



- Tribunals are institutions established for discharging judicial or quasi-judicial duties.
- The objective may be to reduce caseload of the judiciary or to bring in subject expertise for technical matters.
- The National Green Tribunal Act, 2010 came into force on 18th October 2010 for the effective & expeditious disposal of cases relating to environmental protection & conservation of forests and other natural resources including enforcement of any legal right relating to the environment & giving relief & compensation for damages to persons and property and matters connected therewith or incidental thereto.

OBJECTIVES OF NGT

- Effective and expeditious disposal of cases that are related to the protection and conservation of the environment, forests, and other natural resources.
- To give relief and compensation for any damages caused to persons and properties.
- To handle various environmental disputes that involve multi-disciplinary issues.

ORGANISATIONAL STRUCTURE

- The National Green Tribunal (NGT) comprises the Chairperson, the Judicial Members & the Expert Members.
- There should be a minimum of 10 & a maximum of 20 full-time Judicial as well as Expert members in the NGT.
- All these members are required to hold the office for five years and are not eligible for reappointment.
- The Chairperson of the National Green Tribunal (NGT) is appointed by the Central Government of India in accordance with the Chief Justice of India.
- A Selection Committee is formed by the central government of India for the appointment of Judicial Members and Expert Members.

POWERS OF NGT

- Over the past few years, the National Green Tribunal (NGT) developed as an important body for regulation of the environment and passing strict orders on issues related to pollution, deforestation, waste management, etc.
- NGT provides a way for the evolution of environmental jurisprudence through the development of an alternative dispute resolution mechanism.
- It helps in the reduction of the litigation burden on environmental matters in the higher courts.

- NGT provides a faster solution for various environment-related disputes that are less formal & less expensive.
- It curbs environment-damaging activities. NGT ensures the strict observance of the Environmental Impact Assessment process
- NGT provides reliefs & compensations for any damages caused to persons and properties.
- The National Green Tribunal resolves various civil cases under the following seven laws that are related to the environment: 1) Water Act (Prevention and Control of Pollution), 1974 2) Water Cess Act (Prevention and Control of Pollution), 1977 3) Forest Act (Conservation), 1980 4) Air Act (Prevention and Control of Pollution), 1981 5) Environment (Protection) Act, 1986 6) Public Liability Insurance Act, 1991 7) Biological Diversity Act, 2002

EVOLUTION OF NGT

- Increasing litigations in court – The vast & all-encompassing scope, which covers forests, wildlife, environment, climate change and coastal protection, is that it gives rise to an equally diverse volume of litigation.
- The sheer number & complexity of cases, with several more being added every week, led the Supreme Court to designate a special Bench to handle these matters.
- This Bench, which met every Friday to deliberate on these and many other matters, came to be known fittingly as the 'Forest Bench'.
- Parliament had passed laws related to the establishment of a National Environment Tribunal (1995) & a National Environment Appellate Authority (1997).
- The Authority was intended to act primarily as a forum for challenges to environmental clearances while the Tribunal could award limited amounts of compensation in cases of environmental damage to life or property.
- In judgments such as M.C. Mehta & Anr. Etc vs Union Of India & Ors. Etc (1986), Justice P.N. Bhagwati, had suggested to have an environment court .
- In 1999 by the Supreme Court in the, A.P. Pollution Control Board vs Prof. M.V. Nayudu case which added its own emphasis on the need for a court that was "a combination of a Judge and Technical Experts" with an appeal to the Supreme Court from the Environmental Court.
- The NGT's first year was a turbulent one. The first draft of the NGT Bill was circulated as part of a pre-

legislative consultation process and inspired widespread debate.

- Some experts argued that it would contribute to the trend of 'tribunalisation'
- Some NGOs argued that the word 'Green' could act as a green signal to potential polluters.
- Following its passage, the Madras High Court even issued notice on a petition which had challenged the Act as unconstitutional and stayed appointments to the body
- Some experts intended for the parent bench of the NGT to be in Bhopal, as a tribute and homage to the memory of the victims of the Bhopal Gas Tragedy of 1984. However, many of the jurists suggested that for administrative considerations, it would be better for the Chair to be at Delhi.
- The National Green Tribunal, the world's only dedicated environmental court, came into being, on October 18, 2010.
- In its decade of existence, the NGT has delivered some seminal judgments & has given environmental jurisprudence a leg-up.
- Since it began operations in July 2011 & till May 2021, the NGT has heard 32,626 cases, of which 29,760 have been disposed off, which, at least on the surface, is a heartening record.
- The current tribunal comprises 10-20 judicial members & an equal representation of subject experts, as mandated by the act to maintain a balance. The full strength of the benches has not been established till date.
- Judges from the high court & the Supreme Court are usually appointed as judicial members. The experts are doctorates either in physical sciences or life sciences with 15 years of experience. Engineering post-graduates can also act as expert members.
- The clearance processes, handled by the ministry's statutory advisory bodies, do not have a fixed process of engaging with other stakeholders directly.
- 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.
- It is mandated to make and endeavour for disposal of applications within 6 months of filing of the same.
- Initially, the NGT is proposed to be set up at five places of sittings & 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.

- The National Green Tribunal Act, 2010 under Section 19 gives the Tribunal power to regulate its own procedure.
- Tribunal is not bound by procedure under the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 and is guided by principles of natural justice.
- Tribunal is vested with the powers of a civil court under the Code of Civil Procedure for discharging its functions.
- The Tribunal entertains letter petitions which bring to light instances of substantial environmental damage.
- A valid complaint is taken note of even in the absence of any representation from the aggrieved party & response is sought by email and can be filed even without an advocate.
- Upon adjudication of claims by the Tribunal, select members or committees, including those comprising former high court judges, former chief secretaries or subject matter experts may be appointed to ensure timely execution of the orders, in cases where it is deemed appropriate by the Tribunal.

SOME ACCOMPLISHMENTS

- Since its inception, the NGT has, apart from creating a new breed of legal practitioners, protected vast acres of forest land, halted polluting construction activities in metros and smaller towns.
- It has penalised errant officials who have turned a blind eye towards enforcing the laws, and held large corporate entities to account.
- It has protected the rights of tribal communities and ensured the enforcement of the "polluter pays" principle in letter and spirit.
- In this endeavour it has been assisted by brilliant practitioners, many of whom are young counsels, passionate and dedicated towards protecting the environment.
- The NGT must focus less on governance issues & more on adjudication. Benches have to expand manifold. Vacancies have to be filled quickly.
- The Centre told the Supreme Court that the National Green Tribunal (NGT) does not have the power to take cognisance of a matter on its own as it is not there in the statute.
- In *Almitra Patel Vs Union of India* case, it directed states to implement Solid Waste Management Rules & prohibited open burning of waste on lands.
- It suspended the clearance given to the South Korean steel maker, POSCO, to set up a 12 million-tonne steel plant in Odisha
- Hearing the *Save Mon Federation Vs Union of India* case, the NGT suspended a ₹6,400-crore hydro project, to save the habitat of a bird
- A December 2016 amendment to Environment Impact Assessment 2006 notification — the amendments basically sought to give local authorities powers to grant environmental

clearance to builders — was thrown out of the window to circumvent the 2006 rules.

- Projects which were approved in violation of the law such as an Aranmula Airport, Kerala; Lower Demwe Hydro Power Project and Nyamnjangu in Arunachal Pradesh; mining projects in Goa; and coal mining projects in Chhattisgarh were either cancelled or fresh assessments were directed.
- In one of these matters, the NGT had earlier taken suo motu cognisance on the issue pertaining to solid waste management in Maharashtra and imposed cost of ₹5 crore on the municipal corporation.
- NGT has constituted an eight-member National Task Force to combat air pollution and monitor remedial steps to improve air quality.
- The NTF will comprise senior officials from the Ministry of Environment, Forests and Climate Change, Ministries of Housing and Urban Affairs, Petroleum, Transport, Power, Agriculture, Health and the Central Pollution Control Board.
- The NTF may also monitor enforcement of laid down air quality standards beyond nonattainment cities in other identified air polluted areas where air quality is poor and above.
- The Chief Secretaries of all States and Union Territories may continue to monitor progress in execution of action plans at the State-level with the assistance of monitoring cells in their offices and the Air Quality Monitoring Committee.
- An expert appointed to NGT should have five years of experience in dealing with environmental matters either in the Central government or in a State government or in any national or State institution, as stipulated under Section 5(2)(b) of the NGT Act, 2010.
- The Act lists the qualifications required to be appointed as the Chairperson, Judicial Member as well as Expert Member of NGT.
- According to the law, the Expert Member must have had administrative experience of 15 years, including five years in dealing with environmental matters in the Central or State government or in a reputed national or State institution.
- Though the Act had not specifically defined the expression, 'environmental matters', the Madras high court said that it can take its cue from Section 5(2)(a)
- Section 5 (2) (a) gives a rough idea of the term 'environmental matters' - experience in the field of environment & forests – including pollution control, hazardous substance management, environment impact assessment, climate change management; biological diversity management and forest conservation – in a reputed national level institution.
- Observing that all five zonal Benches of the NGT are equally powerful and their orders are applicable

across India, the Madras High Court disapproved of a 2017 Central notification, which terms the north zone Bench in Delhi as the Principal Bench.

- Justice Kirubakaran observed, "Vesting of power only with the Bench in Delhi is not contemplated anywhere in the statute, even though power is actually concentrated in Delhi."
- Divided into five zones- north, west, central, south and east and one Bench of the NGT was established for each of them, with territorial jurisdiction over specified States, only for the convenience of litigants residing in the zones.
- Many lawyers & insiders believe that until the NGT became a force (many credit Justice Swatanter Kumar, NGT's Chairperson in 2012-2017 for this), environment laws were mostly followed in breach.
- Prof Geetanjoy Sahu of the Tata Institute of Social Studies notes in a paper in the Journal of Indian Environmental Law that outcomes of the Tehri Dam, Narmada Dam cases, and the construction of a thermal power plant at Dahanu, the Akshardham Temple and Commonwealth Games Village show the "hands-off approach" of the Supreme Court, which adopted a stance of "non-interference" on the premise that the issues involve scientific and technical matters that can be addressed only by experts.
- The NGT, has employed legal and scientific methods and assessed environment impact assessment reports before deciding.
- Concepts such as "cumulative impact assessment" study of incremental pollution became part of the decision making process.
- The NGT of today is a mere shadow of what it was a few years back," says lawyer Ritwick Dutta. "Since 2018, the NGT dismissed all except three appeals filed before it, most of them on procedural grounds
- Dutta also points to a recent trend of the NGT taking suo motto cognisance of cases based on news reports, which, he says denies the local people the right to intervene or file applications.
- When the case goes to the Supreme Court, there is no one to defend the order of the NGT. It is an irony that the tribunal set up to protect the citizens right to clean environment denies the public to participate in the hearing."
- NGT only has three judicial and three expert members against the sanctioned strength of 10 each. Many see the vacant posts as a sign of government's non-seriousness.
- Prof R Nagendran, a former Expert Member of NGT, says that NGT is an institution the country should be proud of and not to be seen as an "obstacle to development"
- While Justice Swatanter Kumar demitted office on December 19, 2017, his successor, Justice A K Goel was appointed only on July 6, 2018, a day after he

LOSING THE BITE

retired from Supreme Court, giving an impression that the government had kept the key post vacant for him. (HBR)

- All three expert members are from the Indian Forest Service. Much technical work is outsourced.
- Some lawyers say that the “disposing off” of cases these days is more in terms of directing the department concerned to “look into the matter and take appropriate action.
- In the Mopa airport case, the Supreme Court was critical of the manner in which the NGT dismissed the appeal through a one-para judgment.
- Experts like Prof Sahu observe that often NGT’s directions are not implemented and the tribunal has no powers to follow-up, nor is there a mechanism for it to re-work its orders if found infeasible to implement.
- With this latest round of appointment, all the expert members of the NGT are either retired IAS or IFS officers. This will have important implications on the manner of functioning of the NGT.
- The NGT Act, 2010, contemplates that Expert Members of the Tribunal can be from two categories: First, those who have a degree in Master of Science with PhD or Master of Technology along with experience in the field of environment.
- Second those with “administrative experience of fifteen years including five years dealing with environmental matters in Central or State government”.
- If one goes by the qualification prescribed for the second category, every IAS/IFS officer who has put in two decades in the service would qualify as an ‘expert’ in the field of environment.
- Till the year 2014, Expert members who were appointed comprised professors, academicians and only some retired bureaucrats.
- In the last few years has seen a steady decline in the quality of decisions from the NGT – most cases are either dismissed on hyper technical grounds or the NGT has refused to adjudicate on the merits of the case.
- When the legal challenge to the Mopa airport in Goa was dismissed by the NGT, the Supreme Court in Hanuman Laxman Aroskar (2019) was constrained to observe that “In failing to carry out a merits-based review, the NGT has not discharged an adjudicatory function.”
- Reminding the NGT of its mandate, Justice Ravindra Bhat writing for the bench highlighted that “An appeal to the NGT in such matters is no ordinary matter; it has the potential of irrevocably changing the environment with the possibility of likely injury” (Sridevi Datla Vs Union of India).
- The Supreme Court has directed the NGT to now consider the appeal on merits.

- The effect of having a tribunal dominated by retired bureaucrats is clearly visible in the NGT’s decision. In 2020, out of the 34 Appeals filed challenging approvals granted by the govt, it dismissed 29.
- In some of its recent decisions the NGT has clearly stated that it is “for the government of the nation and not for the Court to decide whether the deposits should be exploited at the cost of ecology and environmental consideration” (Laxmi Chauhan Vs Union of India 2020).
- The NGT needs to be restructured, by ensuring that it does not continue to be a “civil services club”.
- One of its limitations is the ‘lack of environmental finesse’ of its expert members. Usually, the expert members are specialists in one particular field and not on environment as a whole.
- It should also identify institutions and experts who can help it to scientifically estimate environmental damages, compensation and fines on a case-to-case basis.
- NGT has authorities similar to law-enforcement agencies but it is not like a regular court which has the power to adjudicate all types of disputes.
- NGT has the power of enforcing laws on administrative agencies. It can only issue recommendations for punishment in a case, However, such punishment can be challenged in a court of law, which is the final authority, limiting the tribunal’s role.
- The NGT act mentions that the green court’s decisions can be challenged before the Supreme Court.
- In spite of this, petitioners have been invoking Article 226 (power of High Courts to issue certain writs) to challenge decisions before the High Courts, slowing down the litigation process.

UNITED KINGDOM’S ENVIRONMENT AGENCY

- United Kingdom’s Environment Agency (EA) is a non-departmental public body established in 1995 to protect and enhance the country’s environment.
- The agency is financially much more robust. It is sponsored by the Department for Environment, Food & Rural Affairs (DEFRA).
- EA’s annual expenditure for 2017-18 was £1.3 billion (approximately Rs 1,28,22,83,60,949) and it had 10,043 full-time employees as on March 31, 2018.
- Additional money is raised from the issuing of licences and permits such as abstraction licences, waste handler registrations, among others.
- EA’s power to prosecute is set in law and its decisions are independent of government or any third party influence.
- In 2017, Thames Water Utilities Ltd was fined an unprecedented £20,361,140 for a series of significant pollution incidents on the River Thames.

- The polluter has limited rights to challenge EA's decisions in higher court. However, in most of the cases the final decision goes in the favour of EA.
- NGT should have been provided more powers similar to EA in the field of jurisdiction and infrastructure, and these power should be subject to judicial review.
- Other country laws (polluters pay principle) related to environment should also be included within the ambit of the NGT Act.
- In an order issued on February 9, 2018, the Supreme Court has stayed the Central Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 (i.e., the Tribunal Rules) which gives the central government complete control over appointment of tribunal members, including the National Green Tribunal (NGT). Henceforth, the terms and conditions for appointment and termination of NGT members will be governed by the National Green Tribunal Act 2010.
- Earlier in 2017, the Centre had introduced new rules for appointment and termination of tribunal members, including the NGT, overriding the existing provisions of the National Green Tribunal Act 2010.
- The National Green Tribunal (NGT) banned the rat hole mines on April 2014 after the All Dimasa Students' Union had filed a case highlighting unregulated mining in Jaintia Hills.
- As per Section 20 of the NGT Act, 2010, while passing any order, decision or award, the Tribunal shall apply three core principles, including the 'principles of sustainable development, precautionary principle, & the polluter pays principle'
- The National Green Tribunal (NGT) is vested with suo motu power, the Supreme Court ruled on October 2021
- A bench headed by Justice A M Khanwilkar said it must adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of the country toothless and ineffective.
- The tribunal has had trouble with MoEF on various counts - to begin with, even on providing the infrastructure needed to run it.
- The Supreme Court had to step in and force the govt to act when some judicial members of the tribunal resigned.
- One of the ideas proposed in the discussions was to look at turning the existing judicial tribunal into an administrative one under the ministry itself.
- In one of the recent cases, the Union government and the petitioners questioned the NGT's powers to question the correctness of environmental rules and regulations.
- In another recent judgment, the NGT had held it illegal to hire the services of retired bureaucrats as chairs of the statutory expert appraisal committees that review projects for environmental clearances
- Supreme court in its judgement on April 2021 said that , The National Green Tribunal does not have the powers to examine validity of laws or strike them down