



## SUO MOTU ACTION AND NGT

*Dr. Bharti, Associate Professor, National Law University, Delhi*

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**Abstract:** *The suomotu power is exercised as part of superior courts' jurisdiction but its exercise by the specialized environmental tribunal, the NGT in India is uncertain and prone to various interpretations. It is not concretized in the statutory enactment although it has been utilized frequently by the NGT for providing redressal on issues of public interest requiring immediate action. The article attempts to look at the entire issue with sufficient reasoning based on various provisions in the NGT Act. Also, key case studies in which NGT took suomotu cognisance are considered for a fuller understanding on the subject theme. In the ultimate analysis, it becomes sufficiently clear that suomotu action used in a bonafide case by the NGT is a significant procedural complement and enables the unique tribunal on environment to adjudge and discharge the mandate of protection of environment by tackling issues of substantive and consequential concern.*

**Keywords:** *Suo motu, Environmental Courts and Tribunals (ECTs), access to justice, public interest, superior courts, National Green Tribunal (NGT), tribunal on its own motion, environmental justice.*

### Introduction

The legal redressal of grievances within the formal litigation system is usually streamlined into a predictable course of action. The relevant fora that takes cognizance of a 'violation' of a right is at the instance of the wronged party who initiates action. The adversarial system established across 'common law' regimes is at ease with the familiar pattern of a cause of action being addressed in the concerned court/ forum by the concerned litigant/aggrieved in a staggered timeline. However, in recent times suomotu action has been increasingly engaged in by different justice dispensation forums in India. A Latin phrase, suomotu, literally translates into 'on its own motion' and it shows the readiness of the public authorities to take proactive action.<sup>1</sup>

The reasons are many for the recourse to suomotu action which has become primarily the means to draw attention to an urgent issue of 'violation of a right' or a matter 'in public interest' having wide-spread legal ramifications. The evolution of formal legal order is thus edged with this 'vigilante' element that introduces certain dynamics to the process of procedural evolution. There is,

thus, no doubt a merit to exercise suomotu action in deserving cases whence 'rule of law' is strengthened, more so in a vibrant democratic framework but caution must be observed to prevent its indiscriminate use. Both the absence of the power of suo-motu and its exercise in excess would create an impediment to securing effective justice.

Effective access to justice is seen as the most basic requirement-the most basic "human right"--of a modern, egalitarian legal system which purports to guarantee, and not merely proclaim, the legal rights of all.<sup>2</sup>

In the context of India, 'access to justice' is constitutionally guaranteed in the Indian Constitution.<sup>3</sup> The Supreme Court has consistently held that access to justice is not only a fundamental right but it is as well a human right (also Article 8, 10 UDHR; Article 2 (3) ICCPR) and valuable right.<sup>4</sup> The processual aspect can be further enhanced and can become an enabling exercise by empowering judicial fora with suomotu jurisdiction especially on issues of public interest as environment.

The statutory based suomotu action may be contradistinguished from the superior court based

suomotu action whence both are legally tenable and operational in India. An area of unclear delineation is, wherein, tribunals or other legal forum may seemingly preempt to themselves the power of suomotu although clearly in 'public interest' as in case of NGT in India, pertaining to environment.

### **Suo motu and Superior courts**

It is the Supreme Court of India and the High Courts of various States that are considered to have the inherent power of suomotu action which they exercise with adequate caution while observing adherence to the abiding precepts of the Constitution of India.

A perusal of few striking cases in recent times of the Apex Court is revealing in that suomotu action extended has emerged as an instrument advancing the cause of justice.

IN RE: *News item published in Hindustan Times titled "And Quiet Flows the Maily Yamuna"*<sup>5</sup>

With regard to complete deterioration in quality of water in river Yamuna in Delhi, Haryana and U.P, the Supreme Court issued suomotu notice based upon an article published in HT newspaper dated 18/7/1994. Directions were issued to authorities to ensure that no person, including corporations or other industries, discharge their sewage, trade or other effluents directly into Yamuna, without treating the same in accordance with provisions of Environmental Protection Act. Parties were directed to comply with all issues as expeditiously as possible. Although, authorities were lackadaisical in implementation of the orders, the case served to introduce the cleanup of river Yamuna as a state and national priority with greater visibility to the problem.

*Court on its own Motion v. Union of India and others*<sup>6</sup>

Taking notice of the persistent press reports dealing with the poor arrangements as lack of necessary facilities, essential amenities and associated risks to lives resulting in a number of deaths that occurred during the Yatra in the year 2012 enroute to and around the holy cave of Amarnath as well as risks to environment. The court took suomotu action and

issued notice to the Union of India, State of J&K and the Chairman / President of the Amarnath shrine board vide its order dated 13<sup>th</sup> July 2012.

The recommendations of the consequentially constituted Special High-Powered Committee (HSPC) included several measures for health and public safety, as well as for environment, including statutory EIA. Especially sanitation, solid waste management, food waste management, plastic waste management, quality and availability of water required to be better understood and addressed in the given context.

*Court on its own Motion (Air Pollution in Delhi) v. Union of India*<sup>7</sup>

Taking cognizance of far reaching effects of air pollution suomotu, the Court asked the Governments of States of Punjab, Haryana, UP, Rajasthan, NCT of Delhi and the Centre to file affidavits before the Court explaining the steps that are being taken within their jurisdictions to minimize air pollution. The affidavits were filed before a Division Bench comprising of S. Ravindra Bhat and S.P. Garg, JJ.

It may also be pointed out that Public Interest Litigation (PIL) is a specific instance of suomotu power exercised by the Supreme Court and various High Courts on issues of public interest on application by concerned citizens/NGOs before the august forums. PIL is an innovative mechanism of judicial engineering that has become instrumental in preempting access in a quick, inexpensive, non-technical (through expanded standing) and non-adversarial manner on an issue of immediate public concern.

### **Other legal enactments in India with Suo Motu powers:**

The Competition Act, 2002 envisages the powers of suomotu through Section 21A wherein the Competition Commission is empowered to make references suomotu in certain specified instances to the requisite statutory authority i.e. when an issue is raised in proceedings before the Commission. Further, under Chapter 11 Part A (CrPC) the police

have been given powers to investigate suomotu cognizable offenses (only) as defined in S.4 (f) of CrPC. Any magistrate of first or second class may take cognizance of any offence based on complaint of facts constituting the offence, police report of such facts, information received from any person other than a police officer or upon his own knowledge that such an offence has been committed.<sup>8</sup> These provisions are incorporated to safeguard the interest of victims of the offense and to prevent a gross miscarriage of justice.

Similarly, the National Human Rights Commission, under the Protection of Human Rights Act, 1993, has been conferred with the power to suomotu conduct inquiries into complaint of (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant<sup>9</sup>.

The Prohibition of Child Marriage Act is another piece of beneficial legislation that exhibits the presence of suomotu powers. Under the enactment, the Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may take suomotu cognizance on the basis of any reliable report or information regarding child marriages that have been arranged or solemnized in violation of this Act<sup>10</sup>.

### **International Perspective -environmental litigation**

The issues on environment have been integrated as part of general jurisdiction of courts, with a conscious internal specialization of the judicial bodies as further progression and initiation of pioneering environmental courts/tribunals as a final culmination. It is interesting to note that India has undergone the above-mentioned processes in a very dynamic manner and as part of a general evolution of environmental legal regime.

It may be emphasized that the designing of environmental courts/tribunals is the best that fits the legal culture and specific environmental and developmental needs of the country/ region.<sup>11</sup>

There has been a virtual explosion of Environmental Courts and Tribunals (ECTs)

globally<sup>12</sup> since the year 2000, giving credence and vitality to Sustainable Development Goal No. 16.<sup>13</sup> More than 1200 ECTs in 44 countries have been established at National/State/Provincial level including the pioneering ones in New South Wales, Australia in 1980 and New Zealand in 1996.<sup>14</sup> In their 2009 evaluation of ECTs, Pring and Pring note that access to justice can be parsed into three distinct phases: access to the ECT; access to “fair, efficient, and affordable” proceedings; and issuance of orders that “provide measurable outcomes . . . [to] prevent . . . or remedy . . . environmental harm.”<sup>15</sup>

### **Indian scenario – environmental litigation:**

#### ***Apex court and High courts:***

Significantly, a huge edifice of environmental jurisprudence in India has been built and strengthened by the public interest litigation cases<sup>16</sup> that have had their indelible impact on environmental law and policy outcomes too.

Further, in the absence of technical expertise, the courts have also devised several novel methods, as to set up expert and special committees in several environment cases, to report and to monitor directions of the court, improvised the mechanism of ‘continuing mandamus’ as a means of supervising on a specific subject matter of greater gravity, focused attention of the government on issues where there is a necessity of legislation, integrated payment of compensation as part of their orders and looked into various costing and funding issues pertaining to environment.<sup>17</sup>

#### ***National Green Tribunal (NGT)***

The journey of international environmental law beginning with the Stockholm Conference of 1972, and the Rio Conference<sup>18</sup> highlighted the significance of environmental justice as through the medium of courts/tribunals.

With the impetus provided by erstwhile Supreme Court cases<sup>19</sup> recommending the setting up of environmental courts and the 186<sup>th</sup> Report of Law Commission of India in 2003 categorically emphasizing the same, the National Green Tribunal

was finally established as a multi-faceted forum converging judicial and technical/scientific inputs.

NGT is statutorily enacted by Parliament and provides the techno-legal framework to check environmental abuse escalations and for handling environmental disputes involving multi-disciplinary issues resolved through a range of remedies as compensation, injunctive relief, restoration of ecology<sup>20</sup> etc. It has an elaborate jurisdiction including original<sup>21</sup>, appellate<sup>22</sup> and special jurisdiction<sup>23</sup>.

#### **Suo motu and NGT:**

By devolving upon the NGT to elucidate its own procedure, it may be fair to presume that the principle of natural justice shall be fulfilled.<sup>24</sup>

In the case of *M/S Sesa Goa Ltd. & Anr v. State of Goa & Ors*<sup>25</sup>, the NGT concluded that,

“The principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.”

The NGT can be considered to include the component of suomotu as part of its procedure rules.

In the case *Wilfred J and Anr. v. Ministry of Environment and Forests and others*,<sup>26</sup> the NGT drew attention to a number of significant dimensions.

It referred to the dictum of Supreme Court in case of *Supreme Court Advocate on Record Association v. Union of India*,<sup>27</sup> that independence of judiciary has always been recognized as part of basic structure of constitution squarely applies to all courts and tribunals performing the function of dispensation of justice. In *Union of India v. Madras Bar Association*,<sup>28</sup> Supreme Court stated that if Tribunals are to be vested with judicial powers exercised by courts, such Tribunals should possess independence, security and capacity associated with courts. The scheme of NGT Act clearly gives the Tribunal, complete

independence to discharge its judicial functions, have security of tenure and conditions of service and is possessed of complete capacity associated with courts. **The (NGT) Tribunal has complete trappings of civil court and satisfies all the stated features for acting as an independent, impartial Tribunal with complete and comprehensive powers.**

It was emphasized that there is no provision in the Act that specifically or even by implication is suggestive of the legislative intent to exclude the power of judicial review of the Tribunal. The power of judicial review in the scheme of the NGT Act would be implicit and essential for expeditious and effective disposal of cases. In fact, the jurisdiction of the Tribunal as stated under Section 14, 15, 16 not only vests a very wide jurisdiction on Tribunal but by necessary implication gives power of judicial review to Tribunal.

The Judgement (on power of judicial review of NGT) may be read parimateriawith regard to power of suomotu of NGT.

It may be thus said that suomotu be treated as an integral feature of NGT to equip it with the necessary powers to deal with an environmental issue affecting all and being in the nature of public interest requiring immediate and effective action. Thus, suomotu, though not expressed in the statutory enactment, becomes a necessary correlative of jurisdiction of the environmental tribunal. It may be noted that there is no unequivocal negation of suomotu from the ambit of the statutory framework of NGT.

It may be interesting to note that the concept of PIL was not part of the formal jurisdiction spelled out in the Constitution. It has been solely through the ingenious efforts of the pro-active judiciary that the induction of PIL succor has been provided to several deserving cases that might not have otherwise come to the attention of the judiciary. Suomotu action may likewise be considered as an important additive element in the jurisdiction of Supreme Court, High Courts and even Tribunals as NGT

where and when they are seized of matters of public interest, even if not explicitly mentioned in Constitution or any legal statute.

The High Court of Madras struck a discordant note and restrained NGT Chennai branch from exercising suo motu powers. "The NGT is not a substitute for the High Court. The Tribunal has to function within parameters of NGT Act, 2010. It should act within the four corners of the statute. There is no indication in NGT Act, or rules made thereunder with regard to power of NGT to initiate suo motu proceedings against anyone, including statutory authorities".<sup>29</sup> The case, however, saw dismissal on 20<sup>th</sup> June, 2016 and the observation of the High Court remained as such only.

NGT as custodian of natural resources and of ecosystems within the Indian jurisdiction can discharge its functions more effectively with suo motu powers to take cognizance in case of an immediate necessity.

Suo motu or sui generis actions permit the Tribunal to engage in a degree of agenda setting not commonly associated with courts<sup>30</sup>. It is a significant element ensuring procedural equity, securing the initial access to justice through the courts' own mandate, recounted in few following cases-

***The Tribunal at its own motion in the case of Ministry of Environment and Others (Original Application No. 16 of 2013)***

The NGT took suo motu notice of the issue of dolomite mining in tiger reserve forest in Kanha National Park in Mandla and Balaghat districts of Madhya Pradesh and the associated problems with it on the basis of the news item published in the Bhopal edition of the 'Times of India' newspaper dated 10th April, 2013 under the heading "Dolomite mining a threat to Tiger corridor in Kanha – Foresters want ban on mining in Mandla District"<sup>31</sup> with directions to supply the number and details of the Mining Leases (in short 'ML') mentioned in the news item, to be put on record.

The Tribunal ordered for a meeting to be conducted at the highest level with the Chief

Secretary to the Government of Madhya Pradesh acting as the Chairperson along with the officials of the State Forest Department, National Tiger Conservation Authority, Officer in-charge of Regional Office, MoEF, Bhopal, Principal Secretaries, Environment and Mines and Minerals, Government of Madhya Pradesh, Chairman, State Pollution Control Board, Madhya Pradesh, District Collector, Mandla to inspect environmental issues in the given case and take prompt actions with specific time limits in accordance with law in lieu of the same.

***The Tribunal on its own Motion in the case of State of Himachal Pradesh and Ors (Original Application No. 237 of 2013)***

The case dealt with the issue of the rapidly increasing vehicular traffic in the Kullu-Manali and Rohtang Pass areas of Himachal Pradesh. It took suo motu cognizance of the Report made by the Expert Committee constituted by High Court of Himachal Pradesh vide order dated 12<sup>th</sup> October 2010. It came to light that the congestion due to vehicular traffic and tourist influx was resulting in increasing levels of noise pollution as well as leading to accelerated degradation of natural habitats and snow cover in the mountains, affecting wildlife and disturbing the eco-systems. The Tribunal reiterated right to decent and wholesome environment as part of the expanded corpus of Article 21. The Tribunal directed the State Government of Himachal Pradesh to initiate and undertake a scientific forestation program, observe emission norms, levy tax on vehicles. A year later, a limit of 1000 vehicles per day was prescribed. A challenge to this before the Supreme Court saw the refusal of the court to stay/modify NGT order that restricts the number of vehicles, saying that vehicular exhausts have 'adverse impacts' on glaciers. It may also be considered a vindication of the exercise of suo motu by the NGT.

**Judgement of the National Green Tribunal regarding large scale illegal felling of trees near Tara Devi Temple, Shimla, Himachal Pradesh, 01/08/2017**

The NGT suomotu took cognizance of Deodar and Oak trees illegally felled near Tara Devi temple, Shimla, Himachal Pradesh on private property and government lands. It directed that both the seller and the purchaser are held liable for payment in the form of environmental compensation as spelled out under Section 15 and 17 of the National Green Tribunal Act, 2010, with the percentage of liability for the seller and buyer fixed at 60% and 40% respectively, in keeping with the conditions of fairness and justice. The amount of damages was to be remunerated, within the strict timeline of a month, to the District Forest Officer, Rural Shimla. Besides, 4770 trees (on basis of ten times the trees felled) were required to be planted at the same place and the cost of reforestation was to be borne by the land owner.

**Before the NGT, Principle Bench, New Delhi (Original Application No. 673-2018)**

NGT took suomotu cognizance of a news item published in The Hindu titled “More river stretches are now critically polluted: CPCB”<sup>32</sup>. It devised a model action plan, divided river stretches into priorities depending upon extent of pollution and directed all States and Union Territories to prepare action plans within two months to bring all polluted river stretches, to be fit for at least bathing. A four-member River Rejuvenation Committee (RRC) was constituted to prepare action plans that may recover cost of rejuvenation from polluter while also considering voluntary donations, CSR funds and private participation. The action plan should address

issues relating to groundwater extraction, adopting good irrigation practices, protection and management of Flood Plane Zones (FPZ), rainwater harvesting, groundwater charging, maintaining minimum environmental flow of river and plantation on both sides of river. Action plan should focus on proper interception and diversion sewage carrying drains to the Sewage Treatment Plant (STP) and emphasis should be on utilization of treated sewage, so as to minimize extraction of ground or surface water. Action plan should have speedy, definite and specific timelines for execution.

*Recent case:* As recently as January 2019, NGT took suomotu cognizance of a newspaper report in Indian Express titled “17 year old’s video gets Kerala talking of impact of sand mining”<sup>33</sup> in which a 17 year girl’s viral video on environmental impact of sand mining activity in the coastal village of Allapat in Kerala was featured. The NGT has required a report from the District Magistrate, Kolam District within a month on the issue.

**Conclusion:**

In the ultimate analysis it may be said that the exercise of suomotu power by the specialized environmental tribunal, the NGT in India, is a necessary concomitant for access to environmental justice. It has emerged as a catalyst to energize the forum to provide swift, inexpensive legal remedy in a bona-fide case prefixed with only the condition precedent, of ‘requiring immediate attention’. Suo motu emerges as a potential tool to meet the challenges of developing procedures and institutional mechanisms that maximize access to justice on issues of public interest. Environment is a subject of public interest and the tool of suomotu can certainly enhance the effectiveness of the Tribunal.

**End note:**

1. (2011) 14 SCC 365, AIR 1979 SC 369.
2. M. Cappelletti, Access to Justice 672 (1976).
3. Article 39-A of the Indian Constitution, incorporated by the 42nd Amendment Act, 1976. It states that “the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any

other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”.

4. *Tamil Nadu Merchantile Shareholders Welfare Association v. S. C. Sekar*, (2009) 2 SCC 784; and *Life Insurance Corporation of India v. R Suresh*, (2008) 11 SCC 319.
5. (2012) 13 SCC 736.
6. WP (C) No. 284/2012.
7. 2017 SCC OnLine Del 9428.
8. Section 190-199 CrPC.
9. Section 12(a), Protection of Human Rights Act, 1993.
10. Section 13(3), Prohibition of Child Marriage Act, 2006.
11. Greening Justice: Creating and Improving Environmental Courts and Tribunals, G Pring, C Pring, 2009, <https://www.eufje.org/images/DocDivers/Rapport%20Pring.pdf>.
12. Pring and pring, Environmental Courts and Tribunals – A guide for policy makers, UNEP 2016.
13. Topromote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (<https://sustainabledevelopment.un.org/sdg16>).
14. Supra note 12.
15. George Pring&Catherine Pring, Greening Justice: Creating and Improving Environmental Courts and Tribunals 1(2009).
16. *M.C. Mehta v. Union of India (Oleum Gas Leak Case)* AIR 1987 SC 1086; *Indian Council for Enviro-Legal Action v. Union of India, (Bichhri-Chemical industries)* 1996 (3) SCC 212; *Vellore Citizens Welfare Forum v. Union of India, (Pollution from Tanneries)* 1996 (5) SCC 647; *M.C. Mehta v. Kamal Nath (Public Trust Doctrine)* 1997 (1) SCC 388.
17. IMPLICATIONS OF INDIAN SUPREME COURT’S INNOVATIONS FOR ENVIRONMENTAL JURISPRUDENCE, GeetanjoySahu, Law Environment and Development Journal, Volume 4/1.
18. The Rio Declaration on Environment and Development, 1992. Principle 10–“..... Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”
19. *M.C. Mehta v. Union of India*, 1986 (2) SCC 176; *Indian Council for Enviro-Legal Action v. Union of India*, 1996 (3) SCC 212; *Andhra Pradesh Pollution Control Board v. M. V. Nayadu*, 1999 (2) SCC 718; *Andhra Pradesh Pollution Control Board v. N. V. Nayadu II* 2001 (2) SCC 62.
20. Section 15, National Green Tribunal Act, 2010
21. Section 14, National Green Tribunal Act, 2010
22. Section 16, National Green Tribunal Act, 2010
23. Section 15, National Green Tribunal Act, 2010
24. Section 19(1), National Green Tribunal Act, 2010
25. APPLICATION NO. 49 OF 2012
26. ORIGINAL APPLICATION NO. 74 OF 2014
27. (1993) 4 SCC 441
28. (2010) 11 SCC 1
29. *P. Sundararajan v. Deputy Registrar*, NGT, Southern Zone, W.P. 3789 of 2014 and M.P. 1 of 2014.
30. J. Michael Angstadt, ‘Securing Access to Justice through Environmental Courts and Tribunals: A case in diversity, Vermont Journal of Environmental Law, Volume 17, 2016.

31. <https://timesofindia.indiatimes.com/city/bhopal/Dolomite-mining-a-threat-to-tiger-corridor-in-Kanha/articleshow/19469163.cms>.
32. <https://www.thehindu.com/news/national/more-river-stretches-critically-polluted-cpcb/article24962440.ece>
33. <https://indianexpress.com/article/india/17-year-olds-video-gets-kerala-talking-of-impact-of-sand-mining-5532847/>