NEED TO STRENGTHEN NATIONAL GREEN TRIBUNAL ACT OF 2010 AFTER PARIS AGREEMENT

Mansiz Sharma & Adarsh Verma, Jamia Millia Islamia

ABSTRACT

With the beginning of winter season cities of northern India almost became gas chamber and AQI (Air Quality Index) released by CPCB shows worst quality of air in Delhi NCR region and it is quite common during these days that MOEFCC releases guidelines for construction and other economic activities which causes air pollution and even Health Ministry publishes warning for elderly people regarding pulmonary and respiratory problems. This is just one manifestation of problem of environmental degradation in country and world, species loss, habitat loss, economic loss, cultural degradation could be other consequences.

In short environmental degradation is causing economic, social, cultural, physical and mental hardship to people and worst affected are tribal indigenous people who largely depends upon nature for their livelihood. Poor, children physically impaired and women are other vulnerable groups.

Our constitution ensures *"Right to Life with Dignity"* as fundamental right to every individual under Part III. And whenever there is economic, social, cultural, physical, mental and aesthetic damage to individual in particular and society at large in general than this right is breached and it became foremost duty of State and its organs to ensure this right to people. Legislature performs this duty by enacting environmental laws, executive by framing environmental friendly regulatory policies and judiciary by ensuring right to clean and healthy environment to each individual. So Indian Parliament has enacted several laws for this purpose and one famous & latest among them is *"The National Green Tribunal Act of 2010"* to provide speedy and effective justice to people relating to environmental issues.

Moreover, it should not be forgotten that environment is a shared resource of mankind and degradation of it in any part of world will affect whole Earth, so a collective international effort is required for its protection and conservation. India is frontrunner in this endeavor and always proactively participated in such international conventions and treaties and is signatory of many such protocols and agreements. One such landmark international agreement is Paris Agreement to check global rise of temperature to combat

global warming, it asks parties to cut emission of GHGs and adopt clean technologies. India is signatory to Paris agreement and made an ambitious commitment under it to reduce GHGs emissions.

It has been observed in recent past that instead of having international and national laws for environmental protection the quality of air is worsening day by day and air pollution is at its highest level so far. The degradation of environment is impacting the workload of judiciary as well, as cases related to environmental degradation injury are increasing and despite of constitution of NGT Supreme Court is overloaded with such cases.

This article will analyze the NGT Act in detail and tries to find out lacunae in legislation and then proceeds to suggest desired changes so that it became effective. Moreover, article will analyze international environment laws in detail, their evolution and present status after Paris Agreement. Then this article will tries to compare Indian NGT Act with international Paris agreement and find out whether poor functioning of NGT can be cured by aligning it with international environmental laws and this can be done by giving more powers to NGT. This article will be helpful for achieving environmental neutrality through legislative reforms and will be useful to ensure *"Right to Clean and Healthy Environment"* to people so that their overall standard of living will improve.

Introduction

Faulty development activities of modern human civilization has taken heavy toll on environment which can be seen in and around us in form of air quality degradation, noise pollution, land degradation, desertification, eutrophication, global warming, ozone depletion, acid rain and loss of species. Not only living and non living surrounding is badly affected but man itself is on receiving end as damage of environment causes hardship to people in many ways ranging from economic to cultural. To mitigate the negative effect of environmental degradation apart from scientific, social and economic efforts legal measures are equally relevant and effective.

Several legal efforts are taken so far at national and international level. At national level many legislations are enacted till date naming few are Indian Forest Act of 1927, Wildlife Protection Act of 1972, Water (Prevention and Control of Pollution) Act of 1974, Air (Prevention and Control of Pollution) Act of 1982, Forest Act of 1980, Environment Protection Act of 1986, Biological Diversity Act of 2002, Forest Right Act of 2006 and National Green Tribunal Act

of 2010. All these mentioned acts have their role in preservation and conservation of environment but NGT Act of 2010 is vital in sense that it provides for relief in case of damage due to climate change and environmental degradation.

Similarly at international level environmental laws are evolving with evolution of Public International Law, as environmental crisis is looming day by day countries and international organizations are putting more efforts to reduce its impact and tries to establish international and cross border cooperation to preserve environment. Several international treaties, conventions, protocols and binding agreements are laid down so far in this direction. One of landmark meeting at global level was ***"Earth Summit"*** of 1992 which laid down framework to check global temperature rise due of emission of green house gases by reducing their emission. Under this framework one such effort was ***"Kyoto Protocol"*** and its recent successor ***"Paris Agreement".***

Paris Agreement was inducted and adopted in 2015, since then positive outcomes of green house gas emission reductions are recorded and noticed from several parts of world. India is also party and signatory to this historic agreement and has made certain commitment under this regime and also striving forward to achieve targets set for India under Paris Agreement. One innovation that Paris agreement brings was ***"Intended Nationally Determined Contributions"*** **(INDC)** where parties to Paris agreement are required to submit their green house gases emission targets voluntarily and there is no outside imposition of reduction targets like Kyoto Protocol, hence India also proposed its own INDC.

On other hand after enactment of NGT Act of 2010 a National Green Tribunal was established for fast and speedy disposal of cases related to environment. Since its inception it delivers several landmark judgments, provides relief and damages to several persons and above all share work load of main judiciary. Initial phase of working of NGT was admired by all quarters of society but recently its working is being criticized by environmentalist and legal experts as it starts looming under crisis and seems to become ineffective as it was earlier and critiques put blame on inherent problem of NGT Act itself. And they are stressing on amendment of act especially in lime light of post Paris agreement developments.

Problem with present NGT

The basic concept of enactment of NGT Act was to fast disposal of millions of pending cases related to environmental issues in country and to impart speedy justice to aggrieved person. In

lieu of its purpose NGT acts effectively in beginning and it tries to enlarge its wings by imposing fines and penalties on basis of *"Polluter Pays Principle"*[1] but due to non compliance of its decisions it slowly becomes tooth less and starts losing its importance. Even it is criticized to such an extent that instead of sharing work load of judiciary it became burden on Supreme Court as its most of decisions are challenged in Supreme Court.

In recent past it was observed that its decisions were not properly implement by administrative authorities in true sprit which seems to be mockery of NGT and even penalized organizations are reluctant to obey its judgments. One such example is fine of 400 crore imposed on Art of Living Foundation organization of spiritual guru Sri Ravi Shankar for organizing mega religious event at catchment area of Yamuna river.

Scope and Object of this article

This article will focus on how legal steps has potential to provide viable solution to above mentioned problems which NGT is facing and to provide legal help to people so that their right to life enshrined in Indian Constitution is ensured.[2]

Scope of this article is in legal field of environmental laws in India. Legal experts can use this study for further reference in their legal domain. It will be helpful for legislature also to consider these suggestions are amend The National Green Tribunal Act, 2010 (Act 19 of 2010) accordingly. Scope of this article is wide ranging from environmental law, social reform, cultural values based system, administrative reform, ecological conservation of flora and fauna and definitely has academic value.

Object of this article is to find out lacunae in present National Green Tribunal Act of 2010, and establish relationship between further weakening of this act after Paris agreement development and suffering of people is to be established. Increasing number of cases related to environmental issues ***has direct correlation ship with weakness of National Green Tribunal Act, 2010*** and poor implementation of NGT decisions is ***the root cause of this menace***. Therefore, imparting more powers to NGT and its alignment with international environmental laws will sort out the problem and is a need of hour.

[1] *Indian Council of Enviro-Legal Action vs Union of India,* 1996, AIR 1446.
[2] *The Constitution of India*, art. 21

Background of Environmental Laws in India

Environmentalism is not a static concept but it is always evolving and dynamic concept and is influenced by surrounding context. The concept of environment protection and conservation is an age old idea imbibed in the Indian cultural values and her religious ethos since time immemorial. So far historical context is concerned environmental awareness can be said to be existed in Pre Vedic period as well, there is clear evidences of worshipping of nature by inhabitants of Harappa Valley civilization which flourished in northern and north western India during 2500 to 1500 BC. Similarly during ancient period Vedas, Puranas, Upanishads and other ancient scriptures gave detailed commentary on trees, water, river, wildlife and their importance to people. A Vedic period medical science book Charak Samhita, dated from 900 BC to 600 BC gave detailed account of method of cleaning of water, Yajnavalkya Samiti prohibited the cutting of trees by mentioning strict punishment for such acts. Kautilya's Arthashastra have a detailed chapter on Forest Administration so it realized the relevance of forest and Ashokan 5^{th} pillar edict expressed his views about the welfare of creature in the State. Briefly it can be said that ancient Indian society was aware of ill effects of deforestation, pollution and environmental degradation and they gave lot of importance to environment conservation and protection.

Similarly during medieval period state sponsored environmental conservation efforts can be seen. There is a close harmony between Islam and nature and this is manifested in decisions of Mughal emperors as well. The main contribution of Mughal rulers were constructions of magnificent gardens, fruit orchids and green parks.

However, it was British era which can be seen as beginning of modern legislative and legal environmental protection phase in Indian environmental laws history. Many legislative measures were taken by British government for protection and conservation of natural resources and prevention of water and air pollution. Policies of Britishers are considered as first scientific steps towards environmental conservation although they may be criticized on many grounds.

Some of legislations enacted by British government prior to independence were Shore Nuisance (Bombay and Kolaba) Act, 1853 for imposing restriction on fouling of sea water, Merchant Shipping Act, 1858 which deals with prevention of sea pollution by oil, The Fisheries Act of 1897, The Bengal Smoke Nuisance Act of 1905, Bombay Smoke Nuisance Act of 1912

for preventing air pollution, Wild Birds and Animals Protection Act of 1912 for wildlife species protection and Indian Forest Act of 1927 for conservation of forest resources of India.

After Independence the original Indian Constitution of 1950 did not deal with the subject of environment or preservation and control of pollution exclusively although there was inbuilt provision for environment conservation. But forty second amendment act of 1976 added Part IVA and Article 51A in Indian Constitution which provides for fundamental duties, one such duty provides for ***"protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures"***[3]**.**

Then, India took proactive steps for environmental conservation after 1972 Stockholm conference. Several legislations were enacted in field of environmental law naming few are Wildlife Protection Act of 1972, Environment (Protection) Act of 1986 (29 of 1986), Forest (Conservation) Act of 1980 (69 of 1980), Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 (2 of 2007), Biological Diversity Act, 2002 (18 of 2003), The Water (Prevention and Control of Pollution) Act of 1974, The Air (Prevention and Control of Pollution) Act of 1981 and finally a landmark legislation i.e The National Green Tribunal Act of 2010 (19 of 2010).

Meanwhile India was party to several international treaties, conventions and agreements and signed many protocols for environmental conservation. India is party to and signatory to UNFCCC, UNCBD, UNCCD, CMS, Montreal Protocol, Vienna Convention, Kyoto Protocol and recently signed Paris Agreement and in fact established International Solar Alliance with France to achieve target of Paris Agreement.

Indian courts also actively participate for environmental cause and for ecological restoration and formulated world famous ***"Absolute Liability Principle"***[4] in response to ***"Strict Liability Principle"***[5] as lay down by House of Lords.

Indian Judiciary always being proactive to protect the right of people, it has been proved on several instances when Supreme Court uphold the foremost position of fundamental rights of people as provided in Part III of Indian Constitution. In cases related to environmental

[3] *The Constitution of India, 1950* art. 51A(vii)
[4] *M.C Mehta vs Union of India*, AIR 1987, SC 1086
[5] *Rylands v. Fletcher*, 1868 UKHL 1

protection various well known cases come in front of High Courts and Supreme Court and they laid down well known judgments.

In ***Delhi Gas Leak Case***[6] apex court explore the ambit of Article 21 and 32 of Constitution and court held that Right to Life includes living with dignity and which in turn includes clean and healthy environment. Here court laid down ***Polluter Pays Principle*** which says Polluter has prime responsibility to clean the environment which is degraded by Polluter. Moreover court laid down Absolute Liability concept by modifying Strict Liability Rule laid down in "***Ryland v. Fletcher"*** case.

Absolute Liability Concept states that industries which are involved in manufacturing of hazardous chemicals or materials which are dangerous for whole society if not handled properly has more responsibility on their shoulder towards society from which they are earning. They should be absolutely liable for any damage done by their plant.

In "***Ganga Pollution Case***"[7] Supreme Court directed High Courts to not to grant stay of criminal proceedings against industries in pollution cases unless there were extraordinary circumstances. Basically court strictly warned industries which are polluting the Ganga river because along with degradation of river life of people living in villages around Ganga river is badly affected and their Right to Life is taken away.

In "***Dehradun Quarriying Case***"[8] court balanced environmental and ecological integrity against industrial demands on forest resources. Here court banned mining in valley as it violates the provisions of Forest (Conservation) Act and directed the state government to restore the ecology of area.

Salient Features of NGT Act 2010

Rio Conference of 1992 declares that parties to summit shall frame relevant environmental legislations in their own country to enable people to get fast and cheap judicial remedies regarding environmental causes. Moreover, Law Commission of India in its 186th report[9] also recommended establishment of special courts or forum for dealing with environmental cases and even report recommend that central government shall establish and construe separate

[6] *M.C Mehta v. Union of India*, AIR 1987, SC 1086
[7] *M.C Mehta vs Union of India*, AIR 1988, SC 1037
[8] *Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh*, AIR 1985 SC 652
[9] Law Commission 186th Report available at *lawcommissionofindia.nic.in*

environment court in each state. Same report was in favor of giving original and appellate jurisdiction to these environment courts and stress on easy accessibility of these courts to litigants. Some famous jurist of country also expressed similar views about establishment of exclusive courts or forums for environmental cause, prominent and most vocal among theme was "*Upender Baxi"*[10]

Moreover during eighties and nineties several happenings also prompted central government to think about establishing separate environmental courts, important among them was Bhopal Gas Leak Case[11], Oleum Gas Leak Case[12], Delhi Gas Leak Case[13], The Ganga Pollution Case[14], Dehradun Quarring Case[15], Calcutta Taj Hotel Case[16] and Olga Tellis case[17]. As a result of above happenings NGT Act was passed in 2010.

The purpose and requirement of enacting NGT Act are as follows:-

- To address disputes related to damages where substantial issue of environment is involved.
- To provide cheap and speedy justice to people in matters of environment.
- It seeks to reduce burden and pressure on law courts because they are already overburdened.
- It aim to ensure sustainable development by protecting rights of people on one hand and ensuring environmental protection on other hand.
- To restore ecology on basis of Polluter Pays Principle and environmental doctrine.
- To make Indian environmental statutes at par with international standards.
- To handle any other matters related to ecology and environment.

The act provides for definition of accident, environment, injury, hazardous substances, substantial question related to environment, expert members, etc[18]. Section 3 of act provides that central government has power to establish tribunal for the purpose of this act[19]. The tribunal

[10] U.Baxi Environmental Protection Act : An agenda for implementation, 10 (1987)
[11] *Charan Lal Sahu v. Union of India*, AIR 1990 SC 1480
[12] Supra Note 9 at 14
[13] *M.C Mehta vs Union of India*, AIR 1987, SC 1086
[14]Supra Note 12 at 19
[15] Supra Note 13 at 20
[16]*Sachidanand Pandey vs. State of West Bengal*, AIR 1987, SC 1109
[17]*Olga Tellis vs. Bombay Municipal Corporation*, AIR 1986, SC 180
[18] The National Green Tribunal Act, 2010 (19 of 2010), s 2
[19] The National Green Tribunal Act, 2010 (19 of 2010), s 3(2)

established under this act shall follows principle of natural justice[20]. The act provides for original and appellate jurisdiction of NGT tribunal, as per original jurisdiction the tribunal has civil jurisdiction in all cases which involves substantial question of environmental law and also of questions which arise from matters given in schedule I of this act[21]. The tribunal may adjudicate the issue within 6 months from the date of course of action arise.

As per section 16 of act the tribunal provides for damages, compensation, relief and restitution of victims of pollution, environmental damage while handling any hazardous substance, etc. the application of relief and compensation shall be entertained by tribunal within 5 years from date on which the cause of such compensation or restitution first arise, tribunal on being satisfied with sufficient cause can extend the above mentioned cause for period of 60 days[22].

The tribunal shall consist of a full time Chairperson and full time judicial and expert member. Strength of members of tribunal shall be minimum 10 and maximum 20 in number from each judicial and expert member. The Chairperson, judicial members and expert members shall be appointed by central government in consultation with the CJI and the judicial members and expert members shall be appointed on the recommendation of selection committee. The term of office of chairperson, judicial member and expert members shall be five years or retirement age, whichever is earlier, prescribed by this act. The Tribunal shall have as the power of civil court to passing any order or decision or award. While passing any order or decision or award, the tribunal must apply the principle of sustainable development, the precautionary principle and the polluter pay principle. This Act also provides the appeal and review provisions. Any aggrieved person may appeal before Supreme Court against the tribunals order or decision or award. The tribunal shall have power to review its own decision. The tribunal shall have power to take cognizance of offence and impose penalty for failure to comply with any order or award or decision[23].

The Civil court shall not interfere with the appellate jurisdiction of tribunal, where the matter or question related to settling dispute or claim or relief or compensation or restitution of property damaged or environmental damaged involved and which may be adjudicated upon by the tribunal[24].

[20] The National Green Tribunal Act, 2010 (19 of 2010), s 19
[21] The National Green Tribunal Act, 2010 (19 of 2010), s 14(1)
[22] The National Green Tribunal Act, 2010 (19 of 2010), s 15(3)
[23] The National Green Tribunal Act, 2010 (19 of 2010) s 30
[24] The National Green Tribunal Act, 2010 (19 of 2010) s 29

The Tribunal shall have same power as are vested in a civil court under The CPC,1908, for trying any suit and matter relating to summoning and examining on oath, discovery and production of document, receiving evidence on affidavit, re-questioning any public record or document or copy from any office (under section 123 and 124 of The Indian evidence act, 1872), reviewing own decision, dismissing application, setting aside any order, pass any interim order or permanent order to resist the person from causing any violation of any enactment specified in Schedule-1 or any other matter[25].

This Act also provide mandatory power to The tribunal to regulate its own procedure, While tribunal dealing with proceeding under section 193,213 and 228 for the purpose of section 196 of The IPC 1860, this proceeding shall be as a judicial proceeding and tribunal shall be deemed as a civil court for the purpose of section 195 and Chapter-26 of The CrPC 1973[26].

International Environment Regime Up To Paris Agreement

International Environmental Law is a branch of Public International Law where international conventions, agreements, treaties and protocols are framed and signed among states. Evolution of international environmental law is a modern concept and is flourishing from last forty years only. Within this short span of forty years hundreds of such legislations are framed at international level and almost every country is signatory of these agreements. This fast evolution of international environmental law can be linked with rapidly rising environmental risk and crisis. Before 19th century there was no appreciation of idea that environment, biodiversity, ecosystem and other natural resources should be made subject of legal protection. Before 1960's there was no discrete or exclusive domestic and international statute for environmental protection although they may be implied part of other comprehensive legislation. Even in 1970's, there were few multilateral agreements related to environmental law and most of countries lack dedicated statutory provisions. But in recent past much attention is paid on this aspect of Public International Law.

A *"Limit to Growth"* model was proposed in 1971 which proposed that infinite growth cannot be sustained on this finite world and overall findings of this model projected that a collapse will be inevitable if exploitation of natural resources continues. This model raised alarm among environmentalist across the world and they starts lobbying around the world and stressed on

[25] The National Green Tribunal Act, 2010 (19 of 2010) s 19
[26] The National Green Tribunal Act, 2010 (19 of 2010) s 25(1)

international cooperation and efforts at global level to avoid irreparable damage to environment. Over the years, many multilateral environmental agreements have been negotiated and agreed at the international and regional levels. While some have a few Parties, others have almost global participation.

The initial multilateral environmental agreements were quite different from the ones that have been signed and come into force in recent years. They were usually aimed at protecting a particular species, e.g. fauna, or tended to deal with one particular aspect, e.g. oceans. However, over time and as appreciation of the interlinked nature of ecological processes has developed, such sectoral approaches were gradually abandoned in the quest for more integrated considerations and, as a consequence, more integrated mechanisms and solutions started developing in form of comprehensive environmental legislations.

However, multilateral environmental agreements remained sectoral until the early 1990s in the sense that they did not incorporate specific sustainability approaches and only dealt with environmental protection or conservation. While the first generation of multilateral environmental agreements was use-oriented, the more recent second generation agreements took a more holistic approach, focusing on sustainable development and sustainable use of natural resources. The later multilateral environmental agreements were born out of the United Nations Conference on Environment and Development in June 1992 – also known as the Earth Summit or Rio Conference. Here, governments across the globe acknowledged the interaction between society and ecological problems, and began to recognize links between development and the environment.

After "Limit to Growth" model projection a international conference was called by UN in Stockholm and this conference is called as ***"UN Conference on Human and Development"*** and also called as ***"Stockholm Conference".*** This is considered as first international effort towards conservation and protection of environment and to recognize environmental crisis at global level. It laid down foundation for environmental action at international level. Here it was agreed by parties that environment is a shared resource and its quality can be degraded if integrated international efforts are not taken into consideration and at earliest as possible. In Stockholm Conference United Nation Environment Programme (UNEP) was launched. UNEP is a Nairobi based institution and it has functions of creating environmental awareness in governments, society and private sectors, it monitors global environmental status and interpret the data collected and it helps out environmental authorities in developing countries. Parties in

Stockholm Conference decided to convene a international all party meeting in near future to laid down agreement for combating global warming.

As mandate given in Stockholm Conference, United Nation called all party meeting of UN members at Rio de Generio, Brazil in 1992 and this conference is called as ***"UN Conference on Environment and Development"*** also famously known as ***"Earth Summit"*** or ***"Rio Conference".*** It was global meeting and was attended by almost every UN member nation.
Here three major agreements were laid down –

1. **Agenda 21** = A comprehensive programme for global action in all areas of sustainable development.
2. **Rio Declaration on Environment and Development** = it is series of principles underlying rights and responsibilities of states.
3. **Statement of Forest Principles** = it is for sustainable management of forest worldwide.

In addition two legally binding agreement were opened for signature for parties –

1. **United Nation Framework Convention on Climate Change (UNFCCC).**
2. **Convention on Biological Diversity (CBD).**

Also one more legally binding agreement was discussed but not adopted –

- **United Nation Convention to Combat Desertification (UNCCD)**

Moreover **"UN Commission on Sustainable Development"** was also established to look implementation of Agenda 21.

United Nation Framework Convention on Climate Change (UNFCCC)

It recognized that climate system is shared resources whose stability can be affected by emission of CO2 and other GHGs. It sets overall framework for intergovernmental efforts to tackle climate change. Convention entered into force on 21 March 1994. Its meetings are annually attended by parties called as COP – UNFCCC.

Convention on Biological Diversity (CBD)

It came into force on 1993 and it is a legally binding agreement. There are following three aims of CBD –

1. Conservation of Biodiversity.
2. Sustainable use of Biodiversity.

3. Fair and Equitable sharing of benefits arising from use of genetic resources.

United Nation Convention to Combat Desertification (UNCCD)

It is legally binding agreement. It is also called as **"Paris Agreement"** as it was adopted in 1994 at Paris, but its origin is traced from 1992 Earth Summit. This agreement comes into force from 1996. Its meeting called as COP – UNCCD is a biennial meeting and latest COP was 14th meeting and held at New Delhi during September- October 2019.

It has three aims –

1. To check land degradation.
2. To combat Desertification.
3. To mitigate the effects of drought.

Paris Agreement is outcome of UNFCCC and it was adopted in COP 21 of UNFCCC. It is a landmark agreement at international level to reduce GHGs emission and check global rise of temperature within tolerable limit. Paris Agreement is considered as successor of Kyoto Protocol, so it is need to analyze and understand Kyoto protocol in detail first to understand Paris agreement in toto.

Kyoto Protocol was adopted in COP 5 to UNFCCC held at Kyoto, Japan in 1997 but entered into force on 2005. Its first commitment period starts from 2008 to 2012 and second period from 2012 to 2020. It is international agreement linked to UNFCCC, which commits its parties by setting internationally binding emission reduction targets. Protocol placed heavier burden on developed countries as compared to developing countries under CBDR principle. Currently, there are 192 Parties to the Kyoto Protocol.

In short, the Kyoto Protocol operationalizes the UNFCCC by committing industrialized countries and economies in transition to limit and reduce GHGs emissions in accordance with agreed individual targets. The Convention itself only asks those countries to adopt policies and measures on mitigation and to report periodically. Parties to Kyoto protocol are placed under following four groupings –

1. Annex I = Initially 43 parties of UNFCCC were placed in this grouping. Here industrialized countries and Economies in Transition are placed.

2. Annex II = Initially 24 parties were in this group. They are required to provide financial and technical support to EITs and developing countries to assist them in reducing their GHGs emission and manage the impact of climate change.

3. Non Annex I = Here mostly low income developing countries. They can volunteer to become Annex I countries when they are sufficiently developed.

4. LDC = Initially 49 parties of UNFCCC were there, they are given special status in view of their limited capacity to adapt to effect of climate change.

One important element of the Kyoto Protocol was the establishment of flexible market mechanisms, which are based on the trade of emissions permits. Under the Protocol, countries must meet their targets primarily through national measures. However, the Protocol also offers parties an additional means to meet their targets by way of three market-based mechanisms. These mechanisms ideally encourage GHGs abatement to start where it is most cost-effective, for example, in the developing world. It does not matter where emissions are reduced, as long as they are removed from the atmosphere. This has the parallel benefits of stimulating green investment in developing countries and including the private sector in this endeavor to cut and hold steady GHG emissions at a safe level. It also makes leap-frogging—that is, the possibility of skipping the use of older, dirtier technology for newer, cleaner infrastructure and systems, with obvious longer-term benefits—more economical. Following are three mechanism of Kyoto Protocol -

1. Joint Implementation.

2. Clean Development Mechanism.

3. International Emission Trading.

In **International Emission Trading** mechanism to meet emission reduction target one country can buy or trade *"Carbon Emission Credit"* from other country whose emission reduction level is above target. This mechanism is mostly misused by parties since 2008.

In **Clean Development Mechanism** an industrialized country invest in emission reduction project in a developing country then the amount of GHGs reduced in developing country is counted towards the investor's country total emission reduction score.

In **Joint Implementation** when an industrialized country who has commitment under Kyoto Protocol invest in an emission reduction project in another industrialized country who also has commitment under Kyoto Protocol, the amount reduced is counted towards investors total emission reduction score.

International Emission Trading was mostly used by developed and industrialized countries to meet their GHGs emission reduction targets and to operate it these countries come in nexus with some under developed countries whose reduction target is more and their level of GHGs emission is less, so that developed and industrialized countries purchase emission reduction certificate from these under developed countries. But due to this unholy nexus there is no effective reduction of GHGs anywhere in world and hence real motive of UNFCCC was not meet at all. This creates chaos, deadlock and zero sum game in Kyoto protocol implementation. So to end this zero sum game in 2015 COP of UNFCCC that was 21 COP Paris Agreement was adopted to sort out shortcomings of Kyoto protocol.

Paris Agreement is not legally binding agreement. It was agreed in COP 21 to UNFCCC in 2015, and this agreement comes into force from 1st January 2020. Its aim is to restrict global temperature rise by not more than 1.5 degree Celsius as compared to pre industrial level. To achieve this long-term temperature goal, countries aim to **reach global peaking of greenhouse gas emissions as soon as possible** to achieve a climate neutral world by mid-century.

Here developed countries agreed and accepted the CBDR Principle. ***"Intended Nationally Determined Contributions" (INDC)*** mechanism was framed. Developed countries accepted Warsaw International Mechanism which was adopted in 2013 COP where *"Loss and Damage"* Principle was formulated.

Like other countries or signatories to this agreement India also declared its INDC, which includes – contribution of non fossil fuel power generation to total power generation to be increased by 40% up to 2030, increase of forest carbon sink by 3 billion tones by 2030 and to improve the emission reduction intensity by 33 to 35 % of 2005 level by 2030.

Comparison of Kyoto and Paris agreement

- In Kyoto Protocol CBDR Principle was discussed but not adopted and accepted by developed nations, whereas it was accepted in Paris Agreement by developed countries.
- In Kyoto Protocol there was no "Loss and Damage" Principle adoption but it was

adopted and accepted in Paris agreement of 2013.

- There was no target or goal set overall for reduction of GHGs in Kyoto Protocol but in Paris Agreement overall goal was to limit increase in global temperature by 1.5 to 2 degree Celsius of pre industrial level and it was subject to review in later COPs to UNFCCC.
- There was external target set mechanism in Kyoto Protocol for parties means how much green house gas emission curtailment has to be there for particular country is to be decided by whole COP but in Paris Agreement there was internal mechanism to set emission reduction target for countries and this mechanism is called as INDC, means every country who is party to Paris agreement has to voluntary and internally decide their target for green house reduction emission.
- There were groupings of parties in Kyoto Protocol but there is no as such categorization of parties in Paris agreement.
- To achieve targets of Kyoto Protocol there were three market mechanisms namely – Joint Implementation, Clean Development Mechanism and International Emission Trading, whereas in Paris Agreement there are two market mechanisms to achieve INDC tergets for parties these mechanisms are – ITMO means Internationally Transferred Mitigation Outcomes and SDM means Sustainable Development Mechanism.

Internationally Transferred Mitigation Outcome (ITMO)

It allows countries on voluntary direct bilateral cooperation basis to sell any extra emission reductions they have achieved as compared to their Nationally Determined Contributions (NDCs) targets.

Sustainable Development Mechanism (SDM)

It is trading of emission reduction created anywhere in the world by public or private sector. It seeks to replace CDM of Kyoto Protocol.

Critical Analysis of NGT Act 2010

In beginning NGT performs outstanding and it was appreciated from entire legal fraternity, it passed several guidelines to ensure environmental justice and of course shared work load of main judiciary but with passages of time it looms under controversies. Its orders were

overlooked by those against whom it passed the judgment and such punished organizations either refused to pay penalties imposed on them or shows lethargic attitude to obey the orders. Many prefer to challenge its orders to Supreme Court and defeated the very purpose of its inception.

Therefore, many jurists and legal experts started criticizing the NGT Act itself and demanded amendment to act to bring more powers to NGT. After analyzing the NGT Act in detail following issues are figured out which weakens the very foundation of idea of speedy and efficient environmental justice through NGT –

The very first point of criticism is appointment of members of tribunal as there is more governmental say in appointment compared to judiciary although CJI is consulted to appoint some members but not all. It is well known fact that in most of damages claim government is party and these bureaucrats who are appointed by government as members of NGT rarely dares to go against government decisions and victims hardly get compensation.

NGT is funded by ministry and it has budgetary allocation so it is not financially independent as that of judiciary. Through budgetary allocation government can control its decisions and influence it's working.

NGT rarely performs fact finding exercise and deals with question of law only, it saves the time but on other hand it made tribunal vulnerable to faulty decisions because it has to rely upon state machinery for finding facts of any issue which comes before it.

NGT is facing lack of resources; it has lack of managerial staff and its funds are decreased in recent past which further is further problematic for it.

Expert members who are not from judiciary in NGT are criticized on ground that while awarding compensation and relief expert knowledge is hardly required instead legal understanding and knowledge is required.

186th Law Commission Report suggests separate environmental courts in every state but NGT has only 5 benches. This has created problem of accessibility to common people and it discourages people from far flung areas to reach NGT to get justice. Section 29 of act bars civil courts to entertain environmental related disputes which the tribunal is empowered to adjudicate, so aggrieved person is bound to approach NGT only and can't petition to nearest

Munsif Court, it unnecessary burdens common man as hardship of people of far flung areas has increased.

The Act provides that NGT will deal those issues which involves substantial question of environmental law and it is a subjective criteria to decide what substantial question is and hence there is no uniformity to deal with cases and it has more discretionary orientation.

NGT Act of 2010 discourage the PIL culture for environmental damage which effect society at large now PILs are not filed in HC rather aggrieved party has to approach NGT for such issues.

Act has a time bar of 5 years to approach NGT to get damages for injury which can be increased for 60 days by NGT itself during sufficient cause but environmental damage is complex issue and some time consequences of wrong done can be observed after prolonged time period, like effect of air pollution by particular industry might be observed after 10 years.

The right to clean and healthy environment is accepted as fundamental right under ***"Right to life and dignity"***[27] by SC of India. So every person shall have access to judiciary to ascertain this right but this act restricts the *locus standi* of person who may appear before the tribunal to *"person who has sustained the injury"*[28]. Consequently person can petition NGT when he sustained direct injury due to environmental damage.

Moreover, it has been observed in recent past that guidelines issued by NGT are not properly followed by state and central government in true sprit which simply makes mockery of environmental justice in India. Time and again NGT issued order about protection and conservation of Aravalli mountain range in NCR and surrounding region, it laid down strict guidelines for quarrying in Aravalli hill and in fact banned quarrying and mining activities in NCR but unfortunately on ground illegal quarrying and mining activities are carried out on large scale in Aravalli hills in NCR region.

Even in recent Haryana government allowed construction project in forest range over Aravalli range in Faridabad region and Haryana government before granting approval to construction activities priory denotified the forest land by using powers given under Punjab Land

[27] Supra Note 2 at 32
[28] *The National Green Tribunal Act*, 2010 s 18(2)

Preservation Act of 1900.

Similarly, many organizations overruled the orders of NGT, one such highlighted case was of Art of Living Foundation of spiritual leader Sri Sri Ravishankar which organized world level religious cum cultural festival on banks of Yamuna river in Delhi. According to NGT order organizing such huge festivals in catchment area of already endangered river may cause huge and irreparable environmental and ecological damage to riverine ecosystem. But this direction of NGT was not paid attention either by central government or by Delhi government and as a consequence above mentioned organization organized mega event at Yamuna flood plain. Even more when NGT imposed fine on Art of Living Foundation the organization refused to pay fine and approach SC instead.

Such incidents in recent past has tarnished reputation of NGT and laid down wrong precedence in journey of environmental justice in India.

These incidences compel jurist and legal experts to raise their voice to demand more power to NGT and it encourages researchers also to trace out lacunae in environmental laws in India.

Conclusion and Suggestions

Although people are not aware about Paris Agreement which is landmark international agreement so far to combat climate change and to arrest global warming so probably many people may not be aware about other international environmental laws. Hence there is need to popularize international environmental laws or agreements at grass root level so that citizens can pressurize their respective government to take proactive steps for environmental protection, citizens can compel their government and State to amend environmental laws of country for more welfare of all.

India has made a ambitious commitment under INDC of Paris agreement and that is need of hour also but this commitment can be fulfilled proactively acting on multiple front and one such area is legislation, so India need to align its environmental laws as per international environmental regimes.

National Green Tribunal Act of 2010 is guardian of people rights and ensures their fundamental right of clean and healthy environment under article 21 of Indian Constitution. NGT Act is significant because it has potential to provide necessary relief to victims of environmental

damage caused by unscientific operating of hazardous industries. But as it is clear that with passage of time NGT act is crumbling under pressure and tribunal power is seems to be insufficient to handle big corporate houses who finds loopholes in act and policies and keep on polluting the environment despite of repeated warning by NGT and even after imposing heavy penalties.

So to achieve ambitious goal of INDC of India under Paris Agreement there is urgent need to amend NGT Act of 2010 in direction of strengthening it so that more power can be ensured to NGT for its effective functioning.

It is suggestable that NGT should be given constitutional status as par with High Courts so that its financial independence can be properly ensured, appointment of members of tribunal should be more transparent and there shall be more say of judiciary in appointment of members. Similarly removal of members of tribunal shall be made equal be removal of judges of High courts and Supreme courts so that they can function freely without any executive pressure.