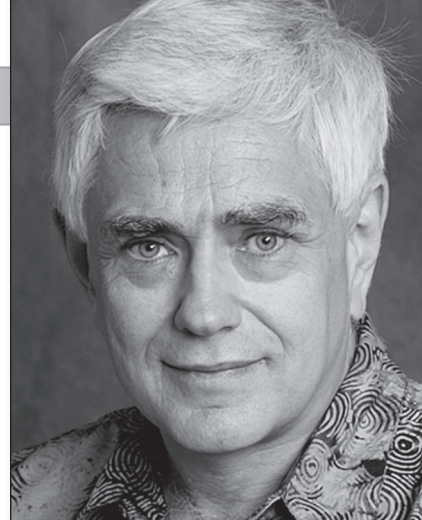


India's National Green Tribunal and the Future of Environmental Justice



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Specialized environmental courts have proliferated around the world, growing from 350 in 2009 to over 1,200 in 44 countries by 2017. This growth is a response to increasing environmental litigation, as well as to failures in traditional legal systems in handling cases in an expedient and equitable way. Environmental tribunals have become especially significant in Australia, New Zealand, and some developing nations, in contrast to the United States and Europe, where environmental law has mostly remained under the jurisdiction of existing courts. India's National Green Tribunal illustrates both the successes of such specialized tribunals and threats to environmental enforcement in many nations.

The NGT's genesis was fostered by decisions of the Indian Supreme Court recognizing the need for new approaches to implement environmental law as well as by the failure of two earlier national envi-

ronmental courts. Civil society activism and growing alarm over India's ecological deterioration led finally in 2010 to the National Green Tribunal Act.

The act established a multi-disciplinary tribunal equally composed of judges and professional environmental experts (each group to number between 10 and 20), chaired by a judge, and divided into four regional benches and a central bench in Delhi. Indian rules for civil procedure and evidence do not apply, allowing for a broader evaluation of environmental and social issues as well as for the identification of alternatives to resolve disputes.

The NGT has jurisdiction over all civil cases concerning implementation of seven Indian national laws concerning air and water quality, forest conservation, environmental protection, and biodiversity. In the absence of a legal

claimant, it can initiate cases itself for public purposes. It is required to consider the principles of sustainable development, the polluter pays, and precaution, as set out in the 1992 Rio Earth Summit Declaration. Cases must be decided within six months. Indian courts transferred a large backlog to the NGT, including in 2015 some 300 cases from the Supreme Court, some of which had been delayed for over 14 years.

Relaxed standing requirements enable community groups and NGOs to undertake claims in the public interest. Permanent technical specialists on the tribunal level the playing field for poorer claimants when faced with powerful business interests that can hire reliably pro-corporate experts. By late 2017 the NGT had heard 23,341 cases and issued decisions on 19,970, the vast majority within the six-month requirement.

In an early 2012 case the NGT suspended India's then largest foreign direct investment, the South Korean corporate giant POSCO's \$12 billion proposal for a steel plant and iron ore mines in southeastern India's Orissa (later Odisha) state. The NGT exposed how the state and national governments and POSCO suppressed information on the project's enormous impacts on water availability (diverting flows from irrigation and urban water supply), port infrastructure, sea turtles, and other marine life, and ignored the legal rights of local village councils. Following further studies and litigation, POSCO withdrew from the project in 2017.

The NGT has halted construction of coal power plants, coal mining projects, and an airport in response to complaints by local villagers and fishermen, citing flawed environmental assessments and inadequate consultation with affected communities. It levied its

An innovative court is handling a huge case load and issuing landmark decisions

largest fine of \$37 million against mining companies for illegal polluting activities on the Yamuna River upstream of Delhi and Agra.

In 2016 it halted proposed dams in the Himalayan states of Himachal Pradesh and Arunachal Pradesh. It ruled in the first case that construction could not proceed without the approval of affected village councils, and in the second that the 780 megawatt project had not considered the impact on the wintering habitat of the endangered black neck crane — viewed by the local Tibetan Buddhist population as a reincarnation of the Dalai Lama. In both cases representatives of local ethnic groups and engaged Buddhist monks protested government plans for massive dam construction that have ignored continual calls for more locally oriented development.

The NGT faces opposition for the simple reason that it is working. Its future is important for environmental justice and effective international environmental law not just in India, but worldwide. The Modi government has tried to limit its authority to making recommendations to the national government, instead of issuing legally binding rulings, as well as reducing term limits and professional qualifications for its members. Indian public interest advocates have challenged these dilutions in the Indian Supreme Court, and on February 18, the court reinstated at least temporarily rules set forth in the 2010 NGT enabling act.