ASSESSING THE EFFICACY OF INDIA'S NATIONAL GREEN TRIBUNAL: AN ANALYSIS OF IMPLEMENTATION CHALLENGES AND ACCESS TO ENVIRONMENTAL JUSTICE

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Abstract

It becomes the need of the hour to understand various causes of failure of regulatory regime as India ranks at the bottom in a list of 180 countries in the 2022 Environmental performance Index. Although India has been forward in adopting various legislations to be in line with the international standards, results are not as expected, the only possible conclusion being that the administrative authorities are unable to implement laws to the required standard. With the creation of National Committee on Environmental Planning and Co-ordination in 1972, it set the basis for establishment of various pollution control boards. Primary focus of the research is to identify the root cause of failure in producing favourable outcomes and provide for solutions for the way forward.

Keywords: National Green Tribunal, Environmental Performance Index, Environmental Justice.

1. Introduction

In environmental matters, access to justice comes through specialized courts. Such courts have been in existence for a long time in countries like Australia, New Zealand, Scandinavia, and the U.S.A. In a developing country like India, such institutions play an important role. Although prior to the 21st century only a handful of environmental tribunals existed, today over 1200 such establishments function across the world. India has set a benchmark for developing nations through the establishment of the National Green Tribunal (NGT) under the 2010 Act, thereby extending the guarantee of access to a clean environment as part of Article 21 of the Constitution.

The distinguishing features of the NGT include its wide jurisdictional powers, flexible procedure, and feasible implementation of international treaties. The formation of this tribunal may be attributed to India's active participation at the United Nations Conference on Human Environment held at Stockholm in June 1972. Subsequently, the 42nd Constitutional Amendment introduced Article 48-A and Article 51(A)(g), and the Supreme Court interpreted these provisions to expand the scope of Article 21. However, the Supreme Court also expressed concern regarding the technical nature of environmental cases, which ultimately led the Law Commission of India, through its 186th Report (2003), to make recommendations aligned with judicial observations. The report also noted that earlier tribunals such as the National Environment Tribunal had lost their practical significance.[1]

As India progressively expanded access to environmental information and ensured citizen participation, the implementation of environmental laws assumed greater importance. The NGT has played a pivotal role in this regard,

[1] Gitanjali N. Gill, The National Green Tribunal of India: A Sustainable Future Through the Principles of International Environmental Law?, 16 ASIAN J. INT'L L. 462 (2020).

especially in its decade-long functioning. As of 31st October 2022, the Principal Bench of the NGT had instituted 39,278 cases, of which 37,295 were disposed of and 1,983 remained pending. These statistics, combined with a review of cases—both in terms of broader trends and specific areas such as deforestation—indicate that while the NGT has functioned as a formal avenue for environmental justice and has significantly contributed to jurisprudence, questions arise as to whether it has been equally successful in ensuring compliance with environmental standards.[2]

Given that India continues to rank below countries such as Pakistan and Bangladesh despite having comprehensive environmental laws and the existence of the NGT, the issues influencing access to environmental justice require examination.[3] Factors affecting enforcement and procedural efficiency, as well as the functioning of the tribunal in both form and spirit, deserve closer scrutiny. Assessing arguments advanced by plaintiffs and defendants in representative cases, along with the evaluation of procedural practices, provides valuable insight into areas where improvements may be necessary. Accordingly, this paper seeks to understand the functioning of the NGT, evaluate its effectiveness in implementation, and identify areas where institutional or procedural reforms could enhance its role in advancing environmental justice in India.

2. Review of Literature

(G. N. Gill 2020) it was noticed in the following research about the various factors both internal and external that affect the NGT and it's decision making. The NGT has a multidisciplinary approach, also an analysis of the application of precautionary principle was seen. It also came to light that role of expert members was seen to be central rather than marginal. The researcher further went on to point out the inter-dependence of countries in ensuring environmental protection, for which a deeper interpretation of Section-20 of NGT was seen as requiring the tribunal to comply with the various established principles such as principle of Sustainable development etc. The researcher found the aforementioned provision as positive and India's commitment towards international cooperation was well appreciated.[4]

(Dilay, Diduck, & Patel, 2020)[5] the following research goes in detail into the approach taken by NGT in dealing with disputes involving Environment Impact assessment and also reviews the procedure adopted by NGT to deliver speedy justice.

(Rengarajan, Dhivya, Purvaja, Ramesh, 2018)[6] this particular research paper has to an extent, similar objects as that of the research at hand. It starts with the background of establishment of NGT and goes on to analyse cases taken up by NGT specifically in the year 2016. By virtue of the analysis conducted the author tries to determine the effectiveness of NGT and tries to identify the broad areas of dispute along with the causes of their occurrence.

(Preston, 2014)[7] the researcher has tried to identify the cause of growth of environmental courts around the world. Such growth was primarily attributed to its features such as independence, knowledge of members, quick/cheap resolution, development of jurisprudence, response to problems, multi-door courthouses and its underlying ethos.

Lacunae: The current literature has to a great extent covered the overall characteristics of NGT from a broader standpoint and have concluded on a positive note. Despite this, India hasn't performed to the required standards when it comes to Environment Performance Index. Thus, there is a need to re-visit the current literature, in search for the reasons of such underperformance.

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[2] Rengarajan et al., National Green Tribunal of India: An Observation from Environmental Judgements, 40 ENVTL. MONITORING & ASSESSMENT 1 (2018).
[3] Geetanjoy Sahu, Implications of India's National Green Tribunal for Environmental Governance and Sustainable Development, 15 GOVERNANCE FOR DEVELOPMENT 22 (2015).
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3. Causes of Failure of Earlier Enactments

3.1. National Environment Tribunal Act, 1995

The National Environment Tribunal and National Environment Appellate Tribunal were established by virtue of the Rio de Janeiro. Their function was victim compensation and assessment of projects respectively. Another authority known as the NEAA established by the Ministry of Environment was to provide environment clearances in restricted areas. In a series of cases starting with the M.C Mehta Case in 1986 and ending with the M.V Nayudu II case in 2001, the Supreme Court made it clear that there was a need for a separate court to handle cases on environmental issues. The primary reasons for this were i) involvement of statistical data ii) need for technical members along with judicial members. In lieu of the aforesaid observations the Law commission made note of the Environmental Courts in New Zealand, Australia, UK and other countries.

The highlights of the report were as follows

i. reducing the burden of higher courts
ii. Required court to be court of fact as well as of law
iii. Jurisdiction- both original as well as appellate
iv. appellate jurisdiction to flow from Water Act, Air Act and other similar laws as notified
v. courts to initially function at State level and
vi. accessibility even to remote areas.[8]

3.2. A Look at the Current Enactment

3.2.1. National Green Tribunal Act, 2010

The differentiating factor is that the NGT has a wider scope and coverage than the NEAA. Despite having wider scope and coverage the objective remains only to deal with cases with environmental issues (substantial) and to provide to citizens right to environment. Although the bill suggested setting up of the main bench in Bhopal, the bench was setup in Delhi after due deliberations. The other benches are in Bhopal, Chennai, Kolkata and more recently pune (having jurisdiction over Maharashtra, Gujrat, Goa, Daman and Diu). Through these benches global principles are being applied at a local level.

3.2.2. Composition

Section 4 lays down the composition and Section 21 states that any decision taken must be in the opinion of the majority. Composition includes a full time chairperson who shall be a judge of the SC or Chief Justice of High Court. The number of Judicial members and technical members are both maintained between 10-20 each for the purpose of balance. Expert members are usually doctorate holders and can even belong from an engineering background provided he/she possesses 15years of experience along with 5years of practical experience in the field of environmental related issues.

3.2.3. Jurisdiction

Section-14 of the NGT Act, states that the tribunal has jurisdiction over all civil cases having environmental issues and lays down the time limit as 6months from cause of action for filling suite with further extension of 60days on condonation . Schedule- I of the NGT Act lays down the names of various legislations by virtue of which the tribunal gains jurisdiction. Some of these Acts include The Water (Prevention and Control of Pollution) Act of 1974, The Air (Prevention and Control of Pollution) Act, 1981, The Forest (Conservation) Act of 1980 etc. It is worthwhile to mention that two legislations have been specifically excluded from the jurisdiction of NGT which are The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and The Wildlife (Protection) Act, 1972. Matters related to which relief can be provided are given under Schedule II, provided the

[8] SNEHA AVINASH, *National Green Tribunal: A new beginning for environmental cases* , ACADEMIC , https://www.cseindia.org

application is made within 5 years with condonation upto 60 days . Tribunal shall have powers similar to that of civil court.

3.3. Analysis Through Judicial Perspective

The following analysis of case studies are done with the objective of understanding the number of cases being filed from each sector, which cases are being filed most often, number of cases taken up suo moto, reasons behind approaching the tribunal, so on and so forth. Cases taken up are those whose final decision was given post 2015. Due to the enormous number of cases, method of simple random sampling has been adopted to conduct the study. Classification is done based on the area of environmental issue as follows:

Cleaning/Preservation of Rivers/Water Bodies:

3.3.1. Pollution of Thirumanimuthar river in the case of V. Manickam V. TNPCB O.A. No 51/2015. It was noticed that industrial wastes had severely impacted the nature of water, a joint committee consisting of CPCB members along with members of TNPCB was assigned the task of ascertaining the compensation to be paid by Salem Municipal Corporation and other allied offenders. An interim compensation and performance guarantee was collect to secure remedial steps.

3.3.2. Pollution of river Mondovi in Goa (Kashinath V. Srinet Kotwale O.A. No. 486/2018) tribunal in its hearing first took preventive steps by appointing new/additional members to the monitoring committee. It then proceeded to appoint a committee to function in coordination with the GPCB to assess the amount of compensation, persons who would be liable to pay the same.

3.3.3. Pollution of the rivers Kali Nadi, Krishna, and Hindon in U.P (Doaba Paryavaran Samiti V. State of U.P, O.A. No.231/2016) the pollution of these water bodies had risen to such an extent that it had caused death of many of the inhabitants in that area. In lieu of the aforesaid prosecution has been initiated against 118 industries who were non-compliant in various areas around UP. A guarantee bond was required to be furnished, stating that within a span of 6 months the water would be processed to atleast meet the minimum standards.

3.3.4. In this case cleaning of River Periyar was directed by a suo motu proceeding initiated based on representations made by a former Judge R. Bhaskaran (Justice R. Bhaskaran V. State of Kerala Original Application No. 585/2018) a committee consisting of the District Magistrate, members from both CPCB and Kerala SPCB was constituted. An action plan regarding compliance with bio-medical and solid waste Rules was required to be made. An expert committee was also constituted to look into the matter of providing reliefs wherever necessary.

Water/Groundwater Pollution:

3.3.5. The Tribunal ordered the real estate promoters to deposit Rs. 10 crores with the CPCB as interim compensation within one month, along with 12% interest for any delay in doing so, as well as to pursue and collect damages.Pollution of the waterways (Aryavart Foundation v. Vapi Green Enviro Ltd. &Ors. (O.A. No. 95/2018) tribunal ordering an audit of the central pollution control board and creating a committee to determine corrective actions for the board's operation and requesting compensation from the board for noncompliance, respect for solid waste management regulations The 2016 Municipal Solid Waste Management Rules (O.A. No. 606/2018) are being followed. establishing task forces apart from the High court judges-only supervision panel and raising awareness of SWM regulations 2016,

3.3.6. Delhi's groundwater contamination (Tribunal on its motion v. Delhi's NCT government and others). The tribunal considered many measures taken by the independent monitoring committee established by the Delhi Jal Board to reduce groundwater contamination and rejuvenation (O.A. No. 496/2016) and directed the committee meet the expert group established for cleaning the river Yamuna.

3.3.7. Illegal groundwater extraction International Recreation & Amusement Ltd. v. Harinder Dhingra and Others (O.A. No. 458/2017) instructed a committee made up of the MoEF&CC, CPCB, Central Ground Water Authority, and District Magistrate of Gurgaon to review the current policy of allowing the supply of water

for commercial purposes when drinking water is in short supply and determine whether water is being diverted from the river supply for commercial use without affecting e-flows.[9]

4. Miscellaneous

Some of the other areas that were covered by the NGT included

a) coal mining (Garo Hills district V State of Meghalaya) the tribunal concluded stating that the non-compliance in such areas could be life threatening and hence imposed a penalty of Rs 100 crores on the state for colluding with the polluters

b) Railways- In the case of Saloni Singh V UOI, NGT took action by giving directions to select railway stations to comply with Solid Waste Management Rules within a period of 3 months

c) Marriage halls(Sri Om Tyagi V. Ministry of Environment & Forest)[10] - A committee was constituted which pointed out to the dual problem with respect to marriage halls in Ghaziabad i.e noice pollution (DJ/crackers) and non-compliance to Solid Waste Management Rules.

d) Illegal sand mining (Himmat Singh V. State of Rajasthan/2017) –States such as Karnataka, Rajasthan, and Madhya Pradesh had failed to comply with the requirement of filling a progress report, where mining licences were granted without an environmental clearance, the reason stated was due to inadequacy of staff. NGT issued a warning granting an extension of 60days.

5. **Conclusion**

Establishment of NGT can indeed be said to have been a step in the right direction for ensuring access to environmental justice in India. It becomes quite natural for a developing country to put its economic benefit above preservation of environment, yet India through various judicial pronouncements has established that we will not be willing to choose our economic interests if it is to have an adverse effect on the environment. India has also been expeditious in adopting international agreements and making them part of law of the land by virtue of Article 253. From the analysis been conducted, it can very well be said that there is no dearth of environment protection laws in our country. A plain reading of the NGT Act 2010 can very clearly show that the parliament has placed in adequate mechanisms to ensure quick disposal of cases. Despite this pressure on the NGT, it has contributed hugely to the development of environmental jurisprudence.

It would be wrong to say that NGT has failed in enforcing the environmental legal regime, as seen from the above case studied, the methodology adopted by NGT is to set up committee which could be any one of the following i) Joint Committees ii) Special Committees iii) Committees with expert members from a particular field etcetera. The NGT lays down certain directions and in order to secure compliance to such directions a bond furnishing guarantee is taken, which would be forfeited in case of non-compliance within the stipulated time period. Therefore the NGT has taken timely, deterrent steps to ensure compliance. The implementation of the directions is left to various other authorities such as the Central and State Pollution Control Boards among various other authorities. There have been various instances where NGT has fined the State Government, which goes to show its autonomy in functioning.

Another angle to the issue of India ranking the lowest among many countries in the environment protection index is that, in comparison to various other developing countries on that list India is the fastest developing country which also implies that there is greater influx of foreign currency. The problem associated with greater FDI is that the companies setting up plants here are less considerate towards the preservation of resources and are mainly profit oriented.

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