

National Green Tribunal: Drifting Singularity

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Abstract

National Green Tribunal established under National Green Tribunal Act, 2010 for the expeditious, effective, and speedy justice in environmental cases, made tremendous changes in the field of environmental justice. It reduced the procedural complexities manifesting green light to the citizens to approach the benches for their environmental concerns. During the bygone eight years a number of noteworthy environment friendly decisions can be pointed out. The paper deals with case analysis of National Green Tribunal compared with earlier Supreme Court decisions. Within the short span of time, the NGT decisions are eye catching for their drastic rulings in favour of environment. Environmental protection and climate change go hand in hand and environmental protection becomes a necessary condition for controlling the climate change where the role of NGT is crucial.

Keywords: *National Green Tribunal, Role of NGT, Environmental cases.*

Introduction

Men cannot compel the environment to act in a specific way for the simple reason that nature does not follow human rules². The life of man should be in harmony with nature and its order. Over profiteering at the cost of the environment is the reason for climate change and all other mishappenings related to nature. The right to be in a healthy environment and the enjoyment of nature are inherent rights of human beings. On the other hand, man is obliged to take care of the natural environment. Sustainable development is an old but ever-flourishing concept which the nations still strive to attain. The international and national instruments theoretically pave the way for it. Perhaps, the enforcement and implementation mechanisms are the radical concern of environmental jurisprudence. "The Rule of Law" lies at the core of a just administration of justice and is a prerequisite of peaceful societies, in which environmental obligations, equality before the law and the adherence to the principles of fairness and accountability are respected by all. Law coupled with strong institutions, is essential for societies to respond to environmental pressures

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²ALEXANDRE KISS AND DINAH SHELTON, THE NEED FOR ENVIRONMENTAL LAW TO TAKE INTO CONSIDERATION THE "LAWS OF NATURE", MANUAL OF ENVIRONMENTAL LAW 9 (second edition 1997).

and crucial for the international community to address the environmental challenges of our time”³.

The colossal increase in environmental cases and its pendency became a challenge to the Indian judicial system. Unlike other cases, environmental suits needed special attention and speedy disposition. “Environmental conflicts require quick action or response, which is incompatible with the slow pace of the court system that, due to its bureaucracy and technical rituals, eventually becomes an obstacle to the effective protection of the environment and to economic progress”⁴. This predicament necessitated a separate judicial system for environmental litigations.

1. Development of National Green Tribunal (NGT)

During the 1970s few specialized Environmental Courts and Tribunals were established across Europe. The concept of green justice has progressed far and wide, and by 2016, the number of Environmental Courts and Tribunals increased over 1200 across the world⁵. There was a growth of international environmental jurisprudence. Access to justice⁶, being the foundation of every right was raised in environmental rights as well. Access rights include the participation in decision making and the right to information. The origin of these access rights is from the international obligations which pursue environmental justice to be “sustainable and green”⁷

Australia was first to establish environmental courts as a superior court of record. In the words of Justice Brian Preston, Chief Judge of the Land and Environment Court of

the State of New South Wales, “The judiciary has a role to play in the interpretation, explanation and enforcement of laws and regulations. ... Increasingly, it is being recognized that a court with special expertise in environmental matters is best placed to play this role in the achievement of ecologically sustainable development”⁸. After the 1970s, the public awareness and concerns about environmental degrading escalated. The initiatives and involvement of NGOs and other institutions compelled the governments to be more cautious about environmental legislations and policies. The growth of Information technology and widespread use of social media made the common people conscious and watchful on environmental dilemmas across the world.

The development of International Environmental Law influenced the municipal laws of the nations. Numerous international instruments paved the way for modern

³Elizabeth Mrema, Director, Law Division at the UN Environment.

⁴Antonio Herman Benjamin, *We, the Judges, and the Environment*, 29 PACE ENVTL. L. REV. 582 (2012)

⁵ GEORGE (ROCK) PRING & CATHERINE (KITTY) PRING, ENVIRONMENTAL COURTS & TRIBUNALS STUDY, UNITED NATIONS ENVIRONMENT PROGRAMME 1(2016).

⁶“the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.” JAYASUNDERE, R, ACCESS TO JUSTICE ASSESSMENTS IN THE ASIA PACIFIC: A REVIEW OF EXPERIENCES AND TOOLS FROM THE REGION. BANGKOK, THAILAND: UNDP11(2012).

⁷PRING, G. AND PRING C, GREENING JUSTICE: CREATING AND IMPROVING ENVIRONMENTAL COURTS AND TRIBUNALS, WASHINGTON DC: ACCESS INITIATIVE6 (2009).

⁸ Brian J. Preston, *Benefits of Judicial Specialization in Environmental Law: The Land and Environment Court of New South Wales as a Case Study*, 29 PACE ENVTL. L. REV. 396 (2012).

environmental protection trends⁹.

Asian Development Bank initiated publishing compendium on Capacity Building for Environmental Law in the Asian and Pacific Region, launching of the Asian Environmental Compliance and Enforcement Network and organizing symposiums and conferences¹⁰. In the year 2010, the ADB (Asian Development Bank) organized the Asian Judges Symposium on Environmental Decision-Making, the Rule of Law, and Environmental Justice emphasising “improving environmental and natural resource decision making and adjudication within regional judiciaries, without assuming that any particular form or structure is the best way to achieve effective environmental decision making and adjudication in different country contexts; highlighting environmental specialization within general courts, as well as exploring work done by specialist environmental courts, boards, and tribunals. Importantly, without drivers for increasing the demand for effective environmental judicial decision making from the judiciary, environmental judicial specializations could go unused”¹¹.

Around 44 nations institutionalized Environmental Courts and Tribunals as a part of their judicial system during the past five decades. At the onset of the multiplicity of environmental litigations in India, the Supreme Court of India many times asserted their view on setting up an environment court. “...We would also suggest to the Government of India that since cases involving issues of Environmental pollution, Ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, and it might be desirable to set up environment courts on a regional basis with one professional judge and two experts, keeping in view the expertise required for such adjudication”¹². The same was ingeminated in several Supreme Court decisions¹³. Apart from this, even the 186th Law Commission Report¹⁴ also proposed Environment Courts. It emphasised the Environment Courts in Australia and New Zealand with expert members.

Indian attempts to Green Court can be traced back to 1995. National Environmental Tribunal Act, 1995 and the National Environmental Appellate Tribunal Act, 1997, both were by and large failures. Hence, we can say that the National Green Tribunal Act, 2010 covered most of the drawbacks of these preceding Acts. The preamble of the National Green Tribunal Act, 2010 states that “... the right to healthy environment

⁹Stockholm Declaration 1972; Rio Declaration, 1992; The Aarhus Convention, 1998; World Charter for Nature 1982; UN Environment's; 2010 Guidelines for the Development of National Legislation on Access to Information; Montevideo Programme for the Development and Implementation of Environmental Law; Paris Agreement on Climate Change, 2016...

¹⁰Gitanjali Nain Gill, *Access to Environmental Justice in India With Special Reference to National Green Tribunal: A Step in The Right Direction*, IDA-INTL-JOURNAL-SUSTAINABLE-DEV 29(2013).

¹¹Asian Development Bank, *Environmental Governance and the Courts in Asia*. Law and Policy Reform, Brief 1(2012).

¹²M C Mehta v Union of India (1986) 2SCC 176.

¹³Indian Council for Enviro Legal Action v Union of India (1996) 3SCC 212; AP Pollution Control Board V M V Nayudu (1999) 2SCC 718.

¹⁴DO No.6(3)84/2003-LC(LS).

has been construed as a part of the right to life under article 21 of the Constitution”¹⁵. ‘Constitutions, a nation’s foundational law, are also being reformed environmentally, becoming “greened” by international environmental law’¹⁶. The Indian Constitution was interpreted accordingly by the Supreme Court in order to safeguard the environment.

Desideratum of National Green Tribunal

The preamble of the National Green Tribunal Act, 2010 highlights the necessity, scope, and object of establishment of the tribunal. It is ‘for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources.’ It is also an implementation of Indian Constitutional rights and International Instruments (International Environmental Law)¹⁷. These objects were achieved to an extent through certain features in the constitution and functioning of the tribunal.

The tribunal consist of expert members to deal with the scientific questions and matters¹⁸. The proceedings are simplified and cost effective which makes it approachable compared to the court formalities. The settlement of dispute is possible and speedy justice are other benefits of the tribunal¹⁹. Unlike other tribunals, public confidence can be perceived towards the National Green Tribunal.

Speedy justice is the heart and soul of the Green Court concept. National Green Tribunal, while compared with the ordinary courts, have shown an increased rate of case disposals. As per the official records²⁰ from the year 2011 to 2019, the total cases dealt with is 31730, and the total disposal is 28761. The pending cases in the month of December 2019 were 2969. The data shows disposal of 91.25% of the cases by all the branches of NGT ie. average disposal of 3595 cases a year. (It is not comparable with our ordinary courts as the nature of cases differs, but it shows the efficacy of the system when it is specialized in an area.)

Grand Total of Institution, Disposal And Pendency of The Cases Of NGT Principal Bench And all Zonal Benches From The Date of Its Inception Till 30-11-2019 ²¹			
Year	Total no. of cases	Disposal	Pending
04-07-2011 to 30-11-2019	31730	28761	2969

¹⁵National Green Tribunal Act, 2010, Preamble, No. 19, Acts of Parliament, 2010

¹⁶GEORGE (ROCK) PRING & CATHERINE (KITTY) PRING, ENVIRONMENTAL COURTS & TRIBUNALS STUDY, UNITED NATIONS ENVIRONMENT PROGRAMME 8 (2016).

¹⁷National Green Tribunal Act, 2010, Preamble, No. 19, Acts of Parliament, 2010.

¹⁸National Green Tribunal Act, 2010, Sections 4 and 5, No 19, Acts of Parliament, 2010.

¹⁹ Ibid at sections 14,15 and 18.

²⁰National Green Tribunal, <https://greentribunal.gov.in/bench-wise-institution-disposal-and-pendency-cases-ngt-principal-bench-and-all-zonal-benches> (Dec.26, 2020).

²¹National Green Tribunal, <https://greentribunal.gov.in/bench-wise-institution-disposal-and-pendency-cases-ngt-principal-bench-and-all-zonal-benches> (Dec.26, 2020).

The NGT initiates the e-filing system, which is less responded but still developing²². All its endeavours are towards reaching out to the common man.

Impediments for the growth and expansion of NGT

There are voluminous NGT environment friendly decisions. The effectiveness of such judgements depends upon the support of Apex Court and Government. Attaining the balance between development and environmental protection is formidable and effortful. The NGT decisions are powerful and favourable to environment. In *Ms. Betty C Alvares v The State of Goa and Ors*²³, found the illegal construction in violation of CRZ notification by government and private parties on an application by a non-citizen of India. Solid waste management is a crucial problem faced by the nation and NGT ordered to the State and Union Territories to implement Solid Waste Management Rules, 2016 with immediate effect²⁴. Like wise in *Srinagar Bandh Aapda Sangharsh Samiti and Anr v Alaknanda Hydro Power Co.Ltd and Ors*²⁵ the Tribunal applied polluter pays principal and ordered damages of 9.26 crores on a private company to the people affected by flood due to the excavations. The NGT emphasised the importance of environmental jurisprudence in *Samit Mehta v Union of India*²⁶. In *Save Mon Region Federation and Ors. v Union of India and Ors*²⁷ the environmental clearance granted by Ministry was suspended by the NGT for hydro project as the project was situated near to the wintering site of endangered birds and other species. Another land mark decision of NGT was on vehicular pollution²⁸ which was also upheld by the Apex Court. Steps taken to protect river Yamuna from pollution²⁹ was another major judgement of NGT showing up its strong desire for environmental protection.

The marginalization of the tribunal is one of the main barriers for the flourishing of NGT. The tribunals are, in reality, out of the mainstream of the judicial system. Thus, the implementation of the decisions of NGT is uncertain in many instances.

Another major stumbling block is the jurisdiction aspect and the overlap of law. The National Green Tribunal Act, 2010 explicitly bars any court from taking cognizance

²²Ibid.

10582 Total Registered Users	6934 Total Advocate Registered	48 Current Month E-Filed Cases	1061 Total E-Filed Cases
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²³ O.A No.63 OF 2012, Misc Application Nos. 32 and 33 of 2014 (WZ).

²⁴ *Almitra H Patel and Ors v Union of India and Ors* O.P No. 606/2018. (W.P transferred from SC).

²⁵ O.P No. 03/2014.

²⁶ O.P No. 24/2011, MA No 129/2012, MA Nos 557 and 737 /2016.

²⁷ Appeal No. 36/2012.

²⁸ *Mustak Kadri v State of Gujarat*, O. A No. 478 of 2019. and *Harvinder Sekhon Vs. Union of India & Others*, O.A No. 21 of 2014, 95 of 2015 and 303 of 2015.

²⁹ *Manoj Misra v Delhi Development Authority and ors*, OA No. 65/2016; *Promod Kumar Tyagi v Art of Living International Centre and ors*, OA No. 76/2016; *Anand Arya v Delhi Development Authority and ors*, OA No. 81/2016.

of any offence under the Act³⁰. In relation to the High Courts, the jurisdiction aspect is always questionable. "In order to understand the relationship between HCs and NGT, one must look at how it has evolved in the case of tribunals in general. Primarily, all judicial functions of a sovereign are performed by the courts. However, some of these judicial functions are often transferred to tribunals, which are vested with the authority to adjudicate upon specific matters and disputes. While tribunals and courts are separate entities, they have several common as well as distinct attributes"³¹. Considering the Apex Court decisions and High Court decisions in this regard³² it can be concluded that the tribunal decision can be challenged before the High Courts and several orders of the NGT were challenged before the High Courts. This limited jurisdiction narrowed the scope of NGT.

The delay in appointment of members prevents the proper and speedy functioning of the Tribunal. The proper functioning and implementation of the judgements only can create a trust in the mind of common man which would ultimately result in the expansion of environmental jurisprudence.

Specialised courts and tribunals are an advantage at the same time, its fragmentation resulted in an insufficient workload. As per the official data, the total number of cases registered for the previous eight years was 31730. Along with all this, the fund allotment, training for the judges is considered to be the drawbacks of the system.

Conclusions

It is lucid that the working of NGT racks up efficiency. 'Despite advancements, NGT's discourse on sustainable development remains painfully precarious'³³. Being a tribunal, the jurisdictional limitation, and the meagre response from the side of the executive to the decisions of the NGT continues even after the nine years of establishment. Regardless of all the drawbacks and barriers, Environmental Courts are persuasive in the present-day context.

The paper suggests more governmental support and importance to this area. Independence of the system is inevitable rather than fragmentation and isolation. Specially trained members are another factor to be considered. Environmental protection and preservation are not only a topic of discussion, and it is the

³⁰National Green Tribunal Act, 2010, Section 30, No. 19, Acts of Parliament, 2010.

³¹Nupur Chowdhury and Nidhi Srivastava, *The National Green Tribunal in India: examining the question of jurisdiction*, Asia Pacific Journal of Environmental Law, Vol. 21 No. 2, 196(2018).

³²Kanaiyalal Lalchand and Sachdev v State of Maharashtra and Others(2011) 2SCC 782; Nivedita Sharma v Cellular Operators Association of India(2011) 14 SCC337;PS Jayachandran v The Member Secretary, Tamil Nadu Pollution Control Board HC Order dated 30.6.2015 in WP No 34199 of 2014 in the High Court of Madras; CicilyKallarackal v Vehicle Factory [(2012) 8 SCC 524];Bhopal Gas PidithMahila Udyog Sangathan and Others v Union of India, Civil Appeal Nos 3187–3188 of 1988 Supreme Court order dated 9 August 2012;Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO)and Another v Sri Seetaram Rice Mill [(2012) 2 SCC 108]; Mahavir Singh v Union of India & Others Delhi High Court 9 WP(C) No 7302/20090decided on 6 February 2013;Somasekharan Nair v District Collector [(2016) SCC Online Mad 25089];South West Port Limited v State of Goa [(2018) SCC Online Bom 87]...

³³Nupur Chowdhury, *Sustainable Development as Environmental Justice; Exploring Judicial Discourse in India*, ECONOMIC & POLITICAL WEEKLY VOLLINOS 26 & 27 91(2016).

fundamental and undeniable right of human society. Environmental rights being given the colour of human rights are to be implemented in the same sense.