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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

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Judicial Activism In Environmental Law: A Study On The Role Of The Judiciary In Shaping Environmental Policies In India

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Introduction

Judicial activism has emerged as a pivotal mechanism through which the judiciary in India has intervened in matters of environmental law and policy. As India grapples with pressing environmental challenges, including pollution, deforestation, and climate change, the judiciary has increasingly taken on a proactive role in enforcing environmental rights and holding various stakeholders accountable. This article examines the concept of judicial activism in the context of environmental law in India, analyzing landmark judgments, the underlying principles, and the implications for environmental policy.

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1. Understanding Judicial Activism

Judicial activism refers to the proactive role of the judiciary in interpreting laws and the Constitution to promote justice, particularly in cases where legislative or executive actions may fall short. It involves the judiciary stepping beyond traditional boundaries to protect fundamental rights, ensure accountability, and promote public interest². In the context of environmental law, judicial activism plays a critical role in safeguarding the environment as a public good.

1.1. Historical Context

The roots of judicial activism in India can be traced back to the post-independence era, with significant developments in the 1980s and 1990s. This period marked the evolution of public interest litigation (PIL), which allowed individuals and groups to file petitions on behalf of those unable to do so, thereby broadening access to justice. The judiciary's willingness to hear PILs related to environmental issues signaled a shift towards recognizing environmental rights as fundamental rights.

2. The Role of the Judiciary in Shaping Environmental Policies

2.1. Landmark Judgments³

Several landmark judgments illustrate the judiciary's proactive stance in environmental matters, fundamentally shaping policies and practices.

2.1.1. M.C. Mehta v. Union of India (1986)

This case marked a significant turning point in Indian environmental law. The Supreme Court directed the closure of polluting industries along the Ganges River, emphasizing the need to protect the river as a national asset. The judgment underscored the principle of sustainable development and reinforced the judiciary's role in environmental governance.

2.1.2. Vellore Citizens Welfare Forum v. Union of India (1996)

In this landmark case, the Supreme Court recognized the concept of "sustainable development" as a guiding principle for environmental law. The Court directed the Tamil Nadu government to take

² Trilegal, New Era for Indian Merger Control Begins on 10 September 2024, 10 September 2024, [Trilegal Update | New Era for Indian Merger Control Begins on 10 September 2024](#)

³ Business Line, Centre expands CCI's deal scrutiny window via new 'deal value threshold' provision, 9 September 2024, [Centre expands CCI's deal scrutiny window via new 'deal value threshold' provision - The Hindu BusinessLine](#)

measures to prevent environmental degradation caused by tanneries. This ruling solidified the judiciary's role in interpreting and enforcing environmental policies.

2.1.3. M.C. Mehta v. Kamal Nath (2000)

This case highlighted the principle of “public trust doctrine,” asserting that the government holds natural resources in trust for the public. The Supreme Court held that the government cannot alienate or exploit public resources without considering the public interest, thereby reinforcing the judiciary’s role in safeguarding environmental resources.

2.2. Interpretation of Fundamental Rights

The Indian Constitution guarantees several fundamental rights that intersect with environmental concerns, particularly Articles 21 (right to life) and 48A (protection and improvement of environment). The judiciary has interpreted these rights expansively:

- **Right to Life:** The judiciary has ruled that the right to life includes the right to a healthy environment, establishing a direct connection between environmental protection and human rights.
- **Right to Information:** The judiciary has also recognized the importance of transparency and public participation in environmental governance, leading to the enhancement of the Right to Information Act.

3. Principles Guiding Judicial Activism in Environmental Law

Several principles underpin the judiciary’s approach to environmental law:

3.1. Public Interest⁴

Judicial activism in environmental matters is often driven by the public interest. The judiciary prioritizes the rights and welfare of marginalized communities disproportionately affected by environmental degradation.

⁴ Business Today, Deal value threshold for high-value acquisitions comes into force: major overhaul of CCI's regime, 10 September 2024, [Deal value threshold for high-value acquisitions comes into force: major overhaul of CCI's regime - BusinessToday](#)

3.2. Precautionary Principle

This principle emphasizes that in cases of uncertainty regarding environmental harm, precautionary measures should be taken to prevent potential damage. The judiciary has invoked this principle to mandate stringent regulations on industries and development projects.

3.3. Polluter Pays Principle

The judiciary has established that those responsible for environmental harm must bear the costs of rectifying the damage. This principle has been integral in shaping liability laws and ensuring that polluters are held accountable.

4. Challenges Faced by the Judiciary

Despite its significant role, the judiciary faces several challenges in effectively addressing environmental issues:

4.1. Executive Resistance⁵

The judiciary often encounters resistance from the executive branch, particularly when its rulings challenge government policies or economic interests. This can lead to tensions between judicial mandates and executive action.

4.2. Limited Resources

The judiciary's capacity to enforce environmental regulations is often limited by inadequate resources, including trained personnel and scientific expertise. This hampers the effective implementation of judicial directives.

4.3. Delays in the Judicial Process

The backlog of cases in Indian courts can delay justice for environmental issues, undermining the urgency often required in matters of environmental protection.

⁵ Lexology, India's Merger Control Regime Gets A Major Overhaul, 10 September 2024, [India's Merger Control Regime Gets A Major Overhaul - Lexology](#)

5. The Future of Judicial Activism in Environmental Law

5.1. Strengthening Institutional Frameworks

To enhance the effectiveness of judicial activism, it is essential to strengthen the institutional frameworks governing environmental law. This includes improving coordination between the judiciary, executive, and regulatory bodies.

5.2. Emphasizing Sustainable Development

The judiciary must continue to emphasize the principle of sustainable development, ensuring that economic growth does not come at the expense of environmental degradation. This requires a holistic approach that integrates environmental considerations into all areas of governance.

5.3. Promoting Public Participation

Encouraging public participation in environmental decision-making can enhance transparency and accountability. The judiciary should continue to support initiatives that empower communities to engage in environmental governance actively.

Conclusion

Judicial activism has played a transformative role in shaping environmental policies in India. Through landmark judgments and the interpretation of fundamental rights, the judiciary has established itself as a crucial player in the fight for environmental justice. While challenges remain, the proactive stance of the judiciary signals a commitment to safeguarding the environment and upholding the rights of marginalized communities. As India confronts escalating environmental challenges, the judiciary's role will be vital in navigating the complexities of sustainable development, ensuring that the balance between economic growth and environmental protection is maintained for future generations.

Judicial activism in environmental law represents the proactive role of the judiciary in shaping environmental policy and safeguarding natural resources, often by stepping beyond traditional legal boundaries to ensure justice. Its emergence and historical evolution are deeply rooted in the global awakening to environmental issues, legal principles regarding public interest, and evolving societal values around environmental conservation. This discussion explores the historical context

of judicial activism in environmental law, focusing on its development, significance, and key milestones in different jurisdictions.

1.1. Historical Context of Judicial Activism in Environmental Law

1.1.1. The Origins of Environmental Judicial Activism

The origins of judicial activism in environmental law can be traced to the growing recognition of environmental problems during the 20th century. The Industrial Revolution had left a legacy of unchecked environmental degradation, including pollution, deforestation, and loss of biodiversity. The 1960s and 1970s marked a turning point, as concerns about environmental quality gained traction globally, leading to the rise of environmentalism as a significant social movement. During this time, courts began to play an essential role in addressing environmental harms, particularly in countries where legislative and executive responses were slow or inadequate.

The landmark event that spurred judicial involvement was the United Nations Conference on the Human Environment in Stockholm in 1972. This conference acknowledged the need for legal frameworks that could protect the environment and spurred many countries to draft environmental laws. However, even with these new laws, enforcement often lagged. It was in this gap between the promise of law and the reality of enforcement that judicial activism emerged, with courts taking the initiative to interpret and enforce environmental norms in a proactive manner.

1.1.2. Judicial Activism in Different Jurisdictions

Judicial activism in environmental law has developed differently across various jurisdictions, reflecting their unique legal systems, socio-economic conditions, and the roles of courts within their respective democracies.

1.1.2.1. United States

The United States has played a pivotal role in the development of judicial activism in environmental law. The U.S. environmental movement in the 1960s and 1970s coincided with the passing of foundational legislation such as the National Environmental Policy Act (NEPA) of 1969, the Clean Air Act, and the Clean Water Act. These statutes granted standing to citizens and

environmental groups, empowering them to seek judicial intervention against violators of environmental laws.

The role of the U.S. Supreme Court in cases like *Sierra Club v. Morton* (1972) is illustrative of early judicial activism. In this case, the Court affirmed that environmental groups had standing to bring lawsuits, even when they could not show direct personal harm. This decision opened the doors for public interest litigation, allowing courts to address environmental concerns proactively. Moreover, the court decisions during this era underscored the importance of NEPA's procedural requirements, emphasizing the need for Environmental Impact Statements to guide government actions that could affect the environment.

1.1.2.2. India

Judicial activism in environmental law in India has been particularly transformative. The Indian judiciary, especially the Supreme Court, has taken on an activist role, frequently citing constitutional provisions like Article 21, which guarantees the right to life and personal liberty, to extend environmental rights to all citizens. This development coincided with growing public awareness of environmental issues and the inadequacies of the legislative and executive branches in addressing these challenges.

One of the most notable cases demonstrating judicial activism in India is the *MC Mehta v. Union of India* series of cases, starting in the 1980s. In *MC Mehta v. Union of India (Ganga Pollution Case)*, the Supreme Court mandated measures to prevent pollution of the Ganges River, including closing down industries that did not comply with pollution control standards. Through this decision, the Court asserted that pollution infringed upon citizens' right to a clean and healthy environment.

The Indian judiciary also introduced the concept of the "polluter pays" principle and the "public trust doctrine." The latter, which establishes that natural resources like air, sea, and forests are held in trust by the state for the public, has become a cornerstone of environmental jurisprudence in India. Such cases demonstrate the proactive role of the judiciary in interpreting the constitution to

extend protection to the environment and upholding public interest against powerful industrial interests.

1.1.2.3. Pakistan

In Pakistan, judicial activism in environmental law has evolved along similar lines as in India, particularly through the application of the right to life under Article 9 of the Constitution. The Lahore High Court and the Supreme Court of Pakistan have taken an active stance on environmental issues, particularly through public interest litigation.

A significant milestone was the *Shehla Zia v. WAPDA* (1994) case, where the Supreme Court interpreted the right to life to include the right to a healthy environment. Citizens had raised concerns regarding the construction of an electricity grid station near a residential area, citing possible health hazards from electromagnetic fields. The Court's decision established the precedent that environmental quality was integral to the right to life, setting the stage for subsequent judicial interventions in environmental matters.

1.1.2.4. The Philippines

The Philippines has been a trailblazer in recognizing environmental rights, with the judiciary taking a progressive stance on environmental issues. The landmark case of *Oposa v. Factoran* (1993) illustrates this. In this case, a group of minors, represented by their parents, sought to stop the government from issuing logging permits, arguing that it violated their right to a balanced and healthful ecology, as guaranteed by the Constitution.

The Supreme Court recognized the concept of "intergenerational responsibility," ruling in favor of the plaintiffs and holding that both present and future generations have a right to a healthy environment. This case exemplifies judicial activism in extending environmental rights beyond the present generation, underlining the judiciary's role in preserving environmental integrity for posterity.

1.1.2.5. Kenya

Kenya's judiciary has also taken an activist approach in recent years, especially after the enactment of the 2010 Constitution, which explicitly recognizes environmental rights. Article 42 of the

Constitution guarantees every citizen the right to a clean and healthy environment, and courts have used this provision to address environmental concerns.

In *Kenya Association of Manufacturers & 2 others v. Cabinet Secretary Ministry of Environment and Natural Resources & 3 others* (2017), the High Court upheld a ban on plastic bags, emphasizing the state's duty to protect the environment under the Constitution. Such decisions reflect the judiciary's willingness to ensure that environmental rights are not just theoretical but are actively enforced.

1.1.3. Key Characteristics of Judicial Activism in Environmental Law

Judicial activism in environmental law has some key characteristics that distinguish it from activism in other legal areas. First, it often involves the interpretation of constitutional rights, such as the right to life, in a manner that includes environmental protections. This broad interpretation has allowed courts to fill legislative gaps and ensure the enforcement of environmental standards.

Second, judicial activism in environmental law frequently relies on public interest litigation, where courts permit individuals or groups to file lawsuits on behalf of affected communities or ecosystems. This mechanism has been crucial in countries where marginalized communities may lack the resources or political power to challenge environmental harm through conventional legal means.

Finally, judicial activism in this field has often led to the development of new legal principles, such as the "polluter pays" principle, the "precautionary principle," and the "public trust doctrine." These principles have been instrumental in shaping environmental policy and ensuring accountability for environmental harm.

1.1.4. Criticisms and Challenges

While judicial activism has played a critical role in advancing environmental law, it has also faced criticism. Some argue that the judiciary oversteps its boundaries, encroaching on the functions of the legislature and executive. In some cases, courts may lack the technical expertise required to

make complex environmental decisions, leading to questions about the efficacy and appropriateness of judicial interventions.

Additionally, judicial activism is often reactive rather than proactive, addressing environmental issues after they have arisen rather than preventing them. There is also the challenge of enforcing judicial decisions, particularly in countries with weak governance structures or powerful economic interests that can resist compliance.

1.1.5. Conclusion

The historical context of judicial activism in environmental law reveals its crucial role in filling the gaps left by legislative and executive bodies. From the United States to India, Pakistan, the Philippines, and Kenya, courts have stepped in to protect environmental rights, often by interpreting constitutional guarantees expansively and ensuring that environmental laws are effectively implemented. Judicial activism has also fostered the development of important legal principles that continue to shape environmental jurisprudence globally.

Despite criticisms, judicial activism remains an essential mechanism for addressing environmental issues, especially where political will is lacking. It ensures that the right to a healthy environment is not merely an aspirational goal but a tangible reality for present and future generations. As environmental challenges become more complex and urgent, the judiciary's role in safeguarding the environment will likely continue to evolve, balancing judicial creativity with the need for technical expertise and effective enforcement.

The origins of environmental judicial activism in India can be traced back to the late 20th century, during a period of rising public awareness of environmental issues and increasing frustration over the inability of the executive and legislative branches to address these challenges effectively. As industrialization expanded, the resulting pollution, deforestation, and depletion of natural resources led to growing concern among citizens, environmental groups, and public interest organizations. This ultimately led to the judiciary taking a proactive stance in enforcing environmental laws and expanding the scope of fundamental rights to include environmental protections.

1.1. The Early Influences

Environmental judicial activism in India gained momentum in the 1980s. During this time, India was witnessing rapid industrial growth that often disregarded environmental considerations. The government's focus was on economic development, and environmental regulations were either insufficient or not implemented effectively. Against this backdrop, the judiciary began to step in to fill the gaps left by an overburdened executive and legislature.

The seeds of environmental judicial activism were sown when courts began to hear cases involving pollution, deforestation, and public health concerns. Many of these cases were brought forward through public interest litigation (PIL), which was introduced in India in the late 1970s and early 1980s. PIL enabled citizens and organizations to approach the courts directly for issues concerning the public at large, rather than just individual grievances. This proved to be a powerful tool for environmental advocacy, as it allowed affected communities, activists, and environmental groups to bring attention to environmental harm without the need to show direct personal injury.

1.2. The Role of Public Interest Litigation

Public interest litigation played a crucial role in shaping the judiciary's role in environmental protection. The Supreme Court of India and various High Courts used PIL to extend the interpretation of Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty, to encompass the right to a clean and healthy environment. This expansive interpretation marked the beginning of judicial activism in environmental matters.

The landmark case of *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh* (1985) is often cited as one of the earliest examples of judicial activism in environmental law. The case involved limestone mining in the Doon Valley, which was causing severe environmental degradation. The Supreme Court, in its ruling, ordered the closure of the mines, emphasizing the need to protect the environment for the sake of public health and ecological balance. This was one of the first instances where the court explicitly acknowledged the importance of environmental protection and took an interventionist approach to prevent environmental damage.

1.3. Expanding the Right to Life

The Indian judiciary continued to expand the interpretation of the right to life under Article 21 to include environmental rights. This was evident in the *MC Mehta v. Union of India* series of cases in the 1980s and 1990s. M.C. Mehta, a prominent environmental lawyer, filed numerous PILs to address various environmental issues, ranging from air and water pollution to the protection of the Taj Mahal from industrial emissions.

In *MC Mehta v. Union of India (Ganga Pollution Case)*, the Supreme Court took significant steps to address pollution in the Ganges River, ordering the closure of numerous industries that were discharging untreated effluents into the river. The Court emphasized the responsibility of the state and industries to ensure pollution control and protect water quality. Through these decisions, the Court underscored the principle that environmental protection is integral to the right to life and that the government has a duty to uphold this right.

The case of *MC Mehta v. Union of India (Oleum Gas Leak Case)* (1986) further demonstrated the Court's willingness to establish new principles of environmental law. The case arose from a gas leak at a factory in Delhi, leading to serious health hazards for nearby residents. The Supreme Court held the company strictly liable for the damage, establishing the principle of "absolute liability" for hazardous industries. This principle departed from the traditional concept of negligence and underscored the need for stricter liability standards in cases involving dangerous substances.

1.4. The Public Trust Doctrine and Precautionary Principle

During the 1990s, the Indian judiciary also adopted new legal doctrines to strengthen environmental protection. One such doctrine was the "public trust doctrine," which was invoked by the Supreme Court in the *MC Mehta v. Kamal Nath* case (1997). In this case, the Court held that natural resources such as rivers, forests, and air are held in trust by the government for public use and cannot be privatized or degraded for commercial gain. The public trust doctrine has since become a cornerstone of environmental jurisprudence in India, providing a basis for courts to prevent the exploitation of natural resources.

The judiciary also embraced the "precautionary principle" and the "polluter pays" principle, both of which have been instrumental in shaping India's environmental policy. The precautionary principle, which implies that preventive measures must be taken when there is a risk of serious or irreversible environmental damage, was formally recognized in the *Vellore Citizens' Welfare Forum v. Union of India* (1996) case. The Court directed industries to adopt cleaner technologies and prevent pollution, even in the absence of conclusive scientific evidence of harm. The "polluter pays" principle, meanwhile, established that those responsible for environmental damage must bear the costs of prevention and remediation.

1.5. Judicial Activism and the Expansion of Environmental Jurisprudence

The activism of the Indian judiciary in environmental matters continued into the 2000s and beyond. The Supreme Court set up specialized committees, such as the Central Empowered Committee (CEC), to oversee the implementation of its orders related to environmental issues. The Court also appointed commissioners and expert panels to ensure compliance with environmental regulations and policies.

In the *Godavarman Thirumulpad v. Union of India* (1996) case, which concerned the conservation of forests, the Supreme Court took on an ongoing supervisory role, issuing numerous orders over several years to protect forest cover across India. The case highlighted the judiciary's commitment to ensuring that environmental laws were not only enacted but also effectively implemented.

The judiciary's proactive stance was also evident in the *Arjun Gopal v. Union of India* (2018) case, where the Supreme Court imposed restrictions on the sale and use of fireworks to address air pollution during the festive season of Diwali. The Court's orders aimed to balance the cultural significance of fireworks with the need to protect public health and the environment from hazardous air pollutants.

1.6. Criticisms and Limitations

While judicial activism has played a pivotal role in advancing environmental protection in India, it has also faced criticism. Some critics argue that the judiciary has overstepped its boundaries, encroaching on the powers of the executive and legislature. In certain cases, the courts have been accused of making decisions without adequate technical expertise or consideration of economic

consequences. Moreover, the enforcement of judicial orders remains a challenge, especially in cases involving powerful economic interests or bureaucratic inertia.

Another limitation of judicial activism in environmental matters is that it is often reactive rather than proactive. Courts intervene when environmental damage has already occurred or when citizens bring cases to their attention, rather than preventing such harm in the first place. This highlights the need for stronger legislative and executive action to complement judicial efforts in protecting the environment.

1.7. Conclusion

The origins of environmental judicial activism in India lie in the judiciary's recognition of its role as a guardian of fundamental rights, including the right to a clean and healthy environment. Faced with inadequate legislative and executive action, the judiciary took on an activist role to address environmental challenges, using public interest litigation as a powerful tool to expand the scope of environmental rights and enforce environmental laws.

Through landmark cases and the adoption of new legal doctrines such as the public trust doctrine, the precautionary principle, and the polluter pays principle, the Indian judiciary has significantly contributed to the development of environmental jurisprudence. Despite facing criticism and limitations, judicial activism has been instrumental in ensuring environmental protection in India, particularly in holding the government and industries accountable for environmental harm.

The evolution of environmental judicial activism in India underscores the importance of a proactive judiciary in bridging the gap between the promise of constitutional rights and the reality of environmental governance. As environmental challenges become more complex, the judiciary's role will continue to be crucial in safeguarding the environment for present and future generations.