

**THE NATIONAL GREEN TRIBUNAL – AN  
INSTITUTION TO ENSURE  
ENVIRONMENTAL JUSTICE IN INDIA: A  
CRITICAL STUDY**

**REGISTRATION NO. 309/2017 5842**



**REVISED SYNOPSIS  
SUBMITTED TO  
DR. B. R. AMBEDKAR UNIVERSITY  
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FOR THE DEGREE OF  
DOCTOR OF PHILOSOPHY  
IN  
Law  
Faculty of Law  
BY  
Ashutosh Kumar Panday  
UNTER THE SUPERVISION OF  
Dr. Durga Charan Mishra  
Agra College Agra  
2014-15**

## **CERTIFICATE FROM THE SUPERVISOR**

It is certified that **Ashutosh Kumar Panday**, Research scholar in law, session 2014-15, Agra College Agra, (Dr. B.R. Ambedkar University, Agra U.P.) ,

He has prepared the revised synopsis on the topic titled “**The National Green Tribunal – An Institution to Ensure Environmental Justice In India: A Critical Study**” as per suggestion laid by research degree committee under my supervision and guidance. This synopsis has embodied original work of the candidate and has not been submitted anywhere else for the award of any other degree or diploma in this or any other university or institute.

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## **CANDIDATE'S DECLARATION**

I, **Ashutosh Kumar Panday** declare that the work embodied in this Ph.D. synopsis is my own bonafide work carried out by me under the supervision of **Dr. Durga Charan Mishra** (Associate Professor), Faculty of Law, Agra college, Agra (Dr. B.R. Ambedkar University, Agra U.P.) in session 2014-15. The matter embodied in this Ph.D. synopsis has not been submitted previously for the award of any degree or diploma in any other University or Institute.

I declare that I have been faithfully acknowledged, given credit and referred to the research workers wherever their works have been cited in the text and the body of the synopsis.

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candidate)**

**Place-**

**Topic:-**

**The National Green Tribunal - An Institution to Ensure Environmental Justice in India: A Critical Study**

**Introduction:-**

The National Green Tribunal has been established on 18.10.2010 under the National Green Tribunal Act, 2010<sup>1</sup> for

effective and expeditious disposal of case 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 matter connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental dispute involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908 but shall be guided by Principles of Natural Justice.

The Tribunal dedicated jurisdiction in environmental matter shall provide speedy environmental justice and help reduce the burden of litigation in higher court. The Tribunal is mandated to make and endeavor for disposal of applications or appeals within 6 months of filing of the same. Initially, the NGT is proposed to be set up at five places of sitting and will follow circuit procedure for making itself more accessible. New Delhi is principle place of

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1- The President on 2-06-2010 and published in the Gazette of India,

sitting the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other four place of sitting of Tribunal.

Need of NGT Tribunal or the Environmental Court is not a new concept. Different Courts in the Country have recommended the establishment of environmental court to take up the case

related to environmental degradation. In *M.C. Mehta v. Union of India* case in 1986, The Hon'ble Supreme Court observed that *environmental case involve assessment of scientific data*. Setting up of environmental courts on regional basis would require Professional Judge and Experts, keeping in view the expertise required for such adjudication. In another judgment '*Indian Council for Enviro-Legal Action v. Union of India, 1996*, the Hon'ble Supreme Court observed that environmental court having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner. Hon'ble Supreme Court of India in *A.P. Pollution Control Board v. M.V. Naidu: 1999* referred to the need for establishing environmental courts which would have the benefit of expert advice for environmental scientists/technically qualified persons, as a part of the judicial process, after an elaborate discussion of the views of jurists of various countries. The 186<sup>th</sup> Report of Law Commission of India on the Proposal to constitute environmental courts in September, 2003, stated that the National Environmental Appellate Authority constituted under the National Environmental Appellate Authority Act, 1997. For the limited purpose of providing a forum to review the administrative decisions on Environment Impact Assessment had very little work. It appears that since the year 2009, no judicial member has been appointed so far as the National Environmental Tribunal Act, 2005 is concern; the legislation is yet to be notified after eight years of

enactment. Since it was enacted by Parliament, the Tribunal under the act is yet to be constituted. Thus, these two Tribunals are non-functional and exist only on paper. In its recommendation, the Commission proposed for setting up of environmental Courts with judicial members and technical experts key points report of Law Commission of India<sup>2</sup>.

- Commission recommended establishment of Environment Court in each State, consisting of Judicial and scientific experts in the field of environment for dealing with environmental disputes besides having appellate jurisdiction in respect of appeals under the various pollution Control Laws.
- The Commission has also recommended repeal of the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997.

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2- 186<sup>TH</sup> Law Commission Report “Proposal to Constitute Environment Courts” September, 2003.

- To achieve the objective of Article 21, 47 and 51A(g) of the Constitution of India by means of fair, fact and satisfactory judicial procedure.

- Environment Court should be constituted in each State and also stated as under Article 253 read with entry 13 list-I of VII that the Parliament have exclusive jurisdiction to enact law for the purpose of establishment.
- Emphasis on Stockholm declaration and the conference at Rio de Janeiro of 1992.
- No power of judicial review as under Article 226 but there can be provision for appeal to the Supreme Court.
- These Courts must be established to reduce the pressure and burden on the High Courts and the Supreme Court. These Courts will be Courts of fact and law, exercising all power of a Civil Court in its original jurisdiction.
- There will also have Appellate Judicial Power against order passed by the concerned authorities under the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 with an enabling provision that the Central Government may notify these Courts as Appellate Courts under other environment related Act as well.
- The Environmental Court shall consist of a Chair Person and at least two members. Each Environmental Court shall be at least three scientific or technical experts known as Commissioners.

- The Court shall not be bound to follow Civil Procedure Code and the Rules of Evidence under the Indian Evidence Act, 1872.
- The Court should follow the Principle of Natural Justice and should apply the Principles/doctrine of strict liability (Rylands v. Fletcher/Bhopal Gas Tragedy), Polluter Pays, Doctrine of Public Trust, etc. The locus standi before the Court shall be as wide as it is before the High Court/Supreme Court that means that any member for the cause of many can stand before the Court of Law.
- The Powers of High Court under Article 226 and Supreme Court under 32 shall be ousted. Thus a very specific and realistic approach was drawn in the 186<sup>th</sup> report of the Law Commission of India with respect to the formulation of Environment Courts after years of deliberation; the National Green Tribunal Bill was introduced in the Indian Parliament on July, 29, 2009. The bill provided for the establishment of a Green Tribunal which offered effective and fast redressal of case related to environmental protection and conservation of natural resources and forests.

National Green Tribunal Act was a path breaking legislation which was unique in many ways. It provided a new dimension to environment adjudication of curtailing delay and imparting

objectively. The Tribunal has given its composition and jurisdiction. Including wide powers to settle environment dispute and providing relief, compensation including restitution of environment is envisaged to be a specialized environmental adjudicatory body having both original as well as appellate jurisdiction.

National Green Tribunal Benches: The National Green Tribunal started functioning since 4<sup>th</sup> July, 2011 initially the NGT is proposed to be set up at five places of sitting and will follow circuit procedure for making itself more accessible. New Delhi is the Principal places of sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai are the other four places of sitting of the Tribunal.

## **LITRECHURE RIVEW**

### **Historical Background**

Our environment Consists of 'Panchtatva' viz earth or land, water, light and air, which together responsible for our survival. If the equilibrium of Panchtatva disturbs the existence of human being. It will be dangerous. We obtained our survival element from all These Panchtatva. One need pollution free air to breathe, uncontaminated water to drink, nutritious food to eat, hygienic condition to live and healthy environment to moue. Pollution free environment to basic themselves with fullest extent. Pollution free

environment is basic need of every human being but everyone has contributed in its pollution and in present day it has become universal phenomenon.

In other word 'Love of Nature' is not modern phenomenon man loves nature and nature in turn nourishes him. Nature, society and human being are interdependent and inherent duty of man is to protect the nature and environment.

The basic area of this study concentrate' upon analyzing the problem discussing the constitutional and statutory provision. This topic as also focused on the principle laid down by the Supreme Court for the solution of environment like sustainable development principle laid down by the supreme court for the solution of environment like sustainable development precautionary Principle and polluter pay principle. The principle laid by the supreme court and various high court and existing constitutional and statutory provision are not enough to solve the problem is absence of independent, empirical and effective enforcing institution.

### **The Ancient Approach**

In Vedic era the environment was considered very pious position and matter of religions importance "One tree is equal to ten sons" This quotation of Padampurana show the importance of

environment. The mentality and need is a kinetic term and it changes according to time.

### **The Medieval India**

From the point of view of environment conservation, a significant contribution of Moghal Emperors has been the establishment of magnificent gardens fruit orchards and green park, round about their palaces, central and provincial headquarter, public places on the bank of the river and in the valley and dales which they used as holiday resorts or places of retreat or temporary headquarters during the summer season.

During the British Raj, the year 1860 is the landmark period in the history of legal control of environmental pollution. For the first time an attempt was made to control specifically water and atmospheric pollution through criminal sanction.

## **Constitutional Back Ground**

The Constitution is known as the Basic law of the land “ all other law derive their sanctity or validity. That a special situation has arisen and the present constitutional provisions are not adequate and cannot deal with the development effectively.

They are amended by parliament from time to time. The former Prime minister of India Smt. Indira Gandhi attended the United Nations Conference on Women Environment at Stockholm, Sweden. This Stockholm declaration is known as “The Magnacarta” on Human Environment. The Indian parliament passed the 42<sup>nd</sup> Amendment of the constitution in 1976 and incorporated specially article 48(A) Article 51 A (g), relating to protection and improvement of the environment. This Indian become the first country in the world to have provisions on the environment in the constitution.

The constitutional provisions of parts III and IV dealing with fundamental Rights and directive Principles respectively are supplementary and complementary to each other fundamental Right are but means to achieve the goal indicated in part IV and thus must be constructed in the light of directive principles 24. In this way judiciary in India has played leading role in providing

impetus to the human right approach for the protection of environment. These Right are following:-

The Right to Equality Article 14 of the Constitution deals with Right to Equality and provides.

“The state shall not deny to any persons right to equality before the law or equal protection of the laws within the tertiary of India.”

Article 19(1)(g) to practice any profession, or to carry an any occupation trade or business.

Article 21: According to Article 21 of the Constitution, No person shall be depraved of his life or personal liberty except according to procedure established by law.”

The heart of fundamental right and has received expanded, meaning from time to time other the decision of the Supreme Court in Meneka Gandhi Vs. Union of India (AIR 1978 SC 597). Art 21 guarantees a fundamental right to life – A life of dignity to be lined in a proper environment, free of danger of disease and infection. The right to live in a healthy environment.

Article 24 – No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any others hazards

employment". This provisions is certainly in the interest of public health and part of the environment.

Further, Art. 39 (C) and 39 (F) under directive principles of state policy provide for the protection of health and strength of children below the age of 14 years.

### **BEGINNING PRINCIPLES**

**POILUTER PAYS PRINCIPLES :-** "The Polluter Pays" principles has been held to be a sound principle by this court in Indian Council for enviro - Legal Action vs. Union of India". The Court observed, "We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country". In this case the number of private companies operated as chemical companies were creating hazardous wastes in soil, henceforth, polluting the village area situated nearby, and they were also running without licenses, so an environmental NGO, filed writ petition under Article 32 of the COI, which sought from the court to compel SPCB and CPCB to recover costs of the remedial measures from the companies.

### **THE PRECAUTIONARY PRINCIPLE**

The precautionary principle seeks to ensure that a substance or human activity which may cause a threat to the environment is

prevented from causing harm to environment the precautionary principle in the context of environmental protection is essentially about the management of scientific risk. It is a component of the concept of ecologically sustainable development and has been defined in principle 15 of the Rio Declaration, 1992" According to this principle, "where there is threat of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation." In other words, any human activity or behaviour which bears the harmful effect to the environment has got too prevented at all cost.

It may be stated that prior to the precautionary principle as incorporated in principle 15 of the Rio Declaration, 1992, Principle 6 of the Stockholm Declaration, 1972 relating to the Assimilative Capacity Principle was the governing rule which provided as under:-

"The discharge of toxic substances or of substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious irreversible damage is not inflicted upon ecosystem. The just struggle of the peoples of all countries against pollution should be supported."

## **NATIONAL GREEN TRIBUNAL ACT, 2010**

It was in close circumstances and taking note of the fact as is seen in the statement of object and reasons of the National Green Tribunal Act, the large number of environmental cases pending in higher courts and the involvement of the multi-disciplinary issue in such cases the Supreme Court of India requested the Law Commission of India to consider the need for constitution of specialized environmental courts. The Law Commission of India, has accordingly recommended setting up of environmental courts with both original and appellate jurisdiction to deal with environmental matters. Pursuant to that, the National Green Tribunal Act, 2010 came to be passed by the Parliament giving effect to the decisions taken in the above said United Nations Conference declarations by virtue of powers conferred on it, under Article 253, which enables the Parliament to pass central law. Under the National Green Tribunal Act, 2010, the Tribunal comprises of a full time Chairperson with qualification of either a sitting or retired judge of the Supreme Court of India or Chief Justice of a High Court. In addition, there can be not less than but subject to maximum ten full time Judicial Members who may be either a sitting or retired judges of the High Court. The Tribunal also consists of not less than ten but subject to maximum twenty, full time Expert Members whose qualifications are prescribed

under Section-5 (2) of the National Green Tribunal Act, 2010. The Judicial and Expert Members are appointed on the recommendation of a Selection Committee.

That National Green Tribunal, thus constituted, exercises original powers under Section 14, with jurisdiction to resolve all civil cases where a substantial question relating to environment is involved and such questions must arise under any of the seven enactments enumerated under Schedule-I, namely The Water (Prevention and Control of Pollution) Act 1974. The Air (Prevention and Control of Pollution) Act 1981, Water (Prevention and Control of Pollution) Act 1980, The Environment (Protection) Act 1986. The Public Liability Insurance Act 1991 and the Biological Diversity Act 2002. The Tribunal is also empowered to grant relief, compensation and restitution to the victims of pollution, restitution of property damaged and restitution of environment as the Tribunal thinks fit. That apart, the Tribunal is empowered to exercise appellate jurisdiction from the order of the appellate authority under the Water and Air Act etc. as contemplated under Section 16. Consequently, Section 33(A) and 31(B) of Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981, respectively were inserted by way of amendment. Empowering appeal to the National Green Tribunal from the orders of the Appellate Authority.

The unique nature of the National Green Tribunal is not only that, it contains both Judicial and Expert Members sitting together to decide the environmental issues, but they are given equal participation so as to enable an appropriate legal decision blended with expert's environmental issues with real requirements instead of deciding environmental issues only on legal basis, and make it authentic and legally enforceable. The Act makes it very clear that the decision of the National Green Tribunal is judicial in nature. This is made explicitly clear in Section 19(5) which states as follows:-

*“(5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of Section 193, 219 and 288 for the purpose of section 196 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of The Code of Criminal Procedure 1973 (2 of 1974).*

The Tribunal is to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Therefore, it enforces not only the decisions of the International Conferences but also the above said celebrated principles propounded by the Hon'ble Supreme Court of India. The Act is having an overriding effect with a non-obstante clause under Section 33, apart from making a total bar on civil courts to exercise

jurisdiction by entertaining cases which are within the purview of the National Green Tribunal, as seen in Section 29 of the Act.

That nature and function of the National Green Tribunal in India, especially when it decides the validity or otherwise of the decision of the appellate authority under the Water and Air Act is unique. While performing such judicial function, the Tribunal which consists of experts as stated above along with the judicial members decides the validity of the order of another expert appellate authority. In its turn, the appellate authority itself decides the correctness of the decision of the statutory authorities functioning under the above said seven Acts who are themselves experts in their own field. When the National Green Tribunal testifies such appellate authority's decision, along with its own experts, certainly it is deemed to be the third body in deciding environmental issues. In that way, the decisions of the National Green Tribunal are Bound to have more experience value. It is in that way, as are unique. It is also pertinent to more that as against the order of the National Green Tribunal, an appeal lies only to The Supreme Court of India, on substantial question of law, relating to environment which is similar to the powers granted under Section 100 of the code of civil procedure.

While concluding, I intend to reproduce the opinion of the Hon'ble Supreme Court of India regarding the necessity and importance of

an appellate tribunal with experts deciding about the validity of the decision of another appellate forum of Experts. The said decision was rendered in respect of the Central Electricity Regulatory Commission under the Electricity Regulatory Commission Act, 1988 suggesting the same as found in the Telecom Regulatory Authority of India, Act 1997. The Hon'ble Supreme Court of India in the words of Hon'ble Justice Santosh Hegde observed as follows:-

*We notice that the commission constituted under Section 17 of the 1998 Act is an expert body and the determination of tariff which has to be made by the Commission involves very highly technical procedure, requiring working knowledge of law, engineering, finance, commerce and management. A perusal of the report of ASCI as well as that of the Commission abundantly proves this fact. Therefore, we think it would be more appropriate and effective if a statutory appeal is provided to a similar expert body, so that the various question which are factual and technical that arise in such an appeal, get appropriate consideration in the first appellate stage also. From section 2 of the 1998 Act, we notice that the Central Electricity Regulatory Commission which has a judicial member as also a number of other members having varied qualifications, is better equipped to appreciate the technical and factual question involved in the appeals arising from the orders of the Commission. Without meaning and disrespect to the judges of the High Court, we think neither the High Court not the Supreme Court would in reality be*

*appropriate appellate forums in dealing with this type of factual and technical matters. Therefore, we recommend that the appellate power against an order of the State Commission under the 1998 Act should be conferred either on the Central Electricity Regulatory Commission or a similar body. We notice that under the Telecom Regulatory Authority of India Act, 1997 in Chapter IV, a similar provision is made for appeal to the Supreme Court on questions of law only. We think a similar appellate provision may be considered to make the relief of appeal more effective.<sup>3</sup>*

### **MAIN OBJECTIVES OF THE NATIONAL GREEN TRIBUNAL**

There are many major objectives of the National Green Tribunal.

- (1). The effective and speedy disposal of the cases relating to environment protection and conservation of forests and other natural resources. All the previous pending cases will also be heard by the Tribunal.
- (2). It aims at enforcing all the legal rights relating to environment.
- (3). It also accounts for providing compensation and relief to affected people for damage of property.

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3- (2002) 8 Supreme Court Cases 715.

West Bengal Electricity Regulatory Commission Vs. CESC Ltd. SPL (C) No. CC 6293 of 2002 and SLP (C) No. CC. 6307 of 2002).

- (4). To effectively appreciate the global consensus and inherent issues in International Environmental Law.
- (5). To explore the need for a special environmental court to be set up.

#### **OBJECTIVE OF STUDY:**

The objective of the study is to examine the important issues relating to the National Green Tribunal – An Institution to Ensure Environmental Justice in India: A Critical Study. Thus, the present work will be to discuss and examine the important aspect of national green tribunal and analyze the relevant law conventions, concerning case and policies.

#### **RESEARCH METHODOLOGY**

The research methodology of the proposed work will be doctrinaire one keeping in view the nature of the problem relating to topic, the proposed work will adopt the analytical, descriptive and evaluative methods. The study materials for the present work will be collected from primary as well as secondary source.

The research topic i.e. “The National Green Tribunal - An Institution to Ensure Environmental Justice in India: A Critical Study”.

The search is primarily analytical and it is a library based. The primary data is collected from the debates of constitutional assembly. The debates in Parliament on important Constitutional amendments. The judgments of Supreme Court on the various constitutional amendments on various enacted laws and of executive order.

The secondary data consists of various interpretations made in commentaries on the Indian Constitutions, the book article and research papers published in different journals.

The purpose of research is to critically analysis the problem of implementation of various judgments and the role played by the political class and bureaucracy in this area. An attempt is made to analyze the comment of experts on various judgments of Supreme Court.

**PRIMARY SOURCE** :- Statutory materials, Government documents and Reports.

**SECONDARY SOURCE** :- Text book, periodical writing, Indian Law Journals.

## TENTATIVE CHAPTERIZATION

Chapter-1	Introduction
Chapter-2	Constitutional provisions related to Protection of Environment.
Chapter-3	Factor responsible for environmental pollution.
Chapter-4	National Green Tribunal, its functioning and effectiveness vis-à-vis National Green Tribunal Act, 2010.
Chapter-5	Composition & Jurisdiction of NGT Composition.
Chapter-6	Power & Functions of the Tribunal Power of the Tribunal.
Chapter-7	Problems & Suggestions of the Tribunal Criticism.
Chapter-8	Conclusion and Suggestions.

### Conclusions and Suggestions

The National Green Tribunal has undoubtedly provided to be panacea, and IT has achieved its objectives effusively. It is not bound by procedure and does not include any structural formalities. There is o delay in the resolution of case and has fulfilled all the objectives for which it was created environment protection, being the most important concern of the nation the creation of the creation of the tribunal seen to be an appropriate step taken at an appropriate time.

It constitution has not only led to fruitful results in the national context but has also marked its image as a rising star on the international format. Since time immemorial India has been a country supporting environmentalism and its tendency to conserve nature and its gift cannot be overlooked.

This legislation has proved to be a great success due to its accuracy in provisions of its dispute resolution mechanism in providing adequate remedy and at the same time not taking away the remedies of other course of law N.G.T. has the power to hear the initial complaints and also the appeals from lower court.

A good piece of work is the one which accommodates in itself scope for improvement environmental regulation are example. Of scientific approach applied to law an example to understand this aspect is that public health is defined in a tangible or more of a lubed form to include safe healthy and wholesome environmental conditions does allow it to be as simple as it seems and rather makes it more of a hideous monster.

The society must also includes varies social experts who can devise effective solutions to the problems. Anything that is social experts who can devise effective solutions to the problems. Anything that is perceived from law must also in value a bird's eye view of sociologist or a representative of society at large.

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