

Assessment on the Establishment and Challenges Confronted by the National Green Tribunal in India

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Abstract: *Environment is the greatest gift of God and most important factor for development to all Kinds of living and non-living things but at the same time it also creates the dispute between them.*

The environmental disputes related to forest, biodiversity, air and water are distinctive and so it needs a capability 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 to resolve this type of problem and expeditious disposal of case is not possible without separate special court.

For the fulfillment of this objective and to solve the disputes regarding to environmental issues government of India established National Green Tribunals (NGT).India is the only nation to have introduced an environmental tribunal after Australia and New Zealand which has been created under National Green Tribunal Act, 2010 known as the 'National Green Tribunal' (NGT), which is a fast-track judicial body formed with the objective of addressing the issues about the environment at the national level. National Green Tribunal is an institutional mechanism for enhancing access to environmental justice in India and work very well to fulfilled the real objectives of the establishment. The formation of the tribunal was indubitably a noble step in addressing environmental disputes in Indian society. But every step comes with its own loopholes and challenges.

The primary objective of this paper is to assess establishment and implementation of NGT, with its pros and cons and also to analysis the challenges faced by the National Green tribunals in India. The study is doctrinal in nature and therefore reliance has been placed on secondary sources to complete the study.

Keywords: Environment, Dispute, Establishment, National Green Tribunal, challenges

I. INTRODUCTION

Entire living life depends on the environmental factors .Environment has a dynamic role in the life of human beings, as it is the only home that humans have, and it provides air, water, food and other need and human Life is dependent on it for clean air, water, food and all other essentials for human life. If environment is polluted it would be a main cause of most of the diseases and life on earth may cease to exist or would be in danger. Therefore it is essential to protect our environment and ecosystem in order to preserve human life. The rise of living standard, urbanization leads to considerable exploitation of natural resources. In way of advance science and technology has disturbed ecological balance and also creates the dispute of serious nature .For the fulfillment of this objective and to solve the disputes regarding to environmental issues government of India established National Green Tribunals (NGT).India is the only nation to have introduced an environmental tribunal after Australia and New Zealand which has been created under National Green Tribunal Act, 2010 known as the 'National Green Tribunal' (NGT), which is a fast-track judicial body formed with the objective of addressing the issues about the environment at the national level. National Green Tribunal is an institutional mechanism for enhancing access to environmental justice in India and work very well to fulfilled the real objectives of the establishment.

The need of environmental court has been long demanded for other reason because the Indian judiciary is overburdened with a large number of pending cases on this context, to effective prevention and control of environmental pollution, there was an urgent need for a separate environmental court to decide the case without much delay. India is a party to the united nation conference on the human environment popularly known as Stockholm Conference, 1972 has made significant declaration related to safeguarding of natural resources and to developing international law, to provide compensation for the victim of pollution and other environmental degradation.

NGT is the statutory forum which is equipped with necessary expertise to handle environmental disputes. The presence of experts belonging to environment in NGT to decide environmental litigations has made it, more result oriented alternative environment dispute resolution mechanism

II. ESTABLISHMENT OF NATIONAL GREEN TRIBUNALS

India is a party to the decision taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India Participated, called upon the States to take appropriate steps for the protection and improvement of the human environment. The Stockholm conference of 1972 resulted a milestone in Human History where active initiatives were taken place at National and International level in furtherance towards protection of Environment, this clearly reveals from efforts of legislatives by enacting Water Act, 1974, Air Act,1984 and Environment Protection Act,1986.To set up pace on environmental justice, there had been demand for environmental courts in India. To improve decision –making on environmental matters, the environmental courts were advocated in some popular judgments of the Supreme Court.

First time in the landmark verdict of **M.C. Mehta Vs Union of India**¹;

The Supreme Court said that in as much as environment cases involve assessment of scientific data, it was desirable to set up environment courts on a regional basis with professional judge and two experts, keeping in view the expertise required for such adjudication. There should be an appeal to the Supreme Court from the decision of the environment Court. “The court found the ad-hoc mechanism of convening technical experts and commissioners as well as expert institutions (such as Central Pollution Control Board or National Environmental Engineering Research institute) for each case inconvenient.

Further in Indian council for Enviro-Legal Action vs. Union of India;²

The Supreme Court observed that environmental courts having civil and criminal jurisdiction must be established to deal with the environmental issues in the speedy manner. Meanwhile the Supreme Court as well as several High Courts resorted to designating a special “Green Bench”- one that could hear environmental cases on affixed day-or to assigning all environmental cases as special judges. There were halfhearted efforts in the direction such as the National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997.

Afterwards in , in **A.P. Pollution Control board v. M.V.Naydu**³, the Supreme Court lamented that the constitution of the State Appellate Authorities lacked judicial and technical expertise which was necessary for the disposal of appeals.

Later the Law Commission in its 186th Report⁶ recommended repeal of the National Environmental Tribunal Act 1995, and the National Environmental Appellate Authority Act, 1997⁴. To achieve the objective of Articles 21, 47 and 51-A (g) of the Constitution of India by mean of fair, fast and satisfactory judicial procedure, the Law Commission in its 186th Report recommended for establishment of experts in the field of environment for dealing with environmental disputes besides having appellate jurisdiction in respect of appeals under the various pollution control laws, emphasis on Stockholm Declaration and conferences at Rio de Janerio of 1992.

Subsequently after the years of discussion, the National green Tribunal Bill was introduced in the Indian Parliament on 29 July 2009. The Bill provided for the establishment of Green Tribunal, which will offer effective and fast redress of cases related to environmental protection and conservation of natural resources and forests. It received the Presidential

¹(1986) 920 SCC 176

²(1996) 3 SCC 212.

³(1999) 2 SCC 718

⁴The Law Commission “proposal to constitute environment courts” 186th Report, September 2003, Page no.6

assent on 2 June 2010, and was duly notified on 18th October 2010. Thus, the NGT was established on 18th October 2010 under the NGT Act. It was, therefore, a statutory manifestation of a judicial prescription.

National Green Tribunal Act, 2010 is an Act of the Parliament of India which enables creation of a special tribunal to handle the expeditious disposal of cases pertaining to environmental issues relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for the matters connected therewith or incidental thereto." It draws inspiration from the India's Constitutional provision of (Constitution of India/part III) article 21 protections of life and personal liberty, which assures the citizen of India the right to healthy environment. The National Green Tribunal has been set-up in five places. The Principal Bench of the NGT in Delhi covers the northern Zone, The Pune bench handles the western territory; the Central Zone Bench is based in Bhopal; Chennai covers the southern part of India; and the Kolkata Bench is responsible for the eastern region.

III. JURISDICTION AND POWER OF NGT

The very purpose of NGT is to adjudicate and dispose of the environmental matters in an effective and efficient manner. For that Act has dedicated different adjudicatory powers to the NGT.

The Statute (2010) Act has been created NGT with great powers in dispensing Environmental Justice. It has jurisdiction to decide all the matters involving substantial question regarding the environment and its protection and any legal right so connected with it. This being a statutory authority exercises not only original jurisdiction but also has appellate jurisdiction. It considers some principles before deciding any case such as, sustainable development, polluter pays, precautionary principle etc. It can order to party or any such person to pay compensation and relief that has caused damaged to the environment and to the victims by using hazardous substances. It can also order for restitution of property and restitution of the damaged environment. Also, an appeal can be filed to the Supreme Court against the order of the NGT. Functions performed by the National Green Tribunal are -Being expertise in environmental issues, it has to handle all the disputes related to environment and other related multi-disciplinary issues. The NGT was formed in the shape of quasi-judicial body on 18th Oct. 2010 under the NGT Act, 2010 with the purpose to adjudicate the matters related to environmental issues.

It must provide speedy trial and speedy justice in all related matter and must help reducing the burden of same cases pending in higher courts. NGT is mandated to dispose of the case within 6 Months from the date of filing of the complaint. All the proceedings under NGT shall have to be accorded to the proceedings within the sections of Indian Penal Code. But it has been observed that the Government has not appointed sufficient staff and judges because of which slowdown the working of NGT in various benches. The cases are even heard by the Principal benches through video conferencing because of less staff. Even by operating through this mode it has its own technical problem and limitations which further reduce the capacity of NGT.

NGT has the power of enforcing laws on administrative agencies. It can only issue recommendations for punishment in a case, depending on the nature and gravity of the offence. However, such punishment can be challenged in a court of law, which is the final authority, limiting the tribunal's role.

The NGT decisions are being challenged in various High Courts under Article 226 (power of High Courts to issue certain writs) with many asserting the superiority of a High Court over the NGT, claiming 'High Court is a constitutional body while NGT is a statutory body'. This is one of the grey areas of the Act.

The Tribunal does not have powers of initiating contempt. The process is so time bound, that the statute prescribes limitation for almost all issue. It has problematic appeal provisions and communication procedures. Some High Courts take up appeals from the NGT, despite the appellate body being the Supreme Court. The idea of having recourse to two appeals is also defeated in this case. So, with problem surrounding the tribunal is essential to explore more options.

The Tribunal has the original jurisdiction to hear all Civil Cases in which substantial question of environment in respect of scheduled Acts is involved as per section 14 of National Green Tribunal Act

The Tribunal has been further empowered to grant relief and compensation to the victims of pollution and other environmental damage arising under the specified Enactments in the schedule including accident occurring while handling any hazardous substances, relief for restitution of property damaged; and relief for restitution of environment for such area or areas, as may Tribunal may fit. For granting such reliefs five years limitation period has been

prescribed, provided that the Tribunal may after satisfying about the applicant being prevented by sufficient cause from filing of application within five years period, may allow such filling within a period of not exceeding 60 days.

While granting such reliefs, the Tribunal will be guided by a number of Supreme Court Cases in respect of compensation, restitution of damaged property and restitution of environment etc.

THE Tribunal has been further given the Appellant Jurisdiction against an order or decision passed by the Appellant Authority u/s 28 of the water Act,1974 or 31 of the ir Act,1981 or section 29 of the water Act,1974 by the state government or directions issued u/s 33 A of the water act 1974 or an order or decisions made by the state government or other authority u/s 2 of the forest (conservation)Act,1980 or directions issued under u/s 5 of Environment Protection Act ,1986 or grant/Refusal of environmental.

IV. THE POWERS OF NGT

As per Section 14 of the National Green Tribunal Act,2010 provides that the Tribunal has to settle disputes, having jurisdiction overall 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 enactment specified in schedule –I .Schedule –I specified the following Acts,Viz

I] The water (Prevention& Control of Pollution) Act,1974:

ii] The water (P& CP) Cess Act 1977

iii] THE Forest Conservation) Act ,1980:

Iv] The Air (P & CP) Act,1981

V] The Environment (Protection) Act,1986

Vi] The Public Liability Insurance Act ,1991

Vii] The Biological Diversity Act, 2012

Since its inception, the National Green Tribunal has exercised its powers very judiciously in environmental matters. This paper makes an attempt to examine the object and purpose of o establishing NGT as an alternative institution in India to hear environmental cases despite of already existing bunch of environmental statutory bodies to dispose of environmental litigations. The NGT has been able to dispose of 90% of the registered cases which means it has addressed 28000 out of the total 31000 cases. But there are serious questions that are raised on the unregistered cases with many claiming that the majority of the cases do not get reported due to lack of awareness and administrative difficulties.

V. CHALLENGES FACED BY THE NGT IN THE ADMINISTRATION REGARDING ENVIRONMENTAL CASES

NGT has given various path-breaking judgments and directives to the authorities since its inception including a ban on noise pollution and illegal mining, orders for wildlife protection and the preservation of biodiversity at various places. Apart from that, NGT is diligently working towards ensuring proper implementation of its orders. It has also played a crucial role in addressing environmental issues in the post-industrial period.

It is true that apart from the effective implementation NGT have to face different challenges and many a time a question has arisen on the enforceability of NGT but in real facts these issues are get up because of the lacunas in the NGT Act such as ; NGT ACT ,2010 Itself has given wide powers to the Tribunal/ Benches constituted under the Act, having overall civil jurisdiction in respect of not only substantial question relating to environment ,but also it includes powers to enforce any legal rights relating to environment. However, It appears that the questions are limited to the implementation of enactments specified in the Schedule-I10 (section 14 of the NGT Act, 2010. NGT has power in seven enactments established in the schedule but the NGT Benches have been observed to be not taking cognizance of other enactments like transfer of Property Act; Municipal Laws etc.; even though the issues involved are pertaining to the environment protection. Various Specific Environmental Laws like Water, Air and Environment protection Laws provide for criminal Sanction against the violations of provisions of the said Acts, Rules and Notifications issued there under. In Such Cases, the NGT jurisdiction has been excluded. Therefore, even though substantial questions relating to environment arise in the criminal actions for scheduled enactments under the NGT Act, 2010. The Tribunal is unable to take any decision in respect of the Criminal Matters.

Although, provision Section 14 of the NGT Act,2010 clarifies that the jurisdiction overall civil cases involving substantial questions relating to environment including enforcement of any legal right relating to environment has been given to the tribunal, and though a no. of important Judgments and order have been passed by the various Benches of National Green Tribunal but very few questions relating to enforcement of any legal rights relating to environment have been decided by the Benches

Earlier, NGT had taken restrictive view in respect of locus standi. At that time, the insistence was the filing of application by the person/s who have sustained injury or who are owner of the damaged property or who are legal representatives of the deceased/injured person or who are legal representatives of the Applicant. However, after realizing the scope of Environment, the broader view not has been taken that any person by bringing on record, the environmental damage or declaration, has locus standi to file application before NGT, as the environment has no restricted jurisdiction.

Though, the NGT benches have taken restrictive in respect of limitation clause. In a number of cases, the application made after five years of knowledge for damage or application made after six months period of knowledge of the activity, have to be admitted, even though the on compliances of environmental norms have been continuous and in most of the cases, though the affected person was having knowledge about the activities prior to the limitation period, the repercussion of those violation started recently within the limitation period mentioned under the section 14 and 15 and 16 of National Green Tribunal Act,2010. In such cases, not allowing the applications for issuance of appropriate directions to stop pollution in continuous pollution even after six months period or the damage caused and continued even after five years period is necessary because the water and Air Acts provide for taking cognizance of offences even in cases of violation after filing of first prosecution, in the continues violation. If at all, Hon'ble NGT does not take cognizance of continuous non compliances only on the ground of limitations, then the affected person/s will have no remedy then to approach Hon'ble High Court under article 226 of the Constitution of India. Therefore, the wide interpretation of continuous non-compliances will have to be taken as far as the limitation cause is concerned.

The provision of sections 14, 15 and 18 empowers the central Government or a State Government or a union Administration or the Central Pollution control Board or a state pollution Control board or a Pollution Control Committee or a Local Authority or any Environmental Authority established under the provision of Environment (protection) act, 1986 or any other law for the time being in force to make an application or Appeal to the Tribunal or various reliefs.

Consequently, it becomes necessary that on every occasion the Authorities are unable to restrain any person or industry or authority from causing pollution or unable to secure compliance of Environmental Regulations, such Authorities can initiate action/s before NGT Aggrieved by the non-compliance on the part of the industry, operation process. It has been observed that in one of the matter of noncompliance /s on the part of local body.

Wide jurisdiction given to the Tribunal, but it appears that this jurisdiction is limited to substantial questions relating to the environment. The substantial question of environment leads to serious consequences affecting community and not just individuals. It also related to causing substantial damage of environment /property or public health.

It true that the NGT Act, since its inception, has never functioned in the full capacity. The lack of human and financial resources has led to high pendency of cases. Which undermine NGT's very objective of disposal of cases within six months. As per the NGT provisions, the tribunal should have been constituted having 10 judicial and 10 experts members. But at present; tribunal is being constituted with 3 judicial and 3 expert members which is much less than mandatory requirement under the NGT Act.

The tribunal is found to be failed in bringing about the right to healthy environment which is a part & parcel of Right to Life under Article 21 of the constitution of India.

Wildlife (protection) Act, 1972 and scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 have been kept out of NGT's jurisdiction. This restricts the jurisdiction area of NGT and at times hampers its functioning as crucial forest right issues in linked directly to environment.

The decisions given By NGT are not fully complied by the stakeholders or the government. Sometimes its decision are pointed out not to be feasible to implement within a given time frame. The tribunal is not functioning in a time bound framework and is invoking the deadlines associated with technical clauses. This reflects the inability of NGT to resolve the cases in a time bound manner.

The NGT Decisions are being challenged in various High Courts under Article 226 with many asserting the superiority of a High court over the NGT, claiming “High court is a constitutional body while NGT is a statutory body.’ This is one of the weaknesses of the Act as there is lack of clarity about what kind of decisions can be challenged; even though according to the NGT Act, its decision can be challenged before the Hon’ble Supreme Court.

The tribunal is warranted for the want of expertise in its functioning. It is found that many NGT decisions have been reverted and overruled by the Supreme Court.

Since the Lack of regional Benches of NGT at local level is also one of the reason behind the delay in justice . The Justice mechanism is also hindered by limited number of regional benches. The present benches of NGT are established in the big cities, whereas the environment is required to be protected judicially in the tribal areas of dense forest as the major exploitation comes about their only.

The most important reason behind the non-fulfillment of objective of NGT is the unawareness about NGT and its functionary mechanism which leads to generate the very limited scope for the people to file the cases in NGT. Most of the common people are still unaware about the existence of judicial mechanism like NGT.

V. OUTCOME AND DISCUSSION

After the Assessment of given data at the end come to the conclusion that NGT appear to be very useful tools to satisfy the growing needs of environmental protection and social legitimacy of environmental laws. It was constituted with the pious motive to provide redresser to aggrieved person in matters relating to environment . While settling the dispute and questions the tribunal has been vested with power to grant compensation, damages, relief also for the direct restitution of environment. The NGT of India has developed faith in society till date and achieved success in delivering environmental justice. During the disposal of cases and delivery of justice, NGT is the first body in India to apply the polluter pay principle, the precautionary principle and sustainable development principle. The NGT has grown in multidisciplinary dimensions and makes great contribution to the development of environmental jurisprudence not only in national level but also in (internationally) global level.

At present, NGT has done well in easy and inexpensive access to justice but some improvements are still required to litigant satisfaction and sustainable development. The issue of environmental or climate change is more serious, the government should make it more autonomous in the field of jurisdiction and rule making power

This has highlighted the necessity of the public trust theory, which requires the government to act as a trustee of natural resources for the benefit of all people. As studied above, we can see why the National Green Tribunal is regarded as “Responsive to Environmental Problems,” which is one of the qualities of any successful environmental court.

It is also true that the tribunal is facing a severe crunch of manpower and lack of resources. It is also not properly equipped to address the modern time issues related to environmental protection and conservation. These loopholes need to be addressed so that NGT becomes a path-breaking institution offering dispute resolution in environment-related issues. Once these issues are successfully resolved, it will certainly benefit the Indian natural landscape to a great extent

1. There is need for more autonomy and widen NGT’s scope for effective protection of Environment in balance with Human developmental activities.
2. The Government shall reform the NGT provisions to increase the judicial and expert officials.
3. To ensure the proper functioning of NGT, the government shall fill the current official vacancies in a time bound way.
4. The very purpose behind the incorporating the NGT is to reduce the burden of Judiciary in the matter of environmental issues but within short times it is observed that there are internal issues within NGT which damage the purpose of protection of environment.
5. The NGT is found with the dedication to deal with the environmental matters. It is also reveals from its website which has exposed that 90% of the cases are adjudicated and got cleared. But when we reveal the mandate of the NGT, it seems to be not fulfilled yet.
6. NGT should have provides more powers in the field of jurisdiction and infrastructure and these power should be subject of judicial review.
7. It also needs to apply certain effective system along with traditional, so justice can achieve at grass root level.
8. The Government should Co-operate with national green tribunal on center, state and local level.

9. Suo-motu jurisdiction must provide to NGT on every step and level to maintain the environmental balance.
10. It needs to identify the experts and institution for the help of NGT in the matters related to estimation of compensation, damages and fine on the basis of complicated matter on cases.

At the end the researcher has mentioned that the initiation of the NGT under the National Green Tribunal Act of 2010 has been an optimistic step in environmental litigation. This court can rightly be called 'special' because India is the third country following Australia and New Zealand to have such a system. We feel that India has the most progressive and active environmental Tribunal. The need of the hour, however, is building capacity and increasing awareness amongst people, enabling them to come forward to protect the environment around them then only people should be able to apply their constitutional right of healthy environment in true sense.

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