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National Green Tribunal: An Overview of Constitutional Provisions Context of Indian Perspective

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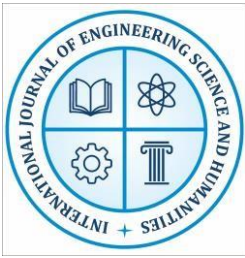
Abstract

In Indian society facing various ups and downs in their present scenario. The status of environment in ancient India was very high, however, it gets deteriorate with the time and mentality of people toward health and environment. It is the sum of all social, economic, biological, physical or chemical factors which constitute the surroundings of man, who is creator of his environment. The UN conference on Human Environment in Stockholm, in 1972. This led to the formation of the National Council for Environmental Policy and Planning in 1972 within the science and technology department. This council was later converted to the Ministry of Environment, Forest and Climate Change. The administration covers various aspects of human life like defense, health, agriculture, education, social security and environment. Environment is the most important constituents of the primary sector including; society, forest, environment conservation, pollution, human rights and environment Act. Here we choose the National Green Tribunal Act, 2010. The National Green Tribunal was established under section 3 of the National Green Tribunal Act, 2010 (Came into force on 18th October 2010) 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. The provisions necessary for making a National Green Tribunal in favor of all living and non-living things that surround an organism or group of organisms have been provided in the constitution itself. The Study has adopted analytical and descriptive methodology and books, research papers, magazines, articles and newspapers have been relied upon.

Keywords: Environment, Administration, Environment Law, National Green Tribunal.

Introduction

Man's efforts to control nature have upset the equilibrium of the environment resulting in destructive effects. One-third of the world's productive land is significantly damaged by erosion, compaction, water logging and salination and chemical destruction of organic content. Countries with large rural populations continue to suffer from traditional environmental risks such as indoor



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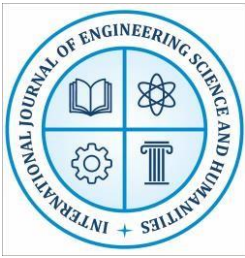
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smoke from domestic cooking and heating with solid fuels, unsafe water supply, inadequate sanitation and poor hygiene. The World Health Organization, defined environmental health as ‘those aspects of human health, including quality of life, that are determined by chemical, physical, biological, social and psychosocial factors in the environment. The factors which are fundamental to individual and community health are water, air, ventilation, light, noise, radiation, meteorological environment and housing, disposal of wastes and excreta. Environmental administration is most responsible to control and provide the suitable solutions for it. Some of the most important environmental challenges faced by India. It is essential to make the public aware of the formidable consequences of the Environmental Degradation, if not retorted and reformative measures undertaken would result in the extinction of life.

The continuous degradation of ambient air quality in the urban centers of India demands effective measures to curb air pollution. Though various policy measures are being introduced by the Government of India (GoI) to reduce the vehicular and industrial emissions, the extent to which these measures are implemented is questionable. A comprehensive review is done to understand the current scenario in the Indian context. The following section comprises a detailed review focusing on air pollution studies in India, the various sources and the effects of the pollutants on the ecosystem, biodiversity, materials and buildings and on human health. The government of India has made numerous acts to protect the environment and biodiversity. The National Green Tribunal has developed the main source to focus on all challenges in the context of India.

The National Green Tribunal was established under section 3 of the National Green Tribunal Act, 2010 (No. 19 of 2010 and came into force on 18th October 2010) 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. As per section 4 (1) of the Act, the Tribunal shall consist of: a full time chairperson, ten to Twenty full time Judicial Members, ten to Twenty full time Expert Members, vide notification F. No. 17 (4)2010-PL/NGT (Vol. IV) dated 10th August 2017, the central government specified the following ordinary places of sitting of the National Green Tribunal which shall exercise jurisdiction in the area indicate against each: Northern zone Delhi (Principal Bench), Western zone Pune, Central zone Bhopal, Southern zone Chennai, Eastern zone Kolkata. The National Green Tribunal was established on 18th October, 2010 with the appointment of Sh. Justice L. S. Panta, Former Judge of Supreme Court as the first Chairperson of the National Green Tribunal but he resigned in October, 2011 and w. e. f. 1st January, 2012 Hon’ble Sh. Justice A.S. Naidu was authorized to act as the Chairperson of the National Green Tribunal as the vacancy in the office had fallen vacant due to the resignation vide Notification dated 31st December, 2011. Hon’ble Sh.



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Justice Adarsh Kumar Goel, Judge, Supreme Court of India has been appointed as Chairperson of the National Green Tribunal vide notification no. S.O. No. 3325E dated 06.07.2018.

Objectives

- 1.To know about the National Green Tribunal in India.
- 2.To study about the Constitutional Provisions Context of the Protection of Environment.

The Concept of the National Green Tribunal

Formation of this idea received during the environment related cases are pending and the article 21 and the miss management of the environment administration and India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockolm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment; and whereas decisions were taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, calling upon the states to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environment damage. It is considered expedient to implement the decisions taken at the aforesaid conferences and to have a National Green Tribunal in view of the involvement of multi-disciplinary issues relating to the environment. By the definition tribunals are court with specialization. They deal in the field of their expertise. Ordinary courts may find it difficult to handle those issues without any sufficient expertise. The jurisdiction will provide speedy environmental justice will going long way for ensuring sustainable development. It will help remove arbitrary environment destruction.

Historical Background of the National Green Tribunal in India

The detailed and developed framework for environmental protection came after the UN conference on Human Environment in Stockholm, in 1972. This led to the formation of the National Council for Environmental Policy and Planning in 1972 within the science and technology department. This was set up to establish a regulatory body for the overview of the environmental related issues and concerns. This council was later converted to the Ministry of Environment and Forests. The government of India has made numerous acts to protect the environment and biodiversity. The important and impactful environmental laws and acts are:

The Wildlife (Protection) Act, 1972: This Act to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country. This act not considered under the National Green Tribunal Act, 2010.

The Water (Prevention and Control of Pollution) Act, 1974: It provide the prevention and control of water pollution, and maintaining or restoring of wholesomeness of water in the country. The Water (Prevention and Control of Pollution) Cess Act was enacted in 1977, to provide for the levy



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and collection of a cess on water consumed by persons operating and carrying on certain types of industrial activities.

Forest Conservation Act, 1980: It is a unique piece of legislation and regulatory mechanism that reflects the collective will of the nation to protect its rich forests, biodiversity and natural heritage and resources.

The Air (prevention and control of pollution) Act, 1981: This Act to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connecting therewith.

The Environment (Protection) Act, 1986: The Environment (Protection) Act was enacted in 1986 with the objective of providing for the protection and improvement of the environment.

Public Liability Insurance Act, 1991: An Act to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto.

The Energy Conservation Act, 2001: Energy conservation Act, 2001 accommodates productive utilization of energy and its preservation for matters associated therewith or incidental thereto.

Biological Diversity Act 2002: The Biological Diversity Act, 2002 is an Act enacted by the Parliament of India for the preservation of biological diversity in India, and provides mechanism for equitable sharing of benefits arising out of the use of traditional biological resources and knowledge.

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA): The Act recognizes and vest the forest rights and occupation in Forest land in Forest Dwelling Scheduled Tribes (FDST) and Other Traditional Forest Dwellers (OTFD) who have been residing in such forests for generations. This act also not considered in the National Green Tribunal Act, 2010.

Compensatory Afforestation Fund Act, 2016: The Compensatory Afforestation Fund (CAF Act), 2016 and Rules, 2018 provide elaborate guidelines and activities for utilization of CAMPA Fund. CAMPA also supports creation of nurseries for multiplication of quality planting material of locally suitable plant species.

The National Green Tribunal Act, 2010: It is a statutory body. The purpose behind the establishment of NGT is effective and expeditious disposal of cases related to environmental dispute involving multi-disciplinary issues. India became the third country to have a specialized body that deals with environmental related issues followed by Australia being the first and New Zealand being the second. The Principal Bench of NGT is situated in New Delhi (North zone) with the circuit benches at Chennai (South zone), Bhopal (Central zone), Pune (West zone) and Kolkata (East zone). The National Green Tribunal is India's first dedicated environmental court with a wide



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jurisdiction power. Its jurisdiction is not only limited to deal with the violation of environmental laws. Instead, it allows the tribunal to focus on providing relief compensation and restoration of the ecology. It is not bound by the procedure laid down under the Code of Civil Procedure 1908, but shall be guided by principles of 'natural justice'. While passing any order/decision/ award, it shall apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Thus, it plays a significant role in environment protection.

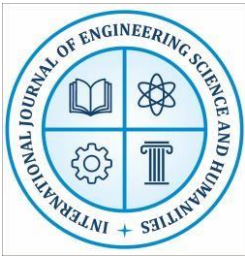
Provisions for National Green Tribunal under the Constitution of India.

The National Green Tribunal was formed in the year 2010 under Section 3 of the National Green Tribunal Act, 2010. It is a statutory body. Under the Indian Constitution, Article 21 the Right to life and personal liberty include right to clean and healthy environment while the other article 323(B) provides for the establishment of tribunals. Though, before this act there were existed two acts namely National Environmental Tribunal Act, 1995 and National Environmental Appellate Authority, 1997, for the same purpose of establishing specialised environmental courts. But the authorities failed to achieve its objective and became defunct. Failure of these acts lead to the realization of having more empowered and strengthened authority to dispose environmental related disputes. Therefore, the National Green Tribunal was established under NGT act, 2010. It has replaced the National Appellate Authority.

The National Green Tribunal decisions are being challenged in various High Courts under Article 226 (Power of High Courts to issue certain writs) with many asserting the superiority of a High Court over the National Green Tribunal. The options available to a litigant to either move to the Supreme Court in a case where a substantial question of law arises or proceed under Article 226 or 227 must not also be overlooked. With such choices being available for a party no rational justification is found for striking down section 22 of the Act which provides for a direct appeal to the Supreme Court. Directive Principles of State Policy (Part IV) Article 48A: Protection and improvement of environment and safeguarding of forests and wildlife. The state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. Fundamental duties (Part IV A) Article 51A: To protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.

Conclusion

The National green tribunal is a statutory body and high court is a constitutional body. High court has wide area as comparison to National green tribunal or any tribunal. If there is any dispute and the decision of the national green tribunal can be challenged in the High court or Supreme Court. High court is not out of the jurisdiction. We can go to the High court or Supreme Court against the National green tribunal decision. The above study full feel the objectives that we already has known about the National green tribunal and the constitutional provisions.



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