The National Green Tribunal, India: Decision-Making, Scientific Expertise and Uncertainty

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INDIA

- Population
- 1.32 billion people
- Projected- 2030 [1.53 billion] & 2050 [1.80 billion]
- Economic growth- 7.8 percent
- Pressure on the environment and natural resources
A Reality Check

- World’s largest democracy
- Westminster Model - fractured
- Ineffective legislature and executive
National Green Tribunal (NGT) 2010
- In-house expertise- judicial and scientific
- Homologous standing
- Collegiality- promotes deliberation and communication
- Epistemic community- central and not marginal
- Interdisciplinary decision making and outcomes
- Use of scientific expertise- compliance assessment, policy prescription and evolving issues
Use of Scientific Expertise: Compliance Assessment

- Development of infrastructural projects
- Environmental Clearances
- POSCO case - Prafulla Samantray v Union of India (2013)
- T Muruganandam v Ministry of Environment and Forests (2014)

‘We will never leave our land, even if you behead us.’
Dongria Kondh, India
Use of Scientific Expertise: Policy Prescription

Burning of tyres - Asim Sarode v Maharashtra Pollution Control Board (2014)
Use of Scientific Expertise: Policy Prescription

Use of Scientific Expertise: Policy Prescription

Precautionary Principle

- Section 20 NGT Act- mandates use of sustainable development, precautionary and polluter pays principles
- Precautionary Principle- preferred
- ‘Strong’ Precautionary principle
- Uncertainty- reasonable grounds for concern
- Prevention and Precaution
New Procedures

- Merit review- technical evaluation underpinning the decision- primary decision-makers
- Investigative procedure
- Suo motu powers
- Stakeholder consultative procedure
- Major issues- air or water pollution
- Larger interest of the society- public health and environment
- Greater element of consent
Air Pollution- Consultative
Ganges Pollution - Consultative
PRECAUTIONARY PRINCIPLE

- Use of precautionary principle- linked to constitutional mandate and NGT Act
- Article 21- right to life
- Dynamic decision-making process
- Problem solving and policy creation
- Impact- openness, accountability, transparency
CONCLUSION

- NGT - a strong innovative tribunal
- Expansion of legal lens beyond pre-determined legal remedies
- Policy creators and Rule enforcers - scientific expertise
- Not contained within traditional doctrinal thinking - Pro-active
- Pro-active - reflects realism, guardianship, welfare and social responsibility
- NGT - template for developing countries
CONCLUSION

- Recognition
- **Former Lord Chief Justice Woolf** ‘...court was to perform its essential role in Indian society, it had no option but adopt the course it did and I congratulate it for the courage it has shown.’
- **Justice Kirby** ‘...the accretions of power to the judiciary...have come about as a result of failures and inadequacies in law-making by the other branches and departments of the government. Constitutional power hates vacuum. Where it exists, in the form of silence, confusion or uncertainty about the law, it is natural than those affected, despairing of solutions from the other law-making organs of the government, will sometimes approach the judicial branch for what is in effect a new rule. They will seek a new law that responds quickly to their particular problem. In India... judicial activism is not viewed as one of condemnation. So urgent and numerous are the needs of that society that anything else would be regarded by many-including many judges and lawyers-as an abdication of the final court’s essential Constitutional role.’