

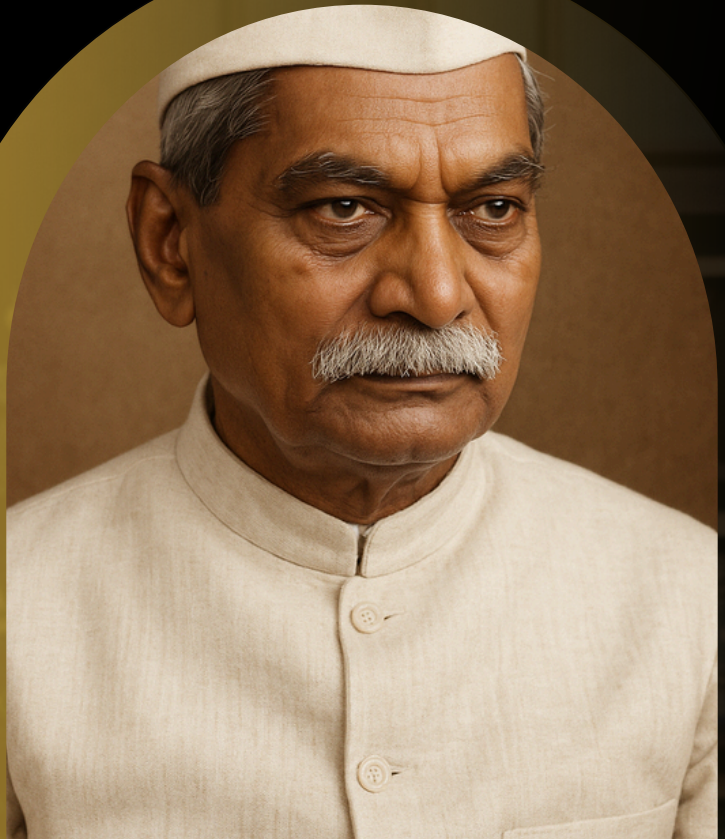
THE LEXOCTA CHRONICLE

Where Diverse Legal Perspectives Converge



*An Initiative
by Lex Octa*

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Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it.



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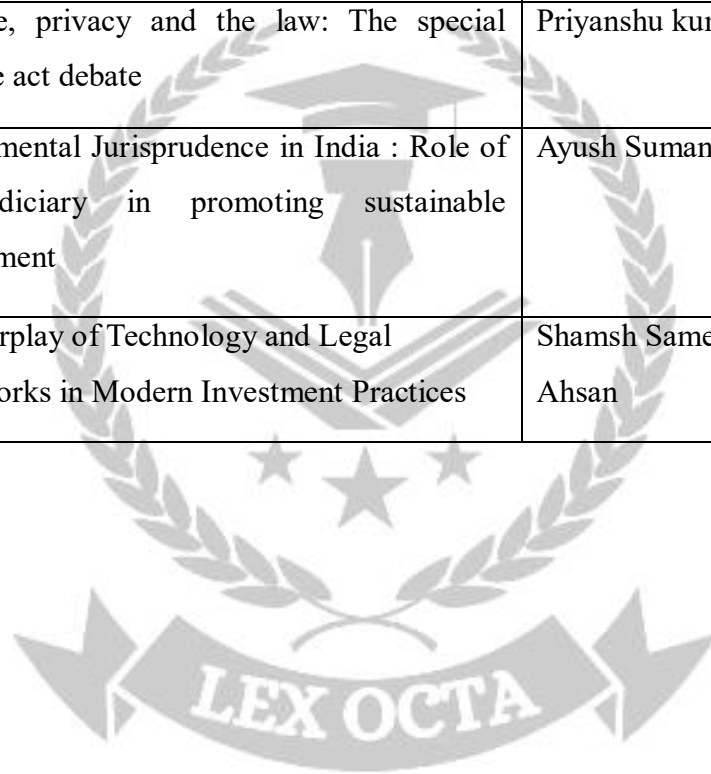
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Environmental Jurisprudence in India; Role of the Judiciary in promoting sustainable development

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Abstract

India's environmental jurisprudence has undergone a remarkable transformation, largely due to judicial intervention and public interest litigation. With increasing environmental degradation caused by industrialization and urbanization, the judiciary has stepped up to interpret constitutional and statutory provisions broadly to safeguard environmental rights. This article critically examines the Indian judiciary's role in promoting sustainable development, highlighting key legal principles, landmark cases, the function of the National Green Tribunal, and the incorporation of international environmental standards into domestic law. It also discusses implementation challenges and suggests a more collaborative approach for environmental governance in India.

Introduction

India, with its vast and diverse ecological landscapes, has faced increasing environmental challenges over the past few decades due to rapid industrialization, urban expansion, deforestation, and over-exploitation of natural resources. The environmental crisis in India is not only a threat to biodiversity but also to the fundamental rights and quality of life of its citizens. Pollution of air, water, and soil, alongside climate change and natural disasters, has underscored the urgent need for robust environmental protection mechanisms. While legislative measures exist, they are often fragmented and poorly enforced, which limits their effectiveness in achieving sustainable outcomes. This institutional gap has created a space where the judiciary, particularly the Supreme Court and various High Courts, has played an assertive and transformative role in developing a jurisprudential framework for environmental governance.

Through proactive interpretation of the Constitution, the Indian judiciary has elevated environmental protection to the level of a fundamental right. Courts have not only enforced

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environmental laws but have also introduced principles from international environmental law into domestic jurisprudence, such as the Polluter Pays Principle, Precautionary Principle, and the Public Trust Doctrine. Additionally, the Indian judiciary has utilized Public Interest Litigation (PIL) as an effective legal instrument to provide access to justice in environmental matters, even to those who are socioeconomically marginalized. Over time, environmental jurisprudence in India has developed into a coherent and dynamic body of law that attempts to reconcile ecological concerns with developmental needs, promoting the idea of sustainable development as a constitutional and moral imperative. The following sections explore this evolution in depth, beginning with the foundational constitutional and legislative framework.

Constitutional and Legislative Framework

Environmental protection in India is grounded in a combination of constitutional mandates and legislative enactments. Initially, the Constitution of India did not have explicit provisions on environmental protection. However, the 42nd Constitutional Amendment Act of 1976 introduced two key articles—Article 48A and Article 51A(g)—which laid the foundation for environmental responsibility in the country. Article 48A, included in the Directive Principles of State Policy, directs the State to "endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country." Though not justiciable, this directive provides an essential policy basis for environmental governance. Complementing this is Article 51A(g) under the Fundamental Duties, which imposes a moral duty on every citizen to "protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures."

While these provisions create a moral and policy-oriented framework, the real judicial innovation came from interpreting Article 21 of the Constitution. Article 21 guarantees the right to life and personal liberty and has been expansively interpreted by Indian courts to include the right to a clean and healthy environment. In the landmark case of *Subhash Kumar v. State of Bihar* (1991)³⁰, the Supreme Court unequivocally held that "right to life includes the right of enjoyment of pollution-free water and air for full enjoyment of life." This interpretation laid the foundation for incorporating environmental rights within the realm of fundamental rights, thereby making them enforceable through judicial intervention. In addition to constitutional provisions, a range of environmental statutes forms the backbone of India's environmental

³⁰ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598

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legal regime. These include the Environment (Protection) Act, 1986, which serves as an umbrella legislation granting wide powers to the central government to take measures for environmental protection. The Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981, established Pollution Control Boards at the central and state levels to monitor and regulate pollution. The Forest (Conservation) Act, 1980 and the Wildlife Protection Act, 1972 aim at conserving biodiversity and preventing deforestation and poaching.

However, the implementation of these statutes has often been criticized for inefficiency, lack of accountability, and bureaucratic inertia. Regulatory bodies like the Central and State Pollution Control Boards frequently lack adequate infrastructure, manpower, and financial resources. Corruption, political interference, and overlapping jurisdictions further weaken the environmental regulatory framework. In response to these deficiencies, the Indian judiciary has assumed an active role not only in enforcing these laws but also in filling legislative and executive gaps by creating enforceable standards through judicial pronouncements. By linking environmental protection to the constitutional guarantee under Article 21, and invoking duties under Articles 48A and 51A(g), the courts have created a powerful triad of constitutional responsibility involving the state, citizens, and the judiciary itself.

Judicial Expansion of Article 21

One of the most profound contributions of the Indian judiciary to environmental protection has been its expansive interpretation of Article 21 of the Constitution. Traditionally understood as a guarantee of protection for life and personal liberty, Article 21 has been judicially enriched to encompass a wide range of rights that contribute to a meaningful existence, including the right to a clean and healthy environment. The shift began in the 1980s and gained momentum through a series of landmark judgments that recognized environmental degradation as a direct threat to life itself. In *M.C. Mehta v. Union of India (Oleum Gas Leak Case, 1987)*³¹, the Supreme Court ruled that an industry engaged in hazardous activities owes an absolute duty to the community to ensure no harm arises from its operations, thereby affirming the environmental dimension of Article 21.

Further, in *Charan Lal Sahu v. Union of India (1990)*, dealing with the aftermath of the Bhopal Gas Tragedy, the Court again emphasized the State's duty to protect the life and health of its

³¹ *M.C. Mehta v. Union of India*, AIR 1987 SC 965

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citizens. These judgments marked a doctrinal shift, where environmental harm was no longer seen as a peripheral issue but as a central constitutional concern. The Court asserted that without access to clean air, safe drinking water, and a non-toxic environment, the right to life loses its value. This broad reading of Article 21 not only placed environmental rights within the ambit of fundamental rights but also allowed for greater judicial activism in the field of environmental governance, enabling the courts to direct both governmental and private actors to take remedial and preventive action.

Public Interest Litigation (PIL) and Environmental Justice

Public Interest Litigation (PIL) has emerged as a transformative instrument for environmental protection in India. It has democratized access to environmental justice by allowing individuals, NGOs, and even journalists to approach the courts on behalf of those who may be unaware of their rights or are too marginalized to seek legal recourse themselves. The traditional doctrine of locus standi, which restricted the right to sue to directly affected parties, was relaxed by the Supreme Court, especially in matters involving public health and environmental degradation. This expansion has enabled the judiciary to take cognizance of a wide array of environmental issues that may have otherwise remained unaddressed.

One of the most prominent PILs in this domain is *Vellore Citizens' Welfare Forum v. Union of India* (1996), where the Court dealt with the pollution caused by tanneries in Tamil Nadu. In this case, the Supreme Court adopted key principles from international environmental law, including the Precautionary Principle and the Polluter Pays Principle, making them an integral part of Indian law. The Court held that industries causing environmental damage must be held financially accountable for restoring the damaged ecosystem and compensating affected individuals. The ruling in this case highlighted the judiciary's willingness to act decisively in favor of environmental conservation, even if it meant imposing economic costs on industrial actors. Through PILs, the judiciary has also ordered the closure of polluting factories, regulated vehicular emissions, improved waste disposal systems, and directed forest conservation measures. PILs have therefore become a vital tool through which the courts have safeguarded environmental rights and advanced sustainable development.

Adoption of Environmental Principles

The Indian judiciary has significantly contributed to the development of environmental jurisprudence by incorporating key international environmental law principles into domestic legal interpretation. Among these, the Polluter Pays Principle, Precautionary Principle, and Public Trust Doctrine have gained prominent judicial recognition and are now embedded in Indian legal reasoning. These principles have empowered the judiciary to adopt a preventive, compensatory, and conservationist approach to environmental matters. The Polluter Pays Principle asserts that those responsible for pollution must bear the cost of managing and rectifying the environmental damage they cause. This principle was emphasized in Indian

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Council for Enviro-Legal Action v. Union of India (1996)³², where industries that had contaminated the soil and groundwater in a village in Rajasthan were ordered to pay for the cleanup.

The Precautionary Principle, which mandates preventive action in the face of environmental threats even in the absence of scientific certainty, was also fully accepted in Indian law in the Vellore Citizens' Welfare Forum case. The Court held that the government and polluting industries must anticipate, prevent, and mitigate environmental harm. Unlike the earlier approach that relied on proven damage before intervention, this principle empowers authorities to act before irreversible damage occurs. Another doctrine extensively applied is the Public Trust Doctrine, elaborated in *M.C. Mehta v. Kamal Nath* (1997), where the Court declared that the State holds natural resources like rivers, forests, and air in trust for the public, and these resources cannot be privatized or diverted for commercial purposes. These principles serve not merely as legal tools but as ethical foundations, guiding the balance between ecological integrity and economic development. They have been instrumental in defining the scope of judicial review, administrative responsibility, and corporate accountability in environmental matters.

Role of the National Green Tribunal (NGT)

The creation of the National Green Tribunal (NGT) under the National Green Tribunal Act, 2010³³, marked a watershed moment in India's environmental governance framework. Recognizing the need for a specialized body to deal with the complex and technical nature of environmental disputes, the NGT was tasked with ensuring the expeditious and effective resolution of environmental cases. The tribunal has jurisdiction over all civil cases involving substantial questions relating to the environment, and it applies the very principles established by the judiciary, including the Polluter Pays Principle and Precautionary Principle. With its powers equivalent to those of a civil court, the NGT can provide remedies such as compensation, restoration orders, and preventive directions.

Since its inception, the NGT has played a crucial role in regulating industrial pollution, preventing illegal mining, improving air quality in metropolitan cities, and restoring water bodies. For instance, in a series of orders relating to Delhi's air pollution crisis, the NGT directed the ban on construction activities, imposed fines on polluting vehicles, and supervised the implementation of solid waste management rules. Similarly, it has taken strong action against illegal sand mining and issued orders to stop environmentally hazardous construction along riverbanks and forest areas. The NGT has also contributed to environmental awareness and public participation by making its proceedings accessible and inclusive. However, while its judgments are often bold and progressive, their implementation remains a challenge due to lack of cooperation from government agencies and delays in compliance. Nonetheless, the

³² *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212

³³ https://en.wikipedia.org/wiki/National_Green_Tribunal_Act%2C_2010?

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NGT represents a strong institutional commitment to environmental protection and serves as an essential complement to the judiciary's environmental jurisprudence.

Challenges to Judicial Environmentalism

Despite the Indian judiciary's active role in promoting environmental protection, several challenges continue to undermine the effectiveness of judicial environmentalism. One major obstacle is the lack of enforcement of judicial and NGT orders. Many rulings, although progressive and detailed, are not implemented by administrative authorities or local governments due to political resistance, institutional inertia, or lack of capacity.

This implementation gap reduces the practical impact of otherwise well-meaning judgments. Another issue is the perception of judicial overreach, wherein courts are accused of encroaching upon the domains of the legislature or executive by issuing detailed policy directions. For example, in some instances, the judiciary has taken over environmental policymaking by framing action plans or controlling day-to-day environmental administration, which critics argue exceeds the judicial mandate.

Additionally, India's regulatory agencies such as the Central and State Pollution Control Boards suffer from severe resource constraints, including inadequate staffing, outdated monitoring technology, and limited financial support. These limitations hinder their ability to provide accurate environmental data or enforce compliance effectively. Moreover, there is fragmentation in environmental governance, with overlapping jurisdictions among multiple ministries and departments, leading to confusion and inaction. Public awareness and participation, though improving, still remain insufficient, especially in rural and semi-urban areas. Without a strong civil society demand for environmental accountability, judicial activism alone cannot ensure sustained environmental protection. Lastly, environmental justice remains unequal, with marginalized communities often bearing the brunt of ecological damage while having limited access to legal remedies or forums. Thus, while the judiciary has laid a strong foundation for environmental law, the realization of its full potential requires structural reforms, political will, and societal involvement.

Conclusion

The evolution of environmental jurisprudence in India reflects a dynamic and transformative journey led significantly by the judiciary. By interpreting constitutional provisions with creativity and foresight, the courts have succeeded in positioning environmental rights at the core of fundamental rights. Landmark cases have not only held polluters accountable but have also forced governments and industries to consider ecological consequences in their decision-making. The adoption of global environmental principles has strengthened the legal framework, and the establishment of the National Green Tribunal has institutionalized environmental adjudication.

However, the judiciary's role, while crucial, cannot be seen as a substitute for legislative efficiency and administrative execution.

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The sustainability of judicial environmentalism depends on effective implementation of judgments, empowerment of regulatory bodies, and participatory governance involving citizens. There is a pressing need for greater inter-agency coordination, decentralization of environmental decision-making, and investment in scientific and technical expertise. Moreover, environmental protection must be mainstreamed across sectors such as urban planning, agriculture, industry, and education. As India continues to pursue economic development, it must ensure that such growth is environmentally sustainable and socially just. The judiciary has illuminated the path, but it is now up to all stakeholders—governments, industries, and citizens—to walk the talk and secure a greener, healthier future for generations to come.

