

**AIR POLLUTION IN INDIA: ASSESSING THE ROLE OF NATIONAL
GREEN TRIBUNAL**- Anish Mahapatra & Ishaan Michael¹**ABSTRACT**

For the past few years there is a mounting concern over the problem of atmospheric pollution in our country. The menace of air pollution is not limited only to the major or metropolitan cities anymore. Over the past decade, it has spread across various small cities and towns as well. In such a situation, it cannot be denied a key and important role of controlling Air Pollution is played by the National Green Tribunal as they are one of the official authorities to control this menace. This paper, in its limited scope, aims to assess the initiative taken up by the National Green Tribunal in keeping a check on air pollution till now and also addresses the obstructions before it in doing so. The author begins by discussing and analyzing some of the important provisions statutorily laid down in National Green Tribunal Act. The article continues by studying the role of National Green Tribunal in keeping a check on air pollution with the help of case laws. Further, the authors have identified the issues which act as an obstruction for the National Green Tribunal in achieving its goal of clean and pollution free atmosphere and also suggested ways in which those issues can be resolved.

INTRODUCTION

In India, the issue of air contamination currently is by all accounts consistently developing and uncontrolled. It has now become a public issue having the capacity to seriously influence general well-being of the citizens alongside the economy of the country also. It's an obvious fact

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since the hazard of air contamination is not any more restricted uniquely to the major or metro urban communities. Over the previous decade, it has spread across the more modest urban communities and towns, for example, Patna, Muzaffarpur; Ranchi, Jharia, Bastacola; Ghaziabad, Kanpur, Allahabad, Faridabad; Alwar, etc.² **Section 2 (a) of The Air (Prevention and Control of Prevention) Act, 1981**³ characterizes air toxin as “any strong, fluid or vaporous substance (counting clamor) present in the climate in such fixation as might be or will in general be damaging to individuals or other living animals or plants or property or climate.” Further, statement (b) of a similar area proceeds to characterize air contamination as “the presence in the environment of any air pollutant.”⁴

The public authority has set up legal bodies, for example, **Central Pollution Control Board (CPCB)**, **State Pollution Control Boards (SPCBs)**, and semi-legal bodies, for example, **Public Green Tribunal (National Green Tribunal)**, so they work in concordance for counteraction of contamination as a rule. Of late, the issue of air contamination has been the essential worry of the National Green Tribunal. It is apparent from the court's overwhelming methodology in giving severe rules and guiding the administrative specialists to make moves against infringement of those rules. In addition, different decisions have additionally been passed by the Tribunal, which shows the undertakings of the council to be aware of air contamination.

Nonetheless, notwithstanding the endeavors of the council the problem of air contamination appears to be a long way from being leveled out. In this piece, the creator has tried to dissect the job of National Green Tribunal with the assistance of case laws in keeping a mind air contamination the nation over, and recognize the obstacles in doing as such.

² Sunil Dahiya, Lauri Myllyvirta & Nandikesh Sivalingam, Airpocalypse: Assessment of Air Pollution in Indian Cities Greenpeace (2018), <https://www.greenpeace.org/india/en/publication/866/airpocalypse-assessment-of-air-pollution-in-indian-cities/>

³ National Green Tribunal Act, 2010, No. 19, Acts of Parliament Section 2 (a)

⁴ National Green Tribunal Act, 2010, No. 19, Acts of Parliament Section 2 (b)

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THE NATIONAL GREEN TRIBUNAL ACT

The Parliament of India by prudence of the National Green Tribunal Act of 2010, set up The National Green Tribunal. The Tribunal was set up with a goal to give a gathering to powerful and speedy removal of cases identifying with the climate. This Act came into power on October 10, 2010. Another reason behind setting up this court was to substitute the obsolete system set somewhere near the National Environment Tribunal Act, 1957 and National Environment Appellate Authority Act, 1997. These demonstrations preceding the foundation of the National Green Tribunal and the National Green Tribunal Act set out the system for building up the environmental courts.⁵

At first the court had a chief seat in Delhi, which was later on followed by the foundation of four zonal seats in Kolkata, Bhopal, Chennai and Pune. The introduction of the Act expresses that the council has been established to do commitments cherished under Article 21 of the Constitution.⁶ The court involves the legal individuals and master individuals from eight distinct fields, for example, material science, science, and herbal science, etc, whose work is to exhort and help the appointed authorities. It is going by a resigned Supreme Court judge and the other legal individuals are the resigned high court judges. Without a doubt, the incorporation of specialists from various fields to manage perhaps every part of the natural issues assists the National Green Tribunal with looking past the straightforward money saving advantage thought of a specific venture and serve the bigger premium of climate and advancement.⁷ Public Green Tribunal has the ward over all the common cases identifying with climate which are covered under the enactments enrolled in Schedule I of the National Green Tribunal Act, including the issues identified with The Air (Prevention and Control of Pollution) Act, 1981. However, it doesn't have the purview to engage cases falling under Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and different laws sanctioned by States identifying with woodlands, tree safeguarding, and

⁵ Ashna Kothiyal, Pinnacle of Environmental Protection in India: NGT (3 ed. 2018), <http://www.penacclaims.com/wp-content/uploads/2018/09/Ashna-Kothiyal.pdf>

⁶ Indian Constitution Article 21

⁷ Armin R. et al., *Assessing the National Green Tribunal after Four Years*, 5, JILS, 194 (2014)

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so on, notwithstanding the way that they could have an immediate bearing on Air contamination. The National Green Tribunal Act gives the court for the sake of request implementing system, the ability to force both discipline just as fine which can go as long as 3 years and 25 Crores individually in instances of infringement of its requests.

NATIONAL GREEN TRIBUNAL AND AIR POLLUTION

The National Green Tribunal has perpetually embraced a firm and watchful methodology in issues identifying with air contamination. The western zone seat of National Green Tribunal, arranged in Pune, has on account of **Charudatt Koli v. Sealord Containers Limited**⁸, seen that “the subject of air contamination control and air quality administration should be recognized and treated as an issue of general wellbeing and be given the significance it merits.”

National Green Tribunal while deciphering the meaning of the terms air poisons and air contamination was of the view that by including the word 'any' in the meanings of both the terms, the governing body expects to give them a substantial significance. In this manner, the specialized arrangement of the air quality to check whether there is any air contamination can't be and ought not be limited to the 12 boundaries advised in the National Ambient Air Quality Standards (NAAQS).⁹ As of late, in an issue identified with the news thing distributed¹⁰ the issue for thought included healing measures was taken up with a reason to improve the air nature of 102 urban areas recognized as 'non-achievement urban communities', which don't meet the National Ambient Air Quality Standards (NAAQS)¹¹. The Tribunal was entrusted with making a move against states that had not outfitted an activity plan to the Central Pollution Control Board (CPCB)¹². Essentially, the Tribunal coordinated that the states that neglect to submit activity plans before 30 April 2019 would be subject to pay climate pay of Rs. 1 crore each and states

⁸ (2019) SCC Online NGT 913

⁹ Id

¹⁰ Order of the National Green Tribunal regarding remedial measures to be taken to bring air quality of 102 cities under control, 15/03/2019 – India Environment Portal <http://www.indiaenvironmentportal.org.in/content/order-of-the-national-green-tribunal-regarding-remedial-measures-to-be-taken-to-bring-the-air-quality-of-102-cities-under-control>

¹¹ Id

¹² Id

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neglecting to eliminate insufficiencies in real life designs that were submitted before 30 April 2019 would be subject to pay Rs. 25 lakhs each¹³.

NATIONAL GREEN TRIBUNAL ON CROP BURNING

One of the significant sources and purpose for exhaustion of air quality and air contamination separately is the act of buildup crop consuming completed by ranchers. On account of **Vikrant Kumar Tongad v. Climate Pollution (Prevention and Control) Authority**,¹⁴ the court has examined widely the ecological risks brought about by the consuming of yields, for example, air contamination and issues identified with general wellbeing. It likewise saw that there are clear and explicit specialized elective goals accessible for the use of horticulture buildup as opposed to consuming them. It further guided the state governments to take endeavors to instruct the ranchers about the perils of yield consuming and furthermore requested that they give appropriate specialized and monetary help to the ranchers to urge them to fizzle out of harvests. On the off chance that individuals continue with the default and don't follow the headings, the council urged the states to make corrective and coercive moves under the current enactments in such cases.

As of late on account of **Smt. Ganga Lalwani v. Association of India &Ors**,¹⁵ where the issue included was identified with the avoidance of harvest consuming bringing about air contamination especially in the NCR district. The court was evidently unsatisfied with the means taken in such manner and named them as deficient and noticed, "the reality stays that there is unfriendly effect of consuming of such buildup on air quality causing air contamination related infections which now and again might be deadly. According to paper answers, to which reference will be made later, 15000 passings occurred in the year 2016 in the NCR locale because of air contamination." It further proceeded to coordinate both the focal and the state government to set up on their separate sites the dates of the fire occurrences, the officials liable

¹³ Id

¹⁴ MANU/GT/0209/2015

¹⁵ Original Application No. 666/2018, Order dated 15.10.2019

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for the subjects for the whole zones and activity taken for the disappointments on consistent schedule.

NATIONAL GREEN TRIBUNAL ON SOLID WASTE MANAGEMENT

The poor management of plastic waste and solid waste by the concerned authorities has also contributed significantly to the air pollution in our country. In the matter of **Saloni Singh vs. Union of India & Ors.**,¹⁶ the tribunal while considering the issue of non-compliance of solid and plastic waste management rules, observed, “it is, thus, clear that wherever there is a significant generation of solid and liquid waste and gaseous emissions, the Water Act and the Air Act are attracted so that regulatory functions can be exercised. There is every reason to presume that major railway stations (classified as such by the Railway Administration itself) are generating solid waste and discharging liquid waste water as well as releasing gaseous emissions unless shown to the contrary. Applying such test, it must be held that such stations are governed by the regulatory regime of the Water Act and the Air Act, unless shown to the contrary. There cannot be any blanket exclusion of or exemption from the regulatory regime for such major railway stations. Thus, all major railway stations must secure Consent to Establish/Expansion and Consent to operate under the Water Act and the Air Act within three months failing which the State Board will take necessary action under the provisions of Water and Air Act in accordance with law.”

Burning of waste in open has unarguably been one of the major sources of air pollution. Even National Green Tribunal has unequivocally been against this practice as can be seen in the aforementioned case as well. However, the tribunal moved one step forward in the case of **Almitra H. Patel & Ors. vs. Union of India**,¹⁷ and completely prohibited the open land burning of waste including the fires lit at landfill sites. It was held that the dumping and landfill sites are a serious source of air pollution and are a consistent and direct source of various diseases. Therefore, the only feasible solution seems to treat the waste in consonance with the rules of

¹⁶ Original Application No. 141/2014, Order dated 12.12.2019

¹⁷ MANU/GT/0150/2016

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2016 to ameliorate the situation and convert it to a source of power, fuel and benefit for society at large, in conformity with the Principles of Circular Economy. The tribunal also issued comprehensive directions to ensure effective and expeditious implementation of the Rules of 2016 so that, there remain no gaps in these rules.

SIGNIFICANT JUDGMENTS OF NATIONAL GREEN TRIBUNAL ON AIR POLLUTION

Although it's been only ten years since the establishment of National Green Tribunal, nevertheless, it has succeeded already in delivering some impactful judgments. One of such judgments is **Vardhaman Kaushik and Ors v. Union of India**,¹⁸ the tribunal observed that there are three major sources of air pollution. First being the open burning of plastic and solid waste including agricultural waste. Second being construction works and other allied activities emitting heavy dust particles. Third being pollution resulting from vehicular traffic and industrial emission. In the same case the tribunal stressed on how diesel vehicles are a major cause for deteriorating ambient air quality. The National Green Tribunal after having considered all these factors passed an order prohibiting:

1. Diesel-based vehicles which have been plying in the roads of NCR, Delhi for more than 10 years
2. Petrol-based vehicles which have been plying in the roads of NCR, Delhi for more than 15 years.

Apart from this the tribunal in this case has also discussed the pollution caused by the industrial emissions and construction works, and consequently directed the authorities to apply polluter pays principle on polluting industries and construction sites.

It was only during the proceedings of the aforementioned case, it came to light that Delhi is only the tip of the iceberg and there are other states as well, which are crippling with the issue of air

¹⁸ Original Application No. 21 of 2014, Order dated 07.04.2015

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pollution. Thereafter, National Green Tribunal ordered the concerned authorities to closely collect and monitor data to study the quality of air and lay down terms for curbing air pollution. The data collected pursuant to this order showed the pitiable condition of air quality in various Indian states and cities. This comprehensive data facilitated the tribunal in identifying the major sources of air pollution. Apart from these, this case also exposed the inadequate Air Quality Monitoring (AQM) technology in India. This poor condition of air quality and poor standards set to control the pollution, led to the establishment of the Central as well as State monitoring committees.¹⁹

The pollution level in the city of joy, i.e. Kolkata has been on an alarming level for the past few years.²⁰ The issue of Air Pollution in Kolkata and Howrah was dealt by the Eastern Zone Bench of National Green Tribunal in the case of **Subhas Datta v. State of West Bengal**.²¹ The tribunal was impressed by the finding of the Expert Committee, which was constituted to recommend measures for controlling air pollution in both the cities. The Tribunal making the recommendations of the committee, of the deciding factor laid down a direction requiring the authorities to phase out commercial vehicles that may have crossed the work cycle of 15 years or more. It further observed that the entering of the vehicles not belonging to the permissible specifications i.e. BS IV in both the cities shall be regulated and therefore issue directions in that regard. It also directed that “any vehicle plying within the twin city limits registered outside its territorial limits shall not be permitted to remain in the city beyond a period to be specified which shall not in any case be more than one week.” However, after two years of the aforementioned judgment, the tribunal was not impressed with the approach of the state government in following its order. Therefore, a fine of 5 five crore rupees was imposed upon the

¹⁹ 6 ELPR 199 (2018)

²⁰ Kolkata's Air quality index worse than Delhi: How did it become the most polluted city in India? India Today, <https://www.indiatoday.in/education-today/gk-current-affairs/story/kolkata-most-polluted-city-india>

²¹ MANU/GT/0160/2016

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state government by the tribunal in a contempt proceedings after it was held that the state failed to comply with the preceding order.²²

The tribunal has in numerous cases dealt with the issue of air pollution caused by the industries and has also keeping in consideration the principles of sustainable development, issued several guidelines to be followed by the industries and pollution control boards. However, it has also come down heavily in cases of blatant violations of the environmental norms. Recently in the matter of **Mayank Manohar & Paras Singh v. GNCTD & Ors.**,²³ in the month of November 2018, the tribunal directed the Delhi Government to immediately shut down over 4,770 industrial units running illegally in the residential areas of Delhi and also directed to adopt coercive measures to recover compensation for illegal operation of such units in accordance with law apart from prosecution.

In the last ten years the National Green Tribunal has come a long way since its inception and delivered plenty of remarkable judgments on different issues related to air pollution. From the handful of cases discussed above, it is apparent that the tribunal has tried to the best of its capabilities to curb air pollution. However, there are obstructions that need to be taken care of so that the tribunal could carry on without hindrance on the road to cleaner air.

BUMPS IN THE ROAD FOR NATIONAL GREEN TRIBUNAL

One of the major concerns is that the statutory bodies such as CPCB and SPCBs (boards) responsible for enforcing orders of the National Green Tribunal be efficient and efficacious. They must not act inefficiently and to ensure so, it shall be made sure that its members are not incompetent and they possess the requisite set of skills. However, in the past, there have been instances where the appointment of the officials of these statutory bodies was in question as it has a direct impact on the functioning of these bodies. On the same issue, the tribunal in

²² NGT imposes Rs. 5 Crore fine on West Bengal for failing to curb air pollution The Hindu, <https://www.thehindu.com/news/national/other-states/ngt-imposes-5-crore-fine-on-west-bengal-for-failing-to-curb-air-pollution/article>

²³ Original Application No. 601 of 2018, Order dated 19/11/2019

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Rajendra Singh Bhandari v. State of Uttarakhand²⁴ stated that the Chairperson and the Members should be people who have sound as well as practical knowledge and experience in the field relating to Environment Protection as they are statutory requirements as mentioned in the “Air Act” and “Water Act”. The “Special” knowledge must be through formal academic training and qualification in the field of environmental protection and under any circumstances include any form of casual knowledge. It ordered the states and UTs to reconstitute the pollution control boards and passed detailed directions to be followed by the states in matters of appointment and tenure of chairpersons and member secretaries, infrastructure of boards, etc.

However, in the case if **Techi Tagi Tara vs. Rajendra Singh Bhandari**,²⁵ the apex court despite agreeing with the reasoning of the tribunal quashed its order directing the state governments and the Union territories to reconstitute the SPCBs. National Tribunal Act states that the Tribunal shall have jurisdiction over all the civil cases where a substantial question with respect to the preservation and protection of the Environment arises.²⁶ It also states that the appointment of Chairpersons and Members should not be considered as a substantial question of Environment.

Therefore, in the present case the National Green Tribunal exceeded its jurisdictional authority in directing the state governments as it has no jurisdiction over the said issue. Apparently this judgment of the Supreme Court manifests the narrowness of the jurisdiction of National Green Tribunal. The issue of the appointment of the chairpersons and member secretaries of the SPCBs has an indirect bearing on the environment, so the National Green Tribunal must have the authority to entertain such issues. Apart from this, Section 14(1) provides that the National Green Tribunal has jurisdiction only over civil cases which include a substantial question relating to environment and thereby excludes criminal cases. The wording of the said section unnecessarily narrows down the jurisdiction of the National Green Tribunal and thus obstructs the tribunal in furthering the cause of cleaner air. Therefore, it must be proposed that the jurisdiction of the

²⁴ Original Application No. 318 of 2013, Order dated 24/08/2016

²⁵ (2018) 11 SCC 734

²⁶ National Green Tribunal Act, 2010, No. 19, Acts of Parliament Section 14(1)

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National Green Tribunal be widened so as to incorporate issues concerning appointments of pollution control boards and criminal matters as well.

Another hurdle before the tribunal is the effective implementation of its orders. The National Green Tribunal Act does not provide the tribunal with any appropriate institutional mechanism to enforce its orders or to ensure that the regulatory authorities such as SPCBs and CPCBs comply with them. There have been various instances of non-enforcement of the orders of National Green Tribunal in the past. Several orders of the tribunal relating to air pollution in Delhi, solid waste management, illegal mining, etc. remain unenforced even today.²⁷ Therefore, it is suggested that a provision be included in the National Green Tribunal Act so as to provide the tribunal with a proper mechanism to implement its orders. In the meantime, the tribunal while passing an order should fix responsibility on the executing authorities and lay down strict conditions for implementation of such orders, also ensure the accountability of the concerned authority if it fails to follow the directions laid down in the order.²⁸

Another issue before the National Green Tribunal has been the lack of basic infrastructure facilities and human resources. The tribunal has only four zonal benches, four circuit benches and a principal bench which are not enough for a country as big as ours. This is also one of the reasons why large numbers of individual cases related to air pollution either remain unregistered or are filed before civil courts as the tribunal is not accessible to everyone. Moreover, the low number of judicial and expert members at the tribunal has made it extremely strenuous for even those benches to function properly. According to section 4 (I) of the National Green Tribunal Act,²⁹ the tribunal shall be presided by a Chairperson who shall be accompanied by a minimum 10 Judicial Officers and 10 Members who are expert in this field, though this number in no circumstance should be more than 20 members. However, presently as opposed to the minimum requirement, the tribunal is functioning with only 4 judicial and expert members each. This led to

²⁷ Whither the National Green Tribunal? Downtoearth.org.in,

<https://www.downtoearth.org.in/blog/environment/whither-the-national-green-tribunal>

²⁸ Pinnacle of Environmental Protection in India: NGT Penacclaims.com, <http://www.penacclaims.com/wp-content/uploads/2018/09/Ashna-Kothiyal.pdf>

²⁹ National Green Tribunal Act, 2010, No. 19, Acts of Parliament Section 4(1)

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the increase in the pendency of cases and even compelled the tribunal to conduct hearing of cases through video conferencing.³⁰ This state of affairs owing to the lethargic attitude of the government, calls for the rectification of the National Green Tribunal Act with greater emphasis on the serious lacuna in the provisions of the National Green Tribunal Act, by the provision of Section 6(1) empowers the Central Government to appoint the chairman and members (both judicial and expert). This provision makes evident the dependency of the tribunal on the executive. Therefore, it is suggested that in order to ameliorate the condition of the tribunal the executive intervention must be curtailed which can be done by the establishment of an independent agency, which will be responsible to oversee and regulate the terms and conditions for the working of the Tribunal. The Supreme Court in the case of **Roger Mathew vs. South India Bank**³¹ discussed the dilapidated condition of the National Green Tribunal and other tribunals in general. The apex court further stated that the administration of tribunals in the hands of individual ministries resulted in mismanagement and unorganized policy making. Therefore the apex court emphasized over the establishment of a National Tribunal Commission in order to have an independent overview over the working of National Green Tribunal. This commission will be responsible for core departments and functions like overseeing the appointment of members, payment of salaries and allowances, setting up dispute resolution mechanism as well as overlooking the removal of Chairpersons and other members. The Court finally laid down the procedure for the establishment of National Tribunal Commission to preserve and protect the efficiency and effectiveness of the National Green Tribunal.

In order for the National Green Tribunal to be well equipped to tackle the worsening situation of air pollution, aforementioned are some concerns which must be addressed properly. All those issues have been effectively hindering the working of the tribunal till now and will continue to do so, if not done away with, therefore, the amendments must be done to the National Green Tribunal Act and other necessary steps should also be taken.

³⁰ NGT's new approach to pending cases raises eyebrows The Hindu,
<https://www.thehindu.com/news/cities/Delhi/ngts-new-approach-to-pending-cases-raises-eyebrows/article>

³¹ 2019 SCC Online SC 1456

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CONCLUSION

National Green Tribunal has unarguably been one of the most important as well as functional regulatory body working towards curbing air pollution. From the preceding deliberations, it can be very well inferred that the tribunal have made all the possible endeavors it could, to keep a check on air pollution. It has addressed all the major factors responsible for the rise in air pollution ranging from crop burning to industrial pollution and issued varying guidelines to tackle them in conformity with the principles of sustainable development. However, on various occasions there have been delays or ineffectiveness in the implementation of such guidelines. There are other issues as well which make it onerous for the tribunal to further its goals, as already been discussed in this piece such as lacunae in the National Green Tribunal Act, unprofessional attitude of the statutory authorities i.e. SPCBs and CPCB and the indifferent approach of the government towards the tribunal. Despite all these issues the National Green Tribunal has made curbing air pollution its priority and has always adopted dynamic functioning style from time to time to resolve the cases before it without any delay.

Supreme Court in several of its judgments has declared Right to Clean Environment to be a sine qua non element of Article 21 of Indian Constitution. Therefore, it is concluded that the government must perform its duty and assist the National Green Tribunal in achieving its goal of clean environment, by doing away with the lacunae in the National Green Tribunal Act and setting up an independent body i.e. 'National Tribunal Commission' to oversee the working of the tribunals.

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