



Courts and Climate: How Judicial Interpretation Shapes Environmental Law in India

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Abstract

The role of the judiciary in shaping environmental law has become increasingly significant in the context of India's growing challenges related to climate change. This paper explores how judicial interpretation has influenced the development, implementation, and enforcement of climate-related legislation in India. It examines key rulings by the Supreme Court and various High Courts that have set important precedents for environmental governance, particularly in cases involving air pollution, deforestation, water conservation, and greenhouse gas emissions. Through judicial activism and the invocation of constitutional principles such as the Right to Life (Article 21) and the Public Trust Doctrine, Indian courts have not only upheld existing environmental laws but have also filled legislative gaps, often compelling the government to take stronger action against environmental degradation. This study discusses landmark cases such as the M.C. Mehta series of judgments, the National Green Tribunal (NGT) directives, and the more recent interventions concerning climate policy and clean energy transitions. By analyzing these cases, the paper underscores the evolving role of the judiciary as a catalyst for climate action, highlighting both its successes and the challenges it faces, including the balance between economic development and environmental protection. It concludes with an assessment of how judicial interpretations have shaped climate law in India and the potential future directions for climate-related jurisprudence, emphasizing the need for coherent policy frameworks that align legal, environmental, and developmental goals.

Keywords: Climate Legislation, Environmental Law, Judicial Activism, Judicial Interpretation etc.

1. Introduction

Climate litigation, also referred to as climate change litigation, is an emerging domain of environmental law that employs legal precedents and practices to assist public entities, including governments and corporations, in their endeavors to mitigate climate change. In response to the lethargic political efforts regarding climate change mitigation, engaged people and non-governmental organizations (NGOs) are intensifying their endeavors to leverage national and international legal frameworks to promote the cause. Climate litigation encompasses constitutional law (in instances of Fundamental Rights violations), environmental law (for the protection and improvement of the natural environment), human rights law (in cases of human rights violations resulting from climate change disasters), and administrative law (for assessing the validity of administrative decision-making).¹ Lawsuits pertaining to climate change emphasize environmental concerns rather than the phenomenon of climate change itself. Concerns encompass the conservation of forests, air pollution, and rising

¹ Joseph Orangias, „Towards global public trust doctrines: an analysis of the trans nationalisation of state stewardship duties’ (Taylor & Francis Online 1 December 2021) < <https://www.tandfonline.com/doi/full/10.1080/20414005.2021.2006030> >

sea levels. These cases may not be classified as climate lawsuits and are termed accidental climate litigation. Human rights are crucial in matters concerning environmental and climate laws. The court of India has been proactive in the nation's environmental governance. Significant environmental and socioeconomic issues have been presented to the courts via public interest litigation, which refrains from challenging procedural laws.² Despite the absence of climate legislation, the Indian judiciary has expanded legal rights to encompass environmental concerns arising from climate change and has invoked international laws to tackle these matters.³

2. Separation of Power in the Indian Constitution and Climate Change

The implementation of environmental legislation to mitigate climate change necessitates the principles of checks and balances within government. The legislative branch is responsible for enacting laws to regulate greenhouse gas emissions and other elements of climate change mitigation. The executive branch will execute these policies, which encompass establishing incentives for renewable energy and defining carbon reduction objectives. The judicial branch upholds accountability through its interpretation of laws and resolution of disputes. Effective climate change management will result from enhanced transparency and the inclusion of all stakeholders in decision-making, supported by a system of checks and balances.⁴ The three branches of government, as delineated in Article 50, are the legislative, executive, and judiciary. A court may declare a statute illegal if it violates fundamental rights, regardless of the absence of a distinct division of powers. Environmental laws and policies must comply with the Constitution and prioritize public interests, which is crucial for managing climate change.⁵ To prevent the misuse of authority, the Indian government is structured into three branches: legislative, executive, and judicial. The court has played a crucial role in upholding the Sustainable Development Doctrine and implementing environmental legislation in India, particularly through the Supreme Court and High Courts. They ensure that environmental and climate change legislation and policies adhere to the Constitution and protect individual rights. Environmental and climate change issues are addressed in court via public interest litigation. The Supreme Court has facilitated environmental protection and climate change mitigation through its interpretation of Indian law and the Constitution. It has facilitated the formulation of concepts for environmental and climate change legislation.

3. Climate Change and the Polluter Pays Principle

The polluter pays principle is a significant notion in the battle against climate change. It suggests that enterprises that harm the environment must bear the costs of actions implemented to safeguard human health and the environment. This incentivizes enterprises to reduce emissions and invest in renewable energy. The PPP has been utilized in India for many initiatives, including the establishment of the “Green Tax Fund” aimed at environmental conservation. This promotes sustainable development and mitigates the impacts of climate change. Although excluded from international climate agreements, the PPP is pertinent in discussions regarding the CBDR principle and loss and harm. The PPP aims to hold polluters accountable and promote a cleaner, sustainable future, serving as a potent tool in the fight against climate change. The Supreme Court's adoption of the Public Interest Litigation principle in the Indian Council for *Enviro-Legal Action v. Union of India*⁶ is significant regarding climate change, as greenhouse gas emissions from several industries adversely affect the environment and public health. The PPP idea promotes businesses to reduce emissions and invest in sustainable energy alternatives by holding polluters accountable for their actions. The Indian Supreme

² The NGT is a specialized environmental tribunal set up under the National Green Tribunal Act 2010.

³ Loveleen Bhullar, The Judiciary, and the Right to Environment in India: Past, Present and Future, in Indian Environmental Law: Key Concepts and Principles.

⁴ Britannica, The Editors of Encyclopaedia. “Separation of powers”. Encyclopaedia Britannica, 10 Apr. 2020, <https://www.britannica.com/topic/separation-of-powers>. Accessed 25 July 2024.

⁵ The Constitution of India Article 50.

⁶ Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.

Court's ruling sets a significant precedent for tackling the effects of pollution and climate change by ensuring that individuals accountable for environmental degradation are held responsible for the damage they inflict.⁷

The case of *Vellore Citizens' Forum v. Union of India and Ors.*⁸ underscored the importance of the PPP concept in Indian environmental law. This concept is crucial for holding polluters accountable for the harm they cause to the environment and public health. The Court emphasized the necessity of fostering a safer and healthier environment for everybody by regarding the PPP as a component of sustainable development. This is significant in the context of climate change, as greenhouse gas emissions jeopardize both the planet and its inhabitants. By urging enterprises to reduce their emissions and invest in cleaner technologies, the PPP may mitigate these impacts and foster a sustainable future.⁹ The Polluter Pays Principle is applied in every verdict by the court established under India's NGT Act to tackle environmental and climate change challenges, ensure sustainable development, and mitigate the impacts of climate change. The NGT Act pertains to climate change mitigation, provides relief, compensation, and restitution to victims of pollution and environmental degradation, and mandates that polluters rectify any harm caused. To comprehend the management of climate change impacts, these issues are being examined in relation to NGT decision. The NGT has designated specific behaviors as "polluting," and the PPP has been utilized. Accountability for polluters on the environmental damage they cause has implications for addressing climate change. The National Green Tribunal stated in *Dr. Karan Singh v. State of Himachal Pradesh*¹⁰: *The Municipal Corporation of Shimla and Solan should contemplate implementing financial contributions for Municipal Solid Waste (MSW) disposal in accordance with the "Polluter Pays" principle, and may levy charges on households within their jurisdiction based on the type and size of the residences.*

The principle of Polluter Pays Principle (PPP) was implemented in the *Kamal Anand v. State of Punjab*¹¹ case by mandating a corporation to levy charges on property owners for the environmental damage caused by their properties. This decision exemplifies the NGT's utilization of PPP to address environmental issues, particularly climate change.

In the case of *Manoj Misra v. Union of India*¹², the NGT authorized the Corporation and Delhi Jal Board to seek public-private partnership funds from citizens to address Yamuna River pollution. The NGT proposed that the calculation of environmental compensation for Delhi residents should be a percentage of their respective property or house taxes. This case illustrates the significance of public-private partnerships (PPP) in fostering sustainable development amidst climate change and ensuring accountability for environmental damage among individuals and enterprises. The NGT created a specific fund named the "Green Tax Fund" in the case of *Court on its own motion v. State of Himachal Pradesh*, permitting an entrance fee of Rs. 100 for heavy vehicles, Rs. 50 for small vehicles, and Rs. 20 for CNG or electric buses for visitors to the Rohtang Pass glacier, thereby aiming to safeguard the environment and mitigate climate change.¹³

The NGT has addressed pollution problems by employing the PPP approach. In *Samir Mehta v. Union of India*¹⁴, concerning an unintentional oil leak from the vessel M.V. Rak Carrier in the Arabian Sea, the NGT evaluated the damage inflicted by the oil spills on the mangroves and marine habitat near the Bombay coast, which may contribute to climate change. In *Kasala Malla Reddy v. State of Andhra Pradesh*¹⁵, the NGT underscored instances of groundwater and air pollution attributable to industrial units, as well as their contribution to climate change. The NGT has recognized noncompliance with norms or regulations as a

⁷ Ibid.

⁸ *Vellore Citizens' Forum v. Union of India and Ors.*, (1996) 5 SCC 647.

⁹ Ibid.

¹⁰ *Dr. Karan Singh v. State of Himachal Pradesh*, 2013 SCC Online 884.

¹¹ *Kamal Anand v. State of Punjab*, 2014 SCC Online NGT 6893.

¹² *Manoj Misra v. Union of India*, 2015 SCC Online NGT 840

¹³ *Court on its own motion v. State of Himachal Pradesh*, 2014 SCC Online NGT 1.

¹⁴ *Samir Mehta v. Union of India*, 2016 SCC OnLine NGT 479.

¹⁵ *Kasala Malla Reddy v. State of Andhra Pradesh*, 2017 SCC OnLine NGT 1914

legitimate basis for invoking PPP in certain circumstances. In *Gurpreet Singh Bagga v. Ministry of Environment and Forests and Others*¹⁶, the NGT mandated that the respondent businesses incur a penalty for conducting mining operations without securing Environmental Clearance (“EC”) or approval from the relevant State Pollution Control Board, resulting in environmental degradation and climate change.

4. Climate Change and the Precautionary Principle

The precautionary principle (PP) establishes a legal basis for implementing preventive measures in policymaking to address potential risks of climate change to public health or the environment associated with certain policies.¹⁷ This idea is manifest in various international environmental accords, notably idea 15 of the 1992 Rio Declaration. Article 3 of the United Nations Framework Convention on Climate Change (UNFCCC) mandates that signatory nations use precautionary measures to foresee, avert, or diminish the causes of climate change and alleviate its resultant impacts. The text emphasizes that when human activities threaten environmental or human health, precautionary measures should be implemented, regardless of the absence of scientific consensus on causality.¹⁸

The National Green Tribunal (NGT) has affirmed that the precautionary principle is an essential component of the nation's environmental policy, as mandated by section 20 of the NGT Act 2010, which obligates the NGT to evaluate the relevance of the precautionary principle in its environmental determinations.¹⁹ The NGT Act of 2010 authorizes any individual to file a petition with the Tribunal regarding any infringement or potential infringement of this principle³⁶². The precautionary principle is a crucial component of sustainable development, climate change mitigation, and environmental governance in India, protecting both the environment and public health. The Supreme Court of India has permitted its application, which was founded on constitutional provisions such as Articles 21, 48A, and 51A. The Supreme Court ruled in *Vellore Citizen Welfare Forum v. Union of India*²⁰ that it is the duty of state governments and regulatory bodies to identify, avert, and address the factors contributing to environmental degradation, which may potentially lead to climate change. In the case of *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati and Ors*²¹, the Supreme Court invoked the precautionary principle, suspending industrial activities potentially contributing to climate change. The Court determined that Environmental Clearance could only be issued following the completion of all requisite Environmental Impact Assessment (EIA) procedures, including public consultation, screening, scoping, and assessment. In *M.C. Mehta v. Union of India*²², the court applied the precautionary principle for climate change mitigation to prohibit companies near the Taj Mahal from utilizing coal in their operations. Coal combustion has significantly impacted the Taj Mahal. The court's ruling was founded on the precautionary principle.

5. Climate Change and the Public Trust Doctrine

Numerous judicial decisions have invoked the Public Trust Doctrine to mandate governmental action against climate change. In the *M.C. Mehta v. Kamal Nath*²³ case, a hotel that jeopardized the environment was erected on the Beas River. The Supreme Court of India invoked the Public Trust Doctrine to mandate that the government safeguard public property and natural resources. The hotel corporation was directed to rectify the damages and prevent additional harm. The court underscored the necessity of sustainable development practices to mitigate the impacts of climate change and asserted that environmental protection is crucial for

¹⁶ *Gurpreet Singh Bagga v. Ministry of Environment and Forests and Ors.*, 2016 SCC Online NGT 92.

¹⁷ Epstein, Charlotte. “Precautionary principle”. Encyclopaedia Britannica, <https://www.britannica.com/topic/precautionary-principle>. Accessed 26 July 2024.

¹⁸ United Nations Framework Convention on Climate Change, Article 3.

¹⁹ National Green Tribunal Act 2010 Sec 20.

²⁰ *Vellore Citizen's Welfare Forum v Union of India* (1996) 5 SCC 647 at 658

²¹ *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati and Ors* Civil Appeal No.1526/2016 delivered on 1 April 2020

²² *M.C. Mehta v. Union of India*, AIR 1997 SCC 734

²³ *M.C Mehta vs Kamal Nath* [1997], 1 S.C.C. 388

sustaining life on Earth. In *Radhey Shyam Sahu v. M.I. Builders Pvt.*²⁴, the court ruled that the public garden constituted a public resource and invoked the Public Trust Doctrine under the right to life to prohibit the construction of a shopping mall. The court determined that authorizing the construction would violate Article 21 of the constitution, which safeguards the right of individuals to a decent standard of living. The court mandates that the government, in accordance with the Public Trust Doctrine, must safeguard the public park for the benefit of inhabitants and alleviate the impacts of climate change. In *Shailesh R. Shah v. the State of Gujarat*²⁵, the court declared that the state acts as a trustee for all resources, encompassing lakes, ponds, natural gas, and wetlands. The state is accountable for conserving and protecting these resources for the benefit of the affected population. The court asserted that it is the state's duty to protect natural resources and the environment from degradation and extinction, as well as to address climate change. The court has expanded the meaning of “basic rights” to encompass climate change by employing the doctrines of “polluter pays,” “precautionary principle,” and “public trust doctrine.”

6. Climate Change and Sustainable development

Climate Change and the Indian Judiciary Regarding Sustainable development entails fulfilling present needs while safeguarding the ability of future generations to meet their own wants. The Sustainable Development Goals (SDGs) are challenging to achieve due to the detrimental effects of climate change on natural and human systems. Energy consumption is crucial for human health, however it has a detrimental impact on the environment. Transitioning to renewable energy may aid in addressing climate change, although it could hinder the achievement of the 17 Sustainable Development Goals (SDGs).

The court is advocating for sustainable development in India. The ideology of sustainable development is deemed essential to life under Article 21 of the Indian Constitution, according to the judgment in *N.D. Jayal v. Union of India*.²⁶ The right to growth cannot supersede the right to a safe environment, as both are fundamental. The concept of sustainable development is crucial for maintaining equilibrium between progress and environmental conservation while tackling climate change. The court determined in *Indian Council for Enviro-Legal Action v. Government of India*²⁷ that economic growth must not occur at the expense of extensive environmental degradation or climate change. It is imperative to maintain the environment and ecological equilibrium while advancing economically and in other domains.

The ruling in *Narmada Bachao Andolan v. Union of India*²⁸ recognized that sustainable development encompasses any form of growth that nature, the environment, or the climate can endure, irrespective of mitigation efforts. The court emphasized in *M.C. Mehta v. Union of India and Ors*²⁹ that economic development, environmental conservation, and climate change mitigation should not be viewed as conflicting priorities. To avert environmental degradation and climatic change, sustainable development principles must be implemented in developmental activities. The court recognized the importance of expanding industries, irrigation resources, electricity initiatives, employment opportunities, revenue production, and compliance with sustainable development criteria.

7. Classification of Climate Change-Related Litigation in India

In proceedings before the Supreme Court, High Court, or National Green Tribunal (NGT), references to climate change, global warming, or international climate agreements are cursory. To mitigate climate change, it is essential to emphasize instances when significant environmental legislation and concepts have received judicial endorsement. There exist four categories of climate-related litigation or actions.

²⁴ *Radhey Shyam Sahu v. M.I. Builders Pvt. Ltd.*, AIR 2010 SC 1289

²⁵ *Shailesh R. Shah v. the State of Gujarat* is reported in AIR 2005 SC 3185

²⁶ *N.D. Jayal v. Union of India* is reported in AIR 2001 SC 2609

²⁷ *Supra* Note. 6

²⁸ *Narmada Bachao Andolan v. Union of India* is reported in AIR 1997 SC 1978.

²⁹ *M.C. Mehta v. Union of India and Ors* is AIR 1997 SC 3476.

- a) Cases pertaining to the climate consequences of governmental decisions or the government's failure to regulate specific activities.
- b) Litigations aimed at ensuring the correct enforcement of legal statutes or governmental policies;
- c) Cases seeking guidance for the formulation of new climate change policy; and,
- d) Instances where the government justified a policy decision by citing climate change.

7.1 Cases Pertaining to the Climate Consequences of Government Decisions and the Government's Inability to Regulate Specific Activities

The Indian judiciary has acknowledged the significance of environmental protection in the *Goa Foundation v. Union of India*³⁰ case. According to Article 21 of the Constitution, the Supreme Court has recognized that the right to a clean and healthy environment is an essential component of the right to life. The court has emphasized the dangers linked to the unrestricted extraction of natural resources such as sand, iron ore, and limestone, along with their impact on climate change, the discharge of toxic effluents into aquatic systems, deterioration of air quality, and ecological damage resulting from industrial or construction activities.³¹ The Supreme Court has stated that while industrial expansion is crucial for India's economy, it should not be at the expense of the environment and ecosystem. It underscored the importance of sustainable development. It is imperative to prioritize cases addressing climate change and its impact on global warming, despite certain instances reflecting the judiciary's stance on these issues.³² The Supreme Court underscored the critical necessity of environmental protection in the case of *Bombay Dyeing and Mfg. Company. Ltd. v. Bombay Environmental Action Group*³³, highlighting critical threats including climate change, resource depletion, water system eutrophication, biodiversity loss, and global warming. The Supreme Court referenced multiple international climate change treaties and recognized the necessity of curbing greenhouse gas emissions in the case of *G. Sundararajan v. Union of India*³⁴. The Court sanctioned the construction of a nuclear power station in Tamil Nadu, acknowledging the environmental hazards associated with continued dependence on fossil fuels, but asserting that nuclear energy serves as a low-carbon alternative that could mitigate climate change.

The Honorable Supreme Court stated in *Karnataka Industrial Areas Development Board v. C. Kenchappa*³⁵, the Appellant must evaluate potential harmful environmental and climate change effects prior to acquiring property for industrial purposes.

The Court emphasized the importance of sustainable development noting:

“Unregulated industrialization, deforestation, fossil fuel consumption, and development have exacerbated environmental degradation and contributed to climate change, resulting in carbon dioxide levels that are presently 26% higher than prior to the industrial revolution. It has resulted in an unparalleled increase in sea levels, which will impact ecosystems and animals. The thawing of polar ice and glaciers, coupled with the thermal expansion of oceans, may lead to extensive floods and a significant increase in sea levels if greenhouse gas emissions persist at their current levels. The ozone layer, which protects life on Earth from the sun's UV rays, has been diminished due to substantial emissions of gasses and chemicals from corporations and vehicles.”

The Supreme Court sanctioned the construction of a Narmada dam, which may generate hydroelectric power and offer ecological advantages in the case of *Narmada Bachao Andolan v. Union of India*³⁶. The court noted that other countries have employed their water and river systems to produce hydroelectric power. Hydropower,

³⁰ *Goa Foundation v Union of India* (2014) 6 SCC 590.

³¹ *M.C. Mehta v Kamal Nath*, (1997) 1 388.

³² *M.C. Mehta v Union of India*, (1997) 2 SCC 353.

³³ *Bombay Dyeing and Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group*, (2006) 3 SCC 434.

³⁴ *G. Sundararajan v. Union of India*, (2013) 6 SCC 620.

³⁵ *Karnataka Industrial Areas Development Board v. C. Kenchappa*, (2006) 6 SCC 371.

³⁶ *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664

as a renewable energy source that does not emit greenhouse gases contributing to global warming, influences climate change.

“India once generated 50% of its electricity from hydropower; but, post-1980, this ratio declined, leading the country to depend on thermal power plants. These facilities combust fossil fuels, which adversely affect the environment and contribute to global warming. The World Bank does not finance thermal power projects due to their greenhouse gas emissions, unlike hydropower projects, which are environmentally advantageous and have no environmental impact. A thermal power plant may require fewer relocations, although it causes greater environmental pollution and has more detrimental impacts than a hydroelectric facility.”

In *Abhimanyu Rathore v. State of H.P.*³⁷, the Honorable Himachal Pradesh High Court expressed regret: *“Our actions have harmed the ecosystem and exacerbated climate change, resulting from global warming, reduced agricultural yields, and altered weather patterns.” This devastation resulted in the calamities in Kedarnath and Srinagar. All individuals have the right to access clean air and water.*

The National Green Tribunal (NGT) in its *Motion v State of H.P.*³⁸ has been instrumental in addressing various environmental issues, including unregulated tourism, climate change, and the impact of unregulated activities on ecosystems. The worldwide temperature has increased by almost 0.6 degrees Celsius in the last century, with the Earth's average temperature rising by 1.6 degrees Celsius. In the case of *M.C. Mehta v Union of India*³⁹, the NGT imposed the use of petrol, natural gas, and catalytic converters in vehicles manufactured post-1995 to reduce carbon emissions, a significant initiative for India's efforts to combat climate change. However, the NGT did not suspend the project, potentially exacerbating the climate change crisis.

In the case of *Om Dutt Singh v. State of U.P.*⁴⁰, the NGT assessed the functioning of a waste-to-energy facility in a residential zone, determining that the plant met all emission criteria and complied with international norms, including restrictions on greenhouse gas emissions. Incineration of waste generates substantial indirect greenhouse gas emissions, including carbon monoxide and volatile organic compounds, which exacerbate climate change.⁴¹ The Ministry of Environment, Forests, and Climate Change issued an amendment notification exempting the construction sector from the EIA Notification 2006 in the case of *Society for the Protection of Environment and Biodiversity v Union of India*⁴², despite its considerable contribution to India's annual carbon dioxide emissions. The NGT concluded that this exemption contravened India's commitments under the Paris Agreement and the Rio Declaration, both of which seek to address climate change.

The NGT instructed the Himachal Pradesh government to implement measures to reduce emissions, including random pollution assessments, restricting transportation to compressed natural gas and electric buses, and establishing a forestry initiative. The court did not hold Himachal Pradesh accountable for global warming but elucidated the role of greenhouse gas emissions in contributing to global warming and reiterated the "polluter pays" principle.⁴³

In *Yogendra Mohan Sengupta & Others v. Union of India*⁴⁴, the NGT forbade all forms of development in the "green, forest, core regions" of Himachal Pradesh, as well as within three meters of national roadways. The NGT criticized the Himachal Pradesh government for permitting unregulated construction and neglecting its constitutional duties, rendering Shimla vulnerable to both natural and anthropogenic disasters.

³⁷ *Abhimanyu Rathore v. State of H.P.*, 2014 SCC Online HP 5202.

³⁸ *National Green Tribunal in Court on its own Motion v State of H.P.*, 2014 SCC

³⁹ *M.C. Mehta v Union of India* 1991 SCR (1) 866.

⁴⁰ *Om Dutt Singh v. State of Uttar Pradesh*, Application No. 521/2014 (May 7, 2015).

⁴¹ *NGT, Sukhdev Vihar Residents' Welfare Association v. Union of India*, Application No. 22 (THC)/2013 (Feb. 2, 2017).

⁴² *NGT, Society for Protection of Environment & Biodiversity v. Union of India*, Application No. 677/2016 (Dec. 8, 2017).

⁴³ *NGT, Court on its own Motion v. State of Himachal Pradesh & Others*, Application No. 488/2014 (Aug. 1, 2017).

⁴⁴ *NGT, Yogendra Mohan Sengupta & Others v. Union of India & Others*, Application No. 121/2014 (Nov. 16, 2017).

In *Karnataka Industrial Areas Development Board v. Sri C. Kenchappa*⁴⁵, the NGT directed the KIADB to establish a 1 km buffer zone beyond village boundaries to preserve ecological balance and ensure a pollution-free environment. This decision promotes sustainable development and environmental conservation.

In *Gaurav Bansal v. Union of India*⁴⁶, the petitioners requested the NGT to compel the national and state governments to demonstrate their endeavors to implement the National Ambient Pollution Control Code (NAPCC). The Tribunal did not reference its authority for NAPCC implementation in its final ruling, but indicated that cases of NAPCC violations will be taken into account in the future. The states promptly formulate their state action plans in alignment with the NAPCC and obtain approval from the Ministry of Environment, Forestry, and Climate Change.

In *Ratandeep Rangari v. State of Maharashtra & Others*⁴⁷, the NGT directed the MoEFCC to establish a control and enforcement mechanism to ensure that all thermal power plants and coal mines adhere to the notification requiring coal-based thermal power plants to utilize coal with less than 34% ash content. In *Kallpavalli Vrishka Pempakamdarula Paraspara Sahayaka Sahakara Sangam Ltd. & Others v. Union of India*⁴⁸, the NGT mandated Enercon (India) Ltd. to pay Rs. 50 lakhs for the installation of wind turbines in Anantapur district, Andhra Pradesh, which adversely affected the ecology and climate.

The Tribunal concluded that Enercon (India) Ltd. caused significant environmental and ecological damage during road building, and the business is obligated to compensate for the damages. The National Green Tribunal (NGT) mandated the allocation of space for indigenous tree species, with oversight by the State Forest Service. In *Wilfred J v. Ministry of Environment and Forests*⁴⁹, petitioners expressed concerns about ecological and environmental issues, particularly the Vizhinjam Port project. They were local fishermen and constituents of the Kerala Government's Fish Workers Welfare Board. The petitioners contested the regulatory clearance awarded to the deep-water container port project in an ecologically sensitive area and the regulatory safeguards for regions susceptible to floods due to climate change. The NGT rejected the petition, asserting that the project was essential for international business. The petitioners also claimed that the state Forest Department increased regulating fees for timber without justification, leading to a five to twenty-fold escalation in timber prices.

The Allahabad High Court allowed the fee increment of Rs. 5000 every three years and allowed the defendants to charge a license fee of Rs. 15,000 annually for every 25-unit horsepower until a new notification was released. The court stated that no differentiation should be established among sawmill, veneer, and plywood units, and a fixed price of Rs. 15,000 per unit per 25 horsepower would be applicable until specific regulations for veneer and plywood units were formulated or the 1978 Regulations were amended.⁵⁰

Indian climate litigation has imparted several lessons, including the importance of limited written submissions and recorded oral arguments, the inconsistent legal reasoning of Indian environmental judgments, and the intertwined nature of the environmental and climate docket with structural flaws within the Indian legal system.

⁴⁵ Karnataka Industrial Areas Development Board (KIADB) v. Sri C. Kenchappa (2006) 6 SCC 371.

⁴⁶ NGT, Gaurav Bansal v. Union of India, Application No. 498/2014 (July 23, 2015).

⁴⁷ NGT, Ratandeep Rangari v. State of Maharashtra & Others, Application No. 19/2014 (WZ) (Oct. 15, 2015).

⁴⁸ NGT, Kallpavalli Vrishka Pempakamdarula Paraspara Sahayaka Sahakara Sangam Ltd. & Others v. Union of India, Application No. 92/2013 (Aug. 25, 2015).

⁴⁹ NGT, Wilfred J v. Ministry of Env't & Forests, Application No. 74/2014 (Sept. 2, 2016).

⁵⁰ M/S Singh Timber Traders & Others v. State of U.P. & Others, MANU/UP/2993/2014

7.2. Litigations Pursuing Adequate Enforcement of Legal Statutes or Governmental Policies

These cases involve litigants seeking judicial enforcement of laws or government programs, with a focus on climate change. The petitioner in *Gaurav Bansal v. Union of India*⁵¹ requested the NGT to compel the government to provide evidence of its endeavors to implement the National Action Plan on Climate Change (NAPCC). The Tribunal concluded that it is authorized to adjudicate petitions on NAPCC violations and their ramifications, instructing state governments to formulate NAPCC-compliant state action plans and obtain expedited clearance from the Ministry of Environment, Forest, and Climate Change (MoEFCC). In *Mahendra Pandey v. Union of India*⁵², the Tribunal requested the State of Delhi to formulate a plan of action. The complaint was dismissed because Delhi submitted the action plan to the Central Government for final approval. Climate concerns were expressed in two instances to scrutinize the implementation of the approval process.

In *Kallpavalli Vrishka Pempakamdarula Paraspara Sahayaka Sahakara Sangam Ltd. & Others v. Union of India*⁵³, the National Green Tribunal mandated Enercon (India) Ltd. to remit Rs. 50 lakhs in environmental compensation for constructing wind turbines in Anantapur district, Andhra Pradesh, causing harm and degradation to the ecology and climate. Three environmental organizations submitted a petition asserting that the windmill project resulted in enduring environmental harm, encompassing plant loss, deforestation, and livestock fatalities. Upon examining the evidence, the NGT determined that Enercon (India) Ltd. was accountable for the environmental damage and mandated them to provide compensation. This example underscores the impact of human activities on the environment and climate change, exemplified by the construction of wind turbines.

The plaintiffs in *Wilfred J v. Ministry of Environment, Forests, and Climate Change*⁵⁴ expressed apprehensions over environmental and ecological issues. Individuals impacted by the Vizhinjam Port project included fishermen from adjacent communities who had engaged in fishing within the project area for decades and were integral members of a larger fishing community operating in that region. The project did not significantly impact the area's ecology and climate, but it adversely harmed the livelihoods of the local population. The plaintiffs were constituents of the Kerala Government's Fish Workers Welfare Board, which supports individuals in the fishing industry. They challenged the regulatory approval for the deep-water container port project situated in an environmentally sensitive area, requesting regulatory protection for regions anticipated to be inundated due to rising sea levels caused by global warming. The NGT rejected the petition, emphasizing the project's significance for international trade. In *Ratandeep Rangari v. State of Maharashtra & Others*⁵⁵, a petition submitted to the NGT, Ratandeep Rangari claimed that the Maharashtra Pollution Control Board and the Ministry of Environment and Forests and Climate Change were indecisive concerning the breach of operational consent conditions imposed on MAHAGENCO's coal-based thermal power plants, which led to air pollution affecting the local population of a village in Maharashtra. The NGT directed the MoEFCC to establish an enforcement mechanism to ensure compliance with the notification mandating that all thermal power stations and coal mines utilize coal with an ash content below 34%.

The NGT justified their decision by highlighting that it would diminish GHG emissions and the carbon impact associated with thermal electricity generation. The Supreme Court reviewed an appeal concerning GMR Goa International Airport Ltd in the case of *Hanuman Laxman Aroskar & Ors. v. Union of India*⁵⁶. The planned greenfield airport in MOPA, Goa, will be transformed into a zero-carbon emission facility, as assured by the concessionaire, GMR, contingent upon the approval of the Environmental Clearance (EC) for the project. A

⁵¹ NGT, *Gaurav Bansal v. Union of India*, Application No. 498/2014 (July 23, 2015).

⁵² NGT, *Mahendra Pandey v. Union of India & ANR*, Application No. 470/201 (January 2, 2019).

⁵³ NGT, *Kallpavalli Vrishka Pempakamdarula Paraspara Sahayaka Sahakara Sangam Ltd. & Others v. Union of India*, Application No. 92/2013 (Aug. 25, 2015).

⁵⁴ NGT, *Wilfred J v. Ministry of Env't & Forests*, Application No. 74/2014 (Sept. 2, 2016).

⁵⁵ NGT, *Ratandeep Rangari v. State of Maharashtra & Others*, Application No. 19/2014 (WZ) (Oct. 15, 2015).

⁵⁶ *Hanuman Laxman Aroskar & Ors. v. Union of India*, designated as Civil Appeal No. 12251 of 2018

zero-carbon airport operation seeks to eliminate or diminish anthropogenic carbon emissions from polluting the atmosphere, with ongoing airport activities. According to the concessionaire, nations are mandated by the United Nations Framework Convention on Climate Change to monitor domestic aviation emissions, while the International Civil Aviation Organization (ICAO) oversees climate change and mitigation efforts within the aviation sector (UNFCCC).

"The court stated that to establish a "Zero Carbon" airport operation, anthropogenic carbon emissions released into the atmosphere during airport activities must be eradicated or minimized to the greatest extent possible. Domestic aviation emissions are tracked by individual nations in compliance with the United Nations Framework Convention on Climate Change, while the International Civil Aviation Organization (ICAO) oversees climate change and its mitigation within the aviation sector."

The Supreme Court lifted the prohibition on the construction of Mopa Airport and designated the National Environmental Engineering Research Institute to oversee adherence to its directions.⁵⁷ Angel Granites and Crushers Private Limited Ltd. contravened the Land Assignment Act and Regulations in the matter of Manu Anand v. the State of Kerala by employing agricultural land for mining purposes. The petitioner submitted a writ to the Kerala High Court, asserting that the respondent's mining activities were unlawful and had been authorized by the District Collector. The High Court, referencing the Kyoto Protocol, mandated the government to formulate a policy to limit the utilization of agricultural land for mining in order to assess measures to mitigate the effects of climate change.⁵⁸

7.3. Requests for Guidance to Formulate New Climate Change Policies

Two instances have occurred in which litigants have presented climate-related issues and requested the formulation of new policies to address these concerns. One instance is *Indian Council for Enviro-legal Action v. MoEFCC & Others*⁵⁹, referred to as the HFC-23 case, where the applicants requested the NGT's intervention to halt the emission of HFC-23 gas. This fuel is generated as a by-product of the HCFC-22 production process and has significant climate and air pollution repercussions. The applicants referenced stipulations in the Indian Constitution and the Environment (Protection) Act (EP Act), 1986, namely Articles 47, 48A, and 51A(g), to advocate for the restriction of gas emissions to alleviate the impacts of climate change. HFC-23, as a greenhouse gas, possesses a global warming potential 14,800 times greater than that of carbon dioxide. The Tribunal mandated the MoEFCC and pertinent Ministries/Authorities to perform a data-driven assessment of entities manufacturing HFC-22 and its by-product HFC-23, in addition to offering guidelines and establishing a regulatory framework for the collection, emission, and incineration of HFC-23. In March 2017, a nine-year-old girl from Uttarakhand named Ridhima Pandey submitted a petition advocating for India to implement more stringent measures against climate change. She stated that, under existing laws and international accords, India have a responsibility to protect the environment. The petition asserts that climate change ought to be encompassed under the definition of "environment" in the 1986 Environment (Protection) Act.⁶⁰

The petition asserts that India is a significant producer of greenhouse gases and is vulnerable to the effects of climate change. The petition requests the court to intervene and mandate the government to undertake several measures to mitigate the adverse effects of climate change, including the integration of climate change considerations into environmental impact assessments, the establishment of a national greenhouse gas emissions inventory, and the formulation of a national carbon budget. The National Green Tribunal upheld its decision on January 15, 2019, dismissing the petition on the grounds that climate change is already

⁵⁷ Hanuman Laxman Aroskar v Union of India Civil Appeal No. 12251 of 2018.

⁵⁸ Manu Anand v. State of Kerala [2016] WP(C). No. 619 of 2016 (B).

⁵⁹ In NGT, *Indian Council for Enviro-legal Action v. MoEFCC & Others*, Application No. 170/2014 (Dec. 10, 2015), the applicants sought directions to stop industries manufacturing HCFC-22 (a refrigerant gas) from emitting HFC-23, which is categorized as a GHG under the Kyoto Protocol.

⁶⁰ NGT, *Ridhima Pandey v. Union of India*, Application No. 187/2017 (Jan. 15, 2019). In this case, a minor sought direction from the NGT to the government and environmental regulatory agencies to consider climate-related issues in their decision-making.

incorporated into the impact assessment process under the Environment Protection Act of 1986, and that the Indian government has enacted policies in alignment with the Paris Agreement and other international protocols. The petition was submitted pursuant to Indian legislation that enables residents to articulate environmental concerns.

The petition addressed topics of sustainable and equitable development for future generations. Comparable events were reported in various countries, including the United States and the Netherlands. The petition asserts that India is among the major emitters of greenhouse gases globally and is vulnerable to the impacts of climate change. It contends that India faces significant risks from climate change and must implement preventative measures. The petition cited international legal principles and court rulings, designating 1°C or 350 ppm of atmospheric CO₂ as critical thresholds for India and the global community in addressing climate change. The petition requested the Court to intervene and mandate the government to implement measures to mitigate the damage inflicted by climate change, including the integration of climate change into environmental impact assessments, the establishment of a national greenhouse gas emissions inventory, and the formulation of a national carbon budget.⁶¹

7.4. Instances in which the Government Justified a Policy Decision by Citing Climate Change

In these cases, the government employed climate change as a rationale for their policy decision. The government endorsed the proposal to raise licensing fees for businesses that utilize timber in the case of *M/S Singh Timber Traders & Others v. State of U.P.*⁶². Additionally, deforestation contributes to greenhouse gas emissions. The administration referenced the UN Environment Programme's Emissions Gap Report in its arguments. Nevertheless, the Allahabad High Court deemed the licensing fees unreasonable but refrained from addressing the government's climate-related assertions. In *Hindustan Zinc Ltd. v Rajasthan Electricity Regulatory Commission*, the Supreme Court of India upheld the Rajasthan Electricity Regulatory Commission's (RERC) Renewable Energy Obligation and Renewable Purchase Obligation Compliance Framework Regulations, referencing the National Action Plan on Climate Change and the necessity to advance renewable energy sources to mitigate pollution and greenhouse gas emissions.⁶³

The court emphasized the state's constitutional responsibilities and initiatives to advance renewable energy and diminish dependence on harmful sources. In India, litigation concerning climate change, deforestation, and pollution management involves courts, non-governmental organizations (NGOs), and governments use constitutional provisions, environmental legislation, and climate policies to further their objectives. Climate litigation in India has not yet strengthened the basis for climate policy; however, the Supreme Court and the National Green Tribunal have demonstrated a readiness to address technical and sectoral climate issues and acknowledge supplementary climate pollutants, such as CO₂, under the EP Act. To rectify deficiencies in national climate policy, the implementation of environmental impact assessments and standards must be enhanced. Indian courts have constraints on their capacity to advance climate initiatives; yet, strategic litigation may aid the government in attaining its climate objectives.⁶⁴

The Indian judiciary's acceptance of Suo-moto or PIL jurisdiction to tackle various environmental issues, including the protection of the Taj Mahal from coal and coke pollution, the cleanup of the Ganga, the relocation of hazardous industries in Delhi, the reduction of vehicular pollution, the mandate for environmental education, and the redirection of rivers, indicates a promising capacity to address climate change concerns. The judiciary has demonstrated its capacity to prompt executive action on numerous issues, including violations of fundamental rights related to climate change. However, under the Indian Constitution, the court lacks jurisdiction over foreign governments to enforce its rulings or address international matters, as

⁶¹ Ibid.

⁶² *M/S Singh Timber Traders & Others v. State of U.P. & Others*, MANU/UP/2993/2014

⁶³ *Hindustan Zinc Ltd. v Rajasthan Electricity Regulatory Commission*, (2015) 12 SCC 611.

⁶⁴ Ibid.

this responsibility lies with the Central Government and Parliament. The judiciary may provide counsel to the President upon request but is prohibited from adjudicating international disputes.⁶⁵

Conclusion

The judiciary in India has played a crucial and proactive role in shaping the country's environmental law landscape, especially in the context of climate change. Through its interpretations, the courts have not only enforced existing legal frameworks but also expanded the scope of environmental protection by invoking constitutional principles like the Right to Life. Landmark judgments have addressed critical issues such as air and water pollution, forest conservation, and climate-related impacts, effectively bridging gaps where legislative action has been slow or insufficient. The judiciary has thus emerged as a guardian of environmental rights, compelling the government and industries to adopt more sustainable practices. However, this role is not without challenges. Courts often face the difficult task of balancing economic development needs with environmental sustainability, leading to complex legal debates. While judicial activism has driven positive outcomes, it has also exposed the limitations of relying solely on the courts for environmental governance. There is a need for stronger, more cohesive legislative policies that align with judicial directions and provide clear, enforceable standards for climate action. Moving forward, the judiciary's role will remain integral in ensuring accountability, but it must be complemented by robust policy frameworks that address climate change in a holistic and systematic manner. Only through such a balanced approach can India achieve its environmental and developmental goals, fostering a future where economic growth and ecological sustainability coexist.

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