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AN OVERVIEW ON THE NATIONAL GREEN TRIBUNAL ACT

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ABSTRACT

National Green Tribunal (NGT) Act is a path breaking legislation in protection and promotion of environment in India. NGT was established through THE NATIONAL GREEN TRIBUNAL ACT 2010, w.e.f. 18-10-2010 in India. NGT is a quasi-judicial, specialized forum, which has both long term and short term objectives. The long-term objective lies in the protection of the environment, and the short-term objective involves resolution of disputes relating to environmental issues in a speedy and effective manner. Before knowing more details about NGT, one has to know brief background issues, which are responsible for setting up of this specialized body in India.

Historical Background

As we all know we have 'one and only one mother earth'. The significance of our mother earth is having wonderful nature, because of which life is possible, which we can't find in any other planet.

Nature is a wonderful gift given by god for us. We are a part and parcel in this nature or environment. Man and environment has solidarity on each other, in fact there will be a close dependence in ecology, either biotic or abiotic and flora or funa, one is necessary for other to be existed. But it is also a proved fact that environment can sustain even without man, but a man can't, so, it should be protected.

So, by recognizing this, our four fathers either in the name of customs or religion they used to protect this precious environment, and strictly controlled those activities which are harmful or has adverse effect on nature. Latter because of industrial revolutions, in the name of industrialization, civilization, technology and more importantly thrust for quick economic benefits etc. day by day man knowingly or unknowingly has started to cause harm to environment.

No country either developed or developing countries can claim exemption from this. All most all countries without any thought of the future and impact on nature as well as glob. Because of which, later world countries had and has been facing consequence of their fault like global warming, ozone depression and many more natural calamities like famine, earthquakes, volcano burst, ice melting etc.

Here one can feel it is the apt words said by our Mahatma Gandhi that is "Earth provides enough to satisfy every man's needs, but not every man's greed".

In modern days, after failure of human efforts like customs or religion, which are non-binding in nature. State came in to picture as a savior, here states independently as well as, as a group under the guidance of UN started making of rules and regulations for the protection and promotion of environment as well as control and prevention of environmental pollution promoted activities of the humans with an aim to protect and continuous of human life on this earth.

Here it is more important to note that in the year 1972 from June 5 to 16, UN calls for a world countries meet in the name of 'the United nations conference on the Human environment', at Stockholm, in Switzerland, Which is famous as Stockholm declaration. From that day on words UN frequently conducts number of conferences to create awareness among world countries like, earth summit, Jamesburg convention, rameswar convention etc. In which India is also one of the participant.

The then PM Smt. Indira Gandhi represented India in Stockholm conference. This conference brought the industrialized and developing nations as well as developing countries together to delineate the rights of the human family to a healthy and productive environment. Here nations came to a conclusion that it is the need of the hour to have "sustainable development" means the thoughtful use of resources, considering the future generations without compromising the need of today, in simple a balance between economic development and environment safety. For that nations must and should strive. By which our nation also inspired.

Under the leader ship of Smt. Indira Gandhi by taking inspiration from Stockholm declaration, Indian parliament in the year 1976 by 42nd amendment to constitution introduced two important articles by which they specifically mentioned environment protection in Indian constitution. They are Art. 48A (as directive principle for the state policy), and Art. 51A (g) (as fundamental duty to people). By these two articles India recognized that protection and promotion of environment is a duty of state as well as individual. Latter it was also recognized that having 'clean and green environment or pollution free environment as a fundamental right under Arts. 14 and 21.

In fact prior to this amendment and after this amendment there are numerous legislative frameworks came into existence like the Wild life (protection) Act, 1972, the water (Prevention and control of pollution) Act, 1974, the Air (Prevention and control of pollution) Act, 1981 and more importantly the Environment (Protection) Act 1986 and many more. All such legislations provide for protection of a particular resource of the county but they all lacks in execution of the guidelines mentioned there. Although under most of the above-mentioned Acts there is a mention of Central as well as state mechanism in the name of pollution control boards (CPCB and SPCB) but they were not given fruitful results. So, there was a constant demand of strong execution machinery, in fact machinery which can adjudicate as well as execute such adjudication.

In mean time India also experienced great industrial disasters during 1980's like Bhopal Gas and oleum gas leakages and different environmental problems.

Justice P.N. Bhagwati (in Oleum Gas leak case¹) for the first time pointed out that cases involving issues of environmental pollution, ecological destruction and its conflict over natural resources involved assessment and evolution of scientific data and, therefore, according to the court, there was an urgent need of involvement of experts in the administration of justice.

There are many case filed by environmental activists as well as victims of disasters before High courts and Supreme Court for 'Justice'. There courts recognized that environment is ones such issue sensitized where matter cannot be adjudicated without the help of experts. Even appointment of environmental experts when dealing with disputes has been in vogue. The method of analyzing of data in many cases required many months in most cases. This meant that the courts had to devote more times those cases because the expert's reports were found to be insufficient in many case and contradictory in some others. Justice Kuldeep sing and Justice S. Saghir Ahmied etc. directed High courts by taking in to consideration of the time constraints and exclusivity of the nature of disputes prompted setting up of "Green Benches" in various High courts at least once in a week.

¹ M.C. Mehta v. Union of India, AIR 1987 SC 965

Finally courts (SC and HCs) realized that “Environment Court” must be established for expeditious disposal of environmental cases to avoid delay and to ensure immediate relief to the Victims. It is better to constitution of tribunal regulated by special procedure for determining compensation to victims of industrial disaster or accident, appeal against which may lie to constitutional courts on the limited ground of questions of law only after depositing the amount determined by the tribunal². Later in Indian council for Enviro-legal action v. UoI (1996)³, In A.P. Pollution Control Board v. M.V. Naidu (1999)⁴ courts expressed same view.

In response to that Indian parliament has passes two acts namely National Environment Tribunal Act 1995 (NET Act) and National Environment Appellate Authority Act 1997 (NEAA Act). However, these two Acts are dead letter and non-starters.

The Law commission of India in its 186th report in September 2003 held 1995 and 1997 Acts were failed, because they are non- functional and remain only on paper. The law commission has conducted a study of foreign environment courts especially of a Australia and New Zealand and prepared a report and recommended, inter alia, setting up of environmental courts having both original as well as appellate jurisdiction related to environmental laws⁵. Ultimately the national green tribunal bill, 2009 was introduced in the Lok Sabha on 31st July 2009. After long deliberations in both houses finally an Act came into force with effect from 18.10.2010 in the name of “THE NATIONAL GREEN TRIBUNAL ACT, 2010”.

Establishment of NGT: It is a quasi-judicial body with powers of civil and criminal courts in many respects, with sections 38 in five chapters with schedules 3 and parts 6.

Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible. New Delhi (to cover north India⁶) is the Principal place of sitting of the tribunal and Bhopal (to cover Central India⁷), Pune(to cover West India⁸), Kolkata (to cover East India⁹) and Chennai (to cover south India¹⁰) are the other four places of sitting of the Tribunal. With an object to 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. This also says that this Act enacted to fulfill the objects laid in Stockholm conference (1972) , and Rio de Janeiro conference (1992) and more importantly to ensure ‘right to life’, which includes right to healthy environment under Art.21 of the Indian constitution¹¹.

Scheme of the Act:Chapter I from Ss.1 to 2 deals about Preliminary issues. This chapter deals about title and commencement of the Act in to force, definitions for different words

² Charanlal Sahu v. Union of India, 1988 AIR 107 1988 SCR (1) 441 1988 SCC (3) 255 JT 1987 (4) 128 1987 SCALE (2)754

³ (1996)2 SCC 212 & 252

⁴ (1999) 2 SCC718

⁵ The law commission of india in its 186th report under the chairmanship of M. Jagannadh rao as submitted on 23 September 2003, pp. 164-169. Available at <http://lawcommissionofindia.nic.in>

⁶ UP, Uttarakhand, Punjab, Haryana, Himachal Pradesh, Jammu and Kashmir, National capital territory of Delhi and Union Territory of Chandigarh.

⁷ Madhya Pradesh, Rajasthan and Chhattisgarh.

⁸ Maharashtra, Gujarat, Goa with Union territories of Daman and Diu and Dandra and Nagar Haveli.

⁹ West Bengal, Orissa, Bihar, Jharkhand, Seven sister states of North-eastern Regional and Sikkam, Andaman and Nicobar Islands.

¹⁰ Kerala, Tamil Nadu, Andhra Pradesh , Telangana, Karnataka, Union Territories of Pondicherry and Lakshadweep.

¹¹ Preamble of the Act says this.

used in the Act. Chapter II deals about Establishment of the Tribunal from Ss.3 to13, this chapter deals about establishment, composition of tribunal, qualifications, tenure, removal of the members etc. Chapter III from Ss. 14 to 25 deals about Jurisdiction, Powers and Proceedings of the Tribunal. This chapter says about on which matters tribunal empowers to take cognizance, what type of relief, compensation and restitution it can give. Matters regarding original and appellate jurisdiction, fee, other procedural powers, apply of certain principles, execution of award or order etc. Chapter IV from Ss.26 to 28 deals about Penalties. Here Act clarifies about if offences committed by an individual or companies or government department what will be the action of tribunal. And more importantly penalty for non compliance of award or relief given by tribunal. Chapter V deals about Miscellaneous issues from Ss.29 to 38. This chapter explains about all other miscellaneous issues like bar of jurisdiction, cognizance of offences, status of members as public servants, action taken in good faith, overriding effect of the Act etc. Schedule I says about different Acts under which tribunal empower to take cognizance¹². Schedule II deals about under which compensation or relief for damage may be claimed before tribunal¹³. Schedule III Amendment to Certain Enactments¹⁴

Important features of the Act are:

1. Object of the Act

Which is so clear from the preamble as an act aims to provide 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.

2. Composition of tribunal

- The tribunal shall consist of a full time Chairperson, a Judge of the Supreme Court of India or Chief Justice of a High Court. With prior consultation of chief justice of India.
- Not less than 10 but subject to maximum of 20 full time judicial members as the central government may, from time to time, notify. Judges of High Courts will be appointed as judicial members.

¹² Acts on which NGT can take cognizance 1. The Water (Prevention and Control of Pollution) Act, 1974; 2. The Water (Prevention and Control of Pollution) Cess Act, 1977; 3. The Forest (Conservation) Act, 1980; 4. The Air (Prevention and Control of Pollution) Act, 1981; 5. The Environment (Protection) Act, 1986; 6. The Public Liability Insurance Act, 1991; 7. The Biological Diversity Act, 2002.

¹³ a. Death; b. Permanent, temporary, total or partial disability or other injury or sickness; c. Loss of wages due to total or partial disability or permanent or temporary disability; d. Medical expenses incurred for treatment of injuries or sickness; e. Damages to private property; f. Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons; g. Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment; h. Loss to the Government or local authority arising out of, or connected with, the activity causing any damage; i. Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna; j. Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards; k. Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems; l. Loss and destruction of any property other than private property; m. Loss of business or employment or both; n. Any other claim arising out of, or connected with, any activity of handling of hazardous substance.

¹⁴ See Section 36

- Not less than 10 but subject to maximum of 20 full time Expert Members,¹⁵ as the Central government may, from time to time, notify.¹⁶ These expert members must possess special qualifications¹⁷.
- The chairperson of the Tribunal may engage services of any one or more persons having specialized knowledge and experience in a particular case. (as amicus curie)

Here one can see that Act given importance to both judicial and technical members to avoid controversy between these two. There are no reappointments. Most importantly this Act provides a scope for amicus curies¹⁸.

3. Jurisdiction of the tribunal

This Act confers on the Tribunal, the jurisdiction over all civil cases where a substantial question relating to environment. Here it provides original as well as appellate jurisdiction¹⁹. It has given time to adjudication 6months either in case of application or appeal. This Act also bars the civil courts jurisdiction over matters that are unique to the tribunal. It also provided scope for entertaining cases which may not exceeding 60days beyond 6months, from cause of action arose to do justice by tribunal if it satisfied by reasons. Cases can be field in person or through legal practitioners. An applicant can be field by an individual or group or an organization on behalf of the victims or for the protection of environment, by government or by industries etc. but the complaint must give notice to other party before not less than 60days to communicate his intentions to approach appropriate authority²⁰. In case of appeals to Tribunal 30days time limit and for

¹⁵ Section 6(3) The Judicial Members and Expert Members of the Tribunal shall be appointed on the recommendations of such Selection Committee and in such manner as may be prescribed.

¹⁶ Section 7. Term of office and other conditions of service of Chairperson, Judicial Member and Expert Member. -

The Chairperson, Judicial Member and Expert Member of the Tribunal shall hold office as such for a term of five years from the date on which they enter upon their office, but shall not be eligible for re-appointment:

Provided that in case a person, who is or has been a Judge of the Supreme Court, has been appointed as Chairperson or Judicial Member of the Tribunal, he shall not hold office after he has attained the age of seventy years:

Provided further that in case a person, who is or has been the Chief Justice of a High Court, has been appointed as Chairperson or Judicial Member of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years: Provided also that in case a person, who is or has been a Judge of a High Court, has been appointed as Judicial Member of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:

Provided also that no Expert Member shall hold office after he has attained the age of sixty-five years.

¹⁷ Section 5. (2). A person shall not be qualified for appointment as an Expert Member, unless he,-

- a. has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or
- b. has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.

¹⁸ Section 4 (2) The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialised knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.

¹⁹ Under section 14, 15 and 16.

²⁰ **Section 30. Cognizance of offences. -**

1. No court shall take cognizance of any offence under this Act except on a complaint made by-

there more 60days at the discretion of the tribunal. In case appeal to Supreme court it is 90days form date of award or order by tribunal based on grounds expressed in section 100 of CPC-1908.²¹ The fee for filling a case is 1% of compensation claiming, which should not be minimum of 1000. It relaxed the fee payment for public spirited persons, who are approached the court for the protection of environment or indigent people. It also has power to penalize vexatious complaints²². The Business and industry can approach the tribunal about Environmental impact assessments that lack clearance from government even after fulfillment of all procedures.

4. The Judicial Remedy under the Act

The Act provides for various kinds of relief²³.

1. Relief, compensation to the victims of pollution and other environmental damage including accidents involving hazardous substances.
2. Restitution of property damaged;
3. Restitution of the environment for such areas as determined under Schedule II of the Act.

But no application for grant of any compensation or relief or restitution of property or environment shall be entertained unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose. Here also there a scope for discretion.

5. Powers and Procedural aspects

This Act lays down the procedure and powers of the tribunal. It provides that tribunal shall not be bound by the procedure laid down by the CPC 1908 and Evidence Act 1872²⁴. It is empower to follower principles of natural justice. It has power of Civil court in respect of summoning, enforcing attendance, receiving evidence on affidavits, examining on oath, and granting ex-parte and interim orders and injunctions. Tribunal is also has power to execute its orders through courts, which have local jurisdiction, as it passed by that court itself.²⁵

6. Principles based

The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle²⁶.

7. Penalties that can be ordered

Chapter 4 addresses penalties that arise from non-compliance with the National Green Tribunal orders. It can award maximum of three years imprisonment or fine not exceeding Rs.10 crore. And additional fine of Rs. 25,000 for every days delay. In case of Company fine may extend upto 25 crore and Rs. 1 lakh per day for continuing offence. It serves a strong deterrent for non-compliance of orders.

8. Notable Orders

(i) Yamuna Conservation Zone

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- a. the Central Government or any authority or officer authorised in this behalf by that Government; or
 - b. any person who has given notice of not less than sixty days in such manner as may be prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

2. No court inferior to that of a Metropolitan Magistrate or, a Judicial Magistrate of the first class shall try any offence punishable under this Act.

²¹ Section 22

²² Section 23 (2)

²³ Section 15

²⁴ Sections 18 and 19

²⁵ Section 25

²⁶ Section 20

On 25 April, 2014, The National Green Tribunal (NGT) said the health of Yamuna will be affected by the proposed recreational facilities on the river. The NGT also recommended the Government to declare a 52 km. stretch of the Yamuna in Delhi and Uttar Pradesh as a conservation zone.

(ii) Coal Block in Chhattisgarh Forest

The National Green Tribunal has cancelled the clearance given by the Union Environment and Forest Minister, Jairam Ramesh, to the Parsa East and Kante-Basan Captive coal block in the Hasdeo-Arand Forest of Chhattisgarh, overruling the statutory Forest Advisory Committee.

The forest clearance was given by Mr. Ramesh in June, 2011, overruling the advice of the Minister's expert panel on the two blocks for mining by a joint venture between Adani and Rajasthan Raiya Vidyut Utpadan Nigam Limited. The blocks requiring 1,989 hectare of forestland fell in an area that the government has initially barred as it was considered a patchable forest and demarcated as a 'no-go' area. The order is bound to have a more far-reaching impact, with the tribunal holding that, "mere expression of fanciful reason relating to environmental concerns without any basis, scientific study or past experience would not render the advice of FAC – a body of expert –inconsequential. Under the Forest Conservation Act, 1980, the FAC is required to appraise projects that requires forestlands and advise the environment Minister to grant approval or reject the proposals.

But in this case, the NGT noted, the Minister had taken all of one day and relied upon his "understanding and belief" without any "basis either in any authoritative study or experience in the relevant fields." The Minister, while clearing the coal block had given six reasons for doing so, including that the coal blocks are linked to super-critical thermal power plant, which is imperative to sustain the momentum generated in the XI Plan for increasing power production. These 'anthropocentric' considerations, the NGT held, were not valid to evaluate the project.

(iii) Ban on decade old Diesel Vehicles at Delhi mainly in NCR²⁷

An attempt to minimize air pollution at capital of India and NCR. In July 2016, the NGT directed the Delhi government's transport department to deregister diesel vehicles that are at 10 years old or older. The court later held that the process of deregistration would begin with scrapping of 15-year-old diesel vehicles. However, as per Media reports, Central Government exploring to appeal against the order at Supreme Court, especially for personal vehicles.

Lacunae in Act:

There are so many criticisms on this Act from various groups of society. like

- Why this Act used the word 'Green Tribunal' was not explained in Act.
- The Act is often criticized on the grounds that only 5 benches have been constituted, for the entire country, under it which makes accessibility to these benches difficult.
- In case of compositions Central government involvement in appointments, removal, resignations etc. it may gives scope for bureaucratize.
- This Act confine to only a limited jurisdiction of 7 Acts explained under schedule I.
- The tribunal lacks support from state and central government.
- The CPCB and SPCB are inefficient as a result of which, a lot of times there is delay in implementation of the directions and decisions of the tribunal.
- Some jurist also saying that ousting High courts power through an ordinary legislation is not violation of Judicial review of the High court under Art.226
- NGT has no direct judicial review power²⁸.

²⁷ National Capital Region

- NGT orders were not available to common man through any easy methods.

However, It cannot be denied that in its short journey NGT had played a wonderful role in protection of environment and that the pros of the Act are more than its cons. NGT also working for fulfillment of international conventions, where India is also a party, And for the fulfillment of Supreme Court's pronouncement that the right to healthy environment is a part of the right to life as guaranteed under Art.21.

However, let us we hope that National green Tribunal will play a lead role in environmental protection, enforcement and compliance and become a role model for enactment of similar Tribunals in other countries.

²⁸ Though the Act does not provide for a specific provision dealing with the power of judicial review, the Act allows NGT to deal with substantial questions of law relating to the environment and their implementation. NGT can also deal with the grant and rejection of environmental clearances by Ministry of Environment and Forests.

In exercising these powers NGT would be required to deal with the notifications/memorandums passed by the government and if required to set aside such notifications/memorandums. NGT can also look into the vires of legislations and subordinate legislations (including notifications/memorandums); without these powers NGT would not be an effective body and would not be able to pass orders in the interest of justice. However, NGT cannot entertain a challenge to its own parent statute, i.e. the Act and the corresponding Rules. In view of this, it may be reasonably concluded that NGT is vested with limited power of judicial review.