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The Role of Judicial Dissent in Catalyzing Progressive Environmental Jurisprudence in Indian Environmental Law

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Abstract

In terms of environment related issues, the Judiciary in India has been very proactive and fairly progressive. However, despite the fact that the judiciary has recognised the right to a clean and healthy environment to be a subset of the right to life and personal liberties on numerous occasions, the environment is far from perfect. According to 'Environmental Performance Index-2024', released by the Yale Centre for Environmental Law and Policy in collaboration with the Colombia Centre for International Earth Science Information Network, India ranked 176th among 180 countries, which is alarming. The policy makers cannot turn a blind eye to this extremely urgent matter. Constitutionally speaking, Article 48A of the Indian Constitution mandates that the state authorities take initiatives to safeguard the environment, including forests and wildlife. However, the problem of pollution in urban India must be dealt with on a priority basis. Under Article 51A(g), every person has a duty to maintain and improve the natural environment. Moreover, the Indian Parliament has also passed many environmental laws, including the Environmental Protection Act 1986, but the implementation is sluggish and thus resulting in an adverse impact on the overall health of the environment in India. This research article examines and underscores the importance of dissenting judgements in environmental jurisprudence and also further explores the role of these dissenting voices in protecting the environment and promoting environmental governance and the rule of law in India. It is also argued that since the majority decisions are binding, the exposition of law by dissenting judges is usually overlooked, especially in the Indian context. However, the dissenting opinions offer a different perspective on a variety of legal issues, including environmental jurisprudence, and have also contributed to shaping environmental law.

1. Introduction

Men and the environment are inextricably linked (Kandpal, 2022). In fact, the survival of human beings is not possible without a healthy environment. World War II left deep marks on the natural environment near war zones, including the regions occupied by war industries (University of Helsinki, 2024). The protection and improvement of the environment for the present and future generations has become a must-have aim for humanity (Shastri, 2015). The first UN Conference on the Human Environment (hereafter referred to as the UN Conference) aimed at addressing environmental concerns was held in Stockholm in 1972. It was the first global conference to recognise the importance of the environment and the need to safeguard it.

The United Nations Conference has inspired countries to pass environmental legislation based on the ideals spelled out in the conference (United Nations, 1972). The UN Conference has also encouraged the participating member countries to establish a full-fledged ministry dedicated to protecting and safeguarding the environment and natural resources. Accordingly, the Indian Parliament passed the 42nd Amendment (1976) and recognised the importance of the environment and natural resources, fulfilling India's international commitments on environmental legislation.

The judiciary in India has also elevated the importance and values of the environment in human life through different rulings over the years. When it comes to environmental challenges, however, not everything is as it seems. “India should take measures to improve enforcement of various environmental laws, including adopting a revised policy on pollution prevention, developing an integrated approach to pollution abatement, developing a policy on prosecution and enforcement, restructuring various environmental laws to meet treaty obligations, introducing incentive-based instruments for pollution abatement and adopting a cooperative approach to enforcement of the environmental laws” (Sinha, 2003). Because there is always an opportunity for improvement on the government’s part, it must take a cooperative approach to enforcing environmental laws.

Over the years, environmental law has gone through the process of development. It is now considered a serious and defined discipline with distinct characteristics that are organically linked to a variety of concerns other than the environment (Cassotta, 2019). In her treatise *Silent Spring* (1962), Rachel Carson writes:

“The history of life on earth has been a history of interaction between living things and their surroundings. To a large extent, the physical form and the habits of the earth’s vegetation and its animal life have been moulded by the environment. Considering the whole span of earthly time, the opposite effect, in which life actually modifies its surroundings, has been relatively slight. Only within the moment of time represented by the present century has one species — man — acquired significant power to alter the nature of his world.” (Carson, 1962)

One of the first books to recognize the value of the human environment and provide the groundwork for environmental protection was Rachel Carson’s *Silent Spring.* Her efforts has effectively raised public awareness of how susceptible nature was to human influence. In fact, because of her outstanding efforts, environmentalism emerged after World War II and people from all over the world came together to talk about the negative effects of climate change and to try to find a peaceful solution.

2. Constitutional Perspectives of the Environmental Law in India

The Indian Constitution is the ultimate law of the land. Actually, it is a *Grund Norm* that forms the basis of all laws and legislations. A society’s ambitions and aspirations are reflected in the Constitution, which also acts as a framework for governing that society according to its stated principles. All laws enacted by the legislature have to be compliant with the constitution. The judiciary exclusively considers the Constitution when interpreting laws and statutes. The limits established by the constitution cannot be exceeded by laws passed by the parliament under any circumstances.

The Constitution is dynamic, evolving over time to appropriately handle the changes that society is going through. Prior until now, the Indian Constitution contained no significant clause that addressed environmental concerns. However, as a part of India’s commitment to the Stockholm Declaration (United Nations, 1972) and to safeguard the environment, the Indian Parliament passed the 42nd Constitutional Amendment (1976) to fill the vacuum in domestic law.

In the present times, the environmental rule of law forms an important pillar of international environmental law and environmental governance (Kreilhuber & Kariuki, 2020). Article 48A of the Constitution of India has directed the state to protect and preserve the environment, including forest and wildlife. Article 51A(g) imposed a constitutional duty upon every citizen of India to protect and improve the natural environment. To fulfil India's commitment in terms of respecting and promoting international environmental law, the Parliament of India also enacted the Environment (Protection) Act, 1986 — an umbrella legislation broad in its nature and scope, aiming at protecting and improving the environment. Under sections 6 and 25 of the Act, the Government of India is empowered to frame rules and, accordingly, 'the Environment (Protection) Rules, 1986' were framed. The main objective of these rules were to protect and improve the quality of the environment.

Moreover, Article 253 of the Constitution of India has also authorised the Parliament to enact laws in accordance with different international treaties, conventions and accords. Invoking Article 253 of the Indian Constitution, the Indian Parliament enacted 'the Air (Prevention and Control of Pollution) Act, 1981' in order to implement decisions taken at the United Nations Conference on the Human Environment, 1972. Similarly, following the Bhopal Gas Tragedy, the Environment (Protection) Act, 1986 was also enacted to implement international treaties and declarations in line with India's obligations under international law (The Constitution of India, 1950).

3. Contribution of the Judiciary in Environmental Jurisprudence in India

Over the years, the judiciary in India has increasingly broadened the scope of environmental law to address the challenges posed by complex environmental issues. Several landmark judgments, the application of constitutional provisions, and the creative use of legal principles like public interest litigation (PIL) have been instrumental in this regard. Here is an overview of landmark judgements in relation to the environment delivered by the top court in India.

The Supreme Court of India addressed the issue of unlicensed and illicit limestone mining negatively harming the ecology and ecosystem in and around the Dehradun-Mussoorie green belt in *Rural Litigation Entitlement Kendra v. State of Uttar Pradesh* (1989). Emphasising the need to strike a balance between economic development and environmental conservation, and underscoring the importance of sustainable practices, the courts ordered that the mining activities must be stopped immediately. This judgement set a precedent for the protection of environment in India.

The Supreme Court of India in the case of *Subhash Kumar v. State of Bihar* (1991) decided that the right to clean water and air is included under Article 21 of the Constitution. In *M C Mehta v. Union of India* (1987), the Supreme Court of India established the doctrine of absolute liability and observed that an industry involved in hazardous operations constituting a possible threat to the health, wealth, and safety of those living in the vicinity must be held liable in case any harm is caused to any person living in nearby areas.

In *Ratlam Municipal Council v. Vardhichand* (1980), the apex court opined that a Municipal Council is a public body and is mandated to preserve public health. It cannot simply escape from its prime duty by pleading financial constraints. In *Tarun Bharat Sangh, Alwar v. Union of India* (1993), the Supreme Court of India prohibited all sorts of mining activities in Sariska National Park and other notified areas. In *Vellore Citizen Welfare Forum v. Union of India* (1996), the top court invoked the "polluter pays principle" and effectively dealt with the problem of untreated effluents of tanneries and industries being directly discharged from the factory into the Palar river, which was the main source of water supply to the city of Vellore in the state of Tamil Nadu.

In *M C Mehta v. Kamal Nath* (1997), the apex court ingrained the doctrine of Public Trust in the Indian legal system and cancelled a lease granted to the respondent on public land, further asking the respondent to pay compensation to restore the ecology of that area. In *Murli S. Deora v. Union of India* (2002), the apex court discussed the issue of passive smoking and held that, "Non-smokers cannot be compelled to be victim of air pollution." In *Indian Council for Enviro-Legal Action v. Union of India* (1996), the top court prohibited the pollution caused by chemical plants and industries situated in Udaipur District of Rajasthan and further directed the industries to pay the compensation for the damage caused due to pollution.

In *M C Mehta v. Union of India* (1997), the Supreme Court of India, considering the importance of Taj Mahal in Indian architecture and taking note of pollution caused in its vicinity, ordered that a green belt must be set up around it. In *M C Mehta v. Union of India* (2003), the Supreme Court directed the National Council of Educational Research and Training (NCERT) to develop an environmental studies curriculum for students from class I to XII, which must be taught in all schools across the country. Various environmental issues have been addressed by the judiciary in a step-by-step fashion. However, the biggest stumbling block remains a lack of administrative will to implement environmental laws, including the court's rulings.

4. Judicial Dissent in Environmental Law

Any single written or spoken word by the apex court carries its own weight, and hence dissenting views have their own value. Dissenting judgements are the judgements delivered by the minority judge/judges and their exposition of law is generally neglected since only the majority judgement is binding. Despite the fact that judicial dissent remains the most neglected part of legal theory, it has contributed to the development of different areas of law, including environmental law. Even though there have only been a few dissenting rulings on environmental issues, their significance in sustaining the environmental rule of law cannot be understated.

The right to dissent and the rule of law are well-accepted norms (Covey, 2022). The right to dissent is indispensable to any democratic society. Dissent is a safety valve of democracy. Labelling of dissent as anti-national or anti-democratic, without any justification, strikes at the very heart of India's commitment

to promote constitutional values. Curbing dissent instils an element of fear and violates the rule of law (Chandrachud, 2018).

4.1 Justice Bharucha's Dissenting Judgement in Narmada Bachao Andolan v. Union of India (2000)

Major projects, like large dams, inevitably have human and environmental ramifications (Cullet, 2001) so the court must carefully and cautiously examine the effects of such projects. Nearly every segment of society has expressed concern about how the Sardar Sarovar Dam will affect the sustainability of natural resources. Even though dams are a crucial source of water for various uses, including domestic, industrial, and agricultural needs, they are nevertheless the subject of numerous debates in India (Rao, n.d.).

In *Narmada Bachao Andolan v. Union of India* (2000), a PIL was filed in the apex of India. This PIL challenged the validity of the construction of the Sardar Sarovar Dam in the State of Gujarat. The petitioner contended that, during the construction of the dam, the environmental impact assessment was not done properly. A full-bench of the Supreme Court decided the case by a 2:1 majority. Justice Kirpal and Chief Justice A S Anand, through the majority judgement, rejected the petition on the ground of laches on the part of the petitioner. The majority judgement further allowed the construction of the dam to continue and observed that the construction project must be cleared at the earliest.

While Justice Bharucha gave his dissenting opinion and disagreed with the majority views. In his dissenting judgement, he ordered the Ministry of Environment and Forest to constitute a committee of experts to make an environmental impact assessment in relation to the said project. The learned dissenting judge further ordered the concerned authorities to immediately stop the project until the environmental clearance was accorded by the expert committee. The dissenting judge, after carefully examining the case, tried to fix the accountability of the government on environmental laws and genuinely believed in the very concept of environmental rule of law.

4.2 Justice Dharmadhikari's Dissenting Judgement in N D Jayal v. Union of India (2004)

The principle of sustainable jurisprudence has evolved to the extent that it has occupied centrality in environmental laws in India (Chowdhury, 2016). A petition was filed in the Supreme Court of India in *N D Jayal v. Union of India* (2004) concerning environmental safety in the Himalayan region. The petitioner prayed before the court that further safety tests must be conducted to ensure the safety of the Tehri Dam. The majority judgement, delivered by Rajendra Babu, J., for himself and on behalf of G P Mathur, J., talked of the doctrine of sustainable development and its compatibility with environmental jurisprudence. The majority judgement dismissed the petition, observing that there had already been an environmental clearance in the place where the Dam would be constructed. On safety concerns, the court held:

"In our opinion the Court can only investigate and adjudicate the question as to whether the government was conscious to the inherent danger as pointed out by the petitioners and applied its mind to the safety of the dam. We have already given facts in detail, which show that the government has considered the question on several occasions in the light of the opinions expressed by the experts. The government was satisfied with the report of the experts and only thereafter clearance has been given to the project." (N D Jayal v. Union of India, 2004)

While Dharmadhikari, J., was unable to agree with the majority opinion and wrote his separate judgement. He issued a slew of directions to the government to appoint an expert committee to look into the matter with utmost care and submit a report on the same. He further observed as:

"In my considered opinion, looking to the dimensions and implications of the case on environment and human rights a monitoring mechanism is required to be set up and activated to ensure compliance of the conditions on which clearance was granted to the construction of a dam in Himalayan Valley near Tehri. It may be legal but not efficacious to transfer this writ petition under Article 32 of the Constitution of India to the High Court of Uttaranchal for monitoring the compliance of the conditions on which environmental clearance was given to the Tehri Dam Project. With utmost respect, therefore, I have considered it necessary to record my separate opinion with conclusions containing the directions which are required to be issued to the respondents in this writ petition." (N D Jayal v. Union of India, 2004)

Commenting upon the resettlement and rehabilitation of those who have been ousted from their original habitat, the dissenting judge stated that the construction activities cannot be carried out by leaving those who have been ousted unless they are evacuated and rehabilitated properly.

4.3 Justice Sanjeev Khanna's Dissenting Judgement in Rajeev Suri v. Delhi Development Authority (2022)

A public interest litigation was filed in the Supreme Court of India in *Rajeev Suri v. Delhi Development Authority* (Transferred Case (Civil) No. 229 of 2020) against the Central Vista Project. The Supreme Court was called upon to comprehensively decide upon the permissibility of the Central Vista Project in the light of various environmental laws. The petitioner raised various issues pertaining to the environment, such as change in land use, grant of statutory and other permissions, and environmental as well as heritage clearances.

A full-bench of the Supreme Court, by a majority judgement of 2:1, outrightly rejected this petition and observed that "the judicial time is not meant for undertaking a roving enquiry or to adjudicate upon unsubstantiated flaws in policy matters of the government and 'politicise it' to appease the dissenting group of citizens" (Rajeev Suri v. Delhi Development Authority, 2020). Before parting with the case, the majority judgement held that:

"We feel constrained to note that in the present case, the petitioners enthusiastically called upon us to venture into territories that are way beyond the contemplated powers of a constitutional court. We are

compelled to wonder if we, in the absence of a legal mandate, can dictate the government to desist from spending money on one project and instead use it for something else, or if we can ask the government to run their offices only from areas decided by this Court, or if we can question the wisdom of the government in focusing on a particular direction of development. We are equally compelled to wonder if we can jump to put a full stop on execution of policy matters in the first instance without a demonstration of irreparable loss or urgent necessity, or if we can guide the government on moral or ethical matters without any legal basis. In light of the settled law, we should be loath to venture into these areas. We need to say this because in recent past, the route of public/social interest litigation is being increasingly invoked to call upon the Court to examine pure concerns of policy and sorts of generalised grievances against the system. No doubt, the Courts are repositories of immense public trust and the fact that some public interest actions have generated commendable results is noteworthy, but it is equally important to realise that Courts operate within the boundaries defined by the Constitution. We cannot be called upon to govern." (Rajeev Suri v. Delhi Development Authority, 2020)

The majority judgement gave the go-ahead to the government to continue with the Central Vista Project, observing that the court cannot interfere in policy matters of the government and that it operates within the boundaries defined by constitutional limits. With due respect, it is most unfortunate that the majority judgement restricted itself to entertain the petition without any reasonable cause.

There have been instances where the judiciary in India has interfered even in policy matters, provided the policy directly affects the fundamental rights of the citizen. Justice Chandrachud interfered in matters pertaining to policy decisions and issued directions to ban the sale of liquor along National and State Highways by invoking Article 142 of the Indian Constitution in the case *State of Tamil Nadu v. K Balu* (2017). However, Rajeev Dhavan, a noted senior advocate, contended that the top court's decision was unlawful since it fell under the category of judicial policy making. Justice Chandrachud, however, did not agree with him and stated that the decision had been made taking into account the Union Government's stance on road safety.

Justice Sanjeev Khanna dissented from the majority views and, carrying the legacy of dissent of his uncle Justice H R Khanna, questioned the validity of the Central Vista Project on several points. His dissent seems more in line with the environmental rule of law. While setting aside and quashing the final notice of modification and change of land use in respect of six plots in the Central Vista Project, he differed from majority views on aspects such as public participation in the decision-making, failure on the part of the government to take prior approval of the Heritage Conservation Committee, as well as the order passed by the Expert Appraisal Committee.

Justice Khanna further directed the Heritage Conservation Committee to examine the issue of grant of prior permission/approval in respect of building/permit of the new parliament. The final decision must be communicated to the local body such as New Delhi Municipal Corporation; accordingly, the Heritage Conservation Committee would pass a speaking order setting out reasons for the conclusions.

Emphasising upon the need and role of the Heritage Conservation Committee, the dissenting judge stated:

"Given the nature and magnitude of the entire re-development project and having given due notice to the language, as well as object and purpose behind the re-development project, undoubtedly prior approvals and permissions from the Heritage Conservation Committee were/are required and necessary." (Rajeev Suri v. Delhi Development Authority, 2020)

The dissenting judgment of Justice Sanjeev Khanna is certainly going to have a positive impact upon environmental jurisprudence in time to come. It will definitely have a role to play in making the administration accountable, especially in matters pertaining to the environment. The Supreme Court in India has already declared the right to a wholesome environment as part of the right to life under Article 21 of the Indian Constitution on many occasions.

Public participation is a key to a representative democracy. In fact, it is an important element of good governance (Menon & Hartz-Karp, 2019). In the dissenting judgement, Sanjeev Khanna, J. also noted and pointed out that the public was not afforded a full opportunity to actively participate in assessing the validity of the project. He directed that the government must put on the public domain on the web intelligible and adequate information along with drawings, layout plans, and an explanatory memorandum. Speaking for the rights of citizens about the plan of the government and the duty of the government to make intelligible information public, Justice Khanna also remarked as follows:

"The citizenry clearly had the right to know intelligible details explaining the proposal to participate and express themselves, give suggestions and submit objections. The proposed changes, unlike policy decisions, would be largely irreversible. Physical construction or demolition once done, cannot be undone or corrected for future by repeal, amendment or modification as in case of most policies or even enactments. They have far more permanent consequences." (Rajeev Suri v. Delhi Development Authority, 2020)

It is the duty of the government not only to put the information in the public domain but also to acknowledge the actual contribution of the public and to further indicate what has been consented to by the public. Article 25(a) of the International Covenant on Civil and Political Rights (ICCPR, 1966) has also touched upon the concept of public participation: "every citizen shall have the right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representative." Public participation was made mandatory in environmental decision-making through a notification in 1997. Therefore, carrying out a project while keeping the general public in the dark is certainly going to defeat the ends of justice and the rule of law — hence, Sanjeev Khanna, J. promoted the very notion of the rule of law.

5. Tabular Analysis

Table 1

Dissenting Judgments and their Contribution to Environmental Jurisprudence

Sr. No.	Judgment	Dissenting Opinion	Contribution to Environment
1	Narmada Bachao Andolan v. Union of India (2000)	Justice Bharucha emphasized the proper environmental safeguards and rehabilitation of victims before continuation of dam project.	The dissent boldly disagreed with the majority and strengthened sustainable development and the environmental project.
2	N D Jayal v. Union of India (2004)	Justice D. M. Dharmadhikari underscored the importance of the precautionary principle and wisely warned against ecological risks and scientific uncertainty.	Emphasized and reinforced the principles of the precautionary principle and inter-generational equity in Indian environmental law.
3	Rajeev Suri v. Delhi Development Authority (2020)	Justice Sanjiv Khanna emphasized transparency, environmental impact assessment, and public participation in decision making.	Promoted environmental rule of law, fixed the accountability of the system, and supported the idea of democratic environmental governance.

Note. *The contributions listed above are based on judicial records analysed in this study.*

These dissenting opinions have expanded the interpretation of fundamental rights by connecting the right to life with ecological balance, environmental safety, and sustainable development in India. The dissents have consistently emphasized precautionary approaches, inter-generational equity, and sustainable development, which later became cardinal principles of Indian environmental law. The dissenting judges, while disagreeing with the majority views, have insisted that constitutional courts must critically examine environmental clearances, rehabilitation measures, and scientific assessments rather than blindly defer to executive decisions. The dissenting judgments certainly contributed to the idea of environmental governance in India and further ensured that every environmental project must operate within constitutional principles of transparency, rule of law, public participation, and accountability of the system.

6. Policy Recommendations

The environmental development projects must strictly undergo Environmental Impact Assessment (EIA). Principles of sustainable development including the precautionary principle and the polluter pays principle must be applied rigorously.

In order to protect the environment, the judiciary should adopt an eco-centric approach rather than an entirely anthropocentric approach. The judicial institutions must also ensure that environmental protection is an essential part of constitutional governance and the rule of law under Article 21 of the Constitution of India. It is also the need of the hour that special environmental benches should be established and the recommendations of expert committees should be incorporated and strengthened.

These dissenting opinions should not remain confined to academic discussions or judicial records only. The bold observations and concerns raised by dissenting judges must also be taken serious note of by policymakers. The parliament, while framing environmental laws and policies, must also take note of these dissenting judgments. Although dissenting judgments do not constitute binding law, they have reflected, as discussed above, deeper constitutional values, ecological concerns, and long-term public interest.

7. Conclusion

Man is the only creature on the planet with the ability to change the world's nature. As a result, every human being has a responsibility to safeguard the environment in order to save the planet. The only goal of environmental law has been to safeguard the environment. The Indian judiciary has elevated the relevance and values of the environment in human life through numerous judgements over the years and has played a significant role; however, not everything is perfect when it comes to environmental issues. In the guise of progress, the ruling authorities and corporate bodies continue to harm the environment, and most of the time they avoid the clutches of fines.

It is important that environmental protection be the primary goal of the current generation so that future generations are not harmed as a result of our irresponsible attitude toward the natural environment. Only three significant dissenting decisions in the top court have dealt with environmental law, but these dissenting judges have attempted to protect the Environmental Rule of Law through these decisions. The government's accountability has been bluntly questioned by the dissenters, who have been quite vociferous. Sanjeev Khanna, J. recently voiced his minority opinions in the *Rajeev Suri* case (2020) and openly questioned the government on a number of fronts, including the environmental impact assessment and citizen involvement in government affairs. His opinions will undoubtedly have a significant impact, and they will also be useful in directing future judicial decisions regarding environmental laws.

It is high time that the dissenting judgements must be acknowledged as part of Indian jurisprudence and the environmental rule of law. It is equally important to investigate the significance of the dissenting opinions. The parliament should take note of these dissenting judgements while enacting laws relating to the environment. It is also encouraged that the policy makers acknowledge the dissenting views while framing policies on different areas of the environment.

Declarations

Ethics approval and consent to participate

This article does not involve studies with human participants or animals that would require formal ethical approval. Not applicable, No human participants were involved, and no informed consent was required.

Consent for publication

The author has reviewed the final manuscript and consents to its publication.

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Author Contribution

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