

The National Green Tribunal in Indian Perspective

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ABSTRACT

The environmental disputes are typical and complicated in nature so it requires an expertise in different fields (like biology, sociology, economics, administration, management and law, etc.) to resolve the environmental matters in effective and expeditious manner which is not possible with a regular judicial and administrative set up in India. The need for environmental courts has long been felt for other reasons also like the higher judiciary in India is overburdened with a large backlog of cases. Thus, in order to have effective prevention of environmental pollution environmental complaints should be decided expeditiously which is not possible in the present context of judicial administration. Therefore, there was an urgent need for an alternative forum so that environmental cases were decided without much delay. India is a party to the decisions taken at Stockholm Conference 1972 and Rio De Janerio Conference, 1992, wherein the participating states were called upon to provide effective assess to judicial and administrative proceedings and to develop national laws regarding the liability and compensation for the victims of pollution and other environmental damage.

INTRODUCTION

The environmental disputes are typical and complicated in nature so it requires an expertise in different fields (like biology, sociology, economics, administration, management and law etc.) to resolve the environmental matters in effective and expeditious manner which is not possible with a regular judicial and administrative set up in India. The need for environmental courts has long been felt for other reasons also like the higher judiciary in India is overburdened with a large backlog of cases¹. Thus, in order to have effective prevention of environmental pollution environmental complaints should be decided expeditiously which is not possible in the present context of judicial administration. Therefore, there was an urgent need for an alternative forum so that environmental cases were decided without much delay². India is a party to the decisions taken

at Stockholm Conference 1972 and Rio De Janerio Conference, 1992, wherein the participating states were called upon to provide effective assess to judicial and administrative proceedings and to develop national laws regarding the liability and compensation for the victims of pollution and other environmental damage³.

¹ The Supreme Court of India pointed out that cases involving issues of environmental pollution, ecological destruction and its conflict over natural resources involved assessment and evolution of scientific data and, therefore, according to the court, there was an urgent need of involvement of experts in the administration of justice.⁴ This view was reiterated in Indian Council for Enviro-Legal Action v. Union of India. (1996) 2 SCC 212.

² The Indian Apex Court opined in M.C. Mehta V. Union of India AIR (1987) SC, popularly known as Oleum Gas Leak Case - that it would be desirable to have the setting up of "environmental courts on the regional basis with a

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professional judge and two experts drawn from the...Ecological Science Research Group."

³ See Dr. Paramjit S. Jaswal, Dr. Nishtha Jaswal and Vibhuti Jaswal (Ed.) Environmental Law (373) 2017.

Prominent jurists of the country also expressed the similar views ⁴. The Rio Declaration on Development and Environment states that “states shall develop the national law regarding liability and compensation for the victims of Pollution and other environmental damage” ⁵.

The Law Commission of India in its 186th Report recommended that the government needs to constitute special Environmental Courts, to deal with multidisciplinary issues relating to protection of environment, which would have members with judicial or legal experience assisted by members with technical knowledge. Since the advice of environmental experts is required in deciding cases related to the environment it would be feasible to include environmental experts in this specialised body. Setting up such a body would help in fast disposal of cases. Environmental Courts in various states or group of states would have original jurisdiction in all civil cases where a substantial question relating to environment is involved and Appellate jurisdiction under various other statutes ⁶.

To give effect to the above directive and to provide for a forum for effective and expeditious disposal of cases arising from any accident occurring while handling any hazardous substance, the Indian Parliament enacted the National Green Tribunal Act, 2010 ⁷.

To give effect to these exhortations contained in the global declarations on environment and to provide for a specialized

forum for effective and expeditious disposal of cases arising out of enforcement of environmental laws in the country, the Indian Parliament has enacted, recently, the National Green Tribunal Act, 2010 which has come into force on 2 June 2010.

The Act seeks to replace the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 which have been in operation for some time in the country. The Act has been enacted in response to the recommendations of the Law Commission of India and the Indian Supreme Court which highlighted the large number of environment-related cases pending in the courts.

OBJECTIVES

The objectives of establishing a National Green Tribunal are as follows ⁸:

- To provide effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment.
- Giving relief and compensation for damages to persons and property
- And other related matters.

SALIENT FEATURES

The Act seeks to establish specialized Green Tribunal with five benches located at different regions in the country ⁹. The Act confers on the Green Tribunal to hear initial complaints ¹⁰ as well as appeals from decisions of authorities under various environmental laws ¹¹. The Tribunal, when established, would not be bound to follow the procedure laid down in the Code of Civil Procedure 1973. Instead, it is allowed to follow the abstract principles of natural justice ¹². However, the Tribunal will have the powers of a civil court under the civil procedure code ¹³. Its decisions are binding on the parties ¹⁴. There can be appeals to the Supreme Court against the decisions, orders or awards of the Tribunal. The Act also ordains that no civil court shall be allowed to entertain cases which Tribunal is competent to hear. The most salient feature of the Act is that the Green Tribunal is enjoined to follow the internationally recognized and nationally applied environmental principles of sustainable

⁴ Prof. Upendra Baxi has expressed the view that a single judicial forum with jurisdiction under the Environment Act and other related environmental acts over both criminal prosecutions and civil claims for violation of the laws should be established. From this forum, appeals could go to an appellate court of the status of the High Court with the facility of another appeal to the Supreme Court under Art 136 of the Indian Constitution. He was also of the opinion that victim groups and public interest groups should have access to these courts. See, U Baxi, Environmental Protection Act: An Agenda for Implementation, 10 (1987); see also G Sadasivam Nair, Environmental Offence: Crime against Humanity, in P Leelakrishnan (ed) Law & Environment, 186 (1992).

⁵ Principle 13 of the Rio Declaration on Development and Environment.

⁶ Available at <https://www.lawteacher.net/free-law-essays/constitutional-law/national-green-tribunal-act-constitutional-law-essay.php> last visited on 18 April 2019.

⁷ The immediate reasons that prompted the Indian Parliament to enact the Tribunals Act had been (i) the inordinate delay involved in the redressal of environment related grievances like the one involving the Bhopal Gas Leak case (Charan Lal v Union of India AIR 1990 SC 1480) and (ii) the inadequacy of the existing judicial system to provide adequate relief as evidenced in the Oleum Gas Leak Case (MC Mehta v Union of India AIR 1987 SC 965).

⁸ Available at: <https://www.legalbites.in/national-green-tribunal/> last visited on 16 April 2019.

⁹ Section 3 and 4 of the National Green Tribunal Act, 2010.

¹⁰ Section 14 and 15 of the Act.

¹¹ Section 16 of the Act.

¹² Section 19(1) of the Act.

¹³ Section 19 (4) of the Act.

¹⁴ Id., Section 21.

development, Precautionary principle and Polluter pays Principle while issuing any order, decision or award¹⁵.

The NGT is not bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. NGT is also not bound by the rules of evidence as enshrined in the Indian Evidence Act, 1872.

- It will be relatively easier for conservation groups to present facts and issues before the NGT, including pointing out technical flaws in a project, or proposing alternatives that could minimize environmental damage but which have not been considered.
- While passing Orders, decisions, awards, the NGT will apply the principles of sustainable development, the precautionary principle and the polluter pays principles. However, it must be noted that if the NGT holds that a claim is false, it can impose costs including lost benefits due to any interim injunction.

JURISDICTION

As per Section 14 (1) The National Green Tribunal has jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I of the National Green Tribunal Act 2010. The acts listed in Schedule 1 are:

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

The Tribunal shall hear the disputes arising from the questions referred to in sub-section (I) and settle such disputes and pass orders thereon. Appellate jurisdiction under section 16 of the Act. As per Section 15 (1) of the Act, the Tribunal may, by an order, provide,-

- a. Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule 1 (including accident occurring while handling any hazardous substance);

¹⁵ Id., Section 20.

- b. For restitution of property damaged;
- c. For restitution of the environment for such area or areas, as the Tribunal may think fit.

REVIEW AND APPEAL¹⁶

Orders can be appealed to the Supreme Court within 90 days.

Criticism

There is the lack proper infrastructure as it functions from two different premises. The body should have minimum 10 judicial and expert members, out of which only 2 judicial members and 4 expert members have been appointed till date. The number of environmental cases has been on the rise but due to lack of benches and infrastructure, the body is unable to pronounce its judgment on time¹⁷. Despite various proactive supports being taken by the tribunal the pollution levels has been continuously rising over the years. This is due to lack of effective support from government both at the centre as well in states. The inefficiency of Central and State pollution control boards is another reason for it. This often results in delays in implementing the tribunal's decision¹⁸. The tribunal is not having suo-moto powers which also restrict its ambit in the area of environment.

Some significant laws are not included for example the Wildlife (Protection) Act, 1972 which prevents any sort of destruction inside sanctuaries without permission. Another example is the Scheduled Tribes (Recognition of Forest Rights) Act, 2005 which gives rights to forest dwelling Scheduled Tribes to protect and conserve forest resources. NGT Jurisdiction is confined to where community at large is affected by specific form of activity such as pollution. It excludes individual or Group of individuals who deserves as much protection as to Community at Large. The qualifications for a technical member are more favorable to bureaucrats (especially retired) and to irrelevant technocrats.

The act considers higher degrees in Science, Technology and Administrative experience but no provision for ecologist, sociologist, environmentalist, civil society or NGO, etc. NGT's critics have also questioned the "lack of environmental finesse" of its expert members. "Usually, the expert members are experts of one particular field and not of environment as a whole". For instance, an expert member who has been working on forests for many years would not be able to comprehend the issues arising out of industrial pollution. Thus, the judgments are vague and not relevant in

¹⁶ Section 22 of the National Green Tribunal Act, 2010.

¹⁷ Available at: <https://www.downtoearth.org.in/coverage/tribunal-on-trial-47400>, last visited on 21 April 2019.

¹⁸ See Down to Earth, "Tribunal on Trial", June 2015.

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Access to justice is denied by two means in NGT: firstly, by the provision of limitation period and secondly, by virtue of NGT being located in only big cities spread across India. For a tribal trying to stop pollution from an iron ore mine in Bastar, this means filing and fighting a case in Bhopal. This is neither easy nor affordable ²¹.

NGT has been accused of overstepping its jurisdiction and taking actions for which it has not been empowered under the NGT Act. Conflicts are brewing between NGT and the high courts. As per the NGT Act, appeals from NGT can only go to the Supreme Court, thus by-passing the high courts. Backlog of cases in NGT as another reason for the institution's failure to address environmental matters ²².

CONCLUSION

The National Green Tribunal was constituted to provide for effective and expeditious disposal of the cases involving multi-disciplinary issues relating to environment protection. From the inception of NGT till 31st January, 2015, a total number of 7768 cases were filed before the NGT out of which 5167 cases stood disposed of, thus, leaving a pendency of 2601 cases in all the NGT benches. This is the first body of its kind that is required by its parent statute to apply the "polluter pays" principle and the principle of sustainable development ²³.

National Green Tribunal is thus a new beginning for India's struggle between development and environment. Despite some inherent flaws, NGT is a significant initiative by the Government and the rightful implementation of the law would certainly usher the country towards the path of Sustainable Development and guarantee a harmonious

relationship between the environment and society. Since more than 8 years has been passed after the enactment of this Act, the NGT still has to travel a long path for winning the confidence of the people.

NGT has done well so far but many improvements are still required to make accessible, speedy and effective resolution of environmental disputes a practical reality. The Central and State government should work in collaboration with NGT to secure the environment with better, faster enforcement of NGT orders. In the act, there is a provision for appeal to the tribunal within a period of 6 months of origin of the cause of an environmental problem. This is small time for reflection of negative impacts of environmental changes. This shall be increased to considerable time. The government should make it more autonomous and efficient in a view to the growing concern regarding the environment and climate change. However, India is doing well when it comes to the environmental or climate change issue as compared to other developed and developing countries of the world.

Need for further reforms

- We must strengthen it by giving it more powers and by investing in strengthening its infrastructure.
- Judicial review is an important power that must be given to NGT.
- We should include other environment-related laws within NGT'S ambit.
- NGT also needs to put certain systems in place for transparent decision-making.
- NGT needs to establish principles and criteria to estimate fines, damages and compensation.
- It should also identify institutions and experts who can help it to scientifically estimate environmental damages/compensation/fines on a case-to-case basis.
- NGT must put internal checks and balances for efficient and transparent delivery of justice.
- Suo-motu jurisdiction has to be an integral feature of NGT for better and effective functioning.
- There is a need for the central and state governments to work in collaboration with the NGT for an effective outcome.

¹⁹ Available at <https://www.insightsonindia.com/2016/06/13/3-critically-evaluate-performance-national-green-tribunal-ngt-analyse-significance-ngt-like-institutions-indias-democracy/>, last visited on 22 April 2019.

²⁰ Ibid.

²¹ Available at <https://www.lawteacher.net/free-law-essays/constitutional-law/national-green-tribunal-act-constitutional-law-essay.php>, last visited on 17 April 2019.

²² Ibid.

²³ Available at <https://www.thehindu.com/news/cities/mumbai/news/challenges-to-ngt-orders-in-courts-a-growing-concern/article8387736.ece>, last visited on 21 April 2019.