

The Role of National Green Tribunal on mitigating the effects of Climate Change

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Abstract:

Climate change is the worldwide problem facing by all the countries. The main cause behind the climate change is the disturbance of ecology and natural environment. We need an attention for saving our environment by balancing our needs. Climate is the long-term average of a region's weather events. The earth's climate is not static. Over the billions of years of earth's existence, it has changed many times in response to natural causes like sun spot, ice age glaciations etc. Climate change is defined as a change in the climate that may be directly or indirectly linked to human activity that modifies the global atmosphere. This shift is distinct from the natural climate variability that has been documented throughout comparable time periods. The phrase climate change represents a change in the long-term weather patterns. Climate change is not a change of weather in particular day; it is the cumulative change of long-term weather pattern i.e. changes in climate. Climate change is the measurable effect of the continual warming trend. Climate change is usually measured in major shifts in temperature, rainfall, snow and wind patterns lasting decades or more. Humans are creating climate change by burning large amounts of fossil fuels (Coal, oil, natural gas), deforestation. (When forests are cut down or burned, they can no longer store carbon is released to the atmosphere).² Gradual rise in sea level, Rise in global temperature, Ocean water getting warmer, Greenland and Atlantic ice sheath are shrinking, Arctic sea ice have also thinned out, Melting of glaciers, Severity in seasons along with the intensity and frequency of climate hazards has greatly increased (floods, heavy rainfall, dry spell, cyclones etc.), Acidification of oceans, Death of corals etc. are nothing but the pure evidences of climate change. These evidence shows two kinds of impacts, that is bifurcated broadly into environmental and agricultural aspect.

Keywords: *National Green Tribunal, Ocean Water Rise, Climate Change, Environmental Disturbance*

Introduction:

Environmental impact creates more intense heat waves, change in ocean currents, frequent cyclones, variation in precipitation, rise in sea level, coastal erosion, inundation, degradation of infrastructure, acidification of soil and ocean, increasing wildfire, epidemics of diseases, everything all together are playing a havoc on maintaining ecological balance and a stable biodiversity. While agricultural impact affects in increase in temperature and CO₂ can prove to be extremely harmful in the long run. Changing atmospheric temperature directly and indirectly effects nutrient levels in soil, soil moisture content, drought, depleting ground water table reducing water availability. More frequently occurring droughts and floods could pose threat for farmers and governments. On the other hand, changing temperature also changes behavioural pattern in fishes and animals, which would not only damage the ecological balance but also affect the economy since May fishermen are dependent on fishing for their livelihood.³ With these consequences the greenhouse gases also influence and responsible for climate change as melting of glaciers due to global warming has been of great concern now because of

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² Environment, 8th Revised Edition, January 2021, Shankar IAS Academy Book Publications, Page no. 237

³ RAVI P. AGRAHARI, CLIMATE CHANGE (McGraw Hill Education (India) Private Limited 2021 Edition)

rising water level and also exposure of darker surface on the earth would eventually lead to the rise in temperature. Rising ocean temperature has also been proven to have ill-effects on corals. Recently coral bleaching has been recorded in the Great Barrier Reef for two successive years.⁴ Due to the global warming global temperature is raising, sea level is also rising which causes thermal expansion. All these are consequences of climate change.

Climate Change – Steps taken by International Community:

The United Nations Framework Convention on Climate Change, the first international agreement on climate change, has 26 articles and went into effect on March 21st, 1994. The United Nations Framework Convention on Climatic Change's primary goal is to stop the worrisome human activities that directly affect the planet's entire climate system. Today, it has 197 parties to the convention. The United Nations Framework Convention on Climate Change is a "Rio Convention", one of two opened for signature at the "Rio Earth Summit" in 1992. Its sister Rio Conventions are the United Nations Convention on Biological Diversity and the Convention to Combat Desertification. The three are intrinsically linked. It is in this context that the Joint Liaison Group was set up to boost cooperation among the three Conventions, with the ultimate aim of developing synergies in their activities on issues of mutual concern.⁵ Then after, The United Nations Framework Convention on Climate Change (UNFCCC), an international agreement that obligated its signatories to create national programmes to reduce their emissions of greenhouse gases, was expanded with the adoption of the Kyoto Protocol. Carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), perfluorocarbons (PFCs), hydrofluorocarbons (HFCs), and sulphur hexafluoride (SF₆) are examples of greenhouse gases whose effects on the energy balance of the atmosphere are predicted to result in an increase in the average global temperature, also known as global warming. the melting of glaciers, sea ice, and Arctic permafrost; an increase in the frequency and changes in the distribution of extreme climate-related events, such as floods and droughts; and an increased risk of extinction for 20 to 30 percent of all plant and animal species. This causes a rise in sea level around the world, flooding low-lying coastal areas, and the potential disappearance of some island states.⁶ A global framework to prevent dangerous climate change by keeping global warming to well below 2°C and pursuing efforts to limit it to 1.5°C was established by the Paris Agreement, the first ever universal, legally binding global climate change agreement, which was adopted at the Paris Climate Conference in December 2015. It also aims to support nations in their efforts and improve their capacity to deal with the effects of climate change.⁷ Then, REDD+ is a framework created by the United Nations Framework Convention on Climate Change Conference of the Parties (COP) to guide activities in the forest sector that reduces emissions from deforestation and forest degradation, as well as the sustainable management of forests and the conservation and enhancement of forest carbon stocks in developing countries. It aims at the implementation of activities by national governments to reduce human pressure on forests that result in greenhouse gas emissions at the national level, but as an interim measure also recognizes subnational implementation. The implementation of REDD+ activities is voluntary and depends on the national circumstances, capacities and capabilities of each developing country and the level of support received.⁸

⁴ *Id.*

⁵ UNFCCC, <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change> (last accessed on 23 June, 2022)

⁶ BRITANNICA, <https://www.britannica.com/event/Kyoto-Protocol> (last accessed on 23 June, 2022)

⁷ EC EUROPA, https://ec.europa.eu/clima/eu-action/international-action-climate-change/climate-negotiations/paris-agreement_en (last accessed on 23 June, 2022)

⁸ UNFCCC, <https://unfccc.int/topics/land-use/workstreams/redd/what-is-redd> (last accessed on 23 June, 2022)

Climate Change – Steps and initiatives taken by India

Stockholm declaration, which provides the backbone to create an obligation as well as right in the Indian constitution through 42nd Amendment, which provides a rich base for making environmental legislations in India. Article 21, Article 48A and Article 51A (Fundamental Duties) are the precious stone of The Constitution of India.

The most recent UN Intergovernmental Panel on Climate Change (IPCC) report paints a dismal picture of India and warns that the South Asian nation may experience a number of climate change-related disasters over the next two decades. If greenhouse gas emissions are not reduced by 2030, then it will result in an irreversible climate catastrophe, according to the report. This paper makes it abundantly evident that many climatic and non-climatic risks will interact with one another, increasing overall risks that cascade across sectors and geographies and posing a special challenge to India. By 2050, the report projects that more than 40% of India's population would experience water scarcity, and sea level rise will have an impact on the nation's coastal regions, including major cities like Mumbai. The report demonstrates how influences on urban livelihood affect India's urban areas' infrastructure, health, and way of life. Urban inhabitants who live in informal settlements and are economically and socially disadvantaged will suffer more as a result of these effects.

India has set a goal of being able to meet 50% of its energy needs by 2030 by increasing its non-fossil energy capacity to 500 gigawatts, which will allow it to reduce its projected total carbon emissions by that year, reduce its economy's carbon intensity by 45% by that same year, and achieve net-zero emissions by 2070. By embracing the Intergovernmental Panel on Climate Change (IPCC), the Ministry of Environment, Forests, and Climate Change has taken steps to lower emissions from the energy sector. Though, it is a time that India has to act in its own interest because at primary sense, it is good for us while in second sense it is an international obligation towards the world community.⁹

India has introduced National Action Plan on Climate Change, which was formally launched on June 30th, 2008. The National Action Plan on Climate Change lists the actions that can advance development goals while also producing side effects for successfully combating climate change. The heart of the national action plan is made up of eight national missions, which highlight promoting understanding of climate change, adaptation and mitigation, energy efficiency, and natural resource preservation. They are –

- ✓ With the ultimate goal of making solar competitive with fossil-based energy sources, the national solar mission seeks to advance the production and use of solar energy for power generation and other purposes. A solar research centre will be built, global technological development partnership will rise, local manufacturing capacity will be strengthened, and government funding and international assistance will both increase.
- ✓ A system for businesses to trade energy-saving certificates, funding for public-private partnerships to reduce energy consumption through demand-side management programmes in the municipal, building, and agricultural sectors, and energy incentives, including lower taxes on energy-efficient appliances, are among the recommendations made by the National Mission for Enhanced Energy Efficiency.
- ✓ A system for businesses to trade energy-saving certificates, funding for public-private partnerships to reduce energy consumption through demand-side management programmes in the municipal, building, and agricultural sectors, and energy incentives,

⁹ CLIMATE CHANGE, <https://www.dw.com/en/climate-change-why-it-is-now-or-never-for-india/a-61000680#:~:text=According%20to%20the%20report%2C%20more,affected%20by%20rising%20sea%20level s.> (Last accessed on 23 June, 2022)

including lower taxes on energy-efficient appliances, are among the recommendations made by the National Mission on Sustainable Habitat.

- ✓ In order to combat water scarcity brought on by climate change, the National Water Mission sets a goal of a 20% improvement in water use efficiency through pricing and other methods.
- ✓ The objective of the national mission for preserving the Himalayan ecosystem is to stop the melting of the Himalayan glaciers and to safeguard the region's biodiversity.
- ✓ Green national mission India wants to increase its forest cover from 23% to 33% of its land area by reforesting 6 million hectares of damaged forest lands.
- ✓ Through the development of climate-resilient crops, the extension of weather insurance mechanisms, and agricultural practises, the national mission for sustainable agriculture seeks to encourage climate adaptation in agriculture.
- ✓ For a better understanding of climate science, implications, and problems, a national mission on strategic knowledge for climate change is developed. The plan calls for a new Climate Science Research Fund, improved climate modelling, and increased international cooperation. Additionally, it supports projects from the private sector that use venture capital money to create solutions for adaptation and mitigation.¹⁰

The government is supporting the research and development of integrated gasification combined cycle with supercritical technologies as part of the National Action Plan on Climate Change, which is also carrying out other parallel initiatives in power generation with the retirement of inefficient coal-fired power plants. The federal and state electrical regulatory commissions are required to purchase a specific proportion of grid-based power from renewable sources in the case of renewable energy. Large energy-consuming enterprises are required to conduct energy audits as part of the energy labelling programme for appliances. The assessment of the increased burden of diseases caused by climate change is a focus of improved public health care services. Different ministries are given the responsibility of carrying out missions, and they are required to create the missions' goals, implementation plans, timetables, monitoring standards, and assessment criteria before submitting them to the Prime Minister's Council on Climate Change. The council will be in charge of regularly reviewing and reporting on each mission's status.¹¹

The Connection between National Green Tribunal and Climate Change

Climate change is the bunch of the problems which are arising due to haphazard environmental activities, which need a special attention by judicial wing of Indian government as it is a fundamental right enshrined in the Constitution of India. So, environmental victims should also be prioritized by providing remedies for their right's infringement. The Supreme Court of India Felt a need to establish Environmental courts which was expressed 1999(2) SCC 718 is the decision in the case A.P. Pollution Control Board vs. M.V. Nayudu. In light of the fact that the National Environmental Appellate Authority was established in 1997 in accordance with the National Environmental Appellate Authority Act, primarily to provide a venue for the review of administrative judgments relating to environment impact assessments. Up to year 2000 no judicial member was appointed, so far as the act was concerned, it was not notified even after

¹⁰ VIKASPEDIA, <https://vikaspedia.in/energy/policy-support/environment-1/climate-change> (last accessed on 23 June, 2022)

¹¹ NCBI, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2822162/> (Last accessed on 23 June 2022)

expiry of eight years. So, the tribunal were only becoming a piece of paper^{12; 13} Afterwards, the Law Commission of India, in its 186th Report, recommends for the establishment of the Environmental Court in India proposing by repealing The National Environment Appellate Authority Act of 1997 and the National Environment Tribunal Act of 1995. Then after, The National Green Tribunal a specialized judicial body composed with judicial and non-judicial experts especially for adjudication of environmental disputes in India set up as a result of recommendations of Supreme Court of India and Law Commission of India, which is also the fulfilment of India's International Environmental obligations by providing effective assistance to environmental legislative framework in India. The main function of the National Green Tribunal is to deal with issues relating to environment protection, conservation and legal right relating to environment. Tribunal is empowered to provide relief to the environmental victims and orders of the tribunal is binding.

Problems with National Green Tribunal

There is no clarity regarding the jurisdiction of National Green Tribunal for taking up the environmental issues on *Suo Motu*. Supreme Court of India as well as Ministry of Environment, Forest and Climate Change are having an opinion that National Green Tribunal cannot take case on its own motion. In addition to that, National Green Tribunal can deal the issues which are pertaining to Specifically, the Biological Diversity Act of 2002, the Forest (Conservation) Act of 1980, the Air (Prevention and Control of Pollution) Act of 1981, the Environment (Protection) Act of 1986, and the Water (Prevention and Control of Pollution) Cess Act of 1974. The other important environmental legislations were not within the scope of National Green Tribunal like By preserving wildlife's natural habitat and granting forest rights to scheduled tribes and other traditional forest dwellers, the Wildlife (Protection) Act of 1972 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 are both making their greatest contributions to preserving the environment. Another problem, Section 14 of The National Green Tribunal Act, 2010 describes that the tribunal will have a jurisdiction over issues regarding enforcement of legal right pertaining to environment and on all civil cases where the substantial question of environment will arise. The word "substantial question of law" is not defined under The National Green Tribunal Act, 2010. While in case of enforcement of legal right pertaining to environment, National Green Tribunal have power to address cases on *Suo motu*. But still there is lack of clarity for *Suo motu* powers of National Green Tribunal including jurisdiction.

Role of National Green Tribunal for mitigating the effects of Climate Change

National Green Tribunal is a court which formed especially for speedy disposal of Environmental issues and compensations to the victims with award of exemplary damages for restoration of ecology. 186th report of Law Commission of India, recommends and propose for the Environmental court h composition of judicial and expertise members, with strong enough legislation to protect the environment and expeditious resolution of the environmental cases.

National Green Tribunal can contribute for mitigating the effects of climate change in the following ways –

1. There are certain other laws pertaining to environment, are not within the ambit of National Green Tribunal. Like The Wildlife (Protection) Act, 1972, The Indian Forest

¹² LAW Commission of India, <https://lawcommissionofindia.nic.in/reports/186th%20report.pdf> (last accessed on 25 June, 2022)

¹³ Das, B., Pandya, M., Chaudhari, S., Bhatt, A., & Trivedi, D. (2021). Global Research Trends and Network Visualization on Climate Action : A Bibliometric Study. *Library Philosophy and Practice (E-Journal)*. <https://digitalcommons.unl.edu/libphilprac/5818/>

Act, 1927 are the core legislations which strengthens the environment protection in the country. Tribunal must be empowered to act within the scope of all environmental legislation.

2. Even issues pertaining to The Wildlife Protection) Act, 1972 and The Indian Forest Act, 1927 cannot be brought against the Tribunal; the only available options are to file a writ petition in the appropriate High Court or Supreme Court of India or to file a civil case in the appropriate court of jurisdiction, both of which can add to the burden on the judiciary.
3. Another loophole is National Green Tribunal has not power to act within the scope of other state environmental legislations and tree preservation laws. Due to which lacking of authority is exists.
4. Jurisdiction is still an issue for proper functioning of the tribunal. As it is a special body for dealing the cases pertaining to environment protection all environmental problems must be within the scope of the National Green Tribunal.
5. Tribunal is having its own procedure to deal the environmental cases due to which disposal of cases becomes more speedier than judiciary. The decision of the Tribunal must be binding and no appeal should be allowed. Because, decision from National Green Tribunal challenged to Supreme Court of India dealt with the procedural laws which takes very long time and with that the harm which was caused to the environment will be irreversible.
6. In the capacity of National Green Tribunal, it should have the powers to review the policies which are directly or indirectly connected with the environment protection and recommendations of the tribunal should also be recorded and implemented if found suitable, whenever necessary.
7. National Green Tribunal provides speedy disposal to environmental issues in expeditious way by awarding exemplary damages with restoration cost and fine. Which is a better step due to which ecology gets restored and by paying the fine a person can learn that environment is very precious and one cannot harm it just for the sake of some monetary benefit.
8. So, National Green Tribunal contribute towards the climate change by restoring the ecology as soon as possible by implementing the polluter pays principle, which may reduce the adverse impacts on climate.

In summary, the National Green Tribunal is a superb legal weapon that can help to mitigate the negative consequences of climate change on the nation's natural environment. India can carry out its commitment to the international community to lessen the consequences of climate change and work to preserve the natural environment for future generations.