

Air Pollution in India: Assessing the Role of NGT

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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 that the NGT has a key role to play in controlling this menace of air pollution. This paper, in its limited scope, aims to assess the role played by NGT 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 of the NGT Act. The article continues by studying the role of NGT in keeping a check on air pollution with the help of case laws. Further, the author has identified the issues which act as an obstruction for the NGT in achieving its goal of clean and pollution free atmosphere and also suggested ways in which those issues can be resolved.

Keywords: NGT, Air Pollution, Environment, Tribunal, SPCB, CPCB, Crop Burning, Solid Waste Management.

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INTRODUCTION

In India, the predicament of air pollution now seems to be ever-growing and rampant. It has now become a national problem having the potential to severely affect public health along with the economy of the nation as well. It is no secret now that the menace of air pollution is no more limited only to the major or metro cities. Over the past decade, it has spread across the smaller cities and towns such as Patna, Muzaffarpur in Bihar; Ranchi, Jharia, Bastacola in Jharkhand; Ghaziabad, Kanpur, Allahabad in Uttar Pradesh, Faridabad in Haryana; Alwar in Rajasthan and so on [1]. Section 2 (a) [2] of The Air (Prevention and Control of Prevention) Act, 1981 defines air pollutant as “any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.” Further, clause (b) [3] of the same section goes on to define air pollution as “the presence in the atmosphere of any air pollutant.”

The government has established statutory bodies such as Central Pollution Control

Board (CPCB), State Pollution Control Boards (SPCBs) and quasi-judicial body, i.e. National Green Tribunal (NGT), so that they work in harmony for prevention of pollution in general. Lately, the issue of air pollution has been the primary concern of the NGT. It is evident from the tribunal’s predominant approach in issuing strict guidelines and directing the regulatory authorities to take actions against violations of those guidelines. Moreover, various judgments have also been passed by the NGT, which manifests the endeavors of the tribunal to keep a check on air pollution.

However, despite the efforts of the tribunal the predicament of air pollution seems far from being under control. In this piece, the author has sought to analyze the role of NGT with the help of case laws in keeping a check on air pollution across the country, and identify the impediments in doing so.

THE NGT ACT

The National Green Tribunal was established by the parliament with the enactment of the Act titled ‘National Green Tribunal Act, 2010’ with an objective to provide a forum for

effective and expeditious disposal of cases relating to the environment. This Act came into force on October 10, 2010. It substituted the National Environment Tribunal Act, 1957 and National Environment Appellate Authority Act, 1997 under which the environmental courts were established prior to NGT [4].

Initially the tribunal had a principal bench in Delhi, which was later on followed by the establishment of four zonal benches in Kolkata, Bhopal, Chennai and Pune. The preamble of the Act states that the tribunal has been constituted to carry out obligations enshrined under Article 21 [5] of the Constitution. The tribunal comprises of the judicial members and expert members from eight different fields such as physics, chemistry, and botany and so on, whose job is to advise and help the judges. It is headed by a retired Supreme Court judge and the other judicial members are the retired high court judges. Undoubtedly, the inclusion of experts from different fields to deal with possibly every aspect of the environmental issues helps the NGT to look beyond the simple cost-benefit consideration of a particular project and serve the larger interest of environment and development [6].

NGT has the jurisdiction over all the civil cases relating to environment which are covered under the legislations enlisted in schedule I [7] of the NGT Act, including the matters related to The Air (Prevention and Control of Pollution) Act, 1981. However, it doesn't have the jurisdiction to entertain cases falling under Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and various laws enacted by States relating to forests, tree preservation, etc., despite the fact that they could have a direct bearing on Air pollution.

The NGT Act provides the tribunal in the name of order enforcing mechanism, the power to impose both punishment as well as fine which can go up to 3 years and 25 Crores respectively in cases of violation of its orders.

NGT AND AIR POLLUTION

The NGT has invariably adopted a firm and vigilant approach in issues relating to air

pollution. The western zone bench of NGT, situated in Pune, has in the case of *Charudatt Koli v. Sealord Containers Limited* [8], observed that “the subject of air pollution control and air quality management must be identified and treated as an issue of public health and be given the importance it deserves.”

NGT while interpreting the definition of the terms air pollutants and air pollution was of the view that by including the word ‘any’ in the definitions of both the terms, the legislature intends to give them a capacious meaning. Therefore, the technical composition of the air quality in order to verify whether there is any air pollution cannot be and should not be restricted to the 12 parameters notified in the National Ambient Air Quality Standards (NAAQS) [9].

Recently in the month of March last year, in a matter related to the News item published in “The Times of India” Authored by Shri Vishwa Mohan Titled “NCAP with multiple timelines to clean air in 102 cities”, in which the issue for consideration involved remedial measures to be taken to improve the air quality of 102 cities identified as ‘non-attainment cities’, which do not meet the National Ambient Air Quality Standards (NAAQS). The Tribunal was tasked with taking action against states that had not furnished an action plan to the Central Pollution Control Board (CPCB). Significantly, the Tribunal directed that the states that fail to submit action plans before 30 April 2019 would be liable to pay environment compensation of Rs. 1 crore each and states failing to remove deficiencies in action plans that were submitted before 30 April 2019 would be liable to pay Rs. 25 lakhs each [10].

NGT on Crop Burning

Residue crop burning by the farmers is one of the major sources responsible for the depletion of air quality. In the case of *Vikrant Kumar Tongad v. Environment Pollution (Prevention & Control) Authority* [11], the tribunal has discussed extensively the environmental hazards caused by the burning of crops such as air pollution and issues related to public

health. It also observed that there are clear and specific technical alternative resolutions available for the utilization of agriculture residue instead of burning them. It further directed the state governments to take efforts to educate the farmers about the hazards of crop burning and also asked them to provide proper technical and financial assistance to the farmers to encourage them to stop burning of crops. In case people persist with the default and do not comply with the directions, the tribunal encouraged the states to take punitive and coercive actions under the existing legislations in such cases.

Recently in the case of *Smt. Ganga Lalwani v. Union of India & Ors* [12], where the issue involved was related to the prevention of crop burning resulting in air pollution particularly in the NCR region. The tribunal was apparently unsatisfied with the steps taken in this regard and termed them as inadequate and observed, “the fact remains that there is adverse impact of burning of such residue on air quality causing air pollution related diseases which at times may be fatal. As per newspaper reports, to which reference will be made later, 15000 deaths took place in the year 2016 in the NCR region on account of air pollution.” It further went on to direct both the central and the state government to put up on their respective websites the dates of the fire incidents, the officers responsible for the subjects for the entire areas and action taken for the failures on daily basis.

NGT 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 & Anr. v. Union of India & Ors.* [13], 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 NGT 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. v. Union of India and Ors.* [14], and completely prohibited open burning of waste on lands including 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 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.

Other Significant Judgments of NGT on Air Pollution

Although it's been only ten years since the establishment of NGT, nevertheless, it has succeeded already in delivering some impactful judgments. One of such judgments is *Vardhaman Kaushik and Ors v. Union of India and Ors.* [15], the tribunal in this case while discussing the issue of air pollution prevalent across the NCR, 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. Therefore, it passed an order prohibiting diesel vehicles more than 10 years old and petrol vehicles more than 15 years old from plying on the roads of NCR, Delhi. 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* [16] 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, crippling with the issue of air pollution such as Rajasthan, Bihar and Uttar Pradesh to name a few. Thereafter, the tribunal directed the comprehensive monitoring and data collection regarding the air quality. Pursuant to this direction, the requisite data was produced and the abysmal air quality of different states was highlighted. 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. These problems were the reasons which led to the establishment of central and state monitoring committees [17].

The pollution level in the city of joy, i.e. Kolkata has been on an alarming level for the past few years. It has been among one of the most polluted cities in the country and sometimes even the most polluted one [18]. The Eastern Zone Bench of NGT in the case of *Subhas Datta v. State of West Bengal* [19], dealt with the issue of air pollution in Kolkata and its twin city Howrah. An expert committee was constituted to recommend measures for controlling the air pollution caused by heavy vehicular movement in both the cities. The tribunal was impressed with the findings of the expert committee;

therefore, it made the recommendations of the committee a part of the judgment. The tribunal relying on those recommendations directed the state to phase out the commercial vehicles that are 15 years old 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 state government by the tribunal in a contempt proceedings after it was held that the state failed to comply with the preceding order [20].

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.* [21], last year in the month of November, 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 NGT 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 NGT

One of the major concerns is that the statutory bodies such as CPCB and SPCBs (boards) responsible for enforcing orders of the NGT 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 the case of *Rajendra Singh Bhandari v. State of Uttarakhand* [22] has observed that only those persons who have “special knowledge” and “practical experience” in matters relating to environmental protection are eligible to be appointed as Chairperson and Member Secretaries of the Board as they are statutory requirements as mentioned in the “Air Act” and “Water Act”. The tribunal emphasized on the word “Special” which requires that the knowledge must be acquired through an academic qualification in environmental protection and it cannot be ordinary or casual in nature. 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, the Supreme Court in the case of *Techi Tagi Tara v. Rajendra Singh Bhandari & Ors.* [23], despite agreeing with the reasoning of the tribunal quashed its order directing the state governments and the Union territories to reconstitute the SPCBs. It observed that section 14 (1) [24] of the NGT Act which deals with the jurisdiction part states that the tribunal has jurisdiction over all the civil cases where a substantial question relating to the environment is involved and the appointment of chairpersons and member secretaries cannot be considered as a substantial question of environment. Therefore, the tribunal exceeded its

jurisdiction 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 NGT. The issue of the appointment of the chairpersons and member secretaries of the SPCBs has an indirect bearing on the environment, so the NGT must have the authority to entertain such issues. Apart from this, section 14(1) provides that the NGT 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 NGT and thus obstructs the tribunal in furthering the cause of cleaner air. Therefore, it must be proposed that the jurisdiction of the NGT 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 NGT 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 NGT in the past. Several orders of the tribunal relating to air pollution in Delhi, solid waste management, illegal mining, etc. remain unenforced even today [25]. Therefore, it is suggested that a provision be included in the NGT 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 [26].

Another issue before the NGT 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) [27] of the NGT Act, tribunal shall consist of a chairperson and at least 10 judicial and 10 expert members but subject to maximum of twenty full time judicial and expert members. However, presently as opposed to the minimum requirement, the tribunal is functioning with only 4 judicial and expert members each. This led to the increase in the pendency of cases and even compelled the tribunal to conduct hearing of cases through video conferencing [28]. This state of affairs owing to the lethargic attitude of the government, calls for the rectification of a serious lacuna in the NGT Act. Section 6 (1) [29] of the NGT Act 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 could be done by setting up an independent agency to oversee the working of tribunal. Even the Apex Court in the case of *Roger Mathew v. South Indian Bank Ltd. and Ors.* [30], discussed the dilapidated condition of the NGT and other tribunals in general. It observed that vesting the function of administration of tribunals in individual ministries has led to haphazard evolution of the tribunal structure, and thus, stressed on the need to constitute an independent statutory body called 'National Tribunal Commission' to oversee the workings of the tribunals. As directed by the court the functions of the 'National Tribunal Commission' would be to oversee the selection process of members, criteria for appointment, salaries and allowances, introduction of common eligibility criteria, for removal of Chairpersons and Members as also for meeting the requirement of infrastructural and financial resources. The court also laid down the guidelines to be

followed by the government in setting up of NTC in order to ensure the independence and efficiency of the tribunal system in India.

In order for the NGT 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 NGT Act and other necessary steps should also be taken.

CONCLUSION

It cannot be denied that the role of the NGT is of utmost importance in 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 NGT 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 NGT 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.

Right to clean environment is the sine qua non of Article 21 of the constitution of India as upheld by the Supreme Court in various cases. Therefore, it is concluded that the government must perform its duty and assist the NGT in achieving its goal of clean environment, by doing away with the lacunae in the NGT Act and setting up an independent body i.e. 'National Tribunal Commission' to oversee the working of the tribunals.

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2. Section 2 (a): "air pollutant" means any solid, liquid or gaseous substance 2 [(including noise)] present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.
3. Section 2 (b): "air pollution" means the presence in the atmosphere of any air.
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6. Armin Rosencranz and Geentanjoy Sahu, *Assessing the National Green Tribunal after Four Years*, (5), JILS, 194, (2014).
7. Schedule I [See sections 14(1), 15(1), 17(1)(a), 17(2), 19(4) (j) and 34(1)]
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 - 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.
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9. Id.
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21. Original Application No. 601 of 2018, Order Dated 19/11/2019
22. Original Application No. 318 of 2013, Order Dated 24/08/2016
23. (2018) 11 SCC 734
24. Section 14(1): The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
25. Geetanjoy Sahu, *Whither the National Green Tribunal?* DOWN TO EARTH, (June 6, 2020, 12:36 A.M.), <https://www.downtoearth.org.in/blog/environment/whither-the-national-green-tribunal-66879>.
26. *Supra* note 4.
27. Section 4(1): The Tribunal shall consist of-
 - a. a full time Chairperson;
 - b. not less than ten but subject to maximum of twenty full time Judicial Members as

- the Central Government may, from time to time, notify;
- c. not less than ten but subject to maximum of twenty full time Expert Members, as the Central Government may, from time to time, notify.
28. Shinjini Ghosh, NGT's new approach to pending cases raises eyebrows, *the Hindu*, (June 10, 2020, 2:30 P.M.), <https://www.thehindu.com/news/cities/Delhi/ngts-new-approach-to-pending-cases-raises-eyebrows/article24787684.ece>
29. Section 6(1): Subject to the provisions of section 5, the Chairperson, Judicial Members and Expert Members of the Tribunal shall be appointed by the Central Government.
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