

National Green Tribunal: A New Dimension of Environmental Jurisprudence*¹

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“The earth, the air, the land and the water are not an inheritance from our fore fathers but on loan from our children. So we have to handover to them, at least, as it was handed over to us.”

-----Mahatma Gandhi

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I. INTRODUCTION

The National Green Tribunal has been established on 18.10.2010 under the National Green Tribunal Act 2010 for 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. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same. Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible. New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other four place of sitting of the Tribunal.

II. BACKGROUND

The Indian Constitution, as a part of its Directive Principles of State Policy, states that “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country²,” and bestows upon the citizens the duty to protect the environment, “it shall be the duty of every citizen of India ... to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures³.” While these words might be an integral part of our Constitution, environmental degradation is one of the most visible and threatening reality that we face at the present. Climate change threatens our future existence as we speak of it right now. Organisations like World Wide Fund for nature (WWF) have been working in India for environmental conservation against illegal trading, Pollution, Climate change issues and other factors but the lack of awareness and implementation of laws works as a constant deterrent to our work. While we have stringent laws in place the Supreme Court itself highlighted the difficulty faced by judges in adjudicating on complex environmental cases and laid emphasis on the need to set up a specialised environmental court. After a lot of deliberation for an appropriate environment tribunal which would give exclusive attention to cases related to environmental protection, conservation of forests and other natural resources, The National Green Tribunal (NGT) was founded on 18th October, 2010 under the National Green Tribunal Act, 2010.

On 2nd December 1984 MIC – leakage UC plant caused one of the world’s largest tragedy. This resulted in death of more than 8,000 people & disabled/injured more dan 6 lakhs. In the light of this tragedy, the erstwhile department of Environment formed in 1980 was upgraded to a cabinet level ministry & named as

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² Article 48A of The Constitution of India

³ Article 51(g) of The Constitution of India

“ministry of environment & forest (MOEF) in 1985. Subsequently, the EPA was passed on 23rd may, 1986 through which state pollution control board were formed. Unfortunately most people who suffered in this disaster were poorly compensated, that too after several years of court trials. This clearly pointed out to the inadequacy of the existing provision in dealing with such disasters.

Therefore, NGT aims to ensure that such environmental disasters are averted in the future & victims are properly compensated & receive quick justice

III. Reason of NGT Establishment

Prof. Upender Baxi rightly said that, “**our constitution is environmentally blind.**”

Let's start with why the NGT was set up. The earliest call for environmental courts came from the Supreme Court (SC) in the case of *AP Pollution vs Nayudu*⁴. In this judgment, the SC had requested the Law Commission of India to study the possibility of setting up special ‘environmental courts’ to tackle complex environmental disputes. It is important to note that the SC and the subsequent report of the 17th Law Commission took care to use the term ‘courts’ and not ‘tribunals’. This is an important difference in the context of the Indian Constitution.

In its report, the Law Commission had called for establishing environmental courts under Article 247 of the Constitution, which permits Parliament to create additional courts. ‘Tribunals’, on the other hand, are established under Article 323A or Article 323B of the Constitution. Now, Articles 323A and 323B were inserted in 1976 via the 42nd Constitutional Amendment, which was enacted during the Emergency imposed on the country by Indira Gandhi’s Parliament. At the time, then Prime Minister Indira Gandhi was furious with India’s ‘independent’ Judiciary, which had not only called the bluff on her election but had also been bold enough to strike down her policies for being illegal and unconstitutional. The idea of tribunals was to transfer some substantial powers of the Judiciary to these tribunals, which did not have the same safeguards for judicial independence that High Courts and Civil Courts did. To shield the rulings of these tribunals from review by High Courts, Indira Gandhi’s amendments also expressly kept them out of the latter’s jurisdiction⁵. The SC was given only limited rights of review under its discretionary powers mentioned in Article 136. ‘Additional courts’ would have come under the jurisdiction of High Courts in most matters; being so placed has major implications for judicial independence since it is the High Court that has the final say in the appointment and removal of all judges in subordinate courts, apart from substantial control over their administrative and financial matters. Tribunals, though, as originally conceived by the Centre, would be dependent on the Government for everything, especially appointments, thus compromising their ‘independence’.

The immediate reasons that prompted the Indian parliament to enact the National Green Tribunal Act 2010 had been:-

1. The inadequacy of the existing judicial system to provide adequate relief as evidenced in the 1st Oleum Gas leak case.⁶
2. The United Nations Conference on the Human Environment held at Stockholm in June, 1972 in which India participated also called “*International Magna Carta of our Environment.*”
3. The United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated also called “*Earth summit.*”
4. The inordinate delay involved in the redressal of environment related grievances like Bhopal Gas leak case.⁷
5. To give effect to these exhortations contained in global declarations on environment & to provide for a specialized forum for effective & expeditious disposal of cases arising out of enforcement of environmental laws in the country the Indian parliament has enacted NGTA 2010.
6. The Act has been enacted in response to the recommendations of the Law commission of India⁸ & the Supreme Court which highlighted the large number of environmental related cases pending in the courts⁹. Not only this, there are catena of cases, where SC referred to the need for establishing environmental courts consisting of expert & judicial members.¹⁰

⁴ decided on 1 December 2000

⁵ Gopal Krishna, ‘The Trouble with Tribunals’ The Hindu dated, May 16, 2013

⁶ *M.C.Mehta v. Union of India*, AIR 1987 SC

⁷ *Charan Lal v. Union of India*, AIR 1990 SC

⁸ 186th Report 2003 of the Law Commission of India

⁹ *M.C.Mehta v. Union of India* AIR 1987 SC, *M.C.Mehta v. Union of India* AIR 1997 SC also see *Charan Lal Sahu v. Union of India*.

¹⁰ *A.P.Pollution Control Board v. M.V.Nyudu* 1999, *Indian Council for Enviro-Legal Action vs. Union of India* 1996

7. The tribunal is a special fast track quasi judicial body comprising of judges & environment experts who will ensure expeditious disposal of cases.
8. The main reason behind its establishment is to reduce the burden of litigation in the higher courts.

Key Features Of The Act: key features of the Act are as follows:

1. NGT of India is *special fast track quasi- judicial body* comprising of Judges & environment experts.
2. It ensures expeditious disposal of cases
3. The Act seeks to establish specialized green tribunal with 5 benches located at different regions in India i.e;

| <u>Region</u> | <u>Place of Sitting</u> |
|---------------|-------------------------|
| North | Delhi (principle bench) |
| South | Chennai |
| East | Kolkata |
| West | Pune |
| Central | Bhopal |

- The Act has both original as well as Appellate jurisdiction from decisions of authorities under various environmental laws.
- The tribunal would not be bound to follow the procedure laid down in the Code of Civil Procedure, 1908. Instead, it is allowed to follow the principles of Natural Justice .
- The tribunal will have the powers of the civil court under Civil Procedure Code 1908. Its decisions are binding on the parties.
- Most important salient features of the NGTA 2010 is that NGT is enjoined to follow the internationally & nationally applied environmental principles of:
 - Sustainable development
 - Precautionary principle
 - Polluter pays principle

While issuing any order, decision or award..

Though the Act envisages the conferment of wide jurisdiction on the Green Tribunal, it also at the same time, seeks to restrict the scope of its jurisdiction only to matters involving substantial question relating to environment that is very subjective.

- Another important feature of NGT is inclusion of scientific community.
- One of the key factor of NGT is that it is known for its transparency.
- It holds high the principles of accountability transparency in all its functions like Australia.
- All of its decisions are published online on a daily basis & is made available & accessible to the public.

IV. NATIONAL GREEN TRIBUNAL ACT 2010 – AN OVERVIEW

Preamble -NGTact 2010 provides for the establishment of National Green Tribunal which received the assent of the President on 2nd june 2010 and came into force on 4th July 2011.

The object of the Act is to give effect to its International obligations arising out of various decisions taken at International Conferences to which India has been a Party and also to implement the Indian apex court's pronouncement that the right to healthy environment is a part of the Right to Life under Article 21 of the Indian Constitution¹¹. This object has been amply reflected in the Preamble to the Act which says: "To provide for the establishment of a National Green Tribunal 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

.And whereas India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972 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 Calling upon the States to provide effective access to judicial and

¹¹ See 186th Report, 2003 of the Law Commission of India. See also the decision of the Supreme Court in *M.C. Mehta v. Union of India*, (1997) 2 SCC 653, See also *M.C. Mehta v. Union of India*, AIR 1987 SC 965 and *Charanlal Sahu v. Union of India*, MANU/SC/ 0285/1990

administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage.

And whereas in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution¹². and whereas 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 environment”¹³.

A. **Chapter one** is **Preliminary part** which talks about short titles & definitions clause. Section 2(c)¹⁴ define “**environment**” as, “*environment includes water, air, land, and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property.*”

Similarly section 2 (d) & (e) define expert member & judicial member respectively.

B. **Chapter two** talks about “**The Establishment of the Tribunal**” from section 3 to section 13¹⁵ .e.g; Establishment¹⁶, Composition¹⁷, Qualification¹⁸, appointment¹⁹, Tenure²⁰, Resignation²¹, Salaries Allowances²², Removal & Suspension of the members of the tribunal²³ etc.

I. **Establishment & composition of the NGT:** under section 3 of the Central Government shall by notification establish a Tribunal known as the NGT to exercise the jurisdiction, powers & authority conferred on such Tribunal by or under this Act.

Under section 4, the Tribunal shall consist of :-

- Full time chairperson
- Not less than 10 member but subject to maximum of 20 full time judicial members & expert members
- The chairperson will also invite any one person or more persons having specialized knowledge to assist the tribunal.

V. QUALIFICATION

A person shall not be qualified for appointment as the chairperson or judicial member of the Tribunal – unless he is or has been

- a judge of the supreme court or
- chief justice of a high court

but if a person who is has been a judge of the high court shall also be qualified to be appointed as a judicial member.

- A person shall not be qualified for appointment as an expert member – unless he
- Has a degree in master of science (physical science or life science)with a Doctrate degree of master of engineering or master of technology &
- Has 15 years experience in the relevant field including 5 years practical experience in the field of environment & forest.
- The above degrees & experiences in a reputed national level institution, or
- Has administrative experience of 15 years including 5 years experience in dealing with environmental matters in the central or a state government or in a reputed national or state level institution.
- Chairperson, judicial member & expert member shall not hold any other office during their tenure.

VI. APPOINTMENT

- i. Chairperson, judicial member & expert member shall be appointed by the central government

¹² *Jolly George Varghese v. bank of coachin* AIR 1980 SC (it was held that Indian courts while interpreting statutes have to maintain harmony with the rules of the international law).

¹³ National Green Tribunal Act 2010

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Section 3

¹⁷ Section 4

¹⁸ Section 5

¹⁹ Section 6

²⁰ Section 7

²¹ Section 8

²² Section 9

²³ Section 10

- ii. The chairperson shall be appointed by the central government in consultation with the chief justice of India
- iii. Judicial member & expert member shall be appointed on the recommendations of select committee as provided by the central government.

VII. TEREM/TENURE:-

- Chairperson, judicial member & expert member shall hold office for a term of 5 years –but shall not be eligible for re- appointment.
- But, in case a person ,who is or has been a judge of the supreme court, has been appointed as chairperson or judicial member of the tribunal, he shall not hold office after he has attained the age of 70 years.
- A person, who is or has been the chief justice of the high court or has been appointed as chairperson or judicial magistrate, he shall not hold office after he has attained the age of 67 years.
- No expert member shall hold office after he has attained the age of 65 years.

C. **Chapter three** is about “**Jurisdiction, Powers & Procedure of the Tribunal**” consisting of section from 14 to 25. E.g:- Tribunal to settle disputes²⁴, relief, compensation & restitution²⁵, tribunal to have appellate jurisdiction²⁶, Principle of No Fault Liability²⁷, application or appeal to tribunal²⁸, procedures & powers of tribunal²⁹, appeal to SC³⁰ and cost³¹ etc.

Jurisdiction:- Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (under section 2(m) including enforcement of any legal right relating to environment), is involved & such question arises out of the implementation of the enactments specified in schedule I, i.e;

- 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;
- The Biological Diversity Act, 2002.

Section 14 further adds that no application for adjudication of dispute shall be entertained by the tribunal unless it is made within a period of 6 months from the date on which the cause of action for such dispute first arose.

Its proviso says that if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding 60 days.

The tribunal has the authority to hear & dispose of cases related to the acts specified in schedule I.

The tribunal has the authority to provide relief & compensation to the victims of pollution & other environmental damages arising under the schedule I.

The tribunal can having regard to the damage to public health, property & environment, divide the compensation or relief payable under separate head specified in schedule II³². So as to provide compensation or relief to the claimants & for restitution of the damaged property or environment.

An award or order or decision of the tribunal under this Act shall be excusable by the tribunal as a decree of a civil court, & for this purpose, the tribunal shall have all the powers of a civil court.

I. **Appellate Jurisdiction**³³ :- any person aggrieved by ,-----

1. An order or decision, made, on or after the commencement of the NGTA 2010, by the appellate authority under section 28 of the The Water (Prevention and Control of Pollution) Act, 1974;
2. Similarly, the tribunal has appellate jurisdiction against an order passed by the state government under section 29 of the The Water (Prevention and Control of Pollution) Act, 1974;

²⁴ Section 14

²⁵ Section 15

²⁶ Section 16

²⁷ Section 17(3)

²⁸ Section 18

²⁹ Section 19

³⁰ Section 22

³¹ Section 23

³² (Heads under which compensation or relief for damage may be claimed).

³³ Under section 16 of the NGTA 2010.

3. Direction issued by by a board under section 33A The Water (Prevention and Control of Pollution) Act, 1974;
4. An order or decision made by the appellate authority under section 13 of The Water (Prevention and Control of Pollution) Cess Act, 1977;
5. An order or decision made by the state government or other authority under section 2 of the The Forest (Conservation) Act, 1980;
6. An order or decision made by the appellate authority under section 31 of the The Air (Prevention and Control of Pollution) Act, 1981;
7. Any direction issued under section 5 of The Environment (Protection) Act, 1986;
8. An order made granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations & processes shall not be carried out or shall be carried out, subject to certain safeguards under The Environment (Protection) Act, 1986;
9. An order made refusing to grant environmental clearance for carrying out any activity or operation under the The Environment (Protection) Act, 1986;
10. Any determination of benefit sharing or order made by the National Biodiversity Authority or state biodiversity board under the The Biological Diversity Act, 2002, may within a period of 30 days from the date on which the order or decision or direction or determination is communicate, prefer an appeal to the Tribunal.
11. Subject to the Proviso, if the tribunal is satisfied that the appellant was the prevented by sufficient cause from filing the appeal within the period of 30 days, allow the appellant to file the appeal within a further period not exceeding 60 days.

II. Powers & Procedure of the Tribunal:-

Powers as follows:

- i. The tribunal shall not be bound by the procedure laid down by the code of civil procedure, 1908
- ii. The tribunal shall have power to regulate its own procedure.
- iii. The tribunal shall be guide by the principles of natural justice.
- iv. The tribunal shall also not be bound by the rules of evidence contained in the Indian evidence act, 1872.
- v. For the purposes of discharging its functions, the tribunal shall have the same powers as are vested in the civil court under the code of civil procedure, 1908, while trying a suit.

Procedures: in respect of matters e.g:-

- i. Summoning & enforcing the attendanc
- ii. e of any person & examining him on oath.
- iii. Requiring the discovery & production of the documents
- iv. Receiving evidence on affidavits.
- v. Issuing commissions for the examination of witnesses or documents.
- vi. Reviewing its decision.
- vii. Dismissing an application for default or deciding it ex-parte.
- viii. Setting aside any order.
- ix. Pass an interim order (granting an injunctinal stay) after providing the parties an opportunity to be herard.
- x. Pass an order requiring any person to cease &
- xi. Other desist from committing or causing any violation of any enactment under schedule-I

Proceedings³⁴:-

- i. All the proceedings before the tribunal shall be deemed to be the judicial proceedings.
- ii. The tribunal shall be deemed to be a civil court.
- iii. Applies the principles of sustainable development, precautionary principle & polluter pays principle.
- iv. Its decision given by majority of the members.

Chapter four is about **Penalty**, which says penalty for failure to comply with orders of Tribunal³⁵.

Penalty:

Section 26 provides for penalty for failure to comply with the orders of the tribunal. It provides that whoever, fails to comply with any order or award or decision of the tribunal, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to 25,000 rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

³⁴ Section 19(5)

³⁵ Section 26

It further provides that in case a company, fails to comply with any order or award or decision of the tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

It also provides that notwithstanding anything contained in the code of criminal procedure, 1973, every offence under the bill shall be deemed to be non-cognizable within the meaning of the said code.

Similarly, offences by companies & offences by government departments are dealt under section 27 & 28 respectively.

Chapter five is about “Miscellaneous”

This chapter provides the miscellaneous provisions in the Statute i.e; NGTA 2010.

Section 29 provides Bar of Jurisdiction on civil courts. It provides that from the date of establishment of the tribunal, no civil court shall have jurisdiction to settle or entertain any appeal in respect of any matter, which the tribunal is empowered to determine under its appellate jurisdiction.

It further provides that no civil court shall have jurisdiction to settle or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment which may be adjudicated upon by the tribunal and no injunction in respect any action or to be taken by or before the tribunal shall be granted by civil court.

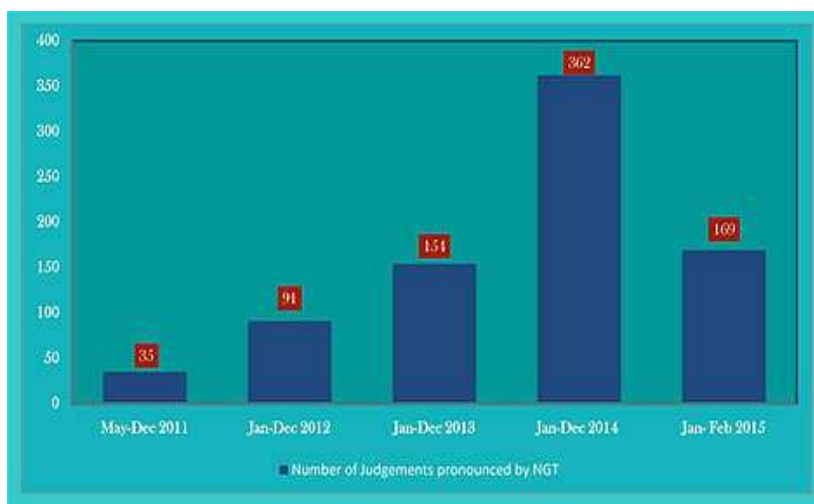
It provides that the court shall not take cognizance of any offence under the proposed legislation except on a complaint made by the central government or any authority or officer authorized in this behalf by that government; or any person who has given notice of not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the central government or the authority or officer authorized as aforesaid. It further provides that any court inferior to that of a metropolitan magistrate or, judicial magistrate of the first class shall not try offence punishable under the proposed legislation³⁶.

Section 31 provides that the chairperson, the judicial and expert members, officers and other employees of the tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

VII.CASE LAWS & ORDERS

According to Sunita Narain³⁷, “ 2014 has brought India’s Environmental movement to a crossroad. Every indicator shows that things on the ground are getting worse.our rivers are more polluted, more garbage is piling up in the cities, air is increasing toxic & hazardous wastes is just dumped, not managed. Worse, people who should have been in the front line of protection are turning against the environment. They see it as a constraint to local development. They may protest against the pollution from neighbouring mines or factories, but even if they succeed their livelihood from natural resources is not secure. They are caught between mining companies and foresters. Either way, they lose”

According to Environment Minister Mr Prakash Javedekar³⁸, the total no of cases received since the establishment of NGT till 31st january, 2015 is recorded 7768.

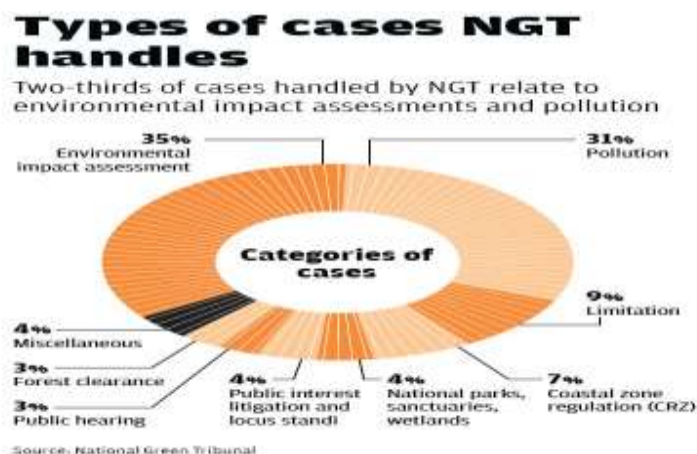


³⁶ Section 30

³⁷ Sunita Narain, ‘Time for New Environmentalism’ print edition, dated 15th feb,2015

³⁸ The Economics Times, dated 3rd march, 2015.

Since its inception in October 2010, the Tribunal has been successfully upholding its mandate as a 'fast-track Court' for effective and expeditious disposal of cases relating to environmental protection and conservation. The above graph indicates the number of cases adjudicated by NGT until September 2014.³⁹



➤ **Manoj Misra & Madhu Bhaduri v/s UoI & others** (Original Application No. 6 of 2012 and M.A.Nos. 967/2013 & 275/2014) regarding the Yamuna river in Delhi, the Principal Bench of the National Green Tribunal led by Justice Swatanter Kumar has given wide ranging directions (dated 13 January 2015). A team of environmental lawyers led by Ritwick Dutta & Rahul Choudhary successfully argued for cleaning the river and protecting its flood plain.

One of the most important directions in the case is regarding ensuring environmental flows in the river throughout the year. During the course of hearings, NGT ordered several committees & expert groups to prepare reports. The tribunal accepts both the reports filed by the expert committee first report and second report on 19th April, 2014 & on 13th October, 2014 respectively. First report is dealing the aspects of restoration, preservation, & beautification of the banks of river Yamuna & 2nd report is talking in relation to drainage system in delhi and the tribunal also accepted the Action Plan prepared by the Delhi Jal Board for revitalization of river Yamuan. Therefore NGT has named the implementation programme of the judgment as “ Maily Se Nirmal Yamuna” revitalization project 2017 & its deadline is March 2017.

Not only this, NGT, regarding dumping of debris on the banks of the river, directed that ‘ no person, authority, corporation& or by whatever name or delegation it is called, shall dump any kind of construction debris, municipal waste.

There shall be complete prohibition on dumping of any material in & around river Yamuan. In this direction NGT ordered compensation charge of rupees 50,000 on the Polluter Pays Principle & Precautionary Principle & that compensation shall be used for removal of such waste and restoration of environment.

➤ **POSCO Case (march 2012):**

This case is one of the most important case in the NGT’s history. NGT suspended the environmental clearance given to south Korean steel major POSCO ‘s billion dollar project in Orissa, believed to be the biggest FDI in the country. The Tribunal asked the environmental ministry to relook into the project. Large scale protest have erupted throughout country in order to stop POSCO in India. NGT in its order suspended the establishment of the POSCO. This order came as a radical step in favour of the local communities & forests.

In this way, tribunal has stood its ground to support sustainable development & valued local communities above economic profit from the project.

➤ **The Goa Foundation Case:**

It is one of the landmark case that established NGT ‘s jurisdiction in all civil cases which involve a substantial question of environment.

➤ **The sand mining order (5th august 2013):**

This sand mining order has been the latest victory of NGT. The tribunal put a ban on all forms of illegal river & ocean bed sand mining which were rampant across over the sand country due to the sand mafia’s influence over the sand market.

³⁹ Source: National Green Tribunal

The tribunal, in a series of orders banned the mining & called upon the state authorities to show cause why illegal sand mining had been going on without any environmental clearance.

➤ **Judgement of the National Green Tribunal regarding grant of Environmental Clearance to the construction of Nyam Jang Chhu Hydroelectric Project, Tawang District, Arunachal Pradesh, 07/04/2016⁴⁰**

Judgement of the National Green Tribunal in the matter of *Save Mon Region Federation & Others Vs Ministry of Environment and Forests & Others* dated 07/04/2016 regarding grant of Environmental Clearance (EC) dated 19.4.2012 to the construction of 780 Mega Watts (MW) Nyam Jang Chhu Hydroelectric Project (NJC-HEP) in Tawang district of Arunachal Pradesh.

The Tribunal has directed that the EC dated 19.4.2011, is suspended till the time the studies as directed are carried out, public consultation thereon done, the Expert Appraisal Committee (EAC) considers outcome of such public consultation, carries out a fresh appraisal of proposal for grant of EC, makes recommendation to the MoEF&CC, and the MoEF&CC acts upon such recommendations in accordance with law.

➤ **Order of the National Green Tribunal regarding making available coal ash free of cost for the purpose of ash based products by thermal power plants, NEPA Ltd, Burhanpur District, Madhya Pradesh, 08/04/2016.**

Order of the National Green Tribunal in the matter of *Ramdas Prajapati & Ors. Vs. Union of India & Ors.* dated 08/04/2016 regarding making available coal ash free of cost for the purpose of ash based products by every coal and lignite and thermal power plants, NEPA Ltd, Burhanpur District, Madhya Pradesh.

NGT directs that ash in powder form having carbon content of 12% will be provided to the applicants (brick kilns) in furtherance to the Notification and would not find exemption under the Judgment of the Tribunal dated 10th December, 2015

➤ **Order of the National Green Tribunal regarding municipal waste management, India, 19/04/2016**

Order of the National Green Tribunal in the matter of *Almitra H. Patel & Others Vs. Union of India & Others* dated 19/04/2016 regarding municipal waste management, India.

Tribunal decided to hear all the matters together relating to:-

1. Waste to energy plant as a solution for dealing with Municipal Waste.
2. What is the Status of the projects in the Punjab State which had proposed eight clusters for dealing with Municipal Waste and whether such projects could be adopted by other States particularly in hilly area, where there is serious limitation with regard to availability of land and even financial resources.

➤ **Order of the National Green Tribunal regarding ambient air quality during the period of ODD and EVEN vehicles plying scheme from 15th April, 2016 to 30th April, 2016, Delhi, 19/04/2016**

Order of the National Green Tribunal in the matter of *Mahendra Pandey Vs. Govt. Of NCT of Delhi & Ors.* dated 19/04/2016 regarding ambient air quality during the period of ODD and EVEN vehicles plying scheme from 15th April, 2016 to 30th April, 2016. NGT disposes of this Application with the direction to DPCC to maintain regular ambient air quality data during the period of ODD and EVEN vehicles plying scheme from 15th April, 2016 to 30th April, 2016. Also directed CPCB and MoEF shall jointly maintain the monitoring data of ambient air quality during this period independent of DPCC.

The National Green Tribunal (NGT) is performing well. Those who can reach it now believe that their cases will be heard speedily. Today, there is a fear among industry and environment regulators that some action would be taken if a case is heard by NGT. But there are many challenges that NGT faces and there are many issues that people have with NGT⁴¹.

The last and most serious problem with tribunalisation is its impact on access to justice. A case in point is the NGT. Originally, the Law Commission's report on environmental courts had—sanely—suggested one such court in every state to ensure easy access to all citizens, since green litigation was widespread across the country. In reality, even this suggestion had its shortcomings; prior to the NGT's creation, most civil courts and all High Courts had jurisdiction over environmental matters depending on the nature of the dispute. As of today, India's 29 states have among them 24 High Courts (some states share these), apart from over 600 District Courts and thousands of Magistrates. Under the Air Act, Water Act and other environmental laws, State Pollution

⁴⁰ <http://www.indiaenvironmentportal.org.in/content/427832/judgement-of-the-national-green-tribunal-regarding-grant-of-environmental-clearance-to-the-construction-of-nyam-jang-chhu-hydroelectric-project-tawang-district-arunachal-pradesh-> (last accessed on 21st April, 2016)

⁴¹ <http://www.downtoearth.org.in/coverage/tribunal-on-trial-47400>(last accessed on 21st April, 2016)

Control Boards could make an application to magistrates, requesting injunctions against entities flouting pollution norms. Similarly, if a community wanted to sue an industry for damages in a case of environmental pollution, they could do so at any civil court, several of which exist in a district. Lastly, in the case of environmental PILs, any person could petition the High Court for relief. With the creation of the NGT, this access to justice has been throttled because it has only five benches—mainly in cities and under the NGT Act—and no other courts can entertain any environmental.⁴²

VIII.CONCLUSION:

“National Green Tribunal Act is a path breaking legislation which is unique in many ways. It will provide a new dimension to environment adjudication by curtailing delays and imparting objectivity. The Tribunal, given its composition and jurisdiction, including wide powers to settle environment dispute and providing relief, compensation including restitution of environment, is envisaged to be a specialized environmental adjudicatory body having both original as well as appellate jurisdiction,”⁴³

---Dr Abraham P Meachinkara, Advocate, High Court, Kerala.

During the inauguration of NGT, Vice President of India Mr. Hamid Ansari rightly said, ***“The commencement of the NGTA in India act as a giant step forward towards achieving environmental democracy.”***

In this way the last five years have brought about a sea change in the way the tribunal has functioned. The judgments have become stricter in their approach inspite of all odds. Because of taking stringent action against such millionaire & billionaire, government authorities & people having money and muscle power, the tribunal’s jurisdiction being challenged & also termed its functions as “judicial over reach”.

The tribunal has not been lenient to government authorities & MoEF . in the recent past, it has issued warrants against high profile government authorities like commissioner of Delhi, police & environment minister of Odisha and very recently against **Sri Sri Ravi Shankar’s Art of Living**⁴⁴. On a more positive note, over the last five years, the NGT has adjudicated over 200 cases & has successfully managed to dispose off most of the cases.



“I don't want to protect the environment. I want to create a world where the environment does not need protecting.”⁴⁵

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⁴² Gopal Krishna, ‘The Trouble with Tribunals’ The Hindu dated, May 16, 2013

⁴³ Dr Abraham P Meachinkara, Advocate, High Court, Kerala

⁴⁴ Judgment decided on 22nd April, 2016, dated: The Hindu, page no.3

⁴⁵ Source: National Green Tribunal Portal