FORTIFYING THE NATIONAL GREEN TRIBUNAL

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Abstract

It has always been a struggle to bring about sustainable development, which is resolved through the concomitant roles of legislation, executive action and adjudication. It is through their collective functioning that the foundation of environmental jurisprudence in India was laid. However, due to the proliferation of litigation and environmental concerns in equal measure, the judiciary had become incapable of disposing of cases in a timely manner. This led to the establishment of the National Green Tribunal, which was set up through the National Green Tribunal Act, 2010, after the failure of several statutory authorities. It is a fast track quasi-judicial statutory body comprising of judges and scientific experts and was established in pursuance of the Rio Declaration, Stockholm Conference and the 186th Law Commission Report, to adjudicate upon matters involving substantial questions of the law relating to the environment. It provides a new dimension to environmental adjudication by curtailing delays and imparting objectivity. The Tribunal, given its composition and

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jurisdiction, with powers to settle environmental disputes and provide relief and compensation including restitution of the environment, is envisaged to be a specialized environmental adjudicatory body having both original as well as appellate jurisdiction. Though the NGT has been an efficient adjudication framework, there are several hindrances which lay in its path.

This paper is an endeavor to analyze the circumstances culminating in the establishment of the NGT, the positive results streaming out of its establishment, the scenario prior to the establishment of the NGT, the benefits derived out of its establishment and the several pitfalls which affect its efficacious functioning. Several improvements have been suggested by the author to buttress the adjudication mechanism established through NGT.

I. EVOLVEMENT OF THE ENVIRONMENTAL JURISPRUDENCE IN INDIA

"In a few decades, the relationship between environment, resources and conflict may seem almost as obvious as the connection we see today between human rights, democracy and peace"

- Wangari Mathai[1]

[1]Nobel Peace Laureate, 2004.

Due to the increasing paucity of environmental resources, there has been a tussle between environmental imperatives such as sustainability and economic development.[2] This conflict is sought to be resolved through comprehensive legislation, able enforcement mechanism and adept adjudication. It is through the concomitant roles of these three factions that the environmental jurisprudence has developed.

It was only in the early 1970s that India, being the largest democracy in the world, took a step towards addressing the increasing environmental concerns, by setting up the National Committee on Environment Planning and Coordination (NCEPC) in 1972 which was rechristened the National Committee on Environmental Planning (NCEP) on April 1981, based on the recommendations of the Tiwari Committee. Further, subsequent to the participation of India in the United Nations Convention on Human Environment in 1972, the 42nd Constitutional Amendment was brought about in 1976 which provided constitutional status to environmental concerns through Articles 48A and 51A(g). Sensitization of Gram Panchayats and Municipalities (local bodies) towards environmental issues was also undertaken through the incorporation of Articles 243(G) and 243(W).[3] In 1974, the Union Legislature enacted the Water (Prevention and Control of Pollution) Act, 1974[4] under Article 252, which was the first legislation engendering an environmental law arena in the country. Several environmental legislations and subordinate legislations were enacted from time to time like the Air (Prevention and Control of Pollution) Act, 1981,[5] Forest (Conservation) Act, 1980, and the Biological Diversity Act, 2002.

[2]Narmada Bachao Andolan v. Union of India, A.I.R. 2000 S.C. 3751 (India); Goa Foundation v. Diksha Holdings Pvt. Ltd., (2001) 2 S.C.C. 97 (India).
[3]73rd and 74th Constitutional Amendments respectively.
[4]Water (Prevention and Control of Pollution) Act, 1974, No. 06, Acts of Parliament, 1974 (India) [hereinafter Water Act].
[5]Air (Prevention and Control of Pollution) Act, 1981, No. 14, Acts of Parliament, 1981 (India) [hereinafter Air Act].

These concerns were further consolidated and collectively addressed by the extensive legislative 'umbrella',[6] which included the Environment Protection Act, 1986 and a plethora of subordinate legislations like Hazardous Waste (Management & Handling) Rule, 1989, Bio-medical Wastes (management & Handling) rules, 1998, Plastics Manufacture, Sale & usage Rules, 1999, The Noise Pollution (Regulation & Control) Rules, 2000, The Municipal Solid Wastes (Management & Handling) Rules, 2000 and the Batteries (Management & Handling) Rules, 2001. These legislations have taken into consideration the new concerns of environmental degradation resulting from human activities.

In the 1970s the judiciary was equipped to handle cases of adversary character meant to defend private and social interests. In the early 1980s, through the persistent efforts of P.N. Bhagwati, J. and V.R. Krishna Iyer, J., the Supreme Court initiated the era of 'Social Action Litigation',[7] more commonly known as Public Interest Litigation which was a response to the 'massification phenomenon'.[8] This ensured distributive justice by allowing suits filed *pro bono publico* by any public-spirited individual or organisation through the relaxation of the traditional rule of *locus-standi*.[9] It is through the increasing number of PILs and indictment of the 'epistolary jurisdiction'[10] that the highest Constitutional Court of the country, i.e., the Supreme Court of India, interpreted the constitutional provisions so as to provide a legal status to the rising environmental concerns in the progressive industrialized developing objective of the

[6]SHYAM DIVAN, ARMIN ROSENCRANZ, ENVIRONMENTAL LAW AND POLICY IN INDIA 66 (Oxford University Press, 2001).
[7]Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 THIRD WORLD LEGAL STUDIES 107, 108-11 (1985).
[8]MAURO CAPPELLETTI, TOWARDS EQUAL JUSTICE: A COMPARATIVE STUDY OF LEGAL AID IN MODERN SOCIETIES (1978).
[9]P. N. Bhagwati, *The Judiciary in India: A Hunger & Thirst for Justice*, 5 NUJS L. REV. 171 (2012).
[10]Gideon v. Wainwright, 372 U.S. 335 (1963).

country's economy. The Court aggregated diffused and individual rights in environmental problems to ensure the protection and improvement of natural environment[11] and integrate the international principles of sustainable development,[12] polluter pays,[13] public trust doctrine,[14] precautionary principle[15] and intergenerational equity[16] into the Indian legal framework,[17] thereby enriching Indian environmental jurisprudence. This benchcame to be addressed as the 'Garbage Supervisor' or 'The Lords of Green Bench'.[18] The Apex Court undertook an activist approach and went on to constitutionally recognize "third generation rights".[19] It was in the case of *Rural Litigation and Entitlement Kendra v. State of U.P*[20] *that* the Court for the first time, declared the 'right of people to live in a healthy environment' intending to extend the ambit of 'right to life' under Article 21 of the Constitution. After that the court indirectly approved of several rights relating to the environment through the series of M.

[11]Geetanjoy Sahu, *Public Interest Environmental Litigations in India: Contributions and Complications*, 69 INDIAN JOURNAL OF POLITICAL SCIENCE 745-58 (2008).
[12]R.L.E.K. v. State of U.P., A.I.R. 1985 S.C. 652 (India); Indian Council for Enviro-Legal Action v. Union of India, (1996) 5 S.C.C. 281 (India).
[13]Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 S.C.C. 212 (India); Vellore Citizen's Welfare Forum v. Union of India; (1996) 5 S.C.C. 647 (India); S. Jagannath v. Union of India, A.I.R. 1997 S.C. 881 (India).
[14]K. M. Chinnappa v. Union of India, A.I.R. 2003 S.C. 74 (736) (India); M I Builders Ltd. v. Radhey Shyam Sahu, (1999) 6 S.C.C. 464 (India).
[15]M. C. Mehta v. Union of India, A.I.R. 1996 S.C. 2715 (India); A.P. Pollution Control Board v. M. V. Nayadu II, A.I.R. 1999 S.C. 912 (India).
[16]Consumer Education and Research Society v. Union of India, (2002) 2 S.C. 599 (605) (India).
[17]Geetanjoy Sahu, *Implications for indian Supreme Court's Innovations for Environmental Jurisprudence*, 4 LAW, ENVIRONMENT AND DEVELOPMENT JOURNAL 10 (2008), http://www.lead-journal.org/content/08001.pdf.
[18]S.S. Prakash & P.V.N. Sarma, *Environment Protection vis-a-vis Judicial Activism*, 2 SUPREME COURT JOURNAL 56 (1998).
[19]In today's emerging jurisprudence, environmental rights, which encompass a group of collective rights, are described as the third generation rights; John Lee, *Right to Healthy Environment*, 25 COLUMBIA J. ENVIRON. LAW 293-394 (2000).
[20]Rural Litigation and Entitlement Kendra Dehradun & Ors. v. State of U.P. & Ors., A.I.R. 1985 S.C. 652 (India).

C. Mehta cases,[21] laid down by the 'tireless campaigner',[22] M. C. Mehta. Subsequently, the 'right to a healthy environment under Article 21',[23] 'right to pollution free water',[24] 'right to clean surroundings',[25] and 'right to fresh and pollution-free air'[26] have received direct recognition by the Hon'ble Court.

II. THE NEED FOR AN ENVIRONMENTAL COURT: AN ALTERNATIVE ADJUDICATION FORUM

The integration of the aforesaid rights and principles through precedents indicates the extensive and powerful role that the Judiciary has taken for itself and its intervention in the sphere of law-making by auguring judicial activism which gave a robust growth to the environmental jurisprudence in India.

Ideally the implementation of environmental law must be through a holistic balance between comprehensive legislation, executive action,

[21]M.C. Mehta v. Union of India, A.I.R. 1987 S.C. 985 (India); M.C. Mehta v. Union of India, A.I.R. 1987 S.C. 982 (India; M.C. Mehta v. Union of India, A.I.R. 1987 S.C. 1086 (India); M.C. Mehta v. Union of India, A.I.R. 1988 S.C. 1037 (India); M.C. Mehta v. Union of India, A.I.R. 1988 S.C. 1115 (India).

[22]ANN FLORINI, THE RIGHT TO KNOW: TRANSPARENCY FOR AN OPEN WORLD, 30 (2007).

[23]T. Damodhar Rao v. S. O. Municipal Board, A.I.R. 1987 A.P. 171 (India); Chhetriya Pradushan Mukti Sangarsh Samiti v. State of U.P., A.I.R. 1990 S.C. 2060 (India); T. N. Godavarnam Thirumalpad v. Union of India, (2002) 10 S.C.C. 606 (India).

[24]A.P. Pollution Control Board v. M.V. Nayadu II, A.I.R. 1999 S.C. 912 (India); Mrs. Susetha v. State of T.N. & Ors., (2006) 6 S.C.C. 543 (India); Narmada Bachao Andolan v. Union of India, (2000) 10 S.C.C. 664 (India); Subhash Kumar v. State of Bihar, A.I.R. 1991 S.C. 420 (India).

[25]B.L. Wadehra v. Union of India, (1996) 2 S.C.C. 594 (India); Municipal Council Ratlam v. Vardhichand, (1980) 4 S.C.C. 162 (India).

[26]M.C. Mehta v. Union of India, (1998) 9 S.C.C. 589 (India), M.C.Mehta v. Union of India, (1999) 6 S.C.C. 9 (India); Vellore Citizens Welfare Forum v. Union of India, A.I.R. 1996 S.C. 2715.

and efficient jurisdiction to instill environmental discipline but the historical development of environmental law shows that the enforcement of environmental legislation appears to be more important than the creation of new ones.[27] Lately there has been an appalling sense of indifference and inaction on the part of enforcement agencies[28] due to several economic and political predicaments of the Government[29] under whose auspices these agencies function. This prevailing ineptness and non-accountability of actors in the field of enforcement became problematic for the maintenance of environmental standards, which resulted in increasing concern from the judiciary in such governance areas, and resulted in the strengthening of its role and a more imperative attitude.[30] It is through judicial activism that new methods to resolve environmental disputes have been devised.[31] Several international principles which address the increasing environmental concerns by the evolving times have been incorporated into the legislative framework: *suo motu* actions have been taken against the polluter, the sphere of litigation has been expanded, expert committees have been appointed to give inputs and to monitor implementation of judicial decisions, amici curiae have been appointed on behalf of the environment, and commoners, NGOs and lawyers have been entertained regarding

[27]Domenico Amirante, *Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India*, 29(2) Pace Envtl. L. Rev. 4 (2012).
[28]Rajendra Ramlogan & Natalie Persadie, *The Inherent Conflict Between Sound Environmental Stewardship and Political Leadership in the Developing World*, Deborah Rigling Gallagher (ed.), ENVIRONMENTAL LEADERSHIP: A REFERENCE HANDBOOK (2012).
[29]*Id.*
[30]Upendra Baxi, *Environmental Law: Limitations and Potentials for Liberation*, J. Bandyopadhyay et al. (eds), INDIA'S ENVIRONMENT: CRISES AND RESPONSES (Dehradun: Natraj Publishers Pvt. Limited, 1985).
[31]M. K. Ramesh, *Environmental Justice: Courts and Beyond*, 3(1) INDIAN JOURNAL OF ENVIRONMENTAL LAW 20 (2002).

environmental problems for issuance of appropriate directions.[32] The intrusion of Judiciary into the legislative and administrative terrain has helped for steady environmental governance and maintenance of plausible environmental standards, which but for this intervention would have been neglected. This has resulted in an increased fillip to the environmental jurisprudence, widespread awareness about the looming environmental problems and has helped in moving beyond the traditional legal issues by acknowledging the nascent problems.

Thus, over time, the role of judiciary, its organization and environmental sensibility has been realized to have been the most crucial in bridging the gap between the letter of the law and its actual implementation.[33] Its imperativeness has also been emphasized in the 2002 Johannesburg Principles on the Role of Law and Sustainable Development in absolute terms, which exhorted, "*an independent Judiciary and judicial process is vital for the implementation, development and enforcement of environmental law, and that members of the Judiciary, as well as those contributing to the judicial process at the national, regional and global levels, are crucial partners for promoting compliance with, and the implementation and enforcement of, international and national environmental law*."

The Judiciary has played an important role in morphing the environmental protection landscape in the country. From directing the closure of limestone quarries,[34] shifting of stone crushers,[35] relocating the hazardous industries,[36] restraining the discharge from the

[32]Geetanjoy Sahu, *Implications for Indian Supreme Court's Innovations for Environmental Jurisprudence*, 4 LAW, ENVIRONMENT AND DEVELOPMENT JOURNAL 1 (2008), http://www.lead-journal.org/content/08001.pdf.
[33]P. Stein, *Why judges are essential to the rule of law and environmental protection*, T. Greiber (ed.), JUDGES AND THE RULE OF LAW CREATING THE LINKS: ENVIRONMENT, HUMAN RIGHTS AND POVERTY 57 (2006).
[34]A.R.C. Cement Ltd. v. State of U.P., (1993) Supp. 1 S.C.C. 57 (India).
[35]Ishwar Singh v. State of Haryana, A.I.R. 1996 P.H. 30 (India).
[36]V. Lakshmipathy v. State, A.I.R. 1992 Kant. 57 (India).

tanneries,[37] stalling urbanization[38] and protecting the rights of the tribal people[39] to providing directions to the authorities for issuance of rules on matters which had been uncared for until then, such as the noise pollution regulations,[40] issuing injunctions, developing new principles such as that of absolute liability[41] to keep pace with the difficulties posed by the changing times. The judiciary has been successful in striking balance between economic development and ecological conservation[42] through several monumental decisions. It has been successful in demarcating a lucid line of non-intervention and non-interference with the environment, thereby eventually providing an unflinching status to sustainable development in the policy regime.

It cannot be denied that in order to remedy environmental degradation and pollution, precipitous disposal of cases is required.[43] But, after liberalization there was an increase in the number of projects and private investments relating to industrial expansion, mining, exploration, etc.,[44] and hence the number of litigations relating to environmental clearances over time increased. Further, due to the increase in developmental activities, the environmental issues increased which lead to the introduction of various procedural requirements under the Environment Impact Assessment (EIA),[45] such as public hearing. This lead to the proliferation of litigations and

[37]M.C. Mehta v. Union of India, A.I.R. 1988 S.C. 1037 (India).
[38]M.L. Sud v. Union of India, (1992) Supp. 2 S.C.C. 123 (India).
[39]Banwasi Sewa Ashram v. State of U.P., A.I.R. 1987 S.C. 374 (India).
[40]Noise Pollution (Control & Regulation) Rules, 2000.
[41]M.C. Mehta v. Union of India, A.I.R. 1987 S.C. 1086 (India).
[42]Live Oak Resort (Pvt.) Ltd. v. Panchgani H.S. Municipal Council, (2001) 8 S.C.C. 329 (India).
[43]ARUNA VENKAT, ENVIRONMENTAL LAW AND POLICY (2011).
[44]Rashmi Banga & Abhijit Das, *Twenty Years of India's Liberalization: Experience and Lessons*, UNITED NATIONS CONFERENCE ON TRADE & DEVELOPMENT, New York & Geneva (2012).
[45]Environmental Impact Assessment (EIA) was formally recognized at the Earth Summit held at Rio de Janeiro in 1992. In India, the EIA Notification was enacted in 1994, with the EPA as its legislative foundation.

backlog of cases, which frustrated the cause of litigations. By the time they were disposed irreparable damage had already been caused to the environment. This placed a significant amount of pressure on the Constitutional Courts which added to the volume of pending litigations causing difficulty in expeditious disposal of environmental litigations resulting in protraction of interim orders of the Courts affecting development and prolonging social tension in the affected locality. This called for an alternative forum having the requisite expertise to tackle the complexity surrounding such matters for expeditious and effective disposal of cases. In 1995 the National Environment Tribunal Act was enacted subsequent to the Rio De Janiero Conference in 1992, but it proved to be dysfunctional.[46] In 1997, the National Environment Appellate Authority[47] was established under the aegis of Ministry of Environment and Forests, for quick redressal of public grievances in relation to Environmental Clearances,[48] but eventually turned out to be 'woefully ineffective' and incompetent.[49]

III. ADVENT OF THE NATIONAL GREEN TRIBUNAL

After the failure of the National Environment Appellate Authority (NEAA), created for a limited purpose, the National Green Tribunal[50] was established in 2010 through the National Green Tribunal Act, 2010,[51] which was touted to be an element of the 'reformist

[46]Environmental Impact Assessment Notification, 1995.
[47]National Environment Appellate Authority Act, 1997, No. 2, Acts of Parliament, 1997.
[48]Armin Rosencranz et al., *Whither the National Environment Appellate Authority?* 44 ECONOMIC AND POLITICAL WEEKLY 11.
[49]Armin Rozencranz & Geetanjoy Sahu, *Assessing the National Green Tribunal After Four Years*, 5 JOURNAL OF INDIAN LAW & SOCIETY 192 (2014).
[50]Also referred to as 'NGT'.
[51]The National Green Tribunal Act, 2010, No. 19, Acts of Parliament, 2010 [hereinafter NGT Act].

approach'.[52] It is a fast track quasi-judicial body comprising of judges and scientific experts[53] and it was established in pursuance of Principle 10[54] and 13[55] of the Rio Declaration on Environment & Development, 1992 and the *Magna Carta* of Environment,[56] the Stockholm Declaration, 1972. It was developed along the lines of the Green Courts in Australia and New Zealand to deal with environment related litigations.

The apex court in four path breaking decisions of *A.P. Pollution Control Board v. Prof. M. V. Nayadu,*[57] *A. P. Pollution Control Board v. Prof. M. V. Nayadu II,*[58] *Indian Council for Enviro Legal Action v. Union of India,*[59] and *M. C. Mehta v. Union of India,*[60] emphasized the need for specialized 'multifaceted' environmental courts having a blend of legal and scientific expertise to tackle these matters owing to increasing technicality and complexity of environmental matters.[61] Eminent jurists also take to this opinion of the court.[62] Following

[52]Jairam Ramesh, former Minister of Environment and Forests, in the Indian Parliament, Apr. 2010, http://www.igovernment.in/news/31968/india-sets-up-national-green-tribunal.

[53]Jayashree Khandare, *Role of National Green Tribunal in Protection of Environment*, 4(12) INDIAN JOURNAL OF RESEARCH 32 (2015).

[54]Principle 10 of the Rio declaration states that effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

[55]Principle 13 of the Rio declaration states that, states shall develop the national law regarding liability and compensation for the victims of Pollution and other environmental damage.

[56]Essar Oil Limited v. Halar Utkarsh Samithi, MANU/SC/0037/2004.

[57]A.P. Pollution Control Board v. Prof. M. V. Nayadu, (1986) 2 S.C.C. 176 (202) (India).

[58]A. P. Pollution Control Board v. Prof. M. V. Nayadu II, A.I.R. 1999 S.C. 912 (India).

[59]Indian Council for Enviro Legal Action v. Union of India, (1996) 3 S.C.C. 212 (India).

[60]M. C. Mehta v. Union of India, A.I.R. 1987 S.C. 985 (India).

[61]An organized explanation of the grounds has been provided in the following section.

[62]Malcolm Grant, *Environment Court Project*, Dept. of Land Economy, University of Cambridge (2000); Lord Woolf, *Environmental Law Foundations Prof. David Hall Medical Lecture*; UPENDRA BAXI, ENVIRONMENTAL PROTECTION ACT: AN

these decisions, task was taken over by the Law Commission of India to undertake a study for the establishment of Environmental Courts in India. In its 186th Report, the Law Commission recommended the setting up of quasi-judicial bodies having a wide jurisdiction and all powers exercised by a civil court, in each state, presided by judges and assisted by technical experts to handle the environmental litigations. The Report also contained reference to the environmental courts established in the countries of Australia and New Zealand which have taken the lead in the establishment of such courts.[63] It also made a reference to the lectures of Lord Woolf in England, who exhorted the need of a 'one-stop shop' consisting of the architects, surveyors and a 'multi-disciplined adjudicating panel' for effective disposal of the disputes relating to the arena of environment. The appropriate jurisdiction and powers that the courts so instituted should be endowed with was also outlined in the Report.

Subsequent to the judicial decisions and Law Commission Report, extensive deliberations were undertaken to establish a suitable framework lasting over 6 years. Thereafter, the National Green Tribunal Bill was mooted in the Lok Sabha in 2009 and was passed by the Parliament in 2010.

IV. CARDINAL GROUNDS CULMINATING IN THE ESTABLISHMENT OF THE NGT

A. Inordinate delay

AGENDA FOR IMPLEMENTATION 10 (1987); G Sadasivam Nair, *Environmental Offence: Crime Against Humanity*, P. Leelakrishnan (ed.), LAW & ENVIRONMENT 186 (1992).

[63] *186th Law Commission Report*, Chapter IV, 53, http://lawcommissionofindia.nic.in/reports/ 186th%20report.pdf.

The old adage 'Justice delayed is justice denied' holds true in cases concerning the environment. Environment deserving serious consideration, the delay caused due to endless litigation can turn out to be counter-productive.[64] It can lead to delayed execution of developmental projects.[65] Thus, delayed disposal of cases can wreak havoc leading to irreversible damage to the environment and economic loss and hence, the Apex Court suggested the setting up of tribunals to avoid this and to ameliorate the agony of the victims.[66]

B. Lack of Expertise

Environmental issues spread over a wide range of complex topics, such as zoology, botany, chemistry, ecology environmental studies, environmental sciences, environmental engineering, environmental management etc. and involve various technical matters such as that of setting up of pollution standards.[67] The Apex Court has time and again required the involvement of technical experts for the undertaking of an extensive scientific investigation to reach a correct finding.[68] In such cases, the procedure of consultation consumes a lot of time and delays the disposal of cases and often hinders the rendering of adequate relief to the victims or investors of development project which adversely affects both social cost and project cost. The courts have also acknowledged the necessity of technical and scientific assistance in matters involving setting up of

[64]Bombay Environment Action Group & Anr. v. State of Maharashtra, A.I.R. 1991 Bom. 301 (India).
[65]Narmada Bachao Andolan v. Union of India, A.I.R. 2000 S.C. 3751 (India).
[66]Charanlal Sahu v. Union of India, A.I.R. 1990 S.C. 1480 (India).
[67]Gitanjali Nain Gill, *Environmental Justice in India: The National Green Tribunal and Expert Members*, *Transnational Environmental Law*, 5(1) TRANSNATIONAL ENVIRONMENTAL LAW 177 (2015) (India).
[68]A.P. Pollution Control Board v. M. V. Nayadu, A.I.R. 1999 S.C. 912 (India); M. C. Mehta v. Union of India (1986) 2 S.C.C. 176, 202 (India); Indian Council for Enviro Legal Action v. Union of India, (1996) 3 S.C.C. 212 (India).

emission or discharge levels, pollutions standards,[69] etc. and the importance of an expert appellate body.[70] Thus, involvement of experts not only culminates in better environmental results but also helps in the recognition of the several inadequacies and uncertainties which are an inherent part of science[71] and manifests an interface between science and law, which is essential for steady environmental governance.[72] Further, the inadequacies of the existing appellate authorities were glaring enough and there was lack of uniformity in the entire structure.[73] Thus, a need arose for an independent statutory panel of scientific experts to lend assistance to the judges in management of environmental matters and to lend credence to the environmental legitimacy of the tribunal so created.

V. ADVANTAGES REAPED OUT OF NGT

A. Speedy Disposal

NGT lives up to its role of a fast-track court with the expeditious disposal of cases that it undertakes. The principal bench of the NGT disposes of cases within a period ranging between 1-2 years extending to 3 or 4 years[74] in exceptional cases.[75] The Zonal benches of the National Green Tribunal hearings take place on a prompt month to

[69]Dr. Shivrao v. Union of India, A.I.R. 1988 S.C. 953 (India); Vincent v. Union of India, A.I.R. 1987 S.C. 990 (India).

[70]West Bengal Electricity Regulatory commission v. CESC Ltd., (2002) 8 S.C.C. 715 (India).

[71]Daubert v. Merrel Dow Pharmaceuticals Inc., 509 U.S. 579 (1993).

[72]*Id.*

[73]*186th Law Commission Report*, http://lawcommissionofindia.nic.in/reports/186th%20report.pdf.

[74]Court on its own motion v. State of H.P., O.A. No. 40/2016 in the National Green Tribunal, http://www.greentribunal.gov.in/judge_courtI.aspx.

[75]On going through the cases on the website of the NGT, it is apparent that mostly the cases are disposed of within 2 years of the date of filing of the Application (can be inferred from the Application Number), and extends to 4 years in rare cases. *See* http://www.greentribunal.gov.in/judge_courtI.aspx.

month basis regularly.[76] On the other hand, the high courts take a much longer period to dispose of certain cases.[77]Further, the Respondents who intend to contend the application or appeal are legally mandated to file a reply within a month of the service of notice of application.[78] In a recent study, it was noted that the number of cases settled in the 1st half of 2013 was double of that which was settled in the 1st half of 2012 and the no. of cases settled in the 2nd half of 2013 was double of that which was settled in the 2nd half of 2012.[79] Hence, the procedures of the NGT have been maneuvered to deliver speedy justice to the aggrieved and to effect recovery of environment.

B. Increased Efficiency of Enforcement Agencies and State Pollution Control Boards

Though the judiciary had been quite successful in incorporating legal principles and issuing directions to the enforcement agencies, it couldn't usurp the legislative or executive powers absolutely[80], and its role remained constricted to such incorporation and issuance only. As stated earlier, the main purpose behind judicial intervention was the inaction of the executive acting through its appropriate authorities,[81] and this inaction was not remedied merely by issuing directions. Periodic monitoring of such agencies and enforcement of such directions in case of continuing inaction was required. But, due to the inflow of a slurry of PILs, this became a distant dream for the judiciary prior to the establishment of NGT. The NGT has taken to its

[76]*Id.*; https://www.greentribunal.gov.in.
[77]Niranjan Patra v. Chairman, State Pollution Control Board, Odisha, W.P. (C) No. 13738/2003 (Collected from the Odisha State Pollution Control Board).
[78]National Green Tribunal (Practices & Procedure) Rules, 2011, Rule 16.
[79]Swapan Kumar Patra & V. V. Mishra, *National Green tribunal and Environmental Justice in India*, 44(4) INDIAN JOURNAL OF GEO-MARINE SCIENCE (2014).
[80]Doctrine of Separation of Powers being part of the basic structure; Indira Gandhi v. Raj Narain, (1975) 2 S.C.C. 159 (India).
[81]Upendra Baxi, *Environmental Law: Limitations and Potentials for Liberation*, J. Bandyopadhyay et al. (eds), INDIA'S ENVIRONMENT: CRISES AND RESPONSES (Dehradun: Natraj Publishers Pvt. Limited, 1985).

stride the task of monitoring the enforcement agencies by issuing frequent directions and imposing time bound functions. Through its active character it reviews the compliance of those directions regularly and ensures execution, thereby strengthening the enforcement agencies and the compliance requirements.[82]

The State Pollution Control Boards[83] are powerful agencies of pollution control which have been clothed with substantial powers ranging from obtaining information[84] and taking samples[85] to inspection,[86] and carrying out emergency operations in case of pollution of a stream or river.[87] The most important amongst them all being, the granting, refusing or withdrawing of consent for the establishment of any industry, hotel or enterprise which is to discharge effluents in the river, well or land[88] and the power to issue 'any' direction to any person, officer or authority, including the directions of 'closure, prohibition or regulation' of any industry, operation or process or the 'stoppage or regulation' of supply of electricity, water or any other service.[89] Though the Pollution Control Boards have been endowed with such appreciable powers, yet, prior to the establishment of the National Green Tribunal, they had little scope to actualize their powers by enforcing the directions that they issued. In case of not fulfilling the consent requirement before establishing an industry, etc. or setting up of any outlet which is likely to discharge effluents into the river or land (as required under Section 25 of the Water Act or in case of non-compliance with the conditions

[82]Niranjan Patra v. Chairman, State Pollution Control Board, Odisha, W.P.(C) No. 13738/2003 (Information collected from the Odisha State Pollution Control Board).
[83]Also referred to as 'SPCB'.
[84]Water Act, *supra* note 4, § 20,
[85]*Id.* at § 21.
[86]*Id.* at § 23.
[87]*Id.* at § 32.
[88]*Id.* at § 25, 27.
[89]*Id.* at § 33A.

stipulated while granting of consent,) the Pollution Control Board has two resorts:

- Proceeding to the Court for prosecution which is *per se* time consuming.
- Issuing of directions of closure, prohibition or any other direction it may deem fit under Section 33A implemented through the Regional Officers of the Pollution Control Boards.

Thus, the powers of the Pollution Control Boards had become subject to the judicial limitations. On the other hand, the industries which failed to obtain the requisite consent or violate the condition of consent and received directions of closure, prohibition, etc., from the State Pollution Control Boards, more often than not, moved the Court against such directions with the prayer of obtaining a stay on such directions as an interim relief, which the Court invariably grants in most of the cases until the matter is disposed of. As these matters remained pending in the courts for years, it gravely affected the function of the Pollution Control Boards which became toothless institutions and completely handicapped. Their hands were tied by the shackles of the slothful and sluggish disposal of such cases and they couldn't proceed against the delinquents despite them having flagrantly violated stipulated conditions or consent requirements. It also had the potential to cause irreversible damage to the environment in the meanwhile, as the industries violating the prescribed norms were allowed to function without any action being allowed against them.

But, after the establishment of the National Green Tribunal, the expertise involved in the management of environmental matters helps in the speedy handling of cases. The periodic monthly hearings keep the Pollution Control Boards on their feet and give appropriate effect to the directions issued by them within appropriate time. The speedy disposal of cases lends activeness to the Boards who can now take

prompt actions against the wrong doers and those who disobey the law. Through the frequent hearings and time bound orders, the NGT monitors the Boards activities and helps in adept environmental justice administration and upkeep of the environment. The power of the NGT to charge 'costs' in case of violation of its orders is a fearful weapon that it possesses owing to its vigorous and dynamic constitution. Thus the Pollution Control Boards, which had lost their vigor due to the play of stay orders as interim reliefs in leaden-footed litigations, are now able to stand as powerful agencies of pollution control. The NGT and the Pollution Control Boards, together have the potential to become the champions of environmental justice. The stringent rules of procedure for normal civil disputes have been done away with under the NGT Act. The mandate for the National Green Tribunal not being bound by the procedure laid down in the Civil Procedure Code, 1908 or the Indian Evidence Act, 1872, is guided by the attitude that principles of natural justice [90] protracts the cases.

C. Minimal Control Exercised by the Executive

The selection procedure of the members of the Tribunals has been designed so as to minimize the executive interference in the appointment process. The Ministry of Environment and Forests is merely an administrative ministry for the National Green Tribunal to provide for means and finances and it cannot interfere in the functioning of the National Green Tribunal.[91] The entire process of appointment and removal is under the effective control of the Supreme Court of India, and the appointments or removals cannot take place without there being the participation and approval of a sitting judge of the Supreme Court of India.[92] Further, the selection committee which is to recruit the various officials would comprise of

[90]NGT Act, *supra* note 51, § 19.
[91]Wilfred J. v. Ministry of Environment and Forests, M.A. No. 277 of 2014 in O.A. No. 74 of 2014, N.G.T.
[92]NGT Act, *supra* note 51, § 6.

only one nominee of the Ministry of Environment and Forests, alongside the Chairperson, Expert Member, and the Registrar of the Tribunal.[93] This is indicates the independence and autonomy that has been provided to the National Green Tribunal, and are essential for its efficiency.

D. Incorporation of International Environmental Principles Into the Legislative Framework

The polluter pays principle was recognized internationally by the Organization of economic Cooperation and Development (OCED) for the first time[94] and then by the Rio Declaration subsequently.[95] The precautionary principle was recognized for the first time through Principle 15 of the Rio Declaration. Sustainable Development, on the other hand, was defined by the World Commission on Environment and Development (WCED), in its report popularly known as the Brundtland Report. Though these principles have been emphasized in India through precedents and are regarded as an integral part of environmental jurisprudence, they did not find a place in any of the environmental legislations formulated. The National Green Tribunal Act, 2010, for the first time, gives legislative status to these quintessential principles and makes it incumbent on the Tribunal to apply these principles.[96]

VI. PITFALLS FACED BY THE NGT IN THE PATH OF EFFICIENT JUSTICE DELIVERY

[93]National Green Tribunal (Recruitment, Salaries & Other Terms & Conditions of Service of Officers & Other Employees) Rules, 2011, Rule 9.
[94]Guiding Principles concerning international economic aspects of environmental policies- Council Recommendations (1972).
[95]Rio Declaration on Environment and Development, 1992, U.N., Principle 16.
[96]NGT Act, *supra* note 51, § 20.

A. Conflict Between Statutory Body and Constitutional Body:

In the ***Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India & Ors.,***[97] the Apex Court directed that all matters instituted after coming into force of the National Green Tribunal Act, 2010 and which are covered under the said Act shall stand transferred and can be instituted only before National Green Tribunal. This provided the NGT with absolute powers to deal with all the environmental cases and thus affirmed its position as an appropriate environment court as envisaged in the Statement of Objects & Reasons of the NGT Act. But, in the case of ***Aadarsh Cooperative Housing Society Ltd. v. Union of India,***[98] it was held that the directions issued in the aforementioned case will not be given effect to until it is reconsidered by the Court and a stay was issued on the implementation of such directions. As this matter hasn't been considered since, the result is that the High Courts have recovered their power to decide on environmental matters. This defeats the purpose of establishment of the NGT as provided in the Statement of Objects and Reasons of the NGT Act. The aggrieved and the environment are once again suffering from the lack of expertise and endless delay in the disposal of cases, despite there being a special fast track court for the purpose. Further, it creates a conflict between the NGT and the High Courts. NGT, being a statutory authority with limited powers cannot take up matters lying before the constitutional courts and hence the smooth deliverance of justice through the NGT is being affected. The NGT cannot act upon the establishments which have been granted interim relief by the High Courts as well. The restoration of status quo prior to the Bhopal Gas Peedith Mahila Udyog Sangathan case poses a major problem in efficient justice delivery.

[97]Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India & Ors., (2012) 8 S.C.C. 326 (India).

[98]Aadarsh Cooperative Housing Society Ltd. v. Union of India, SLP (C) Nos. 27327 and 28512-28513/2013 [hereinafter Aadarsh Cooperative].

B. Redundancy of Appellate Authority

NGT has appellate jurisdiction in respect of orders passed under the Section 28 of the Water Act[99] and Section 31 of the Air Act[100] by the Appellate Authorities. Thus, NGT is made a forum for second appeal which defeats the purpose of expeditious disposal as the matters would reach the NGT from these Appellate Authorities (which are non-functional in most of the states) in their own course. Further, the orders of the NGT would be subject to the Supreme Court, which is the appellate authority over NGT.

The Supreme Court had acknowledged the inadequacies of appellate authorities (such as, the lack of expertise), which are mostly manned by bureaucrats and had urged the Law Commission to devise a new scheme which could provide for a uniform structure.[101] This subsequently found mention in the 186th Law Commission Report as well. One of the reasons for setting up the NGT was to curb the Appellate Authorities' inadequacies. It is preposterous to let the very institution sustain whose demerits it sought to remedy. Further, the Appellate Authorities in most of the states are largely non-functional despite the orders of their revival in most of the States.[102] Section 15 of the NGT Act empowers the NGT to handle all the cases which are dealt with by the Appellate Authorities. Further, due to the lack of expertise these authorities are inadequately equipped as compared to the NGT and hence are superfluous.

Hence, as the institution of Appellate Authorities throttles the expedited disposal of cases, deprives the NGT of its autonomy to a

[99]NGT Act, *supra* note 51, § 16(a).
[100]NGT Act, *supra* note 51, § 16(f).
[101]A.P. Pollution Control Board v. M.V. Nayudu, (2001) 2 S.C.C. 62 (India).
[102]Debjani Dutta, *Set Up Body on Pollution: HC to Puducherry*, THE INDIAN EXPRESS (May 1, 2014), http://www.newindianexpress.com/states/tamil_nadu/Set-Up-Body-on-Pollution-HC-to-Puducherry/2014/05/01/ article2199334.ece.

certain degree and has largely become a redundant entity, it should therefore be taken down and done away with.

C. Inadequacy & Irrationality of Limitation Periods:

Under Section 14 of the NGT Act, the limitation period for making an application for adjudication of a dispute is 6 months from the date the cause of action for the dispute arises which can be extended for a maximum period of 60 days. Further, the victims claiming compensation can do so only within 5 years from the date on which the cause of action arose. Sections 15 & 16 of the NGT Act provide stringent limitation periods of 5 years and 30 days for compensation and appeals, respectively. These limitation periods are irrational, because:

- The latency period of several carcinogens the toxins persists for a considerable amount of time. The time period between exposure and observable effect is in most of the cases more than 6 months. But due to this provision, the aggrieved party loses the right to approach the NGT.[103]
- The consequences of exposure to 'radioactive substances' take their own course to surface and take beyond 6 months to give rise to any effect.
- The problems arising out of ground water pollution takes several years to surface.

Further, there are different limitation periods provided in Sections 14, 15 & 16, i.e., for settling of disputes, for claiming compensation and for appeals from decisions or orders. There lies no reasonable explanation behind this dichotomy being drawn, again. As a remedy, Section 5 of the Limitation Act, 1963 may be made applicable for

[103]Alyson C. Flournay, *Scientific Uncertainty in Protective Environmental Decision-Making*, 15 HARV. ENVIRONMENTAL LAW REV. 327 (1991).

petitions filed beyond the period prescribed in section 14, 15 or 16, in suitable cases.

VII. *MODUS OPERANDI* IN RESOLVING THE CONUNDRUM

A. Providing an Enhanced Status to the NGT

The NGT Act was formulated in pursuance of the 186th Law Commission Report which provided the necessity of 'environmental courts'. The Statement of Object and Reasons of the NGT Act, also, provide a mention to the same and state that NGT was for speedy disposal of cases relating to environment considering its colossal importance in quality of life. The decision of the NGT is statutorily appealable to the Supreme Court. In spite of the provision for judicial review of the decision of the NGT, the orders passed in the *Adarsh case*[104] deprive the NGT of the autonomy on environmental matters at the state-level. This needs an early resolution particularly when on complex environmental issues involving experts' study for a proper adjudication is not per se available to the courts while the NGT has an inbuilt expertise for adjudication of complex environmental issues. This appears to be defeating the envisaged objective of creating an 'environmental court' apart from the various other envisaged advantages. It restores the demerits looming prior to the establishment of NGT concerning environmental litigations and creates further complications arising out of the conflict between NGT and the High Courts. The key problem in this issue arises because of it being a tribunal or a statutory body, due to which it cannot override the constitutional bodies as they don't possess equal powers or authority.[105]

[104]Aadarsh Cooperative, *supra* note 98.
[105]P. Reddy, *Open the Trouble With Tribunals*, OPEN MAGAZINE, http://www.openthemagazine.com/article/nation/the-trouble-with-tribunals.

Hence, the NGT cannot usurp jurisdiction over the matters which are taken up by the High Courts, but the High Courts can choose to ignore the directions of the NGT. The problem is aggravated by the issue of inappropriate interim orders which provides leeway to the wrong-doers, impacts the environment and affects the objective of a balanced and equitable development. The situation remains in force until the Adarsh matter is disposed of by the Hon'ble Supreme Court.

The effective way out of this conundrum is to get a settled law declared by the Supreme Court. If the Court upholds the Bhopal verdict, the NGT will regain its full authority and if the Adarsh case overrules the Bhopal decision the situation preceding the NGT Act will get restored.

For speedy and effective judicial system approach may be threefold:

- The interim order in the Adarsh case should be revoked and the autonomy of the NGT over the environmental litigations should be revived.
- In event the verdict of the Bhopal case is considered one which it would be appropriate to set aside,, power of the Constitutional Courts to entertain writs is upheld and the absolute authority of the NGT is thwarted, it may, at that stage, be worth considering making a provision in the NGT Act to the effect that if any writ application is filed either in the High Court or Supreme Court directly, such Court before passing any interim order shall issue a show cause notice to the concerned Pollution Board, who in turn may show cause in the Court or approach the Green Tribunal for adjudication and if no proceeding before the NGT is started or the cause shown is , upon hearing, found to be not satisfactory, such Court may issue such interim orders as it deems fit or dispose of the proceeding as per law. Alternatively, the High Court could

also be mandated to take the opinion of NGT before settling any dispute or granting an interim relief.

- The orders passed by the NGT are treated as a decree of the Civil Court for the purpose of enforcement. But directional orders mandating actions to be taken may not be easily enforceable as a decree of a civil court and the polluter may get a leeway to protract the execution. To avoid such contingencies, the enforcement of criminal proceeding or monetary penalty for a conviction may itself be a protracted proceeding, but may be much less compared to the environmental damage caused by noncompliance of the mandate of NGT. It may be worth considering that such a directional order of the NGT may be treated as if it is a writ issued under Art 226 and 227 by a High Court and NGT can in case of noncompliance with its mandatory order may start a proceeding for contempt under the Contempt of Courts Act or issue directions to the executive to enforce compliance.

B. Benches of NGT Should be Set Up in Every State

Following the endowment with absolute authority over environmental matters at the State level over the NGT, a bench of it should be instituted in every state by amendment of Section 4(3) of the NGT Act. This would not only simplify the entire process of environmental justice delivery, but would also expedite the entire process. As India is developing at a very fast pace, with an annual GDP growth rate of 7.5% in the year 2015-2016[106], environmental concerns are bound to increase. In such a scenario, the setting up of separate environmental courts is incumbent to ameliorate the pressure on environment created

[106]*World Bank retains India growth forecast at 7.5% for 2015-16*, THE ECONOMIC TIMES (Oct. 30, 2015), http://economictimes.indiatimes.com/news/economy/indicators/world-bank-retains-india-growth-forecast-at-7-5-for-2015-16/articleshow/49584688.cms.

and only 5 benches would not be able to handle the burden of increasing litigations. This makes the institution of benches of NGT in every State necessary. This has also been urged by Mr. Manohar Parrikar, the former Chief Minister of Goa, who had opined that it was cumbersome for the States to send its officers to the select benches time and again.[107] Such incorporation would help in the clearance of the backlog of environmental cases with ease. Further, as there exists a provision regarding appealing to the Supreme Court from the decisions of the benches of the NGT, the institution of such benches in each State would provide the country with an environmental judicial hierarchy and would help in bringing about sustainable growth. Though the system of circuit benches exists[108], yet the incorporation of permanent separate benches is advisable owing to the proliferation of environmental litigations in every state in equal parameters.

C. The Institution of Appellate Authorities Should be Dispensed With

As provided earlier, the existence of Appellate Authorities in States is redundant. Even in the States where it is functional, due to the absence of assistance by an expert panel, it merely delays the matter as that of the High Courts and defers its settlement by the NGT. In such a scenario, and due to the catena of advantages and reasons as to why the NGT should have sole autonomy over environmental litigations already outlined, and also having majorly lost its utility and functionality in most of the states, the Appellate Authorities should be done away with.

D. The Need to Update the Environmental Laws

[107]*CM wants NGT Bench in Goa, but not to function as HC*, GOA NEWS (Jun. 28, 2014), http://www.goanews.com/news_disp.php?newsid=5075.
[108]NGT (Practices & Procedures) Rules, 2010.

The NGT can perform its task of delivering apt justice properly, only if its decisions are backed by comprehensive legislations which run in tandem with the current time, and the demands of the environment. Old laws such as the Indian Forest Act, 1927 need to be amended. Several aspects of the persisting environmental legislations need to be revisited. One such aspect is that of the conduct of 'public hearing' in obtaining Environmental Clearance (EC) under the Environmental Impact Assessment Notification, 2006. The large scale protests undertaken by the public in this formality and the undue importance attached to this stage for obtaining EC, poses difficulties in implementing several public-interest projects. Due to the increasing technological advancements, the amount of waste and pollution generated is increasing manifold. Further, due to the vast population growth, there is a proliferation of dwelling units, and if the concerns of the public are attached undue importance, no new project including that of waste disposal units can be successfully heralded. Hence, there is a need to simplify the procedure of public hearing and weigh the concerns raised in the process reasonably against the importance of the proposed project.

Therefore, there is a need to update the environmental laws and various anomalous aspects of the NGT Act so as to address the new emerging issues by providing them a place in the legislative framework, thereby helping the NGT in providing adequate justice. The NGT cannot after all, make laws through precedents which have the effect of national legislations; as it too, lies below the Supreme Court.

VIII. CONCLUSION

With a population of over 1.3 billion,[109] economic growth rate of 7.5%110 and 13 of the top 20 cities world-wide with the worst quality

[109]Worldometers India's Population, http://www.worldometers.info/world-population/india-population/.

of air being Indian cities111, environment protection is currently one of the most serious challenges for the country.

NGT is a milestone as it has been successful in heralding a new era in the environmental justice delivery system of India. It has revamped the enforcement mechanisms at various levels and has proved to be an efficient alternative adjudication forum. Even the Supreme Court has acknowledged its proficiency and expert character and has transferred cases relating to the environment for its consideration.112 The hitherto developed jurisprudence on environment, which itself is dynamic and not under any State Control and the organic growth of the legal frame work needs constant judicial watch and states' proactive approach to upgrade the substantive law, procedure and enforcement mechanism progressively.

In light of the several hurdles and hindrances faced by the National Green Tribunal in the path of efficient environment justice delivery due to the lacunae in the system as aforementioned, adequate measures for its reinforcement are to be taken. It is through an efficacious justice delivery system that the goal of sustainable development can be realized; and the realization of sustainable development is imperative for a developing country as no development can rightly be termed as 'development' if it fails to touch the cornerstone of 'sustainable development'.

[110]*Id.*
[111]World Health Organisation, *Ambient (outdoor) Air Pollution in Cities Database 2014*, http://www.who.int/phe/health_topics/outdoorair/databases/cities/en/.
[112]Almita H. Raj v. Union of India & Ors., (1998) 2 S.C.C. 416 (India).