



Restorative Justice and Environmental Compensation: A Critical Evaluation of Law and Policy

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Abstract

Addressing environmental challenges using the avenue of criminal law through retributive justice, has not been able to address the current ecological urgency for Nature restoration. Restorative justice as an alternative way of addressing environmental crises could prove to be more efficient. The quasi-decriminalization of several key environmental statutes through the Jan Vishwas (Amendment of Provisions) Act, 2023, signifies a departure from the carceral system. Parallel to this development, nature restoration is being solidified through the adoption of the term in many international legal instruments as well as in national laws of other jurisdictions. This paper explores the interplay between restorative justice and restoration with the penalty and compensatory regime established by the Jan Vishwas Act, 2023 and the decisions of the National Green Tribunal. Several obstacles exist in the form of definitional uncertainty, lack of proper methodology for calculating environmental compensation for establishing a restorative justice system aided along with compensation. The lessons from Compensatory Afforestation Fund Management and Planning Authority also beg the question of whether restoration can solely be achieved through environmental compensation.

Keywords: Environmental Crimes, Indigenous, Jan Vishwas Act, 2023, National Green Tribunal, Nature Restoration

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1. Introduction

The rapid deterioration of the environment stemming from anthropogenic reasons marks the Anthropocene, which is widely believed to be the geological epoch in which we currently live.¹ The exponential growth of human population exerts immense pressure on nature as we are dependent on its resources.² This pressure has significantly exacerbated the deterioration of several critical ecosystems and has led to substantial biodiversity loss. Furthermore, the diversion and destruction of forest lands forcefully displaces indigenous communities as well.³ Such displacements not only violate their right to livelihood and other human rights, but also leads to the death of traditional practices and local languages closely interwoven with nature, rich with the knowledge to protect and care for the environment.⁴

Unprecedented levels of natural disasters have become the new normal in many parts of the world, due to global warming. Air, soil and water pollution are responsible for the death of millions every year.⁵ Around 28 per cent of over 147,000 species that the International Union for Conservation of Nature has assessed are endangered.⁶ One million species have been affected by the present pace of extinction, which is 100 times quicker than it was ten million

¹ Paul J. Crutzen, *Geology of Mankind*, 415 NATURE 23 (2002).

² SANDRA DIAZ ET AL, SUMMARY FOR POLICYMAKERS OF THE GLOBAL ASSESSMENT REPORT ON BIODIVERSITY AND ECOSYSTEM SERVICES OF THE INTERGOVERNMENTAL SCIENCE-POLICY PLATFORM ON BIODIVERSITY AND ECOSYSTEM SERVICES (IPBES, 2019).

³ Indigenous people are granted the right to protect and conserve the environment under Article 29(1) of the United Nations Declaration on the Rights of Indigenous People.

⁴ Rodrigo Cámara-Leret & Jordi Bascompte, *Language Extinction Triggers the Loss of Unique Medicinal Knowledge*, 118(24) PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCE e2103683118 (2021); Anastasia Riehl, *The Impact of Climate Change on Language Loss*, THE CONVERSATION (Nov. 26, 2018, 10:37 PM), <https://theconversation.com/the-impact-of-climate-change-on-language-loss-105475>.

⁵ STEVE TOMBS & DAVID WHYTE, *THE CORPORATE CRIMINAL- WHY CORPORATIONS MUST BE ABOLISHED* 48 (Routledge, 2015).

⁶ *The IUCN Red List of Threatened Species 2024*, IUCN RED LIST, <https://www.iucnredlist.org> (last visited Feb. 26, 2024).

years ago.⁷ However, the inherent speciesist attitude⁸ of humans have significantly worsened the condition of other species on this planet, regardless of the fact that our survival is inextricably linked with the survival of other species.

India has also suffered major biodiversity loss in the recent past. It has lost around 6,68,400 hectares of forest land between 2015 and 2017.⁹ The Living Planet Report of 2020, published by the World Wildlife Fund, identifies two major drivers of global biodiversity loss; overexploitation and land use change.¹⁰ India's loss of massive forest land can also be credited to these causes. Between 2021 and 2022, approval to divert 18,154.41 hectares of forest land for non-forest purposes was given by the Ministry of Environment, Forest and Climate Change.¹¹ Between 2019 and 2020, 11, 467.83 hectares were approved for such diversion.¹² Losing such a staggering amount of forest land to various non-forest purposes does not bode well for the wildlife in it as well.¹³ Degrading soil health aggravated by intensive agricultural practices, in addition to deforestation, poses a severe challenge to food security in India.¹⁴ India's Silicon Valley,

⁷ DIAZ ET AL, *supra* note 2.

⁸ RICHARD D. RYDER, *ANIMAL REVOLUTION: CHANGING ATTITUDES TOWARD SPECIESISM* (Berg Publishers, 2000); RICHARD DAWKINS, *THE SELFISH GENE* 10 (Oxford University Press, 1976) (Modern philosopher, Richard D. Ryder coined the term 'Speciesism' in 1970. He explained the meaning of this term by drawing parallel with the meaning of racism. Like racism, where one race is considered to be inferior to the other based on no substantial reason, in speciesism, one species is considered to be inferior to the other. Richard Dawkins in his famous book, 'The Selfish Gene' concurs with these observations).

⁹ Shuchita Jha, *India Lost 668,400 ha Forests in 5 years, 2nd Highest Globally: Report, DOWN TO EARTH* (Mar. 20, 2023), <https://www.downtoearth.org.in/news/wildlife-biodiversity/india-lost-668-400-ha-forests-in-5-years-2nd-highest-globally-report-88337>.

¹⁰ WORLD WILDLIFE FUND, *LIVING PLANET REPORT 2020* (2020).

¹¹ MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, *ANNUAL REPORT 2021-2022* (2022),

¹² MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, *ANNUAL REPORT 2019-2020* (2020).

¹³ Rashme Sehgal, *India's Wildlife Losses in 2023 Reveal Our Staggering Indifference*, NATIONAL HERALD (Jan. 11, 2024), <https://www.nationalheraldindia.com/environment/indias-wildlife-losses-in-2023-reveal-our-staggering-indifference>.

¹⁴ Ramesh Menon, *Soil Degradation in India Spells Doom for Millions*, MONGABAY (Oct. 25, 2023), <https://india.mongabay.com/2023/10/soil-degradation-in-india-spells-doom-for-millions/>.

Bengaluru, has faced some of its hottest days in years in April 2024,¹⁵ which was preceded by a water crisis that brought to the surface level the flagrant mismanagement and poor urban management, which has completely side-lined sustainable development.

Widespread and long-term damage has already been caused to biodiversity all over the planet, some of which are beyond repair. This alarming trend must be arrested with urgency and due caution. Law plays a significant role in preventing our planet's untimely demise exacerbated by anthropogenic activities. For several decades, punitive measures rooted in retributivism were considered the best way to address environmental harm in India. However, such punishments suffer from certain limitations in ameliorating the climate crisis and undoing centuries of environmental injustice caused to vulnerable communities. The complexities in determining and imposing criminal culpability in the case of environmental harm have driven the search for other avenues that could lead to behavioural changes instead of relying on fear as a motivation to care for the planet. At this juncture, the authors implore whether restorative justice steered by a compensatory regime could be a viable framework and a more significant means of guaranteeing environmental justice for tackling environment issues, because of its focus on mending harm and promoting reconciliation.

2. Environmental Crimes: From Retributive Justice to Restorative Justice; From Protectionism to Restoration

Environmental crimes are an umbrella term used to signify all the acts that can potentially damage the environment, which can, in its widest sense, range from throwing a chocolate wrapper into a pond to deforestation. Since crime is considered a violation of the conscience of the entire society, it is necessary to define it unequivocally. However, what amounts to an environmental crime is extremely difficult to define as it is dependent on a lot of factors. First, in the case of environmental crimes, it is difficult to pinpoint the perpetrator. Similarly, it is an arduous task to locate and identify the victims as

¹⁵ The Hindu Bureau, *Bengaluru Records Hottest April Day in the Last Three years*, THE HINDU (Apr. 2, 2024), <https://www.thehindu.com/news/cities/bangalore/bengaluru-records-hottest-april-day-in-the-last-three-years/article68020784.ccc>.

they could spread over time and space, also leading to a skewed perspective of damage. Secondly, most of the environmentally damaging activities are legalised in most of the nations. Countries including China, United States, Japan, EU have policies and regulations in place to manage and reduce emissions. But this includes setting up of limits and caps rather than outright prohibition. Furthermore, definition of environmental crime also depends upon the gravity of the impact on the victim, the monetary value of the property etc. There is also disagreement as to the terminology used with some calling it environmental crimes; some reforming to it as green crimes or eco crimes.¹⁶ All of these factors combined make a universal definition of environmental crimes extremely difficult.

Different authors have come up with different definitions. Some have defined it as a violation of any environmental prosecution statute,¹⁷ or as an act causing harm to the 'ecological or biological system' for business gains,¹⁸ or acts against the environment to 'serve the interest of corporations or individuals'.¹⁹ The combined report of United Nations Environment Programme (UNEP) and Interpol on environmental crimes also takes note of the lack of a universal definition for the same, but understands it as²⁰:

a collective term to describe illegal activities harming the environment and aimed at benefitting individuals or groups or companies from the exploitation of, damage to, trade or theft of natural resources, including serious crimes and transnational organized crime.

The common inclination is to provide a comprehensive definition encompassing various activities. This makes criminalization of environmental harm even more difficult as they may not adhere to

¹⁶ Katja Eman et al, *Crimes Against the Environment: Green Criminology and Research Challenges in Slovenia* 11(4) JOURNAL OF CRIMINAL JUSTICE AND SECURITY 574, 576 (2009).

¹⁷ MARY CLIFFORD, ENVIRONMENTAL CRIME: ENFORCEMENT, POLICY AND SOCIAL RESPONSIBILITY (Aspen Publishers, 1998).

¹⁸ *Id.*

¹⁹ See Eman et al, *supra* note 16, at 580.

²⁰ UNITED NATIONS ENVIRONMENT PROGRAMME & INTERPOL, THE RISE OF ENVIRONMENTAL CRIME – A GROWING THREAT TO NATURAL RESOURCES PEACE, DEVELOPMENT AND SECURITY (2016).

the principle of *nullum crimen sine lege*, one aspect of which focuses on the clarity of the law (non-retroactivity being the other aspect).²¹ If a law is vague and overbroad, it cannot be used to punish a person. For this reason, some definitions list out the specific activities that are criminalized such as illegal mining, illegal trade of endangered species etc.²² Despite the definitional issues, there have been serious discussions about environmental crimes as technological advances and poor implementation of existing laws makes engaging in criminal activities directed against the environment more lucrative. Little to no fear of accountability increases the threat of environmental crimes day by day.²³ Potential endangerment to wildlife and birds through activities such as the trade of endangered animals, pollution, deforestation, exploitation of natural resources, unregulated dumping of effluents and similar activities damage the environment and biodiversity.

Definitional hurdles aside, there are issues pertaining to establishing a causal link as well as pinning individual responsibility when it comes to environmental crimes. Since several environmental issues tend to be transboundary in nature, it becomes difficult to establish a causal connection between the damage caused and the action that led to the damage.²⁴ This becomes more so evident in issues such as climate change, which is spread over decades and may have been caused by several acts or omissions done by individuals and corporations alike.

The limitations of penal provisions, as explained above, present itself as the strongest argument against an increased carceral regime for tackling environmental issues. Failure of such efforts begs us

²¹ See ROBERT CRYER, AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW 5 (Cambridge University Press, 2007); A P SIMESTER ET AL, CRIMINAL LAW; THEORY AND DOCTRINE 22 (Hart Publishing, 2016) (*Nullum crimen sine lege*, also known as the principle of legality, stipulates that nothing can be a crime unless defined by the law. Therefore, it prohibits the retroactive application of criminal law as well as demands greater clarity on the definition of an offence).

²² See e.g., The Wild Life (Protection) Act, 1972, §§ 49A, 49B.

²³ Chaitanya Motupalli, *Intergenerational Justice, Environmental Law, and Restorative Justice*, 8(2) WASHINGTON JOURNAL OF ENVIRONMENTAL LAW & POLICY 333, 346 (2018).

²⁴ Rob White, *Carbon Criminals, ecocide and criminal justice* in CAMERON HOLLEY & CLIFFORD SHEARING (EDS), CRIMINOLOGY AND THE ANTHROPOCENE 72 (2017).

to look to other frontiers in which justice can be meted out to the damaged environment and its vulnerable inhabitants. In recent years, there has been a significant shift in environmental law from a focus on retributive justice to restorative justice. This shift recognizes that simply punishing those who harm the environment is not always effective or sufficient. Instead, restorative justice seeks to repair the harm done and restore the relationships between humans and the environment. In 1996, Tony F Marshall attempted to define restorative justice as “a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.”²⁵ Hence, restorative justice facilitates a dialogue between all stakeholders, including the victim and the offender, and it makes the victim take the forefront in repairing the damage caused and restoring the original position of the parties as much as possible.²⁶

This approach acknowledges that addressing environmental issues requires a more holistic and collaborative approach involving all stakeholders in the process. By embracing restorative justice in environmental law, there is a greater potential to address the root causes of environmental harm and prevent future damage. Philosophically operating from an eco-centric angle, restorative justice in environmental law emphasizes the importance of engaging in the indigenous communities and considering their perspectives and needs,²⁷ emphasising the role of community in being a part of the redressal process, which has been absent in the traditional criminal justice administration models. Thus, this model helps in bringing victim, the offender and the community (which can be direct as well as indirect victims in the case of environmental crimes) to the forefront of arriving at an equitable solution that restores the original

²⁵ Tony F Marshall, *The Evolution of Restorative Justice in Britain*, 4(4) EUROPEAN JOURNAL OF CRIMINAL POLICY AND RESEARCH 37 (1996).

²⁶ Muhammad Ikram Nur Fuady & Nurfaika Ishak *Green Restorative Justice Approach in Environmental Issues to Attain the Sustainable Development*, 1190 IOP CONFERENCE SERIES: EARTH & ENVIRONMENTAL SCIENCE 1, 2 (2023).

²⁷ See Motupalli *supra* note 23, at 356; See also Brunilda Pali, *Restorative Environmental Justice*, EUROPEAN FORUM FOR RESTORATIVE JUSTICE, https://www.euforumrj.org/sites/default/files/2020-05/EFRJ_Thematic_Brief_Restorative_Environmental_Justice.pdf (last visited Mar. 2024).

position of the parties to the maximum possible extent. By doing so, it promotes a more sustainable and inclusive approach to environmental protection and conservation. Additionally, restorative justice in environmental law recognizes that individual accountability is not enough to address complex environmental challenges. Therefore, it encourages systemic change and collective responsibility for creating a more sustainable future.²⁸ By not following the traditional method of adjudication, restorative justice also ensures intergenerational equity as well.²⁹

With respect to issues related to environmental crimes in India, penal provisions for environmental protection under various statutes such as the Bharatiya Nyaya Sanhita, 2024, the Air (Prevention and Control of Pollution) Act of 1981, and the Indian Forest Act, 1927 have also failed in bringing significant meaningful change. Recent developments show that India is also moving away from a retributive system heavily dependent on incarceration to a penalty regime in the case of environmental laws. The Jan Vishwas (Amendment of Provisions) Act, 2023 (Jan Vishwas Act) has quasi-decriminalised several penal provisions in environmental statutes. For example, minor offences under the Indian Forest Act, 1927, such as trespassing by cattle and felling a tree, are now punishable with a fine and compensation as decided by the Forest Officer.³⁰ The penalties imposed under the provisions of the Environment (Protection) Act, 1986³¹ (EPA) and Air (Prevention and Control of Pollution) Act, 1981³² will be deposited in an 'Environmental Protection Fund' that has been created under Section 16 of the EPA. The Environmental Protection Fund shall be used to raise awareness, education, research or to realize the objectives of these statutes. It is pertinent to note that 75% of this fund will be allocated to State Governments. Even though it is not specifically mentioned that this fund shall be used for restorative activities, it eventually should become a priority. This is not to suggest that these laws have been decriminalized; they have only been quasi-

²⁸ See Motupalli *supra* note 23, at 350.

²⁹ *Id.*

³⁰ The Jan Vishwas (Amendment of Provisions) Act, 2023.

³¹ The Environment (Protection) Act, 1986, §§ 14A, 14B, 15A, 15B.

³² The Air (Prevention and Control of Pollution) Act, 1981, §§ 37, 38, 38A, 39.

decriminalized. While this change does not completely embrace the concept of restorative justice, it can be said that it is a stepping stone in that direction. Moving away from a carceral regime is indicative of a transforming nation which is ready to view environmental crimes in a new light.

Furthermore, ever since environmental rights have become formally recognised through legislation and other legal instruments, the dominant attitude has been to indulge in a protectionist approach towards environmental issues. Common terminologies associated with ecological emergencies and calls for future actions have been 'protection', 'prevention', 'conservation', 'preservation' etc. The environmental provisions of the Indian Constitution also incorporate these terms. Article 48A urges the State to 'protect and improve the environment' and 'safeguard the forests and wildlife' in the nation.³³ Article 51A(g) imposes a duty on citizens to 'protect and improve' nature.³⁴ While formulating draft development plans, district planning committees and Metropolitan planning committees are required to have regard for 'environmental conservation'.³⁵ The objectives of major environmental statutes are also laden with these terms. For instance, the Environment (Protection) Act of 1986 is primarily concerned with 'protection and improvement' of the environment and allied matters.³⁶ Similarly, the Air (Prevention and Control of Pollution) Act of 1981 is concerned with the 'prevention, control and abatement of air pollution'.³⁷ The Water (Prevention and Control of Pollution) Act, 1974³⁸ stands out from the rest as its goal is to maintain or restore the wholesomeness of water along with preventing and controlling water pollution.

Environmental restoration seems to be the prominent approach international organizations are taking to address the widespread loss of ecosystems. The Aichi Biodiversity Targets adopted under the Convention on Biological Diversity aimed to restore 15% of

³³ India Const. art 48A.

³⁴ India Const. art 51A(g).

³⁵ India Const. part IXA, art. 243ZD, 243ZE.

³⁶ The Environment (Protection) Act, 1986.

³⁷ The Air (Prevention and Control of Pollution) Act, 1981.

³⁸ The Water (Prevention and Control of Pollution) Act, 1974.

degraded ecosystems by 2022.³⁹ The Bonn Challenge aims to restore 350 million hectares of deforested land globally by 2023.⁴⁰ Goal 15 of the Sustainable Development Goals talks about the reversal of land degradation.⁴¹ Most significantly, the United Nations has declared 2021 to 2030 as the Decade of Ecosystem Restoration.⁴² The clarion call for this mission is 'Preventing, Halting and Reversing Loss of Nature'. Recently, the European Union adopted the EU Nature Restoration Law, which sets legally binding targets for the restoration of different kinds of ecosystems.⁴³

Nature restoration aided by environmental compensation is a vital component of environmental conservation and sustainable development. Restoration of ecosystems can happen naturally if left undisturbed, as has happened in the Chernobyl Exclusive Zone (CEZ) where the absence of humans has led to a miraculous recovery of nature and wildlife in this area despite it being radioactive.⁴⁴ Alternatively, ecosystems could be restored through human efforts and intervention.⁴⁵ These practices play a crucial role in addressing the impacts of human activities on the environment and restoring the balance between ecological preservation and economic development. This is especially important in the context of developing countries, where achieving sustainable land use and mitigating environmental damages are key challenges. In this regard, implementing a framework for nature restoration can lead to long-term ecological, economic, and social benefits.

³⁹ *Aichi Biodiversity Targets*, CONVENTION ON BIOLOGICAL DIVERSITY, <https://www.cbd.int/sp/targets> (last visited Mar. 1, 2024).

⁴⁰ THE BONN CHALLENGE, <https://www.bonnchallenge.org/> (last visited Mar. 1, 2024).

⁴¹ The 17 Goals, UNITED NATIONS, <https://sdgs.un.org/goals> (last visited Mar. 1, 2024).

⁴² UNITED NATIONS DECADE ON ECOSYSTEM RESTORATION 2021-2030, <https://www.decade-on-restoration.org/> (last visited on Mar. 1, 2024).

⁴³ *Nature Restoration Law Emerges from Trilogue – What's Changed?*, AGRICULTURAL AND RURAL CONVENTION (Nov. 10, 2023), <https://www.arc2020.eu/nature-restoration-law-emerges-from-trilogue-whats-changed/>.

⁴⁴ *How Chernobyl has Become an Unexpected Haven for wildlife*, UNITED NATIONS ENVIRONMENT PROGRAMME (Sep. 16, 2020), <https://www.unep.org/news-and-stories/story/how-chernobyl-has-become-unexpected-haven-wildlife>.

⁴⁵ Carolyn Cowan, *Common Goals Ensure Forest Restoration Success in Northern Thailand*, MONGABAY (Jun. 6, 2022), <https://news.mongabay.com/2022/06/common-goals-ensure-forest-restoration-success-in-northern-thailand/>.

Compared to the other terms mentioned above, 'restoration' carries much more weight and importance in the current scenario as it aims at a reversal of damages which imposes a positive obligation on the states rather than just keeping a check on the damage or trying to maintain the status quo by doing a cost-benefit analysis of developmental activities. Neither the environmental statutes nor the Indian Constitution impose a strong positive obligation on the State to restore its degraded ecosystems. Restoration of nature thus becomes an integral way of ensuring restorative justice. Letting the ecosystems get back to their original state, with or without human intervention, will be a significant step.

2.1. Challenges to Nature Restoration

At the outset, a number of challenges exist with respect to the restoration of nature. The primary challenge is with respect to the definition itself. There is no universally accepted definition of restoration, and to complicate this further, it has been used interchangeably with other similar terms such as 'rehabilitation', 'remediation' and others.⁴⁶ While one defines ecological restoration as 'the process of assisting the recovery of an ecosystem that has been degraded, damaged'⁴⁷ and aims at 'substantial recovery',⁴⁸ another defines it as a *continuum of practices* for 'halting and reversing degradation', with an aim to 'improve ecosystem services'.⁴⁹ Another challenge is with respect to the determination of baseline for setting restoration targets. While we say a particular ecosystem is to be restored, what should be considered as the baseline, the point to which we intend to bring back the ecosystem? Unlike the set target for halting the increase of global temperatures beyond 2 °c above pre-industrial levels,⁵⁰ under the Paris Agreement, nature restoration has no such determined baseline.

⁴⁶ Ana Mendes et al, *Towards a Legal Definition of Ecological Restoration: Reviewing International, European and Member States' Aase Law*, REVIEW OF EUROPEAN, COMPARATIVE & INTERNATIONAL ENVIRONMENTAL LAW 1 (2022).

⁴⁷ George D Gann et al, *International Principles and Sandards for the Practice of Ecological Restoration*, 27(51) RESTORATION ECOLOGY 1 (2019).

⁴⁸ *Id.* at 35.

⁴⁹ UNITED NATIONS ENVIRONMENT PROGRAMME, BECOMING #GENERATIONRESTORATION: ECOSYSTEM RESTORATION FOR PEOPLE, NATURE AND CLIMATE (2021).

⁵⁰ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16 1104.

The failure of Aichi Targets has been due to the lack of uniformity in the definition of baseline, among other factors.⁵¹ Neither does any legal instrument in India provide a definition for restoration nor has it been set out as a positive legal obligation in any of them. Moving forward with a goal of ecosystem/nature/ ecological restoration without arriving at a concrete definition for the same and determining baselines would be rendered a failure and even counterproductive as it could hamper nature's cycle of healing and restoration as has been illustrated above using the Chernobyl Exclusive Zone example.

3. The Proactive National Green Tribunal

In the late 80's and throughout the 90's the Supreme Court found itself in a predicament of almost conducting full-fledged trials in environmental matters after it opened doors for Public Interest Litigation (PIL). The severe lack of a specialized tribunal to handle environmental matters became apparent on several occasions due to challenges faced by regular courts in handling technical aspects. One such instance was in deciding the *Oleum Gas Leak* case.⁵² The Supreme Court further, brought up the issue of the need for a special court to hear environmental matters in *A P Pollution Control Board v. M V Nayudu*,⁵³ and also in the *Indian Council for Enviro-Legal Action v. Union of India*.⁵⁴ Taking these judgements of the Apex Court into consideration, The 186th Law Commission Report, prepared under the Chairmanship of Justice M Jagannadha Rao, also stressed upon the need to have a separate, specialized environmental court that will have technical and expert members in addition to the judicial members.⁵⁵

The establishment of the National Green Tribunal (NGT) under the National Green Tribunal Act of 2010 was a significant contribution to the institutional framework for environmental justice in India. NGT, which began operating in July 2011, is unique as it is

⁵¹ *Aichi Biodiversity Targets*, *supra* note 39.

⁵² *M C Mehta v. Union of India*, 1987 SC 965.

⁵³ *A P Pollution Control Board v. M V Nayudu*, 1992 (2) SCC 718.

⁵⁴ *Indian Council for Enviro-Legal Action v. Union of India*, 1996 (3) SCC 212.

⁵⁵ LAW COMMISSION OF INDIA, ONE HUNDRED EIGHTY SIXTH REPORT ON PROPOSAL TO CONSTITUTE ENVIRONMENTAL COURT (2003).

the third specialized environmental tribunal globally⁵⁶ and the first in a developing country dedicated to resolving environmental disputes. With its principal and zonal benches spread across India,⁵⁷ the NGT has extensive jurisdiction over violations of environmental laws and has the authority to order the restoration of ecosystems according to international principles such as polluter pays and precautionary measures.⁵⁸

As mentioned before, one of the main reasons behind the demand for a dedicated environmental court was the inadequate expertise that other courts faced since environmental matters are highly technical and scientific in some cases. This inadequacy was expected to be addressed through the presence of an independent statutory panel with members who are experts in various fields such as physics, chemistry, zoology, botany, environmental economics, forestry, engineering and social sciences in addition to judicial members.⁵⁹

3.1. Compensatory Regime

After its inception, the NGT has generally been perceived as an efficient institution that supplanted the Supreme Court's effort in shaping a robust environmental jurisprudence in India. In contrast to other courts and tribunals, NGT has also disposed off a huge number of cases in a relatively short time.⁶⁰ However, the effectiveness of its compensatory legacy has been questioned as it lacked any methodology or guidelines to impose compensations.⁶¹ The sole

⁵⁶ *Green Tribunal*, World WILDLIFE FUND INDIA, https://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/ (last visited Mar. 1, 2023).

⁵⁷ *National Green Tribunal FAQs*, NATIONAL GREEN TRIBUNAL, <https://www.greentribunal.gov.in/faqs>. (last visited Mar. 1, 2023) (The Principal Bench of NGT is in the North Zone, situated in Delhi. The South Zone bench is situated in Chennai, the East Zone in Kolkata, the West Zone in Pune and the Central Zone in Bhopal).

⁵⁸ The National Green Tribunal Act, 2010, § 20.

⁵⁹ Armin Rosencranz & Geetanjoy Sahu, *Assessing the National Green Tribunal after Four Years*, 5 JOURNAL OF INDIAN LAW & SOCIETY 191, 193 (2014).

⁶⁰ *Bird's Eye View of NGT Performance in the Last Five Years (July, 2018 – July 2023)*, https://greentribunal.gov.in/sites/default/files/important_orders/NGT_Initiatives%20final-1.pdf (last visited Mar. 1, 2023).

⁶¹ *Shiv Industries v. Chandigarh Pollution Control Committee*, Appeal No. 30/2021 (NGT).

guidance offered by Section 20 of the NGT Act, 2010 is that the Tribunal shall apply the principles of sustainable development, precautionary principle, and the polluter pays principle while passing awards.⁶² The Indian Supreme Court has also, in the past, made polluters pay environmental compensation for blatant violations of environmental regulations.⁶³ In *Deepak Nitrite Ltd. v. State of Gujarat and Ors.*, the Supreme Court held that “compensation must have a deterrent effect and such damage not only extends to restitution for the harm to the environment to compensate the victims of the pollution but also the cost of restoring the environment by degradation.”⁶⁴

Without much to situate its reasoning on imposing compensation, The NGT turned to *Goa Foundation v. Union of India*,⁶⁵ decided by the Supreme Court in 2014. However, NGT, without citing sufficient reasons, departed from this precedent in multiple ways. The Supreme Court had ordered that the project proponents would have to pay 10% of the sale proceeds as compensation.⁶⁶ In contrast, NGT decided that the compensation shall flow the project cost and the percentage of the project cost was fixed at 5% rather than 10%. The compensation levied by the Tribunal in Uttar Pradesh sugar distillery cases has also been criticized as being severely inadequate as these compensations were less than 0.5% of the annual turnover of the project proponent.⁶⁷ There have also been instances where the Tribunal has modified its initial compensation and imposed a lesser compensation⁶⁸ or no compensation at all.⁶⁹ In these instances, the Tribunal had to modify its initial decision due to the issues in the scientific analysis which also points fingers at the scientific efficiency of the Tribunal.

⁶² The National Green Tribunal Act, 2010, § 20.

⁶³ See *Vellore Citizens Welfare Association v. Union of India*, AIR 1996 SC 2715; *M C Mehta v. Union of India*, (1997) 2 SCC 411; *M C Mehta v. Kamal Nath*, (1997) 1 SCC 388.

⁶⁴ *Deepak Nitrite Ltd. v. State of Gujarat and Ors.*, (2004) 6 SCC 402.

⁶⁵ *Goa Foundation v. Union of India*, Writ Petition (Civil) No. 435 of 2012 (SC).

⁶⁶ *Id* at ¶63.

⁶⁷ See Armin, *supra* note 59 at 198, 199.

⁶⁸ *Ajay Kumar Negi v. Union of India*, OA No. 183 (THC) of 2013.

⁶⁹ *Manoj Mishra v. Delhi Development Authority*, Original Application No. 65 of 2016 (NGT).

However, this trend of imposing meager amounts has changed in recent times. NGT has garnered attention for imposing hundreds of crores of environmental compensation, especially on state governments, for their lax implementation of various waste management rules. This trend commenced with the landmark case of *Paryavaran Suraksha Samiti v. Union of India*.⁷⁰ Initially, this case started as a writ petition before the Supreme Court of India wherein the petitioners had sought issuance of a writ of *mandamus* to the concerned State Pollution Control Boards and State Governments for taking necessary steps to ensure effluent treatment plants are fully operational in industries requiring “Consent to Operate (CTO)”.⁷¹ The Apex Court while issuing the orders to the Pollution Control Boards and State Governments requiring them to ensure installation of effluent treatment plants by industries, also directed that the duty of implementation of this order falls on the Member Secretaries of the Pollution Control Boards, and in case of any default the Secretary of the Department of Environment of the concerned State Government or Union Territory shall be held accountable. The Supreme Court also assigned the responsibility of supervising complaints of non-implementation of this order to NGT which was required to maintain running and numbered case files of complaints of non-implementation, and list them periodically, and pass appropriate orders.⁷² Following this, NGT, in the matter of *Court of its Own Motion v. State of Karnataka*,⁷³ issued the following direction:

Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs,

⁷⁰ *Paryavaran Suraksha Samiti v. Union of India and Ors.*, Writ Petition(C) No. 375 of 2012 (SC).

⁷¹ *Id.* ¶¶ 1, 13.

⁷² *Id.* ¶¶ 14, 15.

⁷³ *Court of its own motion v. State of Karnataka*, Original Application No. 125/2017 and M.A. No. 1337/2018 (NGT).

depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided

NGT in *Paryavaran Suraksha* also directed the Central Pollution Control Board (CPCB) to collect compensation levied from various entities as a fund to be used for protectionist activities. As a result, CPCB constituted a committee for this purpose, and this committee prepared a detailed report. The recommendations of the committee, including a formula for calculating the environmental compensation, were accepted by NGT in August 2019.⁷⁴ The formula is:

$$EC = PI \times N \times R \times S \times LF$$

EC stands for Environmental Compensation in Rupees, PI is the Pollution Index of the industrial sector, N is the number of days the violation took place, R is a factor in Rupees for EC, S stands for factor for scale of operation, and LF indicates Location factor. In the same report, CPCB recommended that the fund received as environmental compensation calculated on the basis of the pollution index shall be used for various schemes aimed at environmental restoration, such as remediation of contaminated sites, installation of air and water quality monitoring stations etc. Environmental compensation levied by expert organizations or agencies based on the actual damage caused will be used for various remediation activities in a specific site.

As mentioned before, NGT has been monitoring the compliance of directions issued in the *Almitra Patel* case⁷⁵ in relation to solid waste from 2014 and the compliance of directions issued in the *Paryavaran Suraksha* in relation to wastewater since 2017.⁷⁶ After noticing that severe gaps existed with respect to compliance, NGT constituted Monitoring Committees in January 2019 for a period of six months and sought personal appearances of Chief Secretaries of all States and UTs. Following the interaction with Chief Secretaries, NGT ordered

⁷⁴ Central Pollution Control Board, Report of the CBCP In-House Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund (2019).

⁷⁵ *Almitra H Patel v. Union of India*, Original Application No. 199/2014 (NGT).

⁷⁶ *Paryavaran Suraksha Samiti v. Union of India*, Original Application No. 593/2017.

that a Special Task Force be constituted in every district, which was responsible for disseminating information and spreading awareness regarding proper waste management. Six months later, in July 2019, NGT directed that environmental cells shall be set up under Chief Secretaries at the State level and under District Magistrates at the district level. Directions were also issued to impose compensation for non-compliance and also to Chief Secretaries to file quarterly reports to CPCB, which in turn will collate such reports. In January 2020, interim compensation amounts for the continued failure of local bodies and other departments regarding solid waste management, legacy waste remediation, and setting up of sewage treatment plants were fixed by NGT and directed SPCBs and PCCs to decide and collect the final compensation amount. In December 2020, further directions were given to deposit the compensation amount in a separate account with the Environment Department of the States.

NGT further sought interaction with Chief Secretaries multiple times till May 2023, and based on the data received from these interactions, NGT has imposed Rs.79,234 crores on States and Union Territories for improper management of solid and liquid waste. These compensations were determined based on the 'Polluter Pays Principle' and on the scale of 2 crores per minimum liquid discharge for a gap in respect of liquid waste and, 300 rupees per Metric tonne for a gap in respect of legacy waste.⁷⁷ Highest fine was imposed on Tamil Nadu (15, 419 crores). Maharashtra was fined 12,000 crores, Uttar Pradesh with 5000 crores, Bihar with 4000 crores, Telangana with 3800 crores, West Bengal with 3500 crores and Karnataka with 3400 crores.⁷⁸ It was held that this compensation was levied not just to remedy the health and environmental hazards caused by untreated wastewater and solid waste but also to make authorities liable for their failures and to uphold the citizens' right to a clean environment. NGT expressed optimism that the appropriate usage of this compensation will also act as a catalyst to achieve sustainable development goals and be a tool in the fight against climate change.

Interestingly, NGT had tasked CPCB to come up with a formula

⁷⁷ *In re: Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues*, Original Application No. 606/2018 (NGT).

⁷⁸ *Id.*

for the calculation of environmental compensation, but it seems to have not applied the same in *Paryavaran Suraksha*. However, in a more recent decision, the Tribunal has used this formula for levying environmental compensation.⁷⁹ While being proactive is a desirable quality that an environmental tribunal should have, it should be noted that it took the Tribunal several years to arrive at a decision to impose herculean amounts as environmental compensation on the state governments.

A pertinent thing that has to be mentioned at this juncture is that the enhanced penalties under the provisions of EPA and the Air Act through the Jan Vishwas Act, 2023, can be imposed in addition to the environmental compensation levied by the NGT. This means that the same person can be subjected to environmental compensation as well as penalties for the same violation. While the government's commitment to strict enforcement of environmental regulations is commendable, the imposition of overlapping penalties for the same violation can lead to excessive financial burden on individuals. But even the proposed compensation scheme does not provide enough safeguards to ensure that huge corporations who have managed to *pollute and then pay*, instead of being proactive in reducing their damning impact on the environment all these years. The lack of a systematic way of levying compensation could prove to be counterproductive since corporations can easily pay off the compensation and carry on environmentally damaging activities.

More importantly, can we achieve restoration solely through environmental compensation? This can be answered by looking at the Compensatory Afforestation Fund and Planning Authority (CAMPA) that has been set up at the state level and has been tasked with monitoring, assisting and evaluating afforestation done for compensating diversion of forest lands. Afforestation under CAMPA has a better structure than restoration through environmental compensation. Project proponents have to provide funds to state forest departments for afforestation if they are diverting a forest for non-purpose.⁸⁰ However, even with a huge corpus already at its disposal,

⁷⁹ M/S Shiv Industries v. Chandigarh Pollution Control Committee, Appeal No. 30 of 2023 (NGT).

⁸⁰ Supriya Vohra, *Compensatory Afforestation Unlikely to Make up for the Loss of Carbon*

CAMPA has not been successful in managing the loss of India's forest cover, making it difficult for India to meet its goal of restoring 26 million hectares of forest land by 2030.⁸¹ One of the main reasons for the poor performance of CAMPA is the way in which afforestation is done. If a state has not enough land for compensating the loss of its forest land, afforestation can be done in another state under CAMPA. This has puzzled environmental activists, and rightfully so.⁸² Finding alternative places for afforestation has also led to instances of land grabbing. It has also been brought to attention that monoculture plantations in the name of afforestation will also not lead to the recovery of lost forest lands.⁸³ This echoes the words of Dr. Faiyaz Khudsar, an ecorestoration scientist, that "not all green is good and not all brown is bad".⁸⁴ The lessons from CAMPA could be applied in the case of restoration aimed to be achieved through environmental compensation imposed by NGT and penalties enhanced by the Jan Vishwas Act, 2023.

Furthermore, in addition to CAMPA, other environmental legislations in the country have also made provisions for the establishment of funds such as the Environmental Relief Fund under the Public Liability Insurance Act, 1991,⁸⁵ the National Biodiversity Fund under the Biological Diversity Act, 2002,⁸⁶ and the Environment Protection Fund under the Environment (Protection) Act, 1986.⁸⁷ to be used either for the protection, preservation or regeneration of the

Stocks, MONGABAY (Aug. 23, 2021), <https://india.mongabay.com/2021/08/compensatory-afforestation-unlikely-to-make-up-for-the-loss-of-carbon-stocks/>.

⁸¹ Nicole Schwab & Bhairavi Jani, *Here's Why Forest Restoration is Key to India's Ambitious Climate Goals* WORLD ECONOMIC FORUM (Mar. 23, 2022), <https://www.weforum.org/agenda/2022/03/forest-restoration-india-ambitious-climate-goals/>.

⁸² Gerard de Souza, *Forests Cut in Goa to be Afforested in Karnataka, Activists Question Logic*, HINDUSTAN TIMES (Feb. 28, 2020, 06:43 PM), <https://www.hindustantimes.com/india-news/forests-cut-in-go-to-be-afforested-in-karnataka-activists-question-logic/story-APsQpBQnRGtT0FxE9prjL.html>.

⁸³ See Vohra, *supra* note 80.

⁸⁴ *The Green Mandate S2E1- 'Afforestation, Reforestation & Eco-Restoration' with Dr Faiyaz Khudsar*, YOUTUBE: VIDHI CENTRE FOR LEGAL POLICY (Feb. 20, 2023), <https://www.youtube.com/watch?v=dm1LenbymiA&t=1003s>.

⁸⁵ The Public Liability Insurance Act, 1991 § 7A.

⁸⁶ The Biological Diversity Act, 2002 § 27.

⁸⁷ The Environment (Protection) Act, 1986 § 16, as amended by the Jan Vishwas (Amendment of Provisions) Act, 2023.

environment or to compensate victims who have suffered as a result of environmental harm. In addition to legislations, some environment funds have also been established in pursuance of the orders of the judiciary.⁸⁸ While there are supporting rules and guidelines for ensuring their management, studies have pointed out that the effective utilization and management of these funds remain a critical challenge.⁸⁹

Firstly, the existing funds remains grossly under-utilized.⁹⁰ For instance, the Comptroller and Auditor General (CAG) of India in 2013 has reported that more than 1000 Crores Rupees received under the CAMPA remained unutilized,⁹¹ and this trend of under-utilization of CAMPA funds still continues as highlighted by successive Performance Audit Reports of the CAG.⁹² In *Gyan Prakash*

⁸⁸ T. N. Godavarman v. Union of India, 2003 (1) SCALE 4 (in this case the SC ordered the establishment of Compensatory Afforestation Fund (CAF), consequently the CAMPA was enacted); D. Govindasamy v. L. Ganesh Naidu, CRP (NPD) No. 1643 of 2010 (Mad. HC) (The Madras High Court in this case ordered the constitution of "Environment Fund" wherein the costs imposed by the Court under this head can be deposited, this fund is to be utilized for purpose of planting, developing and maintaining trees and clearing water bodies etc.); In subsequent judgements, the Madras High Court has imposed costs on parties to be credited in the Environment Fund; See e.g. Ajithakumar v. The Inspector of Police, CrI. O.P. (MD) No. 7279 of 2017 (Mad. HC); C. Brasanth v. State, CrI. O.P. (MD) No. 17885 of 2017 (Mad. HC); Yoganand v. The State, CrI. O.P. (MD) No. 14448 of 2018 (Mad. HC).

⁸⁹ See Sairam Bhat & Madhubanti Sadhya, *Environmental Funds in India: An Appraisal*, CEERA PUB (June 27, 2020), <https://ceerapub.nls.ac.in/environmental-funds-in-india-an-appraisal/>; Debadityo Sinha, *The Mangement of Environment Relief Fund*, VIDHI CENTRE FOR LEGAL POLICY (Mar. 11, 2020), <https://vidhilegalpolicy.in/research/tracking-funds-to-provide-relief-to-victims-of-environmental-hazards/>.

⁹⁰ See e.g. Tarika Jain, *Underutilization of Environmental Relief Fund defeats the "Polluter Pays Principle"*, THE INDIAN EXPRESS (Jan. 11, 2021), <https://indianexpress.com/article/opinion/columns/environmental-relief-fund-pollution-india-7142247/> (highlighting that a massive amount of Rs. 800 Crores remains unspent in the Environment Relief Fund);

⁹¹ Chapter 4: Utilization of Compensatory Afforestation Funds, in COMPTROLLER AND AUDITOR GENERAL OF INDIA (CAG), COMPENSATORY AFFORESTATION IN INDIA 87, 89 (Rep. No. 21 of 2013).

⁹² See e.g. Chapter 3: Plantation under Compensatory Afforestation Fund Management and Plantation Authority (CAMPAA), in COMPTROLLER AND AUDITOR GENERAL OF INDIA (CAG), PERFORMANCE AUDIT REPORT ON AFFORESTATION AND SOCIAL FORESTRY PROGRAMME 25, 26 (Report No. 2 of 2024) (highlighting that Rs. 1,179 Crore remained unutilized in the State of Uttar Pradesh in the year 2021-22); Ipsita Pati, *45% of Compensatory*

v. Ministry of Environment, Forest & Climate Change,⁹³ the NGT has also been critical of the MoEFCC for not utilization of a significant portion of the Environmental Relief Fund.⁹⁴ Secondly, the utilization of these environment funds is marred by issues of arbitrariness, lack of transparency and mismanagement.⁹⁵ Studies have reported that funds that were meant for specific purpose of environment improvement are being diverted or used for unrelated purposes such as purchase of stationary, electronic devices and renovations.⁹⁶ The Supreme Court and the NGT have also expressed their concerns over this issue.⁹⁷ For instance, the NGT in a *suo motu* action, took notice of diversion of funds by Delhi Pollution Control Committee to local bodies for construction of roads and payments etc and imposed a fine of Rs. 25,000 crores on the MoEFCC for permitting such diversion.⁹⁸ Lastly,

Afforestation Funds Not Utilized by Haryana in Six Years, THE TIMES OF INDIA (Feb. 8, 2023), <https://timesofindia.indiatimes.com/city/gurgaon/45-of-compensatory-afforestation-funds-not-utilised-by-haryana-in-six-years/articleshow/97712917.cms> (highlighting that more than 45% of CAMPA Funds allocated to the State of Haryana remained unutilized between 2017-2022).

⁹³ Gyan Prakash v. Ministry of Environment, Forest & Climate Change, Original Application No. 86 of 2020 (NGT).

⁹⁴ *Id.*

⁹⁵ Chapter 5: Investment of Accumulated Compensatory Afforestation Funds, in COMPTROLLER AND AUDITOR GENERAL OF INDIA (CAG), COMPENSATORY AFFORESTATION IN INDIA 111, 122 (Rep. No. 21 of 2013); Simrin Sirpur, 'Misappropriation' of Funds, Lack of Transparency in Environment Schemes: MP's Panel, THE PRINT (Mar. 09, 2021), <https://theprint.in/india/governance/misappropriation-of-funds-lack-of-transparency-in-environment-ministry-schemes-parliamentary-panel/618163/>; Kushagra Dixit, DPCC Lacks Data on Work Done Using Green Damage Charge, Reveals RTI Reply, THE TIMES OF INDIA (Oct. 03, 2024), <https://timesofindia.indiatimes.com/city/delhi/lack-of-transparency-dpccs-environmental-damage-fund-remains-mostly-unspent/articleshow/113912765.cms>.

⁹⁶ See Debby Jain, CAMPA Funds Diverted to Buy iPhones, Laptops in Uttarakhand, Reports CAG: Supreme Court Seeks State Chief Secretary's Affidavit, LIVE LAW (Mar. 05, 2025, 4:17 PM), <https://www.livelaw.in/top-stories/supreme-court-seeks-chief-secretary-uttarakhand-affidavit-cag-report-claim-misutilization-of-campa-funds-to-buy-iphones-laptops-285735>.

⁹⁷ *In Re: T. N. Godavarman Thirumulpad v. Union of India*, W.P.(C) No. 202 of 1995 (SC); *In re: News Item Titled "Feeling Anxious? Toxic Air could be to Blame" Appearing in Times of India Dated 10.10.2023*, Original Application No. 638 of 2023 (NGT).

⁹⁸ *In re: News Item Titled "Feeling Anxious? Toxic Air could be to Blame" Appearing in Times of India Dated 10.10.2023*, Original Application No. 638 of 2023 (NGT); Amita Bhaduri, *Environmental Fund Misuse: NGT Penalizes CPCB, Criticises Ministry's Response*, INDIA WATER PORTAL (Dec. 31, 2023), <https://www.indiawaterportal.com>.

there is the ever-prevailing issue of bureaucratic delays in releasing the funds not only for undertaking conservation activities⁹⁹ but even for providing compensation to effected individuals.¹⁰⁰ The delay in prompt release of funds not only exacerbates the suffering of victims but also undermines the creation of the environmental funds. Hence, without adequately addressing these underlying issues, the creation of new and multiple environment funds will further exacerbate these issues in the absence of an effective monitoring and assessment mechanism.

4. Conclusion

The Supreme Court of India donned the role of an activist to come to the rescue of India's environment in several of its landmark judgments aiming to reinforce the accountability of the actors responsible for putting these laws into action.¹⁰¹ The NGT has also sprung into action and has proactively imposed environmental compensation for remedying various environmental issues. Without discounting the contribution of these provisions, statutes, and judgments in shaping up the environmental law framework and in bringing a sense of respite to the environmental destruction that was going out of bounds, it is important to acknowledge that their implementation has been less

org/governance-and-policy/governance/environmental-fund-misuse-ngt-penalties-cpcb-criticises-ministrys-response.

⁹⁹ Ministry of Environment, Forest and Climate Change, Agenda Notes (Provisional) for the 21st Meeting of the Executive Committee of National Authority on 02.02.2023 (2023), https://forestclearance.nic.in/writereaddata/Campa/Agenda/611261231215121ECMeetingAgendaNote_compressed.pdf; Press Trust of India, *CAG Flags Misuse, Delays in Uttarakhand's Compensatory Afforestation Funds*, BUSINESS STANDARD (Feb. 22, 2025), https://www.business-standard.com/india-news/cag-flags-misuse-delays-in-uttarakhand-s-compensatory-afforestation-funds-125022200477_1.html; G. V. R. Subba Rao, *Forest Department's Afforestation Plans go Awry as A.P. Govt Fails to Release CAMPA Funds in Time*, THE HINDU (May 29, 2024), <https://www.thehindu.com/news/national/andhrapradesh/forest-departments-afforestation-plans-go-awry-as-ap-govt-fails-to-release-campa-funds-in-time/article68228977.ece>.

¹⁰⁰ Press Trust of India, *No Compensation Paid from Environmental Relief Fund Since 2019: Govt*, THE ECONOMIC TIMES (Aug. 11, 2023), <https://economictimes.indiatimes.com/news/india/no-compensation-paid-from-environment-relief-fund-since-2019-govt/articleshow/102645613.cms>;

¹⁰¹ Municipal Council, Ratlam v. Shri Vardhichand, AIR 1980 SC 1622; MC Mehta v. Union of India, AIR 1988 SC 1115; MC Mehta v. Union of India, AIR 1987 2 SC 1037.

than satisfactory. The unfortunate state of two major rivers of India-Ganga and Yamuna despite numerous efforts to clean them from all stakeholders, clearly illustrate this point. It is a fact that the efforts to conserve these water bodies have failed.¹⁰²

While we have not transformed towards a restorative justice system for finding solutions for environmental issues, quasi-decriminalization through the Jan Vishwas (Amendment of Provisions) Act, 2023, of India's environmental statutes shows that we are heading towards having less and less jail term for environmental crimes. The shift to restorative justice is essential for the efficacious disposal of environmental matters, as the interests of future generations are also at stake. In addition to solidifying the ground for restorative justice, there is also a need for differentiating restoration from other protectionist measures and arriving at a legal definition. This definition shall be incorporated into the environmental law instruments in India, setting binding targets for various types of ecosystems. Along with this, the baseline for each kind of ecosystem shall also be determined with scientific accuracy as well.

The challenges to the confluence of restorative justice, restoration and environmental compensation are further exacerbated by the humungous task of monitoring the multiple funds that have now been created such as Environment Protection Fund, as well as the environmental compensation levied by the NGT. The exercise of establishing multiple funds without addressing the issues of non-utilization, lack of transparency, mismanagement of existing funds and delayed compensation will prove to be ineffective.

Justice is beyond punishment and that is what restorative justice aims at. India has been meting out ecological justice in a piecemeal fashion through a host of legislations and policies mainly aimed at preventing, controlling and abating pollution. Needless to say, restorative justice is not a panacea for environmental damage. However, it paves the way for approaching ecological crises in a holistic way by generating a restorative theory that would mark the next phase of environmental criminal justice. Monetary penalties

¹⁰² Nabeela Siddiqui et al, *Ganga and Yamuna Rivers: Through the Lens of the National Green Tribunal*, 21(4) NATURE ENVIRONMENT AND POLLUTION TECHNOLOGY 1657 (2022).

imposed under various legislations or compensatory amount levied by NGT alone cannot achieve nature restoration. Political and executive will to implement the laws strictly should go together with restoration activities. Behavioural changes are crucial for restoration to work. This is not just applicable for citizens alone, it is equally applicable for the authorities and big corporations as well. Only then will a holistic approach to environmental restoration be possible.