



Critical Appraisal of National Green Tribunal Act, 2010

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Abstract

In India some initial legislative support for creating the National Green Tribunal already existed in the form of the National Tribunal Act 1995, though this went unimplemented, and also the National Environmental Appellate Authority Act 1997. The concept of environmental courts was initially and positively addressed in two major judgments of the Supreme Court of India. In M C Mehta v Union of India the Supreme Court stated that as environmental cases frequently involve assessment of scientific data, it was desirable to set up environmental courts on a regional basis with a legally qualified judge and two experts, to undertake relevant adjudication. Similarly, in Indian Council for Enviro-Legal Action v Union of India¹ the Supreme Court again floated the establishment of environmental courts with both civil and criminal jurisdiction in order to deal with environmental issues in a speedy manner.

Key words: Supreme Court, establishment, legal right, Conservation, implementation

Chapter: 1- object, origin & introduction of national green tribunal Act 2010.

Object:

An Act to provide for the establishment of a National Green Tribunal 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 would deal with all environmental laws on air and water pollution, the Environment Protection Act, the



Forest Conservation Act and the Biodiversity Act. With this effort, India would join Australia and New Zealand, which have such specialized environment tribunals. It would monitor the implementation of environment laws.

Introduction:

National Green Tribunal Act (NGT) was established in 2010, under India's constitutional provision of Article 21, which assures the citizens of India, the right to a healthy environment under Article 2 of the Charter of Fundamental Rights of the European Union, which affirms the right to life. The tribunal itself, is a special fast-track court to handle the expeditious disposal of the cases pertaining to environmental issues. The National Green Tribunal (NGT) was officially passed by the legislature on 19 October 2010 with its Chairperson, Justice Lokeshwar Singh Panta taking charge of his office here. By virtue of this law, the National Environmental Tribunal Act and the National Environment Appellate Authority Act were repealed. The legislature Act

of Parliament defines the National Green Tribunal Act, 2010 as follows,

An Act to provide for the establishment of a National Green Tribunal 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 thereto¹.

Parliament passed the NGTA in June 2010¹. The NGTA implements the commitments of India made in the Stockholm Declaration of 1972 and in the Rio Conference of 1992. India committed to take appropriate steps for the protection and improvement of the human environment and to provide effective access to judicial and administrative proceedings, including redress and remedies. This included also the development of national laws regarding liability and compensation for the victims of



pollution and other forms of environmental damage. In addition, and for the first time, the Act recognises the judicial exegesis of the right to environment as part of the right to life¹. In consequence, the Act provides for the establishment of the National Green Tribunal (NGT). The Tribunal aims to adjudicate environmental protection and forest-conservation cases in an effective and expeditious manner, which includes enforcement of any legal right relating to the environment together with available relief and compensation for damages to persons and property.

The Tribunal is 'one element' of a reformist approach to environmental governance. There are some 5,600 environmental related cases pending throughout India. Consequently, the government proposes to create a circuit system for the new tribunal. The main bench is to be situated at Bhopal in recognition of the city's disastrous industrial history¹. There will be four regional counterparts across the country.

According to the Environment Minister; the main bench of the tribunal will be in Bhopal. This way the government and parliament could show some sensitivity to the people of Bhopal, the site of the worst industrial disaster. We can never obliterate that tragedy from our memories but by setting the national green tribunal in Bhopal, I think we would send a signal that we mean business. A circuit approach would be followed to enable access for people. The court will go to the people. People would not come to the court¹.

Chapter:2- composition & jurisdiction of NGT composition:

A remarkable feature of the NGT is its composition. In view of earlier debate as to the specialist nature of environmental law and the multi-disciplinary issues relating to the environment, the Tribunal will consist of both judicial and expert members. The judicial members will have been or will be judges of the Supreme Court or the High Court of India¹. This reflects the significant, perceived status of the Tribunal and constitutes a commitment that the



judicial bench will have the requisite legal expertise and experience. Expert members will include either technical experts from life sciences, physical science, engineering or technology¹. Interestingly, there appears to be no room for social scientists with appropriate specialisation or familiarity with environment or occupational risk. Members will need practical experience of not less than five years or will be an administrative expert with not less than 15 years' experience of dealing with environmental matters. The minimum number of full-time judicial and expert members will not be less than 10 with a maximum of 20 to each bench¹. The Chairperson of the Tribunal will be appointed by the central government in consultation with the Chief Justice of India¹. Members will be appointed on the recommendation of a selection committee in such manner as may be prescribed by the central government¹.

Although the 'appointment of members' provision appears appropriate there is a caveat.

Action by the government to implement these provisions is essential. Hopefully, there will be no repetition of its inactivity concerning the National Environmental Appellate Authority (NEAA) as described above. Although the NEAA was constituted as a quick-redress process for public grievances in relation to environmental clearances, without leadership it remained ineffective.

Jurisdiction:

The Tribunal has original and appellate jurisdiction to settle environmental disputes. The original jurisdiction covers all civil cases in which a substantial question relating to the environment is involved and which arises out of enactments specified in Schedule 1 of the National Green Tribunal Act¹.

A substantial question relating to the environment may be of two kinds. The first is where the community at large is affected or is likely to be affected by environmental consequences or where the gravity of damage to the



environment or property is substantial or there is damage to public health as a result of direct violation of a specific statutory environmental obligation. The second relates to the environmental consequences that relate to a specific activity or point to the source of pollution¹.

The Act confers significant jurisdictional powers to the Tribunal but these require clarification. For example, substantial damage to the environment needs to be quantified and public health should be defined in a tangible form whereby a consistent and uniform approach can be followed by the Tribunal. If precedent or guidelines are applied, this will reduce the likelihood of subjective and possibly contradictory conclusions in the determination of what constitutes the term 'substantial'. As unreported administrative decisions are prone to inconsistency, this is a matter of some importance. For example, there have been numerous grand judicial pronouncements concerning the environment but

also some subjective statements by members of the judiciary which do not sit well with the overarching commitment to protect the environment¹.

Access:

The Act provides access for all aggrieved parties to approach the Tribunal to seek relief or compensation or the settlement of environmental disputes¹. This obviously includes a person who has sustained injury or an owner of property to which damage has been caused or the legal representatives of the deceased where death has resulted from environmental damage. However, any person aggrieved has standing including, with the permission of the Tribunal, a representative body or organisation functioning in the field of the environment, making the provisions sufficiently wide to allow enforcement by non-governmental organisations (NGOs) of all legal rights relating to the environment. In the original Bill, the provision in regard to access was limited in that it was silent on the right of individuals to approach the Tribunal as an



aggrieved party. This evoked criticism from activists, particularly NGOs¹. It was also believed that the original Bill diluted the objectives of both the Stockholm Declaration and the Rio Conference. The later changes to the Bill have ensured compliance, therefore, with international commitments.

Chapter:3- procedure principles & of the tribunal Procedural issues:

The Act provides for an appeal to the Supreme Court of India by any aggrieved person concerning the award or order passed by the Tribunal¹. This right of appeal is limited to a period of 90 days from the date of communication of a decision. It can be on one or more grounds specified under s 100 of the Civil Procedure Code 1908¹, although the Supreme Court may allow an appeal even after 90 days if it is satisfied that sufficient cause exists. The appeal clause seeks to ensure that the Tribunal functions in accordance with the principles of fairness and does not act in a

manner contrary to the public interest.

The Tribunal has the power to make such orders as to costs as it may consider necessary, including where the claim is not maintainable or false or vexatious¹. On the one hand, this may act as a deterrent to those seeking to use the Tribunal for improper personal or economic reasons but equally, imposing costs might prove restrictive to impoverished individuals or organisations seeking to address the concerns of communities and affected peoples.

Foundational principles:

It is mandatory for the Tribunal to apply the foundational principles of India's environmental jurisprudence, namely, the principles of sustainable development, precaution and the polluter pays principle¹. The Supreme Court has declared and reinforced this commitment in several cases. For example, in *Vellore Citizen's Welfare Forum v Union of India*, popularly known as the Tamil Nadu Tanneries Case¹ the Court dealt with the concept of



'sustainable development' and specifically accepted 'the precautionary principle' and 'the polluter pays principle' as part of India's environmental law. According to the Supreme Court: We have no hesitation in holding that sustainable development as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists. We are, however, of the view that 'The Precautionary Principle' and 'The Polluter Pays Principle' are the essential features of 'Sustainable Development'.

According to the Supreme Court in that case, both the 'precautionary principle' and the 'polluter pays principle' are accepted as part of the law of the land since Article 21 of the Constitution of India guarantees protection of life and liberty¹. The Court also elaborated what is meant by these principles and in particular ruled that the 'polluter pays principle' should be interpreted as meaning that: the absolute liability for harm to the

environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

Functions of NGT

The Tribunal would have 4 circuit Benches. The Tribunal shall consist of both judicial and expert members. Judicial members must have been judges of the Supreme Court or High Courts. Expert members have to possess technical qualifications and expertise, and also practical experience.

Suggestions:

According to a critique by The Access Initiative-India (TAI-India), a global civil society coalition, the National Green Bill suffers the following limitations. The problems, along with their suggested solutions, include:

- The name "National Green Tribunal," as provided in Clause (1) must be changed to "National Environmental Tribunal Bill."
- There must be a tangible method for measuring or substantiating the impact on



- environment or public health - Clause 2 (1) (m).
- The bill must mention a fixed time period for the law to come into effect.
 - The bill must specify that the tribunal can be considered functional only if it has a mix of judicial and technical members, the chairperson included. (Clause 3 and 4)
 - Bill must have the power to revoke clearance granted in terms of compensation of damaged property
 - Clause 16 (i) refers to "aggrieved person" as someone affected by action under the Forest (Conservation) Act and Water Act. However, this may end up benefiting violators, such as mining companies and industrialists. Hence, this provision must be deleted.
 - Clause 18 (2) e vests too much discretion in the Tribunal, thus increasing chances of its misuse. Hence, the suggestion for deleting this clause.

- Clause 21 states that the decision of the tribunal is final. This, however, must be changed to provide for an appeal against its decision before the Supreme Court.
- Imposing of cost against litigants should be removed, since this may discourage people from approaching the body.

In fact, the bill requires complete reconsideration, deliberation and redrafting so that it meets the aims of securing environmental justice and offering relief to those affected by environmental degradation.

Conclusion:

It is interesting that the debate in India has focused on the technical and scientific content of the subject matter before the courts in environmental cases. The composition of the National Green Tribunal itself reflects this approach. One might argue that the technical content is no greater in this area than other areas of law (such as intellectual property or competition law)¹. However, the true case in India may be that



scientific expertise on the Tribunal itself produces an equality of arms and prevents powerful, corporate interests from outgunning claimants in producing expertise which claimants cannot match in what is often public interest litigation.

It will be interesting to see both the type and volume of cases coming forward to the National Green Tribunal in India. This experience will also test the drawing of the boundaries in the Act in terms of what can be seen as 'environmental' and also, in an era of sustainable development, the extent to which environmental issues can be ring-fenced from wider social and economic concerns. Finally, as suggested by comments on the composition of the National Green Tribunal, there is no guarantee of resolution of wider systemic problems of environmental enforcement in India or of freedom from capture of the Tribunal by narrow sectoral interests. This suggests that the National Green Tribunal is unlikely to be a panacea for all environmental ills, but it could

provide a lead in terms of new forms of environmental dispute resolution and do much to further the lead already given by the Sup development, the extent to which environmental issues can be ring-fenced from wider social and economic concerns.

References: