

A lack of fit

The Delhi government has been at the receiving end of a spate of diktats from the National Green Tribunal since last week when it decided to implement the odd-even scheme of road rationing. The tribunal has weighed in, not on the matter of law, which it is mandated to do, but on policy, which is best left to the executive. It has found the Delhi government's scheme too watered down to effectively tackle the city's ongoing pollution emergency.

On Tuesday, the tribunal termed the exemptions given by the Delhi government to women, government servants, vehicles carrying children, and two-wheelers as "arbitrary". The green court's interventions have put paid to the chances of the odd-even policy being implemented to check the current pollution emergency — the Delhi government contends that the city's public transport shortfall does not allow it to implement road rationing without giving exemptions.

Like any arm of the judiciary, the NGT's expertise lies in interpreting law and weighing executive action against them, as in the case of the Air (Prevention and Control of Pollution) Act. The tribunal was set up for "the effective and expeditious disposal of cases related to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment". But in its directions to policymakers, the green court has often exceeded this mandate, enshrined in the National Green Tribunal Act, 2010. Last year, when Delhi was reeling under another pollution crisis, the NGT decreed that steps be taken "on long-term and short-term basis keeping in view the precautionary principle to ensure that the ill-effects and adverse impact of polluted ambient air quality is not repeated in the year 2017".

Many such summary directives have gone unheeded. According to the court's own admission, the order that passed strictures on construction activity and use of diesel generator sets in the capital "remains unexecuted". "The judgment has been complied with only in default," it noted. The green tribunal usually lays the blame for such failures at the door of state governments. In the last month, for instance, it has admonished the Punjab and Haryana governments on at least three occasions for their failure to implement a 2015 directive that banned stubble burning in these states. The NGT needs to acknowledge that what such failures also signal is that the green body has been treading into areas where it has little expertise, undermining its own credibility.

It is nobody's case that the Delhi government's odd-even policy is flawless. In fact, Delhi's pollution crisis should occasion a rethinking by all authorities that deal with environment. The NGT should re-visit the cases where it has crossed the line that divides judicial intervention from policy-making.

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