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ENVIRONMENTAL COURTS WITH SPECIAL REFERENCE TO NATIONAL GREEN TRIBUNAL: AN ANALYSIS

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ABSTRACT

Prior to 1970s before the UN Conference on Human Environment, environment did not find much mention in the legal regime of any country, let alone the environmental courts. The concept of "environmental courts" emerged, firstly in Europe. The reason behind the increasing numbers of ECTs are multifarious, like the new international developments taking place in the world which are highlighting the grave concerns related to the environment, the increasing interaction and inter-dependence of environmental rights and human rights, the emerging novel threats to the environment in the form of climate change and others. ECTs deal only with the environmental cases and it uses the otherwise less-used techniques of alternative dispute resolution which are often cheaper and less time-consuming. These can be courts (judicial approach) or tribunals (executive or administrative approach), depending upon the societal, economic, political and environmental factors existing in a particular country. India saw the birth of NGT after a lot of deliberations within the legislative and judicial spheres. It was the result of the ratification of the path breaking Stockholm Conference, 1972 by India. The NGT through the balanced-approach towards the environment and economy, in plethora of cases, has won accolades from the civil society as well as from the centre, which is very much evident from the recent verdict and proceedings of the tribunal. But, setting up of an ECT is not the end of the road, but it's an initial step in the direction of environmental justice which alone cannot guarantee the same but needs to be supplemented through various other means.

KEYWORDS:*Environmental Courts, Environmental Tribunals, Stockholm Conference, National Green Tribunal, Right to Life*

INTRODUCTION

Prior to 1970s before the UN Conference on Human Environment, environment did not find much mention in the legal regime of any country, let alone the environmental courts. Post the conference, environment gained much deserved importance as a burning issue common to all the countries of the world. Thereafter, the concept of "*environmental courts*" emerged, firstly in Europe and slowly it gained popularity and its figures have been continuously rising.[1] In the year 2009, 350 ECTs were found to be existing. This number has risen to 1200 approximately distributed in at least 44 countries at different levels national, state or local levels, with another set of 20 nations proposing the setup of ECTs and 15 other states which have given a green signal for their establishment but awaiting their establishment. At the same time there are 7 those states which once had ECTs functioning as a part of their judicial system, but they chose to dismantle them.[2] The emergence of the ECTs- distinct and separate from the general judicial network, has changed the structure and approach towards environmental jurisprudence altogether, and are also affecting the existing conventional judicial administrative structures. The UN Conference has been a starting point in the global history of environment, giving a clarion call to all the states worldwide to awaken and act upon the various ecological concerns manifesting themselves in the form of grave environmental crisis felt by nations located at peculiar places on earth having more vulnerability and sensitivity towards those crisis, like countries located at the sea-coasts or in the mountainous regions etc.[3] This awakening lead to development of certain essential principles and practices now widely accepted as international customs, which are known as- environmental rule of law, sustainable development, precautionary principle, polluters pay principle etc. To this, the member states of the UN Conference responded by incorporating the abovesaid principles and by making suitable changes in the legislative, administrative,

judicial, political, economic framework of system. Even the civil society is participating actively in this process by constantly reviewing the institutions set up by the government and are asking for creation of new administrative and judicial structures for implementation of their environmental rights leading to better accessibility to environmental justice. ECT_s have been becoming increasingly popular when looked to as "*logical solution*" to the obstacles faced in conventional judicial structures.[4]

Environment Courts and Tribunals (ECT_s) are distinct form of courts, may or may not forming an integrated part of the traditional judicial system existing in the state. The structure and the procedure of working differ greatly, when seen from the reference point of ordinary courts which focus solely on application of legal principles. ECT_s due to the complex nature of the environmental disputes and concerns, has a unique blend of composition, having both judicial experts as well as experts in the field of science.[5] As the name suggests, ECT_s deal only with the environmental cases and it uses the otherwise less-used techniques of alternative dispute resolution which are often cheaper and less time-consuming than the process followed in ordinary courts, with the slight assistance of the technology (IT sector). There are many types of ECT_s found existing worldwide- these can be courts (judicial approach) or tribunals (executive or administrative approach), depending upon the societal, economic, political and environmental factors existing in a particular country.[6] ECT_s can be either completely independent of the legislative and executive creating them or can be a tool of the ministry forming a part thereof, whose policies it reviews. The various ECT_s established in New South Wales, Australia, Land and Environment Court, India's National Green Tribunal and the Environmental Courts of Kenya- represent an ideal example of above described models of ECT_s.[7]

The need for ECT_s arose due to various short-comings seen in the regular judicial administration.[8] As, the ordinary courts lack the competency to deal with and adjudicate upon the complex technical environmental issues which involve the knowledge of not only laws related to the environment but also of diverse scientific fields. These courts are already reeling under the burden of ordinary cases filed in it day to day, which makes the judicial administration very lethargic and sluggish, shaking the confidence of the people in the overall judicial system. Moreover, ordinary courts involve huge expenditure for the litigant not only in terms of money but time also. Many kinds of fees are supposed to be paid by the litigant like court fees, fees of attorney, fees for expert witnesses, security bonds etc. which nobody can afford or would like to pay for a cause involving environmental concerns. It has also been observed that environmental litigation is considered to be of less significance than the ordinary civil and criminal cases by the ordinary courts and thus these suffer at the hands of judges, as they are put on the back burner, which further promotes the environmental injustice. Additionally, in the absence of specific environmental statutes, the ordinary courts find themselves helpless to grant the requisite relief in the matters involving the environmental injustice as these courts are bound by codified general civil procedure which at the time of drafting did not take environment into the concern and thus now fall short in addressing the environmental issues.[9]

FACTORS RESPONSIBLE FOR THE GROWTH OF ENVIRONMENT COURTS AND TRIBUNALS (ECT_S)

The figures relating to the ECT_s clearly indicate a steep growth in their number, the reasons behind this trend, is acceptance of existence of environmental crisis looming over all of the world post the 1972 Conference of UN on Human Environment, and a will to address the same, followed by various countries amending their constitutions to include certain provisions for the protection and conservation of environment and its components. Constitution, being the '*Grund-norm*' commands supremacy over all the laws, thus adding environmental

provisions in it was a major milestone towards achieving the goal of environmental justice.[10] The reformation of constitutions in an environmental way, resulting in it becoming "*green*" by the effect of international environmental treaties and agreements, affected the enviro-legal regime in a great way. It led to stronger environmental statutes being enacted with effective sanctions ensuring their enforcement, along with the increase in awareness among the civil society with respect to their environmental rights, resulting in overhauling of entire system of environmental governance. [11]Additionally, there is a strong and direct relationship between environmental provisions mentioned in the constitution and better environmental administration.[12] These constitutional provisions which have been incorporated as the consequence of international events, are being brought up before courts and are thus pressurising the governments of the state for establishment of ECT_s.[13] Kenya, set up its ECT_s under the Constitution itself, becoming the first ever country to do so.[14] Many landmark judgments, have already been delivered on the base of these constitutional provisions in the states of Ontario, India and Kenya. Not only the constitutions, but the international conferences and agreements have even influenced the domestic statutory framework related to the environment. The effect has even pervaded to the state and local levels. The National Green Tribunal in India is the result of ratification of UN Conference held at Stockholm and 1992 Rio Declarations.[15] With the international instruments and conferences, the awareness regarding the need to protect and conserve environment reached the masses. People became conscious of the fact that environment forms an important part of their lives, their livelihood, subsistence and well-being are dependent on the environment only. They are now questioning their elected government about various developmental projects and their potential impact on the ecology and consequently on their lives. Citizens' trust and confidence in ordinary courts has already been shaken due to the various instances of corruption, unnecessary delays, high costs, political interference etc., demanding for new and distinct court system which is not plagued by all these evils.[16] It is not only the case of citizens, but the people on the other side of the bench i.e. adjudicators also find it difficult to deal with increasingly complex and technical environmental issues owing to their limited scientific knowledge, since they are experts in the legal field and not in other areas. The network of environmental laws (domestic and international) is so complex and bulky in itself that judges find it nearly impossible to devote time towards environmental cases, already suffering from shortage of time due to voluminous cases lying pending in the courts, along with evaluating every scientific evidence involved in such cases. Thus, demand for specialized environmental forums have been made from this section of the society also, as faster, fair and cheaper justice is in everyone's best interest.

MODELS OF ECT

There can be various types or models of ECT- as no "*one-size-fits-all*" concept can be applied.[17] Every model has its unique structure. Every environmental court (EC) or environmental tribunal (ET) represents the "*national culture, character and legal system*"[18], because no two nations are identical in these terms. What model matches the economic, social, political, legal, historical, ecological, judicial, cultural, religious environment of the nation, will serve it the best. Such model will lead to effective and efficient dispensation of environmental justice for all.[19] An open and transparent process of planning and analysis is required for evaluation of various types of models and selection of the same for one's nation.

Court or Tribunal?

The question arises as to whether there is any difference between the two, if yes, what are those differences and how do they are relevant for the "*environmental justice*". In some legal systems, the terms "*court*" and "*tribunal*" are used synonymously. Example, in Spain, the word "*tribunal*" means both "*judicial courts and administrative tribunals or bodies*".

However, in general parlance, both the words signify their area of operation– in terms of branch of the government i.e. executive or judicial. "*Court*" is used for the judicial organ of the state, while "*tribunal*" signifies the non-judicial, executive or administrative side of the government. The tribunal can also signify the ministerial branch of the government.

In addition to the above two models, there are various other types of "*environmental dispute-resolution entities*" like – Ombudsman, Human Rights Commissions – having the authority over environmental matters and resolution of the same without approaching the judicial courts, but such entities are rarely in existence.

The structure, composition, jurisdiction, budget, audit & accountability provisions & procedural aspects of the hearings before the concerned ECT are governed by its parent legislation, rules of their parent branch of government, and the rules provided under the parent Act itself. Normally, ECs have solely legal or judicial experts who adjudicate upon the disputes, although some countries are now appointing non-law persons or persons having scientific/technical knowledge or commissioners (example- Sweden, Chile and New Zealand). The scenario is bit different in ETs where usually, along with the legal experts one would find persons with scientific and technical intellect and in some cases even non-professional lay-man as the decision makers in the bench. In Ireland, the ET has waived off the requirement for the members to be from legal background. Some states like Canada, proudly state that they have "*tribunal culture*" rather than "*court culture*" for environmental cases or matters pertaining to land-use decisions. Other countries like Philippines, Pakistan and Chile, have "*court-culture*" for matters concerning environmental disputes.[20] Each EC or ET model has its unique pros and cons.

COMPOSITION OF ECT

The ECTs have a unique blend of composition, very distinctive from that of the ordinary courts where traditional system is being followed since times immemorial, of having only the judicial experts as the sole decision-makers. If the need arises, the court calls for the opinion(s) of the expert witnesses, whose opinions are not in any case binding upon the court. This practice often leads to delay(s) in the disposal of cases and involve higher costs of litigation as the costs of the expert witnesses are to be paid from the pocket of the party calling such witness. Another anomaly of this system is that opinion given by expert witness forming expert evidence is not given due weightage and is sometimes totally disregarded by the court(s), thus leading to the judgment being based on illogical conclusions arrived at by going against the scientific evidence. But thanks to the nature of environmental cases, which involve deeper insights into the scientific technicalities involved at every stage, the experts having such acumen have been made part of the bench only avoiding the anomalies found in the traditional system followed in regular courts. Not only the experts from scientific field are included in the process of decision-making, but their say has been given equal weightage to that of the judicial expert(s), thus having an 'equal-partnership approach' enabling more expert, fair, logical and scientific judgments, thus better fulfilling the aim of environmental justice.[21] This partnership in the decision-making or the "*combined approach*" will contribute significantly towards the environmental protection and sustainable development. Thus, in ECTs analytical skills of the non-legal expert members gets combined with the legal and decision-making skills of legal experts.[22]

INDEPENDENCY OF ECT

Irrespective of the model of an ECT, independence is of critical importance for any judicial or quasi-judicial entity. For ensuring justice- be it criminal or environmental, independence in decision-making is necessary leaving no room for any kind of political pressure or legislative interference. This independence ensures the maintenance of public faith in the judicial administration of any nation, encouraging people to approach the courts in case of any

violation of their rights. Independence is required at both levels- structural and decision-making. Structural independence demands the overall structure of the ECT to be free of any interference- appointment procedure of the members, their remuneration, budget allocation etc. all processes should be independent otherwise, decision-making will automatically be lost. Independence in the functioning of ECT$_s$ ensure check on arbitrary use of power by legislature and executive, fundamental rights and environmental rights to the citizens, immunity from politicians' influence in obtaining judgment in their favour, effective implementation of emerging international environmental law principles and experimentation with new remedies to ensure better justice.

There is no dispute as to which version is better of an ECT- a judicial court or administrative tribunal, as both have their unique pros and cons, nor the question lies whether the ECT should be established at trial (first instance) level or at appellate level (second-instance) or at all levels in the system.

EFFECTS OF ECT

The inclusion of both legal or judicial experts and scientific or technical experts on the decision-making bench (scientists, engineers, economists, planners, academicians) is the best combination one can have for composition of environmental courts, as this system combines the knowledge and acumen of both the sides-legal and scientific, which are of utmost importance in the matters related to the environment, as we have seen that ecological matters are a blend of different disciplines. The disciplines of science, technology, economics and law are diverse and continuously changing that too rapidly, thus, the analysis which today seems to be true can turn turtle tomorrow. Thus, it's better to have two heads than one as combination of minds of persons from diverse fields can yield better adjudications.[23]

SELECTION OF ADJUDICATORS

The selection criteria and process of adjudicators should be transparent and independent to ensure the transparency and independence in the working of the ECT$_s$. Adjudicators form the blood of the skeleton i.e. ECT. So, the selection criteria should be carefully chosen. It should not be seen as a political award or post-retirement benefit or a sinecure position. The conditions of service- tenure, remuneration, allowances etc. should ensure independence of the members and should be made beyond the amending powers of the political people so that these cannot be altered adversely. The eligibility criteria should take into consideration not only the merit but also ethics (character) and interest towards the environment which greatly affects the quality of adjudication and also keeps up the confidence of citizens in the working of ECT. Along with the above requirements, due consideration should also be given to the experience and training part of the adjudicators.

COMPREHENSIVE JURISDICTION

To have an effective system of environmental governance, the jurisdiction of ECT should not be restricted in its scope. "*Jurisdiction*" includes five different types: (1) Geographical/ Territorial jurisdiction, (2) Subject-matter jurisdiction, (3) Pecuniary jurisdiction (4) Appellate jurisdiction (5) Review jurisdiction. These five jurisdictions should be comprehensive and non-restricted in the scope.

(1) *GEOGRAPHICAL/TERRITORIAL JURISDICTION*: To have an effective regime of environmental justice, the ECT should be conferred with the nationwide territorial jurisdiction, and enabling each citizen (even coming from remote areas) to have easy access to the ECT by arranging for hearings at the site of the dispute, thus localising the environmental justice. This requires establishment of ECT benches at various locations, with the provisions for on-site visits and hearings, as are practiced in countries like- Queensland, Ontario, Ireland, New Zealand etc.

(2) *SUBJECT-MATTER JURISDICTION*: Since environmental concerns relating to one aspect are intricately linked to other aspects of the environment, so withholding jurisdiction on one aspect of the environment will curb the ability of ECT to analyse the complete picture and thus, the verdict delivered might turn out to be infeasible and vague. It is rather suggested that jurisdiction over environmental matters should be combined with the jurisdiction over the land use or other land laws regulating its use or conversion, as the latter is entangled with the former in every aspect. Besides this, it's also recommended that ECT should be conferred with the ability to decide on matters falling in criminal jurisdiction, as grave environmental concerns affect a large section of individuals and also other organisms, giving rise to deadly catastrophes in the form of ecological destruction. Example of environmental laws, involving criminal jurisdiction are- wildlife hunting, trafficking of products derived from wild animals which are otherwise banned due to the vulnerable status of animals, illegal fishing. EC_s in New south Wales, New Zealand and Kenya are conferred with very wide jurisdiction.

(3) *PECUNIARY JURISDICTION*: normally, in environmental matters, the pecuniary jurisdiction is not considered, which also should be the case. Environmental concerns, although seem to be of trivial nature when seen in light of economic loss, but in long run, these turn out to be the case of major disasters. Thus, limiting the cognizance power of ECT_s w.r.t. pecuniary value is not recommended.

(4) *APPELLATE JURISDICTION*: For establishing an effective enviro-legal regime in a country, the ECT should have wide appellate jurisdiction encompassing almost every environmental law and every authority established under them. Additionally, the ECT_s's decisions should not be made challengeable in ordinary courts, as this amounts to lowering the authority of the concerned ECT in the eyes of people. The decisions given by ECT should be appealable in higher ECT_s only as their judgments involve complex scientific-legal analysis, which an ordinary court will find difficult to comprehend or will require the services of experts on the matter, thus adding to the time and cost of litigation. Also, the decisions of the ECT should be immune from the possible interferences posed by the agency whose actions are under review.

(5) *REVIEW JURISDICTION*: It is generally accepted as a good practice to have both the "*merit review*" and "*judicial review*" being conferred on the ECT for exercising the review jurisdiction effectively. Merit review enables the court to dwell on the substance of arguments whereas under judicial review, the court limits itself to examining the legality of the process involved in the decision-making only.

Thus, it is an accepted fact worldwide, that ECT_s scope of functioning should not be limited or clamped down by any means, rather be made extensive so that inter-twined environmental matters can be dealt with wholly and comprehensively.

The rule of 'locus standi' implies the eligibility of a person to file a suit in the court, which is generally provided for in the procedural law governing the court/law, either enacted by the legislature or developed by the courts themselves. Since matters involving environmental concerns involve interest of society at large, any damage to environment produces far-reaching diverse adverse consequences, so it becomes difficult to ascertain as to who are the affected persons, thus making the application of this rule almost impossible. Moreover, environment is the concern shared by the society at large, thus it is desirable to not have the rule of standing applicable in environmental cases, rather to throw open the doors of court as wide as possible, so that violations of environmental laws are brought to the fore, without waiting for the "*aggrieved person(s)*" to approach the ECT causing the greater object of environmental justice to suffer. Thus, diversion from the normal rule i.e. one who has actually

suffered injury is entitled to knock at the doors of the court, is ideal to be followed in the environmental litigation. This principle was devised by the Supreme Court of India long back in 1980_s and is still in practice in the cases involving public interest.

REMEDIAL MEASURES

The effectiveness in the working of ECT depends greatly on the remedies it can grant to the affected party, for dispensation of environmental justice. Present environmental statutes, confer only a certain number of remedies on the ECT_s, leaving the judges in lurch for granting the required remedy. In some statutes, penal provisions have not been amended, and the advantage of which is/can be taken by the wrong doer, enabling him to continue with the violations rather than complying with the mandate of the law, as the amount of fines payable are so low, that the violation becomes cheaper than complying with the order. Additionally, the amount collected from the fines paid, go into the coffers of the government and are never utilised for the reparation of the environment. Talking of remedies, the interim injunctions form the most important part, for the time, the matter is sub-judice, to maintain status quo. The parent statute establishing the ECT should clearly lay down the remedies which ECT is empowered to grant. Also, it should leave some room for flexibility, so that court doesn't always have to follow a straight-jacket formula, rather it can create its own remedy as per the demand of the situation.[24]

POWERS OF ENVIRONMENT COURT &TRIBUNALS

Without the enforcement powers, the judicial process and authorities become a subject of mockery and thus, the justice delivery system loses its command and respect in the eyes of common people, so for both enforcement and judicial powers to be in tandem, its recommended that ECT_s should be conferred with sufficient means and jurisdiction to enforce its own verdict(s). for this, an effective tool which can be made use of is-"*continuing mandamus*" which implies that an ECT/court continues to exercise authority over the matter after its adjudication so as to supervise on its implementation aspect. In some areas, instead of traditional penal provisions, the convicted defendants are given the alternative options such as attending "*environmental night school*", vehicles polluting the environment to carry environmental ads, convicted poachers to volunteer in wildlife organizations, developers guilty of illegal construction to maintain green spaces and carry out afforestation etc. These kinds of innovative penalties not only benefit the environment, but also seek to undo the damage done by the wrongdoer, with the additional advantage of making him realize the magnitude of his misdeed(s).

PROFESSIONAL DEVELOPMENT

The success of any organisation depends upon the human resources working in it. In the case of ECT_s, it depends upon the judges hearing the matters and delivering judgments by applying their knowledge gained from various sources and hard-earned experience of the field gathered over years. Additionally, ECT_s have the added benefit of having the expert members on board, which makes it a specialized forum for environmental matters. To enhance this knowledge and experience, continuous training and professional education should be imparted to the judicial and expert members. This can be done through organizations like UN Environment, institutes involved in judicial training, universities, international financial institutions like Asian Development Bank and ECT organisations and conferences arranged from time to time. Also, there are innumerable prominent multi-national judicial forums, which have provision for training and interactive sessions organized for environmental judges, such as EU Forum of Judges for the Environment (EUFJE), Australasian Conference of Planning and Environmental Courts and Tribunals (ACPECT) and Asian Judges Network on Environment (AJNE) etc. These cross-border collaboration for interaction amongst the environmental judges encourages development of healthy international environmental regime

involving exchange of information which leads to development of internationally recognised best practices.25 The states through such interactive programmes, encourage each other to follow these practices resulting in gradual evolution in the concept of environmental justice. Professional development through education and training, enables the adjudicators to keep themselves abreast with the latest developments occurring in the environmental field and the technology sector, of which both are very dynamic and ever-changing disciplines.

INDIA'S CASE: NATIONAL GREEN TRIBUNAL

India saw the birth of NGT after a lot of deliberations within the legislative and judicial spheres. It was the result of the ratification of the path breaking Stockholm Conference, 1972 by India, which gave the clarion call to the member states to act upon the deepening environmental crisis by ensuring environmental justice to its citizens through enactment of laws protecting the ecological sphere and also by providing for compensation to the victims of environmental destruction. Although the idea of setting up a separate and specialized court for matters concerning the environment came/ emanated from the judiciary when Supreme Court[26] stressed on having a distinct type of courts which would comprise of experts in multi-dimensional fields concerning environment along with experts in law so that this requirement of issues concerning ecological realm is met with, leading to speedy disposal of cases and judgments having a wider scope and vision, which would not have been possible with the existent regular courts as they are already reeling under the great burden of ever continuing cases which are waiting for years for their final disposal. Thus, after a long wait, finally the NGT was established in 2010 with the multi-fold objective of setting up of a distinct specialized body for adjudication of environmental disputes which would ensure their speedy disposal and at the same time relieving regular courts of some of their burden. The parent Act of NGT vests it with both original and appellate jurisdictions over environmental matters. The Act provides for a unique composition for the tribunal, with judicial members and an equal number of expert members, headed by a chairperson. The tribunal is not only empowered to take cognizance on the environmental disputes but it can also order for compensation or damages to be paid in consonance with the internationally accepted principles of 'Sustainable Development', 'Polluter Pays' principle, 'Precautionary Principle'.[27]

One unique and never seen before feature of NGT which distinguishes it from rest of the specialized courts is its composition which fixes/has the strength of technical experts at par to that of legal experts making it an expert body in resolving the environmental issues which essentially requires multi-faceted approach. Gradually and consistently, it is becoming more and more responsive to the complex environmental challenges faced by various regions across the different states especially the areas facing consequences of widespread environmental degradation or those having fragile ecology. With passing time, it is becoming proactive in its sphere by taking suo moto cognizance over any news reported in media about environmental degradation carried out by state or any private player instead of waiting for any person aggrieved by the same to approach it. The Centre for Environment Law at Worldwide Fund for Nature-India has termed the establishment of the NGT as a huge milestone achieved in the way of attaining environmental democracy.[28] The NGT through the balanced-approach towards the environment and economy, in plethora of cases, has won accolades from the civil society as well as from the centre, which is very much evident from the recent verdict and proceedings of the tribunal. One can non-hesitantly, remark that the tribunal is truly meeting its object mentioned in the Act and for its strong-worded judgments against many big private players, and in some cases government also, deserves to be acclaimed widely.

In the year 1976, the Parliament amended the Constitution by 42nd Amendment Act[29], and inculcated two articles namely- Article 48A[30] and Article 51A(g)[31]concerning "*protection and*

improvement of environment" obliging both the "*State*"and"*citizens*" for conserving the environment. Before the said amendment, the Constitution did contain some of the provisions though not referring to environment conservation directly but which were put to wide interpretations by the Supreme Court to protect the environment. An example of this is Article 21 which guarantees the Right to Life of an individual. It was/ is continuously been given widest possible connotations such as right to live in a clean environment[32], right to livelihood[33], right to live in smoke free environment[34] etc.

Along with the aforesaid amendment, many environmental laws were enacted by the Indian parliament and state councils to restrict and control the issue of air, water, land, radiationcontamination and to ensure conservation of forests and wildlife[35]under the enabling provision of Article 253 of the Constitution.[36]

Prompted into action by the UN Conference held at Rio in 1992 and Indian judiciary through plethora of its judgements, the Parliament in addition to substantive laws related to environment, enacted a statute providing for a tribunal called National Environment Tribunal vide National Environment Tribunal Act, 1995. It was supposed to be the first of its kind in the country which would adjudicate on the matters related to the environment only and "impose strict liability for damages on those handling any hazardous substance in case of any accident involving such substance(s)", on the lines of the Rio Conference guidelines. Another attempt was made by the state by enacting National Environment Appellate Authority Act, 1997 which sought to establish National Environment Appellate Authority for the purpose of "hearing appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto." The National Environment Appellate Authority and the National Environment Tribunal both met the same fate, mainly due to the lack of political will and disinterest displayed by the Ministry of Environment, Forest and Climate Change. Even after a period of 15 years of enactment of NET Act, NET didn't see the light of day. Nothing better can be said regarding the status of NEAA, in the terms of the composition of the tribunal, it saw the appointment of retired officials having little or no experience in the field of law or the process of Environmental Impact Assessment, moreover its conditions of service were so pathetic that no high rank judicial official would like to be appointed as its chairman. Regarding its working, the conditions were equally worse, as it didn't entertain any of the matter which came before it in the form of appeal in the 12 years of its functioning. Thus, both the tribunals have become dark chapters in the history of evolution of India's environmental legal regime.[37]

The 17th Law Commission of India under the chairmanship of M. Jagannadha Rao in its 186th Report, 2003 finally paid heed to the repeated requests of the apex court and made a comprehensive analysis on the idea of having separate courts for environmental matters. It authored a detailed report for the "environmental courts"[38] – their need and idea of establishment in India. It also resonated the thought of the apex court that right to justice, especially in cases related to the environment, is necessary corollary of Article 21 of the Constitution of India. The report prepared by the commission is very comprehensive consisting of 10 chapters- analysing every aspect of legal-enviro regime in India, existing laws on "Environment Courts" (in Chapter I to X) in different states and recommended establishment of these courts for easing out the burden on High Courts and the Supreme Court. Moreover, environmental cases require rapid response and constant monitoring which is a tedious process, and which adds to this burden, delaying the disposal of these cases. Hence, the establishment of green courts was necessary as regular courts lack the expertise

and time needed for complex and multi-disciplinary nature of disputes. The report endorsed the below points:

1) *"In view of the involvement of complex scientific and specialized issues relating to environment, there is a **need to have separate 'Environment Courts'** manned only by the persons having judicial or legal experience and assisted by persons having scientific qualification and experience in the field of environment."*
2) *"The environmental courts will be **Courts of fact and law**, exercising all powers of a **civil court"** in its original jurisdiction, "including the **grant of 'compensation'** as visualized by the National Environmental Tribunal Act, 1995."*
3) Along with the ***original jurisdiction***, *"the proposed Environment Court shall also have appellate jurisdiction in respect of appeals under:*
    (i) The Environment (Protection) Act, 1986 and rules made thereunder;
    (ii) The Water (Prevention and Control of Pollution) Act, 1974 and rules made thereunder:
    (iii) The Air (Prevention and Control of Pollution) Act, 1981 and rules made thereunder;
    (iv) The Public Liability Insurance Act, 1991.

    The Central and State Governments may also notify that appeal under any other environment related enactment or rules made thereunder, may also lie to the proposed Environment Court."
4) *Parliament is authorised to enact law providing for environmental courts by virtue of **"Article 253 of the Constitution** of India, read with Entry 13A of List I of Schedule VII to give effect to decisions taken in Stockholm Conference of 1972 and Rio Conference of 1992."*
5) *"In order to achieve the objectives of accessible, quick and speedy justice, these 'Environment Courts' should be **established and constituted by the Union Government** in each State. However, in case of smaller States and Union Territories, one court for more than one State or Union Territory may serve the purpose."*
6) *It agreed with the opinion of the Supreme Court that **technical knowledge and expertise** was needed in dealing with environmental law matters as complex issues of science and technology arise in court proceedings concerning water and air pollution.*
7) *"The proposed Environment Court shall consist of a **Chairperson and at least two other members**. Chairman and other members should either be a retired Judge of Supreme Court or High Court, or having at least 20 years' experience of practicing as an advocate in any High Court. The term of the Chairperson and members shall be 5 years."*
8) *"**Appeal against the orders** of the proposed Environment Court, shall lie before the Supreme Court on the question of facts and law."*
9) *"The need to make a final appellate view at the level of each State on decisions regarding '**environmental impact assessment**'."*
10) *"The proposed Court shall not be bound to follow the procedure prescribed under the Code of Civil Procedure, 1908, but will be guided by the **principles of natural justice**. The Court shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872."*
11) *"The Environment Court must follow the following **principles**. These principles must be **part of the proposed statute** dealing with Environmental Courts." These are:*
    a) ***"Polluter Pays Principle**- The 'Polluter Pays Principle'…… means that the absolute liability for harm to the environment extends not only to compensate the victims of the pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as*

such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."[39]

b) ***"Hazardous substances – Absolute liability***- *Absolute or strict liability is one where fault need not be established. It is no-fault liability……. Liability independent of fault must be favoured for two reasons: first, it is very difficult for plaintiffs to establish fault in environmental liability cases; and secondly, it is the person who undertakes an inherently hazardous activity, rather than the victim or society in general, who should bear the risk of any damage that might ensue……. In the Oleum Gas Leak case (M.C. Mehta v. Union of India) AIR 1987 SC 1086, the Supreme Court laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and to those residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken.*[40]*…… It is no longer permissible in the case of injury by use of hazardous substances, to prove merely that the injury was not foreseeable or that there was no unnatural use of the land or premises by the factory, as was the position under the law laid down in Rylands vs. Fletcher. This principle was reiterated in Indian Council for Environ-Legal Action vs. Union of India 1996(3) SCC 212 (see p 246, para 65) and other cases by the Supreme Court of India."*

c) ***"Precautionary Principle***- *The Supreme Court of India, referred to the precautionary principle and declared it to be part of the customary law in our country. "In view of the above mentioned constitutional and statutory provisions, we have no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environmental law of the country."*[41]

d) ***"Principle of Prevention***- *The Prevention Principle takes care of reckless polluters who would continue polluting the environment in as much as paying for pollution is a small fraction of the benefits they earn from their harmful acts or omissions. Prevention of pollution must therefore take priority over compelling the polluter to cough up……..... Environment Impact Assessment is the crucial procedure which seeks to ward off prevention."*

e) ***"Principle of New Burden of Proof***- *In the Vellore Case*[42] *1996(5) SCC 647, Kuldip Singh J observed (see p 658)(para 11) as follows: "(iii) the 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign." In A.P. Pollution Control Board case*[43]*: 1999 (2) SCC 718 (at p 734) it was explained that the 'precautionary principle' has led to the new 'burden of proof' principle. In environmental cases where proof of absence of injurious effect of the action is in question, the burden lies on those who want to change the status quo."*

f) **"*Sustainable Development***- *Development of the countries and eradication of poverty must be balanced against conservation of environment…….. The principle of 'sustainable development' is at the basis of the fundamental principles of the law of environment. The principle was referred to in Vellore Citizens' Welfare Forum case*[44] *:1996(5) SCC 647. It was stated that there is today no conflict between 'development' and 'safeguarding ecology'; it is a viable concept which has been developed after two decades from Stockholm to Rio; it is a principle which seeks to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystem……. In Narmada Bachao Andolan vs. Union of India 2000(10) SCC 664, it was pointed out that when the effect of a project is known, then the principle of sustainable development would come into play which will ensure that*

mitigative steps are and can be taken to preserve the ecological balance. "Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation.""

g) ***"Public trust doctrine**: The 'public trust' doctrine was referred to by the Supreme Court in M.C. Mehta vs. Kamal Nath: 1997 (1) SCC 388. The doctrine extends to natural resources such as rivers, forests, sea shores, air etc., for the purpose of protecting the eco-system. The State is holding the natural resources as a trustee and cannot commit breach of trust."*

12) **"Inter-generational equity**: Over-exploitation of earth, water and other natural resources by the present generation must be prevented so as to preserve them for the benefit of future generations."

"The need to **develop a jurisprudence** in this branch of law which is also in accord with scientific, technological developments and international treaties, conventions or decisions."

The government brought up the bill in 2009 proposing to set up National Green Tribunal vide National Green Tribunal Act, 2010. It came into force on 18th October, 2010.

OBJECT OF NGT

The parent Act enacted by Parliament defines the object of National Green Tribunal Act, 2010 as follows:

> *"An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto."*[45]

Section 4(3) of the NGT Act empowers the centre government to specify by notification the place(s) of sitting of the tribunal and their corresponding territorial jurisdiction.[46] The centre has thus provided for the New Delhi to be the principal bench of the NGT with other regional/zonal benches in Pune (West), Bhopal (Central), Chennai (South) and Kolkata (East). The territorial/geographical jurisdiction of each of these benches has been clearly laid down. In addition, provision has also been made for circuit benches for making NGT more accessible to the citizens. Example- the Southern Zone bench at Chennai, can, under the circuit procedure, sit at other places like Bangalore or Hyderabad.

COMPOSITION OF NATIONAL GREEN TRIBUNAL

Presently, the NGT has 3 judicial members, and an equal number of expert members and is headed by a Chairperson.The head of the NGT has to be either present judge of the Supreme Court or has a former judge of the apex court, or the Chief Justice of a High Court. Other judicial members have to be from High courts. Proviso to section 4(4)(c) states "that the number of Expert Members shall, in hearing an application or appeal, be equal to the number of Judicial Members hearing such application or appeal". Section 5 of the Act prescribes "Qualifications for appointment of Chairperson, Judicial Member and Expert Member". Theeligibility criteria for an Expert member is-

A. Post-graduation in science with a doctorate degree or Master of engineering or Master of technology

B. With an experience of five years in environmental field or forest conservation or other related subjects, or

C. Administrative experience of fifteen years incorporating five years' experience in environmental matters in centre or state government or in government institution at these levels.

CONCLUSION

This research work concludes that environmental conservation is dependent on three major, important and inter-twined areas: environmental statutes enacted by the legislative authority, ethics and academics & education. Of these three domains, every domain contributes its part towards the building of an enviro-legal regime of a country, and moulding it from time to time. The inter-play of these factors also influences the judicial decisions and general behaviour of society at large towards the cause of environment. For environmental justice to be converted into reality from mere paper existence, society needs to evolve these three domains and work on the inter-relationship between them that will lead the environmentalism movement in the country.[47]

Today, what is required is the adoption of a wholesome approach towards the ecological issues, right from the optimum natural resource management to addressing the issues concerning such resources like pollution and wastage etc. This approach demands a pro-active role to be taken up, rather than passively responding to the particular challenges. Thus, the idea of environment conservation should be the guiding factor in the policy-making process and not only in the legal structure of the country. It is recommended to have a democratic process for decision-making over policies by incorporating the concerns of various stakeholders, relevant governmental agencies, representatives of multifarious industries, NGOs involved in cause of environment and activists with civil society at large. This leads to improved flow of information between policy making authorities and the common man, resulting in transparency and reducing the scope of conflicts, and also the growth of conflict-resolving strategies. Thus, setting up of an ECT is not the end of the road, but it's an initial step in the direction of environmental justice which alone cannot guarantee the same but needs to be supplemented through various other means.

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[1]George Rock Pring, Catherine Kitty Pring, *et. al., Environmental Courts & Tribunals: A Guide for Policy Makers,* (UN Environment, Kenya, 2016) *available at:* https://wedocs.unep.org/bitstream/handle/20.500.11822/10001/environmental-courts-tribunals.pdf?sequence=1

[2] George Rock Pring, Catherine Kitty Pring, *et. al., Greening Justice: Creating and Improving Environmental Courts and Tribunals,* (The Access Initiative, 2009) *available at:* https://www.eufje.org/images/DocDivers/Rapport%20Pring.pdf

[3]*Ibid.*

[4]*Supra* note at 1.

[5] George Rock Pring, Catherine Kitty Pring, "Specialized Environmental Courts & Tribunals at the Confluence of Human Rights and the Environment" 11 *Oregon Review of International Law* 301 (2009) *available at*: http:// www.law.du.edu/ect-study

[6]Michael Faure (ed.), II *Elgar Encyclopedia of Environmental Law*(Edward Elgar Publishing Limited, Cheltenham, 2016) *available at*: https://doi.org/10.4337/9781785369520

[7]*Supra* note at 1.

[8]*Ibid.*

[9]Brian J. Preston, "Characteristics of Successful Environmental Courts and Tribunals", 26 *Journal of Environmental Law*365-393 (2014) *available at:* https://doi.org/10.1093/jel/equ019

[10]John Barry, "Towards a Green Republicanism: Constitutionalism, PoliticalEconomy, and the Green State" 17(2) *The Good Society*4 (2008).

[11]*Ibid.*

[12] David R.Boyd, "The Constitutional Right to a Healthy Environment", 54 *Environment: Science and Policy for Sustainable Development*3-15 (2012) *available at:* http://doi.org/10.1080/00139157.2012.691392

[13] The National Green Tribunal Act of India, 2010 (Act 19 of 2010).

[14] The Constitution of Kenya, 2010, ss. 162(2)(b), 162(3).

[15]*Supra* note at 6.

[16] George Rock Pring, Catherine Kitty Pring, "The Future of Environmental Dispute Resolution" 40 *Denver Journal of International Law & Policy*482(2011) *available at*: http://www.law.du.edu/ect-study

[17]*Supra* note at 2.

[18]*Supra* note at 1.

[19]Gitanjali Nain Gill,*Environmental Justice in India: The National Green Tribunal*(Taylor & Francis, 2016).

[20]*Supra* note at 1.
[21] Evan Hamman, Reece Walters and Rowena Maguire, "Environmental Crime and Specialist Courts: The Case for a 'One-Stop (Judicial) Shop' in Queensland" 27 *Current Issues in Criminal Justice*59-77 (2015) *available at:*https://doi.org/10.1080/10345329.2015.12036031
[22]*Supra* note at 1.
[23]Gitanjali Nain Gill, "Environmental Justice in India: The National Green Tribunal and Expert Members" 5(1) *Transnational Environmental Law*175-205 (2016).
[24]BrianPreston, "The Use of Restorative Justice for Environmental Crime", 35 *Criminal Law Journal* 136(2011), *available at:*https://ssrn.com/abstract=1831822
[25]*Supra* note at 1.
[26]*M.C. Mehta v. Union of India*, AIR 1987 SC 965; *A.P. Pollution Control Board v. M.V. Nayudu-II*, 2001(2) SC 62.
[27]Swapan Kumar Patra & V.V. Krishna, "National Green Tribunal and Environmental Justice in India" 44(4) *India Journal of Geo-Marine Science* 445-453 (2014).
[28] Categorisation of Cases Filed in the National Green Tribunal, *available at:*https://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/
[29] The Constitution (42nd Amendment) Act, 1976 received the assent of President of India on December 16,1976.
[30] Article 48-A "Protection and improvement of environment and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."
[31] Article 51A(g) "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures."
[32]*Rural Litigation and Entitlement Kendra v. State of U.P.,* AIR 1985 SC 359.
[33]*K. Chandru v. State of Tamil Nadu*, AIR 1986 SC 204.
[34]*Murli S. Deora v. Union of India, (2001) 8 SCC 765*.
[35]"SourcesofDomesticEnvironmental Law" *available at:* https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/06._environmental_law/02._sources_of_domestic_environmental_law/et/5722_et_02_et.pdf
[36]Article 253 "Legislation for giving effect to international agreements.
Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."
[37]The Access Initiative, "How Green Will be the Green Tribunal?" (2009), *available at:*https://elaw.org/system/files/How%20Green%20Will%20be%20the%20Green%20Tribunal.pdf
[38] Law Commission of India, "186th Report on Proposal to Constitute Environment Courts" (September, 2003).
[39]*Vellore Citizens' Welfare Forum v. Union of India*, 1996(5) SCC 647.
[40]*M.C. Mehta v. Union of India*, AIR 1987 SC 1086.
[41]*Supra* note at 39.
[42]*Ibid*.
[43]*A.P. Pollution Control Board v. Prof. M.V. Nayudu*, 1999(2) SCC 718.
[44]*Supra* note at 39.
[45] The National Green Tribunal Act of India, 2010 (Act 19 of 2010).
[46]Section 4(3) "The Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting."
[47]National Green Tribunal Act, *available at:* https://www.lawteacher.net/free-law-essays/constitutional-law/national-green-tribunal-act-constitutional-law-essay.php.