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# ENVIRONMENTAL DISPUTE REDRESSAL MECHANISM: A Comparative Analysis of India and Australia

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**[Abstract:** Environmental protection is a global concern that requires dedicated legal mechanisms to address the complex issues at hand. India and Australia, two countries known for their unique ecological diversity, have both established specialized courts to deal with environmental matters. In this comprehensive comparative study, we delve deep into the structures, functions, effectiveness, and challenges faced by these specialized courts: India's National Green Tribunal (NGT) and the various environmental judicial bodies in Australia. Through a meticulous analysis, we seek to understand how each system operates and explore their respective strengths and weaknesses, ultimately shedding light on the broader implications for global environmental jurisprudence.]

## I

### Introduction

Environmental protection is one of the most critical global challenges of our time. The deterioration of ecosystems, climate change, pollution, and the depletion of natural resources necessitate robust legal frameworks to safeguard the environment. Recognizing this need, many countries have established specialized courts to handle environmental matters, ensuring that laws are upheld, polluters are held accountable, and justice is served for environmental violations.<sup>1</sup>In the year 2008 it has been reported that the world countries nearly, forty one, have adopted different approaches- some have adopted environmental tribunal and this includes Kenya, South Africa, Guyana, Philippines, China, Bolivia, Chile, India, and Tanzania. Other countries like Norway, Finland, Belgium, Thailand, Sweden and Uganda where ordinary Court or Administrative Courts resolve environmental litigation.<sup>2</sup>

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<sup>1</sup>C. M. Jariwala, National Green Tribunal: Wither (IN)Justice? Delhi Law Review, 1 (2011).

<sup>2</sup>*Ibid.*

The environmental litigation unlike others disputes, involves complex techno-science and interdisciplinary matters like whether some components or the environment as a whole is affected because of pollution; what is the degree of pollution; to what extent damage is done to different components of environment; how much is the cost to compensate the loss and repair and regenerate the damage; and what is the appropriate penal sanction in the matter. If the existing courts decide these matters without technical expertise, the US Supreme Court warned that 'it will lose confidence of people'.<sup>3</sup> Because of these problems, in India, the Supreme Court repeatedly suggested and even directed to constitute a separate specialized forum to handle environmental litigations; whereas the Australian environment court deserves special attention in view of the fact that the apex court of India in '*A.P. Pollution Control Board v. M V Nayudu*'<sup>4</sup> (Further mentioned as *Pollution Control Case*) suggested that "the Land and Environment Court of New South Wales in Australia, which was founded in 1980, could be the perfect option". As, it is clear that India and Australia, two countries with diverse and ecologically sensitive landscapes, have each adopted distinct approaches to address environmental concerns through specialized courts. India introduced the National Green Tribunal (NGT) in 2010, while Australia relies on a decentralized system, with various federal and state-level courts and tribunals dealing with environmental cases. This article presents a comprehensive comparative study of these systems, analyzing their structures, functions, effectiveness, and challenges.<sup>5</sup>

Therefore, the present research try to present a comparative picture of India's specialised court i.e The National Green Tribunal (Further Mentioned as NGT) and Australia's the Land and Environment Court of New South Wales (Further Mentioned NSW'LEC) in Australia.

## II

### Historical Background

The concerns for establishing Environmental Courts in India originated from the pro-active judiciary, around 40 years back<sup>6</sup>, when in 1986<sup>7</sup>, the Supreme Court of India expressed

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<sup>3</sup>*Daubert v. Merrel Dow Pharma* (1993) 11 j S. Ct. 2786.

<sup>4</sup>AIR 1999 SC' 812.

<sup>5</sup>Usha Tandon, *Environmental Courts and Tribunals: A Comparative Analysis of Australia's LEC and India's NGT*, *The Indian Yearbook of Comparative Law*, 477 (2016).

<sup>6</sup>Bhopal disaster, 1984

difficulty in solving techno-science disputes handling environmental litigation. The Apex Court observed that, in as much as cases pertaining to the environment encompass the evaluation of scientific information. It was deemed advantageous to establish courts specializing in environmental matters at a regional level, presided over by a learned Judge and two knowledgeable experts. This approach takes into account the specific expertise necessary for the effective adjudication of such cases.<sup>8</sup> In 2000, the Supreme Court of India speaking through Justice Jagannath Rao in *Pollution Control Case*<sup>9</sup> directed the Law Commission of India to seriously study the need of having Environmental Courts in India. When, in 2003, Justice Jagannath Rao became the Chairman of the 17<sup>th</sup> Law Commission of India the very first report that came out during his regime was on “Proposal to Constitute Environmental Courts”,<sup>10</sup> wherein the Law Commission recommended for the constitution of State level Environmental Courts.<sup>11</sup>

Before the National Green Tribunal Act<sup>12</sup> was passed by the Indian Government, the Parliament in 1995 enacted the National Environment Tribunal Act (NETA),<sup>13</sup> The principal objective was to establish a National Environment Tribunal with the aim of expeditiously and efficiently addressing litigation stemming from incidents pertaining to perilous elements. The goal of this was to offer aid and reparation for harm caused to individuals, possessions, and the natural world. Despite this, the Tribunal was never established and was ultimately revoked when the National Green Tribunal Act was passed in June 2010. In 1997, National Environment Appellate Authority (NEAA) was created under the National Environment Appellate Authority Act, 1997, that mainly dealt with environmental clearances and turned out to be grossly ineffective, primarily due to the heavy control of the Authority by the MoEF. India’s NGT was established on 18/10/2010 and became functional

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<sup>7</sup>M.C. Mehta v. Union of India, 1986 (2) SCC 176

<sup>8</sup>Indian Council for Enviro- Legal Action v. Union of India, 1996(3) SCC 212.

<sup>9</sup> AIR1999 SC 812.

<sup>10</sup> Law Commission of India, Government of India, 186<sup>th</sup> Report on Proposal to Constitute Environmental Courts, September, 2003

<sup>11</sup>Id.

<sup>12</sup> National Green Tribunal Act, (NGT Act) 2010 (Act no. 19 of 2010) (India).

<sup>13</sup> Act No 27 of 1995

from 5/05/2011,<sup>14</sup> with New Delhi selected as the site for the Principal Bench, later followed by 4 zonal benches in Chennai, Bhopal , Pune, and Kolkata.<sup>15</sup>

In Australia, environmental matters are generally dealt with through various federal and state regulatory bodies, rather than a specific environment court. Each state and territory have its own environmental legislation and administrative bodies responsible for regulating and enforcing environmental laws.<sup>16</sup>

Structure of Environmental Jurisprudence in Australia: Australia has a federal legal system where environmental matters can be heard in federal courts or state and territory courts. Additionally, various specialized tribunals, such as the Administrative Appeals Tribunal and the Land and Environment Court,<sup>17</sup> handle environmental cases at the state and territory levels.

### III

#### **The National Green Tribunal, 2010: An Indian Experience**

India established its first specialized environmental court in 1995, known as the National Green Tribunal (NGT). The NGT's primary objective is to expeditiously handle cases related to environmental protection, conservation of forests, and the prevention of environmental degradation. The NGT is a statutory body with jurisdiction over all civil cases related to environmental laws. The salient features of the National Green Tribunal Act, 2010 (NGTA) is divided under the following heads:

#### ***Objectives***

The main goals of this legislation were: “firstly, to guarantee that cases related to environmental protection and the conservation of forests and other natural resources are resolved efficiently and promptly, including the enforcement of environmental legal rights and the provision of compensation for damages to individuals and property, as well as other

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<sup>14</sup> Ministry of Environment and Forests (MoEF), Government of India, Notification, 5 May 2011, SO 1003 E. (The Ministry has now been renamed as Ministry of Environment Forests and Climate Change-MEF&CC).

<sup>15</sup> Ministry of Environment and Forests ,(MoEF), Government of India, Notification, 17 Aug. 2011, SO 1908 E. (It also holds Circuit Benches at various places like Shimla, Jodhpur, Shillong etc. )

<sup>16</sup>Supra note 5.

<sup>17</sup> Land and Environment Court Act (LEC Act)1979 No 204 (NSW).

relevant issues. Secondly, the enforcement of international decisions made in Stockholm and Rio, of which India was a participant. Furthermore, the Constitution of India has broadened the interpretation of article 21, leading to the development of new fundamental rights, such as the right to a clean and healthy environment.”<sup>18</sup>

### *Composition*

The tribunal is comprised of a chairperson who serves on a full-time basis, along with a minimum of ten and a maximum of twenty full-time members who possess expertise in the judicial and legal fields.<sup>19</sup> The prerequisites for the designation of the chairperson necessitate that the individual hold the position of a judge in the Supreme Court of India or serve as the Chief Justice of a high court.<sup>20</sup> It is the National Tribunal, and consequently, it would have been preferable if the position of the chairperson was occupied exclusively by a judge from the Supreme Court of India. In addition to the aforementioned requirement, which is relevant for a member with a judicial background, an individual who is currently serving or has retired as a judge from a high court can also assume the role of a judicial member within the tribunal.<sup>21</sup> The presence of justices from the Supreme Court and high court is imperative due to the fact that the tribunal has been equated with the high court in matters pertaining to environmental litigations, and furthermore, they possess the ability to equitably balance the scales of justice.

In the event of the proficient constituent, the credentials consist of possessing a Master's degree in Physical and Life Sciences, specifically in the field of Science, with a doctoral degree. Alternatively, an individual may also possess a Master's degree in Engineering or Technology, accompanied by a minimum of fifteen years of practical involvement in the pertinent sector. Within this timeframe, it is requisite to have accumulated at least five years of hands-on experience in the domain of environment and forests, within a highly regarded institution operating at the national level..<sup>22</sup> The scope of practical knowledge has been extended to encompass a wider range of subjects, such as the regulation of pollution, the management of hazardous substances, the evaluation of environmental impact, the

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<sup>18</sup>Object and Statement of National Green Tribunal Act, 2010.

<sup>19</sup>Section 4 (1), National Green Tribunal Act, 2010.

<sup>20</sup>*Id.*, Section 5 (1).

<sup>21</sup>*Id.*, Section 5 (1).

<sup>22</sup>*Id.*, Section 5 (2).

administration of climate change, the supervision of biological diversity, and the preservation of forests.

The alternative qualification<sup>23</sup>the individual possesses a cumulative experience of fifteen years in administrative roles. Among this duration, a minimum of five years is mandatory to have been devoted to the handling of matters pertaining to the environment. This experience should have been acquired either within the central or state government or within a highly regarded institution operating at the national level.

The appointment of the chairperson, judicial members, and administrative members can be carried out by the central government.<sup>24</sup> the appointment of the chairperson, on the other hand, will be made by the government in consultation with the Chief Justice of India..<sup>25</sup>

The chairperson, judicial members and the expert members shall hold the office for a term of five years and will not be eligible for reappointment.<sup>26</sup>

### ***Jurisdiction and Powers***

The tribunal has been given wide jurisdictions. Looking to the matters which will come before the tribunal , can it be said that all of them will be confined to only 'green' India? But looking to the environmental litigations which have come before the Supreme Court and high courts, they are not merely confined to greenery or green matters, rather they involved large number of components of environment. Thus it is submitted that the 'green' label requires replacement by 'environment'. The jurisdiction of the tribunal is divided into two: first, the original; and second, the appellate. In case of the original jurisdiction, the Act provides that provides thatthe Tribunal shall have jurisdiction over all civil cases.<sup>27</sup> However there are two limitations: Firstly, there must exist a significant inquiry pertaining to the environment in question.<sup>28</sup> Secondly, the question must ariseout of the implementation of the seven legislations mentioned in Schedule I to the Act of 2010.<sup>29</sup>

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<sup>23</sup>*Id.*, Section 5 (2) (b).

<sup>24</sup>*Id.*, Section 6 (1).

<sup>25</sup>*Id.*, Section 6 (2).

<sup>26</sup>*Id.*, Section 7.

<sup>27</sup>*Id.*, Section 14 (1).

<sup>28</sup>*Id.*

<sup>29</sup>*Id.*

Section 16 earmarks the appellate jurisdiction to cases where any person is aggrieved by any direction, order or decision made on or after the commencement of the Act under six legislations, keeping the Public Liability Insurance Act, 1991 out of the jurisdiction. In both the jurisdictions the date of limitations is different. In the first case it is six months from the date on which the cause of action arose; however a grace period of further sixty days is given in case of sufficient cause. In case of appeal, it is thirty days from the date of communication of direction, order or decision to the party; however grace period of sixty days on sufficient cause is also provided.

In the matter of jurisdiction, it should be noted that the Act does not mention articles 32 and 226, which grant the fundamental right and constitutional right to enforce fundamental rights, respectively. This brings up the issue: can a law overshadow article 32? Additionally, the tribunal has the authority to make initial decisions: will it supersede the authority of the high courts under article 226, which guarantees the constitutional right to uphold fundamental rights? The Act does not provide a specific answer, but the general stance is that the Act is unable to do so. Section 22 states that if someone is unhappy with a decision made by the tribunal, they can appeal to the Supreme Court.

The tribunal has been granted authority under section 15(1) to offer assistance and compensation to individuals affected by environmental pollution, to restore damaged property, and to restore the polluted environment.

Additionally, aside from the powers outlined in the Act, the tribunal is not required to follow the civil procedure code but must adhere to the principles of natural justice.<sup>30</sup> Additionally, aside from the powers outlined in the Act, the tribunal is not required to follow the civil procedure code but must adhere to the principles of natural justice.<sup>31</sup> The decision made by the majority members must be followed.<sup>32</sup> In case the bench is equally divided then the matter shall be heard by the chairperson. Further, if still they are equally divided then the matter shall be referred to the other bench. Costs can also be awarded in cases of false or vexatious litigation, including any lost benefits due to an interim injunction. It is submitted that in order to discourage such litigations, provision for exemplary cost

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<sup>30</sup>*Id.*, Section 19 (1).

<sup>31</sup>*Id.*, Section 19 (4).

<sup>32</sup>*Id.*, Section 21.



should have been provided. A civil court with local jurisdiction is responsible for carrying out the orders or decisions made by the tribunal. Section 24 contains a crucial rule that permits compensation for environmental damage to be placed into the Environment Relief Fund. The authority has the discretion to use the deposited money as prescribed. Beforehand, this money was placed into the Consolidated Fund, where it was used for various general expenses. The money deposited in the Environment Fund will now be specifically used for repairing or rejuvenating the environment.

In the event of an accident leading to death, injury, or damage, Section 17(1) introduces the notion of strict liability. The legislations in Schedule section 17(3) specifically brings 'no fault' principle in such cases. The person responsible shall compensate the loss under all or any head mentioned in Schedule II. Section 17(2) takes care of joint liability in case of combined activities and in such a case the tribunal is empowered to provide for apportioned compensation on an equitable basis.

### ***Penal Provision***

In the year 2010, for the first time, the Act introduces a substantial fine penalty. Section 26 states that anyone who does not follow a tribunal's order or decision can be imprisoned for up to three years, or fined up to ten crore rupees, or both. This is the lowest punishment in the history of increased punishment. If the violation persists, a fine of rupees twenty-five thousand will be imposed for each day it continues. If a corporation is deemed culpable, the penalty shall be augmented to a sum of twenty five crore rupees and rupees one lakh each day for each day the infringement persists. Further, the non-compliance is made non-cognizable offence under section 26(2). It is unfortunate that the harsh penalty is neutralized by sections 27 and In case the company or government department can demonstrate that the offense was committed without knowledge or due diligence in preventing it, they will not be subject to any penalty as per section 28. Thus the mandatory application of principles of no fault liability, strict liability and polluter pays principle prescribed by the Act of 2010 are badly diluted, leaving the main actors, polluting the environment, to go scot free. Those with open eyes could defy the orders or decisions of the tribunal may take the umbrella of above

pleas for their protection. Is not it contrary to the principle of sustainable development and against environmental justice?

### *Effectiveness of the NGT*

While the NGT has made significant contributions to environmental protection in India, there are challenges related to its backlog of cases and delays in delivering judgments. However, its existence has undoubtedly improved access to justice in environmental matters.

## **IV**

### **Specialized Courts in Australia**

Australia has a different approach to environmental law, with a more decentralized system involving both federal and state jurisdictions. Instead of a single specialized environmental court, environmental cases are typically heard in various tribunals, courts, and administrative bodies at different levels of government. In this part only the Land and Environment Court Act 1979 has been discussed for comparative analysis

### *Objectives*

The goal of NSW'LEC is to establish the Land and Environment Court and to establish its authority.<sup>33</sup>The NSW'LEC was created in 1980 to serve as a superior court of record, taking the place of the Local Government Appeals Tribunal, the Land and Valuation Court, the Clean Waters Appeal Board, and the Valuation Boards of Review. Furthermore, the new Court also took over certain jurisdictions that were previously under the authority of the District Court.<sup>34</sup>

### *Composition*

The judicial body known as Composition NSW'LEC is comprised of individuals who hold positions as Judges, Commissioners, and other Officers of the Court. LEC, on the other hand,

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<sup>33</sup> Land and Environment Court Act (LEC Act)1979 No 204 (NSW), Preamble.

<sup>34</sup> Young Lawyers, A Practitioner's Guide to NSW'LEC(2009) 1

is established as a Superior Court of Record and possesses its own official seal.<sup>35</sup>The composition of the court is comprised of the chief judge , who is designated by the governor, and addittional judges who may be appointed by the Governor periodically.<sup>36</sup>The appointment of the commissioner of the court is within the purview of the Governor.<sup>37</sup>The position of the commissioner may be occupied by either a person who works on fiull time basis or a person who works on a part time basis.<sup>38</sup>

A Registrar, an Assistant Registrar, and any other necessary officers of the Court may behire d for the purpose of administering the Act..<sup>39</sup>All cases in the Court are heard and resolvedby a sole Judge, who forms the Court.<sup>40</sup>

It also includes instructions for the handling and resolution of cases before one or more Com missioners or other court officers.<sup>41</sup>,with respect to specified matters. To be appointed as a Judge of LEC, a person must be under 70 years old and either hold a judicial office in this State or the Commonwealth, or be an Australian lawyer with at least 7 years of experience.<sup>42</sup>The revised Act also allows for Supreme Court Judges to serve as Land and Environment Court Judges, with only a few exceptions.<sup>43</sup>No specific requirements have been set for the position of Chief Judge. An individual is eligible for appointment as a Commissioner if they have relevant qualifications and knowledge in urban or rural planning, environmental planning, architecture, engineering, surveying, or construction of buildings.<sup>44</sup>; Having expertise in local government or town planning administration, environmental science and environmental protection, land valuation law and practice, natural resource management, Crown land administration, urban design, heritage, and/or Aboriginal land rights, as well as qualifications and experience suitable for resolving disputes involving Aboriginal people, qualifies someone to be appointed as a

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<sup>35</sup> Section 5, Land and Environment Court Act (LEC Act)1979.

<sup>36</sup>*Id.*, Section 7.

<sup>37</sup>*Id.*, Section 12.

<sup>38</sup>*Id.*, Section 12 (2A).

<sup>39</sup> Under the Public Sector Employment and management Act, 2002, *Id.*, Section 15

<sup>40</sup>*Id.*, Section 6 (1)

<sup>41</sup>*Id.*, Section 6 (2)

<sup>42</sup>*Id.*, Section 8 (2)

<sup>43</sup>*Id.*, Section 11A

<sup>44</sup>*Id.*, Section 12 (2)

Commissioner.<sup>45</sup> A person who is a lawyer in Australia is also eligible to become a Commissioner.<sup>46</sup> The commissioner serves a 7-year term and can be reappointed.<sup>47</sup> The Act also provides for the disqualification of Commissioner<sup>48</sup> provision for the Acting Chief Judge<sup>49</sup> and Acting Judges.<sup>50</sup> No disqualification for judges have been prescribed.

### *Jurisdiction*

The LEC in NSW has been granted extensive authority over environmental planning and land issues. The Land and Environment Court has exclusive jurisdiction, meaning no other court or tribunal has the authority to exercise its jurisdiction. The Court's jurisdiction is split into eight Categories of Proceedings under Part 3 of the Act.<sup>51</sup> Classes 4, 5, and 8 of Part 3 give Original Jurisdiction to LEC with respect to "Environmental Planning Protection and Civil Enforcement"<sup>52</sup>; "Environmental Planning and Protection Summary Criminal Enforcement"<sup>53</sup>; and Mining Matters. Classes 1, 2, 3, 6 and 7 confer Appellate Jurisdiction on LEC with respect Appeals related to environmental planning and protection, local government, land tenure, valuation, rating, compensation, and convictions for environmental offences can now be heard by the New South Wales Local Court, rather than the Supreme Court. Each one of these Classes refers to host of legislations with specific

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<sup>45</sup>*Id.*,

<sup>46</sup>*Id.*, Section 12 AA

<sup>47</sup>*Id.*, Schedule 1

<sup>48</sup>*Id.*, Section 14 Disqualification of Commissioners

(1) Where a Commissioner:

(a) has a pecuniary interest, direct or indirect, in a matter which is the subject of proceedings before the Court

(b) is a member, officer, employee or servant of a public or local authority that is a party to any proceedings before the Court, being proceedings in respect of which the Commissioner is exercising any functions conferred or imposed on the Commissioner by or under this Act or the rules, then:

(c) the Commissioner shall inform the Chief Judge that the Commissioner has such an interest or is such a member, officer, employee or servant, and

(d) the Commissioner shall thereupon cease to exercise those functions in relation to the proceedings

<sup>49</sup>*Id.*, Section 10

<sup>50</sup>*Id.*, Section 11

<sup>51</sup>*Id.*, Sections 16 to 21C

<sup>52</sup>The United States Environment Protection Agency ensures compliance and enforcement of all environmental laws.

<sup>53</sup>The *Summary of Criminal Prosecutions* resulting from environmental investigations provides information to the public and regulated community on concluded criminal enforcement cases, by the U.S. Government

sections of the legislation. These Classes provide jurisdiction to LEC with respect to more than fifty legislations.<sup>54</sup> The court also has jurisdiction to hear and dispose of the matter relating to the claim for compensation in compulsory acquisition of land.<sup>55</sup>

## V

### **A critical analysis of the functioning of the Australian Environmental Dispute Redressal Mechanism and Indian Tribunal**

A critical analysis of the functioning of the Land and Environment Court and the National Green Tribunal involves examining various aspects such as their structure, jurisdiction, efficiency, effectiveness, and the impact they have on environmental justice. This part critically examines the functioning of NSW's Environmental Court and India's Green Tribunal in terms of independence & impartiality; speedy & efficacious justice, technical expertise; credibility and powers to enforce the orders passed by LEC and NGT.

#### ***Independence and Impartiality***

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<sup>54</sup> The main legislative instruments which grant the Court jurisdiction to hear and dispose of proceedings and or appeals are:

Environmental Planning & Assessment Act 1979 (NSW)

Local Government Act 1993 (NSW)

Protection of the Environment Operations Act 1997 (NSW)

Heritage Act 1977 (NSW)

Threatened Species Conservation Act 1995 (NSW)

Native Vegetation Act 2003 (NSW)

Contaminated Land Management Act 1997 (NSW)

Roads Act 1993 (NSW)

Land Acquisition (Just Terms Compensation) Act 1991 (NSW)

Trees (Disputes Between Neighbours) Act 2006 (NSW)

Noxious Weeds Act 1993 (NSW)

Water Management Act 2000 (NSW)

Environmentally Hazardous Chemicals Act 1985 (NSW)

Fisheries Management Act 1994 (NSW)

Pesticides Act 1999 (NSW)

Forestry and National Park Estate Act 1998 (NSW)

Pipelines Act 1967 (NSW)

National Parks and Wildlife Act 1974 (NSW)

Aboriginal Land Rights Act 1983 (NSW)

In addition, there are a plethora of environmental planning instruments under the Environmental Planning and

Assessment Act 1979 (NSW) (EP&A Act) that regulate various planning and environmental matters.

<sup>55</sup> Under Land Acquisition (Just Terms Compensation) Act, 1991 or any other Act. *Id.*, Section 24

Having an independent and unbiased decision-maker is a crucial element of a well-functioning environmental justice and governance system.<sup>56</sup>Independence is not just about being separate from the legislative and executive branches of government, but also being free from any external influences that could sway the ECT's decisions away from legal and factual considerations. Independence is especially relevant for specialized ECTs, since these forums handle environmental and planning conflicts with a high likelihood of substantial external influences.<sup>57</sup> In case of NSW's LEC,establishing an environment court, rather than as an organ of the executive arm of government and as a superior court of record rather than an inferior court or tribunal, evidences and enhances its independence.<sup>58</sup>The principle of independence is closely linked to the need for a decision-maker to be impartial. Impartiality also entails decision-makers being mindful of and minimizing their personal preferences, biases, or any outside factors that could distort their judgment.<sup>59</sup>India's National Green Tribunal (NGT) has demonstrated its autonomy and fairness by strongly confronting not only small businesses but also holding accountable large corporate sectors and the Central and State Governments for not complying with environmental regulations.<sup>60</sup>"The issuance of warrants against prominent government officials such as the Commissioner of Delhi Police and the Environment Minister of Odisha has indeed taken place."<sup>61</sup> It has the courage and conviction to reject the environmental clearances from its master<sup>62</sup>and Simultaneously, also secure a substantial increase in funding from Rs 8 crore to Rs 34 crore.

### *Speedy and Efficacious Justice*

The main goal of an ECT is to make the resolution of proceedings fair, fast, and cost-effective. Much of the environmental litigation aims to stop or lessen damage to the environment. A postponement in reaching a final decision on the case causes a delay in issuing an order to prevent or lessen the environmental damage.<sup>63</sup>The LEC in NSW is a good example of case management in this situation. The Court Rules and Practice of the LEC in

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<sup>56</sup>*Supra* note 5 at p. 17.

<sup>57</sup>*Id.*

<sup>58</sup>*Id.*

<sup>59</sup>*Id.*

<sup>60</sup>*Id.*

<sup>61</sup>*Id.*

<sup>62</sup>*Id.*

<sup>63</sup>*Id.*

NSW handle different types of cases that are brought before the Court in a varying manner. The processes involved may include directions hearings before judges, commissioners, or registrars to establish timelines for filing applications, documents, and evidence, as well as the exchange of documents and information between the parties, interim applications, and the final hearing. Case management conferences, ADR processes such as conciliation conferences or mediations, and court case reviews are also utilized to ensure the proper handling and timing of the case, and to ensure deadlines are met and filed documents are complete. The EEC case management in NSW consists of a user-friendly court website that offers relevant information to all parties, as well as the ability to file and process documents electronically. Additionally, the system allows for teleconferencing and videoconferencing during hearings and the collection of evidence. Computer data management systems are also utilized to track the status, progress, and deadlines for each case, providing regular reports on individual cases and the overall caseload.

Since its functioning in May 2011, India's NGT has been fairly successful in fulfilling its role as a fast-track Court in efficiently handling cases related to environmental protection and conservation.<sup>64</sup> Majority of the matters before NGT relate to environmental clearance and pollution.<sup>65</sup> The number of cases received since the establishment of NGT till January 31 2015 is 7,768. "The total count of resolved cases as of January 31st is 5,167, while the number of cases that are yet to be resolved stands at 2,601."<sup>66</sup> NGT has been successful in speedy and effective settlement of environmental matters, as it is much more regular in scheduling hearings, typically with time gaps of two to three weeks between two consecutive hearings. Perhaps, this promptness in deliberating over cases is reflected in the increasing number of

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<sup>64</sup>The number of judgments pronounced by NGT May-Dec, 2011, 36; Jan-Dec, 2012, 91; Jan-Dec, 2013, 164;

Jan-Dec, 2014 362 and for the one and a half month Jan-Feb, 15, 169. CEL on National Green Tribunal Available at: [http://www.wwfindia.org/about\\_wwf/enablers/cel/national\\_green\\_tribunal/](http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/)

<sup>65</sup>*Category wise judgments adjudicated by NGT (from May 2011 until February 2015: Environmental Clearance-119 (26%); Forest Clearance 09 (2%); Pollution 148 (32%); Mining 24 (5%); Forest conservation 12 (3%); Limitation 23 (5%) ; CRZ 20 (4%); Cutting of Trees 20 (4%); Illegal Construction 09 (2%); Miscellaneous 76(17%). Ibid.*

<sup>66</sup>As per the written response, to a question in the Lok Sabha, by the Union Environment Minister Mr. Prakash Javadekar, see PTI March 3, 2015, Available at: [http://articles.economictimes.indiatimes.com/2015-03-03/news/59725502\\_1\\_national-green-tribunal-wildlife-crime-control-bureau-lok-sabha](http://articles.economictimes.indiatimes.com/2015-03-03/news/59725502_1_national-green-tribunal-wildlife-crime-control-bureau-lok-sabha) visited on July 3, 2023.

cases being settled by NGT. This has also created optimism in the community regarding decisions of environmental dispute.<sup>67</sup> The Act prescribes<sup>68</sup> “30 days for challenging an order under the Tribunal's appellate jurisdiction, six months on disputes of substantial questions related to the environment”<sup>69</sup> and five years for seeking compensation and relief.<sup>70</sup>

Coming to case management, NGT website is still improving with time. The website does provide for e-filing but it has not taken off as yet. Largely the filing remains cumbersome with six sets of documents to be filed. The website does try to provide all the orders of the case but it seems to get lost while doing so. The website needs substantial improvements. NGT Court rooms do not have the facility of teleconferencing and videoconferencing as of today.<sup>71</sup>

### *Technical Expertise*

Special knowledge and expertise are required for addressing environmental issues and implementing legal and policy responses. The lay commissioners of NSW's LEC have expertise and experience in environmental issues. Many of them have a master's degree, although it is not a requirement. Our jurisdiction includes individuals from a range of fields including local government, town and country planning, environmental science, arboriculture, horticulture, land valuation, architecture, engineering, surveying, natural resource management, aboriginal land rights, urban design, heritage, and law.<sup>72</sup> The NGT Act considers higher degrees in Science, Engineering, Technology and experience in Administration only as technical qualifications. It further requires that degree should be from a reputed national level institution.<sup>73</sup> There is no provision for environmental academicians who have been proactive in the field of environment protection. In its current form, NGT Act mainly facilitates back-door entry for retired bureaucrats.

### *Credibility*

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<sup>67</sup><http://www.downtoearth.org.in/coverage/tribunal-on-trial-4740>

<sup>68</sup>NGT Act, Section 16.

<sup>69</sup>*Id.*, Section 14(3).

<sup>70</sup>*Id.*, Section 15(3).

<sup>71</sup>*Supra* note 5 at p. 19.

<sup>72</sup> LEC Act, Section 12

<sup>73</sup> NGT Act, Section 5



NSW's LEC has upheld the rule of law, and that, in turn, promoted public trust and confidence in the rule of law and in the court system.<sup>74</sup> The number of cases being instituted at India's NGT, each year is phenomenally increasing. The number of cases filed has increased from just 548 in 2012 to 3,116 in 2013 to 2,348 in the first three months of 2014.<sup>75</sup> This indicates an increasing confidence that people have in NGT for addressing the growing environmental crisis. NGT aims to resolve cases within six months. The aim has been largely successful, although there have been some notable cases where NGT has not met deadlines.<sup>76</sup> It is gaining greater credibility and is being accepted by both industry groups and NGOs focusing on environmental protection. The combination of judicial members with technical expertise has significantly enhanced the country's environmental protection system. It has shown a progressive attitude towards both environmental protection in general and the rights of marginalized people in particular.<sup>77</sup> It needs to evolve, however, some internal system for checks and balances for efficient and transparent delivery of justice.<sup>78</sup>

### ***Enforcement Powers***

NSW's LEC enforces law through statutory notices including penalty notices (on-the-spot fines) and stop work notices; civil proceedings including court orders granting an injunction or a court declaration of a breach of the law; and criminal prosecutions imposing sentences for fines and imprisonment. If a person fails to comply with a notice, the Environment Protection Authority EPA may take the action required to mitigate or prevent harm to the environment and recover the costs by issuing a compliance cost notice to the person responsible.<sup>79</sup> India's National Green Tribunal (NGT) has exhibited significant efficacy in

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<sup>74</sup>*Supra* note 5 at p. 19.

<sup>75</sup>Yukti Choudhary, "NGT on Trial", Available at: <http://www.downtoearth.org.in/coverage/tribunal-on-trial-47400#1>

<sup>76</sup> The Sterlite case and Meghalaya rat hole mining cases are two such examples

<sup>77</sup>Armin Rosencranz & Geetanjoy Sahu, "Assessing the National Green Tribunal After Four Years", *Journal of Indian Law and Society*, Vol 5 (Monsoon), (2014) 191, see at 194.

<sup>78</sup>Chandra Bhushan, "NGT Must be Strengthened" Available at: <http://www.downtoearth.org.in/coverage/tribunal-on-trial-47400>.

For an excellent insight into the internal decision-making processes of the five benches of the NGT, see Gitanjali Nain Gill, "Environmental Justice in India: The National Green Tribunal and Expert Members", *Transnational Environmental Law*, (2015) at 29 Available on CJO 2015 doi:10.1017/S2047102515000278

<sup>79</sup> Protection of the Environment Operations Act 1997 (NSW), Section 101.

executing its directives, primarily concerned with the suspension of environmental clearances. The Regional Green Tribunals, conversely, appear to be even more dynamic and assertive than the National Capital Territory (NCT) in Delhi, owing to the intrepid regional adjudicators who lack aspirations for prominent national roles.<sup>80</sup> The NGT Act stipulates the powers vested in the Tribunal to enforce its orders including jail terms and fines amounting to crores. But it is clearly evident that there is hardly any use of such powers to enforce the directions. Given the current composition of the NGT, it poses a considerable challenge for the organization to effectively oversee its directives in every single instance. In order to ensure the efficient execution of the NGT's directives, it becomes imperative to enhance the efficacy of the implementation process by consolidating the various entities responsible for pollution control, including local government bodies and Pollution Control Boards. The petitioner can be involved in the monitoring of its directions.<sup>81</sup>

## V

### **Challenges and Conclusion**

Both India and Australia have recognized the importance of specialized courts or tribunals in addressing environmental issues. While India's NGT provides a centralized and efficient mechanism, Australia's approach allows for flexibility. However, both systems face challenges, including backlog and complexity. A comparative study of specialized courts on environmental protection in India and Australia reveals that there is no one-size-fits-all approach. Each country's legal system and environmental challenges influence the structure and effectiveness of their specialized courts. Both countries can learn from each other's experiences to further improve their environmental protection mechanisms and promote sustainable development. Ultimately, these specialized courts play a critical role in safeguarding the environment for present and future generations.

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<sup>80</sup>*Supra* note 75 at p.200.

<sup>81</sup>*Id.* at 195

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