

**REGIONAL CAPACITY DEVELOPMENT TECHNICAL ASSISTANCE:
STRENGTHENING THE CAPACITY FOR ENVIRONMENTAL AND CLIMATE CHANGE
LAWS IN ASIA AND THE PACIFIC**

Colombo, Sri Lanka, 28 May – 01 June 2018

SESSION 9: Environmental Dispute Resolution and the Role of Judiciary

Indian Experience with the National Green Tribunal

**Presented by Prof Bharat Desai
Jawaharlal Nehru University, New Delhi**





Framework



- Why do we need a specialized environmental court?
- How did this idea of “Greening Justice” come about and be practiced in India?

- Framework:
 - Evolution of the legislation and policies of “Greening Justice” in India
 - Advent and practices of National Green Tribunal (NGT)

- ❑ Constitutional recognition of environmental rights
- ❑ Judicial activism: Enforcement of environmental statutes (led by the Supreme Court of India)
 - Liberalization of the rule of *locus standi*
 - Shift from traditional individual *locus standi* to community-oriented public interest litigation
 - Facilitation of easier access to justice
 - Expanded interpretation of the right to life
 - Diversification of environmental issues
 - Proposal to establish special environmental courts by SC in a series of cases since 1987
- ❑ Judicial Activism: Is judicial take-over of administrative functions desirable?

❑ From NETA (1995) and NEAA (1997) to NGT (2010)

- Reason of failure: Lack of political will (?)

❑ National Green Tribunal Act (2010)

1. Composition: tardiness

Procedure for appointment of members

- Reluctance of retired Supreme Court judges to head the Tribunal
- Lack of dynamism of retired judges (mostly from High Courts)
- Expert members: A dumping ground for retired bureaucrats?
- No legal member yet

2. Growing diversity of issues



Growing Jurisprudence of NGT

ADB

Sand mining

Marine oil-spill
pollution

Air pollution in
the NCT

Illegal
slaughter
houses

Ganga
pollution cases

- ❑ Comprehension of complex science-driven issues by experts on the bench
- ❑ Application of a bundle of legal principles
- ❑ Flexibility and responsiveness in organizational change
- ❑ Tightened oversight on enforcement of NGT's orders