

| LAW AUDIENCE JOURNAL |
| VOLUME 2 | ISSUE 1 | ISSN (O): 2581-6705 |
| INDEXED JOURNAL | IPI VALUE (2019): 2.32 |
| IMPACT FACTOR (2018): 2.527 |

| LAW AUDIENCE JOURNAL® |

| VOLUME 2 & ISSUE 1 |

| ISSN (O): 2581-6705 |

EDITED BY:

LAW AUDIENCE JOURNAL'S

EDITORIAL BOARD

| LAW AUDIENCE JOURNAL |
| VOLUME 2 | ISSUE 1 | ISSN (O): 2581-6705 |
| INDEXED JOURNAL | IPI VALUE (2019): 2.32 |
| IMPACT FACTOR (2018): 2.527 |

| COPYRIGHT © 2020 BY LAW AUDIENCE JOURNAL |

(ISSN (O): 2581-6705)

*All Copyrights are reserved with the Author. But, however, the Author has granted to the Journal (**Law Audience Journal**), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.*

No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

*For permission requests, write to the publisher, subject of the email must be **"Permission Required"** at the email addresses given below.*

Email: lawjournal@lawaudience.com, info@lawaudience.com,

Phone: +91-8351033361,

Website: www.lawaudience.com.

Facebook: www.facebook.com/lawaudience

Instagram: www.instagram.com/lawaudienceofficial

Contact Timings: 5:00 PM to 9:00 PM.

DISCLAIMER:

*This article is published free of cost as a part of **Law Audience's 4th National Online Essay Writing Competition 2020**. No separate Article Processing Fee is charged. Law Audience Journal (ISSN (O): 2581-6705) and Its Editorial Board Members do not guarantee that the material published in it is 100 percent reliable. You can rely upon it at your own risk. But, however, the Journal and Its Editorial Board Members have taken the proper steps to provide the readers with relevant material. Proper footnotes & references have been given to avoid any copyright or plagiarism issue. Articles published in **Volume 2 & Issue 1** are the original work of the authors.*

*Views or Opinions or Suggestions (**if any**), expressed or published in the Journal are the personal point of views of the Author(s) or Contributor(s) and the Journal & Its Editorial Board Members are not liable for the same.*

While every effort has been made to avoid any mistake or omission, this publication is published online on the condition and understanding that the publisher shall not be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work.

All disputes subject to the exclusive jurisdiction of Courts, Tribunals and Forums at Himachal Pradesh only.

**“CONDEMNATION AND LOOPHOLES OF NATIONAL
GREEN TRIBUNAL ACT 2010.”**

**AUTHORED BY: MS. MANVI ADHIKARI (B.A.LL.B),
BANASTHALI VIDYAPITH, JAIPUR,
EMAIL ID: MANVI.ADHIKARI20@GMAIL.COM.**

I. INTRODUCTION:

India in the present scenario is dealing with many problems related to environmental degradation. These environmental problems have led to a rise in diseases and health issues to human beings. An imbalance which is caused in the environment by pollution threatens the survival of all forms of life. In order to deal with such a situation government had made many laws to curb this problem. On 18 October, 2010 government made a new law National Green Tribunal Act as there was a dire need for speedy justice for resolving the matters concerning environmental issues. In India, from the time of independence, a lot of policies and laws related to environmental issues have been made but these laws have not been successful in solving the issue related to the environment. The pollution in the environment is still rising with a high rage which is causing more and more deaths. The NGT Act has a lot of loopholes in it which is needed to be recognized and rectified. There are many environmental issues in India like air pollution, water pollution, garbage domestically prohibited goods and pollution of the natural environment is some of the challenges for India. Indian environmentalist believes that pollution in India is as bad as terrorism.

Till now many laws have been made in India like:

- *National Green Tribunal Act 2010;*
- *The Air Prevention and Control of Pollution Act 1974;*

| LAW AUDIENCE JOURNAL |
| VOLUME 2 | ISSUE 1 | ISSN (O): 2581-6705 |
| INDEXED JOURNAL | IPI VALUE (2019): 2.32 |
| IMPACT FACTOR (2018): 2.527 |

- *The Water Prevention and Control of Pollution Act 1974;*
- *The Environment Protection Act 1986;*

Despite these active passages of laws been launched by the Central Government of India, the reality of environmental quality is still the same. It has been a situation of concern for those people who are poor and have no choice but to sustain life in whatever way possible.

The NGT Act which establishes the National Green Tribunal was passed in 2010 under article 21 of the Indian Constitution which guarantees the citizen of India the right to the healthy environment¹. The main reason why NGT was established was to resolve disputes related to the environment as they are the rising concern for society. This Act was formed for providing successful and speedy disposal of the cases relating to environmental protection and conservation of forest and other resources that are natural.

This Act also helps in providing enforcement of any legal right relating to the environment. The Tribunal has five benches the principal bench is situated at New Delhi and the other benches are at Pune which is the Western Zone Bench, Bhopal which is the Central Zone Bench, Kolkata which is the Eastern Zone Bench and Chennai which is the Southern Zone Bench. Each of the benches has been specified with a geographical jurisdiction which covers several states in a region.

The answer to the question that why to have such a body like NGT is that in India the High Courts and Supreme Court is loaded and overburdened with a large number of cases and in order to get effective prevention of environmental pollution the issue should be resolved in an effective manner which was not at all possible in the present context of judicial administration. So it was felt that there is an urgent need to have an alternative forum so that cases related to the environment were resolved with no delay. The basic idea of having environmental Court came through the Supreme Court of India. Supreme Court in its verdict highlighted the obstacles faced by the judges in resolving cases of environment.

¹ The Indian Constitution 1949 Art 21“no person shall be deprived of his life or personal liberty except according to the procedures established by law”.

The Supreme Court in ²*M.C Mehta v. Union of India*, observed that environmental Courts are important to be established for speedy disposal of environmental cases and reiterated it time and again. Therefore the Indian Parliament passed the *National Environment Tribunal Act, 1995* and *National Environment Appellate Authority Act, 1997*. But both the Acts were not successful and failed to provide a better result. Ultimately the Indian Parliament passed the *National Green Tribunal Act, 2010*, to handle all the cases related to the environment. These Courts would have the benefit of the advice of expert and people who are qualified and have scientific knowledge in the judicial process.

Under Article 21 of the Indian Constitution the Supreme Court of India in the case of ³*Charan Lal Sahu v. Union of India*, observed that Right to life includes right to a better quality of life and to have a wholesome environment. It is a fundamental right to have a pure and hygienic environment. Therefore life to live with human dignity becomes absolutely useless in the absence of healthy surroundings. In this case, the Court opined, “*under the existing civil law, damages are determined after a long litigation which ultimately destroys the very purpose of avoiding damages.*”

II. AIMS OF THE OBJECTIVE:

The National Green Tribunal provides for huge importance to Article 21 of the Indian Constitution concerning the environmental matters. In the ⁴*Subhash Kumar v. State of Bihar*, the Supreme Court observed that the Right to Live is a fundamental right under the Article 21 of the Constitution and it include right to have a pollution-free environment and if anybody violates this right then the person can enforce his right by way of a petition under Article 32. Rights that are provided under Article 21 are basic human rights and so it cannot and should not be overlooked. In the ambit of right to life protection and preservation of the environment and making the environment a pollution-free environment all these things are included.

²1987 AIR 1086, 1987 SCR 1 819

³1986 AIR 107, 1986 SCR (1) 441

⁴1991 AIR 420, 1991 SCR (1) 5

III. POWERS OF NATIONAL GREEN TRIBUNAL:

The National Green Tribunal has the authority to listen to all civil cases related to environmental issues and it also includes the questions that are linked with the implementation of laws mentioned in schedule 1 of the National Green Tribunal Act.

This includes the following:

- *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.*

This implies that any of the violation caused by any person or organization pertaining only to these laws, or any order/ decision taken by the government under this can be challenged before the National Green Tribunal. Importantly, NGT does not have the power to hear matters related to the Wildlife Protection Act 1972, and the Indian Forest Act, 1927 and various laws enacted by States that are related to forest, tree conservation etc. Therefore, some specific and significant issues related to these laws cannot be heard before the NGT. For this, the person can approach the State High Court or the Supreme Court by filing a writ petition or by filing an original suit before a civil judge.

IV. THE PRINCIPAL OF JUSTICE OF NGT:

The National Green Tribunal does not work according to the procedures established under the Code of Civil Procedure, 1908, but is guided by the principles of natural justice. Furthermore, NGT is also not bound by the rules of evidences as mentioned under the Indian Evidence Act, 1872. Therefore, it is comparatively easier for the conservative groups to bring facts and issues before NGT rather than approaching a Court for it. While passing any of the decision/order/awards, the NGT can apply the principle of sustainable development, the

precautionary principle and the principle related to polluter pay. But if NGT holds that any claim is false it can impose cost due to any interim injunction.

V. CRITICISM AND LOOPHOLE OF THE NATIONAL GREEN TRIBUNAL ACT, 2010:

It has been around ten years since the National Green Tribunal Act has been passed till now there has been no changes made to the environment as the pollution has reached to a great height and there has been no solution made for it. The people who are below the poverty line have to suffer more than the rich. The main aim or the objective of this Act was to provide speedy justice in the matters related to the environment and to also provide a safe environment to everyone as it a basic human right. But all the objectives of the National Green Tribunal Act till now have not been accomplished.

The Act has many lacuna or loopholes in it which need to be rectified. Some of these loopholes are;

1. Lacks Judicial Independence:

The Act lacks judicial independence from the government and this is the first criticism it faces. The rule of the National Green Tribunal Act allows the bureaucrats to be appointed and to work in the tribunal while holding their post in the government offices.

This becomes a problematic situation that the person who is working under the government or who is a government official will never rule against the government because as he is a part of the government he may face pressure if he goes against the central government and this may put an obstacle in providing justice.

2. Scarce Funding:

The total amount of funds which are received by National Green Tribunal is very low. They get a very low amount of funding and therefore the number of cases in the tribunal remains pending.

3. **Criticism For Yamuna Floodplain:**

The World Cultural Festival was organized by the *Shri Shri Ravishankar Foundation* on the floodplain of river Yamuna; environmentalist believes that such an event can cause permanent and heavy damages to the aquatic ecosystem in the affected area. The work at the site has changed the natural gradient of the floodplain and this can diminish its flood-carrying capacity. The small water bodies and aquatic animals have suffered great danger because of this. The National Green Tribunal for this instead of taking some action just imposed a fine of rupees five crores on the organization, and just asked them to undertake some action to restore the area to its original state. It is the duty of the tribunal to prevent these actions which are spoiling the environment.

4. **Limited Benches:**

The National Green Tribunal Act provided for only five benches which are situated at different places. The tribunal is situated at New Delhi, Chennai, Bhopal, Pune and Kolkata this fails to provide speedy justice on the matter related to environmental issues. As there are very limited bench of the tribunal the main of resolving in a fast way of NGT fails and so this is one of the loopholes of the Act. The cases in the tribunal remain pending, more than seven to ten thousand cases are still pending in the tribunal. This has reduced access to justice. As there are limited benches people from different regions other than these benches face problem in having access to this tribunal.

5. **Methods of Selection of Member:**

The method of selecting the members of the National Green Tribunal has not been mentioned in the Act.

6. **Minimum Member:**

In the National Green Tribunal Act, there was no information regarding the minimum number of members of the tribunal. Tribunal has around ten member in the expert panel and ten-members in the judicial panel which is very low. This could bring an obstacle in providing quick justice.

7. **The Act Skips Certain Important Law:**

The National Green Tribunal Act does not provide the power to deal with certain laws that are related to the environment such as the *Wildlife Protection Act 1972*, *the Indian Forest Act, 1927*, and various laws enacted by the State that are related to the forest, trees conservation etc. Therefore, there are some important and significant issues that cannot be heard by the National Green Tribunal. This restricts the tribunal from resolving problems related to these issues. Therefore, it is considered as an important loophole that a person cannot approach the tribunal for every environmental issue. The tribunal cannot file a suit against any person or organization for cutting trees in a forest even though it is related to the environment. Anything which is not covered under the specified mentioned Act for that NGT is not competent to admit the suit for that matter. So it becomes little ambiguous for a person to comprehend when to go to the tribunal to seek a remedy.

8. **Determination of Compensation:**

There is an absence of a formula based rule in the determination of the compensation. There is no specific rule for determining any compensation from the person violation of any law related to the environment.

9. **Pendency of Cases:**

The National Green Tribunal lacks human and financial resources and this has led to the high pendency of cases. It was one of the objectives of NGT to have the disposal of appeals within the time frame of six months. So that it could provide disposal of cases quickly but because of this loophole the objective of NGT cannot be fulfilled.

10. **National Green Tribunal Jurisdiction:**

The jurisdiction of National Green Tribunal is totally confined to where the community at large is affected by some specific form of activities such as pollution. The tribunal should not exclude the individual or a group of the individual as they also deserve as much protection as to a community at large. This loophole of the tribunal restricts the working of the tribunal.

11. Act Remain Silent On Paying Of Compensation:

The National Green Tribunal Act remains silent on the provision that who will pay the compensation or cost of damages received by the public or the environment. *The Ministry of Environment, Forest and Climatic Change (MOEFCC)* also says that this provision should be included in the NGT act and should not be left on the discretion of the executive.

12. Lack of Environmental Finesse of Its Expert Member:

Sometimes the environmental finesse of its expert members or the panel is also questioned. The expert members are usually the expert of one particular field and not of the environment as a whole. For example, an expert who has been working on forests for many years would not be able to give a decision or resolve the issues related to industrial pollution.

Therefore, in many of the cases of the tribunal the judgment is vague and not relevant. There have been many judgments of National Green Tribunal which has been questioned for instance there was a judgment dealing with *the Okhla Bird Sanctuary* in Noida. In this, the principal bench of NGT gave a verdict to stop all the construction work which was going on within the radius of ten kilometers of the sanctuary as the government had not notified the eco-sensitive zone around it at that time.

This order stopped construction only at Uttar Pradesh but did not do so in the parts of Delhi which also fall in the radius of ten kilometers. Therefore the selective and the judicial nature of this judgment were criticized.

Although the National Green Tribunal has done well so far still there are lacunae in the Act which provides us with the provision for having such a body. There many improvements required for providing of speedy justice, accessible and much more effective justice for the environmental issues and for this the National Green Tribunal must be strengthened and not weakened.

VI. CONCLUSION:

The National Green Tribunal Act, 2010 laid the foundation of the National Green Tribunal which aims at providing for the expeditious and efficient disposal of cases relating to environmental protection and conservation of forests and other natural resources. It also includes enforcement of any legal right relating to the environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The Tribunal's dedicated jurisdiction in environmental issue shall provide speedy environmental justice and help to reduce the burden of litigation in the Higher Courts. NGT has done well so far but many improvements are still required in the Act to make the effective, accessible and speedy resolution of issues related to the environment.

To secure the environment with better and faster enforcement of NGT orders the Central and the State government should work together in collaboration with the National Green Tribunal. The Act has a provision for appeal to the tribunal within the time period of six months of the origin of the cause of the environmental problem this is a very short time period and so it should be increased to a considerable time.

With the rapid expansion of the industries and the factories and the beginning of the developmental activities in the country a large number of issues related to the environment have come up and therefore there is a great need for the establishment of these bodies like National Green Tribunal to control such situation. India in the present scenario is one of the most polluted countries in the world. Around ten years have been passed to this Act but still, the pollution level in India is rising the act has failed to meet its aims and objectives. In many of the world rankings, India's rank is very low. In the environmental performance index, India ranks a low 125 out of 132 countries. According to a study, nearly 35 percent of India's total land area is subjected to serious environmental pollution. India's environmentalist acknowledges that pollution is as bad as terrorism so it is very important to curb this issue.