

Specialised Tribunals and Good Governance: An Analysis of India's Green Tribunal's *Suo Motu* Intervention

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In India, the judiciary, in particular, the Supreme Court (SC) has played a pivotal role in ensuring good governance by filling the gaps in municipal law through the incorporation of principles from international instruments. This especially holds true in the case of the environmental legal framework. Certain tenets of good governance, for example, effectiveness and efficiency, are built into the very structure of the National Green Tribunal (NGT), the constituting statute of which mandates it to dispose of environmental cases in an “effective and expeditious” manner. Furthermore, transparency is reflected in pronouncing orders and judgments in open court and duly publishing them.

In light of the tenets of good governance, this paper studies the exercise of *suo motu* powers by the NGT and the challenges ahead in the use of such power. The paper first considers the general scenario of the exercise of *suo motu* powers by courts in India, followed by the statutory powers of and rationale for *suo motu* interventions by the NGT. The second part studies the recent judgment of the SC upholding the *suo motu* powers of the NGT to understand its interpretational and jurisprudential aspects. The third part undertakes a trend analysis of *suo motu* proceedings before various benches of the NGT and analyses some of the *suo motu* decisions to highlight the nature of cases addressed by the Tribunal so far. Finally, the paper discusses the way forward and challenges in the exercise of *suo motu* power to advance an argument that the NGT has the potential to facilitate good governance through the exercise of its *suo motu* powers

Keywords: National Green Tribunal, *suo motu* powers, Good Governance, environment protection

Governance” is defined by the United Nations Economic and Social Commission for Asia and the Pacific as “the process of decision-making and the process by which choices are implemented (or not implemented)” (United Nations Economic and Social Commission for Asia and the Pacific [UN ESCAP], 2009, para. 3). It’s the “quality of

governance” that determines the good factor in the governance (Santiso, 2001, p. 5). Governance becomes good governance when it encompasses a certain set of principles such as equity and inclusivity, effectiveness and efficiency, rule of law, responsiveness, and accountability in the decision-making process. These principles are essential for the effective and equitable functioning of a society. Some of these principles are:

Accountability: calls for the State and private actors to be answerable for their actions and decisions. It makes the power-exercising stakeholders responsible to the public who are affected by their decisions.

Transparency: implies that the information is readily and easily accessible to the general public. Transparency in the formulation and enforcement of decisions is key to good governance.

Responsiveness: refers to the ability of institutions to address the concerns of the stakeholders in an effective and timely manner. Good Governance requires institutions to respond to and redress the concerns of the stakeholders in a time-bound manner.

Equity and Inclusiveness: calls for the interests of every member of the society, especially the vulnerable and the marginalised to be recognised and addressed. Good governance institutions are impartial and inclusive in the functioning and decision-making.

Effectiveness and efficiency: imply optimal use and management of resources for the fulfilment of the needs of society. Good governance requires institutions to yield outcomes in the most effective and efficient manner.

Rule of Law: requires the laws and regulations to be formed and enforced in a just, equitable and fair manner. An independent and impartial judiciary ensures good governance by upholding the rule of law (UN ESCAP, 2009).

“A sound judicial system” is one of the cornerstones of achieving good governance in a country (Landell-Mills & Serageldin, 1991, p. 15). In India, the judiciary, in particular, the Supreme Court (SC) has been crucial in ensuring good governance by filling the gaps in municipal law through the incorporation of international instruments (Sabharwal, 2012)¹. This specifically holds true in the case of the environmental legal framework, where the responsiveness of the SC through public interest litigation (PIL) has brought about executive and legislative changes resulting in effective good governance (Shrotria, 2012). One such change is the National Green Tribunal (NGT), a specialised environmental court established as a consequence of persistent observations and directions of the SC.²

¹ See *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647; *M.C. Mehta v. Union of India*, (1997) 2 SCC 353; *M.C. Mehta v. Union of India*, (2009) 6 SCC 142; *Indian Council for Enviro-Legal Action v. Union of India*, 1996 (3) SCC 212; *M.C Mehta v. Kamal Nath*, (2002) 3 SCC 653; *Tirupur Dyeing Factory Owners Association v. Noyyal River Ayacutdars Protection Association*, (2009) 9 SCC 737; for international environmental principles of sustainable development, polluter pays principle and the precautionary principle.

² See *M.C. Mehta v. Union of India*, 1986 (2) SCC 176; *Charan Lal Sahu v. Union of India*, 1990 (1) SCC 613; *Indian Council for Enviro-Legal Action v. Union of India*, 1996 (3) SCC 212; *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, 1999 (2) SCC 718; *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*, 2001 (2) SCC 62.

Certain tenets of good governance, for example, effectiveness and efficiency, are built into the very framework of the NGT, the statute establishing which mandates it to dispose of environmental cases in an “effective and expeditious” manner (National Green Tribunal Act (NGT Act), 2010, Aims & Objectives). Furthermore, transparency is reflected in pronouncing orders and judgments in open court and duly publishing them (National Green Tribunal (Practices and Procedure) Rules (NGT Rules), 2011, r. 23(2) and 25). There is no available study so far to show whether the NGT, through the exercise of its general or specific powers has facilitated good governance.

In light of the tenets of good governance, the paper examines the gamut of *suo motu* decisions by the NGT in the first decade of its establishment. It studies the exercise of *suo motu* powers by the NGT so far, and the challenges that it may encounter in future in the use of such power. There are four sections in the paper. The first section sets out the scenario of the exercise of *suo motu* power by Indian courts in general and then, specifically by the NGT. It considers the NGT’s statutory powers and its justification for *suo motu* interventions, amidst criticism of its exercise of such power as being beyond its statutory ambit. To illustrate the nature and range of cases already taken into consideration, the second section undertakes a trend analysis of *suo motu* proceedings before its various benches and examines some of the NGT’s *suo motu* decisions. The third section looks at the recent SC decision affirming the NGT’s *suo motu* authority in order to comprehend its judicial and interpretive dimensions. In the fourth and final section, the paper discusses the way forward and challenges in the exercise of *suo motu* power to advance an argument that the NGT has the potential to facilitate good governance through the exercise of its *suo motu* power.

Understanding *Suo Motu*: The Indian Context

The term *suo motu* means “of its own motion” (UNEP, 2019, p. 194). A court usually takes up a matter *suo motu*, or its own when an issue of abuse of power or human rights violation or an issue in the interest of the public comes to its notice. In India, the genesis of *suo motu* proceedings can be traced to the 1978–1979 *Sunil Batra Case* where an inmate, Sunil Batra wrote a letter to one of the then judges of the SC, Justice Iyer, alleging prison assault on a co-inmate. The SC took cognisance of the letter and took up the matter *suo motu* to issue guidelines for administering justice in prisons.

The emergence of the *suo motu* practice by the constitutional courts, especially the SC, is considered as an “aftermath” of the emergency in India (Galanter & Ram, 2019, p. 98). The development of the *suo motu* practice of the courts coincided with the rise of PIL in the 1980s, both aimed at ensuring justice for all, particularly the marginalised sections of society, through relaxing the procedural aspect of standing (*locus standi*) before the SC. As both PILs and *suo motu* matters involve relaxed procedural standards with the only difference being that *suo motu* matters are initiated by a judge, the latter is often considered an offshoot of PIL (Galanter & Ram, 2019).

The legislative history, however, reveals a much earlier genesis of *suo motu* proceedings rooted in the Contempt of Courts Act, 1971. The powers of the SC to initiate criminal proceedings for its contempt were well spelt out in the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975. Both these statutes

relate to the initiation of *suo motu* criminal proceedings but for the very limited purpose of contempt.

Today, however, the scope of *suo motu* proceedings initiated by the SC is far wider than just criminal proceedings. From 1990 to 2021 it has taken up a total of 46 *suo motu* cases on issues of pollution, criminal justice, and COVID-19, amongst others (Mihir, 2021). The entire practice and procedure of *suo motu* proceedings before the SC was formalised through its adoption of a procedure to be followed in such matters (Supreme Court Rules, 2013, or. 38 r. 12(1)).

Presently in India, the constitutional courts and the National Human Rights Commission (Protection of Human Rights Act, 1993, s. 12(a)) are empowered to exercise *suo motu* jurisdiction, the former dealing with fundamental rights in general, and the latter with human rights, in particular. Closely associated and many a time intertwined with fundamental rights and human rights are environmental rights. However, the NGT, the forum established to safeguard the environment and the legal rights associated with it, is not statutorily provided with the power to take up instances of environmental degradation, pollution, conservation or compensation and relief *suo motu*.

The exercise of *suo motu* powers by the NGT has been an issue of debate since soon after its inception. In 2011 and 2012, the then Chairpersons of the NGT wrote to the Ministry of Environment, Forest and Climate Change (MoEF&CC) to amend the National Green Tribunal Act, 2010 (NGT Act) to include *suo motu* powers, but the request was repeatedly rejected (Sethi, 2013). The fact that there is no such provision under the NGT Act was interpreted as the absence of legislative intent to grant such power. To support this argument, the case was contrasted with that of the National Human Rights Commission, specifically empowered by section 12 of the Protection of Human Rights Act, 1993 to take *suo motu* action. It was stressed that the NGT being a statutory body is bound by the ambit of its parent statute and since the NGT Act does not expressly vest the NGT with *suo motu* power, it cannot exercise such power (Shrotria, 2015).

However, this did not deter the NGT from initiating proceedings *suo motu* for preventing irreversible damage from being caused to the environment. It has been taking up matters *suo motu* since 2012, and the issue of lack of jurisdiction to exercise *suo motu* powers has constantly been raised and challenged before the SC. Such exercise of power was regularly opposed by the MoEF&CC and the high courts (Gill, 2020). The Southern Zone Bench of the NGT at Chennai was the first to take up a *suo motu* matter in 2012, and its exercise of such power was restrained by the Madras High Court in 2014 holding that there is no provision either under the NGT Act or under the National Green Tribunal (Practice and Procedure) Rules, 2011 (NGT Rules, 2011) which empowers the NGT to initiate *suo motu* proceedings (Subramani, 2014). The “strife” between the NGT and MoEF&CC on the issue of *suo motu* jurisdiction was more than evident on many occasions (Gill, 2016, p. 197). The NGT has come a long way from initially seeking the government’s approval to exercise *suo motu* power to take up *suo motu* matters on a wide array of issues concerning the environment. However, this has met with “disapproval” from various stakeholders (Choudhary & Srivastava, 2018, p.209).

With the recent judgment of the SC in *Municipal Corporation of Greater Mumbai v. Ankita Sinha* (2021) upholding the *suo motu* powers of the NGT, the question of its

jurisdiction is settled. The need of the hour is to go beyond the debates and controversies that surrounded this power. It is imperative to study the contribution of its *suo motu* interventions to environmental jurisprudence and justice in India. It is only with a holistic understanding of the NGT's exercise of *suo motu* power so far, that its future challenges and potential can be reflected on and addressed.

Powers of the NGT

The NGT was not India's first attempt at establishing a specialised environmental forum. It has a history of two failed predecessors, the National Environmental Appellate Authority (1995) and the National Environmental Tribunal (1997), the former never being set up, and the latter failing due to limited jurisdiction (Desai & Sidhu, 2010). The NGT was constituted with jurisdiction over any civil issue relating to the environment arising from the statutes listed in Schedule I of its parent Act. The NGT Act has an overriding effect over other statutes (NGT Act, s. 33), thus the powers of the NGT are expansive. The SC has interpreted the powers of the NGT to include the power to issue directions to all statutory bodies (*Mantri Technoze Pvt. Ltd. v. Forward Foundation*, 2019) and to pass directions to avoid future adverse impacts on the environment (*National Highways Authority of India v. Aam Aadmi Lokmanch*, 2020).

Globally the NGT is regarded as a 'model' for Environmental Courts and Tribunals (ECTs). It integrates some of the best practices of an ECT. This is reflected through the legislation that constitutes it. The fact that appeal against its decisions statutorily lies directly to the highest court of appeal, the SC, places the NGT in the 'power position' amongst ECTs. Its mandate to not be bound by the Civil Procedure Code, but to apply natural justice and principles of international environmental law, specifically sustainable development, the precautionary principle and the polluter pay principle, have led to its judgments being seen as "visionary and innovative" (United Nations Environment Programme, 2016, p. 35).

The NGT is vested with original (NGT Act, 2010, s. 14), appellate (NGT Act, 2010, s. 16), and compensatory jurisdiction (NGT Act, 2010, s. 15) over the statutes mentioned under Schedule I of the NGT Act.³ Its original jurisdiction extends to any civil dispute that relates to a "substantial question of the environment" and appellate jurisdiction arises out of the provisions of specified statutes⁴ (NGT Act, 2010, s. 14). It possesses the pecuniary jurisdiction to decide compensation and damages to victims of environmental accidents (NGT Act, 2010, s. 15(1)(a)). It also has the power to impose a penalty for non-compliance with its orders to the extent of Rs 10 crore along with imprisonment extendable to three years (NGT Act, 2010, s. 26). The NGT has the power to review its orders, appeal against which lies directly to the SC (NGT Act, 2010, s. 20).

While discussing the scope of its power, the NGT explained that the fact that the power of judicial review is not merely limited to the examination of merits but extends

³ Water (Prevention and Control of Pollution) Act, 1974, Forest Conservation Act, 1980, Air (Prevention and Control of Pollution) Act, 1981, Environment Protection Act, 1986, Public Liability Insurance Act, 1991 and Biological Diversity Act, 2002.

⁴ Section 33B inserted in Water Act, 1974; Section 13A inserted in Water Cess Act, 1977 (Now Repealed); Section 2A inserted in FC Act, 1980; Section 31B inserted in Air Act, 1981; Section 5A inserted in EP Act, 1986; Section 52-A inserted in BD Act, 2002

to the process of decision-making itself indicates NGT's inherent power to administer justice, articulated under section 19 of the NGT Act. This provision empowers the NGT to regulate its procedure and to be guided by the principles of natural justice. Thus, it held that the "...Tribunal within the framework of the NGT Act would be entitled to exercise the power of judicial review within its prescribed limitation..." (*Wilfred v. Ministry of Environment and Forest*, 2014, paras. 30, 44 & 55). The SC has interpreted the NGT's power under section 19 of the NGT Act⁵ read with rule 24 of the NGT Rules, 2011⁶ to be an extensive and wide power to pass orders and give directions (*State of Meghalaya v. All Dimasa Students Union*, 2019).

Suo Motu Initiations: NGT's Rationale and Tenets of Good Governance

The NGT Act does not expressly provide NGT with the power to take up matters *suo motu*. This statutory limitation was acknowledged by the NGT (*Bajinath Prajapathi v. Ministry of Environment and Forest*, 2014). However, in certain cases, the NGT has taken it upon itself to deal with activities that were leading to the deterioration of the environment and natural resources. The rationale of the NGT to take on a matter *suo motu* is best explained in its own words when it states that ".....Irretrievable damage to the environment is not acceptable..." (*Tribunal on its own motion v. State of Himachal Pradesh*, 2014, para. 19). It cannot sit as a mute spectator while the environment suffers irrevocably.

The issue of *suo motu* jurisdiction was more recently addressed by the NGT *In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village* (2020). It held that the purpose of establishing the NGT, specifically section 15 of the NGT Act, which relates to compensation and damages, would be defeated if the NGT did not have the power to take up issues *suo motu*. *Suo motu* proceedings ensure the exclusion of the limitation of "means" to approach a judicial forum for the marginalised victims of drastic environmental damage (*In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village*, 2020, para. 17). It was observed that often the ones representing the cause of the marginalised before the NGT drop the proceedings midway after initiating them, leaving the victims practically remediless. In the absence of *suo motu* power with the NGT, and in the prevalence of limitation of means and the reliance of victims and marginalised on the "public-spirited" persons would render the NGT "futile" in providing justice. The statutory power for *suo motu* jurisdiction was interpreted to be contained in the provisions of section 19 and section 17 of the NGT Act read with rule 24 of the NGT Rules, 2011 which grants the power to the NGT to regulate its procedure, to apply the no-fault

⁵ Section 19 states that NGT would "not be bound by the procedure laid down by the Code of Civil Procedure, 1908...but shall be guided by the principles of natural justice."; within the provisions of the NGT Act it "shall have power to regulate its own procedure"; it "shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872"; "for the purposes of discharging its functions" under the NGT Act, it "shall have...the same powers as are vested in a civil court under the Code of Civil Procedure, 1908..."; and "All proceedings before.." it "shall be deemed to be the judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973"

⁶ These rules empower NGT to pass orders or give directions to prevent abuse of process or secure ends of justice

principle in case of accidents and pass any order or direction to prevent abuse of law or for meeting the ends of justice (*In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village*, 2020, para. 20). Placing reliance on *M.C. Mehta v. Union of India*, the NGT held that a “hyper-technical” approach to environmental matters defeats the ends of justice. Therefore, in cases of violation of constitutional rights connected to the environment, like the right to life, the jurisdiction of the NGT cannot be ousted merely on the technicality that an affected party did not approach it for adjudication (*In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village*, 2020, para 23). Thus, the NGT held *suo motu* action is a procedural aspect, and since the NGT has full discretion to adopt its procedure, it has the power to initiate *suo motu* proceedings (*In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village*, 2020, para. 25).

“Equity and inclusiveness”, a tenet of good governance, can be found underlined in the rationale for *suo motu* initiation provided by the NGT in the *LG Polymers Case*. The case states that *suo motu* initiations eliminate the dependency of the marginalised on other actors in society for accessing environmental justice. The tenet of “equity and inclusiveness” envisages the inclusion of all sections of society in the decision-making process, particularly the section which is “most vulnerable” (UN ESCAP, 2009, para. 15). By taking an environmental concern *suo motu* NGT not only furthers “equity and inclusiveness” it also demonstrated its “responsiveness” as an institution by serving the interests of marginalised section of the society (UN ESCAP, 2009, para. 13).

The NGT and *Suo-motu* Initiations So Far: Overview and Analysis *Suo Motu* Initiations: Trend Analysis

The NGT functions from one Principal Bench (PB) which is seated in New Delhi and four other zonal benches. The Eastern Zone Bench (EZ) is seated in Kolkata, the Western Zone Bench (WZ) at Pune, the Central Zone Bench (CZ) at Bhopal and the Southern Zone Bench (SZ) in Chennai. All the benches of the NGT have the same powers and comprise both judicial and expert members. The PB in addition to the general powers has administrative powers for regulating the functioning of the institution. Each bench has a determined geographical jurisdiction for ease of access. The PB exercises territorial jurisdiction over the states of Uttar Pradesh, Uttarakhand, Punjab, Haryana, Himachal Pradesh, Jammu and Kashmir, and the Union Territories (UTs) of the National Capital Territory of Delhi and Chandigarh. The EZ covers the states of West Bengal, Odisha, Bihar, Jharkhand, Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and the UT of the Andaman and Nicobar Islands. The WZ covers the states of Maharashtra, Gujarat, Goa and the UTs of Daman and Diu and Dadra and Nagar Haveli. The CZ covers the states of Madhya Pradesh, Rajasthan and Chhattisgarh. The SZ covers the states of Kerala, Tamil Nadu, Andhra Pradesh, Karnataka and the UTs of Puducherry and Lakshadweep (National Green Tribunal, 2023).

To understand the trend of *suo motu* filings across the benches of the NGT, information related to *suo motu* cases was obtained through the NGT website, SCC Online and the Right to Information Act, 2005.

TABLE 1:The year and bench-wise initiation of *suo motu* proceedings by the NGT from 2010 to 2020

Year	<i>Number of Cases</i>				
	PB	EZ	WZ	CZ	SZ
2010	-	-	-	-	-
2011	-	-	-	-	-
2012	-	-	-	-	1
2013	2	-	-	3	15
2014	1	1	-	0	1
2015	2	-	-	2	1
2016	3	1	-	2	10
2017	6	3	1	1	7
2018	18	-	1	0	0
2019	10	-	-	0	2
2020	16	-	-	0	99
Total	58	5	2	8	136

Source:NGT website⁷, SCC Online⁸ and information obtained under the Right to Information Act, 2005⁹

Data Analysis. In the last 10 years, the NGT has taken up 209 *suo motu* matters pan India. The maximum *suo motu* cognisance was taken by the SZ, with territorial jurisdiction covering four states and two UTs. The SZ witnessed the initiation of an unprecedented number of *suo motu* proceedings in the year 2020¹⁰. The second-highest number of *suo motu* initiations has been by the PB, with territorial jurisdiction over six states and two UTs. The PB is the only bench that has been most consistent in taking up issues *suo motu*.

The WZ has the least number of cases, two cases, with the EZ and CZ being just marginally higher with five and eight cases, respectively. The low number of *suo motu* initiations by the EZ is a bit perplexing. Its territorial jurisdiction expands across eleven states and one UT and includes all the north-eastern states, but it has made only five *suo motu* interventions since its establishment. The SZ was the first to take up a matter *suo motu* in 2012 and WZ was the last to take it up in 2017. From 2010 to 2020, it is only in the year 2017 that we find all the benches initiating *suo motu* matters.

⁷ <https://www.greentribunal.gov.in/>

⁸ <https://www.sconline.com/>

⁹ Information received through RTI application registration number NAGRT/R/E/21/00126/3

¹⁰ The cause of a such high number of *suo motu* imitations needs to be further studied.

Nature and Types of *Suo Motu* Initiations

Out of the eight *suo motu* cases taken up by the CZ, the nature of issues ranges from water pollution,¹¹ sand mining¹², air pollution from a thermal power plant and fly ash utilization¹³, and tree felling¹⁴ to the declaration of an eco-sensitive zone around a reserve¹⁵.

The *suo motu* cases in the WZ are related to the pollution of rivers¹⁶ and the felling of forest trees¹⁷, while those of the EZ covered issues of loss of mangroves in the Sundarbans¹⁸, dumping and burning of municipal solid waste leading to air and water pollution,¹⁹ operation of commercial lodges in forest areas²⁰ and pollution of the river Ganga²¹.

The PB has taken *suo motu* cognizance of varied issues ranging from industrial accidents²², the running of illegal e-waste units²³, the unscientific disposal of bio-medical waste arising from COVID-19²⁴, and the protection of animal corridors²⁵ to coastal²⁶, water²⁷ and air pollution²⁸. The SZ appears to have been more on the sector of water, ranging from the quality of drinking water²⁹ and water pollution³⁰ to construction on waterways³¹.

¹¹ Tribunal on its own motion v. State of Rajasthan, O.A. No. 88/2017(CZ).

¹² National Green Tribunal v. The Chief Secretary Government of Madhya Pradesh, O.A. No. 20/2015(CZ).

¹³ Tribunal on its own motion v. Madhya Pradesh Pollution Control Board, O.A. No. 44/2013(CZ).

¹⁴ Tribunal on its own motion v. State of Madhya Pradesh, O.A. No. 56/2013(CZ).

¹⁵ Tribunal on its own motion v. State of Madhya Pradesh, O.A. No. 16/2013(CZ).

¹⁶ Court on its Own Motion v. State of Maharashtra, O.A. No. 489/2018(WZ).

¹⁷ Hiranman Mukunda Garate (Court on its Own Motion v. State of Maharashtra), O.A. No. 108(THC)/2017(WZ).

¹⁸ Tribunal on its own motion v. Union of India, O.A. No. 20/2014(EZ).

¹⁹ Tribunal on its own motion v. State of West Bengal, O.A. No. 70/2016(EZ).

²⁰ Tribunal on its own motion v. State of West Bengal, O.A. No. 50/2017(EZ).

²¹ Tribunal on its own motion (Suo Motu) v. State of Bihar, O.A. No. 44/2017(EZ).

²² See News item published in the local daily "The New Indian Express" dated 08.08.2020 titled "Massive fire at chemical factory in Gujarat's Valsad", O.A. No. 168/2020; News item published in the "Times of India" dated 20.11.2020 entitled "Six killed as blast tears through Malda Plastic recycling factory", O.A. No. 272/2020; In re: News item published in the "Indian Express" dated 23.11.2020 entitled "Maharashtra: Two Killed, eight injured in methane gas leak in sugar factory", O.A. No. 274/2020; News item published in the local daily "Indian Express Sunday Express" dated 30.06.2020 titled "Two dead, one critical in Visakhapatnam gas leak; third case in Andhra in two months?", O.A. No. 109/2020; News item published in the "Indian Express" dated 01.07.2020 titled "Tamil Nadu Neyveli boiler blast: 6 dead, 17 injured", O.A. No. 108/2020

²³ In Re: News items -The Indian Express - 5,000 illegal e-waste units being run in capital: Study, O.A. No. 1001/2019

²⁴ In re: Scientific Disposal of Bio-Medical Waste arising out of Covid-19 treatment-Compliance of BMW rules-2016, O.A. No. 72/2020; In re: News item published on 23.07.2020 in the local daily named "Dinamalar, Chennai City Supplement Edition" titled "Danger of PPE (Personal Protective Equipment) thrown in the open place", O.A. No. 15/2020; In re: News item published on 01.07.2020 in the local daily named "The Hindu" titled "Ramky Group accused of dumping biomedical waste in the open in Hosur", O.A. No. 110/2020

From the data gathered, water emerges as a common issue taken up across the NGT benches.

Analysis of *Suo Motu* Interventions So Far: Cases and Judgments

The *suo moto* cases of the NGT range from issues of water and air pollution to the protection of wildlife habitats and climate change mitigation, reflecting the devotion of the NGT to the protection, preservation and conservation of the environment, firmly grounded in the precautionary principle. Here, despite the non-conclusiveness of scientific data or otherwise, the NGT has proceeded on the principle of precaution and taken action on the likeliness of damage. This is reflected, for instance, in one of the above cases where the NGT stated that wildlife is part of the environment and that any action that has caused damage to wildlife, or is likely to lead to causing damage, cannot be excluded from the purview of the NGT (*Tribunal on its own motion v Ministry of Environment and Forests*, 2014, para. 23).

NGT took cognizance of a study conducted by the Indian Institute of Technology, Kanpur and similar other studies stating major glacial retreat in the Rohtang Pass of the Himalayan region due to the impact of black carbon on the glacier of the range. It directed a ban on plying of commercial vehicles in the eco-sensitive zone of the pass and imposed a Green Tax. The imposition of such a tax was based on extending the polluter pays principle to make the polluter bear the cost for the management of the pollution control equipment, and compensation and clean-up which are the consequences of pollution. Direction solely to the government to make good the damage caused was viewed as a burden to the taxpayer for no fault of his, which the court recognised as an underlying principle of environmental justice. The present case was the first case in India dealing with the issue of climate change based on sustainable development, which the NGT interpreted could be attained through the application of the polluter pays, precautionary and proportionality principles which

²⁵ News Item Published in the “Times of India” Authored by Riyan Ramanath titled “Hanging Live Wire Kills 7 Jumbos in Orissa”, O.A. No. 844/2018; News item published in “The Times of India” Authored by Vijay Pinjarkar Titled “String of new road projects in Maha to cut off tiger corridors”, O.A. No. 1030/2018; News item published in “The Times of India” Titled “Electrocuted at Meghamalai Forest”, O.A. No. 1031/2018

²⁶ In Re: Instagram BBC News with Regard to Coastal Pollution on Marina Beach, Chennai, O.A. No. 1029/2019

²⁷ In Re: Water Pollution At Rania Kanpur Dehat & Rakhi Mandi Kanpur Nagar Uttar Pradesh, O.A. No. 986/2019

²⁸ *Suo Moto v. Union of India*, O.A. No. 531/2019; In Re: Air Quality Deterioration In And Around Delhi as reported in Print and Electronic Media, O.A. No. 1008/2019; News item published in “Indian Express” Authored by Mallica Joshi Titled “All fiddle as crop stubble burns, farmers say solutions out of reach”, O.A. No. 835/2018

²⁹ *Tribunal on its own motion (Quality Water to be Delivered by Public Tap Based on Letter dated 24.07.2013) v. The State of Tamil Nadu Municipal Administration and Water Supply Department*, O.A. No. 182/2013(SZ).

³⁰ *Tribunal on its own motion Suo Motu based on the news item in Dinamalar Chennai newspaper dated 10.02.2020, “Stagnation of Drainage Water in Velachery, Veerangal Canal – People suffer from Respiratory Problem”*, O.A. No. 33/2020(SZ).

³¹ *Tribunal on its own motion SUO MOTU Based on the News Item in Dinamalar Newspaper Newspaper 06.11.2020, Chennai Supplementary “Rising of New Buildings in water ways, Danger to Velachery due to callousness of officials”*, OA No. 225/2020(SZ).

are all components of the said approach (*Tribunal on its own motion v. State of Himachal Pradesh*, 2014).

Based on a newspaper article reporting dolomite mining threatening the tiger corridor in the Kanha Tiger Reserve, the NGT stated wildlife and their habitats as “part and parcel of the environment” and “form the centre stage” of the implementation of management practices (*Tribunal on its own motion v. Ministry of Environment and Forests*, 2014, paras. 28 & 34). Finding irregularities in the statutory administration of mines, the NGT directed cumulative impact assessment and regulated the movement of vehicles and mining activities so as to not cause disturbance to wildlife. The NGT directed that certain measures are to be taken for protecting the movement of tigers in a particular locality falling in proximity to a Protected Area (*Tribunal on its own motion v. Ministry of Environment and Forests*, 2014).

Amongst other *suo moto* matters, 100 industrial units in the State of Uttarakhand discharging black soot were directed to be inspected by the pollution control board, with the immediate stopping of their functioning, if found violating environmental standards (*Tribunal on its own motion v. State of Uttarakhand*, 2018). Another case is related to encroachment by tribals into wildlife habitats by clearing trees in the Sathyamanglam Tiger Reserve (*News items published in The Hindu dated 22.10.2013 “Tribals Clear Forest Bushes in Tiger Reserve Area”. Ministry of Environment and Forest*, 2013). The cases of contamination of groundwater in supply lines and borewells in Delhi (*Tribunal on its own motion v. Government of NCT Delhi*, 2015) and extreme levels of pollution near Adyar estuary (*Tribunal on its own motion Suo Motu based on the News Item published in the Times of India, Chennai edition dated 17.02.2020, “Choking Waterways”, 2020*) are other examples where the NGT has exercised *suo moto* powers. The NGT took note of a newspaper article based on a report of the Central Pollution Control Board identifying 351 critically polluted river stretches in the country (Koshy, 2018). It directed all states and UTs to prepare an action plan to bring the quality of water in such stretches to at least a level fit for bathing (*In re: News item published in “The Hindu” authored by Shri Jacob Koshy titled “More river stretches are now critically polluted: CPCB*, 2018).

The NGT took *suo moto* cognizance of the incident of a gas leak in the *LG Polymers Case*. The matter was brought before the SZ by way of two separate applications³² which were transferred to the PB by the SZ. The leakage of a hazardous chemical from the factory premises of LG Polymers resulted in the death of 11 people, serious injury to 25 and hospitalisation of 100 people. Applying the principle of strict liability as the industry was engaged in operations utilizing hazardous substances, the NGT on the first day of the hearing itself directed LG Polymers to deposit Rs. 50 crore for the damage caused to life, health and the environment and appointed a committee to look further into the incident.

Good Governance, NGT and *suo moto* initiations: The Nexus

Good governance is inherited in NGT's constitution and is demonstrated through its *suo moto* initiations. NGT rests on the foundation of good governance, requiring

³² EAS Sarma v. Union of India, O.A. No. 160/2020(SZ); *See also* Centre for Wildlife and Environmental Litigation Foundation v. Union of India, O.A. No. 73/2020(SZ).

it to work effectively and expeditiously (NGT Act, 2010, Aims & Objectives). It is mandated to be responsive to dispose of the cases within the specified timeframe of six months (NGT Act, 2010, s. 18(3)) and is driven by the principles of sustainability (NGT Act, 2010, s. 20). The judges and the expert members of the NGT are public servants whose actions during the course of service are protected against lawsuits or legal actions (NGT Act, 2010, s. 31& 32). The status of its members and the protection of their actions make the decision-giving process of NGT independent and impartial. The orders and judgements are passed by NGT by the majority (NGT Act, 2010, s. 21) and are required to be communicated to the parties (NGT (Practice and Procedure) Rules, 2011, r. 25) as well as published for the general public's access (NGT (Practice and Procedure) Rules, 2011, r. 28). Decisions by the majority and its communication to parties and availability to the public provide transparency in the working of NGT.

NGT functions on the tenets of good governance like independence, transparency, accountability and impartiality. It regulates its own procedure for conducting its day-to-day functions (NGT Act, 2010, s. 19(2)). To further the interests of justice, carry out its ruling or stop the abuse of its process NGT has the power to issue any orders or directives it deems necessary or appropriate (NGT (Practice & Procedure) Rules, 2011, r. 24). This power has been utilised by NGT in initiating *suo motu* interventions in the cases of environmental harm and degradation. Through *suo motu*, not only the private stakeholders, but also the state functionaries are made accountable by NGT for the dereliction of duty. Through *suo motu*, NGT warrants accountability of private (“vertical accountability”) and State (“horizontal accountability”) stakeholders to the public at large for the degradation of the environment facilitating good governance (Santiso, 2001, p. 17). Accountability cannot be enforced without transparency and the rule of law (UN ESCAP, 2009 para. 17). *Suo motu* initiations are mostly taken up on the basis of newspaper articles which are common knowledge in the public sphere which is one of the most transparent manners of functioning. *Suo motu* cognisance through a newspaper article also reflects the responsiveness of NGT to the concerns of environmental degradation. Under *suo motu* powers NGT does not have to wait for an affected stakeholder to approach it for redressal, it proactively addresses the pressing environmental concerns. Through *suo motu*, NGT prevents the violations of the law from going unaddressed promoting accountability and rule of law.

NGT Vested with the Power to Take *Suo Motu* Action: Supreme Court

The legal question of whether the NGT is vested with *suo motu* jurisdiction came before the SC in the matter of *Municipal Corporation of Greater Mumbai v. Ankita Sinha* (2021). This appeal was filed against the order of the NGT directing the Municipal Corporation of Greater Mumbai (MCGM) to deposit Rs 5 crore as compensation for a landfill site under its control operating in total violation of the Solid Waste Management Rules, 2016 (SWM Rules) (*Ankita Sinha v. State of Maharashtra, 2018*).

The NGT took cognisance of an article published in *The Quint* titled “Garbage Gangs of Deonar: The Kingpins and Their Multi-Crore Trade” bringing out the impact of maladministration of solid waste in a dumping ground in Mumbai, on the environment and lives (Sinha, 2018). Relying on the report of the committee, the NGT directed the MCGM to pay compensation of Rs 5 crore for its failure to adhere to and implement the provisions of the SWM (*Ankita Sinha v. State of Maharashtra, 2018*). This order was challenged by the MCGM before the SC on grounds of lack of

jurisdiction of the NGT to initiate *suo motu* action (*Municipal Corporation of Greater Mumbai v. Ankita Sinha*, 2021).

The SC settled the question of the lack of jurisdiction of the NGT to initiate *suo motu* action on the following three broad points:

Purposive Interpretation to Understand the Powers of the NGT

The SC observed that the ambit of the powers of the NGT must be understood in light of the intent of the legislature in enacting the NGT Act. The preamble and the purpose of a statute are the mirrors of legislative intent. The SC relied on the preamble and the factors which propelled the enactment of the NGT Act to adopt a liberal construction of its purpose and powers. The preamble of the NGT Act entrusts the NGT to address concerns relating to the right to life and to efficaciously deal with multi-disciplinary environmental matters. The NGT Act was enacted to incorporate India's international environmental commitment³³ into municipal law.

Since the NGT Act is related to Article 21 of the Constitution, the SC observed that it is a beneficial piece of legislation enacted to serve greater social concerns and as such must be given a purposive interpretation. Its provisions must always be interpreted to facilitate environmental regulation.

The fact that the NGT was established to specifically overcome the limitation of jurisdiction of its predecessors³⁴ implies that its jurisdiction and powers were not intended to be constrained. This is reflected in rule 24 of the NGT Rules, 2011, which the SC observed provides the NGT with "wide discretionary power" (*Municipal Corporation of Greater Mumbai v. Ankita Sinha*, 2021, para. 16.3). The power is so extensive that it enables the NGT, even in the absence of a specific prayer, to grant relief in the interest of justice. The uniqueness of this power is reflected in the SC's observation that such power is not possessed by any other civil court in the country. While interpreting the powers of the NGT, the SC equated its power of *locus standi* with that of the high courts and the SC itself.

NGT's Role: Not Limited to Adjudication

One of the contentions raised against the exercise of *suo motu* powers by the NGT was that the role of the NGT is that of an adjudicator and as such it does not have the power to take up matters on its own accord. The SC observed that the NGT is a specialised forum and is "expected to take preventive action" (*Municipal Corporation of Greater Mumbai v. Ankita Sinha*, 2021, para. 17.3). This aspiration of the legislature is reflected through the provisions of section 20 of the NGT Act which requires the NGT to apply the principle of sustainable development, the precautionary principle and the polluter pays principle while imparting environmental justice.

The SC observed that NGT must function to better the environment and for that, it does not always necessarily have to settle a dispute or have two contesting parties before it.

When *Suo Motu* Powers Can be Exercised by the NGT

The NGT was established to specifically deal with environmental matters in a

³³ Made under the United Nations Conference on Environment and Development, 1992.

³⁴ The National Environment Tribunal and the National Environmental Appellate Authority

specialised manner and as such has a *sui generis* role to play when it comes to environmental issues. Consequently, after its establishment, all the environmental matters before the constitutional courts were transferred to the NGT. The SC observed that the fact that most of the cases so transferred were originally *suo motu* initiations by the constitutional courts *ipso facto* imply that the NGT possesses the same self-activating power, for which neither a party nor a dispute is necessary.

Upholding the self-activating or *suo motu* powers of the NGT, the SC went a step further to define the yardstick of *suo motu* interventions. The SC held that for a *suo motu* initiation by the NGT there must exist an issue involving a “substantial question relating to the environment” (*Municipal Corporation of Greater Mumbai v. Ankita Sinha*, 2021, para. 10). The issue must satisfy two conditions: firstly, it should be civil in nature, and secondly, it must be traced to any of the statutes mentioned in Schedule I of the NGT Act. The SC specified that *suo motu* actions can only be initiated by the NGT either to (i) make things (environment) better, or (ii) to prevent any environmental harm (*Municipal Corporation of Greater Mumbai v. Ankita Sinha*, 2021).

What Next? *Suo Motu* Powers of the NGT and Good Governance

What next will the NGT do after its power to initiate *suo motu* proceedings has been affirmed by the SC? This is a question that remains to be examined. So far, the NGT has been taking up issues of water body pollution;³⁵ rainwater harvesting and revival of water bodies,³⁶ solid waste management,³⁷ air pollution due to thermal power plants,³⁸ wetland conservation,³⁹ and the management of construction and demolition waste,⁴⁰ to list a few. Considering the NGT is just over 10 years old, it has demonstrated an expansive jurisdiction on varied environmental issues. Entering its second decade with the express power to take up matters *suo motu*, the NGT is expected to go beyond its regulator’s role and also develop environmental jurisprudence and add to the body of environmental law in India. The seeds for developing environmental jurisprudence through its *suo motu* jurisdiction have already been sowed with the NGT taking up the non-implementation of laws relating to various facets; for instance, cases on ban on single-use plastic, implementation of rules on bio-medical wastes and construction and demolition material, amongst others. The NGT has widened the scope of its jurisdiction through *suo motu* cognisance to “meet the end of justice” (Tripathi, 2018, pp. 232–233). The scope of exercise of *suo motu* powers by the NGT has also been defined by the SC in the *Ankita Sinha Case*. It now rests with the NGT to take steps to formulate rules and regulations in this regard.

³⁵ C¹ Court on its own motion v. State of Himachal Pradesh OA No. 446/2018 (PB); Tribunal on its Own Motion v State of Rajasthan OA 88/2017 (CZ); Tribunal on its Own Motion v State of West Bengal OA No. 14/2017(EZ).

³⁶ Tribunal on its own motion v. Government of NCT of Delhi OA No. 496/2016 (PB).

³⁷ Tribunal on its own motion v. Chief Secretary of Government of Tamil Nadu OA No. 257/2020 (SZ).

³⁸ Tribunal on its own motion v. Madhya Pradesh Pollution Control Board OA No. 44/2013 (CZ).

³⁹ Tribunal on its own motion v. Secretary to Government of Tamil Nadu OA No. 246/2020(SZ).

⁴⁰ Tribunal on its own motion v. Chief Secretary, Kerala OA No. 12/2020 (SZ).

Furthermore, *suo motu* jurisdiction has also facilitated the application of some of the tenets of good governance and environmental justice, particularly equity and inclusiveness. Initiation of *suo motu* proceedings by the NGT on behalf of the marginalised upholds the Environmental Rule of Law as it ensures access to justice for all, which is one of the primary pillars of an environmental court. Access to justice through *suo motu* powers facilitates the tenet of “equity and inclusiveness” under which the weakest section of society is justly included in environmental decision-making, eliminating their dependence on other actors. Often the representation of the marginalised through *suo motu* matters is criticised for taking away the right of representation before the court of appeal. In the case of the NGT, this would not be an issue as the appellate court for the NGT is the SC which apart from appellate jurisdiction over certain environmental issues also has writ jurisdiction under the Constitution. Under this, the victims can very much approach the SC.

Suggestions

Analysing the discourse so far, the following are some suggestions for strengthening and streamlining *suo motu* initiations by the NGT:

Develop Criteria for Suo Motu Initiations

The study revealed that from 2011-2020 NGT initiated 206 *suo motu* proceedings and from 1990-2021 the SC has taken up 46 cases *suo motu*. The NGT should develop a broad framework laying down the criteria for initiating *suo motu* actions, which would rule out or at least minimise the chances of misuse of such powers. The existence of established criteria would aid the NGT in ensuring greater “accountability” towards the stakeholders in the exercise of *suo motu* powers. Broad criteria would also act as a filter ensuring that the NGT would not waste its time and resources on non-urgent issues. It would further facilitate the tenet of “responsiveness” whereby environmental justice is not only accessible to all but also delivered in a time-bound manner.

Formulate a procedure for suo motu matters

Like the SC, the NGT may also formulate a separate procedure for dealing with *suo motu* cases. A defined procedure would facilitate “transparency”, “accountability” and the “rule of law” in the exercise of its *suo motu* powers. Besides enabling good governance, these tenets would also strengthen the NGT as an institution.

Challenges

The practice of the NGT so far and other aspects and circumstances also reveal certain challenges in the way of the effective functioning of the NGT as an institution.

Likelihood of non-acceptance of suo motu orders

The effectiveness of court orders gets diluted by non or improper or incomplete execution. Execution is effective only when there is a larger acceptance of the order by the agencies implementing the same as also the general public. One of the ways to ensure the two-fold acceptance of the order is to involve the stakeholder in decision-making. In *suo motu* proceedings, such inclusion does not often take place, which may result in reluctance in the acceptance of the order.

Danger of Assumed Supremacy of the PB

The *suo motu* adjudication in the *LG Polymers* case reflects the assumed supremacy of the PB over the other benches of the NGT. The transfer of matters from the SZ to the PB raises questions on two accounts: firstly, the SZ, despite having territorial jurisdiction over the issue transferred the matter, and secondly, such transfer was without any speaking order and so the rationale behind the same would never be in public knowledge.

Another instance of the PB assuming supremacy in *suo motu* matters is demonstrated in an office order dated 12.06.2021⁴¹ issued by the PB. The office order states that *suo motu* matters having pan-India/inter-state implications would be listed before a three-member bench of the PB. No provision in the NGT Act reflects a superior position of the PB, except for an additional responsibility of an administrative nature. The said office order was challenged before the Madras High Court and was stayed for violating section 4(4)(c) of the NGT Act which provides for a bench to comprise an equal number of judicial members and expert members (*Meenava Thanthai KR Selvaraj Kumar v. National Green Tribunal Principal Bench*, 2021). Limiting the *suo motu* powers of other benches by an office order appears to defeat the scheme of territorial jurisdiction of the NGT benches.

Chances of Multiplicity of Cases

Another issue that may arise in *suo motu* matters is of the multiplicity of cases on the same issue as seen in the *LG Polymers* case, where two petitions were filed before the SZ, but still, the PB took *suo motu* cognizance of the issue. A mechanism to prevent such overlap is also desirable in the public interest.

Conclusion

Through the exercise of *suo motu* powers, NGT has overcome the limitation of means and accessibility, strengthening access to justice, the cornerstone of a specialised environmental justice forum. It has utilised its mandate of the precautionary principle innovatively through *suo motu* interventions and fulfilled its objective of effective environmental justice in the last 10 years. However, though this power is available across benches, it has not been applied consistently by most of them. A streamlined and well-defined procedure in such a scenario may exclude the personal discretion of the bench to a large extent and facilitate greater *suo motu* interventions and good governance. The initial foundation in this direction has been laid by the SC in its recent judgment upholding the *suo motu* power of the NGT. The SC laid down that *suo motu* jurisdiction can only be exercised by the NGT to either prevent harm or to better the environment. The NGT now needs to formalise the principles for the exercise of this expansive power to ensure that the remotest regions and the maximum number of people benefit. The NGT has the potential to facilitate various tenets of good governance through *suo motu* interventions. As a way forward in the exercise of this power, the NGT has to consciously utilise *suo motu* interventions for strengthening environmental good governance.

¹ Available at: https://greentribunal.gov.in/sites/default/files/office_orders/Office%20Order%20dated%2012.06.2021.pdf

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