

NATIONAL GREEN TRIBUNAL

Written by Paridhi Verma

2nd Year BA LLB Student, 'Indore Institue of Law', Indore Madhya Pradesh

ABSTRACT

National Green Tribunal has formed by the Government of India during the year 2010. It is a 'Quasi-judicial' body which deals with the environment related civil litigations. National Environment Tribunal Act 1955 (NETA) and National Environment Appellate Authority Act, 1997 (NEAA) were two previous efforts to establish Green Court in India, it has evolved before National Green Tribunal. The most effective environment court in the form of National Green Tribunal which has come into existence in year 2010. This research paper also deals with many limitations in National Green Tribunal Act and its procedure, it can be viewed as a positive step towards the environmental justice of India. National Green Tribunal which was established in 2010 under article 21 of Indian Constitution, guarantees the citizen of India for the right to healthy environment. India is the third country following Australia and New Zealand to have such tribunal. The researcher also focused on that the higher judiciary which is loaded with excessive weight with a large backlog of cases in India. It may be appreciated that in order to have effective protection of environmental pollution and environmental complaints should be decided in an effective manner that is not possible in the present context of judicial administration. That's why there was an urgent need felt for an alternative forum, so that environmental cases were resolved without much delay. Basically, National Green Tribunal has been enacted to fulfil the long felt need of alternative forum to deliver speedy and inexpensive justice. The philosophy of Public Interest Litigation which is welcome direction for the class of victims who are unable to knock the doors of judiciary.

INTRODUCTION

The word tribunal has not very precise definition and can therefore be given. It can be said that administrative lawyers generally use this term 'Tribunal' to describe any statutory body established under federal or provincial legislation to implement legislative policy. Apart from the judicial bodies as the Supreme Court and the High Court, tribunals are the quasi-judicial bodies which are involved in the process of resolving disputes between the parties.

¹The constitution of India, work on the principle of welfare state, was bound to recognize the existence of tribunals. Tribunals are being implemented for speedy disposal of cases, which ultimately reduces the burden on the Civil Courts. ²Professor Dicey's concept on Rule of Law had created a bias against tribunals in the mind of English, as well as Indian Legal Practitioners. In India, due to many circumstances a unitary system take place and the tribunals were subjected to superintendence of the ordinary courts. Therefore, constitution prevailed tribunals in Article 136 and Article 227.

HISTORICAL BACKGROUND

Earlier, state was working on the theory of 'Laissez Faire' (let do), in which transactions between private parties were free from government interference which has been replaced by philosophy of 'welfare state' and now state play its beyond role in which functions have increased. The concept of National Green Tribunal (NGT) is based on Polluter Pays Principle (PPP), which was mentioned in the recommendation of the French organization, the organization for economic cooperation and development (OECD) of 26th May 1972. As per Section 20 of the NGT Act, 2010 while passing any order or award, the tribunal shall apply there three principles which are as follows:

- Principle of Sustainable Development
- Precautionary Principle
- Polluter Pays Principle

¹ S.P. Sashe, Administrative Law, fifth edition, 1994.

² S.P.Sashe, Administrative Law, fifth edition, 1994.

A conference was set up by United Nations on Human Environment, to improve the quality of our surrounding. The first global environment conference was set up and a plan was released known as “Stockholm Declaration of 1972”. Stockholm Declaration stated that people have “the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generation.-”

Meanwhile, following acts were added in our Indian Constitution:

- The Water (Prevention and Control of Pollution) Act 1974, generally known as Water Act.
- The Air (Prevention and Control of Pollution Act 1981 also known as Environment Protection Act.
- 48A and 51A (g) was adopted by the 42nd amendment Act, 1976 which is Protection and improvement of environment and safeguarding of forest and wildlife.

Afterwards, in 1992 the Rio Conference was set up, conference was emphasizing national law regarding liability and compensation for environmental damages for the pollution victims.³ According to the Principal 10 of the Rio Declaration-Environmental issues can be tackled only with the help of concerned and spirited citizens at the relevant level. At the national level, each individual should give their active participation to protect and improve the quality of environment. Nation and their state should facilitate and encourage by making inform widely available. Judicial proceedings followed by appropriate remedy shall be provided. Meanwhile, India introduced new economic reforms in 1991 which introduced Liberalization, Privatization and Globalization. Before the existence of National Green Tribunal Act came into existence, there were two green courts. First was National Environmental Tribunal Act (NETA) of 1995 and the second was National Environmental Appellate Authority (NEAA) Act of 1997. National Tribunal Act, 1995 was the result of Rio Declaration conference of 1995.

³ Indian Journal of Geo-Marine Science, Vol 44(4), April 2014.

FUNDAMENTAL CONCEPT OF NGT

There are number of cases related to environment justice which led to the establishment of National Green Tribunal. With the four breaking path of judgments by Supreme Court of India- :

- M.C.Mehta V. Union of India
- Indian Council for Environmental-Legal Action V. Union of India
- A.P. Pollution Control Board V. M.V. Nayudu
- A.P. Pollution Control Board V. M.V. Nayadu II

With these landmark cases, Government of India realizes that there should be a separate environment court and these cases involves interpretation and assessment of scientific data. Hence green courts were supposed to work with the professional judges only.

NATIONAL GREEN TRIBUNAL ACT, 2010

NGT was established in the year 2010 under the NGT Act, 2010 to dispose the matters of cases related to environmental protection and conservation of forests and other natural resources. The Act came into force under the ambit of Article 21 of the Constitution of India, which signify the right to live in a clean and healthy environment. The NGT replaced National Appellate Authority of the Ministry of Environment and Forest. At present, the NGT is functional in five locations. New Delhi is the principal seat of the Tribunal (Principal Bench) and Bhopal (Central Zone), Pune (West Zone), Kolkata (East Zone) and Chennai (South Zone) are the other seats of the tribunal as zonal benches.

Composition of Tribunal

Section 4 of the National Green Tribunal deals with the composition of Tribunal. There shall be

- Chairman who will be appointed from the Judge of Supreme Court or Chief Justice of High Court.

- Two Vice-chairpersons appointed by the Minister responsible for Labour and Human Resource Development by powers.
- Tribunal consists of 10-12 members (member should not be less than 10).
- ⁴Tribunal consists of subject expert members. Expert members are doctorate degree holder either physical sciences or life sciences.
- A member of the Tribunal shall not take part in a hearing in relation to a matter in which the member has a direct or indirect pecuniary interest.

Jurisdiction of Tribunal

The NGT has the power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the NGT Act. These include the following:

1. The Water (Prevention and Control of Pollution) Act, 1974;
2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1986;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002.

⁵From the existence of National Green Tribunal, all the civil suits relating to environment are being tackled by this green court only. No other courts shall entertain any such matter related to environment disputes.

⁴ The National Green Tribunal Act, 2010, Ministry of Law and Justice, New Delhi, June 2, 2010

⁵ Khandare, Jayashree P. (2015). Role of National Green Tribunal in Protection Environment. Indian Journal of Research, Volume, Issue 12.

Territorial Jurisdiction

ZONE	PLACE OF SITTING	TERRITORIAL JURISDICTION
North	Delhi (Principal Bench)	Uttar Pradesh, Jammu and Kashmir, Uttarakhand, Punjab, Haryana, Himachal Pradesh, National UT of Delhi, UT of Chandigarh
West	Pune	Maharashtra, Goa, Gujarat, UTs of Daman and Diu and Dadar and Haveli
South	Chennai	Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, UT of Pondicherry and Lakshadweep
Central	Bhopal	Madhya Pradesh, Chhattisgarh and Rajasthan
East	Kolkata	West Bengal, Orissa, Bihar, Jharkhand, Sikkim, Andaman and Nicobar Islands, Seven Sisters states of North-Eastern region.

IMPACT OF NGT: 2011-2016

Since its establishment in October 2010, the National Green Tribunal of India is positively endorsing its mandate. National Green Tribunal act as a fast-track court for effective and expeditious disposal of cases relating to environment protection and conservations. From fig.1 it is very clear that people are being aware of their surroundings and they are also concerned for quality of environment. Based on a critical analysis of the judgments. The minimum was seen in the year 2011 (28 orders) and the maximum was seen in the year 2015 (821 orders).

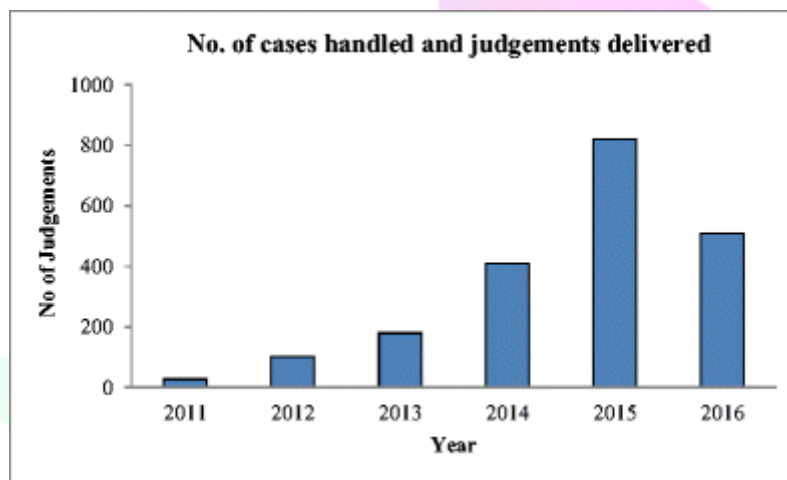


Fig.1 Environmental Judgments settled in 2011-2016

Further, a majority of the judgments were from the Southern Zone (318), followed by the Principal bench-New Delhi (79), West Zone (78), East Zone (25) and Central zone (10).

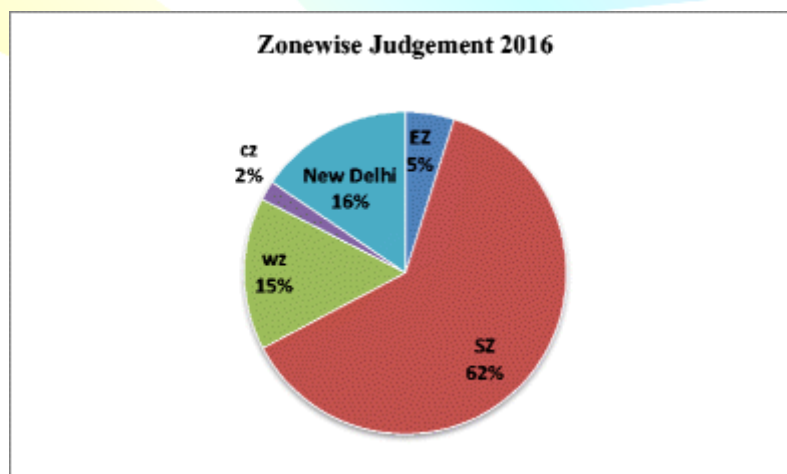
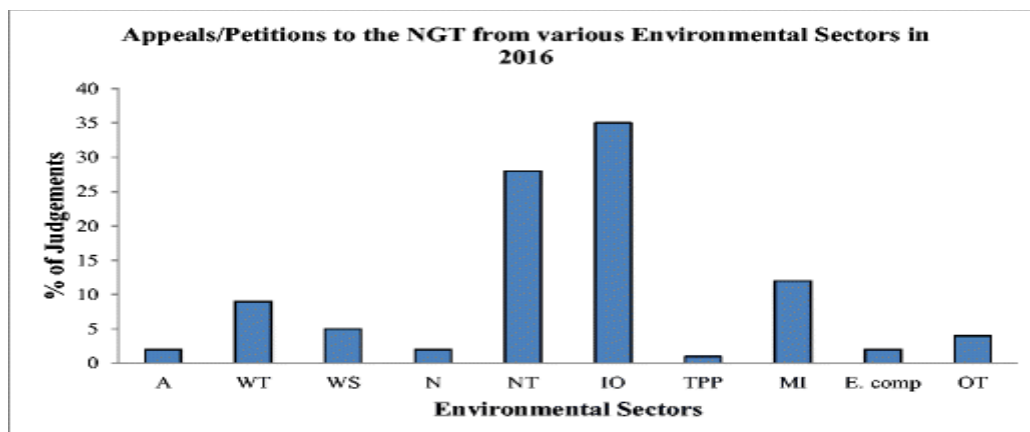


Fig. 2 Judgments from different zones of NGT



CASE REVIEW

The NGT has imposed a fine on carrying a project activities, which was affecting environment and ecology. Six particular cases were related related to this regard:

- The Forward Foundation vs. State of Karnataka.
- S.P. Muthuraman vs. Union of India..
- Manoj Mishra vs. Union of India and Ors.
- Krishan Lal Gera vs. State of Haryana.
- Sunil Kumar Chugh vs. Secretary Environment Department.
- Govt. of Maharashtra and Ors. and Hazira Macchimar Samiti vs. Union of India and Ors.

In all the above given cases except one, penalty has been stipulated as ‘five percent of the project cost’. In most of the cases penalties remained provisional. The bench mark was set up by referring to the judgment of Supreme Court on the matter of ⁶Goa Foundation vs. Union of India and Ors. The NGT has also made reference to the matter of Sterlite Industries (India) Ltd.

⁶ Goa Foundation vs. Union of India and Ors (Writ Petition (Civil) No. 435 of 2012), Supreme Court of India, 21 April 2014.

vs. Union of India & Ors. of the Supreme Court for determining the ‘liability’ of the developers to pay in flagship cases such as ⁷The Forward Foundation vs. State of Karnataka.

Various companies and innovator were held liable to pay environmental compensation for violating conditions stipulated in statutory permits such as environmental and forest clearances (EC and FC) or for not undertaking Environmental Impact Assessment (EIA) appropriately before getting EC. Cases on this regard-:

- Ajay Kumar Negi vs. Union of India.
- Mohammed Kabir and Ors. vs. Union of India.
- Ors. and Naim Sharif Hasware vs. M/s Das Offshore Co.

In the matter of Ajay Kumar Negi vs. Union of India⁸, penalty imposed because the ground realities suggested for less damages, most of which was paid for by the company. Principal bench held an ‘initial’ fine of Rs 5 crore on Nuziveedu Seeds Limited Power Generation (P) Ltd on the grounds that the company had caused damage to forest wealth in the Tidong basin of Himachal Pradesh (HP), due to development of its 100-MW Tidong-I Hydro Electric Project.

Meanwhile, there are certain cases in which Judges were facing difficulties in citing calculation of compensation costs. Likewise, Mohammed Kabir vs. UoI Mohammed Kabir vs. UoI, MANU/GT/0088/2016⁹ then the bench also referred to a previous case, the matter of Krishna Kant Singh vs. National Ganga River Basin Authority, where the Principle bench of the Tribunal had rected Simbhaoli Sugar Mills—which had opened without the consent of the concerned Board for a long period and polluted the surface water and groundwater in the region—to pay a compensation of Rs 5 crore. The compensation was imposed for flouting the law and causing pollution.¹⁰

⁷ The Forward Foundation vs. State of Karnataka (OA No. 222 of 2014), National Green Tribunal, 7 May 2015, p. 100.

⁸ Ajay Kumar Negi vs. Union of India, (OA No. 183 (THC) of 2013), National Green Tribunal, 7 July 2015.

⁹ Mohammed Kabir vs. UoI, MANU/GT/0088/2016

¹⁰ Ibid

CONCLUSION

The human and geographical scale of India is gigantic, as are its ongoing internal issues that include population growth, poverty, inflation and corruption. Modern India has embarked on an economic pathway to promote itself as a development juggernaut. The target of high GDP within this development agenda indicates worrying trends in the context of its social and environmental impact. The convergence of the right to environment and the right to development has created a national paradox. The right to development is commonly perceived as being a reflection of powerful commercial vested interests rather than supporting equitable social welfare. Establishment of National Green Tribunal is just a step to ensure the development of a country as a whole sole which is not only an act, it is a primary guardian of environment for a future generation.