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Courting Resilience

The National Green Tribunal, India

Rita Brara

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UNRISD, Palais des Nations
1211 Geneva 10, Switzerland

Tel: +41 (0)22 9173020
Fax: +41 (0)22 9170650
info@unrisd.org
www.unrisd.org

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Acronyms

CSO	Civil Society Organization
EIA	Environmental Impact Assessment
ENGO	Environmental Non-Governmental Organization
NGO	Non-Governmental Organization
NGT	National Green Tribunal

Summary

Confronted with a slew of environmental challenges, the number of green courts is growing worldwide. By according exclusive attention to environmental disputes, adjudication by these courts and tribunals is linking up democratic and ecological processes synergistically. This paper provides an analysis of how the National Green Tribunal (NGT) of India has enabled local publics, affected by the pollution of air, water, soil (and more), to mobilize and fight back in defence of their rights to a better environment.

The NGT has indeed been a remarkable attempt at courting social and ecological resilience. Its robustness and transformative power are buttressed by judicial and expert members, environment lawyers and activists pushing it to bolster its judgements further with "the force of law" in order to deliver justice beyond what has been achieved so far. The combination of civil society organizations, advocates and the NGT judges have catalysed resilience through legal actions that have made and remade regulatory procedures and monitoring institutions for improved environmental outcomes.

Rita Brara is a Senior Fellow of the Department of Sociology at the University of Delhi.

Introduction

Confronted with a slew of environmental challenges, the number of green courts is growing worldwide. By according exclusive attention to environmental disputes, adjudication by these courts and tribunals is linking up democratic and ecological processes synergistically. Here I focus on the National Green Tribunal (NGT) of India that has enabled local publics, affected by the pollution of air, water, soil (and more), to mobilize and fight back in defence of their rights to a better environment.

The juridical making and remaking of social and ecological resilience in India traverses a huge terrain. It is enabled by statutory acts and global treaties, litigated by activists, civil society organizations, supported by environmental lawyers, arbitrated by judges, administered by state bodies and interpreted by citizens. Strikingly, the spearheading of the public interest in socio-environmental affairs has been taken on by the judiciary and more recently, by the NGT. Having said that, we have to recognize that it is the volume and nature of petitions by citizens' associations that have nudged the courts to act in this direction.

While the Indian judiciary's trail-blazing environmental jurisprudence has often led to its description as a prime environmental activist, the NGT is both a product and a producer of new transformative environmental outcomes. The breadth and the depth of suits brought before the NGT testify to the investment of local environmental associations in this arena. The documentation of such appeals affords a current account of those seeking environmental justice through the NGT and registers the diverse socio-environmental interests being pursued by citizens. Most cases at the NGT are initiated by local-level citizens' organizations and advocated by lawyers pleading this public's interest at reasonable costs.

Buttressed by sympathetic advocates and people's associations who draw attention to local environmental violations, the NGT's judicial actions have catalysed resilience by making and remaking regulatory procedures and monitoring institutions in their deliberations of the public interest. Further, since the Tribunal has expert members on board who play the dual role of scientists and judges, techno-scientists help both to comprehend issues emerging from contexts of present vulnerability and to envisage long-term actions that can make for ecological resilience. Bringing in scientists as members of a jury has certainly advanced the use of techno-scientific data by local publics and advocates in the assertion of environmental rights and wrongs.

The Tribunalization of Matters Environmental: The National Context

I start with a brief introduction to the NGT that was set up in 2010 by signposting the global context and the specific circumstances in India that led up to its creation. The outcome documents of two major international conferences, at Stockholm in 1972 and Rio in 1992, clearly urged for more judicial intervention in favour of environmental principles such as sustainable development, the precautionary principle, the polluter pays and intergenerational equity that were subsequently disseminated and adopted around the world. India was a signatory to these multilateral agreements as well, and these principles vitally resonated in the democratic and environmental forums dispersed across the country.

In addition, juridical developments within India in the 1980s had radically expanded the notion of "standing", that is, the ability to show sufficient connection to a matter to seek legal redress, to include any public-spirited citizen pleading a common cause. The case for mitigating vulnerability, expressed as a public interest, expanded to cover many domains but what concerns us here was its vitality in the sphere of environmental practice and jurisprudence. By extending the conception of who could appeal in the common interest to any affected citizen, a host of public-minded citizens came to have the legal standing to put forth the interests of disadvantaged groups for environmental protection. Such legal inclusiveness, for instance, enabled aggrieved villagers to secure their rights in village commons even when the official, representative village body at the local level did not join the dispute (Brara 2006).

What followed in the wake of the expanded notion of standing was a flood of litigation expressing citizens' concerns on environmental issues. Pleadings and judgements in pursuit of the public interest paved the way for a review of the right to life as inclusive of the right to a healthy environment for all citizens. Simultaneously, the citizen, in turn, was charged with the duty of protecting forests, rivers, lakes and wildlife and enjoined to show compassion to other living creatures.[1] Lately, provincial courts have begun to think about the rights of inanimate nature, such as rivers as well, going beyond the concern with human and animal rights.[2]

Beginning with a wealth of observations in the 1980s, the Supreme Court drew repeated attention to both the challenges posed by the burgeoning of environmental issues and lawsuits and the lack of scientific, technical expertise at its command that was vital to arrive at robust judgements. The increase in the volume of environmental suits had, in fact, led the Supreme Court to reserve Fridays exclusively for such cases. What followed was the creation of a National Environment Appellate Authority in 1997, staffed primarily by retired bureaucrats (Rosencranz et al. 2009). After disappointing results from this organization, it was realized that a new institution was needed, this time with more teeth and autonomy. As a result, the 186th Law Commission of India in 2003 recommended the formation of a new judicial body that would comprise both judicial and technical members.

In 2010, a tribunal with original jurisdiction, appellate authority and scientific expertise was instituted under the National Green Tribunal Act. It was a judiciary-driven reform and the progress of the NGT's formation was monitored by the Supreme Court (Amirante 2012; Ghosh 2012).

The NGT's constitution drew on the experience of similar bodies in Australia and New Zealand before attuning it to the Indian context (Rosencranz and Sahu 2009). The Tribunal was endowed with technical members and original jurisdiction on substantive matters to adjudge violations against seven environmental acts, concerned with water, land and air pollution, biodiversity and forest conservation.[3] These discrete acts were brought under the NGT's umbrella as part of a strategy that aimed at the better integration of environmental issues.

1 Article 51 A of the Indian Constitution.

2 The Uttarakhand High Court granted the Ganges and the Yamuna, the rights of juristic persons, a judgement which was, however, stayed by the Supreme Court.

3 The NGT's jurisdiction extends to cases falling under the following seven Acts: The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention and Control of Pollution) Cess Act, 1977; The Forest (Conservation) Act, 1980; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1986; The Public Liability Insurance Act, 1991; and The Biological Diversity Act, 2002.

A tribunal is distinct from a court in more ways than one. Striking for my purposes here is that the NGT is a single-purpose body, equipped to review technical facts and to penalize violators. While its Principal Bench is located in the capital, New Delhi, the NGT's zonal benches are spread across four regions (figure 1). To facilitate legal access further, circuit benches periodically hold court closer to environmental hotspots as well. An appeal against a judgement of the Tribunal is maintainable before the Supreme Court.

Figure 1: Location of Principal and Zonal Benches of the National Green Tribunal

Source: Map produced by Dunja Krause 2018, based on GADM, Choudhary (2014) and NGT

The NGT: Analysing the Recent Initiative

I turn next to a range of informal partnerships that arose and were strengthened in the course of the NGT's functioning. These partnerships developed between single activists, environmental non-governmental organizations (ENGOs), lawyer-activists and the NGT; and between the NGT and different wings of the state, such as state pollution boards and scientific research institutes.

Local ENGOs comprised nearly 70 percent of the petitioners before the Tribunal. In the course of perusing the judgements, it became apparent that some of these ENGOs were created and/or galvanized in the course of environmental struggles. To mention just two examples, the "Save Mon Region Federation" mobilized support against the environmental clearance granted for the construction of a large-scale hydropower project in Arunachal Pradesh; and the "Ratnagiri Jinda Jagruk Manch" (Ratnagiri's Alive and Awake Forum, Maharashtra) worked against the setting up of a thermal plant in that area. Already existing ENGOs, NGOs, local residents and solo activists, too, were active in drawing the NGT's attention to cognizable environmental violations. These appeals spoke of local attempts to redress an environmental wrongdoing involving the state, private industry or both.

Interestingly, several groups signposted the idea of the public interest in the vernacular through names such as Jan Chetna (Public Awareness), Janahita Seva Samiti (Public Service Association), Matu Jan Sangathan, (Matu People's Coalition) and Janjagrathi Samiti (Association Working for People's Awakening). These are loose translations

intended to convey the notion that the urge to work for the environment in the public's interest straddled the country's societal arena. I also came across environmental groups with titles suggesting a long-term engagement with nature, such as the Vidarbha Nature and Human Science Centre, Nisarga Nature Club and the Krishi Vigyan Arogya Sanstha (Agricultural Science and Health Society).

Groups that articulated concerns about consumerism (Consumer Federation of India), those that were unionized (Mazdoor Kisan Ekta Sangathan and Adivasi Mazdoor Kisan Ekta Sangathan) and urban resident welfare associations were also discernible in the listed appeals. Public-spirited individuals, too, filed suits before the NGT and some of these cases were momentous in their impact. For instance, a single activist, Rohit Choudhary, brought industrial encroachments to light in the "No Development Zone" of the Kaziranga National Park in a lawsuit that led to the closure of industry in the area and the imposition of fines on the state personnel who had turned a blind eye to these developments.

Who was appealing on what issues at the NGT and with what results, in the manner delineated above, was revealed by perusing lawsuits and the emergent case law. The other prong of the method focused upon fieldwork at the NGT, including meetings with lawyers and judges. Discussions with lawyers showed up the active collaboration between ENGOs and environmental advocates, who were simultaneously attorneys and environmental activists. Outside the courts, some of these lawyers were associated with national and international environmental initiatives to promote better legal access to justice and environmental protection. Although the NGT allowed citizens to depose directly before the Bench, appeals were, more often than not, channelled by advocates supporting environmental causes at low cost.

The environmental lawyer assumed a critical role or interface between the locally affected communities and the judiciary by converting the environmental interests of the public into official language. The lawyer sifted the facts and framed them for presentation in a legal case registering the environmental violation or vulnerability. By addressing the mismatches between the evidence sought by a court and the local apprehension of the problem, these lawyers constituted a robust link between actions for environmental justice at the local level and its legal realization.

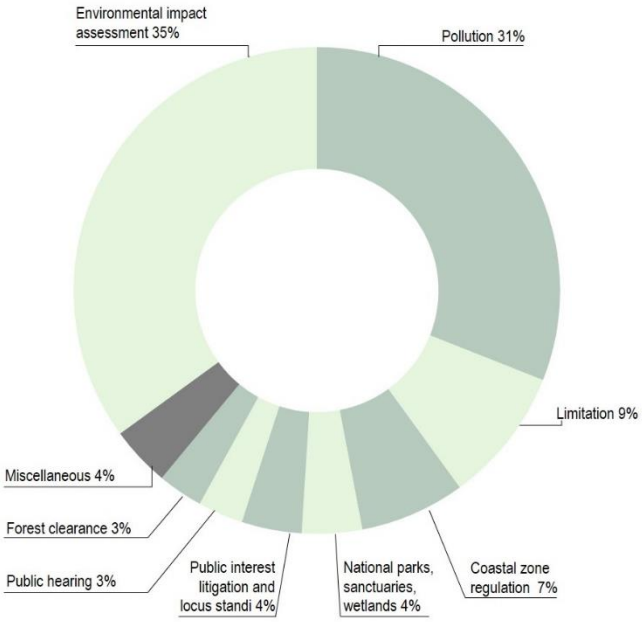
The NGT looked for expertise from national research institutions when its own resources for examining technological claims or counterclaims were limited, initiating new partnerships in this domain. It investigated which arm or wing of the state was responsible for overlooking a violation and which department had therefore to be strengthened to ensure both compliance with environmental regulations and better monitoring of environmental issues. On this front, the NGT was able to bolster the working of state pollution boards. The relentless attention to pollution concerns and the pulling up of state executives at the same time often antagonized the administrative branches of the government. Affected departments spoke out against what was described as the NGT's judicial overreach. While the executive alone was implicated in some lawsuits, a grievance against private industry always implicated the administration as well such that the latter was frequently at the receiving end of the NGT's ire.

What was being litigated

Environmental matters affecting citizens arose from actions and inactions of the administration and private industry. Next, I outline the range of environmental issues that

were brought to the notice of the NGT for judicial consideration by civil society organizations. A synoptic picture of these legal suits is presented in figure 2.

Figure 2: Categories of cases brought before the National Green Tribunal



Source: Author's illustration, based on Choudhary (2014) and NGT

In urban areas, ENGOs were active against a host of environmental challenges—the hazards posed by air pollution caused by diesel or crop burning, solid waste processing plants and e-waste, risky biomedical waste disposal, tree felling and concreting of tree bases, the escalating exhaustion of groundwater by construction and bottled drinking water companies, the lack of rainwater harvesting and the pollution of rivers and catchment areas—to cite prominent lawsuits. Noise pollution emanating from loud music at weddings, from firecrackers, generator sets, blaring sirens and horns, too, found a hearing. Problems ensuing from mining, diesel vehicles and long-duration construction activities were brought before the NGT. Building disputes vis-à-vis coastal regulation authorities also featured before the Tribunal.

Solid biowaste management plants produced a distinct set of concerns about siting and air pollution by ash particles and nauseous smells. In towns, the burning of waste in solid waste processing plants was said to produce dioxins that were emitted with fly ash and extremely injurious to health. Published articles relating to the dangers of coal ash were produced before the NGT as well (including those appearing in *Scientific American,* such as Hvistendahl 2007). It put the subject on the jury's radar.

From rural and peri-urban regions, the environmental consequences of coal-based thermal plants, hydroelectric power projects, mining operations, and bleaching and dyeing textile units formed the bulk of grievances that were pleaded before the Tribunal in the public interest. Since mining operations were understood to lead to a slew of ailments ranging from dust inhalation, water pollution, declining crop yields, the worsening of roads and an impact on livelihoods, activists appealed against the negligent granting of environmental clearances for mining activities. Further, citizens contested the setting up of thermal and hydropower plants in areas already identified as critically polluted, reported commercial activities in eco-sensitive regions, spoke out against the pollution of

rivers and the diversion of forest land for non-forest uses alongside encroachments in forests and other public spaces.

Coal-based thermal power plants were a recurring nightmare in areas where people were dependent on agriculture and fisheries. Emissions from thermal plants reportedly caused damage to agricultural lands, polluted surface and groundwater and jeopardized health and livelihoods. Fishermen argued that their fish catches would decline if power plants were set up near the coast as the discharge of hot water from such units affected marine life. The dust emanating from the plant, they insisted, would coat the fish laid out in the open for drying and so render it unsuitable for consumption and sale. Often, this information was used to challenge the environmental clearance accorded to a thermal project.

The adverse environmental impacts of power plants upon biodiversity were brought to the NGT's attention from varied geographical regions. From the mountains of the Uttarakhand Province, ENGOs drew the Tribunal's attention to degradation of the habitats of wild animals, such as the snow leopard, brown bear, and 250 bird varieties, including the critically endangered Indian white-backed vulture. It was further maintained that the release of hot water into the sea affected the nesting of the endangered Olive Ridley turtle, altered the route of migratory birds and impacted coral reefs and mangroves. Such operations were therefore sought to be curtailed.

It was argued that even the output of coconut, jackfruit, casuarina and cashew plantations diminished in the vicinity of thermal power plants. The Ratnagiri Association, Maharashtra held that environmental impact assessments had failed to reckon with the sulphur dioxide and acid rain that the thermal power plant produced and appealed against its devastating effects on the flowering stage of mangoes and the ecosystem. Mango orchards were also said to be affected by smoke from brick kilns that often operated without fixed chimneys. Dyeing and bleaching units, too, were held responsible for rendering water unfit for human consumption and agriculture in peri-urban and rural areas.

The NGT's legal scans often showed a lack of adherence to the laid-down norms of environmental protection by both private and state institutions. It galvanized the NGT to push for assigning responsibility to officials for state inaction and led to the setting up of new standards for improved environmental outcomes. Its deliberations also led to liaising with research institutes and academia in order to ascertain the claims of science vis-à-vis local knowledge in the determination of the public interest. For instance, the Tribunal commissioned studies on the cumulative impact assessment of thermal power plants on human life and environment in their catchment areas.

Questioning environmental impact assessment reports

Nearly 35 percent of the cases brought before the NGT pertained to environmental impact assessments (see figure 2). Most suits were filed against the state for granting environmental clearances without due diligence and failing to check violations against environmental laws by private industry or state agencies. While monetary penalties were imposed on nearly one-fourth of the proven cases, the regulation of resource use was primarily through permits or leases by the state and withholding this licence was a major form of penalty. Less often, petitioners from private industry looked to the Tribunal for appealing against closure notices that were imposed by the state pollution control boards.

A draft environmental impact assessment report on a proposed project, along with its terms of reference, had to be placed before the public, published in local newspapers and discussed with citizens likely to be affected at a site in the vicinity of the project and in the presence of notified officials. Public objections to draft environmental impact assessment reports were ostensibly recorded in writing, videotaped and dispatched to expert appraisal committees. But in practice, the system worked unsatisfactorily. Appeals on this count before the NGT were recurrent. Local residents and activists reiterated that the objections submitted at environmental public hearings and consultations prior to the environmental clearance for an industrial project were not incorporated in the final assessment report. An extract from a judgement in this regard is telling:

> Our experience in so far as examining the issue – whether [public hearing] was conducted in consonance with the principles of natural justice and strictly in accordance with the procedure stipulated in the EIA Notification, 2006, is horrible. On viewing the video CDs in majority of the cases, which have come up for our consideration, we felt it was a mockery. Though, a big show is put up by erecting big pandals [large open-sided temporary structures], providing facilities like conveyance, water, food, medicine, police force and Fire services etc., by spending huge money, the result of the [public hearing] is, however, worthless except mere recording of 'support' or 'oppose'.[4]

On this issue an *amicus curiae* of the NGT, Raj Panjwani, reiterated that public consultation and hearings were "not only an environmental law requirement but an essential feature of democracy" which would affirm that the project "is viable and beneficial to the common man."[5] Questionable environmental and forest clearances for mining projects were revoked. At the same time, there were strictures by the courts when civil society organizations or political parties took to violence and thwarted the public hearing proceedings. Revised rules that sought to keep political flag-raising away from the venue followed in wake of motivated disruption.

From redress to resilience

What can one say about resilience for matters that are simultaneously juridical and environmental, in the light of the violations and concerns presented above? Where does one locate social and ecological resilience?

Civil society organizations (CSOs), vital for the socio-environmental mobilization of affected residents, have deployed the NGT in their efforts. Here both ENGOs and NGOs expressed their public interest in the environment and put forth claims in judicial space for consideration or remedial action. By focusing on substantive and diverse environmental issues on the ground and drawing attention to dubious state practices, activists underlined the missing links in the chain of accountability. Lawyers specializing in environmental cases, especially those associated with environmental justice efforts outside the courts as well, helped to buttress the arguments of affected citizens often with little remuneration.

While environmental acts were intended for all citizens, their potential for transformation evidently came to be tapped and fleshed out in the processes of litigation, initiated by citizen engagement, argued by environment lawyers and finally, adjudicated by the NGT. The efforts at legal redress, articulated by this combine, catalysed social and ecological

[4] Appeal no. 3/2011, Adivasi Majdoor Kisan Ekta Sangthan and Others versus Ministry of Environment and Forests and Others.

[5] Appeal 22/2011, Jan Chetna versus Ministry of Environment and Forests and Others.

resilience. In the next section, I will briefly enumerate the transformative outcomes that arose from NGT's constitution and practices (cf. Preston 2014; Pring and Pring 2010).

The NGT, India: Courting Resilience and Beyond

Pring and Pring (2016) report that the world now has over 1,200 national and regional environmental courts or tribunals spread over 44 countries. There can be no doubt that each country's and region's experience is unique, but how does the NGT in India fare as an instrument or policy reform aimed at fostering a healthy environment?

The NGT was a relatively early endeavour to set up an environmental tribunal that would tackle the pressing environmental concerns of India. It was intended to be different from a conventional court though, of course, it continued to draw upon the Supreme Court's trail-blazing contribution to socio-environmental jurisprudence in the country and the worldwide arena of environmental jurisprudence. In this vein, the NGT can be viewed as a product of transformative change and resilience in environmental matters.

Distinctively, the Tribunal functioned on the strength of its mandate as a single-purpose body that looked into technical merits while recommending corrective action which conduced beneficial outcomes. The cumulative accretion of judicial observations and the NGT's developing case law, often following the lawyer-activist's pleading of a case, made for radical changes in environmental governance that received wide media coverage. The Tribunal came through as a producer of change insofar as it galvanized a route for the prompt juridical redressal of environmental wrongs. CSOs viewed this new route as enabling and marshalled it in the pursuit of political and environmental justice. It differed from the overtly political mode of action in which CSOs sought to rouse people's democratically elected representatives to act directly in the environmental public interest.

I outline the distinctive features of the NGT's constitution and working below:

- First, the NGT is the creation of a statute, not a constitution-mandated court, like the provincial courts. It is a civil court enabled to act on rules of fair procedure and natural justice without being constrained by the stringent requirements of the Indian Evidence Act (1872). Rules of natural justice (or the duty to act fairly), it is commonly understood, are not embodied rules but contextually determined.
- Secondly, as a single-purpose body, the NGT is mandated to conclude a hearing within six months and has indeed reduced delays in case adjudication.
- Third, since the NGT has technical members on board as well as judicial members, it is able to review technical issues and incorporate those considerations in the final judgement in an integrated manner.
- Fourth, appeals against the judgements of the Tribunal are possible before the Supreme Court such that the NGT is not the final arbiter of environmental issues.
- Fifth, judgements of the NGT, under Article 20 of the NGT Act, are guided by internationally and contemporarily accepted principles (sustainable development, the precautionary principle and the polluter pays principle). Environmental discourse, weighed and discussed in the national, global and judicial context, further, raises awareness through its circulation.

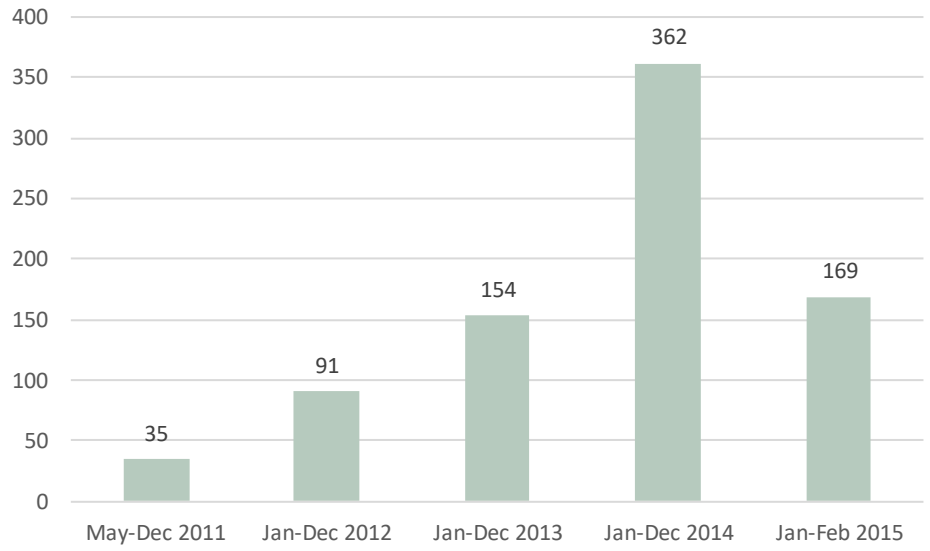
Gauging NGT's impacts

The documentation of lawsuits affords a readily available and reliable register of the NGT's deployment by citizens. The number, breadth and depth of suits drawing the Tribunal's attention to environmental violations testifies to the quest for environmental justice and redress through this new channel. It is also apparent in the rush of CSOs that seek to make the most of a new verdict.

Often, the number of cases filed or disposed (Kumar 2014) or else the number of judgements pronounced (see figure 3) are taken as indicative of the NGT's efficacy. However, going over the corpus of cases decided upon by the NGT, it soon became obvious that the number of judgements that it has produced provide, at best, a rough and ready means of capturing the transformative power that coursed through this environmental legal domain. Sometimes, a common judgement was pronounced on similar cases though these featured as separate in the numerical listing. Or again, a single judgement could generate up to 30 review petitions.

An additive approach, moreover, belied the importance of specific suits whose transformative potential lay in reversing a precedent. The notion that efficiency was only a practical matter of totalling cases could not do justice to the stimulus that the Tribunal accorded to social and ecological resilience.

Figure 3: Number of judgements pronounced by NGT



Source: Author's illustration, based on WWF India (2015)

A perusal of the judgements further clearly showed that what affected ordinary citizens was not industrial development per se but industrialization and commercial activity without environmental safeguards. Appeals against the inadequacies of state functioning and private bodies indicated that environmental regulation left much out of its purview. Spurred by citizen appellants, the NGT recommended the creation of siting rules for thermal and hydropower plants, solid waste disposal units, the determination of standards for permissible levels of air, land, water and soil pollution, parameters for sand and coal mining, and the banning of more than ten-year-old diesel vehicles in the capital. Directions to administrative bodies for pollution monitoring, suspending environmental clearances, setting deadlines for completing tasks and chastising officials made the NGT

veer ever closer to the powers and functions of the executive as it was partly taking on the tasks of environmental governance.

Deciphering NGT judgements: Modes of juridical thought

What can we glean from the Tribunal's judgements about modes of juridical thought and practice in the context of environmental issues? These judgements provided ample space for the framing and reframing of the public interest, both by drawing from precedents set by the Supreme Court and newer powers accorded to the Tribunal to pave the way for social and ecological resilience. I outline specific features that contoured the NGT's decisions next and later touch upon contentious issues that have arisen in the wider juridical arena and beyond.

I identify three styles of reasoning, culled from a reading of the Tribunal's judgements, in order to apprehend judicial attempts at transformative outcomes. The mode I describe first makes use of the metaphor of balance; the second concerns the construction of a techno-scientific governmentality by the combination of scientists and judges; and the third reckons with the motif and practice of invoking the public interest. Often, these three features have been interwoven in the text of a judgement and have come to constitute an integrated sense.

The metaphor of balance and the image of scales is a recurring motif in judicial discourse and also an element in the NGT's logo. Perhaps more acutely than in other areas of juridical thinking, the conception of a balance constitutes a positive, defining feature of environmental jurisprudence. The notion of sustainable development is evidently an attempt to balance the concerns of economic growth, social development and the environment, developed and developing countries, and the needs of the present vis-à-vis the needs of the future. Adjudicating by the Tribunal valorized the balance between industrial development and environmental protection, in the normal course, illustrated in the following extract from a judgement: "The doctrine of sustainable development has been accepted as an answer to balance… the various developmental activities and… to ensur(e) that the consequence(s) of development do not exceed the carrying capacity of the ecosystem."[6] In the Supreme Court's words: "Any programme, policy or vision for overall development has to involve a systemic approach so as to balance economic development and environmental protection. Both have to go hand in hand."[7]

Yet, tilts of the judicial balance were occasionally discernible in the unfolding of judgements and justified in relation to the national context. The focus on environmental protection had to be balanced, indeed modified, to allow for a thermal power plant in Bijapur, Karnataka such that the Tribunal's order against the National Thermal Power Corporation (NTPC) was stayed by the Supreme Court.[8] Here, the tipping of scales formed part of juridical practice, even as the metaphor of balance lived on.

The second defining feature of the Tribunal's practice drew upon the co-construction of a regime of environmental protocols by judges and techno-scientists. The judicial interface with techno-science in the process of adjudication was a novel experiment for members of the Tribunal. The Chairperson of the Tribunal, Justice S. Kumar, remarked that the techno-scientific was incorporated in the course of the pre-hearing and the post-hearing of the case. "The scales are 'evenly balanced' between the technical and the

6 Janjagrathi Samiti versus Union of India: Appeal no.10/ 2012 NGT.
7 T.N. Godavarman Thirumalpad versus Union of India, Supreme Court, 2006.
8 For details, see 'Supreme Court stays NGT order on Bijapur NTPC Project'. The Hindu April 2, 2014.

judicial members", another judge commented. A scientist-member noted that "we have equal standing" articulating the emergence of a common language.

Attempts at more or less uniform, technocratic and regulatory restructuring were reflected in categorical and ever more detailed standards, such as those for industrial and vehicular emissions and effluents flowing into rivers, for instance. These regulatory attempts sought to govern conduct through mechanisms of surveillance such as pollution measuring and monitoring devices, frequent inspections and reporting on compliance.

This welding of the scientific and the judicial worked well in the call for precautions, for fixing rigorous environmental standards, in promoting transformative actions and for generating new knowledge. The setting up of new environmental regimes was a hallmark of the NGT. Yet, categorical, standardized technocratic protocols and attempts through such governmentality also floundered when the field was populated by polluters with unequal powers (Foucault 1991).

A third manner of judicial reasoning lay in determining and constituting the public interest in matters environmental. The idea of the public interest was a running thread through legal pronouncements on environmental issues and the commendable object of ongoing practice. Here the argument, more often than not, urged the paramountcy of the larger or wider, public interest to which the narrower or smaller, local public interest had to submit. To illustrate this motif, I quote a statement on land acquisition: "If a project is beneficial for the larger public, the inconvenience caused to a smaller number has to be accepted…for the larger interest or cause of society."[9]

The constitution of the "larger interest" was always somewhat opaque. Who actually benefited from such determination was justified in societal rather than concrete terms. It is not as though the smaller public interest, which often coincided with the interests of the less-powerful, was legally abandoned. Public consultation on local environmental impacts was envisaged as an important feature of democratic functioning. Citizens who made up the locally affected population were described by judges as "the vulnerable" or the "voiceless" whom the public consultations and hearings were especially intended to benefit.

Officially speaking, the views of the smaller public were given a place in the public hearing before a green clearance was accorded to an industrial project or land acquisition, for instance. Their objections were to be considered by the Environmental Advisory Committee that was, however, a part of the executive outside the domain of the judiciary. And so unless these objections were litigated and brought before the Tribunal, bolstered by ENGOs, mass movements and/or mass media, the local concerns could be papered over in the normal, executive course.

From the point of view of the common citizen, then, the judicial process often addressed the legal aspect of the problem that was distinct from how things played out on the ground. Seen from this angle, the Tribunal was viewed as a partial arbiter of the local interest in the environment.

Vanguard thinking: What the activists say

While partly lauding the NGT's role in environmental protection, vanguard activists continued to challenge the interlinked judicial paradigm that emphasized balance even

9 See Leo Saldanha versus Union of India, Application No. 6 of 2013, NGT.

while it skewed it, conflated the public interest with the opaque "larger interest" and laid down a regime or "environmentality" (Agrawal 2005). From this perspective, it was the unceasing assertion of the public interest by CSOs that constituted the bedrock of ecological and social resilience and indeed incubated hope.

What was highlighted outside the juridical framing, was the imbalance between the 99 percent of environmental clearances that were handed over by administration to industry without adequate scrutiny and the one percent or so that were contested before the Tribunal. The activist Sunita Narain (2015) remarks that even in cases where green clearances were challenged in court, proposed projects were stalled not stopped. The environmentalist lawyer Ritwick Dutta observes that while such development can be sustained for a limited period, it is certainly not sustainable.

To turn to another dimension of the paradigm, the "smaller publics" primarily inhabited eco-sensitive areas and were mainly the less well-off. They were unable to check land acquisition that continued apace (at 333 acres every day) by the captains of industry presumed to represent the "larger interest" (Dutta 2016). Nor could the safeguards for the smaller publics be investigated by the NGT without the prior filing of a case. Turning to the aspect of techno-scientific parameters, the larger corporates often continued to "pay and pollute" since there was scarce monitoring of compliance by the authorities once a monetary penalty had been settled. The small-scale entrepreneur, by contrast, found the initial demands of compliance with the NGT's technical parameters formidable and was subjected to harassment by local-level monitors.

And so the critique from environmental activists raised the bar for what is to be done and how to do it for NGT's judges. But radical juridical thinking and judgements also stepped up the risks of the NGT running afoul of the provincial High Courts and the legislative and administrative arms of the state that provided its frame and finance. In March 2017, a move to curtail and alter the terms of employment and remuneration of members manning tribunals across the country is afoot in the shape of the Finance Bill.[10] Among the first to protest the Bill and seek collective support against this action were the environmental lawyers. These lawyer-activists argue that the consequences of downgrading the status of the NGT's Chairperson and judicial and technical members will affect the functioning of the NGT and environmental protection in the country adversely. The proposed amendments, these lawyers contend, will dilute the authority of the NGT and bring on increased executive control (Dutta 2017).

If the force of the Tribunal empowers local-level environment publics to seek judicial redress, simultaneously, if somewhat predictably, its action creates counter-actions. As a statutory body without an unlimited tenure, the NGT is targeted by private industry and caught in turf wars with other wings of the state (and less often, with provincial courts) since its rulings challenge the sway of competing interests.

Conclusion

The National Green Tribunal has indeed been a remarkable attempt at courting social and ecological resilience. Its robustness and transformative power are buttressed by judicial and expert members, environment lawyers and activists pushing it to bolster its judgements further with "the force of law" in order to deliver justice beyond what has

10 For details, see "How the Finance Bill 2017 cripples the National Green Tribunal" by Ritwick Dutta, 7 July 2017. Accessed 7 December 2017. http://www.livelaw.in/finance-act-2017-cripples-national-green-tribunalngt/.

been achieved so far (Bourdieu 1987; Derrida 1990). The combination of civil society organizations, advocates and the NGT judges have catalysed environmental resilience through legal actions that have made and remade regulatory procedures and monitoring institutions, despite the constraints.

While it is not possible to foretell whether the NGT, a statutory body, will turn out to be a flash in the pan or a court that continues to drive social and ecological resilience in the country, it has thrown down the gauntlet on environmental issues, hammering away at those who think otherwise.

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