, persons or body of individuals including NGOs can approach on behalf of the villagers;

Article 51A(g) of the Constitution of India establishes a fundamental duty of every citizen to protect and improve the natural environment.

Nature of cases before the NGT

The Tribunal will only decide civil cases involving a substantial question relating to environment and covered by legislation mentioned in the Schedule 1 of the NGT Act 2010.

- Civil cases- involve all legal proceedings to enforce a right for a wrong done to a person or party by another person or party. It does not include criminal cases which are governed by the provisions of the Criminal Procedure Code.
- Substantial question relating to the environment- Substantial means a real rather than the imaginary question relating to the environment. This includes situations where the statutory authorities fail to perform their duties leading to:

1. Environmental consequences affecting communities at large- for example, the in effective disposal of municipal solid waste by the municipal authorities has severe environmental and health consequence for the communities and people living in the area (Box 6 gives examples of two decided cases).



Image source (hindustantimes.com and financialexpress.com)



Box 7- Two examples of cases affecting communities due to inaction on the part of statutory authorities

Rayons-Enlightening Humanity v Union of India (Judgment 18 July 2013)

An application was filed before the NGT by Rayons-Enlightening Humanity, an NGO, against the operation of a municipal solid waste management plant at Rzazu-Paraspur, Bareilly. The plant was established in an area very close to residences, educational institutions, hospitals and water bodies, thereby resulting in environmental harm. The major part of the plant was in the open air and had not been prepared in compliance with the schedule to the Municipal Solid Waste Rules 2000. The NGO opposed the operation of the project as being illegal, not in accordance with regulations and based on arbitrary decisions by the municipal authorities.

The NGT allowed the application of the NGO and observed:

“the site in which the plant is located, is bound to cause pollution of ground water by leaches. Therefore, the contaminated water is bound to seep into the underground water and affect the adjoining water bodies and irrigation water. The foul smell arising from the dumping at the site is bound to pollute the air quality and affect the health of the residents near the site ... they would be exposed to diseases like asthma, emphysema or even cancer. Thus, the adverse effects of permitting the plant to carry on its activities at the site in question are bound to cause irretrievable damage to public health and environment.”

Satpal Singh v Municipal Council Gardhiwala (Judgment 25 April 2013),

An application was filed by Satpal Singh and others, the residents of Gardhiwala town, concerning the failure of the municipal council and Punjab Pollution Control Board to implement provisions of the Municipal Solid Waste Rules 2000 and Punjab Municipality Act 1911. The applicants required the removal of dead animals from open places and that paths and roads in the township be kept clean. The foul smell and the presence of stray dogs in the vicinity caused air pollution and amounted to a public nuisance.

The NGT allowed the application and observed that the authorities had committed dereliction in discharging their statutory obligations. The inaction on the part of the authorities adversely affected the health and well-being of residents. The authorities failed to ensure the local community's fundamental right to pollution-free air and pure water.

The NGT directed the authorities to take immediate action to shift the dumping ground to a suitable place away from the residential area and file a six-monthly affidavit on progress for the next two years.

2. Damage to environment or property- Box 7 illustrates with two decided cases.



Image source (kaziranga-national-park.com and india.com)



Box 8: Two decided cases illustrating damage to the environment

Rohit Chaudhary v Union of India (Judgment 7 September 2012)

Kaziranga National Park (World Heritage Site) is the home of three-quarters of India's rhinos and contains the largest single concentration of endangered species and wild animals, including wild buffalo, elephants, tigers and gangetic dolphins.

The applicant, Rohit Choudhary, a local resident, approached the NGT to pass directions to the concerned authorities, particularly, the Ministry of Environment and Forests, and State of Assam, to safeguard the eco-sensitive zone of Kaziranga against unregulated quarrying and mining activities permitted in and around the no development zone of the Kaziranga National Park. The expansion of stone-crushing units, brick kilns, tea factories and industries (fuel-dispensing stations, a saw mill, an oil tanker-making unit, mustard oil mills, a flour mill, concrete-making units and a restaurant) were established without following the legal rules. These activities caused air, water and land pollution thereby endangering forest, vegetation and living creatures.

The NGT directed the regulatory authorities to close illegal industrial units with immediate effect or shift them outside the no development zone.

Forward Foundation v State of Karnataka (Judgment 7 May 2015)

An application filed by an NGO, the Forward Foundation, interested in protecting the environment and ecology, particularly, in the State of Karnataka. The principal grievance related to commercial projects that were being developed by the builders without prior environmental clearance on the wetlands and catchment areas of the water bodies- the Agara and the Bellandur Lakes.

The NGT admitted the application as the multi-purpose projects caused unfavourable environmental and ecological impact, particularly on the water bodies. Ecological and environmental implications in terms of land use change, loss of drainage network, alteration in land topography and loss of shoreline, appeared to be the imminent threats faced by the wetland and catchment area in question.

3. Broad damage to public health- Public health is defined to include a safe, healthy and wholesome environment and free from pollution. Any violation or non-compliance on the part of state authorities that amounts to degradation of the environment having adverse impacts on public health will be entertained by the NGT (Box 8 gives two examples). Images source (hindustantimes.com)



Box 9- Two examples of pollution related cases damaging public health

Supreme Court Group Housing Society v All India Panchayat Parishad (Judgment 18 December 2012)

The residents of the Supreme Court Group Housing Society filed an application before the NGT regarding the ineffective implementation of the Noise Pollution (Regulation and Control) Rules 2000 in New Delhi. The use of loudspeakers, music and public-address systems during weddings, receptions and parties until late at night, without obtaining prior permission from concerned authorities, was disturbing to residents. Noise pollution affected the health and sleep of residents, particularly infants and the aged. It not only caused annoyance but also led to significant adverse health consequences including raised blood pressure, hearing impairment and neurological disorders.

The NGT decided that the rules were not observed by the authorities and stated:

“Noise can be regarded as a pollutant because it contaminates environment with high decibel noise intensity, causes nuisance and affects the health of a person and would therefore offend Article 21 of the Constitution if it exceeds a reasonable limit. Keeping public health in mind, the sub-divisional magistrate and local police must ensure that the rules are strictly observed.”

Vardhman Kaushik v Union of India (Order 10 November 2016)

In 2014, a young lawyer and environmentalist, Vardhman Kaushik, filed a petition before the NGT with a pleading to identify and curb the sources of rising air pollution in the National Capital Territory of Delhi. The petition is one of the most important ongoing cases. The increasing air pollutants in Delhi is resulting in serious health hazards as the citizens are vulnerable to severe diseases and the greatest sufferers from these pollutants are young children and senior citizens.

The NGT declared Delhi’s air pollution as an ‘environmental emergency’ and have passed several orders and directions to improve the air quality. These include banning of old vehicles (15 or more years), reducing dust from construction sites, banning the burning of plastic or any material in open including leaves, and awareness raising programmes about the impacts of air pollution on human health.

4. Environmental consequences relating to specific activity or a specific source of pollution-
(Box 9 cites two decided cases)

Images source (greenstitched.com and hindustantimes.com)



Box 10- Environmental consequences due to a specific activity

P Chandrakumar v the Chairman Tamil Nadu Pollution Control Board (Judgment 20 March 2014)

An application filed by farmers alleging groundwater pollution caused by 15 to 20 dyeing factories in the Kongampalayam village in Erode district. These operated without proper treatment plants and discharged untreated, coloured trade effluents into the canal and onto vacant land located within the dyeing units. Due to seepage and percolation, the untreated effluent polluted the underground and surface water and degraded the water quality.

The NGT ordered the state pollution control board to take necessary action against the units and close any units not complying with the directions.

Neel Choudhary v State of Madhya Pradesh (Judgment 6 May 2014)

An application was filed by a public-spirited citizen regarding problems with the running of marriage gardens, function halls and similar venues for holding parties in and around the city of Bhopal, resulting in environmental pollution. The owners or management of these premises discharged untreated solid waste and sewerage without permission into the Bhopal's lakes.

Further, the use of generator sets for electrification and decoration within the premises and road traffic congestion due to inadequate parking space resulted in traffic jams and consequential noise and air pollution.

Thus, the legal provisions relating to air and water pollution, and waste management were violated and caused environmental pollution.

The NGT ordered the closure of 24 marriage gardens for causing environmental degradation.

The Tribunal, therefore, considered the matter from the point of environmental issues relating to water, air and noise pollution and directed that the Pollution Control Board shall take effective steps with the assistance of the District Administration and Police Authorities for enforcement of the legal provisions.

Procedure for filing a petition before the NGT

No petition (application or appeal) for adjudication of disputes shall be entertained by the Tribunal unless made within six months from the date on which the cause of action for such a dispute first arose. However, the Tribunal for sufficient cause can condone a delay in making the petition (application or appeal) for a period not exceeding 60 days.

Rule 8 of the National Green Tribunal (Practices and Procedure) Rules, 2011 provides that a petition (application or appeal) can be presented to the Registrar of the Tribunal at his or her ordinary place of sitting falling within the jurisdiction where the cause of action, wholly or in part, has arisen by the

- applicant in person or
- by an agent or
- duly authorised legal practitioner.

The Tribunal accepts letter petitions that identify instances of substantial environmental damage. A valid complaint is taken note of even in the absence of any representation from the aggrieved party and response is sought by email and can be filed even without an advocate.

Additionally, in 2019 the NGT introduced E-Filing for speedy access to justice. Any petition can be filed and received online on the NGT portal in the manner provided under the National Green Tribunal (Practices and Procedure) Rules, 2011. An aggrieved party can approach the NGT by e-filing the petition from any place across the country without the necessity of physically approaching the Principal Bench and Regional Benches of the NGT.

<https://ngtonline.nic.in/efiling/mainPage.drt>

Fees for a petition in the NGT

The NGT rules provide for a petition where no compensation has been claimed to be accompanied by a fee of Rupees 1000. Where compensation is claimed, the fee is equivalent to 1 per cent of that compensation, subject to a minimum of Rupees 1000 (Rule 12, National Green Tribunal (Practices and Procedure) Rules, 2011). For e-filing, the fee can be paid online with Bharat Kosh and the receipt annexed with the petition filed online.

Speedy disposal of the petition

The NGT Act 2010 mandates a fast-track process and the decision of cases within six months of petition (application or appeal). This is provided in Section 18(3) of the Act.

The NGT from 1 August 2018 has directed the petitioner to approach the concerned authorities (the respondents) for a reply and file the same with the petition at the time of admission thereby mandating an advance service of notice.

To provide speedy remedy to the litigants, such persons must normally approach the respondents and give them at least 15 days to respond. The authorities must give their response either to the individual concerned (preferably email) or put the response on the respective website at the earliest. If a person approaches the Tribunal, the response received should also be mentioned in the petition filed before the Tribunal.

Speedy disposal not only benefits the litigants but also enables prevention of potential environmental damage.

Remedy- relief, compensation and restitution

Section 15 NGT Act empowers the Tribunal to order relief and compensation to victims of pollution and other environmental damage arising under the enactments specified in Schedule I. It also allows the Tribunal to pass orders for restitution of damaged property and of the environment in such areas as it considers appropriate. Box 10 illustrates two cases where remedy was provided in the form of compensation.

Box 11- Relief and compensation to the victims of pollution and environmental damage

Ramdas Janardan Koli v Secretary, MoEF (Judgment 13 27 February 2015)

A fisherman named Ramdas Janardan Koli, on behalf of the Paramparik Macchimar Bachao Kruti Samiti, a fishers' organisation, argued the case himself before the NGT. He claimed that 1630 families of traditional fishermen from four localities had been affected due to development projects jointly undertaken by the City and Industrial Development Corporation (CIDCO), Jawaharlal Nehru Port Trust (JNPT), Oil and Natural Gas Corporation (ONGC) and the Navi Mumbai Special Economic Zone.

The claim for compensation and right to rehabilitation was based mainly on the fishermen's traditional right to catch fish from sea areas being reclaimed for project activities. The fishermen were deprived of daily earnings from their traditional rights of access to the sea. Further, the fishermen stated that the reclamation of land, and removal of mangroves in the area, had caused large-scale destruction of surrounding mangrove forests, which had, in turn, substantially reduced breeding fish and narrowed the navigational route of the traditional fishing craft, which had also added to the worries of the fishing communities.

For the Tribunal, it was case a classic example of civil action brought by traditional fishermen living in *koliwad*s. The development projects were undertaken without proper environmental clearances and hearings. Accordingly, the NGT ordered the project developers to pay Rupees 951,920,000 as loss of livelihood to the fishermen and Rupees 50 lakhs to the collector, Raigad, as the restoration cost for environmental damage.

A G Kajale v M/S Godhavari Bio-Refineries Ltd and Others (Judgment 19 May 2015)

The applicants, village residents, alleged that the industrial activities of the industry (M/S Godhavari Bio-Refineries) caused groundwater pollution due to the ineffective effluent treatment and disposal system. This affected groundwater quality near Godavari riverbank and affected agricultural land and soil quality and reduced agricultural yield. The pollution control boards, i.e. the regulatory authorities, were aware of the inadequate effluent management system but did not take any stringent action against the industry.

The NGT, based upon sufficient evidence on record, admitted the allegations of the villagers. Accordingly, it directed the industry to pay and bear all costs of remediation of groundwater and land, including studies and actual execution of remediation works and provide compensation.

An initial sum of Rupees 50 lakhs was to be deposited with the collector of the region and Rupees 5 lakhs with the pollution control board. Further, each applicant was entitled to compensation of Rupees 2 lakhs towards affected agricultural lands and polluted water.

Other cases for reference include:

- *S K Navelkar v State of Goa* (Judgment 8 April 2015)
- *Kalpavalli Tree Growers Mutually Aided Cooperative Society Ltd v Union of India* (Order 10 July 2013)

Appeal

Any person aggrieved by an order or decision of the Tribunal can file an appeal to the Supreme Court within 90 days from the date of communication of the order. The Supreme Court may condone the time-limitation provided it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal.

Use of latest technology

The use of technology for the dispensation of quick environmental justice is a new strategy adopted by the NGT. This includes:

- E-filing (as stated above) has been introduced in the NGT to address environmental concerns to produce speedy action.
- The use of geo tagging to provide specific locations and information could help gather authentic evidence and reduce frivolous applications in environmental litigation.
- The current use of video-conferencing technologies connects the NGT benches with Delhi in real time, despite significant geographical distances.

ADDITIONAL NOTES

Note 1- Important Indian Environmental Legislations

The Indian Parliament has enacted legislation to address environmental issues. The important environmental legislation includes:

1. The Water (Prevention and Control of Pollution) Act 1974

An Act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water for the establishment, with a view to carrying out the purposes aforesaid, of Boards (Central and State Pollution Control Boards) for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

2. The Air (Prevention and Control of Pollution) Act 1981

An Act to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards (Central and State Pollution Control Boards), for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

3. The Environment (Protection) Act, 1986

An Act to provide for the protection and improvement of environment and for matters connected therewith. The Central Government is empowered to take measures necessary to protect and improve the quality of environment. Accordingly, rules have been framed under the following heads:

- Coastal Regulation Zone
- Eco-marks Scheme
- Eco-sensitive Zone
- Environmental Clearance
- Environmental Standards
- Hazardous Waste Management
- Loss of Ecology
- Noise Pollution

4. The Wildlife Protection Act, 1972

An Act to provide for the protection of [Wild animals, birds and plants] and for matters connected therewith or ancillary or incidental thereto. The objective of the Act is to effectively protect the wild life of this country and to control poaching, smuggling and illegal trade in wildlife and its derivatives.

5. Forest Conservation

- The Forest Conservation Act, 1980

An Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto. It restricts and regulates the de-reservation of forests or use of forest land for non-forest purposes without the prior approval of Central Government.

- **The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**

An Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

- The Indian Forest Act, 1927

The Indian Forest Act, 1927- was enacted to 'consolidate the law related to forest, the transit of forest produce, and the duty liable on timber and other forest produce'. The Act seeks to consolidate the law relating to forests, the transit of forest produce and the duty that can be levied on timber and other forest produce.

6. The Biological Diversity Act, 2002

An act to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto. Where as India is rich in biological diversity and associated traditional and contemporary knowledge system relating thereto.

Note 2- The National Human Rights Commission of India

Source- <https://nhrc.nic.in>

Human Rights are defined as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India

The National Human Rights Commission India was established by an Act of Parliament, the Protection of Human Rights Act 1993, for the protection and promotion of human rights. The functions of the Commission are stated in Section 12 of the Act and include enquiring into complaints of violation of human rights or negligence in the prevention of such violation by a public servant. The Commission also studies treaties and international instruments on human rights and makes recommendations for their effective implementation to the Government. The Commission is responsible for spreading human rights awareness amongst the masses and encouraging the efforts of all stake holders in the field of human rights literacy not only at the national level but also at the international level,

PROMOTION & PROTECTION OF HUMAN RIGHTS THROUGH CSC BY NHRC

Who promotes & protects your Rights?

- National Human Rights Commission, INDIA
- A watchdog for Human Rights and taking cognizance of violations thereof.

Who can file a complaint and where?

Victim or any other person on his behalf can file complaints with NHRC free of cost

- By post at : National Human Rights Commission, Manav Adhikar Bhawan, Block-C, GPO Complex, INA, New Delh-110023.
- Online : www.nhrc.nic.in
- Online : through Common Service Center On Payment Of Rs 30/- (All inclusions) to Common Service Centre only

Issues on which complaints can be registered

For not taking lawful action by police, administration and other departments in the matters as below:

- Unlawful detention, false implication, illegal arrest, custodial violence, and other police excesses;
- Encountered death, deaths in police and prison custody;
- Harassment of prisoners, jail conditions;
- Atrocities on SCs and STs;
- Denial of : benefits of social welfare schemes, PDS, basic amenities health, education, old age pension etc;
- Rights of disabled, bonded labour, child labour, child marriage,
- Dowry demand, dowry death or its attempt;
- Sexual harassment and indignity to women, exploitation of women,
- Abduction, rape and murder;
- Environment related issues;
- Inaction on complaints for preventive action to check unlawful activities, communal violence , public unrest

Complaints not ordinarily entertained regarding

- Incidents which happened more than one year before filing the complaint;
- Matters which are sub-judice or before any other Commission ;
- Complaints : which are vague, anonymous or pseudonymous, frivolous in nature;
- Service matters other than pension and family pension;
- Property and other civil disputes

Note 3- The Right to Information Act 2005

Source: <https://rti.gov.in/>

Bringing Information to the Citizens

Right to Information Act 2005 mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a– RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the government of India as well as the State Governments

Objective of the Right to Information Act

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in a meaningful manner. An informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards keeping the citizens informed about the activities of the Government.

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