

Constitution of India and Environmental Governance:

Administrative and Adjudicatory Process

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Lecture 52

National Green Tribunal - I

As we begin our enquiry in the 11th Module, we are armed with the knowledge and information about the tentative, amateurish steps taken by India in Environmental Justice Dispensation through crafting of laws and creating institutions. They were quite impressive to start with but could not deliver and sustain themselves petering out either because of the fact that they were ill equipped or did not get the kind of support they deserved.

Be that as it may, we have two illustrative examples in the form of the National Environment Appellate Authority Act 1997 and the Environment Tribunal Act of 1995 as illuminating this idea which we discussed in the last module. In this module, we will witness a phenomenon, a phenomenon of the birth of a professionalized specialized environmental justice delivery outfit and its working the National Green Tribunal NGT.

And in the later part we turn towards the very arrangements that exists in the existing body of environmental legislation and the enforcement mechanism with them to explore the latent and patent avenues available for Environmental Justice Delivery. We first begin with the National Green Tribunal as the first segment of our discussion on Environmental Justice Dispensation the second part the National Green Tribunal 2010.

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I. BACKGROUND, MANDATE, ORGANISATION, JURISDICTION



1. BACKGROUND: - Felt need for a Specialised Environmental Court-general growing arrears of cases at all levels of the courts, placing a great pressure on the Constitutional Courts to allocate adequate time for environment cases - to help reduce the burden of litigation in the higher courts (-M.C. Mehta v. Union of India, 1986,SC- Oleum Gas Leak Case) - S.C's directions to Central Govt. in A.P. Pollution Control Board v. Prof. M. V. Nayudu (1999,SC), to create a Specialised Environment Justice Delivery System bringing , both Expertise over environmental issues and judicial acumen into play- - Law Commission's 186th Report-NGT Act, 2010- India, third country, after Australia and New Zealand, to have such a system, in place - By 2016, over 1200 Environment Courts are reported to have been established, in different parts of the World

2. THE MANDATE : Creation of National Green Tribunal (NGT), to achieve the following objectives,



Look at the background, the mandate, organisation and jurisdiction of this entity which I refer to as a phenomenon. It was not something that just came overnight. It was a very well thought out and very well planned, desired, work of great care. It was out of a felt need for a specialised environmental court. And this desire was not just fed by any ordinary entity but even by the Supreme Court of India recall way back in 1986 in the Oleum Gas Leak case M.C. Mehta versus Union of India.

The Supreme Court insisted that we do, we do need such a court to help reduce the burden of litigation in the Higher Courts and much later in 1999 the Supreme Court had even given a direction to the central government in the AP Pollution Control Board versus Professor M.V. Nayudu to create a specialised environment justice delivery system which would bring both expertise in relation to environmental issues and the judicial acumen into play.

In its 186th report to the Law Commission, all this has been very elaborately stated and it examines several kinds of models that are already in existence and what India can gain by creating such an institution. And this report was a kind of a clincher the government had already toyed with so many experiments which we saw in the previous module and finally decided on such a kind of an arrangement. And that resulted in the National Green Tribunal act 2010, (NGT) for short.

India is the third country after Australia and New Zealand to have come up with such an effort and this happened in 2010. By 2016, just in about 6 years' time if you take a panoramic

view of the system that was developed all over the world over 1200 environmental courts are reported to have already been established in different parts of the world, what exactly is the mandate of this new green outfit?

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(i) effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources ; (ii) enforcement of any legal right relating to environment and (iii) giving relief and compensation for damages to persons and property, etc.

3. SALIENT FEATURES:

- **Preamble:** - to carry out, *inter alia*, the Constitutional obligations under Article 21- protection of the right to clean and healthy environment as an integral aspect of right to life- quality of life, emphasis
- **NGT-UNIQUENESS OF COMPOSITION:** A judge of S.C (-Chairman) and 10-20 judicial and 10-20 expert members-NGT along with its 4 regional Benches(Delhi as HQ, Regional Benches at Pune, Bhopal, Chennai and Kolkata --each case , heard by NGT/ Bench, by equal number of Judicial and Expert Members-Additionally, NGT constituted circuit benches in different places, viz. Shimla, Shillong, Jodhpur and Kochi, mainly to reduce the constraints of accessibility, especially for the poor and tribal populations living in remote areas - **CO-OPTION OF EXPERTS, TO ADVICE,** provided for



The Act stipulates three clear objectives; one, effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources. Please note, it is not just dealing with cases on environment but effective and time bound disposal of cases for protection and conservation of forests and natural resources is the prime objective. The second one; enforcement of any legal right relating to environment and finally giving relief and compensation for damages to persons and property etc.

So, in a way it was a combination of the objectives of the Environment Protection Act on the one side and overcoming those defects and deficiencies that existed in our legal order in not being able to compensate, give relief to the suffering of the people on account of environmental disaster. Primarily man-made ones at that. A very broad-minded Act and you cannot ask for anything bigger and better than this in terms of the said objectives which the new institutional arrangement would have to deliver.

A quick look at the salient features of the National Green Tribunal Act before we look into its working. The preamble says, to give a little bit about constitutional insulation of support it says the objective is to carry out the constitutional obligations under Article 21, in fact this is one wonderful thread of thought running all throughout in our thinking about environment

and environmentalism, an idea kindled by the Supreme Court of India that it has a very close relationship with the human rights, the fundamental rights of the people right to live.

And that has been given expression to the Preamble to carry out the constitutional obligations under Article 21 which is protection of right to clean and healthy environment as an integral aspect of right to life. And so, the emphasis is on the quality of life and not just their existence. Quality of life, life forms, human, animal, plant and the entire environment as a whole.

You cannot have stated a lofty objective in such clear eloquent terms than what has been given here in this NGT Act. This creates a body, a body for achieving these goals and what is it called The National Green Tribunal. It is a very unique body. Look at the composition. It would have a judge of the Supreme Court or a retired judge as that of the Supreme Court, of that stature and 10 to 20 judicial and equal number of expert members.

This is very special actually this is a further amplification and elaboration of the idea conceived in, remember the Environment Tribunal Act which we discussed earlier of 1995 Vintage and 10 to 20 judicial and 10 to 20 expert members, and who are these expert members? Expert members are those who have expertise in different areas of environmental knowledge, skill, understanding, specialization academic qualifications are given.

So, it is not just anyone who is in the no of environment somebody who has administrative experience also is put in this particular category and so you are combining administrative experience and knowledge and expertise on the subject to constitute an important component of the composition of this particular body and that counterpart rather the other part of this body is equal number of judicial members.

So, you are bringing in both the judicial acumen and administrative and research experience to combine to deliver justice. NGT would have its headquarters in Delhi and with four regional benches at Pune, Bhopal, Chennai and Kolkata would constitute the National Green Tribunal each of the case that is heard by either the NGT and the headquarters or by those ventures that are constituted in different parts of India they are heard by an equal number of judicial and expert members., so equal protection.

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- **JURISDICTION:-** (a) Original: settle disputes- civil cases "where substantial questions relating to envt.", including enforcement of any right in relation to it -application, normally within 6 months of cause of action- and (b)Appellate:- jurisdiction over decisions made under ,Water Act, 1974,FCA, 1980, Air Act, 1981, EPA, 1986 and notifications under it and Biological Diversity Act, 2002- appeal to be, normally, within 30 days of order etc.
- also, deals with Cases transferred by way of Reference, from Higher Judiciary
- to dispose the applications or appeals, as a general rule, within 6 months of filing of the same - Orders include, relief, compensation and restitution
- No other court or authority can entertain any claim or action that can be dealt with by the Tribunal.



- not bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.
- All proceedings , deemed judicial proceedings-Order, executable, as a decree of Civil Court
- Liability may be imposed on an individual, corporate entity-(Govt. agency, public / pvt. sector) and those who are in charge or responsible for corporate environmental wrong-every offence under the Act, deemed non-cognizable offence
- Appeal from NGT Order , lies with S.C



In recent times in order to have a greater reach and scope for access for a large number of people, NGT constituted circuit benches in different places like Shimla, Shillong, Jodhpur and Cochin and may be many more may come mainly to reduce the constraint of accessibility especially for the poor and the tribal populations living in remote areas. There is a scope for co-option of experts to advise in this body of law.

That explains the uniqueness of this creation and its composition. What kind of jurisdiction that NGT would have? It has two kinds of Jurisdiction, an original jurisdiction to settle disputes civil cases where substantial questions relating to environment are involved. So it is a very broad sweep of an idea of conferring upon this body an original jurisdiction.

And all issues which to the major part have issues concerning environment then invariably NGT is answer to knock at its door, seek and secure justice this includes enforcement of rights and relation to it all that is required is, if your right is affected, apply within 6 months of the cause of action, normally there can be exceptions and NGT can really take up cases even beyond 6 months if it is convinced that there is enough justification for the delay.

The second kind of jurisdiction that NGT exercises is the appellate jurisdiction to set an appeal, jurisdiction over decisions that are made under Water Act 1974, Forest Conservation Act 1980, Air Act 1981, Environment Protection Act 1986 and notifications under it and Biodiversity act. The appeal has to be made normally within 30 days of orders from all these legislations.

NGT also deals with cases chosen to be transferred by way of reference from Higher Judiciary if the High Courts and Supreme Court feel that this is one subject that is before them, which should be rightly be dealt with by the National Green Tribunal they may just pass an order to the effect that this particular case the suitable form for litigation and resolution of conflict is the National Green Tribunal, then those cases also can come.

As a matter of fact, except the Supreme Court, no other court has actually transferred cases of this kind because as you know it is actually the Supreme Court which was actually the prime motivator for the creation of this body and there are instances of Supreme Court having transferred cases before it, in favour of the National Green Tribunal, we have not heard of cases coming from the High Court to the National Green Tribunal as yet.

It is a time bound exercise, since the idea is to expeditiously dispose of cases and appeals these applications and appeal as a general rule, NGT is mandated to dispose of within 6 months of filing the same and orders also include release compensation and even restitution. So enormous task but to be accomplished in about 6 months' time as a general rule, no other court or authority can entertain any claim or action that can be dealt with by the tribunal.

So, this is a unique creation. When the case comes before it, no other court can take up any such case which is before the NGT and it is not bound by the procedure laid out under the Civil Procedure Code, but of course it is guided by the principles of natural justice it can lay down its own procedures.

So, a kind of liberty that is given to NGT is that it is not shackled by that normal usual court processes of filing petitions, of hearing them of argumentation and disposal in the manner in which the courts of law would operate but to lay down its own procedures for convenience and for expeditious hearing and disposal of cases.

All proceedings of NGT are deemed judicial proceedings and so by that token, every order issued by NGT is executable as a decree of Civil Court. So, it is clothed with the status, role, responsibility and function of a normal court of law without being confined to the rigmarole procedures which have afflicted affected them leading to delays, a very important thing to note.

And that does not in any way hinder in the execution of its orders because they have the same status as that of a judicial order. What kind of powers did they have? Liability may be imposed on an individual a corporate entity, which may include a government agency, which maybe in public sector or private sector and those who are in charge or responsible for corporate environmental row, every offence under this act is deemed a non-cognizable offence. All appeals from the order or what you call as decisions of NGT lies only with the Supreme Court and no other forum can sit in appeal over the decisions or orders of NGT.