

Global Evolution of Environmental Justice Movements and Its significance in Environmental Jurisprudence

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Abstract

Environmental justice movements are multifaceted with interconnectivity between legal, political, academic, administrative, technological, economic and civic actors and the actions taken by them to prevent harm to humans and to the environment from extensive utilization of natural resources for capitalist development. The modern global environmental movements that gave birth to the concept of environmental justice grew in reaction to social and economic injustice stemming from human activity. Hence, the judiciary plays a key role in many countries in enunciating environmental principles and facilitating the development of environmental jurisprudence. The article focusses on the international and regional growth of environmental jurisprudence and green tribunals, mainly using developments in United States of America, and in India to address the issues of access to environmental justice. The review concludes with the view that the key stakeholders in environmental justice movements need to consider the historical roots of environmental injustice and continue to bring reforms in national and international environmental legislations.

Keywords: environmental justice; environmental justice movement; green tribunals; human rights; sustainable development

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Introduction

Environmental justice (EJ) is broadly defined as a movement for protecting the natural environment and the right of all people irrespective of race, class, gender, citizenship, and place of residence, to live in a safe and healthy environment. The concept of environmental justice emerged from initial concerns of environmental conservation to a recognition that environmental problems are disproportionately experienced by some groups more than others and that environmental hazards are distributed unevenly across race and class divisions. The goal of environmental justice is achieved when everyone enjoys the same degree of protection against environmental hazards and pollution and each individual has a role in decision making which is significant for protecting the environment. EJ is the action towards environmental equity in the action of companies, industries, factories, government institutions, courts and regulatory agencies concerning measures taken by them in protecting the environment and preventing pollution. It is also the process of setting standards and laws for protecting the communities that are at risk due to the dumping of toxic waste and pollutants in their nearby locality. Therefore, it is necessary to ensure appropriate instruments are in place to address the conflicts in environmental protection and to overcome barriers to accessing that protection.

True access to justice is achieved once the rights of all people, other living, and non-living entities are effectively guaranteed. Environmental justice is, therefore, the antithesis to the unjust distribution of environmental benefits and burdens, and confronts status quo views of modernity, patriarchy, capitalism, settler colonialism, and consumerism. Indiscriminate and careless exploitation of natural resources, increasing levels of air, water and soil pollution, deforestation, and severe loss of biodiversity due to climate change, depletion of the ozone layer, acid rain, and global warming require clear formulation of environmental justice mechanisms globally and locally. The continued deprivation of environmental quality shakes the very foundation of human survival. The concept of environmental justice has evolved from protection of the environment from careless, indiscriminate exploitation, to include environmental injustice as a civil rights violation.

Globally, specialized systems for environmental justice began to emerge in the early 1970s. In 1969, Sweden enacted environmental laws and established environmental courts to address environmental matters. To date, operational environmental courts or tribunals has been established in 67 countries, including, Sweden, the United States, Australia, New Zealand, South Africa, Pakistan, Bangladesh and India. The number of ECTs increased to 2,116 by the end of 2021 with around 850 such tribunals being established since

2016 (UNEP, 2016). Many countries have also integrated the principles of international environmental law into their jurisdictions including Brazil, Korea, Pakistan, Bangladesh, Philippines, China and India etc.

In this paper I delve into the interplay between environmental justice movements and environmental jurisprudence development in the United States and in India. By understanding the developments in these two countries, I identify the contemporary issues in environmental jurisprudence, the various actors who play key roles in bringing about transformative change, and the challenges encountered in implementing environmental law, both nationally and internationally.

International Initiatives for Environmental Protection

International agreements and conventions play a key role in establishing the legal frameworks nationally, and in establishing cooperation and uniformity across nations in development of legislation for environmental justice. The 1972 Stockholm Conference on the Human Environment played a pivotal role in recognizing the impact of humans on the natural environment, and to address the challenges of preserving and improving human lived environments. One of the major achievements of the Stockholm Conference was the establishment of the United Nations Environment Programme (UNEP). It provided a forum for the developing nations that emphasized development as a vehicle for raising the quality of the environment. It gave the international environment movement universality, legitimacy and acceptability in developing countries. It was also the first attempt to address the global problems of environmental issues. The Conference established 26 principles that led to the foundation of modern international environmental law, and it became the turning point in the development of international environmental politics.

The United Nations World Charter for Nature, adopted in 1982, aimed to protect the global environment from the impacts of industrialization. It emphasized the interconnectedness between mankind and nature, stating that living in harmony with nature allows for the development of creativity and provides opportunities for rest and recreation. The Charter outlines five conservation principles: respecting nature and its essential processes, maintaining genetic viability on Earth, applying conservation principles globally with special protection for unique areas and endangered species habitats, managing ecosystems and resources sustainably, and safeguarding nature against degradation from warfare or hostile activities (Declaration of the United Nations Conference on the Human Environment, 1972).

The concept of “Sustainable Development” gained prominence following the Declaration on the Human Environment conference. In 1987, the United Nations World Commission on Environment and Development published the report ‘Our Common Future’, also known as the Brundtland Commission Report. This report defined Sustainable Development as development that fulfils present needs without jeopardizing the ability of future generations to meet their own needs (WCED, 1987).

These developments laid the foundation for modern environmental governance and highlighted the interconnectedness between human activities and the natural world. Furthermore, the concept of Sustainable Development, as articulated in the Brundtland Commission Report, underscores the importance of balancing present needs with the preservation of resources for future generations. Overall, these initiatives reflect the global commitment to addressing environmental challenges and promoting sustainable practices for the well-being of both people and the planet.

The UN Conference on Environment and Development (UNCED) in 1992 held in Rio, also known as the Earth Summit, solidified sustainable development as a fundamental principle, emphasizing the right to a healthy and harmonious life with nature. Principles outlined in the Rio Declaration highlighted the centrality of human well-being and the integration of environmental protection into development processes (Earth Summit, 1992). The emergence of sustainable development significantly influenced the understanding of environmental justice and human rights, leading to the establishment of institutional mechanisms like the Commission on Sustainable Development within the UN system.

The Earth Summit catalysed global awareness and cooperation on environmental issues, prompting the formulation of international agreements to address environmental challenges collectively. Overall, the Earth Summit marked a pivotal moment in global environmental governance, urging individuals and nations to reconsider their relationship with the natural world and prioritize sustainable practices for the benefit of current and future generations.

Role of the Judiciary in Access to Environmental Justice

By outlining environmental law’s guiding principles, fostering the growth of environmental jurisprudence, and inspiring the legal community to pursue the integration of sustainable development and environmental justice within robust national rule of law frameworks, the judiciary plays a crucial role in

enforcing environmental laws (Earth Summit, 1992). The Environmental courts and tribunals (ECTs) can also contribute to the achievement of Sustainable Development Goals (SDGs). Goal 16 of the (SDGs) emphasized “Peace, Justice and Strong Institutions, which seeks to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (Earth Summit, 1992).” ECTs can be designed to (Earth Summit, 1992):

- i. Promote environmental rule of law at the national and international levels and ensure access to justice (SDG Target 16.3)
- ii. Develop more effective, accountable and transparent institutions at all levels (SDG Target 16.6)
- iii. Ensure responsive, inclusive, participatory and representative decision-making at all levels (SDG Target 16.7)
- iv. Ensure public access to information and protect fundamental freedoms, under national legislation and international agreements (SDG Target 16.10)
- v. Promote and enforce non-discriminatory laws and policies for sustainable development (SDG Target 16.10b).

The UNEP 2021 mentions that there are six modes of environmental dispute resolution (Earth Summit, 1992).

- i. **Environmental Courts:** Environmental disputes may be resolved in environmental courts which have a specialized jurisdiction over environmental matters
- ii. **Green Chambers:** Green chambers in general courts as in India or environmental divisions at various levels of courts seen in Thailand
- iii. **Designated green judges on a general court:** Green benches with green judges may also be used within courts of general jurisdiction as found in Indonesia and Pakistan
- iv. **Independent Tribunals:** Environmental disputes may be resolved in independent environmental tribunals, including free-standing environmental tribunals or an environmental division within an administrative tribunal
- v. **Quasi-independent environmental tribunals:** Quasi-independent environmental tribunals may be used under the supervision of government agencies; and

- vi. **Captive tribunals:** These are the type of environmental tribunals controlled by the agency such as the United States Environmental Appeals Board.

The Environmental Justice Movement

The Aarhus Convention of 1998 stands as a landmark agreement recognising access to justice in environmental matters as a fundamental human right (Freitas, 2017). Encompassing 46 European and Central Asian countries, including the European Union, it underscores the importance of effective judicial mechanisms accessible to the public for safeguarding both environmental integrity and human rights (Stec et al., 2000). By granting individuals and organizations rights to information, participation, and justice in governmental decision-making processes related to environmental issues, the Convention aligns environmental protection with human rights principles. It addresses barriers to accessing justice, emphasizing governmental accountability, transparency, and responsiveness. Article 9 outlines comprehensive procedures for effective judicial mechanisms, promoting expeditious review processes, reasoned decisions, and assistance mechanisms to mitigate barriers to justice (Jain, 2013). In essence, the Aarhus Convention signifies a significant step towards ensuring environmental accountability and empowering individuals to actively participate in environmental governance.

The Aarhus Convention reaffirms access to justice in environmental matters as a cornerstone of human rights. By fostering transparency, accountability, and public participation, it enhances environmental governance and empowers individuals to protect both their well-being and the planet.

The judiciary plays a crucial role in environmental enforcement and compliance, as highlighted by the Johannesburg Principles on the Role of Law and Sustainable Development. Adopted in 2002, these principles underscore the judiciary's responsibility in implementing and enforcing international and national environmental laws to promote sustainable development (Earth Summit, 1992). With over 120 senior judges involved, the principles emphasize the judiciary's role as guardians of the Rule of Law, aiming to alleviate poverty, sustain civilization, and safeguard the rights of present and future generations. The principles stress the urgent need to enhance the capacity of judges, prosecutors, legislators, and other stakeholders in environmental law, advocating for judicial education and collaboration to improve enforcement, compliance, and implementation efforts.

The Johannesburg Principles underscore the judiciary's pivotal role in environmental governance and sustainable development. With a commitment to upholding the Rule of Law, judges aim to implement and enforce environmental laws to safeguard present and future generations. The call for enhanced judicial capacity, collaboration, and education reflects the urgency to improve enforcement and compliance with environmental regulations globally.

Regional Development on Environmental Law

Following the Aarhus Convention, Latin American and Caribbean nations ratified the Escazu Agreement on April 22, 2021. Currently, 12 countries have ratified the agreement; while 12 others have signed but not ratified it, with additional nations considering joining. Modelled after Principle 10 of the Rio Declaration, the Escazu Agreement upholds three core rights: access to environmental information, participation in environmental decision-making, and access to justice for environmental matters. Ensuring these rights is crucial for addressing inequality and advancing environmentally sustainable development, aligning with the commitment to leave no one behind in the 2030 Agenda. These treaties also contribute to SDG 16, promoting peaceful and inclusive societies, access to justice, and effective institutions. Additionally, they prioritise protecting vulnerable groups, including indigenous peoples, and safeguarding environmental advocates from threats and intimidation.

The Asian Development Bank (ADB) has undertaken considerable efforts in building judicial capacity from 2002 onwards. It published a compendium on Capacity Building for Environmental Law in the Asian and Pacific Region, launching the Environmental Compliance and Enforcement Network (AECEN) and organizing symposiums and conferences. In 2010, the ADB organized the first Asian Judges Symposium on Environmental Decision-Making, the Rule of Law, and Environmental Justice in Manila, Philippines from July 28 to 29, 2010. It brought together over 110 judges, environment ministry officials and civil society representatives from Asia, Australia, Brazil, Europe and the United States. The symposium emphasised the importance of environmental specialisation within general courts and explored the work done by specialist environmental courts. It also proposed the establishment of an Asian Judges' Network on the Environment to help improve adjudication in environment and natural resource cases (ADB, 2010).

The South Asia Conference on Environmental Justice was held on 24-25 March 2012, at Bhurban, Pakistan. The Conference brought together chief justices, senior members of the judiciary and other legal stakeholders in South Asia, to highlight environmental challenges in the sub-region and devise

ways to strengthen the implementation of environmental justice and ensure compliance with environmental laws. The recommendation adopted a 14-point Bhurban Declaration and included a promise for an educated judiciary, and specialized courts to improve the development, implementation, enforcement, and compliance of environmental laws as well as make an action plan to achieve environmental justice. It also focused on strengthening the existing specialized environmental tribunals, as well as training judges and lawyers on environmental law. It also vows to establish green courts for the dispensation of environmental justice and to make necessary amendments or adjustments to the legal and regulatory structures to foster environmental justice in South Asia (ADB, 2010).

The United Nations Environment Programme (UNEP) also emphasized “the role of the judiciary is fundamental in the promotion of compliance with and enforcement of international and national environmental law”. Many countries have shown sensitivity in their approach to promoting the rule of law in the field of sustainable development through their law and policy (ADB, 2010).

Evolution of the Environmental Justice Movement:

The environmental justice movement brings together a diverse group of impacted communities. The term environmental injustice refers to both distributive and procedural bias against politically disadvantaged groups in society; the concept of environmental justice, is intended to be inclusive of a variety of site-specific grievances (Perez et al., 2015).

Originally framed as ‘environmental racism,’ the early movement focused on the unequal distribution, both social and spatial, of environmental burdens, an issue that was often ignored by the mainstream environmental movement (Perez et al., 2015).

One of the key characteristics of the current environmental justice movement is the broadening of missions by environmental justice groups and communities. Today, environmental justice groups not only focus on traditional issues of environmental justice regarding environmental burdens but also work to create healthy and sustainable communities. They push for equal access to environmental goods, such as public green space and healthy foods, and meaningful participation of all residents in decision-making processes (Perez et al., 2015).

Origin of the Environmental Justice Movement in the United States

The first concept of Environmental Justice had its origin in the United States in the struggle against waste dumping and polluting industrial installations in North Carolina in the 1980s. It was reported that this waste was dumped in the area with the highest proportion of African-Americans, “people of colour” and low-income populations (Alier et al., 2014). The lives and health of Black, Hispanic or Indigenous communities from poor and minority neighbourhoods were being disproportionately put at risk than white and middle class communities due to their exposure to toxic pesticides and hazardous waste (Alier et al., 2014). The first court case *Margaret Bean et.al v. South-Western Waste Management Corporation et.al* alleging environmental discrimination was registered in the United States (Sambo, 2012). The plaintiffs sought an injunction to prevent the construction of a solid waste disposal facility in Houston because it had a disproportionate environmental impact on the black minority community (Sambo, 2012). Though the quest for an injunction failed, it gave birth to a new social and environmental justice movement against environmental racism, a term coined by Benjamin Chavis in 1982 (Mohai et al., 2009).

Expanding the definition in “The Legacy of American Apartheid and Environmental Racism”, Dr. Robert Bullard further said that environmental racism refers to any policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals; groups, or communities based on race or colour (Mohai et al., 2009). Bullard in his book, *Dumping in Dixie* (1990) mentioned that communities of colour were deliberately targeted for the location of society’s unwanted waste and that these practices had their origins in both historic and contemporary forms of institutional racism (Mohai et al., 2009). The lack of affordable land, lack of political power, lack of mobility and poverty are three major factors that lead to environmental racism. Thus, environmental racism is likely to manifest as a barrier to environmental justice at the institutional level that plays a key factor in environmental planning and decision-making, and the government through legal, economic and political practices reinforced it.

The protest against environmental racism gained attention all over the USA, which further grew in the United States and abroad throughout the late 1970s and 1980s. It triggered subsequent events that increased the visibility and momentum of the environmental justice movement. The further movement emphasizes the inequality between urban and suburban areas as well as the particular vulnerability of indigenous groups to environmental pollution (Mohai et al., 2009).

In October 1991, the First National People of Colour Environmental Leadership Summit convened in Washington D.C. that drafted and adopted seventeen principles concerning environmental justice on October 24-27, 1991 (Mohai et al., 2009). It has since then formed the basis of environmental justice in the United States and other countries. They are also important because they embody the unanimous present and future aspirations of the environmental justice movement. Further, each principle specifies what can be achieved, making it easy to tailor the environmental justice needs of any society accordingly (Freitas et al., 2017).

Concerns over environmental inequality led to the establishment of the US Environmental Protection Authority (EPA) Office for Environmental Justice in 1992 under the U.S. Federal Water Pollution Act 1972. The environmental matters in the USA are entrusted with the EPA that has the authority to make rules and is bound to prepare an Environment Impact Statement (EIS) report in respect of every development project to analyse if there are any adverse environmental effects. It defined environmental justice as: “The fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income, for the development, implementation, and enforcement of environmental laws, regulations and policies” (USEPA). This goal will be achieved when everyone enjoys:

- The same degree of protection from environmental and health hazards; and
- Equal access to the decision-making process to have a healthy environment in which to live, learn and work.

The EPA definition makes it clear that environmental justice is aimed at avoiding unfair environmental burdens on minorities in any community through fair treatment and meaningful involvement of community members. EPA’s acknowledgment that minority populations are exposed to greater environmental health risks than white people brought more public attention to environmental justice concerns as it highlighted the environmental inequalities and the importance of addressing them.

The strong environmental social movement in the USA resulted in very strict and stronger environmental legislation that has been enforced effectively by the US Environmental Protection Agency and other entities in the executive branch. The United States is widely viewed as the principal origin of the environmental justice movement where the environmental justice movement of the 1970s and early 1980s started with complaints against environmental

racism but it soon concerned with environmental justice worldwide (Freitas et al., 2017). The activists and policymakers began to notice similar patterns of environmental inequality in many parts of the world.

Global Expansion of Environmental Justice Movement

In the United States, EJ policy developed in response to directly expressed concerns of civil society, but elsewhere, EJ policy has emerged largely in response to intergovernmental agreements on human rights, as a mechanism to achieve environmental sustainability. These rights include the right to a clean and safe environment, the right to act to protect the environment, and the right to environmental information and participation in decisions affecting the environment. These rights were defined in the 1992 Rio Declaration on environment and development. These are being implemented through subsequent international agreements including the 1998 Human Rights Act. In Europe, the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters whose objective is to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being also implemented these rights (Mitchell, 2019).

Environmental Justice Movement in India

Environmental human rights and justice movement evolved in India during the 1970s and early 1980s, based on developments in the United States and in the international arena. During this period, Indian environmentalists persistently drew attention to environmental justice issues, especially development-induced displacement. For example, an estimated 40 million people have been displaced by large dams in the fifty years in India since independence, and of these, less than a quarter have been resettled. These numbers stack up unfavourably against some of the worst state statistics anywhere in the world during the century—including wars, disasters, and pestilence. The numbers also conceal the extent of human trauma—forced and delayed relocation, multiple displacements in many instances, the absence of alternate cultivable lands or livelihood, and the undervaluation of compensation (Ranjan, 2014).

According to the Environmental Justice Atlas (EJAtlas), India has the largest number of environmental justice movements (about 300 reported cases of conflicts). Out of these conflicts, more than 57 percent of the reported environmental justice movements from India have Adivasi communities mobilizing. Involvement of Adivasis in such movements gives rise to multiple levels of oppression due to historical exclusion and marginalization. This can

be understood by looking at the history when these communities have been treated indifferently with no rights, who can be discriminated against and against whom atrocities can be committed with near impunity.

The government's statistics collected around the turn of the century painted a dismal picture of its economic policies on the environment and livelihood of people. They claimed that soil erosion, waterlogging, and salinity affect 60% of cultivated land; that the average annual per capita water availability had declined by almost 70% in the first five decades of the post-independence era; and that the area under forest cover, at 19%, was well below the desired level of 33% (GOI 2009). Crucially, each of these numbers has a social justice dimension, because adverse ecological changes tend to exacerbate poverty by directly affecting poor people dependent upon ecosystem services (Ranjan, 2014).

It was the period when international environmental jurisprudence started taking shape due to the Stockholm Convention. It influenced many nations including India that later adopted many provisions of the Convention in its domestic legislation. This was also the period when many social and ecological movements emerged in India against rapid industrialization, deforestation and commercial logging such as Chipko Andolan (1973), Save Silent Valley Movement (1978), Appiko Movement (1983) and Narmada Bachao Aandolan (1985) etc. These movements followed the principles of environmental justice, intergenerational equality and respect for nature to fight for the preservation of water, forests and land (Jal, Jungle, Jameen). These movements significantly changed the development discourse by including not only people in power but also the disempowered and disadvantaged villagers whose lives were directly impacted by decisions made without their input.

These movements are often drawn out, filled with uncertainty, and involve multiple layers of injustices and inequalities. They also often include Adivasis, the indigenous population at the forefront (Roy, 2019). Over the past six decades, such social movements have erupted across the country over access to natural assets and the degradation of the environment (Ranjan, 2014).

Then in the backdrop of the Bhopal Gas Disaster of 1984, when thousands of people died and more than a million people suffered the aftermath, considerable activism and mobilization around issues of industrial policy, and the control and management of toxic substances occurred in India (Ranjan, 2014). This phase of Indian environmental history also witnessed the rise of judicial activism aimed at safeguarding the environment. They sparked a fundamental question about the meaning of development, the future of the country and the very idea of justice (Ranjan, 2014).

Significant Environmental Justice Movements in India

- i. **Chipko Movement (Hug the Trees):** March 2023 marked the 50th anniversary of the beginning of the Chipko Movement led by social activist Sunderlal Bahuguna in the Himalayan region. This movement is often credited as India's first environmental justice movement. In his work, "The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalayas", Ramchandra Guha traces the origins of environmental movements in India to the Chipko movement of the Central Himalayas. He construes the Chipko as a powerful statement against the violation of customary rights by the state forest department that brought into focus a wide range of issues regarding forest policy and the environment debate as a whole (Guru, 2023).

Peasants of the Garhwal region of Uttarakhand against the commercialization and destructive activities of forest officials led the Chipko movement. This movement is also considered an eco-feminist movement because the women of the Himalayan region formed the nucleus of the movement. Women advocated for forests as self-renewing life-support systems rather than just economic resources fusing their practical expertise with scientific knowledge.

Due to their consistent effort, the government finally put a 15-year ban on cutting down trees in the Himalayan forests and the forests in the Vindhayas and the Western Ghats. The Chipko movement also aided in raising the awareness of forest rights and the power of grassroots activism to shape public policy.

- ii. **Save Silent Valley Movement:** The local people of Palakkad district of Kerala initiated the Silent Valley movement in 1978 against the construction of a hydroelectric project, as it would threaten the valley's high diversity of rare wildlife species. The movement subsequently got support from an NGO named Kerala Sasthra Sahithya Parishad (KSSP) that aroused public opinion by publishing a techno-economic and socio-political assessment report on the Silent Valley Hydroelectric Project.

This movement also received criticism from eminent social scientists and conservationists like M. Krishan, Madhav Gadgil, MS Swaminathan, Subramaniam Swamy and Sitaram Kesari, etc. who termed this project as short-sighted, and with limited objectives.

The movement went on for almost a decade and saw its first success in 1983 when the Central Government instructed the State Government to abandon the Hydroelectric project. The government also banned all forest activities and declared the Silent Valley Forest as a National Park on November 15, 1983, and later it was designated as the core area of the Nilgiri Biosphere Reserve.

Although the campaign did not have any centralized planning, the sustained pressure exerted by the people using every means possible at that time including newspaper editorials, seminars, and widespread awareness programmes, petitions and appeals in court and other government offices proved ultimately successful. The lessons from this inspiring and hard-fought campaign are still relevant in today's situation to address environmental justice issues.

- iii. **Aapiko Movement:** The famous Chipko movement of the Himalayan region inspired the Aapiko movement. Aapiko also means 'to hug' or to 'embrace'. The men, women and children of the village in the Uttar Kannada region of Karnataka launched a similar movement of hugging the trees to save their forests in September 1983. The natural forests were destroyed due to the commercial felling of trees for timber extraction. It also resulted in soil erosion and drying up of perennial water resources. The local indigenous communities forced the contractors of the forest department to stop cutting trees by hugging the trees. The movement was spontaneous and spread over other villages of the region. Finally, the government gave in to their demands and stopped contractors from cutting the trees.

This movement became a symbol of people's power to fight for their rights to natural resources against the state. The movement was successful in achieving the objectives of protecting the existing forest cover; regeneration of trees in denuded lands and utilizing forest wealth with proper consideration for conservation of natural resources. It also created awareness among the villagers throughout the Western Ghats about the ecological danger posed by the commercial and industrial interests to their forest that was the main source of their sustenance.

- iv. **Narmada Bachao Aandolan (NBA):** The movement originated in the 1980s as a protest against the building of dams in the Narmada River that flows across Madhya Pradesh, Maharashtra and Gujarat. The movement was led by a woman social activist Medha Patker and embraced by

thousands of poor indigenous people against the lack of an appropriate resettlement and rehabilitation policy for the people who faced displacement due to the construction of the dam.

The movement brought the national focus on environmental and rehabilitation issues raised by big dam projects. It also raised awareness of tribal and underprivileged people most affected by such projects. Though the height of the dam has been raised after the Supreme Court allowed it, the struggle for resettlement and rehabilitation continues.

Judicial Activism towards Environmental Justice

All of the above-mentioned socio-environmental movements continue to remain relevant even today. These movements played a significant role in shaping the approach of the Indian judiciary towards developing the principles of environmental justice. The Constitution of India has itself kept the judiciary on a special footing and the concept of independence of judiciary therefore forms an integral part of Indian democracy. With the changing needs of the society, many environmental issues arise which needed out of the box thinking and therefore a liberal and progressive approach has been required whilst following the basic principles of law.

Environmental law has become one of the main pillars of environmental protection in the last few decades and India has passed significant legislation for the protection of the environment, including the Water Act (1974), Air Act (1981), Environment Protection Act (1986), Noise Pollution (Regulation and Control) Rules (2000), etc. and paved the way towards sustainable development. However, even after all these years, it is still suffering from ineffective implementation. Often the executive is also unable to enforce these laws successfully and tends to abdicate their responsibilities. It, therefore, comes upon the shoulders of the Indian judiciary to take effective steps towards environmental justice. It has been a pioneer in promoting new and unique environmental jurisprudence in securing the enforcement of environmental rights. The judiciary, from time to time, took the matter into its own hands when the legislature failed to take any effective measures against those who are continuously harming our ecological balance and has given some extraordinary judgments.

The role of the judiciary has been crucial in shaping environmental laws and policies. The higher judiciary, as guardian of citizens' fundamental rights, widened the scope of the "right to life" under Article 21 in many of its judgments. It held that the right to life includes the right to breathe in a safe

and clean environment (Kharak Singh v. State of UP, 1963). It also reminded us that it is a social obligation, and every citizen has a fundamental duty to protect the environment under Article 51(A) (g) of the Constitution.

The two eminent leading academicians Professor S.P. Sathe and Professor Upendra Bakshi have supported judicial activism and analysed the transformation of the Supreme Court “from a positivist court into an activist court”. Professor Bakshi has opined the idea that the Indian “Supreme Court is one of the strongest courts in the world” (Sathe, 2007) and that the “Supreme Court of India has often become the Supreme Court for Indians” (Baxi, 2000).

Ex-Chief Justice of Indian Supreme Court P.N. Bhagwati along with Justice V.R. Krishna Iyer were the main pioneers behind judicial activism in India who also introduced Public Interest Litigation (PIL) in the Indian system to help the poor, marginalised sections of the society and then expanded its application to include environmental justice question. In his various judgments, Justice Bhagwati emphasized integrating development, environment and human rights. He also widened the scope of Article 21 and emphasized that the right to life includes the right to live in a healthy environment.

Three landmark environmental cases have shaped India’s environmental jurisprudence: the Ratlam Case, the series of Mehta cases, and attempts to resolve the Bhopal case. These cases represent the development of neo-environmental justice jurisprudence in India (Abraham, 1995).

However, existing legislation and judicial activism have been insufficient in curbing environmental degradation and pollution. As early as 1987, the Supreme Court recognized the need for scientific expertise in environmental cases and advocated for the establishment of specialized environmental courts. The Court urged the government to form an Ecological Science Research Group to provide unbiased information.

To underscore the necessity of environmental courts, the Supreme Court suggested their establishment in cases like the Shriram Gas Leak Case (M.C. Mehta v. UoI, 1986), the Vellore Citizen’s Welfare Case (1996), and the Bichhri Village Case (1996). The delays in ordinary courts hinder justice, prompting the need for specialized environmental courts.

Moreover, the National Environment Tribunal and NEAA also lacked comprehensive jurisdiction over environmental issues, highlighting the urgent need for regional environmental courts with expertise to provide accessible and timely environmental justice. Therefore, to ease the burden on regular courts, the Law Commission of India came up with its 186th Report under

the Chairmanship of Justice M. Jagannadha Rao. The report recommended constituting 'environment courts' at the state levels which can simultaneously exercise appellate powers and original jurisdiction as exercised by Civil Courts to deal specifically with all the environmental matters based on the observation of the above three cases (Law Commission of India, 2003). The report also mentioned the issues faced by the Indian courts due to their inadequacy of judicial knowledge on scientific and technical aspects of environmental cases.

The report also stated that the "National Environmental Appellate Authority constituted under the National Environmental Appellate Authority Act, 1997, for the limited purpose of providing a forum to review the administrative decisions on Environment Impact Assessment, had very little work. It appears that since the year 2000, no judicial member has been appointed. As far as the National Environmental Tribunal Act 1995, is concerned, the legislation is yet to be notified after eight years of enactment. Since it was enacted by Parliament, the tribunal under the Act is yet to be constituted. Thus, these two tribunals are non-functional and exist only on paper" (Law Commission of India, 2003). In its recommendation, the Commission proposed for setting up of environmental courts with judicial members and technical experts (Kesav, 2023).

The specialized courts dealing with only environmental cases present several advantages. It results in speedy judgments; efficient, trained and specialized judges are accustomed to dealing with non-judicial expert members. The Law Commission report, through the examples of environmental jurisprudence in Australia and New Zealand, presented a comprehensive analysis of the relevance and necessity of green court in India and explained how it needs to be constituted, its function, composition and its jurisdiction. Although NGT is a judge-driven legislation, the Law Commission Report provided a model of the environmental court that would be acceptable as per the needs and requirements of the Indian scenario.

National Green Tribunal (NGT)

The Parliament enacted the National Green Tribunal Act, 2010 after much debate and the NGT was finally set up as a quasi-judicial body on October 18, 2010, under the Chairmanship of Justice Lokeshwar Singh Pant. Its main aim was to ensure speedy justice in civil cases of environmental-related matters including enforcement of any legal right relating to the environment and available relief and compensation for damages to persons and property (Gill, 2013). The principles of: Inter-generational equity, Sustainable Development, Polluter Pays, and Precautionary Principle guide the NGT while passing any order (NGT Act, 2010). The NGT also replaced the existing

National Environment Appellate Authority (NEAA) and National Environment Tribunal and the cases pending before the NEAA were transferred to the NGT (Rengarajan, 2018).

India not only became the first country to make provisions in its Constitution for the protection and improvement of the environment but also became the third country in the world (after New Zealand and Australia) to establish an environmental court to specifically deal with environmental issues in the form of the National Green Tribunal (NGT). It is, therefore, a fast-track federal judicial body court. Its specific mission is “the effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources” and thereby, strike a balance between environment and development. The principal bench is in New Delhi along with four subsidiary branches at Bhopal (Central Zone), Pune (West Zone), Kolkata (East Zone), and Chennai (South Zone) that have jurisdiction of different states covering entire India under its ambit (Rengarajan, 2018).

As of February 2023, the NGT’s zonal benches have handled 40,343 cases since its establishment. Of these, 38,373 cases have been resolved, leaving 1970 cases pending. These cases span industrial and mining operations, water, air, noise, waste management, and environmental compensations, indicating a growing concern for environmental issues in India and an increasing awareness of environmental rights as human rights.

While the NGT Act does not explicitly mention suo-motu jurisdiction, the NGT has historically taken suo-motu cases. This practice led to a legal dispute, with the Madras High Court ruling against the NGT’s suo-motu authority. However, the Supreme Court clarified this issue in the case of *Municipal Corporation of Greater Mumbai v Ankita Sinha* (2021). The court affirmed that while the NGT Act does not grant explicit suo-motu powers, the NGT could exercise such jurisdiction in line with its functions under the Act. It emphasized that the NGT’s suo-motu actions must adhere to principles of natural justice and fair play, requiring the tribunal to offer affected parties a hearing before issuing any orders.

Despite the shortage of staff, the institution has tried its best to deal with the cases effectively. To date, the NGT has never had full strength, and even now, there are only four judicial members and seven expert members, including the chairperson on the principal bench. The government does not show much interest in filling these seats that have been vacant for a long period despite several reminders from the Supreme Court. Due to the unavailability of an adequate number of judicial and expert members, the petitioners sometimes have to wait for years to get justice.

Challenges before Green Tribunals (Jhang, 2019): Some of the challenges faced by Green Tribunals in the countries are as follows:

- 1. Lack of government and stakeholder support:** Political support is crucial for the Green Tribunals to work efficiently but it is missing in most of the countries as the government tries to curb its independence through insufficient budget, lack of infrastructure and human resources and security to the judges.
- 2. Non-Prioritization of Green Tribunals issues:** Economic interests are a priority in countries over environmental issues. It is claimed that the development of specialized Green Tribunals leads to fragmentation of the legal system. Some countries also claim that it is difficult or impossible to differentiate environmental and non-environmental cases and therefore, there is no need for a specialized Tribunal. Furthermore, less attention is given to environmental cases and the training of judges in environmental matters, resulting in the marginalization of environmental issues.
- 3. Use of Information Technology:** For Green Tribunals to work efficiently, they need improved and smart use of information technology to create just, speedy, and inexpensive courts. During COVID-19, physical access to any court was impossible which made the litigants suffer. The digitization of the Green Tribunals process is thus crucial to ensure access to environmental justice and transparent environmental dispute resolution. The pandemic brought changes in the functioning of the Green Tribunals as it also rapidly adopted interactive IT platforms and developed entirely new ways of conducting environmental adjudication. This shift had an extremely positive impact on access to justice, as it increases speed, eases communication, enhances transparency and accountability, and reduces costs for litigants and the court.
- 4. Lack of enforcement of environmental legislation:** The lack of enforcement of environmental legislation due to the lack of financial and human resources also poses a grave challenge to Green Tribunals in many countries. Furthermore, many developing nations have inadequate environmental legislation to guide enforcement efforts. The lack of enforcement also reduces public trust and interest in environmental litigation. Thus, weak operationalization and enforcement of environmental laws do affect their functioning and should be considered.

Conclusion

The rise of Green Tribunals globally marks a significant shift towards environmental justice, emphasizing sustainability and innovative solutions. These specialized courts, equipped with judges versed in environmental law, enhance legal clarity and transparency. They offer a more effective approach to sustainable development, equity and climate change compared to conventional courts. Green Tribunals' independence, expertise and jurisdiction contribute to robust environmental jurisprudence, particularly in remote regions where digital platforms bridge access gaps.

Today, environmental and human rights movements unite globally, challenging harmful policies and advocating for sustainable alternatives. Strengthening access to environmental justice demands enhanced legal mechanisms that uphold rights to information, participation and fairness. As environmental injustices persist worldwide, empowering judicial bodies to amplify civil society's environmental protection efforts is crucial. This international movement intersects with broader issues like development, corporate accountability, poverty alleviation, indigenous rights and feminism, shaping future environmental justice advocacy globally.

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