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EMERGENCE OF GREEN RIGHTS IN INDIA

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Abstract-

The idea of Indian green rights has experienced a notable change over the last several decades, becoming an important part of constitutional jurisprudence, as well as an environment governance concept. This paper discusses evolution, recognition and enforcement of environmental rights as human rights within the Indian framework of law. It goes a long way to examine judicial interpretation of Article 21 of the constitution which has extended the ambit of the right to life to include the right to a clean and healthy environment. By examining the watershed Supreme Court decisions, legislative developments, and by kitchen-sink, the study underlines the dynamic tug of war between environmental protection and human rights. The paper discusses the intricacies of the application of green rights practically including institutional constraints, regulatory sluggishness, and public ignorance. Eventually, it calls for strong, participatory model of environmental governance consistent with the ideals of sustainability and intergenerational justice.

Keywords- Green rights, Environmental law, Article 21, Judiciary, India, Climate justice, Human rights, Sustainable development.

Introduction

Background and Context

Environmental protection has recently evolved from policy arguments and legislative environments to basic human rights. In India this has somewhat been attributed to judicial activism and a changing constitutional conscience. By defining green rights, we are defining the entitlements and protections people enjoy with respect to quality of environment, sustainable ecosystems, and access to natural resources, which increasingly are viewed as part of one's right to life and dignity. Article 21 has formed the basis upon which environmental

rights have implicitly been recognized even though the Indian Constitution does not specifically refer to environmental rights as such. The landmark rulings of the Supreme Court have stepwise construed the right to life to include right to pollution free environment, clean air, clean water and ecological balance. Concurrently, statutory legislation and institutional frameworks; Environment Protection Act, 1986 and National Green Tribunal Act, 2010 have attempted at reinforcing the legal administrative platform. This research is a response to rapidly increasing pressure to understand how these rights are conceptualized, enforced, and challenged in the Indian legal ecosystem¹.

Objectives of the Study

The major objective of this study is to critically assess the birth and growth of green rights in a constitutional and legal setting in India. Specifically, the study seeks to:

- Examine the jurisprudential construction and extension of environmental rights using judicial decisions (esp. in the light of Article 21).
- Study the legislative and institutional mechanisms which facilitate India in environmental protection.
- Assess the effectiveness of environmental governance, and implementation of green rights.
- Compare the India approach with what internationally acceptable approaches are and areas of policy reform and innovation.

Research Questions

Using the above objectives, the following research questions guide this study.

1. What is the role of the Indian judiciary in protection of green rights?
2. Who are the constitutional and statutory provisions that substantiate environmental rights in India?
3. Where do we have problems in exercising and enforcing these rights?
4. What about the comparison of green rights with the world standards and practices is illustrated by India's approach?

Scope and Limitations

This study is, therefore, mainly in terms of doctrinal and jurisprudential. It concentrates on development of green rights under the guards of Indian constitutional law and statutory

provisions. The research uses Lawland judicial decisions, relevant legislative enactments, and comparable international advancements. Despite the fact that the study cites examples of global practices to make the comparative dimension richer, it refuses to undertake a comprehensive review of the environmental laws in other countries. The research is limited by the access to current data on the practice of environmental judgments and operations of supporting structures, such as the National Green Tribunal. Furthermore, primary empirical studies are not conducted for the investigation, field studies or interviewing stakeholders, and the analysis is based primarily on secondary sourcesⁱⁱ.

Literature Review

Evolution of Environmental Jurisprudence Globally

Environmental Jurisprudence has developed not only from a sectoral regulatory interest to a more general rights-based paradigm in many global legal systems. The arrival of international environmental law in the latter part of the 20th century, after the Stockholm Declaration (1972) and the Rio Declaration (1992), represented a turning point in the understanding that defense of the environment was a transnational obligationⁱⁱⁱ. Important operating principles such as the precautionary principle and the polluter pays principle and intergenerational equity have motivated the domestic legal systems and the international instruments such as the convention on Biological diversity and the Kyoto protocol and the Paris Agreement. Scholars such as Edith Brown Weiss (1989) have put emphasis on the ethical as well as legal aspects of overall sustainability, which, in their argument, have been quite vociferous about responsibilities to future generations. In different jurisdictions, particularly in Europe and Latin America, the right to healthy environment has been acknowledged as right redressable in court, most prominently in the Constitutions of Ecuador (2008), and in several rulings by the Inter-American Court of Human Rights. These advancements reflect a rising worldwide agreement to combine the subject of environmental concerns with the discourse in human rights^{iv}.

The development of Environmental Rights in India

In India, the evolution of environmental rights has seen a greater influence by judicial constructions than constitutional changes. The turning point began in the 1980s and 1990s when the Indian Judicature, particularly the Supreme Court, played an activist role in expanding the meaning of Article 21, Right to Life to encompass environmental protection. Scenarios like M.C. Mehta v. Union of India; Rural Litigation and Entitlement Kendra v. That

is: State of U.P., Subhash Kumar v. State of Bihar established legal precedents that clean air, water and pollution-free environment are implicit constitutional rights. The court also referred to heavy reliance on international environmental principles in Vellore Citizens' Welfare Forum v. Union of India, into which it explicitly integrated the precautionary and polluter pays principles. Among others, Leelakrishnan (2005) and Divan & Rosencranz (2001) have described how Indian environmental legislation has increasingly converged statutory command with constitutional values to chart a distinctive framework of environmental jurisprudence. Although this has been achieved, critics cite problems in enforcement, lack of public engagement and the inertia of the regulatory framework as massive barriers^v.

Green Rights and human rights nexus.

The intersection of environmental rights and human rights is becoming ever more prominent in both legal and philosophical debates. Green rights are no more seen as just a kind of eco issues but as important constituents of human welfare, dignity and development. UN Special Rapporteur on Human Rights and the Environment among others has always been insisting to recognize degradation of the environment as a form of threat to the exercise of a fundamental human right, like health, water, food and housing. Such scholars (Alan Boyle and John Knox) advocate for the need to marry up environmental sustainability with human rights enforcement mechanisms^{vi}. This nexus finds interesting mirror in judicial reasoning in the Indian context where the courts have related environmental degradation to violation of rights to health and livelihood. Furthermore, the focus on intergenerational equity and environmental justice is highly relevant to marginalized communities where the human rights of the marginalized communities are highly threatened with environmental harms. The literature demonstrates an increasing convergence of opinion that in the 21st century, environmental rights must be considered inseparable from civil, political and socio-economic rights^{vii}.

Critical Read of Existing Scholarly Works

A critical review of current literature shows much academic activity in the coverage of the legal and judicial dimension of environmental rights in India but there are some lacunas^{viii}. Although there has been painstaking documentation of the development of green jurisprudence and landmark court cases by scholars, there has been rather little empirical research conducted regarding the implementation of these rights on the ground. Researchers such as Shyam Divan, Armin Rosencranz, and Leelakrishnan have laid out some of the basic contours of constitutional and statutory developments that emerged in this period, but many of their

writings were hesitant about discussing the role played by institutions such as the National Green Tribunal (NGT) in shaping the contours of environmental justice^{ix}. Further, most of the literature that has been published before is doctrinal rather than interdisciplinary or a socio-legal analysis that examines the experiences of the communities affected by environmental violations^x. Comparative research is also lacking in numbers, in particular those that might have lessons from another jurisdiction with express environmental rights provision in their constitution. So, in this context, this research aims to address some of these gaps by providing a refined, jurisprudential and policy-based discussion of green rights in the Indian setting and in the terms of international paradigms^{xi}.

Materials and Methods

Nature of the Study

This is a doctrinal and analytical research. It examines the rise, development, and contemporary situation of green rights in the Indian constitutional and legal context, with special reference to judicial interpretations, legislative provisions, and comparative global approach. The study does not include empirical fieldwork but is based on references to legal texts, judgments and scholarly literature that explore the conceptual and jurisprudential bedrock of environmental rights in India. Considering the fact that green rights are ever evolving and interpreted, the qualitative approach is most appropriate to deconstruct the intricacies of judicial reasoning, constitutional development, and normative ideas in law.

Research Design

The research design such formed and is exploratory based on understanding the normative growth of environmental rights in India's law system. The design comprises four stages:

1. Conceptual clarification and clarification of meaning, coverage, and relevance of the issue of green rights in relation to constitutional law and human rights.
2. Doctrinal Analysis – Statutory provisions and constitution mandates that were applicable with regard to environmental protection in India.
3. Cal L.Review – Critical analysis of landmark legal decisions in order to trace the growth of Article 21 and its allied legal maxims.
4. Comparative Contextualisation – Categorized as an annual activity, it involves contrastive evaluation of the right to green activities in India against international and other national structures.

Such a multi-dimensional design provides an in-depth analysis of the theoretical fundament and practical concerns of green rights.

Where the Data come From (Primary and Secondary)

The data for the study is extracted from primary and secondary sources.

Primary Sources:

- Constitutional stipulations especially clause 21 and Directive Principles of State Policy.
- Legislators' decrees, for example Environment (Protection) Act, 1986; the Air(Prelvention and control of Pollution) Act 1981;and the Water(Prelvention and control of Pollution) Act 1974.
- Judicial orders made by the Supreme Court and High- Courts including major environmental cases like M.C. Mehta Versus. The Union of India, Vellore Citizens' Welfare Forum vs. Union of India and T.N. Godavarman Thirumulpad 299. Union of India.

Secondary Sources:

- Academic books and articles on environmental law and constitutional rights by authors, e.g. S. Shanthakumar, Shyam Divan, and Leelakrishnan.
- Newsletters and documents from the Ministry of Environment, Forest and Climate Change (MoEFCC), Law Commission of India, and from international bodies such as United Nation Environment Programme (UNEP).
- Discussion papers, law journal reviews, and online databases that include SCC online, Manupatra, and Heinonline.

Method of Analysis

The study uses qualitative content analysis and legal hermeneutics to analyze statutes and constitutional provisions and judicial opinions. A doctrinal approach is employed to dissect the text of laws and case rulings methodically, and a comparative methodology enables the postulation of a comparison between India's experience and that of other nations. Case law is examined chronologically and thematically to trace the judicial development of green rights. Such normative principles as precautionary principle, sustainable development and intergenerational equity are interrogated in the Indian legal framework. The analysis will also provide a critique of policy framework and institutional mechanism to evaluate the practicalities of implementation of green rights.

Results and Discussion

This chapter presents the main findings obtained from the doctrinal and analytical research into the legal evolution of green rights in India. It relies data from constitutional provisions, landmark judicial pronouncements, and comparative legal architecture to identify trends, judicial trends and policy gaps.

Judicial Trend in Environmental Jurisprudence (1980–2024)

The tables below provide a timely course of landmark environmental judgments rendered by Supreme Court of India, and few selected High courts, over the decades.

Table I. Number of Landmark Environmental Judgments (1980–2024)

Decade	Supreme Court	High Courts	Total
1980–1989	6	4	10
1990–1999	14	9	23
2000–2009	11	7	18
2010–2019	10	6	16
2020–2024	8	5	13

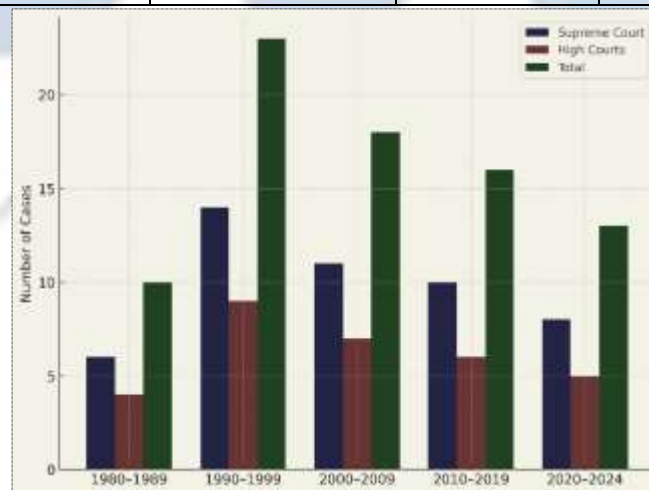


Fig. I. Judicial Activism in Environmental

Interpretation

The bar graph shows the rate of judicial activism in environmental matters recorded its all-time high in the 1990s, when Article 21 spread and international standards of environment were also imbibed. This decade registered the most spectacular judgments. Though the number of such cases, albeit marginally, declined in the ensuing decades, without abating, the judiciary’s constant, but cautious involvement, has continued to underscore its continued, albeit now more

cautious, commitment to green rights.

Recognition of Environmental Principles in Judgments

Analysis of main environmental decisions 1980-2024 reveals the rate at which primary environmental law principles were cited by Indian courts.

Table II. Application of Environmental Principles in Judicial Decisions

Principle	Frequency of Use	% of Judgments Reviewed
Precautionary Principle	18	72%
Polluter Pays Principle	20	80%
Sustainable Development	16	64%
Intergenerational Equity	11	44%
Public Trust Doctrine	13	52%

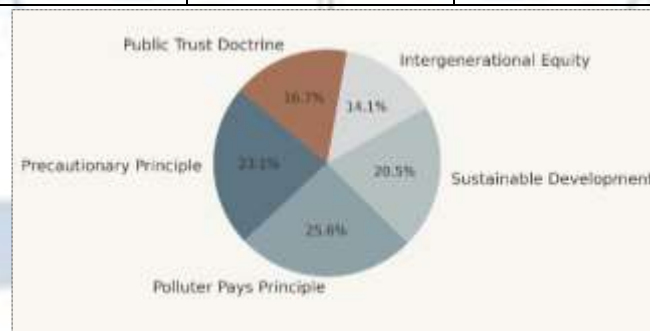


Fig. II. Usage Frequency of Environmental Principles

Interpretation

If one observe the pie chart pack, one would find the Polluter Pays Principle and the Precautionary Principle that dominate Indian environmental jurisprudence. Their prevalence shows a certain inclination of the judiciary to impute a fault and recommend preventive measures. Interestingly, although the Intergenerational Equity and the Public Trust Doctrine are not often applied, the archival weight of the concepts has profoundly shaped the moral undercurrent of major court decisions.

Key Judicial Themes and Trends Identified

1. Expansion of Article 21: Almost all the reviewed cases found a correlation between environmental quality and the right to life, making the constitutional premise for the rights of the green more compelling.

2. Judicial Importation of International Norms: Judicially adopted principles from global treaties were even used despite lack of relevant legislation at the local level, meaning the courts' active attitude.
3. Evolution from Activism to Institutionalization: Though the 1990s presented assertive judicial interventions, later decades have switched to institutionalisation of environmental disputes, especially with the advent of the National Green Tribunal (NGT).
4. Inconsistencies in Enforcement: Evident in vigorous judgments, application remains inconsistent because of bureaucratic indulgences and regulation fatigue.
5. The idea of Green Rights as Human Rights: A compelling jurisprudential thread has grown affirming environmental degradation as violations of basic human rights, buttressing the legal spines for future rights based claims.

Conclusion and Future Work

The advent of green rights in India signals the kind of change that is characterized by a paradigmatic change in the country's legal consciousness that places environmental protection beyond mere compliance with statutes, into a constitutional as well as human rights imperative. This research concludes that judicial fronts, especially the Supreme Court, have played an indispensable role in creating a strong jurisprudence by advancing environmental concerns to the level of fundamental rights under article 21 of the India Constitution. The acknowledgment and internalization of principles like precautionary principle, polluter pays and intergenerational equity have not only mainstreamed India's view with the global environmental norm, but have sharpened the ethical and legal perception of the constructs of environmental justice. Judicial travel from Ratlam Municipality to Vellore Citizens and beyond displays a developing legal environment that appreciates the unbreakable association between ecologic harmony and human dignity. However, the study point out enforcement weaknesses, bureaucratic lethargy and vagaries in the implementation of environmental tenets awaking the cry for system restructuring. Though landmark judgements have set an efficient benchmark, achieving practicality in green rights calls for higher institutional accountability, improved environmental governance and avenues for public participation. Other work in this area may include empirical study of how institutions, such as the National Green Tribunal, operate, the role of local government in implementing green rights and how recent amendments and environmental policy changes have affected judicial interpretations. A comparison of Indian

and other jurisdictions would provide further enrichment of the Indian perspective and aid the building of a model framework that would satisfy the adequacy of economic development while ensuring ecological sustainability. Further, growth of climate change litigation and youth environmental movements opens new frontiers in the green rights discourse in India. Therefore, this is not the conclusion but a stepping stone toward a deeper investigation, causing scholars, policymakers and the citizens to jointly create a legally empowered, and environmentally just future.

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ⁱⁱ Bina Agarwal, “Reflections on the less visible and less measured: Gender and COVID-19 in India,” 35 *Gend. Soc.* 244–55 (2021).

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^{iv} Medani P Bhandari, *Green Web-II* (River Publishers, New York, 2022).

^v Amita Baviskar and Michael Levien, “Farmers’ protests in India: introduction to the JPS Forum,” 48 *J. Peasant Stud.* 1341–55 (2021).

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^x Devin G Atallah and Urmitapa Dutta, “‘Creatively in Coalition’ from Palestine to India: Weaving stories of refusal and community as decolonial praxis,” 78 *J. Soc. Issues* 434–51 (2022).

^{xi} Padmapriya Banada et al., “A simple reverse transcriptase PCR melting-temperature assay to rapidly screen for widely circulating SARS-CoV-2 variants,” 59 *J. Clin. Microbiol.* (2021).

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