

National Green Tribunal on Western Himalayas Handbook

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Himalayan Advocacy
Chambers

National Green Tribunal on Western Himalayas

Handbook

Dharamshala
Himachal Pradesh · 176215
India



**Himalayan Advocacy
Chambers**



A man walks past the Faridkot House, a part of which has been leased out to the National Green Tribunal
New Delhi AFP/SCMP

June, 2022

“It will therefore sometimes happen that those rules which were made to secure right would if they were closely observed establish wrong, because they would operate in a manner not foreseen when they were made. Upon these occasions the aid of equity is solicited, not properly to control or supersede the law, but so to regulate its operation that it may produce the effect which the law always intends. The decisions of equity as contradistinguished from those of law are not contra legem but praeter legem [not against law but beyond law], they do nothing which the law forbids, they do only what the law desires but cannot perform.”

Sir Robert Chambers

Quoted in Henry E. Smith, Equity as Meta-Law, 130 YALE L. J. 1050 (2021)

About

**“We stand with communities
in defending the environment,
through the power of law.”**

Himalayan Advocacy Chambers is a registered non-profit based in Dharamshala in the Western Himalayan region of India. Our aim is to use the law to protect the third pole through a beautiful and welcoming space.

The three gaps we are working hard to fill, in legal practise and the larger Himalayan region are:

Location: Legal practice is highly concentrated in the metropolitan city.

Changing that was a priority for us because we believe that working from location is crucial to working for it - which is why we decided to establish within this region. You will find our community space and library in the quaint bazaar area of lower Dharamshala.

Collaboration: Lawyers, even those working to protect the environment, don't really collaborate with those from other disciplines - and tend towards wanting to drive the narrative - through analysis, opinions and argument.

We are ending that by collaborating with and assisting community members, instead of telling them what to do to save their home, the mountains. We also simplify complex and unapproachable legal information and share it with community members.

Novelty: There is no collaborative grassroots legal advocacy organization devoted to this unique region.

Well, that was until we came along.

This handbook is a result of our continuing work on each of these gaps.

Do follow us on Instagram and LinkedIN @Himalayan Advocacy Center

Visit our website at <https://www.himalayanadvocacy.com/>

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Preface

The process of compiling and organizing this handbook came from a need felt by all practicing advocates - the need to keep themselves updated with the law, and its interpretation by the courts of law. I also always wished to give back to the Western Himalayas, where I grew up, in a way that merged this proximity to the region with my profession. Then there were the books and law review articles on the need for lawyers to work on the field, as assistants and not protagonists. It seemed intuitive then, to start with mapping all orders of the National Green Tribunal (“NGT”) relevant to this region, in an easy to read and usable and contemporary format.

Although there is extensive literature providing a broad overview of the NGT, lasting attention towards how the Himalayas have shaped its jurisprudence and *vice versa* is scant, scattered or dated. This effort² was undertaken, with a sole focus on the Western Himalayan region consisting of Uttarakhand, Himachal Pradesh and Jammu & Kashmir and Ladakh³. This region is at a crucial international frontier where the environment and international relations suffer from great instability, directly impacting two of Asia’s most important river basins - Sindhu and Ganga, and India’s defense priorities. Himalayan ecology often finds itself at the very center of this instability.

What you are reading gathers a fairly representative picture of how the NGT has considered and settled environmental issues of the Western Himalayas over a time period of one year (June 1st, 2021 - May 31st, 2022). Each case summary is vividly referenced, keeping context in mind. This means that you can visualize the reports, policies, legislation and most importantly, the location behind a judicial order on the click of a button. The Black’s Law dictionary definitions of certain crucial (and commonly used by the Tribunal) terms have been duly added in footnotes.

Although the case summaries have been arranged in chronological order, orders passed in connected execution, miscellaneous, and review applications have been placed together for

² With support from Ritika Singh, Institute of Law, Nirma University, and Deepansh Tripathi, South Asian University.

³ Although Jammu & Kashmir and Ladakh are two separate Union Territories, the nomenclature used by the High Court at Srinagar is ‘Jammu & Kashmir and Ladakh’, has been adopted in this handbook, with due respect. This is with the exception of case titles and separate nomenclatures used by agencies like the ‘Jammu & Kashmir State Pollution Control Board’.

convenience. The subject matter of each case has also been flagged with key words - for instance, sand mining, stone crushing, construction or a combination of such issues. 'Standard' subject matter/issue based classifications have been left out in the interest of preserving subjectivity.

It may be noted that many cases of significant importance are still being adjudicated by the Tribunal, hence not making it to these pages. However, considering major pending issues on law and fact, including on high altitude urban planning, and watershed conservation, the Himalayan Advocacy Center continues to track these issues via our website and google maps, which pair well with this handbook for all those interested in a more granular approach.

It is our hope at the Center that this handbook only evolves from here, to incorporate more orders and perspectives from the ground and Tribunal itself, over time. A collection of judicial orders is insightful in ways that reading individual orders is not. What those ways are, only time can tell - for to lay them out prematurely here would be to submit to the need to drive the narrative - which properly belongs in the hands of those that are facing environmental issues.

National Green Tribunal in the Western Himalayas from June 1st, 2021 till May 31st, 2022, as depicted on Google Earth.



Introduction

Perhaps most crucial to contemporary Indian democracy are her temples of justice, the constitutional courts. And yet, the concrete jungles built over the increasingly unstable slopes of Shimla made it impossible for one such temple, the High Court of Himachal Pradesh to be rebuilt. In its landmark 2017 judgment in *Yogindra Mohan Sengupta v. Union of India*, the NGT warned of a ‘terrible loss of person, property and natural resources of Shimla’ but for the most stringent adherence to environmental law. That judgment is one of the few of such import, that still hold ground in the Tribunal’s jurisprudence⁴. In a pending matter, the Tribunal finds itself considering an absurd situation - that of the State of Himachal Pradesh effectively sitting in appeal over the Tribunal's judgment in *Yogindra Mohan Sengupta*⁵, by encouraging large scale construction in the 2041 master plan of Shimla - and possibly the unimaginable loss of life which would follow, in the event an earthquake occurs.



Indicative locations of areas from where road construction issues arose before the National Green Tribunal

To state that the Tribunal is discharging an unpopular function is to state the bare minimum. The declared policy priority of the National Highways Authority of India (“NHAI”) has been to develop an extensive network of highways crossing across the Western Himalayas, to bring

⁴ Others of significance have been *S.P Muthuraman v. Union of India*, 2015 SCC OnLine NGT 169, *Himmat Singh Shekhawat v. State of Rajasthan*, 2015 SCC OnLine NGT 846 and *Sreeranganathan K.P. v. Union of India*, 2014 SCC OnLine NGT 15.

⁵ *Yogendra Mohan Sengupta v. Union of India*, Original Application 297 of 2022, Order dated 12th May, 2022.

in tourism and secure India's defense requirements. And yet those very highways have a devastating impact on commerce, human and non-human life, and the ecology of the Himalayas. This past year, the Tribunal considered various such cases - from the National Highway 44 connecting Udhampur to Banihal⁶ to National Highway 72A connecting Ganeshpur and Dehradun⁷. In the latter, we witness an illuminating back and forth between the Supreme Court and Tribunal, on a Section 16 issue concerning the appropriate stage at which a government decision may be challenged under the NGT Act, 2010⁸. The former is an ideal case study for the consequences that unfettered development and financial mismanagement may have on slope stability and the rule of law.

With development comes waste of all kinds. From pharmaceutical and biomedical to plastic and construction waste. The Tribunal considered a substantial number of such cases, impacting some of our most pristine wetlands (such as the Wular) and rivers, including the Khoh⁹, Tirthan¹⁰ and Sutlej¹¹.

A striking reminder of the consequences of such waste finding its way into rivers was the *Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh*¹² case, which brought up the issue of 'antimicrobial Resistance', in what may be called factual and dystopian in equal measure - the creation of medicine resistant microorganisms. Of note is the affidavit of the Ministry of Environment, Forest and Climate Change ("MoEFCC") here, citing India's need to effectively compete with the Chinese pharmaceutical manufacturing market, also recently emphasized by the Minister of External Affairs on the issue of national security. Such was the degree of pollution, that the Tribunal was constrained to give effect to standards on 'bulk drugs' yet to be finalized by the MoEFCC, a situation having its own bearing on the separation of powers between judiciary and executive.

It is becoming clear that the NGT may no longer be considered as a body solely adjudicating Section 14, 15 and 16 matters¹³ - provisions requiring minimum thresholds of specificity in terms of limitation period, nature of executive action questioned, factual matrix and such. The Supreme Court has made this abundantly clear in its recent judgments on the Tribunal's *suo motu* powers to tackle environmental issues¹⁴. The Tribunal is charged with effectuating both

⁶ Amresh Singh v. Union of India, 2021 SCC OnLine NGT 274.

⁷ Citizens for Green Doon v. Union of India, 2021 SCC OnLine NGT 326.

⁸ Citizens for Green Doon v. Union of India, 2021 SCC OnLine SC 1074 at paragraph 8.

⁹ Arvind Baniyal v. State of Uttarakhand, Original Application 144 of 2019, Order dated 7th October, 2021.

¹⁰ Ashish Shaunik v. State of Himachal Pradesh, 2021 SCC OnLine NGT.

¹¹ Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh, Original Application 136 of 2020, Order dated 6th April, 2022.

¹² Ibid.

¹³ See National Green Tribunal Act, 2010 ("NGT Act").

¹⁴ Municipal Corporation of Greater Mumbai v. Ankita Sinha, 2021 SCC OnLine SC 897 at paragraphs 51-75.

Article 21 and India's commitments made in the Stockholm and Rio conventions¹⁵. This brought up a host of larger, ostensibly pure policy centric issues of tourism¹⁶, forest fires¹⁷ and ecologically sensitive areas¹⁸. Conspicuous by its absence here was the issue of climate change. The Tribunal passed important directions on each of these issues without having a specific fact situation brought before it, via an Original Application or Appeal. This is of course not to say that the Tribunal did not consider various specific issues passing standalone orders shedding light on its jurisprudence concerning the Western Himalayas. Although one year is far too less to draw definitive trends, it is heartening to observe the development of a *sui generis*¹⁹ Himalaya focussed jurisprudence, by the Tribunal.

¹⁵ Id. at paragraph 43. *See also* Mantri Techzone (P) Ltd. v. Forward Foundation, (2019) 18 SCC 494 and NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566.

¹⁶ In re : News item published in The Hindu dated 27.02.2022 titled "Tourism has brought economic prosperity to the Himalayan region, but the environmental cost has been catastrophic", 2022 SCC OnLine NGT 87.

¹⁷ In re : News item published in Hindustan dated 21.04.2022 titled "Village in danger due to fire in forest", Original Application 301 of 2022, Order dated 29th April, 2022.

¹⁸ D.V Girish v. Union of India, 2022 SCC OnLine NGT 117.

¹⁹ Of its own kind or class; unique or peculiar, Black's Law dictionary, 9th Edition. This would be, in a way similar to the NGT itself, *see* Municipal Corporation of Greater Mumbai v. Ankita Sinha, 2021 SCC OnLine SC 897, at paragraphs 63-67.



Guidance

1. We intentionally designed this document to be a handbook rather than a casebook. The need to balance brevity with enough background information to allow for independent research, time period for which judicial orders were considered, and an audience beyond legal professionals informed our choices,
2. All hyperlinks have been colored “gray” to differentiate them from standard text. You can access further information by clicking (try [here](#)) on each hyperlink. Note that the link may open on the same page on the browser. To access the handbook, simply go back,
3. This handbook covers cases disposed of or concluded by the Tribunal. For further detail, we suggest you refer to our judicial tracker for information on all cases, disposed or ongoing. The tracker is available on [Google Maps](#) as well as [Google Docs](#),
4. This handbook can be used in print as well as online. However, accessing it online allows you to access hyperlinks and in turn, a lot more material connected with each case. This includes [maps](#), reports, reportage, papers, connected judicial orders and such,
5. We have arranged case summaries in the following format, with the exception of connected cases mentioned in the next point:

Line 1: <Case title> <Citation/Case number> <Date>

Line 2: <Key Words>

Line 3 onwards: <Summary>

6. For connected cases, i.e. miscellaneous, review or execution applications pertaining to the same issue, the format used is as follows:

Line 1: <Case title> <Citation/Case number> <Connected matters>

Line 2: <Key words for all connected matters>

Line 3 onwards: <Connected matter title> <Date> <summary>

7. A case number has been provided for those judicial orders which have not been reported on SCC OnLine as of June, 2022,

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