

Efficacy of the National Green Tribunal in India

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Abstract—The rising globalisation and Industrialization across the globe has led to environmental concerns all over the world, as the countries are transforming into revolutionised ones, creating the need to protect environment for the future, in this race of discoveries special laws concerning environment has been coming up from decades, as the pillars to protect environment. India as a part of rising economy and one of the most developing countries of the world has also responded to the concerns regarding the environment through several years now ensuring and accepting the need to establish special environment legislations in the country, reforms were made when Indian economy went through liberalisation and The National Environment Tribunal Act, 1995 followed by, The National Appellate Authority Act 1997 were enacted by the parliament these two Tribunals however were non-functional and remained only on paper, as either they were not implemented or couldn't acquire any place in the rule of law but on the papers as plans, years after the Country has adopted the National Green Tribunal Bill 2010 passed in the parliament concerning the need for better implementation of the Principles of environmental law and of sustainable development, with a vision to provide justice to affected people and organisations throughout the country The article focuses on the development, structure and Implementations of the Green justice focusing on the various pros and cons of the system of green justice in India.

1. INTRODUCTION

The rise of environmental concerns across the globe as a consequence of visible environmental degradation resource depletion and several other aspects like Industrial exploitation has made the world to recognize that good environmental governance is fundamental to achieving protection of human race and sustainable development, Over the last three decades judicial institutions in some countries have responded to environmental challenges in innovative waysⁱ, especially in developed and recently developing countries the trend has been to set up specialized environment courts and tribunals for providing justice to individuals and organisations suffering from environment related problems, however there has been a problem in implementation of such laws and environment justice systems but with the various amendments and modification of laws a wide scope of improvement in justice is seen, Over 350 specialized environmental courts and tribunals have been established in 41 countriesⁱⁱ. India being one of the most developing countries of the world noticed the need of special environment laws and has seen several

changes in its environmental laws over the years as Pursuant to the observations of the Supreme Court of India in four landmark judgments, namely, *M.C. Mehta v. Union of India*; *Indian Council for Environmental-Legal Action V. Union of India*; *A.P. Pollution Control Board v.. M.V. Nayudu* and *A.P. Pollution Control Board V. M.V. Nayudu*ⁱⁱⁱ also the cases like Bhopal Gas Tragedy gathered a lot of public attention and frustration against the failure of the legal system in the context of implementing environmental laws, the Law Commission in its 186th Report had recommended to set up “multifaceted” Environmental Court in each state of India, with judicial and technical/scientific experts, as they exist in Australia, New Zealand and other countries^{iv}, before the passing of National Green Tribunal Act, 2010 The National Environment Tribunal Act 1995 followed by the National Appellate Authority Act 1997 following the conclusion of Rio de Jenerio Declaration 1992 in which India was a participant but the legislations failed in implementation and was later replaced by the National Green Tribunal Act 2010, which is serving for the 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 environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice^v. This paper mainly focuses on the evolution, concerns relating structure, implementation and the efficacy of the green tribunal in India.

2. HISTORY OF THE NATIONAL GREEN TRIBUNAL

The evolution of the environment legislations in India covers a wide range of changes in environmental jurisprudence having impact of various national and international concerns throughout the formulation of laws, some of the basic impacts came with The United Nations Conference on the Human Environment, met at Stockholm from 5 to 16 June 1972, having considered the need for a common outlook and for common principles to inspire and guide the peoples of the

world in the preservation and enhancement of the human environment^{vi}, The Stockholm Declaration of 1972, however, resulted in several amendments to the Constitution. Under the Constitution (Forty-second Amendment) Act, 1976 (which came into force on 3.1.1977), Art. 48A was introduced in Part IV which is the chapter dealing with Directive Principles, introduced in Part IV which is the chapter dealing with Directive Principles. Art 51A(g) was brought into Part IVA of the Constitution which deals with 'Fundamental Duties' which says- "to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures". Under the same Forty-Second Amendment, Forest and protection of wild animals and birds were brought into the Concurrent List as entries 17A and 17B^{vii}, on the basis of these articles the parliament enacted various laws, which includes, The Water Act of 1974, The Prevention and Control of pollution Act 1981, The Environment protection Act 1986^{viii}, looking at the need of making a better justice system for environment The National Environment Tribunal Act, 1995 was enacted by the parliament, Consequent of the decisions taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, calling upon the States to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages^{ix}, subsequently The National Appellate Authority Act was enacted to "hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto"^x Thus, these two Tribunals however were non-functional and remained only on paper, also Supreme court of India played a significant role in highlighting the need of specialized environmental courts Pursuant to the observations of the Supreme Court of India in four judgments, namely, *M.C. Mehta v. Union of India*, 1986 (2) SCC 176; *Indian Council for Environmental-Legal Action v. Union of India*: 1996(3)SCC 212; *A.P. Pollution Control Board v. M.V. Nayudu*:1999(2)SCC 718 and *A.P. Pollution Control Board v. M.V. Nayudu II*: 2001(2)SCC62 reference was made to the idea of a "multi-faceted" Environmental Court with judicial and technical/scientific inputs as formulated by Lord Woolf in England recently and to Environmental Court legislations as they exist in Australia, New Zealand and other countries^{xi} consequently the Law commission of India released its 186th Report on 'Proposal to constitute Environment courts' reviewing the Laws on "Environment Courts" in each State (or for group of States) and suggested in Chapters IX and X that these Courts must be established to reduce the pressure and burden on the High Courts and Supreme Court. These Courts will be Courts of fact and law, exercising all powers of a civil court in its original jurisdiction. They will also have appellate judicial powers against orders passed by the concerned authorities under the Water (Prevention and Control of

Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986 with an enabling provision that the Central Government may notify these Courts as appellate courts under other environment related Acts as well. Such a law can be made under Art. 253 of the Constitution of India, read with Entry 13A of List I of Schedule VII to give effect to decisions taken in Stockholm Conference of 1972 and Rio Conference of 1992^{xii}, as a result, to control the liberalisation escalating in environment jurisprudence, The National Green Tribunal was established on October 18th, under the National Green Tribunal Act 2010 Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible. New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other four place of sitting of the Tribunal^{xiii}.

Structure of the National Green Tribunal

The National Green Tribunal having established to take into account a large no. of Environmental cases pending with the higher courts and involvement of multidisciplinary issues in such cases, as well as the views of the supreme court of India^{xiv}, the Law commission of India recommended the setting up of the environmental courts having both original and Appellate Jurisdiction relating to Environmental Issues based on the observation of Supreme court in various judgements^{xv} The National Green Tribunal has been established under the National Green Tribunal Act 2010, to dispose of the civil cases relation to environmental protection and conservation of forests and other natural resources including enforcement of any legal rights relating to environment, The present Tribunal, According to the Section 4 of the act, the Tribunal shall consist of a Full time Chairperson, appointed by the Central Government in consultation with the Chief Justice of India, The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialised knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case, The Central Government may, in consultation with the Chairperson of the Tribunal, make rules regulating generally the practices and procedure of the Tribunal, not less than ten but subject to maximum of twenty full time Judicial members, A person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court, Provided that a person who is or has been a Judge of the High Court shall also be qualified to be appointed as a Judicial Member. not less than ten but subject to maximum of twenty full time Expert members, a person may be appointed as an expert member if he has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control,

hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution or has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution. The appointment of the Full time judicial members and Expert Members is subjected to as the Central Government notifies^{xvi}

Jurisdictions of the Tribunal

The tribunal shall have the 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 and grant relief and compensation to the victims of pollution and other environmental damage arising under such enactment and to hear appeals under certain enactments in the schedule any person aggrieved by an order or decision of the Appellate Authority under the Acts in Schedule 1 may appeal to the National Green Tribunal In accordance with the provisions of the respective acts ,The Water (Prevention and Control of Pollution) Act, 1974, The Water (Prevention and Control of Pollution) Cess Act, 1977, The Forest (Conservation) Act, 1980, 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^{xvii}

No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days^{xviii}.

3. IMPLEMENTATION OF THE GREEN JUSTICE IN INDIA

The Liberalisation of Laws in the past environmental jurisprudence of the country has been a unavoidable concern as with the growth of Industries, pollution, climate change and the degradation of environment has been the most threatening truth that we face today, With the establishment of the National Green Tribunal in India, the concern lies in its proper implementation and efficacy, The Tribunal faced many hardships in its early establishment as the country adopted a new justice system for the environmental concerns, The present chairperson, Justice Swatanter Kumar, was appointed Chairperson of the NGT on 20th December, 2012 following a tumultuous phase fraught with resignations by expert members, judges and acting Chairperson Justice Naidu due to the lack of infrastructure and facilities^{xix}, however The

Tribunal is gradually holding up its mandate of the Fast Track court, The Tribunal has developed Judgements that have set a precedent to demonstrate the importance and need for change in the environment sector^{xx}, according to the official site of the National Green Tribunal informing all its Judgements, the no. of Judgements given by the Tribunal has recorded a rise from a no of 28 cases in year 2011 to 410 recorded in year 2014 which has been seen improving in 2015 where a lot more judgements are expected to come by the end of the year, from the analysis of the litigation settled, it is observed that very few cases have been fixed Initially specially from the mineral rich states of India as very few number of cases were recorded from the states of Madhya Pradesh, Chhattisgarh and Orissa^{xxi} but the figures have recorded a rise in recent years where the Tribunal has been in Several Controversies for passing Warrants against high profile government authorities like the Commissioner of Delhi Police and Environment Minister of Odisha^{xxii} on the other hand Government has taken on the Tribunal in a direct confrontation before the supreme court for acting Suo motu in the environment cases which according to the government is beyond its limit^{xxiii} as the Tribunal acted Suo motu in some cases , *NGT v. State of Hp Ors* (application no. 273/2013(THC)) and *suo motu v. State of MP & Ors* were some of the most important cases in which the Tribunal acted in its own motion.

The Tribunal In response to the Ministry of Environment and forest passed the order, authored by NGT chairperson Swatanter Kumar, underlined that the purpose of the NGT Act will “stand defeated” if the tribunal is not said to have all the powers of a court. “In our considered view, the NGT has all the trappings of a court and is vested with original, appellate and special jurisdiction, performing exclusively judicial functions and hence is a court,” said the tribunal, pointing out that the fine distinction between a “court” and a “tribunal” has been reducing by the day. Citing pertinent provisions of the Act and some judicial precedents, the NGT said the tribunal is like a civil court and satisfies all the stated features for acting as an “independent judicial tribunal with complete and comprehensive powers”. Asserting the authority and independence of the tribunal, the 142-page order said the Ministry of Environment and Forest (MoEF) is “merely an administrative ministry” for the NGT to provide for means and finances and that “once the budget is provided, the ministry cannot have any interference”. It added that the entire process of appointment and removal is under the effective control of only the Supreme Court^{xxiv}

In its 5 years of existence the tribunal has given many important judgements, The Posco Case is one of the most important cases in NGT’s history. The Order to suspend the establishment of the 12 MTPA capacity steel plants in Odisha came as a radical step in favour of the local communities and forests. While the case is still going on in the court, it is worth mentioning that the Tribunal has stood its ground to support sustainable development and valued local communities above economic profit from the project. However the court has also

passed judgements in favour of industries when the scale tips towards economic development. The Sterlite industries judgement warranted the need for sustainable development. The tribunal passed an order in favour of the industries and stated that “environmental restrictions must operate with all their rigour but no action should be suspicion-based which itself is not well-founded”. The Goa foundation case was a landmark case that established NGT’s jurisdiction in all civil cases which involve a substantial question of environment. The petition sought protection of the Western Ghats and prayed for directions to the respondents to exercise the powers conferred upon them under the enactments stated in Schedule I to the National Green Tribunal Act, 2010 for preservation and protection of Western Ghats within the framework, as enunciated by the Western Ghats Ecology Expert Panel in its report dated 31st August, 2012. The Tribunal directed the Ministry of environment and forest to file its reply on the report within 4 weeks. Also, the Sand Mining Order has been the latest victory of NGT. The Tribunal put a ban on all forms of Illegal River and Ocean bed sand mining which were rampant across the country due to the sand mafia's influence over the sand market. The Tribunal, in a series of orders banned the mining and called upon state authorities to show cause why ‘illegal sand mining had been going on without any environment clearances’. While the case is still going on, there has been severe backlash from states against the ban calling it ‘judicial over reach’ and a reason for increased black marketing of sand^{xxv}.

The question here arises is about the Judicial over reach of the Green Tribunal, as the Tribunal has been formed as a result of failure of past environment justice systems it is now seen dealing with limitation of Judicial power, Infrastructure and facilities, as the court can settle cases and pass judgements but its implementation is dependent on other bodies as well, according to an information published by the Tribunal under Right to Information Act, Its places of establishment has been in 5 places Including Delhi, Pune, Bhopal, Chennai, Kolkata throughout which a wide number of Vacancies still exist in different positions under the Tribunal, 92 seats for different positions out of 161 total no of positions are still vacant and the Tribunal is working with less than half no of total sanctioned staff^{xxvi}.

4. CONCLUSION

Environment concerns are rising with the change in the various socio- economic factors, India being one of the most developing countries went through various Judicial reforms for the conservation of environment but the effectivity and implementation of environmental jurisprudence has always been a concern as the History of environmental jurisprudence in India have always been through improper implementation, lack of facilities and Jurisdiction, The pattern of environmental justice has seen a change With the establishment of the National green tribunal in India, The Tribunal faced many hardships in its early stages of

establishment due to lack of infrastructure and facilities but the Tribunal is gradually holding up its mandate of Fast track court which has been seen in the past years of its functioning where the Tribunal has given many strict and sensitive judgements regarding environmental clearances, Mining and other matters concerning environment. However, The Tribunal still lacks facilities and Jurisdiction as it has been set up in 5 places in which the appointment of staff and other positions in the Tribunal still stands vacant, The Tribunal has also been in conflict with various authorities in regard of its jurisdiction as a tribunal, There lies a stiff need for providing the Tribunal with proper Jurisdiction and facilities.

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