

Impact case study (REF3)

Institution: University of Northumbria at Newcastle		
Unit of Assessment: 18 (Law)		
Title of case study: Shaping Judicial Practice and Access to Environmental Justice: Insights from India's National Green Tribunal		
Period when the underpinning research was undertaken: August 2011 – December 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Gitanjali Nain Gill (Gita Gill)	Professor	01/08/2011 – present
Period when the claimed impact occurred: 2016 – December 2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>Globally, specialised environmental courts and tribunals (ECTs) are dynamic adjudicatory forums offering a flexible mechanism for dispute resolution. Professor Gita Gill's India research is the first study based in a developing country of a specialised environmental tribunal-National Green Tribunal (NGT). The research impact is primarily in India, but with substantial international dimensions at the United Nations level. Gill's research has:</p> <ol style="list-style-type: none"> 1) shaped and improved India's NGT judicial practice by addressing scientific uncertainty and the application of the precautionary principle for better informed decision-making, and changed its participatory procedures resulting in greater accessibility and flexibility; 2) enhanced and enabled two Indian NGOs to access environmental justice through increased awareness and capacity-building that resulted in E-filing cases for the first time before the NGT, and registering complaints and obtaining a compensation order from the National Human Rights Commission (NHRC); and 3) influenced the United Nations Environment Programme (UNEP) guidance related to environmental adjudication in ECTs, as evidenced by citation and adoption of best practices for policy makers and judiciary at the global level. 		
2. Underpinning Research		
<p>Gill's research is the first in-depth empirical study of India's National Green Tribunal (NGT). The NGT, established in 2010, is a specialised statutory judicial body with legal and scientific judges adjudicating environmental laws and disputes involving multi-disciplinary solutions. The Tribunal offers wide access to environmental justice through five benches covering all regions of India. Funded by a British Academy Grant (2013-16) Gill's Indian fieldwork includes 110 recorded interviews, analysis of 1,130 reported judgments and court observations. Gill's research builds on ethnographic work with the NGT judges. This resulted in unique interview access to NGT Judges, Registrar General, Registrars and inspection of internal court documentation.</p> <p>Gill's empirical findings resulted in the first monograph devoted to a specialised environmental tribunal from a developing country [R1]. The key findings of the monograph are that the NGT: (a) delivers consistency in inter-disciplinary decision-making involving technically complex and polycentric environmental problems; (b) embeds international environmental law principles in the domestic legal context; (c) applies a human rights lens to address environmental protection; and (d) facilitates access to environmental justice through a liberal interpretation of the term 'affected environmental party', as well as offering speedier decisions and lower costs than traditional courts.</p> <p>Gill's NGT research reflects a practice-based approach that critically analyses characteristics of complex environmental disputes and decision-making. The range and depth of Gill's research identifies and promotes the innovative role of NGT decision-makers and their ability to reach inter-disciplinary holistic decisions by harmonising legal norms and scientific knowledge. Gill's 2016 and 2017 articles address the relative paucity of environmental empirical studies concerning how scientific knowledge is utilised in judicial decision-making [R2, R3]. Her findings demonstrate how the NGT judges configure the boundaries of adjudication by adopting both</p>		

problem-solving and often policy-creation approaches in their decision-making to ensure protection of human health and environment. The benefits of subject specific knowledge on the inter-disciplinary bench promotes better environmental decisions while simultaneously recognising scientific uncertainty in environmental matters.

Building on her innovative findings, Gill's 2019 article stresses the importance of a greater understanding of the precautionary principle that emphasises caution in environmental decisions in the absence of scientific certainty [R4]. Gill's unique Indian data provides a path-breaking, observational study of the judiciary's understanding and application of the precautionary principle and related scientific uncertainty. Gill creates a practical, explanatory, environmental governance framework that illustrates levels of scientific certainty/uncertainty and categorises acceptable parallel legal standards of proof for judicial decision-making in the application of the precautionary principle. The framework facilitates precautionary interventions with greater certainty and develops a 'scientifically-legal' lexicon of meaning for the judiciary that promotes swift and uniform environmental decision-making.

Additionally, Gill's research outcomes are manifested in social value engagement through grassroots activism with two Indian NGOs resulting in the protection of human rights and the environment. In India 66 percent of the population (895 million) are rural dwellers. These people are often disenfranchised victims of environmental degradation and violation of human rights due to their poverty, unawareness, and illiteracy. Their effective access to environmental justice and protection of human rights requires addressing issues of inequality, inequity, recognition, and capability. Gill promotes the intertwined crucial relationship between the human right to life, health, and environmental protection [R5]. Her research advances the importance of accessing environmental justice through statutory institutions, i.e., the NGT and NHRC. Both institutions offer greater accessibility, flexibility, relaxed petitioner standing, and lower costs that enhance legal process and remedies [R1, R5, R6].

Gill's research incorporated by UNEP stresses the importance of dedicated ECTs to advance the environmental rule of law and promote sustainable development. Her research identifies NGT as a best practice institutional role model relevant to those developing countries that are exploring, creating, or improving environmental dispute resolution institutions [R1, R6].

3. References to the research (indicative maximum of six references)

R1. Gita Gill, *Environmental Justice in India: The National Green Tribunal* (London: Routledge, 2016) <https://doi.org/10.4324/9781315686592> (Translated into Chinese with a *Foreword* by Lord Carnwath, Judge Supreme Court UK - March 2019) Available on request

R2. Gita Gill (2016) 'Environmental Justice in India: The National Green Tribunal and Expert Members' *Transnational Environmental Law Journal* 5(1): 175-205
<https://doi.org/10.1017/S2047102515000278>

R3. Gita Gill (2017) 'The National Green Tribunal of India: Decision-Making, Scientific Expertise and Uncertainty' *Journal of Environmental Law and Management* 29(2-3): 82-88
<https://www.lawtext.com/publication/environmental-law-and-management/contents/volume-29/issue-2> Available on request

R4. Gita Gill (2019) 'Precautionary Principle, its Interpretation and Application by the Indian Judiciary: 'When I use a word it means just what I choose it to mean-neither more nor less' Humpty Dumpty' *Environmental Law Review* 21(4): 292-308
<https://doi.org/10.1177/1461452919890283>

R5. Gita Gill, 'Human Rights and Environment Protection in India: A Judicial Journey from Public Interest Litigation to the National Green Tribunal' in Grear, A., and Grant, A., (eds) *Thought, Law, Rights and Action in an Age of Environmental Crisis* (Cheltenham: Edward Elgar, 2015) 123-154 <https://doi.org/10.4337/9781784711337.00013> Available on request

R6. Gita Gill (2020) 'Mapping the Power Struggles within the National Green Tribunal of India: The Rise and Fall?' *Asian Journal of Law and Society* (published Online 2018) **7(1)**: 85-126
<https://doi.org/10.1017/als.2018.28>

4. Details of the impact

Gill's research impact results from direct engagement with institutions and citizens in India, and influence on UNEP. In India, the beneficiaries include NGT judges whose judicial practice has been influenced, improved, and changed; and two grass-root environmental NGOs through enhanced awareness and capacity building, thereby resulting in E-filing cases for the first time before the NGT and registering complaints and obtaining a compensation order from the NHRC. On the international level, UNEP has benefitted from Gill's research, evidenced by citing and adopting best practices to improve environmental adjudication in ECTs.

4.1 Shaping and Improving India's NGT Judicial Practice

Gill's innovative inter-disciplinary research on the relationship between scientific uncertainty and judicial governance has resulted in better informed environmental decision-making. Based on extensive discussions with Gill between 2014-2020 and an on-going research relationship, the NGT Scientific Judge, Dr Ajay Deshpande, reconsidered his perception of how the environmental adjudicatory framework, the NGT, addressed scientific knowledge and evidence, and the use of environmental law principles, especially the precautionary principle [E1]. Consequently, the NGT Scientific Judge, as the Chairman of the 2019 NGT National Monitoring Committee for Hazardous Waste Management, found Gill's work '*very useful in evolving the formulation for effective implementation of the hazardous waste rules and forming an opinion of the expert committee*' that led to '*informed decision-making in the application of precautionary principle*' [E1]. Gill's research [R3] was cited in the 2019 Interim Report of Monitoring Committee on Management of Hazardous Waste [E2, p20]. The 2019 Interim Report on Management of Hazardous Waste was submitted and accepted in its totality by the NGT. The Tribunal in the case of *Rajiv Narayan v Union of India* (NGT Order, 12th April 2019) directed that the 2019 Interim Report's recommendations be fully implemented and monitored by the Chief Secretaries at the state level and the Ministry of Environment and Forests, and Central Pollution Control Board at the national level. Hazardous waste remains a major and continuous environmental challenge in India.

Gill's direct engagement and impact on NGT judicial practice is further evidenced by the 2014-15 field work interaction between Gill and the NGT Registrar General, Judge Sanjay Kumar. The Registrar General's court, under the NGT Rules 2011, decides all questions arising out of the scrutiny of the applications and appeals before they are registered. Principles drawn from Gill's '*thought-provoking, practical and original research*' [R5] led to the Registrar General re-evaluating the use of discretion, procedural requirements, and decisions under the 2011 NGT Rules to promote participatory procedures that help to deliver greater accessibility and flexibility [E3, p2]. Consequently, the Registrar General, based on Gill's research, made the following changes: (a) testimonies of four witnesses admitted in the Bengali language instead of mandatory English or Hindi language [E3, p4]; (b) extended the time-period for filing replies or other processes beyond the statutory limit [E3, p6]; and (c) secured police protection for official on-site investigators sent by the NGT for fact verification [E3, p7].

4.2 Enhancing and Enabling Indian NGOs to Access Environmental Justice through NGT and NHRC

Gill's research and grass-root activism with two Indian environmental NGOs, Parvayaran Mitra and InnerVoice Foundation, successfully enhanced and enabled victims of environmental degradation to obtain redress through NGT and NHRC.

Gill acts as an Advisor and Trainer with Paryavaran Mitra (Friends of Environment) to support victims of environmental degradation through awareness and capacity-building empowerment programmes, and to enforce their environmental-human rights by E-filing cases in the NGT. For

example, in January 2020, Gill produced a Toolkit titled *Access to Environmental Justice in India through Courts* based on her rich research and writing, including [R1 to R6]. The 32-page Toolkit is published in English, Gujarati, and Hindi, and is available free on Parvayaran Mitra's website. The Toolkit extends public accessibility to environmentally affected parties, citizens, and environmental activists. It provides significant practical information and guidance to access NGT and NHRC in order to obtain speedy justice, redress environmental damage or harm, and enforce fundamental and legal rights. The Toolkit '*support[s] capacity-building through growing awareness of environmental laws and access to environmental justice through the Indian judiciary*' [E4a, p3]. The Toolkit was launched and tested on 18-19 January 2020 in Ahmedabad (India) at a two-day Awareness and Capacity Building Workshop. The Workshop was attended by 70 people, including environmentally affected villagers, Panchayat (elected village and community) grass-root leaders, environmental activists, local pressure groups and environmental professionals. Paper copies of the Toolkit were given to all participants. Gill, in the Workshop, explained and demystified the powers, procedures and E-filing provisions of the NGT. The Workshop Report [E4b, p32-45] evidences presentation, simulation, and small group-work exercises. The participants identified their local problems and Gill helped them understand procedure, drafting, and how to E-file an environmental case before NGT.

The Workshop Results [E4c, p47-54] evidences that all participants stated a raised environmental awareness and 91% of rural participants felt empowered to pursue a legal remedy in the NGT [E4c, p49]. To quote, in translation (a) '*So many new information was received which we were not aware about... The E-filing about NGT was helpful and we will go to NGT*'; (b) '*I have been trying to solve the issues in my village but no-one is listening to me. But now I will go to the NGT and achieve my goals*'; (c) '*From all the info that I got from this workshop I will use E-filing in NGT to help my community and make sure my efforts are not futile. I will now use NGT as a forum to fulfil my purpose and access to justice. We've been suffering for years and this workshop has given us hope that environmental justice is possible*' [E4c, p47-48]. The Workshop was a '*huge success and Gill's contribution was immensely helpful and beneficial especially on E-filing before the NGT*' [E5].

A direct outcome of the Toolkit and Workshop is the E-filing, for the first time by Paryavaran Mitra, of two cases before the NGT. Gill's involvement was central in drafting and E-filing these cases. Gill's research and direct involvement '*has brought change resulting in Paryavaran Mitra approaching the NGT for environmental justice*' [E5]. Her research was cited in both cases. The first case *Chetan Vyas v Swan Energy Limited* (E-filing Number 2704105001602020, 15 June 2020) [E6, p1] supported by Paryavaran Mitra, challenges the construction, without environmental clearance, of a gas-based power plant that will affect seven villages in Gujarat's Amreli district having 20,000 inhabitants, 5,000 fishermen and 5,000 head of livestock. The excerpt of Gill's research [R1] on an effective environmental clearance is cited in Para 18 and Annexure A-4 [E6, p13 and p67-69]. The second case *Mahesh Pandya v Gujarat Pollution Control Board* (E-filing Number 2704105002762020, 23 July 2020) [E7, p1] seeks the postponement of an environmental public hearing for a proposed refinery extension project during COVID-19 restriction times. The proposed Gujarat refinery project will affect 14 villages in Jamnagar district with 32,724 villagers, and 11 villages in Devbhumi Dwarka district with 35,092 villagers. In total 67,816 villagers' lives would be detrimentally affected due to the proposed refinery that may cause adverse environmental consequences. Gill's research [R1] on the importance of an effective public hearing concerning environmental projects is cited in Para 20 and Annexure A-8 [E7, p10 and p56]. On-going research between Gill and Paryavaran Mitra focuses on her new British Academy project involving capacity-building and access to environmental justice concerning rehabilitation and resettlement due to compulsory land acquisition (2020-23; SRG20\200093).

Gill's on-going advisory input resulted in InnerVoice Foundation's ability to approach NHRC regarding arsenic groundwater contamination, health and human rights violations. As a '*direct result of the practical insights flowing from [Gill's] published research, legal expertise and involvement*' [E8] InnerVoice has:

(1) Filed complaints before NHRC that concerned 60,000-100,000 school children and residents in Jamalpur, Chakiya, Sonbarsa, Raniganj and Gonhiya Chhapra, Ballia (Uttar Pradesh villages). The NHRC received and admitted the complaints and strongly directed the state Government of Uttar Pradesh to take up the matter urgently and undertake remedial action (Case file 33723/24/10/2016) [E8, p2]; and (2) obtained a suitable compensation order from NHRC for next of kin of the deceased who died because of consuming arsenic contaminated water (Order 30th July 2015) [E8, p3].

4.3 Influencing United Nations Environment Programme (UNEP)

In 2015-16, UNEP drew heavily on Gill's research and expertise for its publication titled 'Environmental Courts and Tribunals: A Guide for Policy Makers' [E9]. UNEP's 2016 Guide is considered as a '*truly valuable and practical ECT guide and roadmap*' [E9] for policy makers and judiciary for adopting best practices to improve environmental adjudication in their quest to deliver the 2030 Agenda for Sustainable Development. The 2016 Guide acknowledges Gill as a global access to justice expert [E9, Appendix E, p123] on ECTs, and especially the NGT. The 2016 Guide incorporates Gill's research [R1, R2] by citing and adopting best practices to improve integrated law and scientific competence, both crucial to successful decision-making in complex environmental cases [E9, Endnote 63, p98]. Other 'best practices adopted include procedural flexibility, transparent selection of adjudicators, liberal standing provision, stakeholder consultation process, and continuing professional development of adjudicators [E9, Endnotes 61, 62, 64, 69, 78 and 85; p98-99]. Examples of 2016 Guide usage include UNEP (Law Division) organising a workshop run in February 2017, which 'enhanced the capacity' of members of the Kenyan National Environmental Tribunal and provided tribunal members with '*practical examples to adjudicate environmental matters*' [E10, p2]. On the international level, the UN Office of the High Commissioner for Human Rights, in order to enhance the effectiveness of state based non-judicial mechanisms (such as ECTs) in cases of business-related human rights abuses, used the Guide as a resource for experts to use in its Accountability and Remedy Project II [E10, p2].

5. Sources to corroborate the impact (indicative maximum of 10 references)

Ref.	Source of corroboration	Link to claimed impact
E1	Testimonial - Dr Ajay Deshpande, Former NGT Judge, Pune Bench, India - (E1 2018 and E1 2019) and subsequent email correspondence (E1 2020)	Influencing and Improving NGT judicial practice
E2	NGT's 2019 Interim Report on Management of Hazardous Waste (Dr Ajay Deshpande)	Influencing and Improving NGT judicial practice
E3	Testimonial - Judge Sanjay Kumar, Former Registrar General NGT, India (July 2020) and includes Judicial Orders	Influencing and Improving NGT judicial practice
E4	Toolkit (4a), Workshop Report (4b) and Workshop Results (4c)	Enhancing and Enabling access to environmental justice in NGO sector
E5	Testimonial - Paryavaran Mitra (November 2020)	Enhancing and Enabling access to environmental justice in NGO sector
E6	<i>Chetan Vyas v Swan Energy Limited</i> case and E-filing number screenshot (June 2020)	Enhancing and Enabling access to environmental justice in NGO sector
E7	<i>Mahesh Pandya v Gujarat Pollution Control Board</i> case and E-filing number screenshot (July 2020)	Enhancing and Enabling access to environmental justice in NGO sector
E8	Testimonial - InnerVoice Foundation India (May 2020) and includes NHRC Orders	Enhancing and Enabling access to environmental justice in NGO sector
E9	UNEP, 'Environmental Courts and Tribunals: A Guide for Policy Makers' (2016)	Influencing UNEP
E10	UNEP Law Division (December 2020)	Influencing UNEP