ISSN (Online): 2455-3662
EPRA International Journal of Multidisciplinary Research (IJMR) - Peer Reviewed Journal
Volume: 10| Issue: 9| September 2024|| Journal DOI: 10.36713/epra2013 || SJIF Impact Factor 2024: 8.402 || ISI Value: 1.188

ROLE OF NATIONAL GREEN TRIBUNAL IN ADMINISTRATION OF ENVIRONMENTAL JUSTICE IN INDIA: A COMPARATIVE STUDY

Dr. Manjit Singh[1], Dr. Vinod Kumar[1], Ajay Kumar[1*]
[1]*Department of Laws, Guru Nanak Dev University, Amritsar (Punjab).*
Corresponding Author

ABSTRACT
Environmental justice is an effective medium for making government responsible and guaranteeing that environmental laws and regulations executed for the protection of environment. Earlier the enforcement of these environmental rights was possible through Article 32 and 226 of the Constitution and regular court were approached for the conservation of environmental issues. Access to regular courts for environmental justice was time-consuming, and ineffective in resolving environmental disagreements because of the growing complexity of environmental laws and wisdom. Therefore, National Green tribunal was passed with the aim of tackle these scientific and technical issues with the help of Judicial and Expert members in less expensive and speedy manner.

1. INTRODUCTION

In our constitution, the judiciary has the responsibility to act as a guardian of the constitution. They are not expected to sit as mute spectators and close their eyes and be ignoring for the problems faced by the society.[1] A survey of the cases related to environment pollution and eco imbalances reveals that most of the cases were filed under Article 32 and 226. Article 32 which is a fundamental right and Supreme Court of India entertains a writ petition for the enforcement of fundamental right. Article 32 is a fundamental right and Supreme Court of India entertains a writ petition for the enforcement of fundamental right.

The Supreme Court of India has contributed in widening the contents and contour of fundamental rights.[2] The application of the principles of Sustainable Development and wider meaning of Article 21 can be possible only through the contribution of Indian judiciary. Judiciary has widened its scope by pronouncement of various judgments and declared that right to life includes right to live in a healthy and pollution free environment. In the case of *Hinch Lal Tiwari v. Kamla Devi,*[3] the Supreme Court held that material resources of a society like tanks, forests, ponds, mountains and hillocks etc. are nature's gift. They should be saved for a proper and healthy environment which make it possible for people to enjoy a quality of life which is in fact is the essence of Article 21 of the Constitution. In *M. C. Mehta v. Kamal Nath*,[4] the Supreme Court clarified that any interruption of the vital environment elements, such as water, air and soil, which are essential for continuation of life would be dangerous to life as provided under Article 21 of the Constitution. In *N.D Jayal v. Union of India*,[5] the Supreme Court declared right to environment is a fundamental right. On the other hand right to development is also one. Therefore, the concept of "sustainable development" is to be treated as an integral part of life under Article 21. In *M.C. Mehta v. Union of India,*[6] *famously known as Ganga Pollution Case,* the apex Court has stated that the closure of industries may bring unemployment and loss of revenue to the state but life, health and ecology have greater importance for people. The Supreme Court of India adopted the doctrine 'Public Trust Doctrine, while interpreting Article 21 in connection with the environment and ecology. The Ratlam Municipality case, Delhi Gas Leak Case, The Ganga Pollution Case, Dehradoon Quarrying case, Calcutta Taj Hotel etc. are some of notable examples where the court, not only by liberalizing the traditional rule of locus standi has evolved the concept of public interest litigation but introduced novel innovative technique directed at protection of environment. Additionally, by providing new remedies or reliefs, appointing commission to look into the task of identification and monitoring of pollution the court has been able to provide adequate relief and compel the state to carry out the directions given by it from time to time.[7]

The Supreme Court has, in cases relating to environment given juristic recognition to the doctrine of sustainable development. This doctrine has been the running theme at all international conferences relating to environment and climate change, from Stockholm (1972) to Johannesburg (2002), it has now been recognized as part of customary international law.[8] Environmental law in India, and indeed elsewhere, has its humble origins in concepts of 'nuisance' under tort law and 'public nuisance' under criminal law. From such humble origins

1 *S. C. Tripathi. Environment Law (Allahabad: Central Law Publications, 2013) 220.*
2 *Kailash Thakur. Environmental Protection Law and Policy in India (New Delhi: Deep & Deep Publication, 1999) 203*
3 *(2001) 6 SCC 3215*
4 *(2000) 6 SCC 213*
5 *(2004) 9 SCC 362*
6 *1987 (4) SCC 463*
7 *Kailash Thakur. Environmental Protection Law and Policy in India (New Delhi: Deep & Deep Publication, 1999) 366*
8 *Nilanjana Jain. Judicial Activism in India (Delhi: Kalpaz Publications, 2013) 85.*

ISSN (Online): 2455-3662
EPRA International Journal of Multidisciplinary Research (IJMR) - Peer Reviewed Journal
Volume: 10| Issue: 9| September 2024|| Journal DOI: 10.36713/epra2013 || SJIF Impact Factor 2024: 8.402 || ISI Value: 1.188

in India, environmental claims, harms and wrongs have proceeded to a judicially established basis firmly rooted in the concept of rights and of human rights. The recognition of the right to environment as a human right, and of related environmental rights has been a proud achievement of judiciary in India. In 1980 two remarkable developments in the Indian legal system provided a strong impetus to judicial activism in India. There was a broadening of existing environmental laws in the country and judicial activity through public interest litigation began in earnest in India.[9] In the case of *Subhash Kumar v. State of Bihar*,[10] it was observed by the court that the right to life is a primary right as given under Article 21 of the Constitution and it further clarifies that it includes the right to enjoy pollution free air and water. If anything, cause danger to quality of life in violation of laws, a citizen has a remedy to have recourse to Article 32 of the Constitution. In the case *of T. N. Godavarman v. Union of India*[11] the Supreme Court through its interim order imposed a blanket ban on the cutting of forest in the State of Arunachal Pradesh and movement of felled trees and timber from any of the Seven North-Eastern States to any other State. The court also banned the felling of trees in state of Jammu and Kashmir, Himachal Pradesh and Tamil Nadu. It also prohibited running of timber industry within the forest with a view to protect the forest.

But after a period of time, the higher judiciary while dealing with the environmental justice first time felt that there must be expert members along with the judicial members to tackle the technical issues involved in the environmental cases. The need for the establishment of a specialized environment court has been stressed and reiterated by the Supreme Court of India and the Law Commission of India under One Hundred Eighty Sixth Report. The justification for the establishment of such special court given by the Supreme Court is lack of requisite technical and scientific expertise to deal with complex environmental issues.[12] The rise of environmental issues increased after the well-known interpretation of the judiciary saying that 'Right to clean and healthy environment' is a part of our fundamental rights and is interpreted within the scope of Article 21 of the Constitution of India. There are numbers of *M.C Mehta cases* where judiciary has taken a strong stand for the protection of environment. The Courts directed expert committees if any environmental issue knocks the Court of Law, but the report of expert committee was not interpreted in technical terms which is very essential. Thus, the Supreme Court delivered the landmark judgment for the protection of environment and setup of environment courts for the effective and speedy disposal of cases for giving relief and compensation for damages to persons and property. Justice P.N. Bhagwati was the first person to strongly advocate the establishment of environment courts. In *M.C. Mehta v. Union of India*,[13] popularly known as Oleum gas leakage case, the Apex Court pointed out that cases involving issues such as ecological destruction, environmental pollution, and its conflicts over natural resources include appraisal and evolution of scientific data and there was a pressing need of environment experts in the management of justice. Holding this view, the Supreme Court advocated the establishment of specialized environment courts. Later after ten years the above judgment was delivered, the Supreme Court in the case of *Indian Council for Environ- Legal Action v. Union of India*[14] again focused upon the idea of having specialized environment courts. In the meantime, the National Environment Tribunal, 1995 and the National Environment Appellate Authority Act, 1997 were enacted. In the year 1999, the Supreme Court again strongly recommended establishment of Environment Court in the case of *A.P. Pollution Control Board v. Prof M.V. Nayadu,*[15] by observing that "paramount importance was the need for establishment of Environment Courts, tribunals and authorities for providing sufficient scientific and judicial inputs. Court further held that such complicated disputes should not be left to be decided by officer from the executive. In the follow up case, in *A.P. Pollution Control Board (II) v. Proof M.V. Nayadu*,[16] in the year 2003, the Supreme Court directed the Law Commission of India to scrutinize the question of establishment of environmental Courts. The Law Commission on 23rd September 2003, in its 186th Report suggested establishment of environmental courts having original as well as appellate jurisdiction. The report proposed a structure in which environmental courts could be established at the State level with flexibility to have one court for more than one State. Thus, taking into consideration all these, the Government of India felt the necessity of setting up of a separate body for environment related issues and accordingly on 31st July 2009, the National Green Tribunal Bill, 2009 was introduced in the Lok Sabha.[17] Finally on the 18th of October, 2010 the National Green Tribunal Act came into effect and started functioning on 4th of July, 2011.

2. THE NATIONAL GREEN TRIBUNAL ACT, 2010

In 2010, the Parliament of India has passed National Green Tribunal Act, 2010 which provides for establishment of a special tribunal to handle the speedy disposal of the cases relating to environmental issues. It was enacted for giving effect to Article 21 of the Constitution, which guarantees the Indian citizens the right to a healthy environment. The National Green Tribunal Act a critical step taken by policy makers for capacity development as the Act aims to strengthen the structure of Global Environmental Governance.[18] The tribunal is a quasi-

9 *Pranay Lal and Veena Jha, "Judicial Activism and the Environment in India: Implications for Transnational Corporations", retrieved from http://www.openarchive.cbs.dk visited on 12th June, 2014 at 09:30 pm.*
10 *(1991) 1 SCC 598*
11 *(1997) 2 SCC 267*
12 *Mohammad Ayub Dar, "The New Horizons of Green Justice under the National Green Tribunal Act, 2010: Does it Lock Environmental Class Actions to Civil Courts?", Kashmir University Law Review, vol. XVII, (2010) 1-2*
13 *AIR 1987 SC965*
14 *(1996) 2 SCC 212*
15 *AIR 1999 SC 812*
16 *(2001) 2 SCC 62*
17 *Sukanta K. Nanda. Environmental Law (Allahabad: Central Law Publication, 2013) 419*
18 *Pradeep Bakshi, "New Judicial Roles and Green Courts in India", retrieved from http://www. inece. org visited on 13th May 2013 at 8.45pm.*

ISSN (Online): 2455-3662
EPRA International Journal of Multidisciplinary Research (IJMR) - Peer Reviewed Journal
Volume: 10| Issue: 9| September 2024|| Journal DOI: 10.36713/epra2013 || SJIF Impact Factor 2024: 8.402 || ISI Value: 1.188

judicial body comprising of judges and environment experts and is a special fast-track court which ensures speedy disposal of cases. The tribunal is established for the effective and speedy disposal of cases related to the protection of environment and providing relief and damages for loss to persons and property and for matters related with it. The main purpose behind its institution is to lessen the load of litigation in the higher courts. The NGT has been created with an aim to check industrial pollution, and allow aggrieved persons to approach the tribunal to claim civil damages for non-implementation of environment laws. The NGT has started functioning, and its judgments prove that this specialized body is dealing with environmental cases at fast rates. The tribunal has jurisdiction over matters related to the environment and it is not bound by the technical rules of Civil Procedure Code, 1908 and principles of natural justice are applicable to it.[19] The NGT Act came into force after automatic repealing of two existing laws i.e. the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997. The NGT is likely to lessen the burden of the courts in the country as it would be transferred to NGT. Thus, India has become the third country in the world to have special courts for environmental issues. The Act consists of 38 sections divided into five chapters and three schedules.

Since the inception, the National Green tribunal has played vital role by giving a landmark order for the protection of environment. In 2012, the NGT gave its verdict on many cases. The cases were mostly regarding industrial and infrastructural development and their environmental impact assessments (EIA). The Tribunal disposed of 82% cases filed during the year 2014 within one year of their institution. The Tribunal in one day pronounced 56 judgments and disposed of 209 cases. The judgments pronounced deal with different but very serious and significant environmental issues pertaining to different parts of the country.[20] The tribunal applying the principles of sustainable development; polluter pays principle and precautionary principle in its decisions/ orders. Thus, its decisions/orders are in consonance with section 20 of the National Green Tribunal Act, 2010. Some of the cases decided by the National Green tribunal are as under:

In *N. Chellamuthu v. The District Collector,*[21] the National Green Tribunal has shown serious concern for providing wrong information in the Environment Impact Assessment (EIA) reports. The NGT set aside the environmental clearance granted to the municipal solid waste processing plant of Municipal Corporation of Chennai for providing false information in the Environment Impact Assessment (EIA) Report.

Similarly, in the case of *Hussain Saleh Mahmad Usman Bhai Kara v. Gujarat State Level EIA Authority and Others,*[22] the NGT suspended environmental clearance to Scania Steel and Power Ltd. for expansion of its sponge iron plant in Chhattisgarh in the absence of public hearing. In this case, the Tribunal directed the Ministry of Environment and Forests to develop proper mechanism to check the authenticity of environmental data. It further directed to blacklist those Environment Impact Assessment Consultants who provided the wrong data.[23]

3. NEW SOUTH WALES ENVIRONMENT COURTS

Land and Environment Court of New South Wales established under the Land and Environment Court Act, 1979. Under the Act "mixed" model composed of judges and expert members (nine technical and conciliation assessors) have been constituted. The Judges and Commissioners are appointed by the Governor and the Commissioners are required to have the widest possible qualifications viz. special knowledge or qualification in town planning, environmental planning,[24] environmental science including matters relating to protection of environment and environmental assessment, architecture, engineering, surveying or building construction, management of natural resources and urban design or heritage.[25]

The access to Court for infringement of statutes related to environment and planning law is very easy and open to anyone. Another issue dealt wonderfully by this court is ensuring that the justice delivery system is affordable by one and all. Considerable efforts were made to ensure affordability. Sufficient court funding is made through a graduation of court fees, with due consideration to the nature of applicants and their ability to pay, the nature of the proceedings, the amount of compensation claimed, and the court fees for equivalent proceedings in other courts.[26]

Another key factor in improving the system of Green Adjudication is spreading the much-required awareness and transparency which would automatically promote confidence of the appellants and tribunals. Land and Environment Court of South Wales is known to for its transparency. It holds high the principles of accountability and transparency in all its functions. All of its decisions are published and are made accessible online free of charge, while more significant decisions are reported in the authorized law reports of the local governments, in Local Government and Environmental Reports of Australia, and occasionally in the New South Wales Law Reports. The court's reasons for its decisions are provided in writing or, if given orally are recorded and reproduced in writing. Performance of the court is reported publicly in an

19 *Retrieved from http://www.astrealegal.com visited on 23rd April 2013 at 12.45 pm*
20 *Retrieved from http://www.greentribunal.gov.in visited on 12th May at 2.34pm*
21 *Original Application No. 20/2011 (Principal Bench, New Delhi)*
22 *Transfer Appeal No. 19/2011 (Principal Bench, New Delhi)*
23 *P.S. Jaswal and Nishtha Jaswal, Environmental Law (Faridabad: Allahabad Law Agency, 2011) 392*
24 *Nivit Kumar Yadav, "National Green Tribunal: A new beginning for Environmental Cases", retrieved from http://www.cseindia.org/node/2900 visited on 22nd May, 2013 at 4.34 p.m.*
25 *Section 12, Land and Environment Court Act, 1979*
26 *Nivit Kumar Yadav, "National Green Tribunal: A new beginning for Environmental Cases", retrieved from http://www.cseindia.org/node/2900 visited on 22nd May, 2013 at 4.34 p.m.*

ISSN (Online): 2455-3662
EPRA International Journal of Multidisciplinary Research (IJMR) - Peer Reviewed Journal
Volume: 10| Issue: 9| September 2024|| Journal DOI: 10.36713/epra2013 || SJIF Impact Factor 2024: 8.402 || ISI Value: 1.188

annual review, and a court users group holds quarterly meetings to discuss the court's performance and obtain feedback. Right to appeal and review also ensures accountability.[27]

It is a Court of record having a jurisdiction that combines appeal, judicial review and enforcement functions, pertaining to environmental and planning law. The Court's doors are open to anyone complaining of violation of relevant statutes. It empowers the Court to grant all remedies of any nature, conditionally or unconditionally, so that all controversy is completely and finally determined and multiplicity of proceedings is avoided.[28] On the procedural plane, the Court is not bound to follow rules of evidence and may obtain assistance of any person having professional or technical qualifications relevant to any issue.[29] Justice Paul Stein, Judge, LCE, has highlighted the following benefits arising out of the Court's integrated jurisdiction over the last 20 years:[30]

I. Decrease in multiple proceedings arising out of the same environmental dispute;
II. Reduced litigation with consequent savings to the community;
III. A single combined jurisdiction is administratively cheaper than multiple separate tribunals;
IV. A greater degree of certainty in development projects;
V. Reduction in costs and delays may lead to cheaper project development and cost for consumers;
VI. Greater convenience, efficiency and effectiveness in development control decisions.

4. THE NEW ZEALAND ENVIRONMENT COURT

New Zealand Environment Court which is established under the Resource Management Act, 1991, is an independent specialized court consisting of Environment Judges and Environment Commissioners acting as technical experts. The Governor General appoints them for a period of five years on the advice of Minister of Justice, while ensuring combinations of knowledge and experience include local government, architecture, minerals, economic and commercial affairs, community affairs, planning and resource management, heritage protection, engineering, environmental science, and alternative disputes resolution processes.[31] The Resource Management Act (RMA) enjoins the Court with a general duty of promoting sustainable management in accordance with the Act and the duty of avoiding, remedying or mitigating adverse effects on the environment. The Court exercises a wide spectrum of powers over environmental issues[32] which include three prominent areas viz.

I. power to make declarations of law;[33]
II. power of appellate review on a de novo basis of resource consents and proposed district and regional plans/ policy statements;[34] and
III. power to enforce duties under the RMA through civil and criminal proceedings.[35]

Court can make declarations on questions regarding division of authority between regional authorities and conformance of policy plans or statements and acts of government entities with RMA or the policy plans.[36] Under its appellate jurisdiction, it reviews planning instruments like regional policy statements or plans and resource consents on merits. It has the power to either confirm or direct the local authority to modify, delete, or insert any provision referred to it and such authority is enjoined to effectuate the decision of the Court.[37] Lastly, it can issue 'enforcement orders' on application of any person on any of the four grounds specified underneath, that is:

i. Injunction against actions contrary to the provisions of the RMA, regulations, rules in regional or district plans, or resource consents; or
ii. Injunction against action that 'is likely to obnoxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on environment'; or
iii. Directing a person affirmatively to comply with the RMA and other instruments or to avoid, remedy, or mitigate adverse effects on environment caused by or on behalf of that person; or
iv. Compensating others for reasonable costs associated with avoiding, remedying or mitigating effects caused by a person's failure to comply with one of several instruments, including rules in plans or resource consents. With consent of the parties, at any time after proceedings are lodged, the Court may ask one or more of its Environment Commissioners to conduct mediation or conciliation to resolve the dispute.[38]

Mediation service of the Court is regarded as 'innovative' and cost-effective as its own technically oriented Commissioners act as mediators. On procedural side, limitations on rules of evidence are non-existent[39], proceedings are less formal and it encourages individuals and groups to represent themselves. Third parties may also apply to it for an order to implement the RMA against anyone else. Its decisions may be challenged to High Court only on questions of law.[40] In view of its overarching powers, it has rightly been characterized as the 'adjudicator of sustainability'. Initially, the Court was confronted with delays in disposal of mounting caseload. However, in 2003, the Government provided additional financial resources after a thorough review of this issue. Since

27 *Ibid.*
28 *Section 22, The Land and Environment Court Act, 1979*
29 *Section 38*
30 *Raghav Sharma, "Green Courts in India: Strengthening Environmental Governess", Law Environment and Development Journal, Vol.1, (2008) 61.*
31 *Ibid.*
32 *Retrieved from http://www.mfe.govt.nz/publication/rma/everyday visited on 16th May, 2013 at 5.56 pm*
33 *Section 310-313, New Zealand Resource Management Act, 1991*
34 *Section 120*
35 *Section 314*
36 *Section 310*
37 *Section 120*
38 *Section 268*
39 *Section 274*
40 *Section 287*

ISSN (Online): 2455-3662
EPRA International Journal of Multidisciplinary Research (IJMR) - Peer Reviewed Journal
Volume: 10| Issue: 9| September 2024|| Journal DOI: 10.36713/epra2013 || SJIF Impact Factor 2024: 8.402 || ISI Value: 1.188

then, the case pendency has halved and the 'clearing ratio' has improved to a level above 90 per cent which speaks volumes about its efficiency.[41]

5. CONCLUSION

In Asian context, India has a leading role to play being "the world's largest democracy". Our country is able to influence positively not only other States of the Sub continent but Asian democracies as a whole. With reference to judicial enforcement of environmental law, India being a third country after the Australia and New Zealand which have specialized environmental court to deals with environmental litigation in speedy and effective manner. NGT Act implements the commitments of India made in Stockholm Declaration of 1972 and in Rio Conference of 1992. India is committed to take appropriate steps for protection and improvement of human environment and to provide effective access to judicial and administrative proceedings, including redress and remedies. At global level origin and development of international environmental justice can be traced through various sources like customary principles of international law, decision of judicial or arbitration bodies at the international level, codifications, conventions, treaties, binding or non-binding declarations, protocols and resolutions.

[41] *Raghav Sharma, "Green Courts in India: Strengthening Environmental Governess", Law Environment and Development Journal, Vol.1, (2008) 61*