



NATIONAL GREEN TRIBUNAL ACT, 2010

Dr. Manmeet Singh
Assistant Professor (Law)
Maharaja Agrasen University, Baddi

- Introduced the National Green Tribunal Bill, 2009 in the Lok Sabha.
- Parliament passed the bill in 2009.
- Got the President's assent on June 2, 2010.
- National Green Tribunal was launched on Oct 2010.
- Australia and New Zealand are the only other two countries who has this tribunal system.
- Expected to relieve the courts from the burden of around 5000 pending cases relating to environment.
- The National Environmental Act, 1995 and the National Environmental Appellate Authority Act, 1997 stands repealed.(S. 38)

OBJECTIVE

- “ ...for the effective and expeditious disposal of the cases relating to the environmental protection and the conservation of forests and other natural resources including the enforcement of any legal right relating to environment and giving relief and compensation for the damages to persons and property and for matters connected therewith or incidental thereto.”

➤ Enactment of the law takes into account:

- a) The United Nations Conference on the Human Environment held at Stockholm
- b) United Nations Conference on Environment and Development held at *Rio de Janeiro*.
- c) the judicial pronouncements in India construing the right to healthy environment as a part of the right to life under A.21, constitute a Tribunal to solve the environment issues considering the multi – disciplinary issues relating to the environment.

APPLICABILITY

➤ Section 2(j) – Person

- i. an individual
- ii. A Hindu undivided family
- iii. A company
- iv. A firm
- v. An association of persons
- vi. Trustee of a trust
- vii. A local authority
- viii. Every artificial judicial persons

➤ Section 4 Composition of the tribunal

- a) full time chairperson
- b) 10 – 20 full time judicial members
- c) 10 – 20 full time expert members.

Section 4(2) – any person having specialised knowledge and expertise in any particular field may be invited for assistance in a particular case in the tribunal.

JURISDICTION

Section 14

- The tribunal has jurisdiction over all civil cases where a substantial question relating to environment is involved and also if such question arises out of the implementation of the enactments specified in Schedule I of the Act.
- 14(2) – tribunal shall hear the disputes, settle them and pass the orders thereon.
- 14(3) – application of adjudication of dispute shall be made within a period of 6 months from the date on which the cause of action for such dispute first arose. Provided that if a sufficient cause for the delay is proved, the applicant may file it within a further period not exceeding sixty days.

Relief, Compensation and Restitution

Section 16

- a) Relief and compensation to the victims of pollution and other environmental damage arising out under the enactments specified in Schedule I of the Act.
- b) for restitution of property damaged
- c) For restitution of the environment for such area or areas as the tribunal may think fit.

The relief under S.15 is in addition to the relief paid or payable under the Public Liability Insurance Act, 1991.

The application shall be made within 5 years from the date on which the cause for such compensation or relief first arose.

Any person aggrieved by an order or decision passed under any enactment in Schedule I on or after the commencement of the NGT Act, 2010 may prefer an appeal to the Tribunal.- S.16.

Section 17

- Where the death of, or injury to, any person or damage to any property or environment has resulted from an accident or the adverse impact of the activity or operation or process, under any enactment mentioned in Schedule I, the person shall be liable to pay such relief or compensation for such death, injury, or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.
- In case of an accident the tribunal shall apply the principle of no fault.[S. 17(3)]

Who can apply for the grant of relief or compensation or settlement of dispute?

Section 18

- application shall be made by -
 - a) The person who has sustained the injury
 - b) The owner of the property to which the damage has been caused
 - c) Where death has been caused from the environmental damage, the legal representatives of the deceased.
 - d) any agent
 - e) Any person aggrieved including any representative body or organization
 - f) the central government or the state govt.

Section 20 – the tribunal shall apply the principles of sustainable development, the precautionary principle and the polluter pays principle. The polluter pays principle puts the onus on the polluter to pay for the financial liability arising out of an incident. The Precautionary principle puts the onus on the group or party under the scrutiny to prove that their actions will not harm the environment or public even though complete and absolute scientific clarity on the possible impacts of such actions do not exist.

Section 21 – the decision of the tribunal by majority of members shall be binding. If at all a difference occurs among the members hearing the application and the opinion is equally divided, the chairperson shall hear such application and decide. If the chairperson himself has heard along with the members and if there is a difference of opinion and it is equally divided, he shall refer the case to other members of the tribunal.

Section 29 – the civil courts have no jurisdiction to entertain any question relating to any matter in which the tribunal has appellate jurisdiction.

PENALTY

- whoever fails to comply with any order or award or the decision of the tribunal under this act, 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 in case of individuals whereas it can be upto 25 crore rupees for a company, or with both and in case of further failure, with additional fine which may extend to twenty – five thousand rupees for every day during which such failure continues. (S. 26)
- Separate provisions for the prosecution of the Directors of a company as well as by the govt. departments has been provided for. (S.27, 28).

DRAWBACKS

1. **Slow in activating the NGT, 2010:** For all its visible activism, it is not clear why the Union Government Ministry has remained slow in activating the NGT which came into being in Oct 2010. No rules also have been framed yet under the Act.
2. **It is more about the compensation for the damages rather than the prevention of damages:** the tribunal lacks the power to quash the environmental clearances. The Act fails to provide for the precautionary measures that must be taken to ensure that the environmental damage does not occur. The focus is more on the compensation for damages more than the prevention of it in the first place.
3. **Principle Bench at Bhopal:** The affected people will be forced to come to Bhopal. With no High Court at Bhopal, very limited legal assistance will be available to complainants. This will be of no problem for the corporate who of course have unlimited resources to ferry lawyers to Bhopal several times, but what about those with a grievance and no financial ability. The Act fails to work for the public.

4. **Limited the period of accountability:** This is regressive at best and Machiavellian at worst given that many of the most serious diseases caused by the environmental contamination including the Cancer, or lead poisoning would only show up years later. The time period of six months for filing an application for adjudication of disputes is so less of a time.
5. **It would be infinitely better for the Tribunal's expert members to be of technical and scientific background:** The maximum number of members in the tribunal definitely need not be 20, which is a large number indeed. More than the administrative experience, what is required is the experience and knowledge in Science, Public Health and Environmental Studies. This would bring forth real experts.