

Precautionary principle in Environmental laws and its evolution in light of National Green Tribunal (NGT) judicial decisions with special focus on North-Eastern states

DRAFT-Research Proposal submitted to the National Law University Tripura

**For pursuing the Degree of
DOCTOR OF PHILOSOPHY IN LAW**

Provisionally submitted by

DEEPTI SINGH

1. INTRODUCTION

The precautionary principle in environmental laws is a fundamental concept that emphasizes the importance of taking preventive action in the face of uncertainty about potential environmental harm. It has evolved significantly in the context of National Green Tribunal (NGT) judicial decisions, with a special focus on the North-Eastern states of India. This evolution has been driven by the unique ecological and environmental challenges faced by the region, such as biodiversity conservation, forest protection, wildlife preservation, and sustainable development in diverse ecosystems. The NGT has played a pivotal role in interpreting and applying the precautionary principle in cases related to environmental conservation and sustainable development in the Northeastern states, as these are characterised by unique ecology and diversity and environmental challenges. Its decisions have stressed the need to prioritize environmental protection and take proactive measures to prevent harm, particularly in ecologically sensitive areas.

This evolving application of the precautionary principle has also highlighted the significance of public participation, transparency, and the integration of scientific research and traditional knowledge systems in environmental decision-making processes. The evolution signifies a paradigm shift towards a more holistic and proactive approach to environmental protection and conservation in the Northeastern states. This research proposal aims to explore the application of precautionary principle in judicial decisions, with a specific focus on the north-eastern states of India.

2. STATEMENT OF THE PROBLEM

The evolution of the precautionary principle in environmental laws, particularly in the context of the Northeastern states and as observed in NGT judicial decisions, has encountered several challenges and problems. These include:

1. **Uncertainty and Risk:** Assessing and addressing environmental risks and uncertainties, especially in the context of complex and diverse ecosystems, poses a significant challenge. Determining the potential for serious or irreversible harm to the environment requires a comprehensive understanding of local ecological dynamics, which can be a complex and evolving process in reference to North Eastern states.

2. **Balancing Development and Conservation:** The Northeastern states face the challenge of reconciling the need for sustainable development with the imperative of preserving their unique biodiversity and ecological heritage. Finding a balance between economic development and environmental conservation through implementation of environmental decisions remains a complex and contentious issue.

3. **Traditional Knowledge Integration:** Integrating traditional ecological knowledge, held by indigenous and local communities, with scientific research and environmental decision-making governance processes presents a challenge. Recognizing and leveraging traditional knowledge systems in the context of the precautionary principle requires careful consideration and collaboration.

4. **Reporting, Enforcement and Compliance:** Ensuring effective reporting and enforcement of environmental laws and regulations, as well as compliance with NGT judgments, poses a challenge in the Northeastern states. Strengthening institutional capacities and

mechanisms for robust legal compliance and enforcement is essential for translating judicial decisions into tangible conservation outcomes.

5. Stakeholder Participation: Facilitating meaningful stakeholder participation, particularly from indigenous and local communities, in environmental decision-making processes is essential. Ensuring that diverse voices and perspectives are represented and considered in the application of the precautionary principle remains a critical challenge, as the Northeastern peoples cultures and expectations are rooted in their systems.

6. Transboundary and Interdisciplinary Issues: Addressing environmental concerns that transcend state political boundaries and require interdisciplinary approaches presents a significant challenge. Cooperation and coordination among multiple stakeholders, including neighboring states and countries, are essential for effective environmental governance.

7. NGT as a Quasi-Judicial body: NGT being a Statutory Body and limited constitutional sanctity and its Jurisdiction and decisions can be challenged and the decisions are Reversible by Honble HighCourts and Supreme Court of India.

These problems underscore the complexity and multifaceted nature of applying the precautionary principle in environmental laws, especially in the context of the Northeastern states and NGT judicial decisions. Addressing these challenges requires an integrated and collaborative approach that considers ecological, social, economical and governance dimensions.

3. SURVEY OF LITERATURE

The literature Review: will encompass in-depth exploration of scholarly articles, legal provisions, and case law relating to

precautionary principle in environmental law, the role of NGT in environmental adjudication, and the specific environmental issues and conditions prevalent in the north-eastern states of India. All the Judgments will be further analysed for the types of judgments, the areas of conflicts and from the states where conflicts have come up. The progress on the application of precautionary principles in environmental governance through NGT decisions at metro capitals vis a vis north eastern states will be examined to draw a comparative analysis. The number of filed cases and number of settled cases from different states of India vis a vis North eastern states can also be drawn. Any specific issues (like large dams proposed in Northeastern states) and there are conflicts registered in NGT from specific region can also be examined.

Survey of Literature: The National Green tribunal act 2010 was referred to understand the powers of the tribunal and the necessity of expert member in green tribunal and their role and weightage.

The water prevention and pollution control act 1974 and case on river pollution in Sikkim and Arunachal Pradesh water resources in north eastern area, specific needs in order to preserve them, steps taken by green tribunal and further measure which can be taken.

The Forest conservation act 1980 to understand the measures which can be taken by the authorities for the protection of forest.

The scholarly article on “**The National green tribunal**”, as referred in International journal of environment volume 2 of 2014, to learn art of judging environment dispute and Critical Review of

Environment Impact Assessment Regulation In India was referred.

The scholarly book on “**Environmental Justice in India: The National Green Tribunal**” (Routledge Explorations in Environmental Studies) by author Gitanjali Nain Gill was referred to understand the genesis, operation and effectiveness of the Indian national Green Tribunal.

The scholarly book on “**Environmental issues of north east India by Zahid Hussain**”, to get insight of actual problem existing in North Indian states to find out measures for resolution of those problems.

NGT CASES-

kaziranga national park case, assam- Judgement of the National Green Tribunal in the matter of Rohit Choudhury Vs. Union of India & Others dated 24/08/2016. The application was filed against the alleged illegal activities including operation of stone crushers, brick kilns, tea factories and other polluting activities in the No Development Zone that was demarcated by the Ministry of Environment, Forest and Climate Change vide Notification dated 5th July, 1996 around the Numaligarh refinery in Assam. NGT directs the wall with barbed wire fencing which comes in the way of Elephant Corridor, to be demolished and the proposed township should not come up in the present location as it is a part of Deopahar 'PRF'.

Illegal Coal Mining in Meghalaya- In response to the environmental degradation caused by illegal coal mining in Meghalaya, the NGT issued a series of orders to address the adverse impacts of unregulated mining activities on the region's ecology, water bodies, and communities. The tribunal's

interventions sought to enforce environmental norms, prevent unauthorized mining, and mitigate the ecological damage caused by coal extraction operations.

River Pollution in Sikkim and Arunachal Pradesh-The NGT addressed cases of river pollution in Sikkim and Arunachal Pradesh, particularly focusing on the Teesta and Siang rivers. Its directives aimed to curb pollution caused by industrial effluents, unregulated construction activities, and waste discharge into water bodies. The NGT's interventions underscored the importance of protecting the aquatic ecosystems and ensuring the right to clean and unpolluted water for local communities.

Baghjan Oil Well Blowout in Assam- Following the blowout and subsequent fire at the Baghjan oil well in Assam, the NGT intervened to oversee the environmental impact assessment, remediation efforts, and compensation for the affected communities. The tribunal's directives emphasized the need for comprehensive environmental restoration measures, including soil remediation, biodiversity conservation, and livelihood rehabilitation for those impacted by the industrial accident.

5. Conservation of Wetlands and controls on Unlimited dam construction in Manipur and Tripura: The NGT addressed concerns related to the degradation and encroachment of wetlands in Manipur and Tripura, issuing orders to protect these critical ecosystems. The tribunal's interventions emphasized the significance of conserving wetlands for biodiversity, groundwater recharge, and flood mitigation, promoting the sustainable use of wetland resources and preventing their unauthorized conversion for developmental purposes.

These cases exemplify the NGT's proactive role in safeguarding the environment in the northeastern states by addressing diverse environmental challenges, ranging from biodiversity conservation

and pollution control to the regulation of extractive industries and the protection of fragile ecosystems.

The tribunal's interventions reflect the application of the precautionary principle and the imperative to balance developmental activities with ecological sustainability in the unique context of India's northeastern region.

4. SIGNIFICANCE OF THE STUDY

The research aims to contribute to the existing body of knowledge by shedding light on the application of precautionary principles in NGT decisions, particularly in context of the north-eastern states. The findings are expected to provide insights into the challenges and opportunities associated with the implementation of precautionary measures in environmental adjudication and propose recommendations for enhancing the effectiveness of such principles in the North Eastern region as well as strengthening institutional capacities.

5. SCOPE OF STUDY-The research aims to assess the impact of the application of precautionary principles in NGT decisions, particularly in context of the north-eastern states.

6. RESEARCH GAP- There has been some studies in this area but that is limited to some of the mainstream areas in India and did not focus, in particular, on North east states. A Comprehensive study of Judicial decisions with respect to the implementation of precautionary principle in environmental

laws in the region after the introduction of NGT as a Green Tribunal have not been done in a comprehensive manner. The present study seeks to bridge that gap.

7. RESEARCH OBJECTIVES AND MOTIVATION OF THE STUDY

- To critically analyse the concept of precautionary principles and environmental law and its relevance to the Indian legal framework. The historical development and evolution of the precautionary principle within the legal and policy frameworks of environmental governance, with a specific focus on Northeastern states and the jurisprudence of the NGT.

-To Examine selected NGT decisions pertaining to environmental issues in the north-eastern states and assess the extent to which precautionary principle have been applied and also to assess the intersection of the precautionary principle with existing statutory laws, regulations, and judicial precedents, identifying areas of synergy and potential conflicts.

-To identify the challenges and opportunities in the effective implementation of precautionary principles in the context of environmental adjudication, particularly in the north eastern region considering their different ecological diversity, traditional knowledge systems, and developmental imperatives and to assess the real-world impacts of applying the precautionary principle in environmental decision-making, particularly in the context of preserving biodiversity, mitigating pollution, and addressing climate change.

-To identify institutional and governance challenges related to the enforcement, compliance, and implementation of environmental laws guided by the precautionary principle and to examine the capacity and effectiveness of existing regulatory and adjudicatory mechanisms, including the NGT, in addressing environmental disputes and ensuring sustainable environmental management.

-To generate evidence-based policy and legal recommendations aimed at enhancing the application of the precautionary principle in environmental governance, specifically tailored to the ecological and socio-economic contexts of the Northeastern states.

-To propose strategies for harmonizing development and conservation objectives while upholding the spirit and principles of the precautionary approach.

-To examine the effectiveness of participatory processes in integrating diverse voices and perspectives when applying the precautionary principle in environmental governance.

Overall, the research aims to contribute to the scholarly understanding of environmental jurisprudence, policy formulation, and governance practices, with a specific focus on the precautionary principle and its implications for environmental sustainability in the Northeastern region of India. By addressing these objectives, the research endeavors to provide actionable insights and recommendations that can inform policy-making, legal reform, and institutional capacity-building efforts.

8. RESEARCH HYPOTHESIS

- i. After the formation of the NGT as Quasi Judicial Body, the principle of precautionary principle in Environmental governance has been effectively evolved.
- ii. The North East States have major environmental governance through judicial decisions of NGT dealing proactively with Environmental concerns.
- iii. A better environmental complaint/reporting mechanism in the North East States is required to be in placed in order to have an effective Environmental protection mechanism to strengthen precautionary principle.
- iv. There will be Constitutional crisis to upheld constitutional obligations if the either the Honble Supreme court or High courts do not wish to adopt the decisions of the NGT.
- v. If there is difference of Opinion between the State Government's economy upliftment decisions and NGT's to uphold Environment Protection, there is likelihood that state and other economy stakeholders may hamper or delay implementation of NGT decisions on Environmental Protection or getting themselves withdrawn from the NGT decisions by approaching Supreme courts.

9. RESEARCH QUESTIONS

- i. How the formation of NGT has upheld the concept of Precautionary principle in Environmental justice in India?
- ii. What are the effective mechanisms required for the effectiveness of NGT decisions in the State's vis a vis North East states?
- iii. Whether with the formation of the NGT, the Environmental legislative and judicial concerns of the States Vis a Vis Northeast states have undergone a change?
- iv. Whether the NGT decisions are making an impact for the States Vis a Vis North East states with respect to balancing the Development and Environmental concerns?
- v. What will be the consequence, if any State or the Northeast states doesn't wish to adopt the NGT decisions and its Limited scope if any?

10. RESEARCH METHODOLOGY

The researcher shall adopt a qualitative approach, employing combination of Library and Doctrinal research methods including case analysis. Primary data will be collected through extensive review of NGT judgements related to environmental cases in the north-eastern states. Secondary data shall be gathered through a comprehensive review of relevant statutes,

reports, newspapers, scholarly articles, and reports from governmental and non-governmental organisations.

11. LIMITATION OF RESEARCH

This research pertains to go through implementation of precautionary principle policies through NGT judicial interventions in the Country and its impact on environmental laws. Hence, travelling to all States and collecting data is a cumbersome task. Hence, the researcher focuses only to the North East states.

12. COLLECTION OF LITERATURE

Books, NGT Reports, Reports of Ministry of Environment and Forests, GoI, NGT Judgments, Law Commission Reports on setting up of Environment courts, Articles under Indian Constitution, Journal articles, Reports, etc.

13. ORGANIZATION OF CHAPTERS

a. Introduction

b. Environmental law and Rise of Precautionary principle in India

i. Constitutional framework and Environment protection

ii. Environment laws and earlier scope of Precautionary principle

iii. Evolution of Precautionary principle in India

iv. Conclusion

c. NGT and Precautionary principle in India

- i. Constitutional Provisions and Early Judicial Decisions to govern precautionary principle in India
- ii. Judicial Intervention through NGT for shaping the Precautionary Principle in India
- iii. Judicial Intervention through NGT for shaping the Precautionary Principle in India, in Focus to NGT states

d. Comparative perspective NGT and its Role vis a vis Green Tribunals at International levels and impact

- i. Introduction
- ii. NGT and other Green tribunals globally for comparison and its impact on Environmental governance
- iii. Rationalisation of Choice of NGT work in Different states for Comparison vis a vis North east states
- iv. NGT and Other States for implementing precautionary principle
- v. NGT and North East states for implementing precautionary principle
- vi. NGT and Environment Justice in India

- vii. Conclusion
- e. Ways to Implement transparent reporting mechanisms to track compliance with NGT judgments and environmental regulations.
- f. Assess the impact of Precautionary principle on Environment through NGT judicial decisions in the North East States
- g. Conclusion and Suggestions

BIBLIOGRAPHY

1. The National Green Tribunal Act, 2010, Ministry of law and Justice, New Delhi, June 2, 2010
2. The 186th LAW COMMISSION REPORTS , 2003
3. The INDIAN CONSTITUTION OF INDIA, PROTECTION OF ENVIRONMENT PROVISIONS UNDER THE INDIAN CONSTITUTION
4. NGT of India –An observation from Environmental Judgments, EDITORIAL Published in Springerlink
5. NGT guidelines
6. NGT Decisions
7. Water(Prevention and Control of Pollution) Act, 1974
8. The Air(Prevention and Control of Pollution) Act, 1981

9. The Environment(Protection)Act,1986