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NATIONAL GREEN TRIBUNAL AND ENVIRONMENT COURT: A COMPARATIVE APPROACH

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ABSTRACT

Bangladesh and India have courts that entertain and deal with environmental issues and disputes. Both countries established environmental courts in 2010 namely the 'Environment Court' and the 'National Green Tribunal (NGT)'. The NGT was established under the National Green Tribunal Act, 2010 on 18 October 2010. On the other hand, the Environment Court has also been established in the same year under the Environment Court Act, of 2010. Though being established at the same time with similar objectives, there are many differences between these two courts both as in substantive and procedural ways. The study aims to find out the differences between the courts to know how one can enhance one's capacity by adopting the best rules from each other. The study is based on secondary data sources such as articles, books, book chapters, journals, newspapers, reports, and online sources. These will help to identify where the Environment Court lacks and how can it resolve the loopholes.

INTRODUCTION

Bangladesh and India are neighboring countries that share similar laws and regulations due to kindred culture and environment. The environment and environmental issues are quite similar as well. Both the countries enacted Environment Acts in 2010 which also share homogeneous rules with few differences which are discussed below to gain a clear idea about the laws of the two countries.

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GENERAL COMPARISON

GOVERNING ACT

NGT is established under an act of Parliament, namely, the National Green Tribunal Act, 2010 which was enacted under the constitutional provision of *Article 21*², which assures the citizens of India the right to a healthy environment.³ Environment Court is established under *section 4* of the Environment Court Act, 2010 which states that the Government shall establish one or more Environment Court in each Division. This court is also regulated by the Environment Court Act.

NATURE OF THE COURT

NGT is a specialized body prepared with the essential expertise to handle environmental disputes involving multi-disciplinary issues.⁴ Moreover, NGT is known as a 'quasi-judicial' body that solely deals with civil litigations regarding environmental issues in India.⁵ On the other hand, the Environment Court is not a tribunal like NGT rather it is a Court consisting of lower and appellate courts. As per *section 20* of the Environment Court Act, 2010, the Government shall establish one or more than one Environment Appeal Court.

PURPOSE OF ESTABLISHMENT

The NGT is dedicated to the effective and expeditious disposal of cases relating to the subject of forest, environment, biodiversity, air, and water.⁶ However, the Environment Court aims to ensure the removal of bothersome obstacles in the implementation of environmental laws.⁷ The speedy trial was one of the main objectives behind its establishment.

² The Constitution of India, 1949.

³ Quora, 'What is the National Green Tribunal (NGT)?' (April 2015) < <https://www.quora.com/What-is-the-National-Green-Tribunal-NGT> > accessed 5 March 2023.

⁴ National Green Tribunal < <http://www.greentribunal.gov.in/> > accessed 16 July 2023.

⁵ Patra, Swapan kumar & Krishna, Venni. (2014). National Green Tribunal and Environmental Justice in India. Indian Journal of Geo-Marine Sciences Vol. 44(4).

⁶ WWF, 'CEL on National Green Tribunal (NGT)' < https://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/ > accessed 5 June 2023.

⁷ Bangladesh Online News, 'Environment Court in Every District' (4 October 2010) < <http://www.independent-bangladesh.com/2010100412013/country/environment-court-in-every-district.html> > accessed 17 June 2023.

GUIDING PRINCIPLE

The NGT is not bound by the procedure prescribed under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice⁸ such as principles of sustainable development, the precautionary principle, and the polluter pays principles as per *article 20* of the NGT Act. In the case of our environment court, it is directed under *section 14* that this will follow the Evidence Act, the Code of Criminal and Civil Procedure while judicially functioning. The Environment Court Act, of 2010 has not recognized the substantive or procedural principles of environmental jurisprudence.⁹

PROCEDURAL COMPARISON

ESTABLISHMENT OF COURTS

As per *section 4* of the Environment Courts Act, 2010, there shall be one Environment Court in each district on the tier of joint district judge level. According to *section 5* of the same, the Government with the consultation of the Supreme Court of Bangladesh can establish a special magistrate court and empowered metropolitan magistrate or judicial magistrate to deal with environmental cases. On the other hand under *Article 3* of the NGT Act, Central Government is directed to establish NGT. Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure.¹⁰

COMPOSITION OF COURT

The joint district judge is required to perform the functions of the Environment Court in addition to his general duties.¹¹ In some special cases, under *section 5*, a metropolitan magistrate or judicial magistrate can also be empowered.¹² In this case, NGT has a completely different

⁸ Sumbul Fatima, 'National Green Tribunal: A New Dimension of Environmental Jurisprudence' [2017] 22 IOSR – JHSS 44, 44.

⁹ Md. Khaled Miah, 'Effective functioning of Environment Court' *The Daily Star*, (Dhaka, 25 August 2015) <<http://www.thedailystar.net/law-our-rights/effective-functioning-environment-court-131956> > accessed 21 July 2023.

¹⁰ National Green Tribunal < <http://www.greentribunal.gov.in/> > accessed 16 July 2023.

¹¹ The Environment Courts Act 2010, s 4.

¹² Ibid, s. 5.

structure. As per their Act, the tribunal shall consist of one chairman and 10-25 members (judicial and/or expert).¹³

STATUS OF THE COURT

NGT is settled at the level of the highest court while the Environment Court is settled in lower court at the tier of the joint district judge. Environment Court has appellate court settled up at the tier of district judge.¹⁴

DECISION-MAKING PROCEDURE

The majority decision of tribunal members is final and binding as per *Article 21* of the NGT Act. Since the Environment Court has only one judge in each court to deal with matters, there is no concept of majority decision-making.

TYPES OF RELIEF

There exists relief, compensation, and restitution of property and environment under *Article 15* of the NGT Act. Compensation and penalty are provided as a sort of relief under *sections 7, 8, and 9* of the Environment Court Act, 2010.

JURISDICTION

NGT has jurisdiction over all civil cases addressed under laws stated under *Schedule I* of the NGT Act.¹⁵ It has both original and appellate jurisdiction. The Environment Court tries civil suits and criminal cases, addressed under the Environment Conservation Act, 1995.¹⁶ It also has to entertain matters stated under *section 7* of the Environment Court Act and the Evidence Act in its judicial functions. EC has no jurisdiction over offences that relate to the forest, forest resources,

¹³ The National Green Tribunal Act 2010, art. 4.

¹⁴ The Environment Courts Act 2010, s 20.

¹⁵ The National Green Tribunal Act, 2010, art 14.

¹⁶ The Environment Courts Act, 2010, s 2(c).

wildlife biodiversity, fisheries, water resources, and other natural resources.¹⁷ On the other hand, NGT entertains matters regarding water, forest, air, and biological diversity.¹⁸

POWERS

The NGT shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, and rules under the Evidence Act, 1872 rather than be guided by principles of natural justice. However, it shall follow CPC in regard to the discharge of its functions.¹⁹ The Environment Court shall apply the Code of Civil Procedure, 1908, and Code of Criminal Procedure, 1898 to the trial and disposal of environmental suits and cases along with the prevailing environmental laws.²⁰

METHOD OF ENTERTAINING SUITS

According to *section 7(4)* of the Environment Court Act, 2010, it shall not receive any claim for compensation under environmental law except on the written report of an Inspector of the Department of Environment (DoE). Even *section 6(3)* of the same Act that, no Special Magistrate Court shall take cognizance of an offence except on the written report of an Inspector of DoE. There is an exception to this provision which is more complicated.²¹ Suits can directly be filed to the NGT which makes filling suits easier.

¹⁷ Tawhidur Rahman Murad, 'Weak zone of the Environment Court Act, 2010 in Bangladesh' SCRIBD <<https://www.scribd.com/document/353842335/Weak-Zone-of-the-Environment-Court-Act-2010-of-Bangladesh>> accessed 20 January 2024.

¹⁸ Patra, Swapan kumar & Krishna, Venni. (2014). National Green Tribunal and Environmental Justice in India. Indian Journal of Geo-Marine Sciences Vol. 44(4); Praveen Bhargav, 'Everything you need to know about the National Green Tribunal (NGT)' (2 May 2011) conservation India <<http://www.conservationindia.org/resources/ngt>> accessed 29 January 2024.

¹⁹ The National Green Tribunal Act 2010, art 19.

²⁰ Hasnat, Abul. Environmental Courts in Enforcement: The Role of Law in Environmental Justice in Bangladesh. Australian Journal of Asian Law, 2021, Vol 21 No 2, Article 6: 85-98.

²¹ Tawhidur Rahman Murad, 'Weak zone of the Environment Court Act, 2010 in Bangladesh' SCRIBD <<https://www.scribd.com/document/353842335/Weak-Zone-of-the-Environment-Court-Act-2010-of-Bangladesh>> accessed 20 January 2024.

NATURE OF SUITS ENTERTAINED

The NGT has the power to hear only civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in *Schedule I* of the NGT Act.²² However, the Environment Court of Bangladesh can entertain both civil suits and criminal cases.

APPEAL AND REVIEW

Under *Rule 22* of the NGT Rules, there is a provision for seeking a Review of a decision or Order of the NGT. If this fails, an NGT Order can be challenged before the Supreme Court within ninety days. As per *section 20* of the EC Act, an appeal shall lie to the Environment Appellate Court established at the tier of District and/or Session Judge. Such appeal shall lie within 30 days from the passing of the order.²³

CASELOAD AND DISPOSAL

Though the purpose of our court is to ensure speedy trial and the case disposal deadline is 180 days,²⁴ however, the reality is quite different in our country. Due to the complexity of the filing procedure, a very low number of cases were filed and fewer of them were disposed of.²⁵ A shocking caseload status can be found in 2015 statistics which is incorporated hereinafter.

Environment Court's Status ²⁶	National Environment Court's Status ²⁷
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²² Praveen Bhargav, 'Everything you need to know about the National Green Tribunal (NGT)' (2 May 2011) conservation India <<http://www.conservationindia.org/resources/ngt>> accessed 29 June 2023.

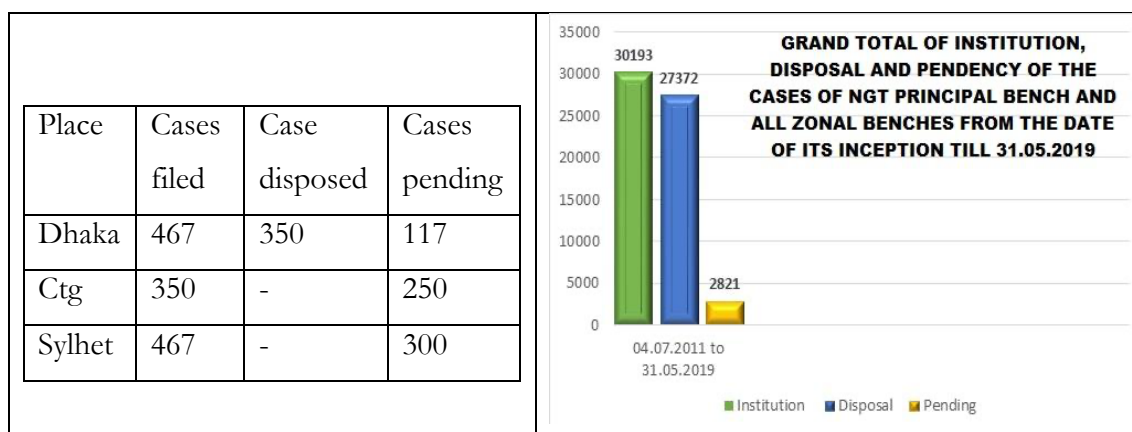
²³ The Environment Courts Act 2010, s 19(2).

²⁴ The Environment Court Act, 2010, s. 10.

²⁵ Md. Sefat Ullah, 'Green Justice in Bangladesh: A Road to Successful Environmental Court', Green University Review of Social Sciences, Volume 03, Issue 02, December 2016 - December 2017.

²⁶ Tawhidur Rahman Murad, 'Weak zone of the Environment Court Act, 2010 in Bangladesh' SCRIBD <<https://www.scribd.com/document/353842335/Weak-Zone-of-the-Environment-Court-Act-2010-of-Bangladesh>> accessed 20 January 2024.

²⁷ National Green Tribunal <<http://www.greentribunal.gov.in/>> accessed 21 July 2023.



In comparison with other environmental courts, our Environment Courts have the lowest rate of case filing which is around 100 every year²⁸ yet it is unable to dispose of in time. On the contrary, NGT is performing in full force.

CONCLUSION

The purpose of the comparative study is to identify the strengths and lacking of our environmental court so that it can be resolved. These two courts are of a similar nature with similar objectives. Where do we lack then? The aims behind the establishment of the Environment Court are not fulfilled due to some substantial and procedural lacking which is clearly visible from the comparison between the Environment Court and NGT. Suits of both natures e.g. civil and criminal can be filed under our court, unlike NGT. However, the Environment Court does not cover all resources of environments that are deficient but NGT does. Nonetheless, entertaining suits under the Environment Court are so complicated and lengthy that it does not ease suit procedures relating to the environment.

Common people's right of access to Environment Courts under the Environment Court Act, 2010 has not been recognized directly. According to *section 6(3)* of the Act, the Special Magistrate Court shall not take cognizance of an offence without a written report of an Inspector of DoE. Moreover, the entire process is so lengthy which are actually unable to bring justice in time e.g. if

²⁸ Imtiaz Ahmed Sajal, Common People's Access to the Environment Courts of Bangladesh: An Appraisal, Bangladesh Law digest, ISSN 2708-6313, July 16, 2015.

someone starts cutting trees in a forest but the complainant has to go through the prescribed long procedure then this will ultimately result in full deforestation. Due to the context of our country, the Environment Court is not that powerful enough to tackle the existing problem let alone be a proper forum for upcoming future environmental difficulties.