

International Journal of Applied Engineering & Technology

A REGULATORY MECHANISM OF NATIONAL GREEN TRIBUNAL IN INDIA; A COMPARATIVE STUDY WITH SPECIAL REFERENCE TO AUSTRALIA

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ABSTRACT

This paper provides a critical comparative examination of Australia's Land and Environment Court (LEC) and India's National Green Tribunal (NGT) with regard to their historical context, important statutory provisions, and how the LEC in New South Wales and the NGT in India operate. It implies that, while both of these adjudicatory bodies in environmental matters experienced challenges at first, Australia's LECs have now established a high standard for environmental adjudication. NGT in India, on the other hand, is very new and will require some time to establish its impact on environmental challenges. The paper argues for support for the NGT in India from many stakeholders, particularly the Ministry of Environment and Forests and Climate Change, in order to remove barriers to its effective and efficient operation, such as infrastructural and competent staff capable of dealing effectively with the multiple issues that are brought before it.

INTRODUCTION

In this paper, Jurisdiction of Environmental Courts in India and Australia are compared. India's growing pollution issue may be attributed to the nation's development and industrialization, which began in the early 1960s. In actuality, in the early 1970s, pollution issues were also a problem in the Australia. Back in 1980, when the Land and Environment Court (hence referred to as LEC) was founded in its State of New South Wales, Australia took the lead in developing an environmental court (hereinafter referred to as NSW). The National Green Tribunal (hence referred to as NGT) was created in India in 2010 at the federal level. A growing number of movements that seek to stop environmental degradation have emerged since the late 1960's as a result of widespread public awareness of environmental issues. Environmental Courts and Tribunals (hence referred to as ECT) are a significant phenomenon in 21st century Environmental Law and are quickly expanding throughout the world. Since there are no international laws or agreements that specifically require the States to establish Special Environmental Courts, the astounding rise of ECT globally is highly interesting. The Rio Declaration's Principle¹, which in actuality refers to "effective access to justice and administrative proceedings," is frequently cited to support the creation of ECT.

Since there is now no real worldwide framework in place for ECT, national advances have taken on a variety of distinct shapes. The LEC in Australia and the NGT in India are compared and contrasted in this Project Report of their historical backgrounds, significant statutory provisions, and operational characteristics. It is founded on the claim that ECT, which consists of judicial and technical professionals to deal with the increasingly complex nature of environmental legislations and science, is a superior platform than conventional courts to efficiently address environmental concerns of this century. It also contends that comparing the LEC in Australia with the NGT in India will help grasp the nature, scope, problems, and challenges that surround both forums' successful operation and make the case for further advancement. The paper leaves out the subject of international environmental dispute settlements and the creation of an international court for the environment within the United Nations in order to have a focused analysis of these two nations in the allotted time and space.

Historical Background

In New South Wales, planning and land matters were dealt with by a range of different tribunals and courts prior

¹ UNCED, *Rio Declaration on Environment and Development*, 1992, Principle 10, para 2 Available at: <http://www.unep.org/documents.multilingual/default.asp?documentid=78&articleid=1163>

International Journal of Applied Engineering & Technology

to the establishment of the Land and Environment Court, in 1980². The functions of valuation, compulsory acquisition and land matters were dealt with by a Land and Valuation Court, Valuation Boards of Review and the Supreme Court (for title issues). The matters relating to buildings, subdivision and development issues were dealt with by the Local Government Appeals Tribunal. The Civil (equitable) enforcement and the judicial review of both government and tribunal decisions were taken up by the Supreme Court of New South Wales. The matters concerning criminal enforcement were undertaken in the Local Courts and the District Court of New South Wales. It was with the enactment of the New South Wales Planning and Environment Commission Act 1974, that it was perceived that there was a need to integrate land use planning and environmental assessment and appraisal techniques³.

The rationalization and specialization goals are the two key reasons given for the establishment of NSW's LEC⁴. When environmental issues were generally handled by a variety of separate courts, tribunals, or boards, an environmental dispute was not completely settled in one location. A "one-stop shop" for issues relating to land, planning, and the environment was desired. All of these various jurisdictions could be consolidated into one court as a result of the Land and Environment Court's establishment⁵. Specialization was the court's secondary goal in being established. It was necessary for the court's employees, judges, and assessors to be knowledgeable about and skilled in the relevant field. It was thought that a specialized court would have a greater understanding of the research and information pertinent to the environment, ensuring that rulings are informed by both science and the environment. Because of a better understanding of the characteristics of environmental disputes and the urgency with which they must be resolved, it was anticipated that the Court would be better able to deliver consistency in decision-making, that there would be a reduction in delays, and, most importantly, that it would make it easier to develop environmental law policies and principles⁶. Around thirty years ago⁷, the pro-active judiciary raised concerns about the need for environmental courts in India when, in 1986⁸, the Supreme Court of India noted difficulties in resolving technological and scientific disagreements involving environmental litigation. In light of the fact that environmental matters include the evaluation of scientific evidence, the Apex Court stated that it was preferable to establish environment courts on a regional basis with a professional Judge and two specialists, having in mind the expertise required for such adjudication⁹. In the year 2000, the Supreme Court of India speaking through Justice Jagannath Rao in *A.P. Pollution Control Board v Prof M.V Nayadu*¹⁰, 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 Law Commission of India the very first report that came out during

²See history of Land and Environment Court, at the official website available at: <http://www.lec.justice.nsw.gov.au/Pages/about/history.aspx>

³ Young Lawyers, *A Practitioner's Guide to Land and Environment Court of NSW* (2009) 1

⁴ Brian J Preston, "Environmental Courts and Tribunals: Improving Access to Justice and Protection of the Environment Around the World", *Pace Environmental Law Review* Volume, 29 Issue 2 Winter (2012), 602 at 604

⁵*Id* at 605. Subsequently, the legislature has added jurisdiction to the Land and Environment Court

⁶*Ibid*.

⁷See Department of Science and Technology, Government of India, *The Report of Committee for Recommending Legislative Measures and Administrative Machinery For Ensuring Environmental Protection*, (Sept. 1980)

⁸*M.C. Mehta v Union of India*, 1986 (2) SCC 176

⁹*Indian Council for Enviro- Legal Action v Union of India*, 1996(3) SCC 212

¹⁰*A.P. Pollution Control Board v Prof M.V Nayadu*, AIR 1999 SC 812

his regime was on “Proposal to Constitute Environmental Courts”¹¹, wherein the Law Commission recommended for the constitution of State level Environmental Courts.

Before the Indian Government passed the National Green Tribunal Act, the National Environment Tribunal Act (NETA)¹² was enacted by the Indian Parliament in 1995. Its main goal was to establish a National Environment Tribunal to handle cases involving accidents that occurred while handling any hazardous substance, in order to provide relief and compensation for damages to people, property, and the environment. The National Green Tribunal Act, which was passed in June 2010, effectively ended the existence of this Tribunal, which never saw the light of day. The National Environment Appellate Authority (NEAA), which was established in 1997 and largely dealt with environmental clearances, turned out to be utterly ineffectual principally because of the Authority's close supervision by the MoEF.

The NGT for India was founded on October 18, 2010, and it began operating on May 5, 2011. The Principal Bench was located in New Delhi, while four zonal benches were later established in Chennai, Pune, Bhopal, and Kolkata.

The National Green Tribunal Act of 2010 and the Land & Environment Court Act of 1979

(i) Statutory Provisions’ Overview:

Title and Goals

The "Land and Environment Court Act"¹³ in New South Wales and the "National Green Tribunal Act"¹⁴ in India are the two names of the relevant pieces of legislation. As a result, the Land and Environment Court functions in NSW and the National Green Tribunal in India.

The Land and Environment Court will be established as part of NSW’s LEC, and provisions will be made on its jurisdiction¹⁵. The Local Government Appeals Tribunal, the Land and Valuation Court, the Clean Waters Appeal Board, and the Valuation Boards of Review were all abolished in favour of the Land and Environment Court of New South Wales, which was formed in 1980 as a superior court of record. Additionally, the District Court also ceded some of its prior jurisdictions to the new Court¹⁶.

The National Green Tribunal (the "NGT") was founded on October 18, 2010, and it began functioning on May 5, 2011. The objective of India's NGT is to establish a National Green Tribunal to deal with cases concerning environmental protection, the conservation of forests other natural resources. It is also entrusted with responsibility of enforcement of any environmental legal rights and the provision of relief and compensation for damages to people and property, as well as for matters related thereto.¹⁷

Composition

¹¹ Law Commission of India, Government of India, 186th Report on Proposal to Constitute Environmental Courts, September, 2003

¹² Act No 27 of 1995

¹³ Land and Environment Court Act (LEC Act) 1979 No 204 (NSW)

¹⁴ National Green Tribunal Act, (NGT Act) 2010 (Act no. 19 of 2010) (India)

¹⁵ LEC Act, *Supra* n. 13, Preamble

¹⁶ Young Lawyers, *A Practitioner’s Guide to Land and Environment Court of NSW* (2009)1

¹⁷ NGT Act, *Supra* n 14, Preamble

International Journal of Applied Engineering & Technology

Judges, Commissioners, and other Court Officers make up NSW's LEC. LEC is set up as a Superior Court of Record with its own seal¹⁸. The Chief Judge of the Court is chosen by the Governor, and the Governor may occasionally appoint additional judges¹⁹. The Governor may also nominate a Commissioner of the Court²⁰, who may be appointed on a full- or part-time basis²¹. A Registrar, an Assistant Registrar, and any additional court officers as may be required for the proper administration of justice under the Act may also be employed. A single Judge makes up the Court²² and hears and decides all cases brought before it. Additionally, it specifies how procedures before one or more Commissioners or other officers of the Court²³ shall be heard and decided.

A person must be under 70 years old, hold judicial office in this State or the Commonwealth, or be an Australian lawyer with at least seven years of experience to be eligible for appointment as a Judge of LEC. With a few restrictions, the Act's amended version also permits Supreme Court justices to serve as Land and Environment Court judges²⁴. No qualifications have been established for the Chief Judge. A person is qualified to be appointed as a Commissioner if they possess the necessary training and experience in architecture, engineering, surveying, or building construction²⁵; they also need to have specific knowledge and experience in local government administration, town planning, environmental science, matters relating to the protection of the environment, and environmental assessment, as well as in the law or a person is competent to be appointed as a Commissioner if they meet the required qualifications, have the necessary experience, and have the necessary awareness of issues pertaining to Aboriginal land rights. Additionally, an Australian attorney is qualified for appointment as a Commissioner²⁶. The term of service for a Commissioner is seven years, and they are available for re-appointment. The Act also includes provisions for the Acting Chief Judge and Acting Judges and for the disqualification of Commissioner²⁷. For judges no disqualification has been prescribed.

Whereas in India a full-time Chairperson, 10–20 full-time Judicial Members, and 10–20 full-time Expert Members make up India's NGT²⁸. Any one or more individuals with specialized expertise and experience in a particular case before the Tribunal may be invited to help the Tribunal in that case²⁹ by the Chairperson of the Tribunal. The Central Government³⁰ appoints the Tribunal's Chairperson, Judicial Members, and Expert Members. In consultation with the Chief Justice of India³¹, the Central Government appoints the Chairperson.

¹⁸ LEC Act, *Supra* n 13, Section 5

¹⁹ *Ibid.*, Section 7

²⁰ *Ibid.*, Section 12

²¹ *Ibid.*, Section 12 (2A)

²² *Ibid.*, Section 6 (1)

²³ *Ibid.*, Section 6 (2)

²⁴ *Ibid.*, Section 11A

²⁵ *Ibid.*, Section 12 (2)

²⁶ *Ibid.*, Section 12 (AA)

²⁷ *Ibid.*, Section 14

²⁸ NGT Act, *Supra* n 14, Section 4

²⁹ *Ibid.*, Section 4 (2)

³⁰ *Ibid.*, Section 6(1)

³¹ *Ibid.*, Section 6(2)

International Journal of Applied Engineering & Technology

According to the Selection Committee's recommendations and in accordance with any applicable regulations³², the Judicial Members and Expert Members of the Tribunal are chosen.

So far as appointment of Chairman or Judicial Member is concerned the judge of the Supreme Court of India or Chief Justice of a High Court is eligible to be appointed as such. A person who is or has been a Judge of the High Court is also qualified to be appointed as a Judicial Member of the Tribunal³³. A person is qualified for appointment as an Expert Member, if he has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests including pollution control, hazardous substance management, environment impact assessment, climate change management and biological diversity management in a reputed National level institution³⁴. A person having administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution is also eligible for being appointed as Expert Member of the Tribunal³⁵.

The Chairperson or Judicial Member holds office for a term of five years or until they reach the age of seventy, whichever comes first. The Chief Justice of the High Court serves as Chairperson or Judicial Member for a period of five years, or until the earlier of age sixty-seven or five years. Similar to this, the Judicial Member, if he were a High Court Judge, maintains office for a period of five years or until he reaches the age of sixty-seven, whichever comes first. The Expert Member serves for a period of five years, or until age, whichever comes first. The Chairperson, Judicial Member and Expert Member are not eligible for re-appointment³⁶.

The Act specifically states that the Chairperson, Judicial Members, and Expert Members of the tribunal shall not hold any other office during their tenure in order to avoid conflicts of interest. Additionally, they are not permitted to accept employment with, or any position related to the management or administration of, anyone who has participated in a proceeding before the tribunal for a period of two years from the date on which they cease to hold office. However, the Statute has preserved their appointment by the federal or state governments³⁷.

The Chairperson or Judicial Member may be removed from office by the Central Government, in consultation with the Chief Justice of India, for a number of specific reasons, including, among other things, abusing his position to the point where his continued employment would be detrimental to the public interest³⁸. After a judge of the Supreme Court has conducted an inquiry during which the Chairperson or Judicial Member has been informed of the allegations against him and given a reasonable opportunity to respond to those allegations, the Central Government may issue an order removing the Chairperson or Judicial Member from his position. The same circumstances that allow for the removal of the chairperson or judicial member also allow for the removal of

³²*Ibid.*, Section 6 (3)

³³*Ibid.*, Section 5(I) Proviso

³⁴*Ibid.*, Section 5 (2a)

³⁵*Ibid.*, Section 5(2b)

³⁶*Ibid.*, Section 7

³⁷*Ibid.*, Section 5

³⁸*Ibid.* Section 11(1)

International Journal of Applied Engineering & Technology

the expert member from office³⁹. The Act states that, when hearing an application or appeal, the number of expert members shall be equal to the number of judicial members hearing such application or appeal⁴⁰.

Jurisdiction

The LEC of NSW has been given extensive authority over concerns of land and environmental planning. No other court or tribunal may exercise the jurisdiction granted to the Land and Environment Court since it is made exclusive. The Court's competence is split into eight Classes of Proceedings⁴¹ in accordance with Part 3 of the Act. LEC is granted original jurisdiction over mining matters, environmental planning and protection summary criminal enforcement, and civil enforcement under Classes 4, 5, and 8 of Part 3. Environmental Planning and Protection Appeals, Local Government and Miscellaneous Appeals and Applications, Land Tenure, Valuation, Rating and Compensation Matters, Appeals by Defendants from Convictions Relating to Environmental Offenses Imposed by Magistrates in the Local Court, and Appeals from Magistrates in Respect of Environmental Prosecutions that Previously Would Have Been Heard by the Local Court are all subject to the appellate jurisdiction granted to LEC by Classes 1, 2, 3, 6 and 7.

Each of these Classes refers to a variety of laws with particular legislative provisions. These Classes grant LEC jurisdiction over more than fifty pieces of legislation. The court also has the authority to hear and decide on a case involving a compensation claim in connection with the forced acquisition of land. The NGT of India deals with environmental issues rather than planning and land issues. Civil courts handle problems related to land and planning.

The Tribunal's authority and functions are covered in Chapter III of the NGT Act. The Act's Sections 14 and 16 give the Tribunal Appellate Jurisdiction, Original Jurisdiction is prescribed in Section 14 of the Act, and Sections 15 and 17 deal with the Tribunal's authority to impose relief and compensation for pollution victims and environmental reparation. The Act grants the Tribunal solely civil jurisdiction. The original language of the NGT's jurisdiction, which states that "The Tribunal shall have jurisdiction over all civil cases where a substantial question relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule I of the Act," is interesting. There are just seven enactments in Schedule I of the Act⁴². Not even all of the current Environmental Laws are included in the Schedule. For example, the Wild Life Act and Indian Forest Act⁴³ was not included. More than 200 laws with direct or indirect effects on Environment exist in India. More than 200 laws with direct or indirect effects exist in India.

The NGT Act grants the Tribunal the authority to hear cases involving the enforcement of any environmental legal rights⁴⁴. The Tribunal may consider an appeal from any directive, order, or judgement rendered by an appellate authority under the Water Act, Water Cess Act, or Air Act pursuant to its appellate jurisdiction⁴⁵. It may also consider an appeal from any decision made by the State Government under the Water Act, the Forest Act, a State Pollution Control Board directive issued under the Water Act, or a decision made by the National Biodiversity Authority (NBA) or State Biodiversity Boards (SBB) under the Biological Diversity Act, 2002.

³⁹*Ibid.*, Section 10

⁴⁰*Ibid.*, Section 4(4C)

⁴¹LEC Act, *Supra* n 13, Sections 16 to 21C

⁴² NGT Act, *Supra* n 14, Schedule I [See sections 14(1), 15(1), 17(1)(a), 17(2), 19(4)(j) and 34(1)]

⁴³ Indian Forest Act, 1927

⁴⁴NGT Act, *Supra* n 14, Section 14 (1)

⁴⁵*Ibid.*, Section 16

Under the seven enactments, India's NGT has been given the authority and competence to provide relief and compensation to persons who have suffered from pollution and other environmental damage, as well as to restore the degraded environment⁴⁶. The Precautionary Principle, the Polluter Pays Principle, and Sustainable Development are all applied by the Tribunal when passing any orders, decisions, or awards⁴⁷. The Tribunal makes decisions with a majority vote. If the Members debating an issue disagree and their opinions are evenly split, the Chairperson hears the matter and makes a decision, if he hasn't already heard it. However, in cases where the Chairperson has heard the matter along with other Tribunal Members and if there is disagreement and the opinions are evenly divided, he must refer the subject to other Tribunal Members who will consider the application or appeal and make a decision⁴⁸.

An appeal from the award, decision or order of the Tribunal lies to the Supreme Court of India⁴⁹. The aggrieved person may file the appeal within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him. The period can be extended by the Tribunal to sixty days in case of sufficient cause⁵⁰.

Penalty

If a person violates a Tribunal order, judgement, or award, he may be sentenced to up to three years in prison, up to ten crore rupees in fines, or both, according to the NGT Act of India. For each day that the failure or contravention continues after being found guilty of the first such failure or contravention, the tribunal may impose an additional fine that could reach 25,000 rupees. If a Company violates any order, award, or decision of the Tribunal, the Company may be fined up to 25 crore rupees. If the violation persists, the Company may also be fined an additional fine of up to 1 lakh rupees for each additional day that the violation persists after being found guilty of the initial violation⁵¹. If the Government Department disobeys any tribunal order, award, or decision, special penalty provisions are provided for it. Such failures are considered the responsibility of the Head of Department, who may be prosecuted for violating the Act and subject to the appropriate sanctions. The LEC Act in NSW does not include any language on penalties for disobeying its orders.⁵²

(ii) A Comparative Study of Statutory Provisions

India has developed a "Tribunal," which is a quasi-judicial body, whereas the State of NSW has formed a "Specialized Court" to resolve environmental disputes. The NGT is regarded as a civil court, and all proceedings before it are regarded as legal proceedings. Being a tribunal, NGT has the same authority granted to civil courts by the Code of Civil Procedure, 1908, but it is not constrained by its rules of procedure and is instead guided by the principles of natural justice. It has the authority to control its own workflow. Additionally, the standards of evidence do not apply to it⁵³.

⁴⁶ NGT Act, *Supra n* 14, Section 15(1)

⁴⁷ *Ibid.*, Section 20

⁴⁸ *Ibid.*, Section 21

⁴⁹ *Ibid.*, Section 22

⁵⁰ *Ibid.*, Section 16 Proviso

⁵¹ *Ibid.*, Section 26

⁵² *Ibid.*, Section 28

⁵³ *Ibid.*, Section 19

International Journal of Applied Engineering & Technology

NSW's LEC is a specialist court, established as a superior court of record⁵⁴. Australia's State of NSW has established specialized courts for a population of 7.5 million⁵⁵, whereas, India has created one Tribunal for a population of 1336 million. This Central Body at the National level is criticized as being deficient for a vast country like India, due to its unreachability to the large amount of people in far off areas. The move to set up specialized environmental courts in India was inspired from none other than green courts like the Land and Environmental Court in New South Wales. However in the course of setting up the specialized Tribunal, the virtues of that legislation could not be preserved⁵⁶.

The Law Commission of India recommended the establishment of State level Environmental Courts in its 186th Report, but the Government of India has established the Green Tribunal at the national level with different places of sitting for the large and populous developing nations. It should also be noted that the Hon'ble Supreme Court of India, speaking through Chief Justice Bhagwati (as he was then), had ruled for the Regional level Environmental Courts in the country in the Oleum Gas Leakage Case⁵⁷.

Civil Courts no longer have the authority to hear appeals or resolve environmental disputes⁵⁸ thanks to the Green Tribunal. It must be stressed that the Act forbids the approximately 600 District Courts in India⁵⁹ from hearing appeals in environmental cases, adjudicating disputes, or adjudicating claims for relief and compensation. The NGT has four regional benches located in Bhopal, Calcutta, Pune, and Chennai in addition to its headquarters in Delhi. In a large country like India, it is structurally insufficient to meet people's requirements.

Numerous environmental complaints never even make it to the adjudicating system due to access concerns. The Land and Environmental Court in New South Wales, Australia, offers a "fair, quick, and cheap" legal remedy, yet this is in direct opposition to that idea⁶⁰. The Tribunal is solely granted civil jurisdiction under the NGT Act. The Tribunal lacks the criminal authority to bring charges for offences against the environment. The Tribunal has jurisdiction in civil proceedings when there is a serious environmental question at issue (which expressly includes the enforcement of any environmental legal right) and the issue arises from the application of the enactments listed in Schedule I. Two different categories of questions fall under the definition of "substantial question relating to environment" in the Act.⁶¹ First, it comprises situations in which a person directly violates a particular statutory environmental requirement that has an impact on the entire community, in which the severity of the environmental damage is significant, or in which the harm to public health is generally measurable. Second, it encompasses situations where the effects on the environment are linked to a particular activity or point source of pollution. Only seven statutes-the Water Act, Water Cess Act, Air Act, Forest Act, Environment Protection Act, Public Insurance Act, and Biological Diversity Act-are listed in Schedule-I of the Act. One may wonder why Schedule I of the Act does not list The Wild Life (Protection) Act of 1972. Around 20 central laws, in addition to

⁵⁴Brian J. Preston, "Judicial Specialization Through Environment Courts: A Case Study of the Land and Environment Court of New South Wales", 29 *Pace Environmental Law Review* (2012), 602-625

⁵⁵<http://stat.abs.gov.au/itt/r.jsp?databyregion#/>

⁵⁶Kaleeswaram Raj, Decentralizing Environmental Justice, *Economic & Political Weekly*, ISSN (online)-2349-8846

⁵⁷*M.C. Mehta v UOI*, 1986 (2)SCC 176

⁵⁸NGT Act, *Supra* n 14, Section 29

⁵⁹See <http://ecourts.gov.in/index.php>

⁶⁰Kaleeswaram Raj, Decentralizing Environmental Justice, *Economic & Political Weekly*, ISSN (online)-2349-8846 Available at <http://www.epw.in/journal/2014/48/web-exclusives/decentralising-environmental-justice.html>

⁶¹NGT Act, *Supra* n 14, Section 2(m)

International Journal of Applied Engineering & Technology

numerous state laws, were named in the Tiwari Committee Report as lacking jurisdictional authority for the Tribunal under Schedule-I.

Making the "substantial question relating to the environment coming out of the implementation of those designated seven statutes" demonstrates the legislation's primary fault.

The Schedule-I to the Act, which only lists seven pieces of law, is wholly unnecessary and ought to be removed. To consider situations involving the enforcement of any legal or constitutional right related to the environment, Section 14 has to be changed. The right may come from the Indian Constitution, any law safeguarding the environment directly or indirectly, or it may come from a civil lawsuit. It should be emphasized that in India, the deterrence idea of penalty is stipulated in the contemporary Environmental Law, which includes those seven legislations. They do not lay down environmental legal rights; instead, they construct environmental offences against individuals who infringe such legal rights.

As a result, the NGT Act's provisions on original civil jurisdiction are inconsistent with the legislative framework of the aforementioned seven laws. The NGT Act's original jurisdiction of the Tribunal may have included offences committed in violation of the specified laws. However, it lacks the criminal jurisdiction necessary to bring charges against violators of the relevant Acts. In this regard, the Bichhri case⁶² may be brought up, in which Justice B.P. Jeevan Reddy of the Apex Court proposed the creation of environmental courts with criminal jurisdiction.

On the other hand, the LEC's jurisdiction in NSW is extensive. It has the civil jurisdiction of a court of equity and can issue equitable injunctions and declarations in civil enforcement actions. It also has the equitable authority of a court of chancery to handle various civil problems involving trees and mining. It has the authority of a superior court and the competence to adjudicate on matters of subordinate legislation and government action. Additionally, it has the authority to impose criminal punishments, such as fines and prison terms. It has appellate authority. The LEC hears appeals from the Local Court on environmental crimes. It also has a tribunal-like function where decisions made by the government on environmental issues are reviewed on the merits and a new decision is made⁶³.

CONCLUSION

Both India and the Australia have fairly complex environmental legal systems in place. International advances in the sphere of the environment, as well as domestic concerns, have greatly influenced this. Environmental organizations have expanded gradually and incrementally both in India and the Australia throughout time. The comparative examination of this ECT must therefore be viewed in the context of this time gap period since whereas India's NGT is barely five years old, NSW's LEC has been operating for the past 35 years. The Land and Environment Court has been operating for almost thirty years and is unquestionably a successful example of an environment court, according to Brian J. Preston.⁶⁴ To meaningfully compare NSW's LECs to India's NGT, it is more pertinent to look at how they operated in the early years. The first Chief Judge of NSW's LEC referred to the Court as a "fragile bastion" because of the LEC's discordant reputation in the early years and the environment in which it worked⁶⁵. The majority of cases before LEC concerned Class 1 of its jurisdiction, which is categorized as the Court's merit review jurisdiction, which was assigned to it to hear appeals from Council decisions relating to development applications. In these cases, the Court had the authority to review the relevant evidence and replace

⁶²*Indian Council for Enviro-Legal v UOI*, AIR 1996 SC 1446

⁶³Brian J Preston, *Supra* n 54

⁶⁴Brian J Preston, *Supra* n 54 at 617

⁶⁵Patricia Ryan, "Court of Hope and False Expectations: Land and Environment Court 21 years on", *Journal of Environmental Law*, Vol 14, No 3,(2002) 301

International Journal of Applied Engineering & Technology

the original decision maker's judgement with its own. In these appeals, the court evaluated the merits of the development application through full hearings, or "de novo" proceedings. The conflict between the Court and Councils⁶⁶ started when the Court looked over and overturned Councils' administrative judgments. When the Court conducts a review of an administrative judgement and, in effect, replaces it with another administrative decision, it is regarded as a waste of public and private funds. The NSW Government was compelled to establish a Working Group to examine the LEC's authority⁶⁷ as a result of the conflict between the LEC and Councils. Its major responsibility was to examine the Court's involvement in deciding on development applications and to consider the possibility of using alternative conflict resolution more frequently. The merit review of the Council's decision on development applications by the Court was suggested in the Working Party's report, which was written under the leadership of former Chief Judge of the Court Jerrold Cripps QC.⁶⁸ The Court, in its Class 1 jurisdiction, is, in its opinion, the most appropriate forum for such review because it is not influenced by the political factors that frequently heavily influence Council's decision-making regarding a development application and because it is made up of experts who have knowledge of these matters. Additionally, it demanded that the Court's current structure be changed to give alternative conflict resolution more weight.

In the short time that it has been in operation, India's NGT has established itself as a strong and successful quasi-judicial organization that resolves environmental disputes throughout the nation. Justice Swatanter Kumar, the first Chairperson of India's NGT, has ushered in a new era in the history of the country's "greening justice," actively promoting the preservation and improvement of the environment. Since his appointment, there has been a discernible improvement in the severe enforcement of environmental regulations. Under his strong direction, the NGT has bravely applied the green law to the Union Government, State Governments, Pollution Control Boards, major corporations, major religious figures, etc. In relation to Public Interest Litigation (PIL) and *suo-moto* powers, India's NGT is soaring high and spreading its wings to reach the prestigious and highest jurisdiction⁶⁹.

However, India's NGT is also having some growing pains in these early years, similar to NSW's LEC. Powerful interests, like the MEF & CC, State Governments, and some High Courts, have expressed alarm about the NGT's very success. In conclusion, it can be said that NSW's LEC, which has been in existence for a while, has raised the bar for environmental adjudication, particularly under the dynamic leadership of its current Chief Judge Brian J. Preston, who appears to be incredibly effective on all fronts—administrative, judicial, and academic. He does not, however, consider LEC to be exempt from environmental concerns in the future, and he supports adaptive management to continuously assess its performance⁷⁰. The National Green Tribunal (NGT) of India has been performing remarkably successfully in defending the environment and public health and may serve as a model for other countries looking to establish ECT. It is incredibly successful, but it also faces some significant difficulties. It is necessary to clearly include public interest litigation and *suo-moto* powers in the NGT's legal authority. For greater public access to justice, it must house more Circuit Benches in addition to additional Regional Benches. The Tribunal needs to be improved and strengthened with better infrastructure, the hiring of office employees,

⁶⁶Councils are bodies established under the Local Government Act 1993 (NSW) (LGA).

⁶⁷Paul Lalich and Scott Neilson, "Review of the Land and Environment Courts Jurisdiction: Review of Issues Relating to the Working Party Review and Reform of the Court", *Local Government Law Journal*, Vol 7, (August 2001) 49 at 51

⁶⁸<http://www.lec.justice.nsw.gov.au/Documents/Announcements/31122015The%20Hon%20Jerrold%20Sydney%20Cripps%20QC.pdf>

⁶⁹*Tribunal on its own Motion v. Secretary, Ministry of Environment and Forests*, NGT Judgment, 4 Apr. 2014; *Tribunal on its own Motion v. Government of NCT, Delhi*, NGT Order, 19 June 2015

⁷⁰Brian J Preston, *Supra* n 54 at 618

International Journal of Applied Engineering & Technology

case management facilities, etc. for effective delivery of green justice. This includes the support of different stakeholders, including the MEF & CC.