

EFFECTIVENESS OF GREEN TRIBUNALS IN ENVIRONMENTAL JUSTICE

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ABSTRACT

India's tremendous growth in population has resulted in increasing number of environmental issues and its consequences. However, these issues are mostly left unaddressed as the political and social policies of the state predominantly focus on the contemporary economic challenges. Therefore, on the account of encountering the environmental issues, the government of India has established National Green Tribunal, with its branches operating throughout the country. The Green Tribunal is a statutory body set up to handle cases regarding environmental issues and to deliver time bound decisions for such cases. Though it is efficiently working on adjudication, there are some reforms that National Green Tribunal (NGT) should consider for its progress. Through this paper, the author explores three inevitable challenges that NGT has to address in terms of political interests and management of resources. The resources of this research are primarily doctrinal and it follows a historical approach in analyzing the fundamental since its establishment. The research begins with an introduction of environmental tribunals, following which it explains the development of National Green Tribunal. Furthermore it gives a detailed overview of the challenges encountered by Green Tribunal since its inception. Finally it concludes by recommending the most comprehensive solutions to approach these environmental challenges.

INTRODUCTION

The environmental pollution has resulting effects on all the living organisms, which is a wake-up call to protect our ecosystem in order to preserve human lives. On the account of this, the government of India has proposed the National Green Tribunal Act of 2010. This was an establishment under Article 21 of the Indian Constitution, assuring citizens a healthy and sustainable environment which lead to the formation of National Green Tribunal. The Green Tribunal is a statutory body that handles civil cases related to the protection and conservation of the environment and natural resources. Since the environmental disputes are distinctive in nature, it is equipped with a panel of experts in different fields like sociology, ecology, environmental science etc. The establishment of this tribunal is an initiative as a substitute for ordinary courts to enable effective justice and speedy disposal of environmental disputes. It empowers citizens by creating a platform to address the grievances and concerns by involving greater public in

decision-making process. The NGT provides assurance for the enforcement of environmental laws by holding the public accountable and also by deterring potential offenders. In addition to this, it also aims to provide compensation for the damages caused by adverse environmental violations.

DEVELOPMENT OF THE ENVIRONMENTAL TRIBUNAL

Environmental Justice is a perspective that has been not addressed by the states in general. A few countries have come ahead of others in preventing environmental degradation and exploitation. According to the UN reports, Environmental Courts and Tribunals are widely accepted as a significant way to accomplish sustainable development goals. Over 1,200 Environmental Courts and Tribunals are operating across the globe at National and State provincial levels. According to Prings "the development is dramatically changing the playing field for environmental justice around the world"¹⁰²⁹. These tribunals differ from other

¹⁰²⁹ Policy makers (UN environment reports).2016

ordinary courts as it handles only the environmental issues and these issues are adjudicated by experts in environmental law. One of such developments was the 186th Report of the Law Commission with a proposal to constitute Environmental courts, which paved way for the incorporation of the National Green Tribunal of India in the year 2010. NGT is an Indian quasi-judicial body, solely constituted to resolve environmental disputes. It provides an effective and quick redressal and also ensures the enforcement of legal rights granted under any law in terms of environmental protection. The NGT is headed by a Chairperson, appointed by the Government of India in consultation with the CJI. In addition to this it consists of Judicial members as well as expert members who are positioned for the process of adjudication. It operates through a panel of zonal benches situated at four main locations and are bound to settle disputes within a period of six months.

CHALLENGES ENCOUNTERED BY NATIONAL GREEN TRIBUNAL

Despite its ever increasing contribution since its inception, NGT has been found struggling to balance between protecting the environment and economic development. It has been criticized for its underperformance in the process of dispute resolution over the years. At present, the NGT tribunals neither have a uniform administration nor flexibility in the process of adjudication. Further they are struggling with many difficulties, like pending vacancies, lack of nodal agency to administer NGTs, loopholes in the appointment of members of NGT, tenure and composition of the members of tribunals, etc. These constraints that have resulted for such underperformance which can be categorized under three different perspectives as follows,

1. Jurisdiction

The NGT derives its jurisdiction exclusively from the National Green Tribunal Act, 2010 and is bound to function within the scope of the Act only. Further, NGT is empowered to handle cases involving civil matters only and criminal

proceedings are excluded from its authority. Hence it has been accused frequently for overstepping its jurisdiction by proposing judgments that are beyond its boundaries. In addition to this, the NGT has not been authorized to hear any matter related to Wildlife protection, Indian Forest Act, and any other law enacted by state legislatures related to forest and wildlife. Moreover the NGT Act, 2010 has limited the jurisdiction of the tribunal to only take into consideration the cases involving “substantial question of environment”, which is practically impossible to be assessed by common people, making it hard for them to determine if it is substantial or not¹⁰³⁰. In recent times there has been an excessive delegation of its essential powers, through various external committees to overlook the compliance of different environment cases. There are more than 90 committees set up at present, in which nearly 37 are headed by the former members of the NGT itself¹⁰³¹. This excessive delegation represents the abrogation of the Tribunal's jurisdiction on cases pertaining under its scope, as the tribunal itself is a delegated statutory body of the state.

2. Political Interests

There are subsequent conflicts witnessed between the ruling government and NGT in matters relating to its adjudication where, the government itself a litigant. As the appointment of NGT's members, their performance appraisals, promotion, salary and reappointment are solely dependent on the Executive, the members of NGT are hesitant to pass stringent penalties against the Executive authorities. This poses an inherent conflict of interests. Further there arises a question of independence of the environmental Tribunals vested with quasi-judicial authority, as the selection and composition of the members of the Green Tribunal is wholly taken up by the executive and not judiciary. The NGT has also been criticized for its decisions contradicting the economic growth and development. NGT

¹⁰³⁰ Committee on Science & Technology, Environment and Forests. 2012

¹⁰³¹ Journal of positive School of Psychology. 2022

has also been accused for imposing heavy restrictions and penalties on both the individuals as well as industries under the “POLLUTERS PAY”¹⁰³² principle without giving alternative solutions and reasonable timeframe. Moreover, the optimum implementation of the decrees of the NGT continues to be a challenge towards achieving environmental protection, which has to be considered as the need of the hour.

3. Insufficient Resources

Right from its inception, the NGT has undergone troubles and administrative roadblocks relating to the appointment of Judicial and technical officials. This has often led Tribunal to a subsequent lack of quorum to hear cases¹⁰³³. The NGT's branches were found lacking adequate infrastructure to function properly, which led to the high pendency rates, thus reducing the possibility for quick justice system. These vacancies are not only resulting a halt in redressal of environmental related disputes but also leading to lack of accountability and efficiency in the working of the tribunal¹⁰³⁴. In addition to this, most of the administrative officials who are appointed in the tribunal do not possess the required job experience and qualifications. Since the NGT's were established to provide expert decisions on various matters, the technical experts work in a specialized manner but they lack experience to draw proper inferences on matters in dispute before them¹⁰³⁵. Therefore there is a need to relook upon the provisions on the selection process of the technical experts under the statute to improve the functioning of the NGT. The establishment of NGT at grassroots level is to provide a speedy remedy on environmental disputes. However, it was observed by the Law Commission of India in its 162nd report, that the purpose of enacting tribunals would go wrong if the its decisions had to go the Apex Court resulting in a lengthy and costly process for justice. The condition of the NGT, is worsening

day by day due to its lack of appointment of the required number of members. Since May 2014, NGT has been working with less than 10 members due to lack of appointment of staffs and it did not have full-time chairperson until 2018¹⁰³⁶. Further, the judicial members have resigned due to lacking facilities and support from the government¹⁰³⁷. Therefore, the shortage of members and transfers from one bench to other has affected the litigants and working of the NGT in India.

SUGGESTIONS FOR REFORM

The National Green Tribunal needs to be given a platform to handle criminal investigations, that widens its scope by granting more autonomy, which boosts its effectiveness in resolving, monitoring and preventing environmental degradation. And also to promote sustainability by ensuring environmental conservation in balance with the government's development activities. The two significant acts which is essential for the environmental protection have not been included in NGT Act, along with seven other acts, which is the Wildlife Protection Act, 1972, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This exclusion restricts the jurisdiction area of NGT, and alters its adjudication capacity as the forest rights are directed towards environment conservation. Since, the main objective of NGT is the speedy disposal of cases, the location of NGT only in four main zones (Bhopal, Pune, Kolkata and Chennai) is still a hindrance in easy accessibility. This can be tackled by establishing more branches of NGT and also by providing an option for virtual proceedings. The main objective of NGT which is to mandate the disposal of cases within six months, cannot be put into practice by lack of resources which can be achieved by the adequacy in financial and human Resources. There is an existing need to provide a uniform structure for the method of appointment and transfer of its judicial and administrative officials. A system of two-tier

¹⁰³² The Indian Express. 2015

¹⁰³³ Sarayu satish, The Tribunal System in India

¹⁰³⁴ Prashant Reddy, The Trouble With Tribunals. 2013

¹⁰³⁵ Navdeep Singh, Times of India, 2015

¹⁰³⁶ The Indian Express. 2018

¹⁰³⁷ Prianka Rao, Hindustan Times. 2017

tribunal system of appeals from lower tribunal to upper tribunal and then to the Apex court, as followed in UK , can be adopted in India without changing tribunal's jurisdiction which is granted under the parent Act. Further, it is necessary for the judiciary to interpret the laws and to define the outlines of the NGT and also to have judicial control over the green tribunals to ensure fairness in the NGT's operations.

CONCLUSION

The National Green Tribunal is a productive initiative by the Government of India , which has enhanced the rightful implementation of the existing environmental laws . These institutions will certainly help India to achieve Sustainable Development Goals and further strengthens a harmonious relationship between the society and the environment. NGT has also facilitated addressing the environmental degradation and depletion , through legal mechanisms has assisted in protecting the environment and people's rights. Since, the NGT has been established with a quasi-judicial authority, its adjudication must be independent and fearless similar to the Indian Judiciary. Ministry of Environment and Forests should establish new branches of green tribunals in each state of the country . In order to improve the Green Tribunal's operation, the awareness of its existence must be spread across the country. Bringing in transparency in the process of appointment and adjudication will build in confidence among the litigants. Further, a platform could be created to publish and access all its decisions to ensure NGT's accountability to the society in guaranteeing environmental justice. In addition to this , a mediation system can be introduced as a dispute resolution mechanism to resolve disputes in explicit and inexpensive manner, which is a great alternative, substituting formal litigation.

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