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Impact of the National Green Tribunal towards Environmental Justice System

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In recent times India has been witnessing a major transformation regarding the environmental justice system as there has been an increase in awareness regarding the true significance of the protection of the environment and continuous and rapid advancement in the number of environmental courts and tribunals. This paper will primarily focus on the National Green Tribunal its origin and how it impacts the factors which lead towards achieving environmental justice. This will be an analysis of the prime case laws and various precedents which has led towards the current status of the environmental laws in India.

The main objective of the research paper is to bring out the true importance and the reason behind the formation of the National Green Tribunal in India. The paper will also focus on the primary and secondary objectives and features of the Green Tribunal and when and how these said features are utilized in the process to achieve environmental justice. In doing so this paper will not only provide a detailed analysis of the major cases laws of environmental laws of India but will also shine a light on the major difference created by the Green Tribunal in the field of environmental law and how its rules and regulation will provide security to the future issues relating to the environmental injustice. Lastly, this paper will also emphasize the essential elements and jurisdiction of the Green Court and its jurisdictional authority and will also focus on how the tribunal can make its presence in the Indian Legal System much more impactful in order to provide better and swift environmental justice.

Keywords: *environment, tribunals, courts, jurisdiction, rules, legality, justice.*

INTRODUCTION

Green Tribunal was formed in 2010 under the Green Tribunal Act for the disposing of litigations relating to forest conservation, ecological protection, and saving of nature and other resources of nature. Among all the developing countries in the world India has established the NGT and it is the only country, after Australia and New Zealand. The main purpose of this establishment is that it must act as a speedy resourceful legal operating body comprising of environmental scholars for the speedy and effective disposal of cases. The landmark judgment in the case of *M.C Mehta v. Union of India* came to the decision that an environmental court must be established for the exceptional disposal of cases in relation to the improvement of ecological balance, flora, and fauna, and resources of nature, in general. This tribunal is not restricted to a border by the Civil Procedure Code but is governed by the phenomenon of natural justice. Apart from this, one of the major purposes of this tribunal is to decrease the stress of litigation from the lower and upper tribunals.

STRUCTURE AND JURISDICTION OF THE NATIONAL GREEN TRIBUNAL

NGT Structure

This Tribunal was formed on 18th October in the year 2010. After the enactment of the said law, the Tribunal has been established in India's capital city New Delhi with intricately subdivided regional branches in Bhopal, Pune, Chennai, and Kolkata respectively. The Chairperson of the Tribunal is to be a retired judge of the Supreme Court and has their headquarter in Delhi. There are various other legal official members who are retired judges of the high court. Every board of the Tribunal consists of one judicial and expert member. It is important for the expert member of the Green Tribunal is to have a professional qualification with a minimum of 15 years of experience in the field of environmental and forest conservation or preservation subject matters.¹

¹ Sridhar Rengarajan and others, 'National Green Tribunal of India – An Observation from Environmental Judgements' (2018) 25 *Environmental Science and Pollution Research*
<<https://link.springer.com/article/10.1007/s11356-018-1763-2>> accessed 15 July 2021

NGT Powers and Jurisdiction

The Green court has judicial authority upon all civil cases which involve major environmental problems.² Apart from the primary judicial authority on the filing of an order, as a legislative adjudicatory body, the NGT also has appellate judicial authority to view appeals as a Judge (Tribunal). The court is not bound by any of the processes provided for in the Code of Civil Procedure and will, not, be formed by the principles of 'natural justice.' The phenomenon of sustainable growth, the precautionary regulation, and the polluter pay phenomenon shall apply when any order/decision/ is passed.

NGT could provide, by a ruling, Relief and compensation to the people who are injured due to pollution and other harm to the environment (in excluding incidents involving the handling of any harmful element), for property damage recovery, and for environmental rejuvenation for such area or areas as the court considers necessary. A Tribunal mandate, ruling, or award may be implemented as a civil court decree.

The NGT Act also includes a mechanism for a non-compliance fine:

1. Imprisonment is about a period of time that may extend the penalty to ten crore rupees, as well as a fine and imprisonment.
2. The Supreme Court considers appeals from the NGT's orders, judgments, and awards within ninety days of the date of contact.

Under the seven environmental rules, the NGT deals with civil cases, this consists:

- The Water (Prevention and Control of Pollution) Act of 1974
- The Water (Prevention and Cess Act, 1977; The Forest (Conservation) Act, 1980
- The Air (Pollution Prevention and Control) Act, 1981
- The Climate (Protection) Act, 1986

² *Ibid*

Any breach of the above-mentioned laws or any decree passed or considered under these laws by the authorities can be questioned before the Green court. The Central Government is the focal point that monitors the implementation of the country's various environmental programs and policies which relates to the protection and development of sustainable improvement of the ecological system. When one observes from the point of view of environmental protection every industry when they begin to venture into development projects they are required to obtain an environmental clearance which is issued by MoEF and CC, this is the result of the Environmental Impact Assessment Notification which took place in the year 2006.

Various Environmental practices which are implemented for and during improvement projects are overseen by the regional chambers of the ministerial government and specifically assigned pollution control board of the said state along with pollution control boards of union territorial places. Before companies can obtain environmental clearances from the board associated, the primary procedures include screening, scoping, and various public consultations along with appraisals.

LEGAL STANCE OF THE NATIONAL GREEN TRIBUNAL

Throughout the years Green court has shown itself becoming one of the most important players in the field of the environmental justice system by passing monumental orders on various issues which have a wide range from waste management to deforestation in this country. A total of 400 judgments were given till the year 2013 and more than 300 cases were filed from different states in India. In Assam, several cases have been filed by environmental activists against various unregulated mining activities which had taken place in the surrounding of Kaziranga National Park.³ The Assam (State) pollution control board had permitted the stone crashing unit and various other brick industries to work around the area of the national park. The said park is nationally and internationally reputed as it hosts about two-thirds of the one-horned rhinoceroses and is also considered to be a World Heritage site,

³ Joëlle Smadja, 'A Chronicle of Law Implementation in Environmental Conflicts: The Case of Kaziranga National Park in Assam (North-East India)' [2018] South Asia Multidisciplinary Academic Journal <<https://journals.openedition.org/samaj/4422?lang=fr>> accessed 17 July 2021

and when such activities causing ecological harm started taking place it raises an immense concern among the environmental activists and several other ecologically conscious citizens.

Similarly, various other different cases and litigation were filed in the state of Maharashtra in the National Green Tribunal such as the case filed against the Lavasa Industries for the starting and developing a multi-million project of Nuclear Power Corporation of India Ltd and the Slum development program in Mumbai.⁴ After a thorough analysis of various cases settled through the National Green Tribunal, it has been noticed that only a few cases were filed in mineral-rich states such as Madhya Pradesh, Chhattisgarh, and Odisha, as there are still many mining and thermal-based power plants operating in this areas. Even though such mining enterprises are working in these areas, the ministry of environment and forest has granted them the authority and licenses so that they can continue their work without any legal hindrances.

The NGT hears suo motu appeals in lots of essential environmental instances within the need of environmental safety and public health. The trouble of 'can NGT take Suo Motu consciousness of an environmental depend?' become addressed via way of means of Shrotria (2015), bringing up examples of among the instances that the NGT handled, within the experience that the NGT does now no longer have electricity for suo motu appeals below the green court, the Madras High Court upheld the NGT's suo motu movement, disagreeing with the court's declaration that the green court is empowered to set up its very own manner and might take suo motu consciousness of environmental trouble. The NGT heard a complete of eleven suo motu complaints in 2016. The Water zone got here in first (5), The Operational activities and Nature oriented sectors got here in 2nd and third, respectively, with one enchantment each. The NGT supplied instructions to the Pollution Control Association also known as (SPCB) with inside the depend on suo motu court cases started on a complaint retrieved, to save you pollutants of the river Periyar via way of means of industries and to take powerful movement. The courtroom docket discovered the terrible situation of faucet water in Chennai and supplied commands to the government worried in one among the suo motu complaints in the

⁴ *Ibid*

problem of suo motu from the above evidence, we will deduce that the NGT is in exact operating order and that one among the traits of powerful environmental courts and tribunals is they are "touchy to environmental problems. There had been 17 judgments applicable to the Coastal Regulation Zone from the 2016 judgments (CRZ). In such CRZ instances, the green court took care of the said programs as well as handled them when they were reviewing the info of every case. The NGT made the subsequent observations and commands in numerous instances of CRZ nature, we noted. NGT emphasized that a public listening to method is anticipated earlier than a Coastal Zone Management Plan may be finalised. In suitable situations, the NGT refers instances returned to the neighborhood coastal region control government, who will look into the scenario and take suitable movement in compliance with the CRZ Notification's provisions. In sure instances, the clearances can be stored via way of means of the NGT till the coastal region control government takes movement. The NGT directs the MoEF&CC and CZMA to carry out tests in order to make sure that the CRZ/EC necessities and Environmental Legislation are being enforced.

LANDMARK JUDGEMENTS OF NATIONAL GREEN TRIBUNAL

1. POSCO NGT Case

In the year 2013, an NGO known as Lok Shakti Abhiyan had challenged with an appeal before the Green court challenging the Environment and Forest ministerial government in regards to them giving clearance to South Korean steelmaker POSCO.⁵ The environmental activist of Lok Shakti Abhiyan stated that POSCO the steelmaker company had already cut down more than two lakh trees without obtaining a forest clearance license from the required government authority. The said company in the year 2012 had signed a Mou with the government of Orissa. After further analysis, the board of the National Green Tribunal suspended the license obtained by POSCO which had previously allowed them to avail forest clearance till the year 2017.⁶

2. Almitra H. Patel vs Union of India

⁵ *Prafulla Samantara v Union of India & Ors* 2014 SCC Online NGT

⁶ *Ibid*

Almitra H. Patel challenged with a plaint against the Union of India regarding the reason behind the poor status of Delhi waste management.⁷ The officials, who were given the duty for the pollution and environmental welfare, could not manage to provide a clean and hygienic surrounding to the residents of the city. This situation led Almitra H Patel to file a petition against Municipal Officials of said city. The National Green Tribunal passed a judgment that completely prohibited the open burning of waste on land and landfills. Till date, the said case is considered to be one of the landmark cases which deals with solid waste management in the country.

3. Uttarakhand Flood Case 2013

The 2013 Uttarakhand disaster, led to a landmark order passing by the National Green Tribunal as it ordered Alaknanda Hydro Power associated with the GVK Power to pay rupees 9.26 crore as compensation for the damage and injury it caused to the residents of Srinagar as the incident took place due to their project's muck erosion.⁸ The said corporation in their defence stated that the said the incident that took place was to be considered as an Act of God and had no relation to their company's activities. The said contention was rejected by the National Green Tribunal during its judgement. This is one of the first instances when the green tribunal has considered Hydro Power to be at fault for the damages caused during the flooding and simultaneously imposed compensation keeping environmental welfare as its first priority.⁹

4. Ban of 15-10-Year-Old Diesel and Petrol Vehicle Case

In the year 2018, the Supreme Court passed an order which completely eliminated the heavy polluting cars in Delhi NCR.¹⁰ It was stated by the National Green Tribunal that diesel was the

⁷ *Almitra H Patel v Union of India* (1998) 2 SCC 416

⁸ Nikhil M Ghanekar, 'In Landmark Order, NGT Asks Alaknanda Power Co to Pay Rs 9.26 Crore' (*DNA India*, 2016) <<https://www.dnaindia.com/india/report-in-landmark-order-ngt-asks-alaknanda-power-co-to-pay-rs-926-crore-2247968>> accessed 18 July 2021

⁹ *Ibid*

¹⁰ Shambhavi Shukla and Anisha Raman, 'SC Bans Plying Of 15-Yr-Old Petrol, 10-Yr-Old Diesel Vehicles In NCR' (*Downtoearth.org.in*, 2018) <<https://www.downtoearth.org.in/news/air/sc-bans-plying-of-15-yr-old-petrol-10-yr-old-diesel-vehicles-in-ncr-61986>> accessed 18 July 2021

primary reason for air pollution and the alarming rate at which the air pollutants were immensely harming the health of the residents of the city. The Green court also mentioned foreign countries like China, Brazil, and Denmark who were also in the process to take certain groundbreaking initiatives in order to reduce the usage of diesel-powered vehicles to reduce the level of air pollutants in their respective countries.¹¹

5. Art of Living and Yamuna Flood Plains Case

The National Green Tribunal held Sri Ravi Shankar's Art of living the reason behind the harm caused to the Yamuna Floodplains during the World Cultural Festival which was held by the Art of Living foundation.¹² The green court imposed a fine of Rupees Five Crore on the Art of Living foundation and stated that the Delhi Development Authority (DDA) shall only begin with its restoration work of the damaged plains when the said foundation will make full payment of their entire fine amount.

6. The Ganga Rejuvenation Case

The National Green Tribunal passed a number of orders for the purpose of rejuvenating the river Ganga in the year 2017. In this process, the tribunal declared that the area of 100 meters from Haridwar to Unnao to be a no-development zone and also restricted waste dumping within 500 meters of the said area keeping environmental protection its prime objective.¹³

CURRENT CONDITION OF THE NATIONAL GREEN TRIBUNAL

Growth in the various legal actions in regards to ecological harm cases all around the country led the Indian government to enact the National Green Tribunal (NGT) Act for the speedy dismissal of overly sensitive litigations. Section 14,¹⁴ of the law, mentions that the green court will have the judicial authority over all civil litigations where considerable doubt arises

¹¹ *Ibid*

¹² Gaurav Vivek Bhatnagar, 'National Green Tribunal Holds Art Of Living Responsible For Damage To Yamuna Floodplains' (*The Wire*, 2017) <<https://thewire.in/environment/ngt-yamuna-art-of-living>> accessed 20 July 2021

¹³ *Ibid*

¹⁴ National Green Tribunal (NGT) Act 2010, s 14

concerning nature is involved, Section 15,¹⁵ states about providing satisfaction and money to the injuries suffered due to damaged air and other ecological harms which took place within the ecological enacted laws and 16¹⁶ of the Act specifies hearing of appeals from a resident injured by any law or implemented rules associated with ecological elements. Another critical aspect of the NGT's efficient functioning, which may significantly impact the decision-making process and access to justice, concerning the executive support supplied by the government of India. From the very first day itself, the Indian Government was not very reluctant to form the NGT function as an effective body. Because of the absence of basic infrastructure facilities and human resources, three judicial members had submitted their resignations between the years 2012-13. This paved the way for the Supreme Court into getting involved in the year 2012 and directing the Union Environment Ministry of Forest and Climate Change to provide basic amenities so that the NGT members keep on. As mentioned initially in part 4 of the law, the court will consist of an all-time chairperson and none but 10 judicial as well as expert officials subjected to the maximum of twenty whole-time judicial and expert officials.

In previous years, the green court has never established the required strength of ten judicial as well as expert officials to deal with the rising number of ecological cases all around India. At present, there are four judicial along with two expert officials, at the Green tribunal which portrays the bench to be weak in every possible sense. With absolutely no sign of new appointments some of the judicial and expert officials, the four zonal boards have been completely out of order the last year. Working for zonal boards with continuous hearing is nowadays happening via video conference for one to 2 hours. A number of litigators who are currently working within the tribunal have shown their dissatisfaction with the video call working procedure. The cases are being dismissed in a haphazard manner, and due to which lawyers are not getting sufficient time to present their cases properly. Many times, video calls are cancelled at the end hour which makes the legal officials complain about getting nearly no time to present new matters are often being ignored because of which cases are not being concluded during given time periods.

¹⁵ National Green Tribunal (NGT) Act 2010, s 15

¹⁶ National Green Tribunal (NGT) Act 2010, s 16

As the figure and motion of eco cases have developed monstrously over a certain period of time, the authorities have not portrayed any interest in bringing in new expert officials to deal with difficult environmental issues beginning from nuclear, medical wastes to hazardous wastes. At present from 13 expert officials who were admitted before and in the year 2018, four of them are coming from the Indian Forest Services with two from Indian Administrative Services. Intricate eco cases require essential information and experience. With the lack of expert officials, orders, associated with the large sums of fines to be paid by the accused are not received and they often fail to recognize the scientific reasoning behind the real environmental issues. This situation resulted in a large number of cases being filed against the Green Tribunal's orders in the Higher Courts.

Also are some huge obstacles when implementations of the NGT orders are in question. Rule 35 (1) of the law mentions that the sum which has been declared by the green tribunal shall be paid to the officials of the Relief Fund in 30 days since the said order has been passed. But due to lack of official involvement, it is noticed that the accused do not follow this regulation. Secondly, the decision passed by the tribunal is quite frequently challenged in the Supreme Court whenever an important fine has been imposed by the court. Thirdly, there is no such established mechanism that has the ability to monitor whether the environmental regulatory officials suit the tribunal's orders. Many of the landmark orders passed by the Green court which are associated with Ganga and Delhi pollution, unlawful mining, and waste management remain unchanged.

CONCLUSION

From further analysis of the orders passed and various landmark cases, it can be observed that most of the litigations arose from the Industrial Operating sectors which included litigations regarding, obtaining environmental clearance, cutting of trees, flooding, and unregulated construction activities. This shows that the Indian Government needs to give much more attention to the matters related to providing legal clearance to such companies and industries who want to expand by developing environment-friendly areas.

The primary objective of the National Green Tribunal is to provide every man residing in India the liberty to live in a pollution-free and eco-friendly environment as mentioned in Article 21 of the Indian constitution. International places like New Zealand and Australia, have specialized eco courts, often reinvent their administration and assist the board in an expansion of efficiency and lower the costs, and try to create a perfect world, by cost-efficient benefits. But when compared, India directs towards diminishing the part and working of the green court. Observing the current state of the tribunal, it is reliable to state that the numerous features that allow accessing cost-efficient benefits of the environment through this Act are defeated. Hence from this study, we can conclude that the Indian government needs to understand the various danger of pending cases in order to achieve its economic results.