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enormity. The dilemma underlying the debate about ICC jurisdiction over non party nationals stems primarily from the conflicting needs for the ICC to have sufficient Jurisdictional powers to bring to justice perpetrators of genocide, war crimes and crimes against humanity, and, simultaneously, for states to retain appropriate discretion regarding methods of dispute settlement when the lawfulness of their official acts is in dispute.

In the ultimate working of the ICC some institutional problems are bound to arise but that does not mitigate the real need and significance of such an institution. To date, the court has opened investigations into five situations: Northern Uganda, Democratic Republic of Congo, Darfur (Sudan) and the Republic of Kenya. The court has indicted 16 persons seven of whom remain fugitives, two have died, four are in custody and three have appeared voluntarily before the court. Its first trial of Congolese militia leader lubanga began on 26 January, 2009.[44] On 14th July, 2008 the prosecutor accused Sudanese president Omar al Bashir of genocide, crimes against humanity and war crimes on a reference by the Security Council under chapter VII of the chapter of United Nations. Al Bashir has been the first sitting head of the state indicted by ICC. The court issued an arrest warrant in this regard in march, 2009 in July, 2009 members states of the African union agreed not to cooperate in this arrest. However, South Africa and Uganda declared that he might be arrested if he entered their territory. Lacking its own enforcement machinery or executive power, the court depends on the effective and speedy international cooperation and judicial assistance with member states. States are not allowed to refuse such cooperation with the court or to make reservations thereto. Every state party is obliged to comply with requests for arrest and delivering up of a person to the court.[45] In July and August, 2010 Al basheer traveled to Chad and Kenya, neither of which returned him over to ICC despite being state parties. ICC has reposted both member states to the UN Security council and the ICC Assembly of state parties.

44 htp/wikipedia. Org/ icc.

45 Article 59 of the statute

National Green Tribunal Act, 2010: Does it Lock Environmental Class Actions to Civil Courts?

Mohammad Ayub Dar*

Abstract

Courts and other adjudication tribunals that specialize in environmental and developmental issues have become the subject of a global comparative study. The enactment of the National Green Tribunal Act, 2010 by the Parliament of India has put an end to the debate over retention of ordinary civil courts for environmental adjudication in India. The Act seeks to penetrate green justice notions deep into the environmental laws operating in India. It introduces a specialist adjudicatory mechanism for environmental matters, with a blend of judicial and environmental expertise aimed at achieving the objectives of distinct green jurisprudence in India. The Act, however, introduces some controversial jurisdictional issues and misses to link the new adjudicatory mechanism with some environmental laws. This article seeks to consider the above dimensions and explores questions of composition, jurisdiction and procedures of the Green Tribunal recently established under the Act.

Keywords: Green Tribunal, Precautionary Principle, Polluter Pays Principle, Jurisdiction, Environmental Justice.

Amidst global debate over whether environmental cases shall be allowed to be handled by the traditional courts or that specialized courts/tribunals shall be created for the purpose, India has opted for the latter. The enactment of the National Green Tribunal Act, 2010 has ushered in new horizons of green justice in India[1].The Act has completely changed the outlook of environmental justice delivery mechanism under the major environmental laws enacted by the Parliament of India after the Stockholm Declaration of June 1972.The

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1 The Act received the assent of the President of India on 2nd June 2010 and was published in Gazette of India on 02-06-2010, Pt.II-S.I, Ext.P.I (No.25).

Act amends half a dozen of major environmental legislations and provides higher appellate machinery which was not available under the legislations amended by it. The Act has, however missed to link the new appellate mechanism with the wide variety of sets of Rules that regulate multiple dimensions of environment in India. The power to try acts declared as offences under the environmental Acts has not been changed and continues to be vested with traditional criminal courts, though higher punishment with sentencing options have been prescribed under the new Act.

Above all the Green Tribunal envisaged and now established under the Act has been invested with a novel jurisdiction to settle all civil cases involving substantial questions relating to environment including those where enforcement of any legal right to environment is involved. This is in addition to the jurisdiction to provide relief and compensation which the earlier Environment Tribunal under the repealed National Environment Tribunal Act, 1995 enjoyed .The new jurisdiction conferred upon the Green Tribunal raises a number of issues which may assume much significance in prospective environmental litigation in India. This paper is an attempt to view the novel features of the Act; various procedural rights for enforcement of environmental rights especially those where jurisdiction of civil courts under the new Act seems to be apparently barred.

The Environmental Court/Tribunal (ECT) Debate

The need for the establishment of a specialized environmental court has been stressed and reiterated by the Supreme Court of India[2] and the Law Commission of India[3].The justification for the establishment of such special court given by the Supreme Court is lack of requisite technical and scientific expertise to deal with complex environmental

2 See *M.C.Mehta v.Union of India* 1986 (2) SCC176;*Indian Council for Enviro-Legal Action v. Union of India* 1996 (3) SCC 212;*A.P.Pollution Control Board v.M.V.Naydu* 1999 (2) SCC 718 and *A.P.Pollution Control Board v.M.V.Naydu* ,2001 (2)SCC 62.

3 Law Commission of India, *One Hundred Eighty Sixth Report on Proposal to Constitute Environment Courts* (Sept. 2003), *available at* http://www.law commission of india.nic.in/report/186th%2 0report.pdf.

issues. It has been argued, however, that the need for a special jurisdiction in environmental matters is not based merely on technical and legal complexity issues because such complex issues can be found in other areas of the law as well[4]. The nature of the evidential and judgmental issues involving complex technical/scientific questions is usually quite different from other types of decisions. The science involved in many environmental and public health questions (such as pathways of exposure to pollutants or effects of chemicals on human health) is often characterized by inherent uncertainties distinct from those found in disciplines such as engineering or surveying .Further some of the fundamental principles like precautionary approach, polluter-pays, prevention at source, and procedural transparency which are still in a developing stage have already entered the language of environmental law and policy[5]. Likewise the emergence of principles concerning third party access to environmental justice and the need for review procedures that are timely and not expensive are other pressing reasons warranting special jurisdiction in environmental matters[6].There is an overlapping of remedies (civil and criminal) as well as interests(public and private).The validity of licenses and regulatory notices in environmental law are critically connected with the subsequent enforcement of environmental standards under criminal law. 'Environmental law is thus qualitatively different from other areas of the law in terms of the values and interests that are engaged-many of which are not properly represented'[7] .

The most motivating goals for the establishment of specialized tribunals are case-management and scope for an alternate jurisprudence. Special tribunals can improve the quality and quantity of case-handling over that provided by general courts and can move ahead from the

4 See ' Modernizing Environmental Justice-Regulation and the Role of an Environmental Tribunal' edited by Professor Richard Macrory et.al, Centre for Law and the Environment, Faculty of Laws ,University College London at p.20.

5 Id.

6 Id.

7 Id.

traditional legalistic adjudications to much desirable 'problem solving' or therapeutic or interdisciplinary approach[8]. The other most frequent reasons advanced[9] to prefer a separate ECT for environmental cases are as under:

1. **Efficiency**: ECTs decrease time necessary for decisions.
2. **Economy**: ECTs decrease costs for all concerned with more efficient handling of cases.
3. **Expertise**: ECTs obtain higher quality decisions from judges more expert in complex environmental laws, scientific-technical questions, and value-laden issues than general jurisdiction judges.
4. **Access to Justice**: Such specialized courts/tribunals improve access to justice for business, government, and the public by having an identified forum to handle environmental complaints.
5. **Case Processing**: They improve case processing and reduce backlog of undecided cases in the general court system.
6. **Commitment**: They demonstrate government's commitment to protection of the environment, sustainable development, compliance with international treaties and agreements, etc., by creating a visible court symbolic of that commitment.
7. **Flexible Solutions**: The specialized courts/tribunals open up more flexible ways to solve environmental problems, including alternative dispute resolution, collaborative planning and decision-making, hybrid civil-criminal prosecution, creative sentencing and enforcement options, court appointed special commissions, and facilitated settlement agreements.

8 G Pring and C Pring, Greening Justice - Creating and Improving Environmental Courts and Tribunals (The Access Initiative, Washington DC 2009) p.9.

9 Id at pp.14-16;,see also George (Rock) Pring And Catherine (KItty) Pring, 'Specialized Environmental Courts and Tribunals at the Confluence of Human Rights and the Environment' Oregon Review Of International Law (2009)[Vol. 11, 301 at p.p.308-9.

8. **Public Participation**: They encourage g participation and support for the decision-making process through more open standing, use of community expert committees, etc.
9. **Public Confidence**: They increase public confidence in the government's environmental and sustainable development efforts by having a transparent, effective, expert decisional body.
10. **Increase Administrative Accountability**: The creation of an ECT with reasonably open standing can result in the executive branch being more thorough and transparent in making decisions which affect the environment, because the decisions are open to scrutiny and legal challenge.

The counter-arguments[10] against creation of specialized tribunals are equally impressive. These include:

1. **Competing areas needing expertise**: There are so many other area of the law with equal or even greater fact and law complexity (e.g. health and employment) and environment is not in any way different from those types.

2. **Marginalization of environmental cases and fragmentation of judicial system**: Separating environmental cases from the mainstream will result in their getting less attention, less qualified decision makers, and inadequate budgets and thus cripple the effectiveness of the tribunal. It also results in fragmentation of the judicial system and isolates both judges and the subject matter from the mainstream. Specialized environmental courts/tribunals may be viewed as non-stream, inferior and not adequately respected, resourced or supported. This results in step-child perception about such courts/tribunals which has been reported from several jurisdictions with ECTs.

3. **Reform from within**: There can be incremental reform from within the general judicial system. For instance if knowledge of environmental law is critical, all decision makers can be given an opportunity to be trained. Further cases can be informally directed to

10 Supra Note 8 at pp.17-18.

those who are particularly interested or experienced in the field of environment.

4. **Insufficient case load**: It does not make administrative sense to have a separate tribunal without there being a case load of sufficient size and complexity to warrant time and experience. Uneven workload compared with the rest of the judiciary has other administrative problems associated with it.

5. **Cost**: A separate tribunal entails separate budget for judges, staff, space equipment, and training. This will dilute the existing budget for an already underfunded or overburdened judiciary and may practically reduce access to justice.

6. **Public confusion**: The general public, especially when different laws deal with different components of environment and resources, may be confused about where to file a complaint or find a relief.

7. **What is environmental**: An environmental case involves non-environmental issues and non- environmental cases may have subsidiary environmental issues. Where shall such mixed cases go in the face of the argument that only a regular court generalist judge can address all the non-environmental issues in a case effectively?

8. **Judicial activism**: Specialized courts/tribunals often go beyond the mandate of rule of law in their decision making and develop jurisprudence unique to the case which approach is frowned upon as policy making. This approach is simply an intrusion into an arena vested in executive and legislative branches and amounts to substitution of a judgment for that of the responsible government. Observers of the judicial activism in India argue that such an approach has restricted the growth of a responsible and independent bureaucracy.

To help planners in designing an ECT, researchers have identified a decision framework that consists of 12 distinct ECT 'design decisions'- structural and operational 'building blocks'. Table- 1, based on the said design, provides an insight into these building blocks and shows the countries whose ECTs are the appropriate instances of these design decisions.

Table-1

The 12 Building Blocks or Design Decisions for creating ECTs[11]

BUILDING BLOCK		DECISION DEFINITION	INTERESTING EXAMPLES
1.	**Type of Forum**	Judicial court, quasi-judicial tribunal, ombudsman or other	Vermont Environmental Court, Tasmania Resources Management and Planning Appeals Tribunal, Hungary's Office
2.	**Legal Jurisdiction**	What laws included under ECT's authority; civil, administrative, criminal or combined jurisdiction	Land and Environment Court of New South Wales, Australia Environmental Commission of Trinidad and Tobago
3.	**ECT Level**	Internal agency review, trial, intermediate appellate or final appellate	Supreme Court of India, United States Environment Protection Agency
4.	**Geographic Area**	Area included in jurisdiction: municipal regional state, provincial, national or other	Amazonas Environmental Court in Brazil, Planning and Environment Court of Queensland, Australia
5.	**Case Volume**	Number of cases needed to justify type of ECT selected	Environmental Court of Dhaka, Bangladesh
6.	**Standing**	Plaintiff credentials needed to file a complaint	Republic of South Africa* Republic of South Africa Supreme Court Philippines
7.	**Costs**	Variety of costs and	Environmental Court of

11 G Pring and C Pring , Greening Justice ,supra note 8 at p.20.

		risks to parties fi ling an environmental complaint	New Zealand
8.	**Access to Scientific -Technical Expertise**	Methods for assuring decision-makers have access to unbiased experts	Environmental Court of Appeal in Sweden, Environmental Board of Appeal in Denmark
9.	**Alternative Dispute Resolution (ADR)**	Incorporation of various types of ADR in ECT process to save money and generate better outcomes	Multi-door courthouse of Land and environment Court of New South Wales, Australia
10.	**Competence of ECT judges and decision makers**	Need for selection processes, qualifications, training, tenure and salary to support competence	Finland's Supreme Administrative Court, Supreme Court of Thailand, New York City, Brazil
11.	**Case Management**	Administrative tools to increase efficiency, effectiveness, and access	Planning and Environment Court of Queensland, Australia
12.	**Case Management**	Powers of ECT to use the right remedy(ies) to solve the problem	Federal prosecutors of Brazil

National Green Tribunal Act, 2010 –an appraisal

The National Green Tribunal Act is India's response to the decisions taken at the international level at Stockholm in June 1972 and the U,N Conference on Environment and Development held at Rio De Janeiro in June 1992[12].While the Stockholm Declaration urges the States to take appropriate steps for the protection and improvement of the human environment, the Rio Declaration calls upon the states to provide effective access to judicial and administrative proceedings including

12 The National Green Tribunal Act, 2010, the preamble.

redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The preamble of the Act shows equal regard to the judicial pronouncements construing right to healthy environment as part of the right to life under Article 21 of the Constitution and the need for a nationwide Green Tribunal to resolve multi disciplinary issues relating to the environment. With these objectives the Act envisages 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 or incidental thereto[13].

The Tribunal is to consist of a full time chairperson who is or has been a judge of the Supreme Court or Chief Justice of a High Court[14]. The Tribunal, in addition to a chairperson ,is to consist of not less than ten and not more than twenty Judicial Members who are or have been judges in the Supreme Court or any High Court[15]. Likewise the Tribunal is to consist of not less than ten and not more than twenty Expert Members who must have a masters degree in physical sciences or life sciences with a doctorate degree or masters of engineering or technology and fifteen years experience in the relevant field including five years experience in the field of environment and forests or fifteen years administrative experience including five years experience in dealing with environmental matters in the Central Government or a State Government or in a reputed national or state level institution[16].The chairperson is to be appointed by the Central Government in consultation with the Chief

13 The National Green Tribunal Act, 2010, the preamble and s.3.

14 Id. s.4(1) (a) and s. 5(1).

15 Id. s.4(1) (b) and s. 5(1).

16 Id. s.4 (1) (c) and s. 5(2) (a) and (b); see also Law Commission of India, supra note 3 , the Commission had recommended statutory panel, with an advisory role, to be known as commissioners, (as in Australia and New Zealand) not as permanent members but to be present in the court during the course of hearings.

Justice of India[17].The Judicial and Expert members are to be appointed by the Central Government on the recommendations of a Selection Committee[18]. The Chairperson and the members are to hold office for a period of five years and are not eligible for re-appointment[19]. Sitting or retired judges of the Supreme Court cannot hold office in the Tribunal beyond the age of seventy years[20]. Judges of a High Court including those who have held the office of the Chief Justice in a High Court cannot hold office beyond the age of sixty seven years. In case of Expert Members, the age has been restricted to sixty five years[21].

The Tribunal is to have four circuit benches. The Tribunal is to apply the principle of sustainable development, polluter pays principle and the Precautionary Principle[22] but in procedural matters it is to apply the principles of natural justice[23]. The Green Tribunal is conferred with power to pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule- 1[24]. This provision considerably reduces the efficacy of the referral scheme of Sec.24 of the Environment (Protection) Act, 1986 which has otherwise been accused of making the Act teeth- less tiger, despite its high penal provisions[25]. Violation of any order of the Tribunal would entail a punishment under the Act and not under the violated Act specified in the Schedule -1[26].This may result in disparity in the award of

17 The National Green Tribunal Act, 2010, s.6(2) .

18 Id. s.6(3) .

19 Id .s.7.

20 Id.

21 Id.

22 Id.s.20

23 Id.s.19

24 Id. S.19(J).

25 D'Monte ,Environment Law Has No Teeth,1 Ecology No.4,24-25 (Sept.1986).

26 The National Green Tribunal Act, 2010, s.26 prescribes a punishment for three years or fine up to ten crore rupees or both and an additional fine up to twenty five thousand rupees for each day of deviation after first conviction. A company can be fined up to rupees twenty five crores for

punishment for similar types of violations or acts of pollution of equal magnitude with the sole difference of conviction under the Green Tribunal Act and conviction under other respective environmental Act. The scales of punishment prescribed under the Green Tribunal Act and other environmental Acts being disproportionate, award of punishment for similar acts under the two systems may not befit the principles of fairness and equality .It is therefore, advisable to bring the scales of punishment for similar acts or violations under the other environmental Acts at par with the punishment scale under the Green Tribunal Act so that violations of similar magnitude are punishable similarly.

Jurisdictional Issues

The Tribunal is conferred with three types of jurisdictions. These include jurisdiction in respect of:-

1) Settlement of environmental disputes –section 14;
2) Relief, compensation and restitution -section 15 and
3) Statutory appeals -section 16.where an application under section 14 is pending before the Tribunal an appeal under section 16 would not lie.

1. Settlement of environmental disputes

This jurisdiction covers power to decide all civil cases where

i. a substantial question relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule- 1 appended to the Act[27] or

ii. enforcement of any legal right relating to environment is involved.

The Act does not provide a one-stop- shop type definition of what constitutes a substantial question relating to environment. However,

any deviation and rupees one lakh per day deviation after the date of conviction.

27 The National Green Tribunal Act, 2010,the Acts listed in the Schedule are the Water (PCP)Act,1974; the Water (PCP) Cess Act,1977;the Forest (Conservation)Act,1980;the Air (PCP)Act,1981;the Environment (Protection)Act,1986;the Public Liability Insurance Act,1991 and the Biological diversity Act,2002.

instances of such substantial questions are given in an inclusive manner as under[28]:-

i) where there is a direct violation of a specific statutory environmental obligation by a person by which:-
   a) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
   b) the gravity of damage to the environment or property is substantial; or
   c) the damage to public health is broadly measurable.

ii) the environmental consequences relate to a specific activity or point source of pollution;

Substantial questions relating to environment which do not arise out of the implementation of the Acts specified in schedule- 1 may continue to be litigated in the ordinary civil courts.

The Law Commission had recommended the following jurisdiction to be vested in the court proposed by it:[29]

a) to protect the right to safe drinking water and the right to an environment that is not harmful to one's health or well being and
b) to have the environment protected for the benefit of present and future generations so as to
   i) prevent environmental pollution and ecological degradation,
   ii) promote conservation and
   iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

In order to bring more clarity in what the jurisdiction of the court on the original side includes, the Commission had suggested addition of an explanation on the following lines[30]:

(a) the protection of natural environment, forests, wild life, sea, lakes, rivers, streams, fauna and flora;

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28 The National Green Tribunal Act, 2010, s.2 (m).

29 The Law Commission of India , supra note 3 at p.146.

30 Id.

(b) preservation of natural resources of the earth;
(c) prevention, abatement and control of environmental pollution including water, air and noise pollution;
(d) enforcement of any legal or constitutional rights relating to environment and pollution under the Constitution of India or under any other law for the time being in force;
(e) protection of monuments and places, objects of artistic or historical interest of national importance as declared by the law made by Parliament.

Procedural Rights of Environmental Enforcement and the jurisdiction of the Tribunal

i) Criminal Law

The Indian Penal Code contains various provisions relating to public nuisance and other offences[31] which were widely invoked during the latter half of the nineteenth century especially in relation to air and water pollution[32]. These sections contain an implicit right for individuals to lay information before the police which may lead to investigation and prosecution.

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31 Under the Indian Penal Code, 1860 (IPC), the ordinary criminal Courts exercise powers under various sections dealing with offences relating to environment. Chapter XIV of the IPC refers to offences under sections 268 (Public Nuisance) 269, 270 (neglecting or doing malignant acts likely to spread infectious diseases dangerous to life, disobedience of quarantine rules (sec. 271), fouling water of public spring or reservoir (sec.277), making atmosphere noxious to health (sec. 278), negligent conduct with respect to poisonous substances, fire or combustible matter, explosive substances, machinery, and pulling down or repairing buildings; animals (sec. 291), endangering life or personal safety of others (sections 336 to 338), mischief (sec. 425), mischief by injury to works of irrigation or by wrongly diverting water (sec. 430), mischief by injury to public road, bridges, river or channel (sec. 431), mischief by causing inundation or obstruction to public drainage, attended with damage (sec. 432), and culpable homicide (sec. 299 to 304A).

32 See Michael R. Anderson, SOAS Law Department Working Paper No.1.

Another distinct but concurrent procedural right is contained in section 133 of the Code of Criminal Procedure where under an individual or group of individuals may initiate an action before a District or Sub-Divisional Magistrate and seek a conditional order for the removal of a public nuisance. The power conferred under the section is mandatory and not discretionary i.e., wherever a Magistrate is presented with evidence of public nuisance, an order for its removal has to be made. In England the Royal Commission had recommended the environmental court proposed by it to exercise jurisdiction in respect of subjects such as contaminated land and all statutory nuisances where currently magistrates' courts exercise powers on the basis of complaints[33]. In India, however, the remedy under section 133 Cr.P.C is not pre-empted under the Water Act, 1974 and the Air Act, 1981[34] nor does the National Green Tribunal Act, 2010 bar such actions before the magistrates. This remedy has been held as supplementary to remedies under the environmental laws[35].

ii) Civil Law

The Code of Civil Procedure provides for a civil remedy relating to public nuisance where an individual has suffered special damages. Thus a public nuisance which may be abated by a conditional order under

33 Royal Commission on Environmental Pollution, 23rd Report, 'Environmental Planning' (Cm 5459, 2002) para 5.38.

34 *State of M.P v.Kedia Leather & Liquor Ltd.*, AIR 2003 SC 3236 at p.3239; see also *Harihar Polyfibers v.Sub-Divisional Magistrate* 1997CRI.L.J.273.

35 Id. See also *Free Legal Aid Cell v. Government of NCT of Delh*i AIR 2001 Del.455 at 462-463;*N.Ramasamy v. Sub-divisional Magestrate, Coimbatore*,1988 (1) Com.L.J 169;*Abdul Hamid v.Gawalior Silk Mfg. (Wvg.)Co.Ltd.*1989 CRI.L.J.2013,;*Ganesh Pd. Sarangi v.State of Bihar*,1997 (1); *Krishna Panicker v. Appukuttan* BLJR 382 (Pat.)holding s.133 Cr.P.C. as an emergency provision and *Ramlal v. Dharam Vir* (2001) Cri.L.J4507 at 4508 holding the jurisdiction under the provision invokable despite availability of alternative remedy; see also *Krishna Panicker v.Appukuttan Nair*,1993 (1)KER.L.T.771 overruling a contrary opinion expressed in *Tata Tea Ltd. v.Sub-divisional Magestrate and Divisional Officer,Sangareddy*,1987 CRI.LJ.2071.

section 133 Cr.P.C may also lead to individual rights to damages or an injunction under the civil law. But if such public nuisance is as a result of any activity, operation or process under any of the Acts specified in Schedule-1 of the Green Tribunal Act,the claim for damages ,it is submitted, cannot be tried in a civil court but has to be preferred before the Green Tribunal by operation of sections 14,15,17 and 29 (2) of the Green Tribunal Act.

A third legal right of enforcement against public nuisance is provided under section 91 of the Code of Civil Procedure. Under this section two or more than two persons with the leave of the court, may institute a suit for declaration, injunction or similar relief in the case of a public nuisance. This remedy for public interest has been available in India from 1908 and despite being an effective and speedy remedy has been used little over the past more than a century[36].

The Code provides for initiation of similar class actions under Order 1 rule 8.The jurisdiction of civil courts to settle the disputes involving substantial questions relating to environment which otherwise could be tried under section 91 or by way of class actions under Order 1 rule 8 seem to be barred under section 29(2) of the Green Tribunal Act. This conclusion is strengthened by the language of section 29(2) which provides:

'No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal ,and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court'.

The Law Commission of India did not propose to oust the jurisdiction of ordinary courts as in the opinion of the commission it

36 See Michael R. Anderson , 'Individual Rights to Environmental Protection in India' in Alan Boyle et.al., ed. " Human Rights Approaches To Environmental Protection " Oxford University Press (1998 paperback) at p.206.

could deprive citizens of the benefits of easy access to courts as ordinary villagers could not, on each adjournment, afford to travel all the way to the remotely located seat of the court proposed by it[37]. It had, therefore, proposed a speedy type of court as provided under the Consumer (Protection) Act, 1986 which could exercise jurisdiction in addition to the remedies under the law before the ordinary civil courts[38]. In the commission's view this was the position in Australia and New Zealand and similar proposals had been made in England as well. But in order to obtain finality, once adjudication had become final, it shall be binding and a person could not be allowed to move before a fora, not approached before, a civil court or the environmental court as the case might be. Where a matter is already pending before a civil court or the environment court, a party could always rely upon section 10 of C.PC in obtaining a stay of the latter proceedings attempted to be initiated in the same matter[39].

However the bar under the above section does not seem to be absolute. It is necessary for the bar to operate that the action to be initiated must have been necessitated as a result of the implementation of the provisions of the Act specified in the Schedule -1, irrespective of whether the powers exercised under the said Acts are exercised rightly or wrongly . But would the bar operate even in cases where legal action needed to be taken in a civil court is necessitated as a result of non-implementation of any provision of any of the specified Acts may become a subject of judicial interpretation in future.

In the case of Jammu & Kashmir the law relating to conservation of forest stands changed from 1980.An Act different from the Central Forest (conservation) Act, 1980 is applicable in the state. Would J&K Forest (Conservation) Act,1997 need a special incorporation inSchedule-1by way of a notification to be issued by the Central Government under section 34 of the Green Tribunal Act? Can Green Tribunal exercise its powers in the state regarding forest conservancy laws until such

37 The Law Commission of India supra note 3 "Jurisdiction of ordinary civil courts and Conflict of decisions" at p.147.

38 Id.

39 Id. at p.148.

inclusion? The answer to these issues, it is submitted, seems to be that in the state of J&K civil courts will continue to have jurisdiction in the forest conservancy matters until requisite overhaul in the relevant law.

iii) Constitutional Right to environment and remedial Mechanism

It has been argued that in countries with a constitutional right to life/ environment, decision should be made whether or not environmental tribunals should have jurisdiction over claims of violations of those constitutional human rights. India is cited as an example of why care should be taken as to how broad the jurisdiction of an environmental tribunal need to be made in order not to actually prevent access to justice. The open access to the Supreme Court in India to file environmental petitions (with no more than a post card) has caused a huge backlog of cases, such that the Justices may "hear" and dispose of 70 cases in a single day[40].

Article32 and 226 of the Constitution of India provide constitutional remedies to challenge violation of any fundamental right, including the right to a wholesome environment. The writ jurisdiction of a high court under Article 226 can be invoked not only for the enforcement of fundamental rights as is the case with the Supreme Court under Article 32 but may be invoked 'for any other purpose' also. A high court under Article 226 can entertain a petition against violation of ordinary legal rights as well. The remedy under Article226 has proved an effective means of obtaining judicial review of administrative action[41]. Being a constitutional provision the remedy under Article 226 can neither be curtailed by an enactment nor made subservient to a statute. The writ being an extra ordinary remedy, courts show reluctance in allowing petitioners to bypass an available alternative statutory remedy. Availing of alternative remedy may be waived in suitable cases where the impugned action violates the principles of natural justice or where an administrative authority has exceeded its jurisdiction.

In tune with the above practice the availability of the alternative remedy under the National Green Tribunal Act, 2010 would be a ground

40 G Pring and C Pring, Greening Justice,supra note 8 at p. 27.

41 Shyam Diwan and Armin Rosencranz, Environmental Law and Policy in India, (2001 ed.), Oxford University Press at pp.128.

for reluctance of high courts to entertain public interest environmental petitions. A remedy by way of writ is to be pursued by a petitioner within a reasonable time on arising of the cause of action and can be rejected on the ground of inordinate delay. The doctrine of laches has been applied even in cases involving breach of a fundamental right and where the impugned action is manifestly erroneous or unauthorized[42]. The courts measure petitioner's lack of diligence by referring to the statutory limitation period fixed for initiation of similar actions under the Limitation Act,1963.The Green Tribunal Act ,2010 prescribes its own period of limitation[43] for institution of cases before the tribunal which may become a prospective tool for the application of the doctrine of laches.

The New Appellate Mechanism

An appeal is considered as the first opportunity to an aggrieved party to seek relief. To achieve the long term significance of an appeal provision it is being stressed in some jurisdictions that it need to introduce new concepts of access to justice in environmental decision – making and facilitate inexpensive review procedures to members of the public and environmental organizations[44]. To improve public confidence and ensure that environmental considerations are given their proper

42 Id. at .129

43 The National Green Tribunal Act,2010,s.14(3)prescribes a period of six months for an application involving civil disputes relating to environment; s.15(3)prescribes a period of five years as limitation period for grant of relief, compensation and restitution against pollution or other environmental damage, the period to be reckoned from the date of accrual of the cause of action and s.16 prescribes a period of thirty days for filing an appeal, period to be reckoned from the date of communication of the order .

44 See the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters(Aarhus Convention) signed 0n 25thJune 1998 in Aarhus, Denmark, by the European Community, available at http:www.euep.org/DEC/OnLine/Manual/Resources/Glossary/tabid/69 /Default.aspx? high=Arhus +Convention #high.

weight, the appeal mechanism must facilitate third party appeals. Further, governments need to provide public information on access to review procedures and consider appropriate assistance mechanism to remove or reduce financial and other barriers to access to justice[45].

Prior to the enactment of the Green Tribunal Act,2010the Water Act, the Air Act and some of the Rules framed under the Environment (Protection)Act,1986 provided for an appellate mechanism but there was no uniformity maintained by the states in the constitution of appellate authorities especially under the Water Act and the Air Act. The states had given preference to bureaucrats rather than legal or environmental experts .The Supreme Court of India had viewed the matter seriously and recommended an examination of the matter by the Law Commission of India so as to bring uniformity in the structure of the quasi –judicial bodies[46].Keeping the practice in several other countries in view the Law Commission recommended that the 'appeals must lie to Court manned by persons with judicial knowledge and experience, assisted by experts in various aspects of environmental science'[47].

The Green Tribunal Act does not satisfy the above standards altogether in its appellate mechanism. The appeal provision is restricted to 'any person aggrieved'[48] and a restricted interpretation of these words would not permit 'third party' appeals to fall within its ambit. The Act does not, except in the case of Biological Diversity Act, 2002, touch the initial appellate mechanism provided under respective environmental legislations, it only gives a second and third appellate mechanism under some environmental legislations in the manner shown in **Table -2.**

45 Id., see also Modernizing Environmental Justice, supra note 4 at p.p.25-27.

46 A. P. Pollution Control Board v. M.V. Nayudu: 2001(2) SCC 62.

47 The Law Commission of India ,supra note 3 at p.99.

48 The National Green Tribunal Act, 2010, S.16.

Table -2
Environmental Appellate Mechanism- Reformed

Legislation	Decision – making Body	Appeal/ Revision Provision		Appellate Body		
		Appeal Section	Revision Section	First Appeal	2nd*/ Direct Appeal/ Appeal Provision under NGT Act*,2010	2nd/3rd Appeal under NGT Act*,2010 ,s.22on any ground/s specified in s.100 C.PC,1908
The Water (P&CP) Act, 1974	SPCB/PCC/ State Govt. */Administrator Union Territory	ss.13, 25,26 ,27,28,29 and 33-A	s.29	Appellate Authority provided under the Act	National Green Tribunal /s33-B*	Supreme Court of India
The Water (P&CP) Cess Act, 1977	Member-secretary SPCB/PCC/CPCB*	s.13	Not available	Chairman SPCB/PCC/CPCB	National Green Tribunal /s.13-A*	Supreme Court of India
The Air (P&CP) Act, 1981	SPCB/PCC/State Govt./Administrator Union Territory	s.31	Not available	Appellate Authority provided under the Act	National Green Tribunal /s.31-B*	Supreme Court of India
The Forest (Conservation) Act,1980	State Govt.	s.2	Not available		National Green Tribunal /s.2-A	Supreme Court of India
The Environment (Protection)Act,1986	Central Govt./Prescribed Authority	s.5	Not available	Not available	National Green Tribunal /s.5-A	Supreme Court of India
EIA Notification of 2006	Central Govt./State Govt.		Not available	Not available	National Green Tribunal	Supreme Court of India
The Biological Diversity Act,2002	National Biodiversity Authority/State Biodiversity Board	s.52(now omitted)	Not available	High Court (now omitted)	National Green Tribunal /s52-A	Supreme Court of India
The Wetlands (Conservation and Management) Rules,2010	Central wetlands Regulatory Authority	Rule 9	Not available	Not available	National Green Tribunal	Supreme Court of India

*SPCB: State Pollution Control Board ;PCC: Pollution Control Committee(Union Territories) ;CPCB: Central Pollution Control Board; MOEF: Ministry of Environment and Forests.; Govt: Government; NGT Act,2010:National Green Tribunal Act,2010

There is a disparity in the number of appeals available after the new reforms under the Green Tribunal Act; in some cases the number goes up to three. In respect of legislations indicated in **Table-2 t**he appellate mechanism guarantees adequate remedy in the form of judicial redress against administrative decision-making. But the legislation has not extended the reformation in respect of various sets of Rules shown in Table-3.Consequently administrative decision –making under the said Rules remains without an adequate mechanism for judicial redress and may need further over- hauls to bring uniformity in the system. The new judicial redress mechanism in the shape of appeals to the Green Tribunal and the Supreme Court would not apply in respect of Jammu and Kashmir where the state has its own Forest (Conservation)Act,1997 as there is no express reference to the said Act in the Green Tribunal Act,2010.The provisions relating to appeals do not refer to employment of ADR techniques which is considered as one of the essential building blocks in some countries(see **Table -1**).

Table -3
Environmental Appellate Mechanism- Unreformed

Legislation	Decision –making Body	Appeal/ Revision Provision		Appellate Body		
		Appeal Rule	Revision Rule	First Appeal	2nd Appeal/ Appeal Provision under NGT Act,2010	3rd Appeal under NGT Act*,2010 ,s.22 on any ground/s specified in s.100 C.PC,1908
Hazardous Wastes (Management and Handling) Rules, 1989,	SPCB/PCC/CPCB*	Rule 12	Not available	State Govtt. /Union Territory/Central MOEF.	Not available	Not available
Manufacture, Storage and Import of Hazardous chemicals Rules of 1989	Prescribed Authorities under Schedule 5	Not available	Not available	Not available	Not available	Not available
Municipal Solid Wastes (Management and Handling) Rules, 2000	Municipal Authority, State Govts*., Union Territories, Central Pollution Control Board and State Pollution Control Board or Committee	Not available	Not available	Not available	Not available	Not available
Ozone Depleting Substances (Regulation & Control) Rules, 2000	Authority specified in Schedule V of the Rules	Rule 13	Not available	Secretary, Central MOEF, or in certain cases, the Dy. Secretary in the same Ministry.	Not available	Not available
Noise Pollution (Regulation & Control) Rules, 2000	Authority prescribed by the Central /State Govt.	Not available	Not available	Not available	Not available	Not available
Bio-Medical Waste (Management & Handling) Rules, 1998	SPCB in States and PCC in Union Territories	Rule 13	Not available	To be notified by the State Govt./Union Territories	Not available	Not available
Batteries (Management and Handling) Rules,2000	Joint Secretary to Central MOEF*	Rule9 (9)	Not available	MOEF or any officer or agency designated by it	Not available	Not available
Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically Engineered Organisms or Cells,1989	Genetic Engineering Approval Committee/ State Biotechnology Co-ordination Committee	Rule 19	Not available	To such Authority as may be appointed by Central MOEF	Not available	Not available
E-waste (Management and Handling) Rules, 2010	SPCB/CPCB	Rule 23	Not available	Secretary Environment of the State Govt./secretary Central MOEF	Not available	Not available

*SPCB: State Pollution Control Board ;PCC: Pollution Control Committee(Union Territories) ;CPCB: Central Pollution Control Board; MOEF: Ministry of Environment and Forests.; Govt: Government; NGT Act,2010:National Green Tribunal Act,2010

Conclusion

The judiciary in India has made a strong case for special treatment of environmental cases initially by creating special green benches and subsequently by advocating special courts for the purpose. The Law Commission of India has also fallen in line and recommended special courts, though not a tribunal, on grounds, inter alia, of need for special expertise and speedy adjudication of environmental matters. The Legislature too has responded quickly in the matter. In this way the two vital organs of the state have placed the environment above all other concerns. Whatever the reasons for opting for a tribunal rather than a special court, the special forum envisaged under the new legislation is befitting the Indian conditions where traditional courts are heavily over-loaded with work and speedy disposal under the adversarial system has become almost impossible. To overcome the difficulties associated with the existing system the legislation has fixed a time frame of six months for disposal of environmental cases by the Tribunal[49] , and its circuit functioning and mobile character is expected to accelerate its accessibility otherwise associated with traditional courts.

The success of the Tribunal would depend upon the structural improvements needed in accordance with the building blocks suggested by some studies (see Table-1above).Such improvements as would ensure access to third parties, employment of ADR techniques, clarity in what precisely falls within the jurisdiction of the Tribunal so as to avoid conflict on account of inconsistency with civil jurisdiction of courts, can become the subject matter of Rules to be framed under the Green Tribunal Act. However inclusion of some state laws like the J&K Forest (Conservation) Act, 1997 in Schedule1 of the Act needs a notification to be issued by the Central Government under section 34 of the Act. Similarly the different sets of Rules (shown in Table -3) where access to judicial redress against administrative decisions is not presently guaranteed can be

49 The National Green Tribunal Act, s.18(3).

reformed by clubbing their respective appellate mechanism with the appeal provision of the Green Tribunal Act. Where sets of environmental Rules do not have any appeal provision, an appeal to the Green Tribunal need to be facilitated by way of amendments to the respective sets of Rules. Reforms in the scales of punishment under all environmental laws in order to bring uniformity with the scales prescribed under the Green Tribunal Act can redress the possible issues of discrimination in the award of punishment by courts for environmental violations of equal magnitude. Governmental interferences in the functioning of ECTs in some countries have associated the stigma of captive tribunals[50] to such institutions. Although the Act provides a proper selection mechanism for the appointment of members of the Tribunal, judicial and others[51], care needs to be exercised in this behalf lest the institution may be reduced to the status of being another extension of a governmental department[52].It has been suggested that an ideal tribunal with general responsibility for overseeing and enforcing the safeguards provided for the protection of the environment needs optimum discretion in order to determine its procedure so that it is able to bring to bear its specialist experiences of environmental issues in the most effective way[53].such an approach can ensure

50 G Pring and C Pring, Greening Justice, supra note 8 at p.26 ,defining such captive tribunals as in-house environmental agency tribunals with selected political appointees, required to carry out the policies of the administration in power.

51 The National Green Tribunal Act, 2010.Section3(3).

52 Gitanjali Nain Gill, 'A Green Tribunal for India' Oxford Journal of Environmental Law 22:3 (2010), 461-474at474, arguing that there is no guarantee of resolution of wider systemic problems of environmental enforcement in India or of freedom from capture of the Tribunal by narrow sectoral interests.

53 Sir Harry Woolf ,Are the Judiciary Environmentally Myopic? (1992) 4 JEL; also see Environmental Law Foundation's Prof David Hall Memorial

quality environmental dispute resolution and advance the cause of a distinctly green jurisprudence.

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Juvenile Delinquency and Dislocated Parenting: A Sociological Context

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Abstract

There is a reason to attribute juvenile conduct to conditionalities around the child. As such the problem of dislocated parenting assumes significance. At contemporary times most of the children who confront law enforcing agencies generally belong to families that are not necessarily poor but juvenile conduct is the result of parental faults spreading from alcoholism, violence, neglect, poor nutrition, schooling, displaced education and lack of parental skills. This is particularly true of the children who on account of failure of parental care prefer to run away from homes and finally end up in juvenile courts or observation homes run by the government.

Institutional failure to rehabilitate or treat them aggravates the situation. The subject assumes importance as it has not been so far developed much. Need arises to deal with the neglected areas in a bid to evaluate whether children generally are victims of dislocated parenting are a genuine stuff of the juvenile courts. Furthermore conventional family construct wherein every member of the joint family took interest in the child and its welfare is gradually crumbling and the emergence of nuclear family has genuine nexus with the juvenile behaviour on account of neglect and lack of parental care.

The issues related with delinquent behaviour are many, mostly of psychological and social significance. It is in this background that an attempt is made in this paper to discuss Juvenile Delinquency and Dislocated Parenting in its sociological context.

Key words: Juvenile Delinquency, Dislocated Parenting, Sociological Context, psycho-social conditions.

Introduction

The concern shown by the international community with regard to aggregate rights of the child is comparatively a recent trend. It is rather an after effect of the rethinking that has dawned upon human rights

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