

Legislative Brief

National Green Tribunal Bill, 2009

The Bill was introduced in the Lok Sabha on July 31, 2009 by the Ministry of Environment and Forests.

The Bill was referred to the Standing Committee on Science & Technology, Environment & Forests (Chairman Dr. T. Subbarami Reddy) on September 15, 2009.

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Highlights of the Bill

- ◆ The National Green Tribunal Bill, 2009 aims to set up specialised environmental courts in the country.
- ◆ The Bill replaces the existing National Environmental Appellate Authority and has wider jurisdiction than the NEAA. It will hear initial complaints as well as appeals from decisions of authorities under various environmental laws.
- ◆ The Tribunal shall consist of both judicial and expert members. Judicial members must have been judges of the Supreme Court or High Courts. Expert members have to possess technical qualifications and expertise, and also practical experience.
- ◆ The Tribunal shall hear only 'substantial question relating to the environment'. Substantial questions are those which (a) affect the community at large, and not just individuals or groups of individuals, or (b) cause significant damage to the environment and property, or (c) cause harm to public health which is broadly measurable.

Key Issues and Analysis

- ◆ The criteria to determine what a 'substantial question related to the environment' are open to interpretation.
- ◆ The Bill may reduce access to justice in environmental matters by taking away the jurisdiction of civil courts. All cases under laws mentioned in the Bill will now be handled by the Tribunal which will initially have benches at only five locations.
- ◆ The Bill does not give the Tribunal jurisdiction over some laws related to the environment.
- ◆ The qualifications of judicial members of the Tribunal are similar to that of the NEAA. The government has been unable to find qualified members for the NEAA for the past three years. The Green Tribunal Bill gives an explicit option to the government to appoint members with administrative experience as expert members.
- ◆ The Bill does not specify the minimum number of members the Tribunal and also does not mention of the composition of the Selection Committee for selecting members. Some other laws that establish tribunals specify the persons who shall decide, or be consulted.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The National Green Tribunal Bill, 2009 introduced by the Ministry of Environment and Forests seeks to create special courts for environmental matters. The Bill has been introduced in response to the Supreme Court and the Law Commission's recommendations pointing out the large number of environment-related cases pending in courts.

There are two existing laws, the National Environment Tribunal Act, 1995, and the National Environment Appellate Authority Act, 1997 which provide for creating specialised courts for environmental matters. However, the National Environment Tribunal Act, 1995 was never notified, and the National Environment Appellate Authority has a very limited task to look into complaints regarding environmental clearances. The National Green Tribunal Bill, 2009 will enable the government to establish Green Tribunals at various centres throughout the country, and repeal the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997.

Key Features

The National Green Tribunal will replace the existing National Environment Appellate Authority (NEAA). The features of the Tribunal proposed by the Bill are compared with the existing provisions of the NEAA Act, 1997 in Table 1.

Table 1. Features of the proposed National Green Tribunal compared to the NEAA

Features	National Green Tribunal	NEAA
Types of Complaints	Will hear initial complaints as well as appeals.	Only appeals from orders granting environmental clearances by the Ministry.
Jurisdiction over	Substantial questions relating to environment under the following laws: <ul style="list-style-type: none"> ▪ Water (Prevention and Control of Pollution) Act, 1974. ▪ The Water 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. 	Orders granting environmental clearances
Types of relief	Relief for damage suffered, compensation, and ordering measures to remedy the damage.	Orders as the Authority thinks fit.
Penalty for not complying with the Tribunal's orders	3 years imprisonment and/ or fine of Rs 10 crores for individuals; Rs 25 crores for companies.	Imprisonment for 7 years and/or fine of up to one lakh rupees.
Members and qualifications	<ul style="list-style-type: none"> ▪ Chairperson or Judicial members (number to be notified by central government): Former or current judge of the Supreme Court or High Court; ▪ Expert Members (number to be notified by central government): <ul style="list-style-type: none"> (a) M.Sc degree with a Doctorate, or a Masters Degree in Engineering/Technology with at least 15 years of practical experience in the field of environment and forests. or (b) has to have administrative experience of 15 years in environmental matters in the government, or in a reputed national institution. 	<ul style="list-style-type: none"> ▪ Chairperson: Judge of the Supreme Court or a High Court. ▪ Vice-Chairperson: Level of a Secretary to the Government, and has to have experience in environmental matters. ▪ Members: Professional knowledge or experience pertaining to conservation, environmental management, law or planning and development.
Persons who can file complaints	(a) The person sustaining the injury, (b) owner of damaged property, (c) legal representatives of the deceased, if death has resulted from the damage, (d) an authorised agent, (e) representative body or organization functioning in this field, (f) central or state government, or authorities under their control.	Any person aggrieved by an order granting environmental clearance.
Procedure	<ul style="list-style-type: none"> ▪ Civil Procedure Code: Not applicable. ▪ Natural Justice: Applicable. ▪ Evidence Act: Rules of evidence under the Act are not applicable. 	<ul style="list-style-type: none"> ▪ Civil Procedure Code: Not applicable. ▪ Natural Justice: Applicable. ▪ Evidence Act: Applicable.

Sources: The National Green Tribunal Bill, 2009; The National Environment Appellate Authority Act, 1997; PRS.

PART B: KEY ISSUES AND ANALYSIS

Functioning of the Tribunal

Clause 2(m) **Original jurisdiction**
 The Bill will allow the Tribunal to hear initial complaints on matters only where (i) a ‘substantial question relating to the environment’ is involved, and (ii) environmental damage is occurring due to a specific activity or from a specific source. A substantial question is defined in the Bill as the violation of a specific law, and (a) the community at large is affected, or (b) the amount of damage to the environment or property is ‘substantial’, or (c) there is a damage to public health which is ‘broadly measurable’. There is:

- No objective method of determining ‘community at large’, or ‘substantial’ damage to environment and property, or ‘broadly measurable’ damage to public health.
- No protection for an individual person’s right to environment. The Bill’s preamble indicates that this Bill aims to promote the right to a healthy environment which is a part of the right to life under Article 21 of the Constitution. Article 21 protects the right to life of individuals. However, the Bill specifically excludes complaints in cases of environmental consequences that affect ‘individuals or group of individuals’. Only complaints regarding activities affecting the ‘the community at large’, or ‘public health’ will be heard by the Tribunal. An individual may be able to approach the Tribunal only if damage to environment or property is substantial.

Schedule I **Scope of the powers of the Tribunal**
 The Tribunal is competent to hear matters relating to laws in Schedule I. Some significant laws are not included. One example is the Wildlife (Protection) Act, 1972 which prevents any sort of destruction inside sanctuaries without permission.² Another example is the Scheduled Tribes (Recognition of Forest Rights) Act, 2005 which gives rights to forest dwelling Scheduled Tribes to protect and conserve forest resources. Other countries give environmental courts a wider scope (Table 2):

Table 2: Environmental courts which can decide on laws other than those directly related to the environment

Country	Canada	New Zealand	Australia (New South Wales)
Court	Environmental Review Tribunal	Environment Court	Land and Environment Court
Laws not directly related to environment	<ul style="list-style-type: none"> ▪ Nutrient Management Act, 2002 ▪ Pesticides Act 	<ul style="list-style-type: none"> ▪ Historic Places Act 1993 ▪ Electricity Act 1992 ▪ Public Transport Management Act 2008 	<ul style="list-style-type: none"> ▪ Pesticides Act 1999 ▪ Dangerous Goods Act 2008 ▪ Local Government Act 1993

Sources: Various Sources³; PRS.

Appeal

The Bill says that orders of the Tribunal shall be final. It does not specify a process for appealing against the orders of the Tribunal given with regard to original complaints filed before it.

Access to the Tribunal

Clause 28
 The Bill has been drafted to provide ‘effective and expeditious disposal of environmental cases’. The Financial Memorandum of the Bill states that five benches of the Tribunal will be established in different parts of the country. No civil court shall be allowed to entertain cases which the Tribunal is competent to hear. This may reduce access to judicial remedies. The Law Commission in its report ‘Proposal to constitute Environmental Courts’ published in 2003⁴ said that “If we oust the jurisdiction of these Courts, villagers cannot be expected to go all the way to the seat of the Environment Court for each adjournment and contest the same.”

Members of the Tribunal

Clause 5 **Qualifications**
 Judicial members being appointed to the Tribunal and its Chairperson are to have the same qualifications as those of the existing NEAA (Table 1). The Delhi High Court has noted that the government has been unable to find qualified members to fill in vacant posts in the NEAA. The Delhi High Court has also taken note of the fact that the post of the Chairperson has remained vacant since July 2000.⁵ Presently, the NEAA is functioning with just one member.⁶ The Law Commission had recommended that judicial members should be picked from judges of High Courts or advocates of High Courts who have practiced for at least 20 years.

The Bill provides for appointment of expert members, who either have a technical background or administrative experience. The NEAA Act had a similar provision. However, all the sitting members of the NEAA (in December 2008) were “retired bureaucrats with no technical expertise”.⁷ The Green Tribunal Bill also permits the formation of a tribunal, in which all “expert” members have only administrative experience rather than technical expertise.

Clauses
4, 5, 6

Appointment of Members and quorum

The central government has the power to notify the number of judicial and expert members of the Tribunal. Many other Acts governing Tribunals mention the number of members of the Tribunal. Moreover, though the Bill mentions that members shall be appointed on the recommendations of a Selection Committee, the composition of the Selection Committee is not specified. Some other laws setting up Tribunals explicitly mention the number of members and the persons to be consulted for appointing members (Table 3).

Table 3: Composition and selection committees for different tribunals.

Name of the Tribunal	Number of Members	Person(s) involved in/ consulted prior to appointment
National Green Tribunal	One Chairperson, others as notified	Not specified.
National Environment Tribunal		Secretaries of concerned ministries, Chairperson of the Tribunal, and an environmentalist.
Competition Commission	3 – 7	Chief Justice of India, Secretaries of concerned ministries, two experts in relevant fields.
SEBI Appellate Tribunal	3	Chief Justice of India or his nominee.
TDSAT	3	Chief Justice of India.

Sources: Various legislations⁸; PRS.

Recommendations of the Law Commission

The Table below shows some recommendations that have not been included in the Bill (Table 4):

Table 4: Recommendations of the Law Commission on Environmental Courts (2003) not accepted in the Bill

Who can appear	Locus standi should be as wide as that of the High Court and Supreme Court in matters concerning fundamental rights.
Wider powers	Power to frame schemes, monitor and modify existing ones.
Minimum number	Chairperson and at least two other members.
Number of Experts	At least three Technical experts.
Quorum for cases	Two members including the Chairperson and one expert.

Sources: Report of the Law Commission; PRS.

Notes

1. This Brief has been written on the basis of the National Green Tribunal Bill, 2009, which was introduced in the Lok Sabha on July 31, 2009. The Bill was referred to the Standing Committee on Science & Technology, Environment & Forests (Chairman Dr. T. Subbarami Reddy) on September 15, 2009.
2. Section 29 of the Wildlife (Protection) Act, 1972.
3. Canada – Environmental Review Tribunal Act, 2000, <http://www.ert.gov.on.ca/english/home.html>; New Zealand – Resource Management Act, 1991, <http://www.justice.govt.nz/courts/environment-court/about-the-environment-court>; Australia (New South Wales) – Land and Environment Court Act, 1979, <http://www.legislation.nsw.gov.au/viewtop/inforce/act+204+1979+FIRST+0+N/>.
4. One Hundred and Eighty-Sixth Report of the Law Commission, dated September 23, 2003.
5. Vimal Bhai and Others v. Union of India and Others, Delhi High Court C.M. No. 15895/2005 in W.P. (C) 17682/2005.
6. Environment panel has just one member, http://www.dnaindia.com/india/report_environment-panel-has-just-one-member_1287070
7. Vimal Bhai and Others v. Union of India; Also, a reply by the NEAA to an application under the Right to Information Act, 2005 dated 31.10.2008 filed by the Access Initiative (No. ES-3/41/2008-NEAA – Dated November 5, 2008) – available on request.
8. National Environmental Appellate Authority Act, 1997; The Competition Act, 2002; The Securities And Exchange Board Of India Act, 1992; The Telecom Regulatory Authority Of India Act, 1997.

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