

# Access to Justice in Environmental Matters: A Critical Assessment of Working of National Green Tribunal in India

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## Abstract

Access to justice is an essential element of rule of law and therefore of democracy. To ensure the realization of rights, it is necessary. A person requires a mechanism that can provide him with relief or allow him to right the wrong when his rights are violated. Without access justice is merely an illusion. To ensure that everyone has access to justice, the state must set up institutions that can administer justice. The Supreme Court of India in various cases as well as Law Commission of India in its 186<sup>th</sup> report highlighted the need to establish a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. To serve this purpose the National Green tribunal was established courtesy of National Green Tribunal Act, 2010 to fulfil the long felt need of alternative forum to deliver speedy and inexpensive justice.(1) The philosophy of public interest litigation is echoed in the legislation, a welcome direction for the class of victims who are unable to knock the doors of judiciary. This article tries to critically assess the working of National Green Tribunal in its decade of existence and how it has revolutionized the adjudication in environmental matters. Also, it tries to analyze year wise details of institution, disposal and pendency of cases at the principal bench, Delhi and other zonal benches.

**Keywords:** *Environmental Justice; Adjudication; Governance; Environmental Courts and Tribunals*

## **1. Introduction**

Access to justice is a foundational pillar for environmental protection and appropriate court structures are required to provide such protection. In this regard the current proliferation of specialized environmental courts and tribunals (ECTs) around the world is dramatically changing the playing field for environmental justice. It is driven by the development of new international and national environmental laws and principles, by recognition of the linkage between human rights and environmental protection, by the threat of climate change, and by public dissatisfaction with the existing general judicial forums.(1) In India, National Green Tribunal (herein after as NGT) was established in 2010 under Article 21 of the Indian Constitution which guarantees the citizen of India the right to healthy environment.(2) India is the third country following Australia and New Zealand to have such system.(3) The NGT as a specialised body was created with the promise of not only speedy, effective, decentralised dispensation of environmental justice but also with appropriate expertise and knowledge in environmental matters.

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## **2. Environmental Courts and Tribunals (ECTs) - Global Perspective**

### ***2.1. Ongoing Explosion of ECTs***

The global "explosion" of specialist courts and tribunals for handling environmental disputes is fundamentally altering the rules of the game for environmental justice. One of the most significant developments in environmental law and institutions in the twenty-first century is the rapid global growth of these ECTs.

In the words of Justice Antonio Herman Benjamin, High Court of Brazil, "Environmental conflicts require quick action or response, which is incompatible with the slow pace of the court system that, due to its bureaucracy and technical rituals, eventually becomes an obstacle to effective protection of the environment and to economic progress."(4)

In the 1970s, only a handful of these specialized environmental courts and tribunals (ECTs) existed – primarily in Europe. In 2009, when the first global study of ECTs was done, 350 ECTs could be documented. Today, a mere 7 years later, there are over 1,200 ECTs in at least 44 countries, at the national and state/province levels, including local/municipal ones that are part of a national or state/province ECT system. (6)

### ***2.2. Reasons for Explosion of ECTs***

The 1970s was a time of growing public awareness and concern about environmental quality, human health and the natural world, and this led to increased public advocacy for more effective actions by governments. In response, international organizations and many nations rapidly developed a body of environmental standards, laws, regulations, policies and institutions. In addition, environmental NGOs including the Sierra Club, Greenpeace, and International Union for the Conservation of Nature, World Wildlife Fund and many others emerged urging governments to be environmentally proactive. The spread of information technology (IT), such as the internet and social media, increased people's knowledge, concern and communication about environmental problems locally, nationally and internationally, and IT continues to fuel society's demands for accountable and effective environmental action.(5)

### ***2.3. International Legal Framework in Support of ECTs***

International environmental law (IEL) also strengthened in the 1970s and began influencing countries' domestic environmental laws and institutions. The pioneering 1972 Stockholm Declaration, while non-binding, laid the foundations for modern IEL. The UN Environment Programme (UNEP) was created that same year, as the leading global environmental authority.

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities ... and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to justice and administrative proceedings, including redress and remedy, shall be provided.”(6)

This was followed by such significant international environmental law instruments as the 1982 World Charter for Nature, the 1992 Rio Declaration on Environment and Development, the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, and UN Environment’s 2010 Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines) among others. These international environmental law instruments provided international standards of best practice for countries’ environmental governance and gave rise to the 3 environmental “Access Rights” – people’s rights of access to information, access to public participation and access to justice in environmental matters – now considered the “3 Pillars” of the environmental rule of law.(6) UN Environment’s and other authorities’ development of international standards for environmental access rights has had a profound effect on countries’ national law development, for many reasons:

Access rights are central to more representative, equitable, and effective environmental decision-making. Access to information empowers and motivates people to participate in a meaningful and informed manner. Access to participation in decision-making enhances the ability of a government to be responsive to public concerns and demands, to build consensus, and to improve acceptance and compliance with environmental decisions. Access to justice allows people to hold government agencies, companies and individuals accountable. (7)

The third “pillar” of access rights – access to justice – as articulated in Principle 10 of the Rio Declaration and refined in the Bali Guidelines is now seen as the primary driver of new ECTs. Current steps by national governments to create a Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters (Aarhus Convention) for Latin America and the Caribbean and similar movements in other regions are occurring as a result.

### **3. NGT: Historical Background**

In India, the higher judiciary is loaded with excessive weight with a large backlog of cases. It may be appreciated that in order to have effective prevention of environmental pollution environmental complaints should be decided in an efficient manner which is not possible in the present context of judicial administration. Therefore urgent need was felt for an alternative forum so that environmental cases were resolved without much delay. India's Environmental Court is a result of the need repeatedly expressed by the Constitutional Courts on the need to have a specialized judicial body to deal with complex environmental questions. The trigger for setting up Environmental Courts was the Supreme Court of India which in its judgment highlighted the difficulties faced by Judges in adjudicating on the Environment.

The Supreme Court in *M. C. Mehta v. Union of India*(8) observed that "Environment Court"(9) must be established for expeditious disposal of environmental cases and reiterated it time and again. As a sequel to it the National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 19974 were passed by the Indian Parliament. But both the Act proves non-starter. They could not cut much ice and there was a growing demand that some legislation must be passed to deal with environmental cases more efficiently and efficaciously. Ultimately the Indian Parliament passed The National Green Tribunal Act, 2010 to handle all the cases relating to environmental issues. The Supreme Court of India in its judgment referred to the need for the establishment of an environmental court which would have the benefit of expert advice from environmental scientists and technically qualified persons as a part of the judicial process, after an elaborate discussion of the views of jurists in various countries. The Supreme Court has also opined that as environmental cases involve assessment of scientific data it would be desirable to have the setting up of "environmental courts on a regional basis with a professional judge and two experts keeping in view the expertise required for such adjudication.

In the *Indian Council for Enviro-Legal Action v. Union of India*. The Supreme Court observed that an environmental Court having Civil and Criminal jurisdiction must be established to deal with environmental issues speedily. In *Charanlal Sahu v. Union of India*(13) the court opined that "under the existing civil law damages are determined by the civil Courts, after a long drawn litigation, which destroys the very purpose of awarding damages so in order to meet the situation, to avoid delay and to ensure immediate relief to the victims, the law should provide for the constitution of tribunal regulated by the special procedure for determining compensation to victims of industrial

disaster or accident, appeal against which may lie to this Court on the limited ground of questions of law only after depositing the amount determined by the tribunal.”

Law commission while drafting its 186<sup>th</sup> law report was guided by the model of environmental court established in New Zealand and the Land and Environmental Court of New South Wales and also the observations of the Supreme Court in four judgments, namely, *M.C. Mehta v. Union of India*, *Indian Council for Environmental – Legal Action v. Union of India*, *A.P. Pollution Control Board v. Nayudu*. The Commission also considered the reference made in the *Nayudu* case to the idea of a “multi-faceted” Environmental Court with judicial and technical/scientific inputs as formulated by Lord Woolf in England recently and to Environmental Court legislations as they exist in Australia, New Zealand and other countries. The report also adopted the practice of the Environmental Courts in Australia and New Zealand which function as appellate Courts against orders passed under the corresponding Water Acts, Air Acts and Noise Acts and various Environmental related Acts and also have original jurisdiction. They have all the powers of a Civil Court. Some have even powers of a Criminal Court.(14)

The Act is also an endeavour of the Parliament under Article 253 of the Constitution read with Entry 14 of List I of Schedule VII to fulfil the obligation of India towards Stockholm Declaration, 1972 in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment and Rio Declaration, 1992, in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The act was also a response to implement the apex court’s pronouncement that the right to healthy environment is a part of the right to life under Article 21 of the Indian Constitution.

#### **4. NGT: Structure, Procedure and Jurisdiction**

##### ***4.1. Structure***

Following the enactment of the said law, the Principal Bench of the National Green Tribunal has been established in the National Capital – New Delhi, with regional benches in Pune (Western Zone Bench), Bhopal (Central Zone Bench), Chennai (South Bench) and Kolkata (Eastern Bench). Each bench has a specified geographical jurisdiction covering several States in a region. There is also a mechanism for circuit benches. For example, the Southern Zone bench, which is based in Chennai, can decide to have sitting in other places like Bangalore or Hyderabad. The chairperson of the National Green Tribunal is a retired Judge of the Supreme Court, headquartered in Delhi. Other Judicial

members are retired Judges of High Courts. Each bench of the National Green Tribunal will comprise of at least one Judicial Member and one Expert Member.(15) Expert members should have a professional qualification and a minimum of 15 years' experience in the field of environment/forest conservation and related subjects.(16)

#### ***4.2. Procedure***

The National Green Tribunal has a simple procedure to file an application seeking compensation for environmental damage. If the party is not satisfied with the decision can file an application before tribunal against an appeal, an order or any decision of the Government. If no claim for compensation is involved in an application / appeal, a fee of Rs. 1000/- is to be paid. In case where compensation is being claimed, the fee will be one percent of the amount of compensation subject to a minimum of Rs. 1000/(17)

#### ***4.3. Jurisdiction of the tribunal***

The National Green Tribunal has power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the NGT Act, 2010. These included the following(18)

1. The Water (Prevention and Control of Pollution) Act, 1947;
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3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1991;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002;

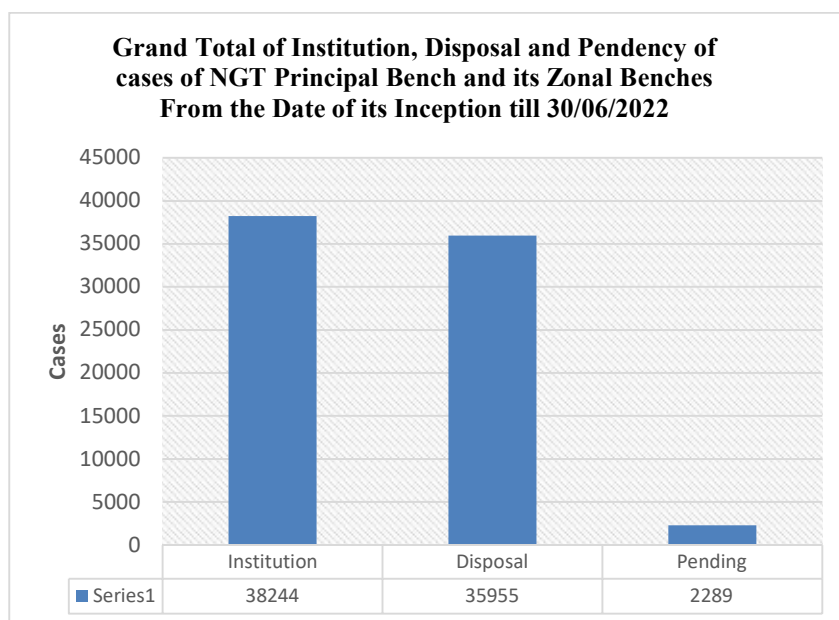
This Act confers on the Tribunal, the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and such question arises out of the implementation of the enactments specified in Schedule I to the Act.(19) It further provides a time-limit of six months within which the applications for adjudication of dispute under this section shall be entertained by the Tribunal.(20) It also empowers the Tribunal to allow such applications to be filled within a further period not exceeding sixty days, if it is satisfied that the application was prevented by sufficient cause from filing the application within the said period.(21)

The term 'substantial question relating to environment' (22) is defined under the act shall include an instance where:-

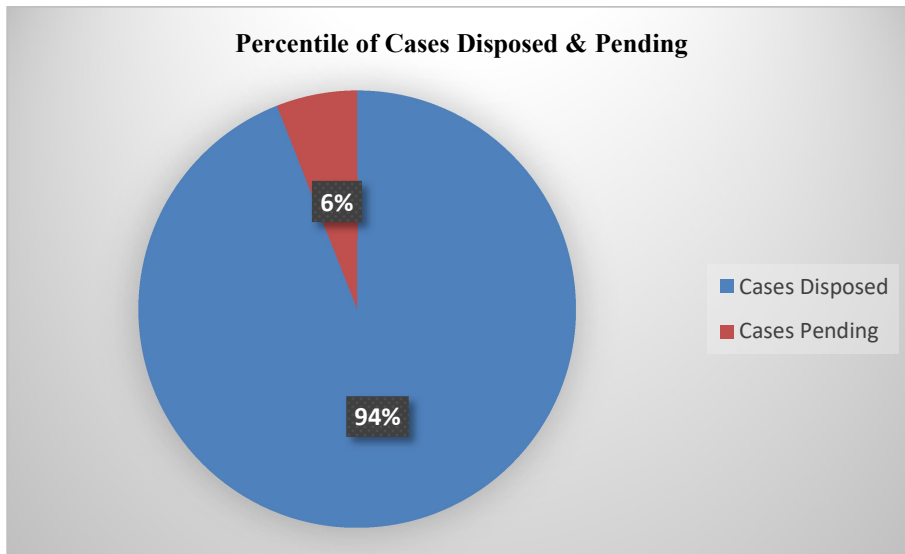
1. There is a direct violation of a specific statutory environmental obligation by a person by which:
  - A. The community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
  - B. the gravity of damage to the environment or property is substantial; or
  - C. the damage to public health is broadly measurable;
2. The environmental consequences relate to specific activity or a point source of pollution.

### 5. Critical Assessment of Working of NGT

The efforts of the National Green Tribunal in dispensation of environmental justice and spreading awareness are commendable. The working of National Green can be traced by the rate of Institution, disposal and pendency of cases in National Green Tribunal. As of 30-06-2022 the total number of cases instituted in principal bench and its zonal benches from the date of its inception is 38,244. The number of cases disposed is 35,955. 2,289 cases are still pending before the principal bench and its zonal benches. The rate of disposal of cases is very high. It is almost 94.01% percent of cases instituted. This is very speedy and commendable in nature, when we compare it with other institutions working in the field of administration of justice. Only a minimal 5.98% of cases instituted are still pending. The below graphs/charts reflect the same data. (23)

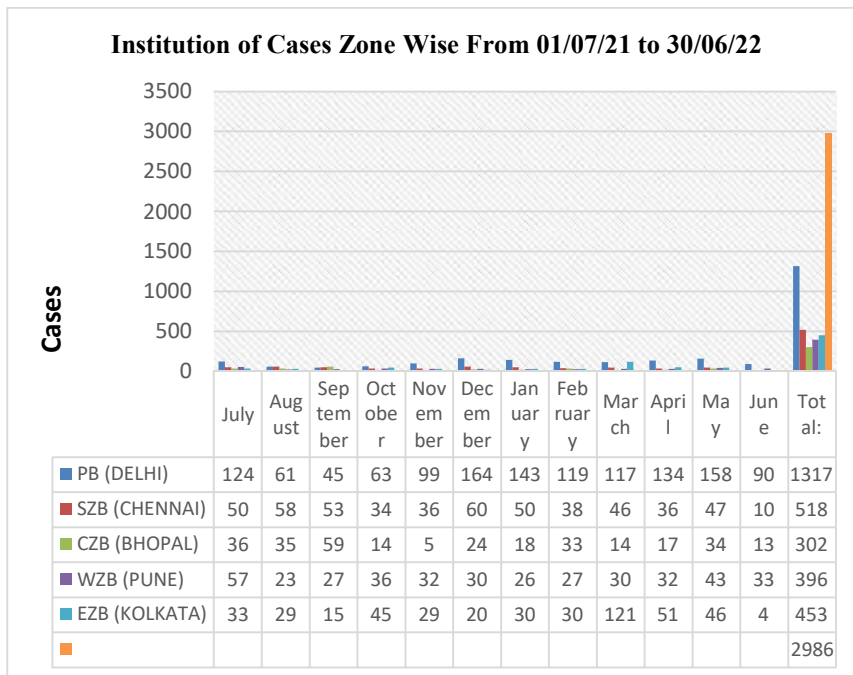


**Source: Official Website of National Green Tribunal (July 2022)(26)**



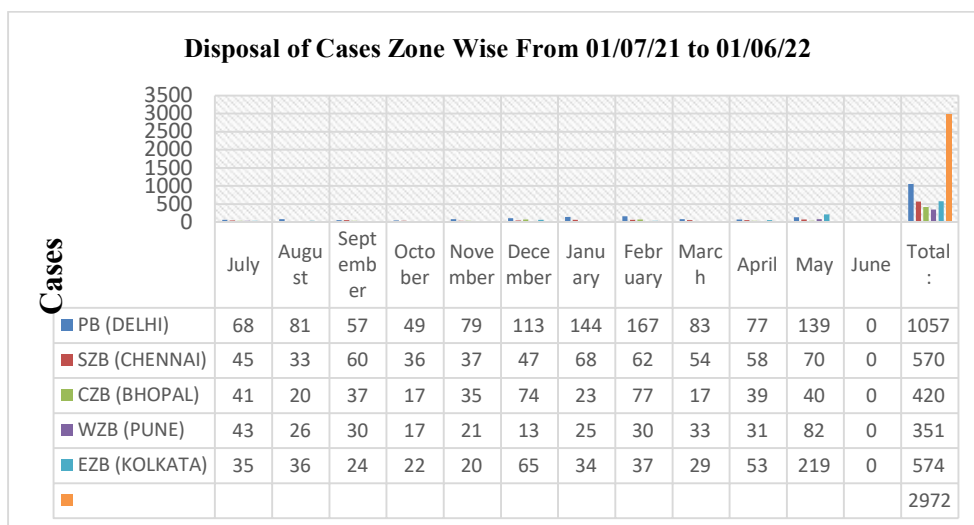
**Source: Official Website of National Green Tribunal (July 2022)(27)**

Assessment will primarily focus on the Bench wise Institution, disposal and pendency of the cases of National Green Tribunal Principal Bench and all Zonal Benches from 01/07/2022 to 30/06/2022.

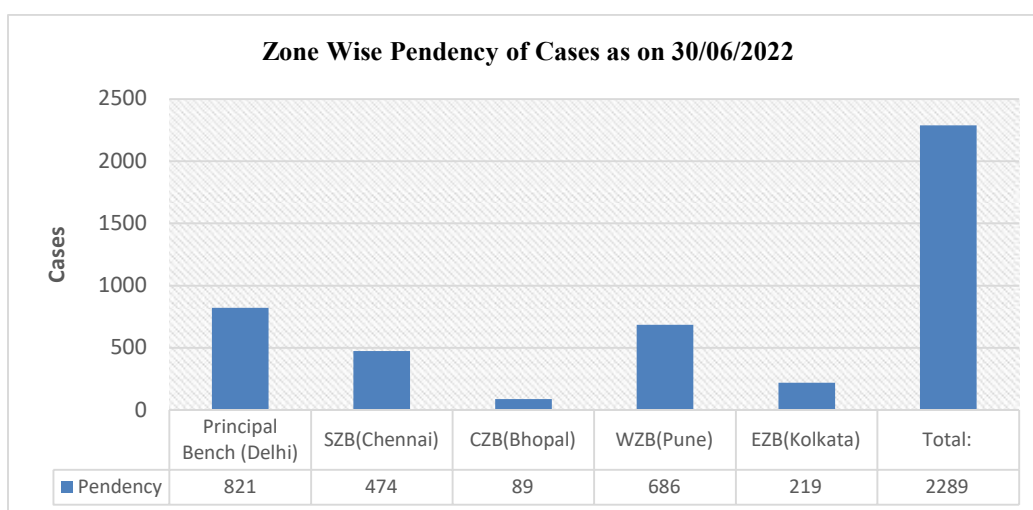


**Source: Official Website of National Green Tribunal (July 2022)(28)**





Source: Official Website of National Green Tribunal (July 2022)(29)



Source: Official Website of National Green Tribunal (July 2022)(30)

### 5.1. Summary of Findings

- The total number of cases instituted in this span (i.e. 01-07-2022 to 30-06-2022) are 2,986;
- Highest number of cases i.e. 1,317 are filled at principal bench New Delhi and the lowest number of cases i.e. 302 are filled in central zone bench, Bhopal in this span of time;

- Total number of cases disposed in this span are 2,972, which are almost equivalent to the number of cases instituted;
- Highest number of cases have been disposed by principal bench, New Delhi i.e. 1,057 cases and the lowest number of cases disposed in west zone bench, Pune i.e. 351 cases in this span;
- The total number of cases that are pending as of 30-06-2022 in principal and zonal benches are 2,289;
- Principal bench, New Delhi has highest number of cases pending before it i.e. 821;
- Central zone bench, Bhopal has lowest number of cases pending before it i.e. 89 cases. (24)

## **5.2. Bench wise Assessment**

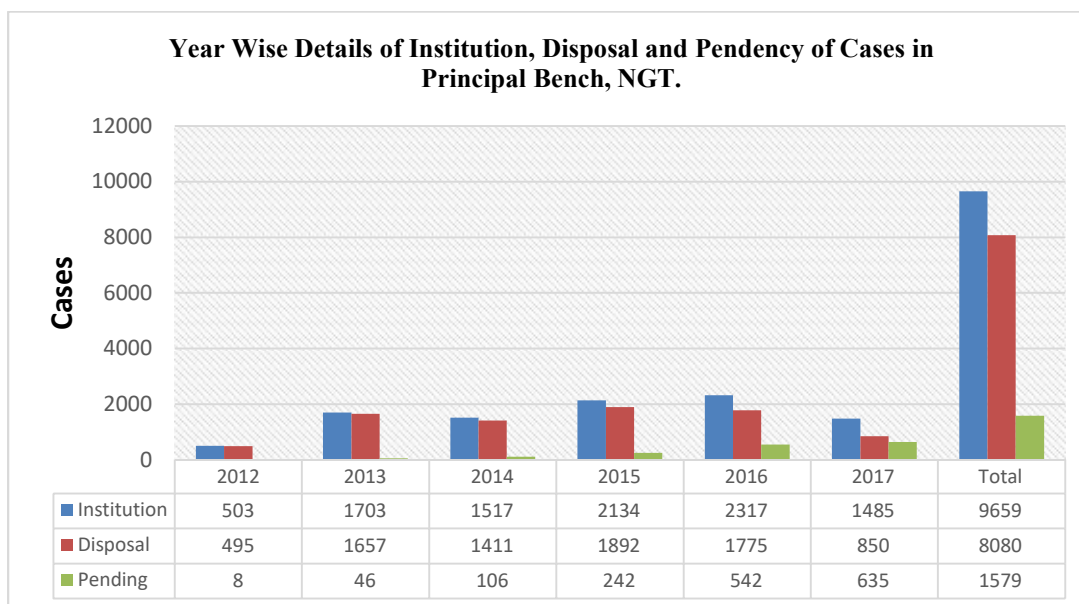
After the incorporation of The National Green Tribunal Act, 2010; one principal bench was established in New Delhi and other zonal benches were created for convenience of public at large. All of them became functional on different dates. If we look at the year wise performance of all these benches including principal bench, we get to know whether the purpose for which The National Green Tribunal Act, 2010 was incorporated is fulfilled or not. The year wise data available in this regard is only up to 2017. (25)

### ***5.2.1. Principal Bench, New Delhi***

The Principal bench of NGT became fully operational in the month July, 2011 in New Delhi. The Principal benches of NGT, exercises jurisdiction in Uttar Pradesh, Punjab, Uttarakhand, Himachal Pradesh, Haryana, and National Capital Territory of Delhi and Union Territory of Chandigarh. (26)

#### **Summary of Statistical Analysis (2012-2017)**

- By the end of 2017 almost 9,659 cases were instituted before this bench;
- In the same period 8,080 cases were disposed by this bench;
- 1,579 cases were still pending before this bench by the end of this period;
- Rate of disposal of cases is 83.65% of the total number of cases instituted in this tenure;
- Rate of pendency of cases is 16.34% of the total number of cases instituted in this phase.(27)



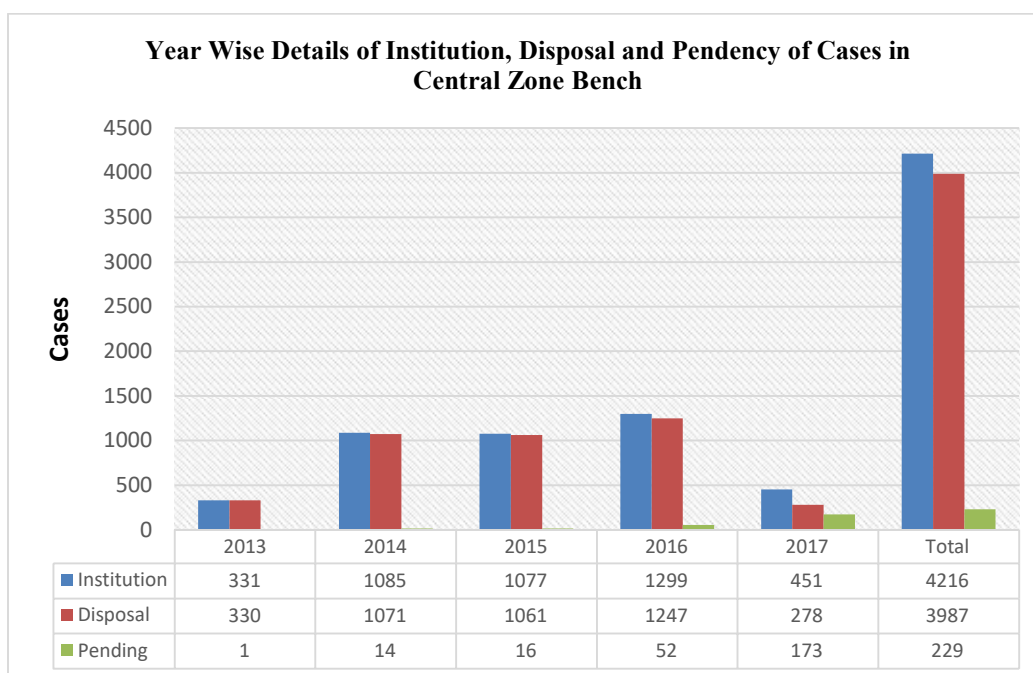
**Source: National Green Tribunal International Journal on Environment Vol. 2 (2017)**

### ***5.2.2. Central Zone Bench at Bhopal***

The Central Zone Bench at Bhopal has become functional w.e.f. 7<sup>th</sup> April 2013. The jurisdiction of Central Zone Bench of National Green Tribunal is Madhya Pradesh and Chattisgarh.

#### **Summary of Statistical Analysis (2013-2017)**

- By the end of 2017 almost 4,216 cases were instituted before this bench;
- In the same period 3,987 cases were disposed by this bench;
- 229 cases were still pending before this bench by the end of this period;
- Rate of disposal of cases is 94.56% of the total number of cases instituted in this tenure;
- Rate of pendency of cases is 5.43% of the total number of cases instituted in this phase.



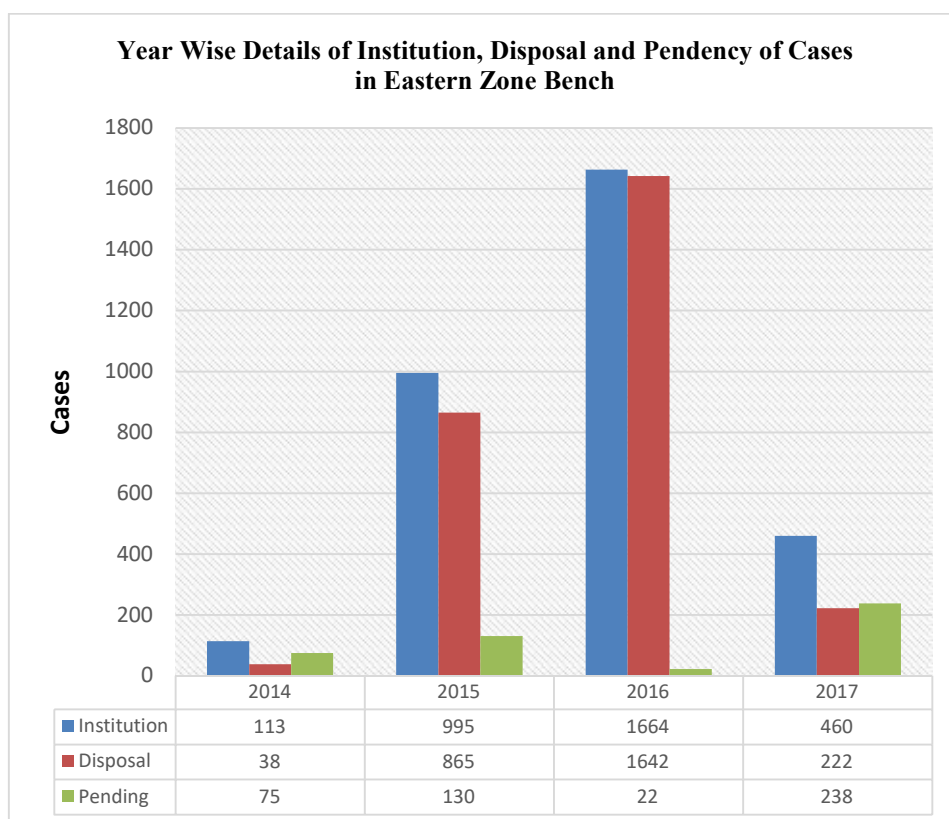
Source: National Green Tribunal International Journal on Environment Vol. 2 (2017)

### 5.2.3. Eastern Zone Bench at Kolkata

As per the Ministry of Environment and Forest notification dated 17<sup>th</sup> August, 2011, Eastern Zone Bench at Kolkata has become functional with effect from 24<sup>th</sup> May, 2014. Presently there is only one Bench functioning at Kolkata. The jurisdiction of National Green Tribunal, Eastern Zone Bench is West Bengal, Orissa, Bihar, and Jharkhand, seven sisters State of North-Eastern Region, Sikkim, Andaman and Nicobar Islands.(27)

#### Summary of Statistical Analysis (2014-2017)

- By the end of 2017 almost 3,232 cases were instituted before this bench;
- In the same period 2,767 cases were disposed by this bench;
- 465 cases were still pending before this bench by the end of this period;
- Rate of disposal of cases is 85.61% of the total number of cases instituted in this tenure;
- Rate of pendency of cases is 14.38% of the total number of cases instituted in this phase.



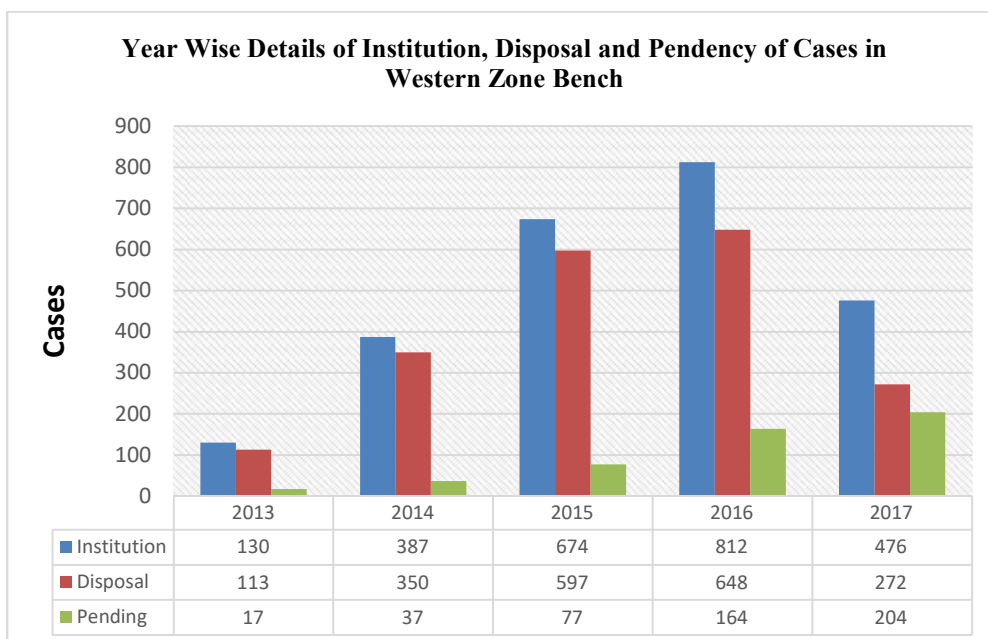
Source: National Green Tribunal International Journal on Environment Vol. 2 (2017)

#### **5.2.4. Western Zone Bench at Pune**

The Western Zone Bench at Pune has become functional w.e.f. 25th August, 2013. Presently there is only one Bench functioning at Pune. The jurisdiction of National Green Tribunal, Western Zone Bench is Gujarat, Maharashtra, Dadar and Nagar Haveli and Goa with Union Territories of Daman and Diu.(28)

#### **Summary of Statistical Analysis (2013-2017)**

- By the end of 2017 almost 2,479 cases were instituted before this bench;
- In the same period 1,980 cases were disposed by this bench;
- 499 cases were still pending before this bench by the end of this period;
- Rate of disposal of cases is 79.87% of the total number of cases instituted in this tenure;
- Rate of pendency of cases is 20.12% of the total number of cases instituted in this phase.



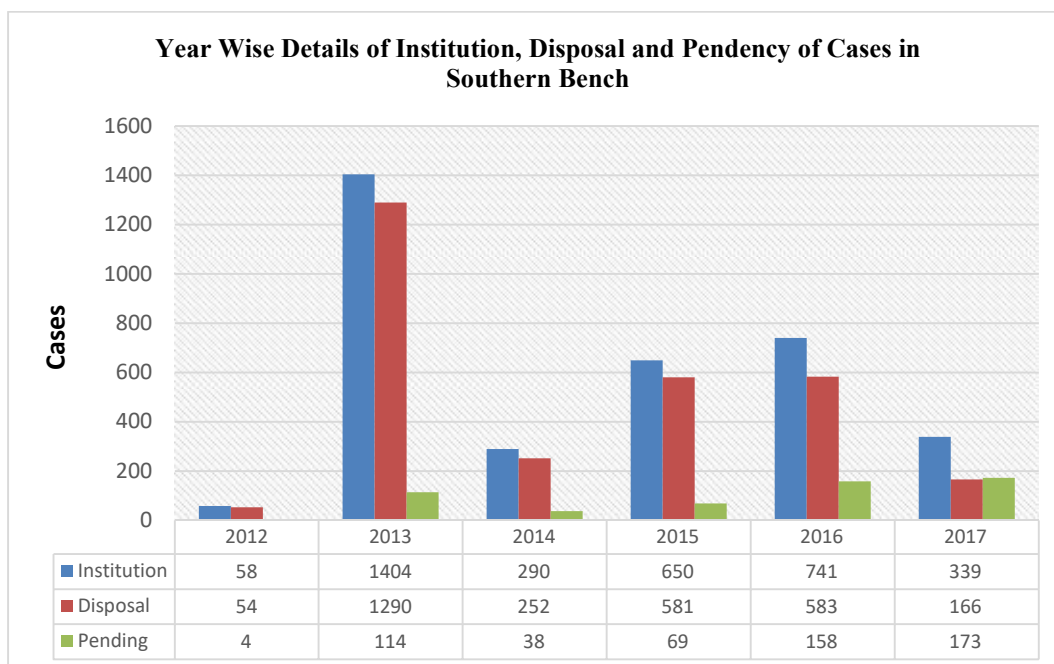
Source: National Green Tribunal International Journal on Environment Vol. 2 (2017)

#### 5.2.5. *Southern Bench at Chennai*

The Southern Zone Bench at Chennai becomes functional w.e.f. 30<sup>th</sup> October, 2012. Presently two courts are functioning at Chennai. The jurisdiction of National Green Tribunal, Southern Zone Bench is Tamil Nadu, Kerala, Karnataka, Andhra Pradesh, Union Territories of Pondicherry and Lakshadweep.(29)

#### **Summary of Statistical Analysis (2012-2017)**

- By the end of 2017 almost 3,482 cases were instituted before this bench;
- In the same period 2,926 cases were disposed by this bench;
- 556 cases were still pending before this bench by the end of this period;
- Rate of disposal of cases is 84.03% of the total number of cases instituted in this tenure;
- Rate of pendency of cases is 15.96% of the total number of cases instituted in this phase.



**Source: National Green Tribunal International Journal on Environment Vol. 2 (2017)**

## **6. Conclusion and Suggestions**

Environmental justice is a concept which aims at protecting nature and strives to achieve a more reasonable balancing of cost and benefits of environment protection across the human societies. At International Level the laws dealing with environmental justice are mostly in the nature of conventions, treaties, protocols, decisions of International Courts which are binding only for the states who are signatories to such treaties, protocols etc. The environment justice comprises different statutory enactments regulating and controlling water, air, noise and land pollution which has deleterious effects on human lives and other living organism. The Indian Constitution is the first constitution in the world which contains specific provisions for the protection and improvement of the environment. The Indian judiciary has played an important role for providing environmental justice. The concept of environmental justice from Article 21 of the Constitution emanates by observing that the environmental justice covers maintenance of health, preservation of sanitation and environment as it adversely affects the life of the citizens and it amounts to slow poisoning process which reduces the life span of citizens because of the hazards if remains unchecked. Indian Judiciary has provided environmental justice by exercising its writ jurisdiction and enhanced the scope of Public interest litigation under Article 32 of the Constitution. The creative role of judiciary has

been significant and laudable. Cases related to environmental pollution, environmental pollution, ecological obliteration and its clash over natural resources include evaluation and advancement of scientific data and therefore a vital need was felt for involvement of expert in the management of environmental justice. To tackle with these techno-scientific issues in the environment litigation the National Green Tribunal Act was passed. NGT has become one of the foremost environmental courts globally with a wide and comprehensive jurisdiction.<sup>(30)</sup> It played significant role for imparting the environmental justice in speedy rate and less expensive manner. It has disposed of nearly 82% of the instituted cases within a year of their institution. The total institution of cases before National Green Tribunal and its regional benches from its inception to till 30/06/2022 is **38244**. Out of these cases as many as 35955 cases stand disposed of, leaving the pendency of 2289 cases in all the Benches of National Green Tribunal. The total disposal of cases at National Green Tribunal at present is 94.01%. In spite of optimistic support for the preservation of environment, the level of pollution has been constantly rising over the years and it happens due to ineffective support from government. Delays in implementing the tribunal's decision and inefficiency of Central and State pollution control boards are the reasons for it. National Green Tribunal is not able to have vigilance throughout the country due to its limited capacity and staff and without sufficient support from the government.

Following suggestions are forwarded for better access to justice in environmental matters especially in relation to National Green Tribunal Act, 2010:

1. The present Act is titled as The National Green Tribunal Act, 2010 having a limited scope, because it covers only those matters which are covered under Ministry of Environment and Forest and does not cover laws related to wild life protection and forest Act within its ambit although these acts also falls within the ambit of environment. So the act should also cover the all issues related to environment as in the case of Environment Protection Act, 1986. This Act should be renamed as National Environment Tribunal Act for the purpose of covering wider area of environment law.
2. The National Green Tribunal Act was passed with an object to remove the burden of the courts. Although this Act has wider discretionary powers but the decision of the tribunal is not final. The appeal against the Tribunal can 223 is filed to Supreme Court. It is suggested that the decision of the Tribunal should be final and must have the binding force.



3. In the Act the jurisdiction of National Green Tribunal described as “substantial question relating to environment”, but it is not clear that what would be a uniform method to observe and what would be the criteria to determine the substantial question relating to environment. It limits the jurisdiction to substantial questions relating to environment and only includes occasions where the population at large is affected but the act leave out individuals or groups of individuals. The environment question cannot be left to the subjective assessment of an individual to judge as to what is substantial or not. So the jurisdiction of the tribunal must be reframed clearly. (30)
4. There is no provision in this Act to stop the causes resulting in environment pollution beforehand. One can approach the Tribunal after an incident has already taken place. The Act does not provide for any anticipatory power. It shows that the tribunal can have a kind of post mortem but cannot prevent any incident from occurring. Therefore, it is not only a major lacuna in the jurisdiction and powers of the Tribunal, but also goes against international and domestic case law, in particular “the precautionary principle”. So there must be an appropriate authority to decide and implement the measures for prevention of environment pollution.
5. National Green Tribunal is located in only five big cities across India. Once the Tribunal started operating, lower courts were barred from taking up environmental cases. It means that poor and disadvantaged communities living in remote parts of the country have to go to NGT Benches in their respective zones to get justice. For someone seeking justice from the UT of Jammu and Kashmir one has to approach Principal Bench New Delhi. It would be a welcome move if the number of Benches could be increased and located in affected areas thus ensuring access to justice to everyone.
6. In order to implement the order and decisions of National Green Tribunal, it should be endowed with the power of contempt of court otherwise the decisions of the tribunal will not be followed and implemented effectively.
7. Suomotu jurisdiction should be an integral feature of National Green Tribunal for better and effective functioning of the institution.

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29. *Ibid.*
30. *Ibid.*