

BOOK REVIEWS

ENVIRONMENTAL JUSTICE IN INDIA: THE NATIONAL GREEN TRIBUNAL (2017), By Dr. Gitanjali Nain Gill, Earthscan/Routledge, London and New York: Pp. XXVI+238. Price 8250/-.

THE BOOK¹ under review, which the author herself has called a “research monograph”, is an outstanding contribution to both international and domestic literature dealing with environmental law, particularly Environmental Courts and Tribunals (ECTs). It is perhaps the first work of its kind on the Indian National Green Tribunal (NGT) and stands out for its quality and depth- a gem by one of the finest researcher- law academician of her generation. The book is essentially the result of empirical study of NGT undertaken by the author, which saw her visit the NGT benches across the country, analyse 1130 reported judgments of NGT, conduct 110 interviews with NGT bench members, lawyers, NGO representatives and other stake holders and also attend NGT hearings. The main concern of the work is to analyse the NGT’s working since its establishment and yet the work also provides wonderful insights into the growth of environmental jurisprudence in the country, the environment-development conundrum and the marginalisation and suffering of the have-nots, who often bear the burden of industrialization and deteriorating environment. In her poignant Introduction, the author points how India strives to push upwards its Gross Domestic Product (GDP) and yet underneath the glitz and glamour of the Indian growth story, it has about 300 million people living in extreme poverty, widespread hunger, serious lack of basic infrastructure, and dangerously polluted cities that would readily qualify as urban slums or gas chambers. It is in this context that the work of NGT becomes important- it has to determine how to temper greed, how to balance development with environment concerns and how to ensure that the have-nots don’t get forgotten in the Indian growth fable. The author also details out the Methodology and Structure of her book in the Introduction.

Chapter 1 is titled “Environmental Justice: A Global Perspective” and here the author talks about “environmental justice” and “environmental racism”. She points out how the poor and marginalised, and often also the people of colour, are the ones who are exposed more to ill-effects of a degraded environment due to comparative lack of financial might and discriminatory attitude. It is a problem limited not to one jurisdiction but is a concern everywhere. Removing such traditional imbalances and

1 Gitanjali Nain Gill, *Environmental Justice in India The National Green Tribunal* (Earthscan/Routledge, London and New York, 2017)

reducing the barriers that such marginalised people face in getting their problems resolved is an essential component of environmental justice apart from ofcourse ensuring that overall damage to environment is reduced for all. Recognizing this, it is pointed that “access to justice through an accessible judicial structure as a means to redress environmental damage”² is critical. The author, therefore, focuses on “environmental rule of law” whose bases are “adherence to environmental law, constitutional rights to a healthy environment and human rights”³. It is emphasised that environmental rule of law is essential for sustainable development and for environmental justice. The chapter then highlights the role of judiciary in environmental compliance and enforcement. However, valiant as the role of judiciary might be in this context, yet there were dissatisfactions due to “public perceptions of delay, lack of expertise, lack of independence and/or corruption” on part of judiciary and also judiciary’s lack of dealing extensively with complex environmental matters⁴. This led to growth of ECTs as a specialised forum for furthering environmental justice. In this context, the author charts the growth of ECTs across jurisdictions.

Chapter 2 is titled “Genesis and Establishment of the National Green Tribunal”. The chapter begins with the study of genesis and growth of the Public Interest Litigation (PIL). It emerged as a splendid mechanism to give voice to the voiceless and has been a landmark contribution of Indian judiciary. The chapter then moves to detailed analysis of the role of PIL in environmental matters. It is here that judicial creativity is most visible. A plethora of environmental rights have been carved out or identified by means of PIL. It is pointed out that it was in the course of a PIL that the seeds of a specialised Environment Court were first sown. In wake of subsequent judicial reiteration of the demand for specialised ECT, the failure in taking off of certain tribunals envisaged under laws such as National Environmental Appellate Authority Act (NEAAA) and the recommendation of 186th Law Commission Report, the NGT Bill was introduced which led to the Act which established the NGT.

Chapter 3 is titled “The National Green Tribunal Act 2010: Interpretation and Application”. This chapter details out the scheme and important provisions of the law. It starts with analysis of the preamble, discusses the composition of the Green Tribunal, engages with the concept of “aggrieved persons” and details out the jurisdiction of NGT, both original and appellate. It also deals with powers and functions of the NGT and other procedural aspects including the nature of penalties and costs.

2 *Id.* at 12

3 *Ibid.*

4 *Id.* at 19

Chapter 4 titled “National Green Tribunal: Normative Principles” continues the author’s exploration of the underlying framework of working of the Green Tribunal. The author points that “the preamble to the National Green Tribunal (NGT) Act 2010 commits India to the implementation of decisions adopted at the Stockholm Conference, 1972 and Rio Conference, 1992”. Unsurprisingly, and this is further fortified by statutory mandate, the NGT is bound to apply the “Precautionary Principle”, “Polluter Pays Principle” and “Sustainable Development” concept. The author then shifts her focus on exploration of these principles, charting their international genesis, meaning and domestic transplantation by the judiciary.

Chapter 5 is titled “National Green Tribunal: Science and Law”. The author begins this chapter by arguing on the basis of empirical data that “involvement of technical experts at the heart of courtroom decision-making promotes better environmental results”⁵. While it is true that judges are not always scientifically trained and might not always appreciate the technical aspects invariably and inextricably linked to complex environment disputes yet, as the author grimly illustrates, scientific knowledge or research can also be presented or pressed into service to suit vested interests. The very objectivity of science becomes questionable if the research design is tampered or if statistics have to be generated to accommodate pre-determined results. While this by itself does not prove science to be ineffective but it shows what can happen if statistics or research fall into wrong hands or are misused by people with ulterior motives. This is ofcourse to be avoided. The author then deals with “epistemic communities”- a concept borrowed from political science which she aims to transplant onto law, more specifically to “unwrap and review the data” pertaining to NGT⁶. The remainder of the chapter deals with “expert value” where the “epistemic community” is of neutral scientific (environmental sciences) experts. It also deals with Schrefler variables or categories based on “three possible uses of expert knowledge by regulators”⁷. These are “*instrumental* (identifying the best solution to a problem); *strategic* (advocating a pre-defined policy position or providing arguments to expand the agency’s power) and *symbolic* (strengthening the agency’s reputation and legitimacy, decoupled from policy decisions)”⁸. The author traces afore-mentioned three categories in the work of NGT. Utilising these theoretical concepts, author confirms that indeed the existence of experts in NGT has contributed more to solving environment problems and presence of such experts is a welcome and laudable step.

5 *Id.* at 148

6 See, *Id.* at 151

7 *Id.* at 162

8 *Ibid.*

Chapter 6 is titled “National Green Tribunal: Judgments and Analysis”. It forms the heart and soul of the author’s research along with the previous chapter. It is here that the author has analysed and neatly presented the work of NGT, in the form of its judgments, right from its beginning in 2011 till 2015 when the author finished her current research. The author starts with details of her method and the use of SPSS software for analysis of her data. Interesting results emerge here. Illustratively, the case load of NGT has increased tremendously over the years with the sharpest increase between 2013 and 2014. Amongst the benches, the Kolkata bench produced the least number of judgments, a fact attributed by the author to its late establishment. The nature of cases is also analysed with matters pertaining to Environmental Clearances forming a major chunk of the disputes before NGT. The author has painstakingly analysed the nature of plaintiffs and defendants before the NGT and the analysis makes this chapter itself an extremely rich and invigorating contribution to legal research.

Chapter 7 is the final chapter and is titled “The National Green Tribunal’s Journey: Challenges and Success”. This chapter highlights the challenges faced by the NGT especially the problem of adequate funding. It was again with the intervention of Supreme Court that an indifferent government sprang into action to make NGT benches fully operational. It also highlights the success of the NGT and its dexterity in problem solving approaches, not all of which have been without criticism and yet, in its short existence, the NGT has, as the author shows, altered the “environmental jurisprudential landscape”. It is a laudable effort indeed and still, given the complex nature of the problem, a lot still needs to be done to secure environmental justice and achieve sustainable development.

The author’s research monograph has brilliantly succeeded at what it sought to do, i.e., to create a work which analysis and charts the history, growth and working of the NGT since its inception till the completion of the research. It also lays down the foundation from where other dedicated researchers, including hopefully the author herself, can build upon. The book is a must have for libraries of courts, environment lawyers, environment researchers across disciplines, any legal research institution and any law and non-law school offering environment law courses at any level. It serves more purposes than just being a book about NGT. It showcases how to conduct research, how to write lucidly, and most of all, the book exhibits quality, hard work and commitment that current legal researchers and academicians must aspire to, if legal research is to rise above its current general mediocrity. It can also be an interesting read for policy makers and with anyone having interest in Indian NGT. The present reviewers sincerely hope that just like the NGT will continue to illuminate environmental

jurisprudence; the author will also continue to contribute to environment law and legal research and will further illuminate the path of fellow researchers.

*Furqan Ahmad**

*Victor Vaibhav Tandon***

* Professor, Indian Law Institute, New Delhi.

** Former Assistant Professor, Rajiv Gandhi National University of Law, Patiala, Punjab,