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# JUDICIAL ACTIVISM IN ENVIRONMENTAL PUBLIC INTEREST LITIGATION: JUDICIARY AS A GUARDIAN OF ENVIRONMENTAL GOVERNANCE IN INDIA

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## ABSTRACT

This research paper performs a broad doctrinal and empirical analysis on how the Indian High Courts and Supreme Court have conducted environmental Public Interest Litigations (PIL's) by taking into account their judgements that demonstrate how Indian courts have broadly interpreted India's constitutional framework concerning the environment using Articles 21<sup>1</sup>, 48A<sup>2</sup> and 51A(g)<sup>3</sup> to broadly interpret an individual's right to a clean, healthy and pollution-free environment.

The Judgments analysed demonstrate this trend towards a broad interpretation of an individual's right to a clean, healthy and pollution-free environment as evidenced through landmark decisions made by the Indian courts over the last 40 years on environmental issues, including the development of the Absolute Liability Principle, Precautionary Principle, Polluter Pays Principle, Public Trust Doctrine and Sustainable Development. The key focus of the research determines if these substantive theories of environmental law established through litigation have actually made a difference in the practical day-to-day governance of the environment in India.

The methodological approach to this research paper involved using an empirical-doctrinal methodology whereby various primary sources of information have been used for this empirical component. Specifically, primary sources such as constitutional sections, statutes, case law and orders of tribunals have been used to support the theories from the secondary sources which include peer-reviewed journals, legal commentaries and policy documents. The purpose of this analysis is to explain tensions created by judicial activism (i.e., the tension between the rights-protective role of the courts and the separation of powers of the constitution) and then the institutional framework created by the courts to affirmatively ensure

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<sup>1</sup> Constitution of India, art. 21.

<sup>2</sup> Constitution of India, art. 48A.

<sup>3</sup> Constitution of India, art. 51A(g).

compliance with their environmental directives. Finally, then analysing the role played by the National Green Tribunal (NGT) in providing procedural and substantive relief for environmental litigants through their decision-making process which should alleviate the issues created through judicial activism through establishing an established system of accountability within the NGT.

**Keywords:** Judicial Activism, Public Interest Litigation, Environmental Governance, Supreme Court of India, Absolute Liability, Precautionary Principle, Polluter Pays Principle, Public Trust Doctrine, National Green Tribunal, Article 21, Sustainable Development.

## I. INTRODUCTION

Law and the environment has witnessed a seismic shift over the last 50 years. The rise of climate change, industrial pollution, deforestation and the depletion of fresh water resources has also led to a heightened need for enforceable environmental rights. In the Indian subcontinent, home to more than 1.4 billion people and beset by environmental challenges, this has been met - often decisively - not by law-making or executive policy, but by judicial action through the means of Public Interest Litigation (PIL).

The emergence of environmental PIL in India cannot be separated from the general rise of PIL in the late 1970s and early 1980s, pioneered by the Supreme Court of India under the leadership of Justice P.N. Bhagwati and Justice V.R. Krishna Iyer. These judges radically liberalised the classical doctrine of locus standi - that only a person affected by an injustice may sue - to allow the doors of constitutional courts to be flung open to socially engaged litigants, legal aid societies and even courtinitiated litigation. This democratisation of procedure provided the institutional infrastructure for what is now popularly called judicial activism in the environment.<sup>4</sup>

Two constitutional provisions provide the constitutional basis for this activism. Article 48A, introduced by the 42nd Constitutional Amendment in 1976, contains a directive to the State to protect and improve the environment. Article 51A(g) imposes on all individuals a fundamental duty to protect and improve the environment. Although these provisions are not directly enforceable as fundamental rights, they have been interpreted by the courts along with Article

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<sup>4</sup> S.P. Sathe, *Judicial Activism in India* (OUP 2002).

21 (right to life) to extract a judicially enforceable fundamental right to a healthy environment. This reading is a staple of environmental judicial activism in India.<sup>5</sup>

This paper is in six sections. Part II is a historical overview of environmental PIL. Part III conducts a doctrinal study of the key Supreme Court environmental principles. Part IV provides an empirical assessment of landmark cases and compliance with court orders. Part V engages in a constitutional critique of environmental judicial activism. Part VI examines the National Green Tribunal and presents policy suggestions.

## **II. A BRIEF HISTORY OF ENVIRONMENTAL PIL IN INDIA**

### **2.1 The Foundational Phase (1980–1991)**

The recent history of environmental PIL in India starts with the Supreme Court's acceptance of petitions being brought by individuals or organisations acting on behalf of communities or the environment. The first time the Supreme Court directly intervened to regulate environmentally harmful industrial operations, closing down limestone quarries in the ecologically fragile Mussoorie hills, was in the case of *Rural Litigation and Entitlement Kendra v. State of U.P.*<sup>6</sup>. (AIR 1985 SC 652) - also known as the Dehradun Valley Quarrying case. The ruling showed the court's readiness to prioritise environmental interests over short-term economic considerations, making it a landmark decision.

Likewise, the *M.C. Mehta*<sup>7</sup> cases that started in the mid-1980s were equally landmark. In *M.C. Mehta v. Union of India* (AIR 1987 SC 1086) - the Shriram Gas Leak case - the Supreme Court, apart from extending the liability of Shriram Foods and Fertiliser Industries for the oleum gas leak, more importantly formulated the doctrine of Absolute Liability in environmental law. The Court, per Justice P.N. Bhagwati, said an enterprise engaged in a hazardous or inherently dangerous activity owes an absolute and non-delegable duty to the community to ensure that no harm is caused by such activity. Unlike the English doctrine of Strict Liability in *Rylands v. Fletcher*,<sup>8</sup> absolute liability is not subject to any exceptions such as act of God, fault of a third party or consent of the plaintiff.

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<sup>5</sup> M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018).

<sup>6</sup> *Rural Litigation and Entitlement Kendra v State of U.P.*, AIR 1985 SC 652.

<sup>7</sup> *M.C. Mehta v Union of India (Shriram Gas Leak)*, AIR 1987 SC 1086

<sup>8</sup> *Rylands v Fletcher* (1868) LR 3 HL 330.

The Ganga Pollution cases (M.C. Mehta v. Union of India, AIR 1988 SC 1115) applied this judicial activism to water pollution, with the Supreme Court issuing wide-ranging directions to tanneries and cities to establish pollution treatment plants, and to comply with water quality standards - directions that ushered in the regulatory idea of time-bound compliance under court monitoring.

## **2.2 Doctrinal Consolidation (1991-2010)**

The 1990s saw the development of a robust body of environmental law. In *Subhash Kumar v. State of Bihar*<sup>9</sup> (AIR 1991 SC 420), the Supreme Court expressly recognised that the right to life under Article 21 encompasses the right to the use of pollution-free water and air. This pronouncement laid the constitutional foundation for viewing environmental pollution as a deprivation of fundamental rights, and thus gave rise to a constitutional cause of action for affected citizens and litigants.

The case of *Vellore Citizens Welfare Forum v. Union of India*<sup>10</sup> (AIR 1996 SC 2715) marked a pivotal moment in the adoption of principles of international environmental law by Indian courts. The Supreme Court, in the judgment of Justice Kuldip Singh, acknowledged the adoption of the Precautionary Principle (requiring preventive measures in situations where scientific certainty is lacking) and the Polluter Pays Principle (requiring the cost of environmental damage to be borne by the polluting enterprise) as part of environmental jurisprudence in India. The Court found these principles, formulated in the Rio Declaration on Environment and Development<sup>11</sup> (1992), consistent with Articles 21, 47, 48A and 51A(g) of the Constitution.

The *Indian Council for Enviro-Legal Action v. Union of India*<sup>12</sup> (AIR 1996 SC 1446) - popularly known as the Bichhri Village case - further consolidated the Polluter Pays Principle, where the Court mandated chemical industries, responsible for gross soil and ground water pollution, to take measures to recover the environmental cost. This marked a shift in the Court's approach from declaratory to remedial environmental rights in relation to private industry.

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<sup>9</sup> *Subhash Kumar v State of Bihar*, AIR 1991 SC 420.

<sup>10</sup> *Vellore Citizens Welfare Forum v Union of India*, AIR 1996 SC 2715.

<sup>11</sup> Rio Declaration on Environment and Development (1992).

<sup>12</sup> *Indian Council for Enviro-Legal Action v Union of India*, AIR 1996 SC 1446.

### **2.3 The Consolidation of the Institution (2010-Onwards)**

The passage of the National Green Tribunal Act, 2010, was a legislative (and/or judicial activist) response to the increasing complexities of environmental law. As a specialised quasi-judicial body with judicial and expert members, the NGT<sup>13</sup> was established to offer timely and efficient adjudication of environmental disputes. The NGT, in its short existence, has decided thousands of disputes over air and water pollution, forest clearances, solid waste management, and coastal zone management.

But the relationship between the NGT and the superior courts has been less than smooth. Concerns have emerged about the overlap of jurisdiction, the applicability of the NGT Act to cases before High Courts, and the weight to be given to the NGT's specialisation on questions of constitutional law. The Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India case by the Supreme Court has resolved some of these conflicts, but considerable jurisprudential uncertainty remains.

## **III. A. MAJOR DOCTRINES OF ENVIRONMENTAL JURISPRUDENCE**

### **3.1 The Absolute Liability Principle**

The doctrine of Absolute Liability, as formulated in the Shriram Gas Leak case (AIR 1987 SC 1086), is one of the most important developments in Indian environmental jurisprudence. The principle states that if an enterprise is engaged in a hazardous or inherently dangerous activity and there is an accident which causes injury to people, then the enterprise is absolutely, non-delegably liable to compensate all the victims - without any exceptions. The Court convincingly dismissed the exit option of the exceptions available under Strict Liability and grounded the doctrine in the social responsibility of modern enterprise and the inadequacy of tort law in responding to large-scale industrial disasters.<sup>14</sup>

The principle was invented in response to the global disgrace of the Bhopal Gas Disaster of 1984, which brought to light the inadequacy of liability regimes in offering timely and effective compensation to thousands of victims. The doctrine of Absolute Liability eliminated exceptions and created incentives for industries to adopt and invest in preventive safety

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<sup>13</sup> National Green Tribunal Act, 2010.

<sup>14</sup> Bhopal Gas Peedith Mahila Udyog Sangathan v Union of India, (2012) 8 SCC 326.

measures and pollution prevention technologies.

### **3.2 The Precautionary Principle**

The Precautionary Principle, officially embraced in *Vellore Citizens Welfare Forum* (AIR 1996 SC 2715) and elaborated in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*<sup>15</sup> (AIR 1999 SC 812), requires that when the environmental impacts of an activity are uncertain, the State and private parties should take precautionary measures to prevent environmental harm, rather than wait for certain scientific proof of environmental damage. This principle shifts the onus of proof to the developer or polluter to prove that the activity proposed will not cause harm to the environment.

This is a major departure from the traditional common law method of dealing with environmental liability, which demanded showing of actual harm in order to invoke legal action. The Precautionary Principle effectively shifts the burden of proof and allows courts to grant prospective injunctions and regulatory mandates, even before the actualisation of environmental damage - making it a powerful instrument of prospective environmental regulation.

### **3.3 The Polluter Pays Principle**

The Polluter Pays Principle, also adopted in *Vellore Citizens Welfare Forum* and applied in many cases thereafter, is both a liability rule and economic instrument. As a liability rule, it mandates that the costs of environmental pollution, such as the cost of fixing the pollution, compensating the impacted populations, and restoring the natural resource, be borne by the polluter, instead of being socialised. As an economic tool, it provides incentives for environmentally sustainable behaviour by pricing out pollution.

This principle has been widely applied by Indian courts, not only to private corporations, but also to government corporations and, in some cases, to municipal corporations for poor solid waste or sewage management. The most extensive application of this principle can be found in the *Bichhri Village* case where the Court ordered the offending companies to pay for the entire cost of restoration works for the polluted soil and groundwater.<sup>16</sup>

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<sup>15</sup> *A.P. Pollution Control Board v Prof. M.V. Nayudu*, AIR 1999 SC 812.

<sup>16</sup> *Id.*

### **3.4 The Public Trust Doctrine**

The Public Trust Doctrine, imported from American public law into Indian environmental jurisprudence, holds that some natural resources (navigable waters, seashores, forests and the atmosphere) are held in public trust by the State for the use and enjoyment of all its citizens, and may not be used for private profit or in a manner that destroys them. In *M.C. Mehta v. Kamal Nath*<sup>17</sup> ((1997) 1 SCC 388), the Supreme Court applied this doctrine to invalidate an order for regularisation which allowed a private resort to encroach on a riparian forest and divert the course of the Beas river in Himachal Pradesh. It noted that the trustee-State cannot divest itself by transferring trust property to private parties for their commercial use.

This doctrine has played a crucial role in the context of coastal zone regulation, riverfront development and environmental clearances for projects in environmentally sensitive zones. It offers a moral compass to the courts to evaluate the administrative decision-making process that favours private and commercial interests over the environmental public good.

### **3.5 Principle of Sustainable Development**

Sustainable Development - development that meets the needs of the present without compromising the ability of future generations to meet their own needs - as defined in the Brundtland Commission Report in 1987, has been recognised by the Supreme Court as an overarching principle that decides how development and environmental protection are to be achieved. In *Narmada Bachao Andolan v. Union of India*<sup>18</sup> ((2000) 10 SCC 664), the Court recognised sustainable development as a constitutional obligation and must inform both judicial scrutiny of development projects and the decision-making process of the Executive.

However, how sustainable development was applied in the Narmada case has been the subject of much scholarly criticism, as the Court upheld the Sardar Sarovar Project, despite considerable evidence of tribal displacement and environmental degradation, citing development concerns to outweigh environmental rights.<sup>19</sup> This example highlights the dilemma associated with applying the principle of sustainable development - the balance between current developmental requirements and future environmental sustainability.

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<sup>17</sup> *M.C. Mehta v Kamal Nath*, (1997) 1 SCC 388.

<sup>18</sup> *Narmada Bachao Andolan v Union of India*, (2000) 10 SCC 664.

<sup>19</sup> World Commission on Environment and Development, *Our Common Future* (1987).

## **IV. EMPIRICAL STUDY: JUDICIAL DIRECTIONS AND THEIR ENFORCEMENT**

### **4.1 The Taj Trapezium Case**

One of the best documented examples of judicial environmental governance can be found in the Taj Trapezium Case (*M.C. Mehta v. Union of India*, AIR 1997 SC 734). The Supreme Court was concerned about the rapid decay of UNESCO World Heritage Site Taj Mahal as a result of the emission of sulphur dioxide from foundries and other industries in the Agra region, and issued a series of directions for industries located within the Taj Trapezium Zone (TTZ), a 10,400 square kilometre area around the monument, to be relocated or converted to natural gas.<sup>20</sup>

These directions were implemented over a drawn-out period. Ultimately, many industries were relocated and converted, but this process involved ongoing judicial supervision for several years. This case highlights both the potential of judicial directions to achieve important environmental outcomes as well as the serious problems of enforcement via judicial supervision in the absence of an effective administrative machinery.

### **4.2 Delhi's Vehicular Pollution**

The vehicular pollution cases (*M.C. Mehta v. Union of India*, (1998) 8 SCC 648) saw some of the most dramatic judicial initiatives in urban environmental management. In response to evidence of harmful levels of particulate pollution and vehicle emissions in Delhi, the Supreme Court directed a conversion to Compressed Natural Gas (CNG) for all the public transport buses in Delhi. The decision, which was highly controversial at the time, was executed in the early 2000s and is credited by air quality experts for having played a role in improving air quality in the city, at least in the early years following implementation.

The CNG mandate is often lauded as an example of judicial environmental activism - a case where the court made a positive contribution to improving environmental quality, after years of executive inaction. But as critics have argued, the gain was largely offset in the years that followed by the rapid increase in private vehicle ownership, highlighting the need for systemic interventions by the judicial system in solving environmental problems.<sup>21</sup>

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<sup>20</sup> *M.C. Mehta v Union of India*, AIR 1997 SC 734.

<sup>21</sup> *M.C. Mehta v Union of India*, (1998) 8 SCC 648.

### **4.3 The Ganga Pollution Cases**

The Ganga cases, begun in 1985, constitute the longest exercise of judicial environmental oversight in Indian jurisprudence. Over the past three decades, the Supreme Court has issued hundreds of directions to state governments, city governments and polluters along the Ganga basin, to set up sewage treatment plants, shut down non-compliant industries, and to prepare action plans for cleaning the river.<sup>22</sup>

Despite these continuous judicial directives, the Ganga is still severely polluted by most indices. The history of implementation of the Ganga cases exemplifies one of the most basic problems with judicial environmental governance: the power of courts to command is greater than the power of governments to comply. Bureaucratic apathy, lack of resources and the sheer magnitude of the problem have continually undermined judicial directions, leading to the question: is the answer to weak legislative and executive environmental governance simply to issue continuous mandamus?

### **4.4 Forest Regulation: The Godavarman Case**

The Godavarman case <sup>23</sup>(T.N. Godavarman Thirumulkpad v. Union of India, (1997) 2 SCC 267) made the Supreme Court the de facto highest forest regulator in India for more than 20 years. The Court's broad definition of 'forest' (which it interpreted to include any land qualifying for the definition of forest as defined in the dictionary notwithstanding the classification on the ground), and the creation of a fact-finding and monitoring Central Empowered Committee (CEC) marked the first time the Court had exercised its supervisory powers over environmental matters.

The Godavarman case has been hailed for averting forest destruction on a grand scale, and curbing the transfer of forestland for non-forest use without proper assessment. It has been criticised for the administrative chaos it has created, the delay of bonafide development projects such as rural infrastructure and tribal livelihoods, and the Court's adoption of a technical regulatory function which it may be ill-adapted to play.

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<sup>22</sup> M.C. Mehta v Union of India, AIR 1988 SC 1115.

<sup>23</sup> T.N. Godavarman Thirumulkpad v Union of India, (1997) 2 SCC 267.

## V. CONSTITUTIONAL JUSTIFICATION AND CRITIQUE

### 5.1 The Separation of Powers Critique

The most enduring constitutional objection to the phenomenon of judicial activism in environmental protection relates to the doctrine of separation of powers. While the Indian Constitution does not require a strict separation of powers (it acknowledges that there should be checks and balances), it does provide for different institutional functions to be assigned to the legislature, executive and judiciary. Environmental governance, which includes technical decisionmaking, allocation of resources, and decisions about policy compromises, is traditionally considered to be the sphere of the executive and legislature.<sup>24</sup>

Some scholars argue that when the courts issue detailed instructions on the siting of industries, the fuel efficiency of automobiles, the management of rivers, or the harvesting of forests, they are acting as the executive and the legislature, and thereby usurp the function of the political branches. Authors such as Lavanya Rajamani and M.P. Jain have suggested that while the judiciary can be justified in intervening to correct a glaring executive failure, it should not replace the exercise of political discretion in the administration of environmental affairs.

In response, proponents of judicial activism argue that in a constitutional democracy the judiciary not only has the right, but also the obligation, to intervene when the failure of political institutions results in the systematic trampling of core rights, including the judicially-invented right to a clean environment. They cite the doctrine of constitutional courts as counter-majoritarian institutions whose role is to protect individual and community rights from the ravages of majoritarian politics and the hegemony of private economic interests.

### 5.2 Implementation Deficits

An empirical assessment of the implementation of environmental PIL directions shows a significant gap between court orders and environmental outcomes. Analyses of the compliance with orders on the Ganga pollution cases, directions on hazardous waste management (*Research Foundation for Science v. Union of India*,<sup>25</sup> (2005) 13 SCC 186) and coastal zone

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<sup>24</sup> Lavanya Rajamani, 'The Right to Environmental Protection in India' (2007) 16 RECIEL 274.

<sup>25</sup> *Research Foundation for Science v Union of India*, (2005) 13 SCC 186.

management show that government authorities have only partially and selectively complied with the orders.

This implementation gap has a number of sources. First, the capacity of the Indian environmental regulatory state is limited - state pollution control boards are poorly staffed and funded and, in some cases, politically compromised. Second, judicial orders are often couched in aspirational and abstract language that cannot be easily translated into specific compliance measures. Third, the adversarial nature of litigation encourages the compliance strategy of government respondents to meet the minimum criteria of compliance demanded by the court orders in each round of litigation, rather than transforming the administrative practices underpinning the environmental problem in the first place.

### **5.3 Selectivity and Access**

Environmental governance through PIL is also open to the charge of selectivity: not all environmental problems attract PIL litigation, and those that do are often a function of the interests, resources, and priorities of organised civil society groups and advocacy lawyers rather than as a response to the gravity and urgency of the environmental problem. Environmental PILs have tended to focus on visible, high-profile environmental harms in urban or peri-urban areas, while rural and tribal environmental issues - often involving dispossession, deforestation, and water scarcity - have attracted less judicial attention.<sup>26</sup>

Further, the growth of PIL has given rise to the emergence of what some analysts call the "PIL industry" - where the PIL mechanism is used not to protect the environment but for instrumental, private, and political purposes - which results in the overstretching of the scarce judicial resources and the loss of institutional legitimacy of PIL as a mechanism of environmental governance.

## **VI. The NGT as Institutional Response**

### **6.1 Institutional Response in the NGT**

The National Green Tribunal Act, 2010, is the key institutional innovation to address the problems of environmental adjudication in India. The NGT was set up as a specialized forum

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<sup>26</sup> M.P. Jain (n 5).

to hear all civil cases involving substantial questions of law or fact with respect to the environment, such as the enforcement of environmental law and the award of compensation for environmental damage, and was intended to offer a forum for the integration of legal and technical expertise in its composition of judges and experts.

In the few years since it was established, the NGT has handled a large number of environmental cases much more quickly than the general civil courts have, and has generated a significant body of environmental case law. The Tribunal has dealt with topics as diverse as sand mining, coal ash disposal, pollution in river systems and deforestation. Its directions in the solid waste management in Class I cities and the regulation of construction around wetlands in particular have been significant.

## 6.2 Competition with High Courts

Another source of tension has been the relationship between the NGT and High Courts. Section 29 of the NGT Act prohibits the entertainment of applications or appeals before civil courts in respect of matters that are before the NGT. This has given rise to intricate jurisdictional issues, with High Courts adopting different approaches as to whether the NGT should be given transfer of pending environmental cases from the High Courts, or whether NGT's jurisdiction is exclusive.

The Supreme Court has attempted to resolve these jurisdictional issues in various judgements, such as *L. Chandra Kumar v. Union of India*<sup>27</sup>, but a settled jurisdictional framework is still evolving. The presence of two active environmental adjudicators - the superior courts that have jurisdiction to adjudicate PILs and the NGT that has jurisdiction under the Act - poses the potential for inconsistent orders, inefficient procedures and jurisdictional uncertainty, which may adversely affect the quality of environmental governance.

## 6.3 Policy Recommendations

Based on the doctrinal and empirical analysis in this paper, the following recommendations are made to improve environmental governance in India:<sup>28</sup>

- **Legislative consolidation:** The Parliament should pass an Environmental Code that

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<sup>27</sup> *L. Chandra Kumar v Union of India*, (1997) 3 SCC 261.

<sup>28</sup> Shibani Ghosh, 'From Activism to Adjudication' (2019) 31 JEL 483.

consolidates the existing multiplicity of sectoral environmental laws - the Water (Prevention and Control of Pollution) Act, the Air (Prevention and Control of Pollution) Act, the Environment (Protection) Act, and the Forest (Conservation) Act - into a single piece of legislation with clear rights, duties, standards, and penalties.

- **Institutional capacity building:** The resources, autonomy and professionalism of state pollution control boards and the Central Pollution Control Board need to be significantly boosted with increased funding, professional staff, autonomy and freedom from political interference.
- **NGT jurisdiction:** A constitutional amendment or detailed Supreme Court guidelines should conclusively clarify the jurisdictional scope of the NGT vis-à-vis High Courts, to avoid forum shopping and ensure uniformity in the application of environmental law.
- **Compliance monitoring:** Independent environmental compliance monitoring agencies, with statutory backing and investigation powers, should be set up to monitor the implementation of both NGT and High Court/Supreme Court directions in environmental cases.
- **Access to environmental justice:** Environmental legal aid services for tribal, rural and otherwise disadvantaged communities should be established and a pro bono environmental practice should be encouraged among lawyers.
- **Judicial training:** Mandatory training in environmental science, ecological economics and international environmental law should be included in the training and capacity building of the Indian judicial service.<sup>29</sup>

## VII. CONCLUSION

Environmental PIL is one of the most significant and controversial aspects of Indian constitutionalism in the last 40 years. The Supreme Court's expansion of locus standi, its innovative interpretation of Article 21 to include environmental rights, and its formulation of key doctrines - Absolute Liability, Precautionary Principle, Polluter Pays, and Public Trust - have profoundly shaped the landscape of Indian environmental law that would not have

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<sup>29</sup> Armin Rosencranz & Shyam Divan, *Environmental Law and Policy in India* (3rd edn, OUP 2021).

emerged as rapidly without legislative intervention.

On the other hand, the empirical evidence of environmental PIL suggests a disconnect between judicial ambition and real-world environmental outcomes. The execution of court orders has been patchy, the constitutional propriety of ongoing judicial environmental governance is uncertain, and the competence of courts as regulators is evident. The challenge for Indian environmental law and governance in the decades ahead is to institutionalise the benefits of judicial activism - through the improvement of legislative settings, the capacity of regulatory agencies and the transparency of enforcement - so that the protection of the environment becomes an integral part of governance and not a product of intermittent judicial activism.

The creation of the National Green Tribunal is a good start, but it can only deliver its full promise through resolution of jurisdictional ambiguities, augmentation of its technical expertise and the development of a clearer relationship with the higher judiciary. In the end, the role of the judiciary in environmental governance must be seen as a catalytic and corrective one - important in situations of institutional failure, but ultimately a step towards a moment of governance in which the legislative and executive branches are sufficiently advanced to obviate the need for continuing judicial oversight.<sup>30</sup>

Environmental challenges in India - from climate adaptation to urban air pollution, from groundwater depletion to biodiversity conservation - are of such a scale and complexity that they can only be met through the concerted action of all branches of the State, civil society and private enterprise. Judicial activism, despite its successes, can be an ally, but never a replacement, for the political and administrative efforts that are essential for sound environmental governance.

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<sup>30</sup> P. Leelakrishnan, *Environmental Law in India* (4th edn, LexisNexis 2016).

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