
UNDERSTANDING THE NATIONAL GREEN TRIBUNAL

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Abstract:

National Green Tribunal Act, 2010 has been enacted to fulfill the long felt need of alternative forum to deliver speedy & inexpensive justice. The philosophy of public interest litigation is echoed in the litigation, a welcome direction for the class of victims who are unable to knock the doors of judiciary. Since its inception in October 2010, the Tribunal has been successfully upholding its mandate as a 'Fast-track Court' for effective & expeditious disposal of cases relating to environmental protection & conservation. The Tribunal is dedicated to the disposal of cases relating to the subject of Forest, Environment, Biodiversity, Air & Water. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multidisciplinary issues.

Key words: NGT, Environment, Justice etc.,

Introduction:

The National Green Tribunal (NGT) was established in 2010 by the National Green Tribunal Act. It replaced National Environment Appellate Authority. The NGT has emerged as an important player in Indian environmental regulation. It was set up to handle cases and speed up proceedings of cases related to environmental issues. It draws inspiration from the India's Constitutional provision of Article 21, which assures the citizens of India the right to a healthy environment. The NGT has issued orders on a variety of issues ranging from pollution to deforestation to waste management. It recently directed the Delhi government to de-register all diesel vehicles more than 10 years old - a decision being opposed by many stakeholders, including the Central Government. The NGT is India's first dedicated Environmental Court with a wide jurisdiction to deal with not only violations of environmental laws, but also to provide for compensation, relief and restoration of the ecology in accordance with the 'Polluter Pays' principle and the power to enforce the 'Precautionary Principle'. The Tribunal's dedicated jurisdiction in environmental justice & help to reduce the burden of litigation

Why and how was the NGT established? :

In 1972, India became a party to United Nations Conference on Human Environment which required it to take suitable steps towards safety and enhancement of human environment. During 1980's the Supreme Court of India emphasized the establishment of specialized environmental courts in series of judgments, the first one being in **Bhopal Gas Tragedy case** and in 1986 in the



Oleum Gas Leak case. In **M.C Mehta Vs Union of India in 1986 (2) SCC 176**, Supreme Court was of the opinion that environmental cases raised issues, which required technical knowledge and expertise, speedy disposal, & continuous monitoring, & therefore these cases should be decided by special courts with necessary expertise and technical assistance. In **Indian Council for Enviro-Legal Action Vs UOI, 1996 (3) SCC 212**, the SC observed that Environmental Courts having civil & criminal jurisdiction must be established to deal with the environmental issues in a speedy manner. Supreme Court of India in **A.P Pollution Control Board Vs M.V Naidu, 1999 (2) SCC 718**, referred to the need for establishing Environmental Courts which would have the benefit of expert advice from environmental scientists/technically qualified persons, as a part of the judicial process, after an elaborate discussion of the views of jurists of various countries.

In 1992, India participated in United Nations Conference on Environment and Development held at Rio de Janeiro (Brazil) which imposed a duty to provide a mechanism for effective access, redressal and remedy through judicial and administrative proceedings, advancing national laws and provisions for liability of defaulters. Later, in compliance with the international mandate, National Environmental Tribunal, 1995 was enacted. This Act provides for strict liability for damages, caused by accident occurring while handling hazardous substances and to provide relief and compensation to the victims. The Act, however, could not be enforced due to limited mandate. Failure in the implementation of the objectives of the Act, led to enactment of National Environmental Appellate Authority Act, 1997. There were several problems in the functioning of the Authority, including its limited mandate & key vacancies that the government did not fill.

In Supreme Court of India in 2000 requested the Law Commission of India to consider constitution of specialized Court in view of inadequacy in the constitution of Appellate authorities which neither have judges nor the assistance of experts. In 2003 the Law Commission of India 186th Report criticized the Tribunal under 1997 Act and which again emphasized for need to constitute environmental courts due to multidisciplinary issues relating to protection of environment, to have members with judicial or legal experience assisted by technical experts and also to set up Environmental Courts in each State or group of States. The Commission has pointed out that, under Article 253 read with Entry 13 List I of VII Schedule that the Parliament have exclusive jurisdiction to enact law for the purpose of establishment of specialized environmental courts. After the recommendation of the Law Commission Report and the detailed report laid down before the House, Parliament came up with a new set of Bill i.e., National Green Tribunal Bill and later the Bill was effectively passed and adapted as National Green Tribunal Act, 2010. The objective of the NGT Act is to provide for effective and expeditious disposal of cases relating to the protection of environment. Even though the Act came into force on 2nd June, 2010, the first hearing of the Tribunal was held only in May 2011.



Further, to achieve the objectives of Articles 21, 47 & 51A of the Constitution of India by means of fair, fast & satisfactory judicial procedure, the establishment of the National Green Tribunal is a positive development.

Structure of NGT:

Following the enactment of the said law, the Principal bench of the NGT has been established in the National Capital – New Delhi, with regional benches in Pune (Western Zone Bench), Bhopal (Central Zone Bench), Chennai (Southern Bench) and Kolkata (Eastern Bench). Each bench has a specified geographical jurisdiction covering several States in a region. There is also a mechanism for circuit benches. For example, the Southern Zone bench, which is based in Chennai, can decide to have settings in other places like Bangalore or Hyderabad. The NGT shall have a full time Chairperson and not less than ten and not more than twenty fulltime Judicial Members and not less than ten and not more than twenty full time Expert Members. Further, the Chairman may invite one or more experts from outside, having specialized knowledge to assist the Tribunal in a particular case. The Chairperson is to be appointed by the Central Government in consultation with Chief Justice of India and Judicial and Expert Members to be appointed on the recommendation of a Selection Committee. The Chairperson of the NGT is either a judge or has been a judge of Supreme Court or Chief Justice of a High Court, Head Quartered in Delhi. The Judicial members are expected to be either who are or who has been judge of the High Courts .The qualification required for Expert Members is experience in relevant scientific and technological or practical experience in dealing with environmental issues. Each bench of the NGT will comprise of at least one Judicial Member and one Expert member. Expert members should have a professional qualification and a minimum of 15 years experience in the field of environment, forest conservation and related subjects.

Generally, the term of office of Chairperson, Judicial Members and Expert Members shall be for a period of five years. But, the Chairman and Judicial Member, if judge of the Supreme Court, shall not hold office after the age of 70 years. Similarly, Chairperson and Judicial Member, if the judge of High Court, shall not hold office after the age of 67 years. And the Expert Members shall not hold office after the age of 65 years.



Jurisdiction:

According to Section 14 of the NGT Act, the Tribunal has jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved & such question arises out of the implementation of the enactments in Schedule I of the National Green Tribunal Act, 2010. The Acts listed in Schedule I are:

- The Water (Prevention & Control of Pollution) Act, 1974;
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- The Forest (Conservation) Act, 1980;
- The Air (Prevention & Control of Pollution) Act, 1981;
- The Environment Protection Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biological Diversity Act, 2002.

This means that any violations pertaining only to these laws, or any order/decision taken by the Government under these laws can be challenged before the NGT. Importantly, the NGT has not been vested with powers to hear any matter relating to the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and various laws enacted by States relating to forests, tree preservation etc. Therefore, specific and substantial issues related to these laws cannot be raised before the NGT. For them we have to approach the State High Court or the Supreme Court through a Writ Petition (PIL) or file an Original Suit before an appropriate Civil Judge of the taluk where the project that you intend to challenge is located.

The aggrieved or the affected person or any institutions whomsoever, shall make the application to Tribunal within the limitation period, that is, within 6 months from the date on which cause of action for such dispute first arose. But the Tribunal on being satisfied that the applicant was prevented by sufficient cause, may be allowed to make application within further period of not exceeding 60 days.

Procedure of filing Application or Appeal:

The NGT follows a very simple procedure to file an application seeking compensation for environmental damage or an appeal against an order or decision of the Government. Application or Appeal shall be in the prescribed form and contain prescribed particulars. Any person who sustained injury, owner of the damaged property, legal representatives of deceased who died as a result of environmental damage were allowed to make applications/appeal in seek of damages and such other relief. A claim for Compensation can be made for:

- Relief/compensation to the victims of pollution & other environmental damage including accidents involving hazardous substances;
- Restitution of property damaged;
- Restitution of the environment for such areas as determined by the NGT, etc.,

Who can approach the NGT? :

According to the NGT Act, an aggrieved person can file a case before the Tribunal, and could be an individual, a company, a firm, an association of persons (like an NGO), even if not registered or incorporated, a trustee, a local authority (like a Municipal corporation), or a government body (like the State Pollution Control Board). The person need not be directly affected by the project or development in question, but could be any person who is interested and preserving the environment.

Principles of Justice adopted by NGT:

- The NGT is not bound by the procedure laid down under the Code of Civil procedure, 1908, but shall be guided by principles of natural justice.
- NGT shall exercise the powers of a Civil Court in respect of summoning, enforcing attendance, examining on oath, receiving evidence on affidavits, deciding matters ex-parte etc, and power to grant interim orders, injunctions or stay.
- NGT shall have the power to regulate its own procedure and is not bound by the rules of evidence as enshrined in the Indian Evidence Act, 1872. Thus, it will be relatively easier (as opposed to approaching a court) for conservation groups to present facts and issues before the NGT, including pointing out technical flaws in a project, or proposing alternatives that could minimize environmental damage but which have not been considered.
- As per Section 20 of the Act, while passing orders/decisions/awards, the NGT will apply the principles of Sustainable development, the Precautionary principle and the Polluter pays principles.
- However, it must be noted that if the NGT holds that a claim is false, it can impose costs including lost benefits due to any interim injunction.

Review and Appeal:

Under Section 22 of the NGT Act, there is a provision for seeking a Review of a decision or Order of the NGT. If this fails, an NGT Order can be challenged before the Supreme Court. Any person or body, who is aggrieved by any award, decision of order of Tribunal may file an appeal to Supreme Court of India on grounds specified under Section 100 of Civil Procedure Code, 1908, within 90 days from the date of communication of such award, decision or order. Further, the Supreme Court may also allow any appeal made after such 90 days, if it is satisfied that the appellants were prevented by sufficient cause from preferring the appeal.

Bindingness of NGT verdict:

The decisions of the NGT are binding on the parties, unless they approach the Supreme Court in appeal and the NGT's order is either stayed or reversed. Failure to comply with the orders of the Tribunal could lead to a fine or imprisonment of the person responsible.



Ministry of Environment and Forests
Government of India

Notable Orders of NGT:

- The NGT recently **banned all diesel vehicles over ten years old from plying** in Delhi and the national Capital Region and also cracked the whip on rampant construction activity adding dust to the air. The Tribunal has directed Delhi government to ensure vehicles are checked for weight, age and pollution levels at all entry points of Delhi and overloaded polluting vehicles are prevented from entering the city limits. The NGT also expressed its disquiet on how rampant unchecked construction in Delhi & NCR was adding dust to the air which when combines with particulate matter turns into a lethal mix. It has directed State of UP & Haryana, Noida & Greater Noida authority, Haryana Urban Development Authority & the Delhi government to immediately stop construction activity like on the two-km stretch from NH-24 to Char Murti Chawk which is emanating dust.
- **Yamuna Conservation Zone:** On 25 April 2014, the NGT said that the health of Yamuna will be affected by the proposed recreational facilities on the river. The NGT also recommended the Government to declare a 52 km stretch of the Yamuna in Delhi & Uttar Pradesh as a conservation zone.
- The Bhopal bench of the NGT in a judgment recently in Original Application No. 16/2013 observed 'mining is required to be taken up only if it is compatible with the objective of protecting the environment'. It has directed constitution of a high level committee so that necessary penal action shall be initiated against those mining license holders who were found violating the provisions of Water (Prevention & Control of Pollution) Act, Air (Prevention & Control of Pollution) Act, & Forest Act, and examine whether the mines require 'cumulative Environment Impact Assessment (EIA) study and then only granting EC under cluster approach as envisaged in EIA Notification, 2006.

- In a landmark judgment, the NGT has **banned light & heavy diesel vehicles, which are more than 10 years old**, in six major cities in Kerala.
- Order in the matter of **Trans Delhi Signature City – Residents’ Welfare Association (TDSC-RWA) Vs Chairman/Managing Director (UPSIDC)** dated 05.06.2017 regarding disposal of Municipal solid waste in Trans Delhi Signature City, Ghaziabad, UP. NGT directs UPPCB to inspect the area & submit the status report in case they find that Air & water Act’s consent & conditions of the ECs are violated, shall take action as accordance with law against the offending parties.
- Order in the matter of **Doaba Paryavaran Samithi Vs State of UP**, dated 06.06.2017 regarding ground water pollution in 6 Districts of Western UP. NGT directs CGWA to study the cause of ground water contamination to know as to whether the contamination of water is due to eugenic or manmade reasons. NGT grants 4 weeks time to CGWA for conducting the study & submit its report before the Tribunal.
- **POSCO case:** It is one of the most important cases in NGT’s history. POSCO, world’s fourth largest steelmaker signed a MOU with the Odisha Govt to set up a 12 million-tonne-capacity steel project in Jagatsinghpur district and it was an attraction for the global media for being the biggest foreign investment in India. NGT suspended the Odisha govt’s order for the establishment of the plan and it is considered as a radical step in favour of the local communities and forests. By keeping its objective of establishment intact, Tribunal has pronounced the judgment on the ground to support sustainable development and valued local communities above economic profit from the project.
- **Art of Living festival on Yamuna Food Plan:** NGT Panel has found that the organizers of the Art of Living festival violated the environment norms and it has severely damaged the food plane area at the bank of Yamuna River in Delhi. Earlier, the Govt of Delhi and Delhi Development Authority has permitted the AOL festival organizers but it was an under some conditions. The NGT Panel imposed a penalty of Rs. 5 Crore on AOL Foundation as environmental compensation after coming down heavily on the Foundation for not disclosing its full plans. The Panel also warned AOL Foundation that in case of failure to pay the penalized amount the grant of Rs. 2.5 Crore which the Ministry of Culture is supposed to pay AOL will be attached.

Major challenges:

NGT is delivering its responsibility with its full integrity but it is still facing major institutional challenges. The first challenge is the lack of power infrastructure as it functions from two different premises. Second, the body should have minimum 10 judicial and expert members, out of which only 2 judicial members and 4 expert members have been appointed till date.

The number of environmental cases has been on the rise but due to lack of benches and infrastructure, the body is unable to pronounce its judgment on time. In the last few months around hundreds of cases have been filed in the NGT and all range from cases challenging

environmental approvals granted to power projects, to those questioning governmental permission to use forest land, to issues of air and noise pollution etc.,

Conclusion:

The Indian Constitution mandates protection and improvement of environment and safeguards of forests and wildlife under Article 48A as Directive Principle and fundamental duties of the citizen under Article 51A. The Supreme Court of India has declared Right to Decent and Clean Environment as a Fundamental right falling within ambit of Right to life enshrined under Article 21 of the Indian Constitution. The NGT Act mandates that any person could enforce any legal right relating to environment or raise any substantial question relating thereto by instituting a civil case before the Tribunal. The Tribunal with its Eastern, central, Western and Southern Zonal benches is ensuring easy accessibility to environmental justice and expeditious disposal of such cases.

The NGT is working and pronouncing its judgments brilliantly on the cases related to environmental issues and challenges. The govt should make it more autonomous and efficient in a view to the growing concern regarding the environment and climate change. However, India is doing well when it comes to the environmental and climate change issue as compared to other developed and developing countries of the world.

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