

# National Green Tribunal Activism

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## Manifest Pedagogy

Judicial activism is an important issue in India which had been asked earlier in mains. Setting up of green tribunals for environmental issues and its recent controversial decisions needs analysis. Striking right balance between environment and development is a difficult task. Environment vs development coupled with judicial overreach is important area of preparation.

## **In news**

The National Green Tribunal has directed the Uttarakhand and Uttar Pradesh Pollution Control Boards to display the water quality of the Ganga at all strategic locations on a monthly basis.

## **Placing it in the syllabus**

Statutory, regulatory and various quasi-judicial bodies.

Environmental impact assessment

## **Static dimensions**

- About National Green Tribunal
- Functions and Powers of NGT

## **Current dimensions**

- Cases of NGT's activism in recent times.

## Content

The Constitution of India through its directive principles of state policy (DPSP) mentions that "it is the duty of the state to protect and improve the environment and to safeguard the forests and wildlife of the country and bestow upon the citizens the duty to protect the environment". In reality the implementation of DPSPs immediately after independence was a difficult task for government as there were many other problems that were given priority over the environment. To overcome the basic problems of poverty, illiteracy, unemployment and to provide basic health care facilities, environment issues were not given that much importance. In order to increase the production in the economy more and more industries were set up. This has led to degradation of environment at a large scale in India and the priority in the last decade had gradually shifted to protection of environment.

The Supreme Court of India suggested that there should be environmental courts on regional basis with professional judges and 2 experts keeping in mind the kind of expertise needed to deal with such issues. This was emphasized by the Supreme Court as there was a need for speedy justice for environmental protection and to reduce the burden on the High courts which were not able to do quick disposal of cases involving environmental issues as they were over burdened by cases.

Accordingly, the **Law Commission of India in its 186th Report** in September 2003, recommended, inter alia, setting up of environmental courts having both original as well as appellate jurisdiction related to environmental laws. As a result of this dire need for speedy justice The National Green Tribunal (NGT) was founded on 18th October, 2010 under the **National Green Tribunal Act, 2010**. It is a statutory tribunal which was enacted by the parliament specially for hearing the matters

concerning to environmental issues.

- The National Green Tribunal has been established in 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**.

## **Powers**

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:

The Water (Prevention and Control of Pollution) Act, 1974;

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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.

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. You will 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.

### **NGT Overreach**

- In eight-and-a-half years of its existence, NGT has received accolades and appreciation, but has also been criticised for **exceeding its jurisdiction**. Judicial activism in India has taken root and grown in a climate where the executive has failed hopelessly. Acts of omission and commission on the part of the latter have broadened the scope for judicial intervention, which has sometimes served as correctives. The higher judiciary has shown a willingness to entertain petitions on sensitive issues that elected governments have been reluctant to address. While such intervention has often led to positive outcomes, one offshoot of this has been the involvement of the judiciary in policy issues, which lie in the domain of the executive. If judges are free to make laws of their choices, not only would that go against the principle of separation of powers, it could also lead to uncertainty in the law and chaos as every

judge will start drafting his own laws according to his whims and fancies.

- NGT has been accused of **overstepping its jurisdiction** and taking actions for which it has not been empowered under the NGT Act. Three issues have frequently cropped up. First, does NGT have powers to take cognisance of a matter on its own and take action upon it-the power of suo motu. Second, can NGT review and direct change in rules and regulations-the power of judicial review. Third, can NGT take up any case which can be termed as “substantial question of environment”.
- The recent verdict of the National Green Tribunal (NGT) banning diesel vehicles over 10 years old from Delhi roads was widely criticized as being a case of judicial overreach. The NGT also banned the burning of leaves, plastic and other material in the open and directed various ministries, the Delhi government and the Delhi Pollution Control to examine the possibility of installation of air purifiers in all the markets and crowded places or where the traffic load is heavy. Authorities were even directed to identify a new bypass route for traffic from Rajasthan heading towards Mumbai.
- Ban on sand mining activity in Goa by NGT has been termed as judicial overreach. It would impact the construction industry thereby hampering the developmental activity of the state. Making odd even scheme mandatory for vehicles including two wheelers in Delhi. Burning of paddy straws completely prohibited by NGT. In one case the principal bench of the NGT ordered closure of eating joints in Delhi that have not applied for operating consent. In another case, the NGT took strong exception to the nailing of ‘Bus Stop’ signs on trees by the Delhi Transport Corporation.
- The NGT is a tribunal. It has been set up to provide effective and expeditious disposal of cases related to the environment and conservation of nature. As executives are failing to protect the environment, more

people are approaching the NGT, even for those cases that normally would not be considered to be within its ambit. There are issues with the NGT which can harm the objective of effective environmental justice. There is a strong perception that it wants to hog more powers and take on other government institutions. The other perception is that of its judicial overreach. The conflict between the NGT and the environment ministry is harming the very objective of setting up the tribunal. The NGT needs the support of various institutions to deliver effective justice. It can't operate in isolation.