

## ARTICLE

### Role of the Judiciary in the Protection of the Environment in India

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**Abstract.** It is a well-established principle that the Indian Constitution protects not only the functioning of the country but also the environment for the welfare of its people who live there. The right to live in a clean, healthy environment is one of the most important and basic rights of every citizen. Increased pollution, a lack of plants and animals, and a high awareness of harmful chemicals in the air are all indicators that environmental problems are getting worse. Even though the Constitution does not explicitly enumerate this right, protecting the environment and preventing accidents that hurt the environment are recognized as rights through judicial interpretation. In many cases, big corporations are to blame for the worsening of environmental degradation; however, courts are often reluctant to punish such powerful companies. In the last few decades, the court system has evolved to help regular people obtain justice. This article discusses several landmark environmental decisions from the past and present to gain a better understanding of corporate social responsibility towards society and to evaluate the effectiveness of the Indian courts over the years. This study further situates Indian environmental jurisprudence within a broader BRICS framework by briefly comparing judicial approaches to

environmental protection in countries such as China, Brazil, South Africa, and Russia and other countries that have recently joined the alliance, thereby strengthening the international and comparative dimension of the analysis.

**Keywords:** judiciary; environment; protection; sustainable development; Rio Declaration; Bhopal Gas Disaster; precautionary principle; polluter-pays principle.

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## Introduction

In the 50<sup>th</sup> year of the United Nations Conference on the Human Environment, also known as the Stockholm Conference, the protection of the environment through the necessary laws that are already in place remains critically important. The principles articulated in the Stockholm Declaration (1972) and later reaffirmed in the Rio Declaration (1992) continue to influence constitutional interpretation and judicial reasoning in environmental cases, particularly in developing economies such as India and the other BRICS countries. With the exception of a few cases like the *Pahwa Plastics Pvt. Ltd.* case and the *Electrosteel Steels Ltd.* case, the Indian judiciary has been proactive in resolving environmental issues over the last few decades. On a broader scale, we can see that by upholding the Environmental Rule of Law, the Supreme Court has emerged as a key institution in environmental protection and the management of ecological damage. This judicial leadership places India alongside

other BRICS nations, where courts have increasingly intervened to fill regulatory gaps in environmental governance. Recent BRICS scholarship demonstrates that contemporary environmental governance increasingly extends beyond traditional pollution control to include climate adaptation, mitigation strategies, and cooperative regulatory frameworks. Various other studies conducted across BRICS countries further highlight the importance of grassroots environmental initiatives, carbon trading mechanisms, public–private partnerships, and renewable energy governance as complementary tools alongside judicial intervention.<sup>1,2,3,4</sup> Incorporating these perspectives allows Indian environmental jurisprudence to be evaluated within a broader BRICS cooperation framework rather than in isolation.

Article 21 of the Indian Constitution guarantees the protection of people's lives and freedoms. It provides that no individual can be deprived of their life and freedom except according to the rules set by the law. In other words, it guarantees that everyone has the right to life and freedom, and any deprivation of these rights must by law be fair and reasonable. Article 21 provides a broad enough picture of what constitutes a good life. Article 21 states that a person's "right to life" can be questioned if their "right to life" is taken away in a way that is unfair, unreasonable, or unlawful.

Article 21 is a cornerstone of fundamental rights and has gradually been expanded to include a range of protections that ensure people can live in a safe place. In particular, it guarantees one of the most important requirements of life: to live in a legally regulated place free of diseases and contamination. The "ideal to live in a sound and healthy condition" has become the center of human rights because of the way the law defines it.

Principle 1 of the 1972 Stockholm Declaration on the Human Environment states that every man has a fundamental right to freedom, equality, and adequate living conditions in a healthy environment and also bears the responsibility to protect and improve the environment for present and future generations.

This implies a serious responsibility to protect and improve the environment for people living now and in the future. This idea is also reflected in Articles 14, 19, and 21 of the Indian Constitution, which are about the rights to equality, freedom of speech, and the right to life and personal freedom, respectively. Article 14, for instance, ensures that the states cannot treat anyone differently when it comes to

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<sup>1</sup> Daryanti, D., & Sudarwanto, A. S. (2024). Legal implications for the BRICS countries in the carbon trading system through carbon exchanges: Perspective from the precautionary principle. *BRICS Law Journal*, 11(4), 126–144.

<sup>2</sup> Kvanina, V., Kovalenko, E., & Vypkhanova, G. (2023). Improving the legislation on public-private partnerships in environmental protection in the BRICS countries. *BRICS Law Journal*, 10(3), 106–121.

<sup>3</sup> Vylegzhanin, A., Ivanov, D., & Milyukova, M. (2023). Renewable energy in international law: The Russian perspective for developing a common BRICS approach. *BRICS Law Journal*, 10(2), 5–36.

<sup>4</sup> Zakharova, O., & Glazkova, A. (2024). Green Waste Practices as Climate Adaptation and Mitigation Actions: Grassroots Initiatives in Russia. *BRICS Law Journal*, 11(4), 145–167.

the law in India. The right to quality can also be violated by decisions made by the government that hurt the environment. Urban environment groups have often invoked Article 14 to challenge municipal decisions that violate developmental regulations.

Article 51-A(g) reads:

It shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers, and wild life and to have compassion for living creatures.

Constitutional amendments also introduced certain changes in the 7<sup>th</sup> Schedule of the Constitution. Forests and wildlife were transferred from the State List to the Concurrent List. This move shows the concerned approach of the Indian Parliament to prioritize environmental protection by bringing it up on the national agenda.

Although unenforceable in courts, the Directive Principles of State Policy are increasingly being cited by judges as complementary to the Fundamental Rights. Article 51-A(g) specifically deals with the fundamental duty of citizens with respect to the environment. It also provides for the protection and improvement of the environment, stressing water pollution by including matters such as lakes, rivers, etc., but this should not mean that other pollution, such as noise pollution, is of no concern. The term “improvement of the environment” encompasses all types of pollution, including noise pollution.

Article 246 of the Constitution allocates legislative powers between the Union and the States, which includes laws that deal with health and environmental issues. The Union List covers areas such as defense, foreign affairs, atomic energy, air traffic, mines and interstate rivers, shipping, oilfields, and interstate transportation. The State List addresses matters such as public health and sanitation, farmland, water supplies, irrigation and drainage, and fisheries. The Concurrent List (List III) includes factories, population control, forests, protecting wildlife, mines and minerals, and other development not covered by the Union List. From an environmental perspective, the allocation of legislative authority is an important one: many important problems like sanitation and waste disposal are best tackled at the local level, while others such as water pollution and wildlife protection are regulated by uniform national laws.

This article therefore focuses on judicial interpretation, doctrinal evolution, and institutional mechanisms, particularly the National Green Tribunal, while foregrounding the judiciary’s role in shaping sustainable environmental governance in India. In the next section, we will examine several important decisions from the past and present to gain a better understanding of how effectively the Indian courts have addressed environmental issues over the years.

## 1. Role of the Judiciary in Implementing International Environmental Principles

It is worth noting that in addressing the problem of environmental degradation, the courts have also contributed to making the environment healthier and cleaner through the application of the principle of sustainable improvement. The Indian judiciary has consistently relied upon internationally recognized environmental principles, such as sustainable development, the precautionary principle, and the polluter-pays principle, while resolving environmental disputes. While Indian courts have incorporated these principles through constitutional interpretation, recent BRICS-focused legal scholarship underscores their relevance in emerging climate governance tools such as carbon trading systems. In particular, carbon exchanges within the BRICS countries are increasingly viewed as mechanisms to operationalize climate justice, transparency, and accountability, requiring that major emitters undertake measurable mitigation efforts while preventing carbon leakage.<sup>5</sup> Judicial endorsement of these principles in India strengthens their normative value across BRICS jurisdictions.

In the case of *Goa Foundation v. Konkan Railway Corporation*<sup>6</sup> a writ petition was filed against the construction of a new broad gauge railway line from Ernakulum to Mumbai. The petitioner argued that a small lake would be filled in, which would adversely affect the migration of birds to the State of Goa. The defendant contended that the project was for the public good, as there were no roads between Ernakulum and Mumbai, and putting down such a track would better help people get around. Citing this fabricated fear, the High Court chose not to intervene and permitted the construction of the Konkan railways, deeming it to be in the public interest.

### 1.1. Sustainable Development

In the same way, the petitioner in *Rural Litigation Entitlement Kendra v. State of Uttar Pradesh* asked the Supreme Court to stop mining in Dehradun due to its detrimental effects on the environment. The Supreme Court reaffirmed the principle of sustainable development, stating that development is not inherently harmful for the environment from an ethical point of view. While the utilization of natural resources is necessary for social development, it should not be done at the expense of ecological balance. The Supreme Court's reasoning in this case reflects a broader global judicial trend, which is also visible in South Africa and Brazil, where courts emphasize balancing developmental needs with ecological sustainability.

In the case of *T. Damodhar Rao v. Municipal Corporation of Hyderabad*<sup>7</sup> the court held that Article 21 of the constitution stresses the protection and preservation of

<sup>5</sup> Daryanti & Sudarwanto, 2024.

<sup>6</sup> *Goa Foundation v. Konkan Railway Corporation*, AIR 1992 Bom 471.

<sup>7</sup> *T. Damodhar Rao v. Municipal Corporation of Hyderabad*, AIR 1987 AP 171.

nature's gifts, which are what make life worth living. Environmental degradation, such as air pollution caused by garbage and other waste, makes the air dirty and slowly poisons people. This is a violation of Article 21. In this case, the petitioner asked that the land set aside for a recreational park in the development plan not be used by the Life Insurance Corporation or the Income Tax Department to build houses.

As a result, the LIC of India and the Income Tax Department were not allowed to build anything on the designated land or use it for residential purposes in any manner.

In *CharanLal Sahu v. Union of India*<sup>8</sup> the Supreme Court of India upheld the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, affirming that "in the context of our national dimensions of human rights, Articles 21, 48-A, and 51(A)(g) of the Constitution guarantee the rights to life, liberty, pollution-free air and water." It is the state's responsibility to protect the constitutional rights effectively. Article 21 explicitly states that everyone has the right to live in a healthy setting, as was also made clear in the Supreme Court's comment. This right must be read together with Articles 48-A and 51-A-g, which means that both the state and the people have a responsibility to protect and improve the environment.

### **1.2. Precautionary Principle**

In *M.C. Mehta v. Union of India*, a landmark case, the Supreme Court of India took note of the pollution caused by the stone crushing operations in and around the Delhi, Faridabad, and Balabhgarh complexes. This case shows how the Indian judiciary set an example for protecting the environment. The Court recognized that as industrialization increased, there would inevitably be some changes to the environment. However, the Court held that such development should not harm the environment by polluting the air, water, and land to the extent that it endangers public health. Reaffirming its commitment to environmental protection, the court, stated that "every citizen has a right to fresh air and to live in a pollution-free environment."

Thus, the Supreme Court reconsidered the matter and held that it was a violation of Article 21 of the Constitution. It subsequently issued an order under Article 32, directing the cessation of operations of the stone crushing units in the Delhi, Faridabad, and Balabhgarh complexes.

### **1.3. Polluter-Pays Principle**

The Supreme Court's decision in *Vellore Citizen's Welfare Forum v. Union of India*, also known as the T.N. Tanneries Case, illustrates the importance of maintaining a healthy environment.

The incorporation of the precautionary principle and the polluter-pays principle in this judgment aligns Indian environmental jurisprudence with international environmental law standards and practices observed in other BRICS jurisdictions.

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<sup>8</sup> *CharanLal Sahu v. Union of India* (1990) 1 SCC 613.

Articles 21, 47, 48-A, and 51-A(g) of the Constitution, as well as the Water (Prevention and Control of Pollution) Act of 1981 and the Environment (Protection) Act of 1986, were cited by the court in upholding the inclusion of the “Precautionary Principle” and the “Polluter Pays Principle” into the environmental laws of the country. In other words, Article 21 of the Constitution stipulates that the right to life is encompassed under these two basic principles.

**Table 1: Landmark Environmental Cases in India: Key Issues, Legal Principles, and Environmental Impacts**

| Year | Case                                                                     | Core Issue                          | Legal Position                                                                                | Environmental Impact                                                            |
|------|--------------------------------------------------------------------------|-------------------------------------|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 1985 | <i>Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh</i> | Limestone mining in Dehradun valley | Sustainable development; ecological balance over unrestricted mining                          | Closure of several mines; protection of Mussoorie hills ecosystem               |
| 1986 | <i>M.C. Mehta v. Union of India (Oleum Gas Leak)</i>                     | Hazardous industry liability        | Absolute liability for hazardous activities; precautionary approach                           | Strengthened regulation of hazardous industries                                 |
| 1987 | <i>T. Damodhar Rao v. Municipal Corporation of Hyderabad</i>             | Conversion of park land for housing | Right to healthy environment under Article 21                                                 | Preservation of recreational spaces in urban planning                           |
| 1992 | <i>M.C. Mehta v. Union of India (Delhi Stone Crushers)</i>               | Industrial air pollution            | Right to pollution-free environment                                                           | Relocation/closure of polluting units around Delhi                              |
| 1996 | <i>Vellore Citizens' Welfare Forum v. Union of India</i>                 | Tannery pollution in Tamil Nadu     | Precautionary and polluter-pays principles part of customary international law and Indian law | Establishment of pollution control infrastructure; compensation and restoration |
| 1996 | <i>Indian Council for Enviro-Legal Action v. Union of India</i>          | Chemical industrial pollution       | Polluter-pays for remediation                                                                 | Remediation of contaminated land and water                                      |

Source: Author

## 2. Landmark Cases: Bhopal Gas Tragedy and Corporate Accountability

The gas leak in Bhopal is considered the worst industrial accident in history. The Bhopal Gas Tragedy marked a turning point in Indian environmental and tort law, highlighting the need for stricter corporate accountability, improved environmental regulation, and specialized environmental adjudicatory mechanisms. Comparative BRICS scholarship on public–private partnerships (PPPs) in environmental protection reveals that effective corporate accountability requires coherent and flexible legal frameworks. Studies indicate that common law BRICS countries, including India and South Africa, possess greater adaptability in structuring environmentally responsible PPPs, enabling private investment while safeguarding public environmental interests.

The regulatory failures exposed by the Bhopal Gas Tragedy underline the necessity of strengthening such legal frameworks to prevent future industrial disasters across BRICS economies.<sup>9</sup> When trying to solve problems caused by similar accidents, an environmental regime faces many problems. To begin with, environmental impact studies should be conducted before the start of a big project, whether in urban or rural areas. In the past, this was not a requirement for many industrial projects. This gap undermined the ability of government agencies to carry out their oversight function, which was to evaluate a project before it was put into action.

Similar industrial disaster litigation in Brazil and China has likewise prompted judicial scrutiny of multinational corporations and state regulatory frameworks, demonstrating a shared challenge across BRICS nations.

When disasters such as the Bhopal disaster occur, environmentalists, social workers, and even the general public begin to contemplate new ways to avoid similar accidents and devise solutions for remediation. Tragedies like these could occur again in the future. This leads to people getting involved in the political and administrative process. Accidents at work that put the environment at risk also raise legal concerns. In the case of *Union Carbide Corporation v. Union of India*,<sup>10</sup> Chief Justice R. N. Misra observed that judges are men and that tragedies such as the Bhopal gas disaster affect them emotionally as well.

Questions were raised as to why the systems in the Bhopal plant in India were not as reliable as their American counterparts and how the Union Carbide Company ensured the safety of the people who worked in it. Concerns were also expressed regarding adequate oversight, particularly in light of reports that several accidents had occurred there even before the 1984 disaster.

The question of compensating the victims of the Bhopal disaster also presented a complex problem in Indian tort law. Indian law, which is based on English common

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<sup>9</sup> Kvanina, Kovalenko & Vypkhanova, 2023.

<sup>10</sup> *Union Carbide Corporation v. Union of India*, AIR 1992 SC 248, 262.

law, has evolved through different laws that resemble tort-based cases. However, tort litigation in India has traditionally been limited, it could be said. This has been attributed to factors such as infamous judicial delays, the high court fees, the complicated procedure and recording of evidence, the lack of public knowledge, the technical approach of the bench and the bar, and the lack of legal specialization in the country. Another point of view is that the perceived scarcity of tort litigation is exaggerated, as thousands of cases are solved regularly without going to court merely through negotiations, compromises, and decisions of lower courts that are not publicly reported. It is also well-established that Indian courts generally do not award punitive damages in civil cases as a deterrent against wrongful conduct. This is not contested. In such a situation, it becomes important to examine Indian tort law closely to evaluate whether it has effectively protected people from environmental and industrial hazards.

### 2.1. Summary of Case

In all of the Bhopal victim cases, the main question was determining compensation for the people who were hurt in the accidents. There were multiple and many different kinds of interests involved, and the degree of pain and harm that each victim suffered varied significantly. Consequently, determining appropriate compensation for such diverse interests posed considerable difficulty. To avoid an excessive number of disputing parties, the Parliament passed the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985. The Bhopal Act gave the Indian government the power to sue *parens patriae* on behalf of the people who were hurt. With this power, the Indian government initiated proceedings in the US District Court for the Southern District of New York, seeking compensation for the victims. The main issue before this court, however, was whether the US court was the appropriate forum.

The United States District Court decided that an Indian court is the best place to argue about the need for compensation. This decision was final and not subject to appeal. The Indian government subsequently had no choice but to file a lawsuit in the District Court of Bhopal to seek compensation for the people who were hurt in the disaster. The Supreme Court reviewed both the interim order issued by the District Court of Bhopal and the order of the Madhya Pradesh High Court that placed a stay on this interim order. At this point, the highest court and the lawyers for both sides realized that they needed to negotiate a middle ground. The *Union Carbide Corporation v. Union of India*<sup>11</sup> compromise judgment is thus comprised of orders issued by courts at different levels on different dates. This compromise has been the subject of numerous criticisms from various groups.

For instance, in *CharanLal Sahu v. Union of India*,<sup>12</sup> differing views were expressed about the Bhopal case and the exercise of the *parens patriae* jurisdiction, particularly

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<sup>11</sup> *Union Carbide Corporation v. Union of India*, AIR 1990 273.

<sup>12</sup> *CharanLal Sahu v. Union of India*, AIR 1994 SC 1480.

with regard to the state's authority to represent these victims and the framework for their compensation. In *Union Carbide Corporation v. Union of India*, the Supreme Court conducted a more in-depth look at the questions and the reasoning underlying the compromise decision.

## **2.2. Judgment by the US Court**

The Union of India, acting in its capacity as<sup>13</sup> *parens patriae* under the Bhopal Act, had to decide which court to bring a claim in for damages on behalf of the victims. Questions arose on whether it should be heard in an American court, where the parent company, Union Carbide Corporation (UCC), was incorporated, or by an Indian court, given that Union Carbide India Ltd. (UCIL), the subsidiary operating the plant in Bhopal, served as the organization's corporate seat. Alternatively, the case could also be heard in the Bhopal District Court, where UCIL was based.

In the opinion of the Union of India, a US court was the most suitable venue. Thus, the complaint was filed in New York's District Court. The court was presided over by Judge Keenan. Several concerns were raised about the selection of this forum, which included the following.

With full support from eminent Professor Mares Galanter, the Union of India argued that Indian courts were not an appropriate venue for the Bhopal litigation and that the Indian legal system was insufficiently equipped to handle it.

Professor Galanter noted that the Indian legal system, which was put in place when India was under colonial rule, still has some remnants of colonialism, such as a lack of broad-based legislative activity, a lack of access to legal information and legal services, high court fees, and a lack of innovation in legal education and practice. The claimants further said that the constant delays and backlogs in Indian courts and the lack of a well-developed tort law system were other signs that litigation in India would be inefficient. The plaintiff's final argument was that judgments rendered by an Indian forum could not be enforced in the United States without more extensive rulings. This means that the plaintiffs could not bring a suit in India based on the same cause of action.

Despite these claims, Judge Keenan<sup>14</sup> determined that the Indian court system constituted a viable alternative forum to handle the Bhopal litigation.

The US Court rejected the contention that Indian courts were so "inadequate or unsatisfactory" that they offer "no remedy at all," finding instead that they seemed to be sufficiently well-equipped to handle this case.

The Piper rule stipulates that any change in the law that is detrimental to claimants and could happen if the case is moved to Indian courts should not be

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<sup>13</sup> Re: Union Carbide Corporation Gas Leak at Bhopal in India in December 1948 per John F. Keenan (US District Judge).

<sup>14</sup> Leellakrishnan, P. (2004). *Environmental Law Casebook*. LexisNexis.

given “substantial weight.” Even if the differences between the two legal systems are disadvantageous to plaintiffs, India remains a viable alternative. As Mr. Palkhivala put it, “while it is true to say that the Indian system today is different in some ways from the American system, it is not to be equated with deficiency.” This eminent Indian lawyer and judge provided numerous examples of how the Indian judicial system has dealt with complicated legal problems in unusual ways. There was therefore no reason to think that the Bhopal litigation would be treated differently.

Judge Keenan also pointed out that the Indian government indirectly regulated the Bhopal plant through a set of environmental laws. These laws were enforced by many agencies, such as the Occupational Safety and Health Administration, the Environmental Protection Agency, and other state and local regulatory agencies.

A state water pollution board, for instance, had reviewed the plant’s emissions, and the fully built plant was monitored by state officials on a regular basis. In the wake of a fatal incident at the MIC unit in December 1981 and a “pump seal” failure in February 1982, the Indian government conducted a thorough investigation into the plant’s operations. Furthermore, the MIC leak in December 1984 had also been subsequently looked into by numerous federal, state, and local committees.

All of this data demonstrates the extent to which various Indian government organizations were involved in the plant’s creation, operation, licensing, regulation, and oversight. Therefore, regardless of the degree of involvement or “control” Union Carbide claimed to have over the plant, the facility ultimately was subject to regulation by Indian laws and agencies at every level.

Judge Keenan further observed that it was not the role of a US court to decide if Indian rules were violated or if those laws were enough to protect Indian people from harm. He noted that it would be both inappropriate and presumptuous for a US court to assess or pass judgments on the rules and regulations of another country. India, he stated, had weighed its need for a pesticide plant against the risks that would come with building one.

The Court also emphasized that the Indian interest in setting standards of care, enforcing them, or even expanding them, and protecting its citizens from any misuse of hazardous activities was far greater than any local American interest in preventing multinational companies from exporting allegedly dangerous technology. The so-called “blackmail” effect of dismissal, which was raised by many claimants, was similarly not a concern for most Americans. Responsible lawmakers in the United States would not lower governmental standards in response to lower standards in other countries. Moreover, other factors, such as convenience and taxation, were more relevant when deciding where to put a plant. Finally, the Court rejected the contention that creating new legal standards at this time would be in the public interest, cautioning that a failure to exercise restraint in such circumstances could, instead, be regarded as an overreach of judicial power.

### 3. India's National Green Tribunal: A New Approach to Environmental Governance

In the last few decades, the environment has been put under more pressure than ever before due to factors such as rapid economic growth, growing cities, and changing lifestyles. Specialized environmental courts, such as China's environmental tribunals and India's National Green Tribunal, represent a global shift toward expert-driven environmental adjudication.

As economies grow and populations grow, there are clear effects on local and global public goods, which often spill over into the realm of individual human well-being. As a result of these changes, there have been more lawsuits about the environment. This has pushed policymakers and lawmakers all over the world to create more frameworks and platforms for settling environmental disputes. Today, over 350 of these specialized forums are operating globally to address issues related to environmental protection, natural resource management, land use development, and other related problems. They can be found on every inhabited continent, in every major type of legal system, and in both rich and developing countries.<sup>15</sup> Environmental courts and panels have been around for almost 100 years. Denmark's Nature Protection Board, for instance, which was established in 1917, aimed to protect the natural environment. The same was true of Sweden's Water Court, which was set up a year later and initially focused on water rights issues. Prominent examples of specialized environment courts today are the Land and Environment Court of Australia and the Environmental Court of New Zealand.<sup>16</sup>

The National Green Tribunal (NGT), which was set up in India, represents a big step in the right direction in this global trend. In 1977, the United Nations Conference on the Human Environment was held in Stockholm. This was the first time that a large group of people from all over the world got together to talk about how bad the world's environment was. In India, the country's commitment to international changes has led to the growth of its own environmental movement, and in 1976, protecting the environment became a constitutional right.<sup>17</sup> In Rio de Janeiro in 1992, the UN Conference on Environment and Development brought together people from 176 countries and several thousand non-governmental organisations.

Several new deals came out of the Earth Summit, such as the Convention on Biological Diversity (CBD) and the UN Framework Convention on Climate Change (UNFCCC). The Rio Declaration on Environment and Development, which lays

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<sup>15</sup> Pring, G. W., & Pring, C. (2009). *Green Justice: Creating and improving environmental courts and tribunals*. Access Initiative.

<sup>16</sup> Pring & Pring, 2009.

<sup>17</sup> India's 42<sup>nd</sup> Constitutional Amendment, 1976, inserted provisions in the Constitution of India with regard to preservation of the environment throughout the country.

out a set of rules for how sustainable development should be done around the world, added to these structural changes. Some of these concepts deal with the enforcement of MEAs, which is still one of the most important things that needs to happen before international environmental and sustainable development law can be put into place.

Comparable institutions exist in Brazil and South Africa, where constitutional courts and specialized benches have played a significant role in enforcing environmental rights.

India's approach is based on Principle 10 of the Rio Declaration, which says that environmental problems are best solved when all concerned citizens have "appropriate access to information," "the chance to participate in decision-making processes," and "effective access to judicial and administrative proceedings, including redress and remedy." India, as an active participant, has pledged to act appropriately to safeguard and enhance the human environment and to ensure that all citizens have fair and equal access to the benefits of the legal and administrative systems, including effective redress and remedies.

Over time, the Indian judicial system has also become interested in the idea of specialized environmental courts and panels. The Bhopal gas tragedy case<sup>18</sup> reminded the Supreme Court that a law that cannot be enforced and citizens who do nothing about it can cause the government to do nothing, causing serious harm to the public. Some of the Supreme Court's most important decisions led to the need for specialized environmental courts.

In *M.C. Mehta v. Union of India*,<sup>19</sup> the Supreme Court said that because environmental cases often involve judging scientific facts, it would be best to set up regional environmental courts composed of a judge familiar with the law and two experts who are knowledgeable about the issue. In the same way, in *Indian Council for Enviro-Legal Action v. Union of India*,<sup>20</sup> the Supreme Court again brought up the idea of setting up environmental courts with both civil and criminal power so that environmental problems can be dealt with quickly. In *A. P. Pollution Control Board v. Prof. M.V. Nayudu*,<sup>21</sup> the Court again emphasized the importance of such environmental courts, noting that as part of the court proceedings, these courts should have access to professional advice from scientists knowledgeable in the relevant field. Following these recommendations, there was a common consensus that the Law Commission of India should examine this matter in greater depth.

In its 186<sup>th</sup> Report, the Law Commission of India recommended that each Indian state establish an Environmental Court composed of judicial members and a group

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<sup>18</sup> *Union Carbide Corporation v. Union of India*, AIR 1992 SC 248.

<sup>19</sup> *M.C. Mehta v. Union of India* (1986) 2 SCC 176.

<sup>20</sup> *Indian Council for Enviro-Legal Action v. Union of India* (1996) 3 SCC 212.

<sup>21</sup> *A.P. Pollution Control Board v. Prof. M.V. Nayudu* (1999) 2 SCC 718.

of professional people called Commissioners to help them. The proposed court would have authority over all environmental issues, including the protection of the right to safe drinking water and the right to an environment that is not harmful to one's health or well-being; the power to protect the environment for the benefit of present and future generations so as to prevent pollution and ecological degradation, promoting conservation, and ensuring ecologically sustainable development for the benefit of present and future generations.

This Environment Court would hear appeals under various environmental laws, removing the need for the National Environment Tribunal and National Environmental Appellate Authority Acts and granting their powers to the court.

The number of environmental lawsuits in India is growing, and the Supreme Court has in several cases acknowledged its limited expertise to deal with complex environmental issues. This recognition, along with the Supreme Court's repeated calls to set up an environmental court and the Law Commission Report, led the government to propose the National Green Tribunal Bill, 2009. On June 2, 2010, the President of India signed the National Green Tribunal Act, 2010. This act sets up the National Green Tribunal (NGT), as a special court with a fast track for handling civil cases connected to the environment quickly. Before the National Green Tribunal Act, 2010 was passed, two pieces of legislation, namely, the National Environmental Tribunal (NET) Act of 1995<sup>22</sup> and the National Environmental Appellate Authority (NEAA) Act of 1997, had been enacted to create specific courts for environmental disputes.

The NET was only intended to provide relief and compensation for damages caused by accidents that occurred while handling dangerous substances. However, as drafted in the Act, the Tribunal's framework seemed to be disproportionate with the role and responsibilities that were assigned to it. In practice, the Act was never made public, and so the Tribunal never came into existence.

Similarly, the NEAA had a very small area of authority, which was to hear complaints against the granting of environmental clearance. Consequently, its functional authority was minimal. One criticism was that, even though the NEAA was set up as an independent body to handle situations where the Ministry of Environment and Forests gave environmental clearances, it was largely unable to provide assistance to people who had been wronged.<sup>23</sup> A contributing factor for this issue may have been that the rules governing the appointment of the chairman did not allow for any successor after the first chairman's term ended.

In this context, the establishment of the National Green Tribunal (NGT) represents a welcome change, both in terms of what it can do and how it is put together. It has broad authority over a wide range of environmental laws. The number of members

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<sup>22</sup> National Environmental Tribunal Act, 1995. Ministry of Environment, Forest and Climate Change. <http://envfor.nic.in/legis/others/tribunal.html>

<sup>23</sup> Rosencranz, A., Sahu, G., & Raghuvanshi, V. (2009). *Whither the National Environment Appellate Authority? Economic and Political Weekly*, 44(35), 10–14.

can be anywhere from 20 to 40, and the plan to set up the NGT in five locations provides hope that it will be able to help with a wide range of environmental problems in an effective manner.

India has thus created a full-fledged, specialized environmental court system to handle environmental lawsuits quickly and efficiently. This move is seen as a sign that India intends to take a tougher approach to improving its green record. This is largely due to increasing concerns over the impact of growing industrialization, urbanization, and economic growth on air and water quality, as well as forests and wildlife. The National Green Tribunal (NGT) was set up on October 18, 2010, after the National Green Tribunal Act, 2010 (hereinafter the Act) was signed into law by the Parliament. The Tribunal's main meeting place is Delhi, but it is supplemented by four other regular meeting venues.<sup>24</sup>

The 2010 Act establishes a National Green Tribunal to handle environmental protection cases and legal rights, providing relief and compensation for damages. It reflects India's international commitments, including the United Nations Conference on the Human Environment (Stockholm, 1972) and the United Nations Conference on Environment and Development (Rio de Janeiro, 1992). The right to a healthy environment is protected by Article 21 of India's Constitution, necessitating the establishment of a special court to address environmental issues across various fields.

The Act also defines what constitutes a "substantial question about the environment" as follows:

1. There is a direct violation of a specific statutory environmental obligation by a person, and:

(a) the community as a whole, not just an individual or group of individuals, is affected or likely to be affected by the environmental, consequences,

(b) the damage to the environment or property is serious, and

(c) the damage to public health can be measured in a broad way; or

2. The effects on the environment are caused by a single action or source of pollution.<sup>25</sup>

However, this definition has been criticized by some. It has been argued that "substantial damage" to the environment needs to clearer specification and that "public health" needs to be spelled out so that the Tribunal can take a consistent and regular approach. In this situation, it is important to realize that the measures to protect the environment should not impede the country from experiencing economic growth.

Part of the process of sustainable development is fixing the damage done to the environment. This means that the polluter is responsible for paying both the cost to

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<sup>24</sup> Dube, R., Sengar, D. S., & Ahmed, S. (2012). National Green Tribunal: A new dimension to environmental adjudication in India. *ISIL Newsletter*, April–June 2012.

<sup>25</sup> National Green Tribunal Act, 2010 (sec. 2(1)(m)).

the people who were hurt and the cost of fixing the environment. The work done at the Rio Conference in 1992 is one of the main reasons why the “precautionary principle” and its interpretations are accepted around the world. In the Rio Declaration on the Environment and Development from 1992, it says that states should employ the precautionary method to the greatest extent possible in order to protect the environment. The absence of complete scientific certainty should not serve as justification to delay the implementation of cost-effective steps to protect the environment when there is a risk of major or irreversible damage.

The Rio Declaration emphasizes the “polluter pays principle” in environmental policies, promoting the internationalization of environmental costs and economic instruments while taking public interest into account. Sustainable development, as defined by the Brundtland Report, focuses on meeting present needs without compromising future generations’ needs. The Act provides a framework for the Tribunal to determine clear boundaries in cases with significant environmental impacts. The Tribunal can order relief, compensation, property restitution, and environmental restoration. It also allows public access to the Tribunal for assistance, compensation, and dispute resolution.

The definition of the term “*locus standi*” has been expanded to include not only the person who was wronged but also environmental organizations and representative bodies. This broadens the provisions to allow non-governmental organizations to help people with all of their legal rights related to the environment. This is in line with the international agreements made at the Stockholm Conference and the Rio Declaration.

Recent BRICS research emphasizes that effective environmental governance depends not only on courts and regulators but also on active public participation and grassroots initiatives. Empirical studies of environmental non-governmental organizations in Russia demonstrate that community-led waste management practices, such as waste segregation, recycling, and responsible consumption, can contribute directly to climate mitigation and adaptation. The expanded concept of *locus standi* under the National Green Tribunal Act also enables similar grassroots participation in India, aligning judicial mechanisms with community-driven environmental action across BRICS countries.<sup>26</sup>

It should be mentioned that there were concerns that this rule would lead to fake and annoying claims. In a recent case, *P. Seshadri v. S. Mangati Gopal Reddy*,<sup>27</sup> the Supreme Court made it official that it did not approve of “masked phantoms” using the public interest litigation (PIL) system to settle their personal scores from behind the scenes. The court described “frivolous” petitioners as “busybodies” who

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<sup>26</sup> Zakharova, O., & Glazkova, A. (2024). Green Waste Practices as Climate Adaptation and Mitigation Actions: Grassroots Initiatives in Russia. *BRICS Law Journal*, 11(4), 145–167.

<sup>27</sup> *P. Seshadri v. S. Mangati Gopal Reddy* (2011) 4 SCALE 41.

should know that the Supreme Court does not “encourage” reckless claims through PILs anymore. Consequently, PILs can only be taken into account when there is a real case; they cannot be used by unscrupulous applicants to conceal personal or individual complaints under the guise of a PIL.

The National Green Tribunal Act also provides that the National Green Tribunal (NGT) must consider and apply the precautionary principle and the polluter-pays principle, which were recognized at the Rio Conference in 1992, when making any order, ruling, or award. For India’s economy to grow quickly, industry growth has been given a lot of attention. However, this kind of growth causes many environmental problems. Indeed, industrial growth should not occur at the expense of the environment.

Environmental protection measures should not deprive a country of economic development opportunities. Remediation of damaged environments is part of sustainable development, and polluters are responsible for compensating individual sufferers and reversing ecological damage. The precautionary principle, which was established at the 1992 Rio Conference, emphasizes widespread application of the precautionary approach to protect the environment. The polluter pays principle promotes the internationalization of environmental costs and economic instruments while considering public interest and international trade and investment. Sustainable development, as defined by the Brundtland Report, focuses on meeting present needs without compromising future generations’ ability to meet their own needs.

These principles also recognize that technology and social organization limit the ability of the world to meet current and future needs. The Supreme Court has repeatedly considered these ideas many times.

In *Vellore Citizen’s Welfare Forum v. Union of India*,<sup>28</sup> the court discussed the concept of sustainable development and accepted the precautionary principle and the polluter-pays principle as part of India’s environmental law.

The statutory incorporation of the precautionary principle and the polluter-pays principle under the NGT Act is particularly relevant in the context of emerging BRICS carbon markets. Legal scholarship emphasizes that carbon exchanges must operate under strict precautionary safeguards to ensure accurate carbon accounting, prevent double counting, and uphold transparency. By reinforcing these principles through judicial and quasi-judicial mechanisms, India contributes to the development of credible climate mitigation frameworks within the BRICS bloc.<sup>29</sup>

Similarly, in *M.C. Mehta v. Union of India*,<sup>30</sup> the Supreme Court asserted that sustainable development is one of the basic principles of environmental law, which means that this kind of growth is permissible as long as it does not adversely

<sup>28</sup> *Vellore Citizen’s Welfare Forum v. Union of India* (1996) 5 SCC 647.

<sup>29</sup> Daryanti & Sudarwanto, 2024.

<sup>30</sup> *M.C. Mehta v. Union of India* (2002) 4 SCC 356.

affect the environment. By making it clear that the precautionary principle and the polluter-pays principle must be used in the NGT's decision-making process, the Act has, for the first time, taken into account international commitments and recognized the Supreme Court's decisions that demonstrate the importance of sustainable development principles.

The NGT Act may be seen as a piece of political engineering. It weaves itself into seven natural acts. Section 36 provides that the laws listed in Schedule III of this Act shall be amended in the ways listed therein, and that these changes shall come into effect upon the establishment of the Tribunal. Furthermore, according to section 38(1) of the Act, the NET Act, 1995, and the NEAA Act, 1997, are no longer in effect. At the same time, six environmental laws, including the Water (Prevention and Control of Pollution) Act of 1974, the Water (Prevention and Control of Pollution) Cess Act of 1977, the Forest Conservation Act of 1980, the Air (Prevention and Control of Pollution) Act of 1981, the Environment (Protection) Act of 1986, and the Biological Diversity Act of 2002, were amended to give the Tribunal a unique position as a judge. Through these amendments, the NGT was positioned as a central adjudicatory authority within India's environmental regulatory framework.

One notable feature about the Act is how it defines a "substantive question" about the environment and how it is linked to the NGT's civil authority. This is done so that this specialized tribunal can focus on important issues like economic growth and damage to the environment instead of spending time and money on minor matters.

This definition is framed in a way that is more descriptive than comprehensive, and it is expected that the scope of such important questions will be narrowed over time as and when real-world cases are addressed under the broad field of environment. It has already ruled out cases where there are individual disagreements or where the environmental effects are caused by pollution that does not originate from a single source.

The parts of the Act that deal with making an application or appeal with the Tribunal have been written in a way that enables a substantial number of people to obtain assistance from the Tribunal for a large number of people. Furthermore, under the Code of Civil Procedure of 1908, the Tribunal has all the powers of a civil court as well as the freedom to break from the strict rules of such procedures in the name of natural justice. It has also been given a flexible procedure. These provisions have given the Tribunal a certain degree of autonomy in the conduct of its day-to-day work.

The Delhi Oleum Gas Leakage Case in 1986 marked the first step towards setting up environmental courts in India. This led to the creation of a specialized environmental tribunal, which is the final step in this process. The National Green Tribunal is intended to speed up the way environmental issues are handled and make it easier for the higher courts to do their jobs. In line with the Rio Principles, the Tribunal is a big step forward in the area of environmental justice. It occupies a unique position across seven environmental laws. However, the mere creation of a new forum for dispute

resolutions does not, by itself, guarantee that problems will be solved quickly. With three sets of rules governing the NGT now having been announced, it is important the panel becomes fully operational as soon as possible.

The success of the new Tribunal will be influenced by several key factors, including:

1. Members must be chosen in a fair, objective, and open way so that they can make quick, fair, and sometimes bold decisions;
2. The entire country needs to have the appropriate facilities set up so that the Tribunal can do its work;
3. It will be interesting to see how the Tribunal uses the circuit method allowed by the Act to reach more people and make justice more accessible;
4. It is also crucial to ensure sufficient public awareness about the role and responsibilities of the Tribunal so that the public as a whole, as well as the most vulnerable sections of society, can use the flexibility that the Tribunal system offers.

In a broader context, the Indian judicial approach to environmental protection can be better understood when viewed alongside developments in other BRICS countries. Across several BRICS jurisdictions, courts have increasingly assumed an active role in environmental governance, particularly where legislative or executive mechanisms have proven inadequate. In China, specialized environmental courts and tribunals function within the constitutional framework of “ecological civilization,” with the Supreme People’s Court actively promoting environmental public interest litigation. Brazil’s constitutional framework explicitly guarantees the right to an ecologically balanced environment, and its judiciary has delivered landmark decisions safeguarding the Amazon rainforest and, in certain instances, recognizing the rights of nature. Similarly, South Africa’s Constitution of 1996 enshrines environmental rights under section 24, enabling the Constitutional Court to intervene decisively in cases involving vulnerable ecosystems and environmental injustice. In Russia, judicial practice increasingly reflects concerns relating to environmental liability, public-private partnerships, and sustainable resource governance through evolving legislative and regulatory mechanisms.

Against this comparative backdrop, India’s distinctive contribution lies in its extensive use of public interest litigation, which has broadened access to environmental justice and enabled active public participation in environmental decision-making. The NGT represents a continuation of this trajectory, providing a specialized, institutionalized mechanism to resolve environmental disputes efficiently and in accordance with principles of sustainable development.

## Conclusion

For a business to thrive in this age of competition, it needs to strategize effectively and establish positive relations with the general public as a whole. Judicial intervention alone cannot ensure environmental protection; it must be complemented by

responsible corporate behavior, effective regulatory enforcement, and regional cooperation among BRICS countries. Society and business must work together to achieve sustainable outcomes. A better world can be built through collective effort and mutual understanding. In a broader sense, sustainable development requires that basic needs such as food, clothing, and shelter be met for all. Even in the 21<sup>st</sup> century, there is a large part of the population that is morally and economically backward. If the corporate social responsibility (CSR) measures under the Companies Act of 2013 are implemented effectively, they can make a significant impact.

Beyond judicial remedies and corporate social responsibility, BRICS cooperation in renewable energy governance represents a critical pathway toward sustainable development. Legal analyses of renewable energy regulation within the BRICS countries indicate the potential for a coordinated international legal framework that balances energy security, economic growth, and environmental protection. India's judicial experience, when combined with evolving BRICS approaches to renewable energy, carbon markets, public-private partnerships, and grassroots climate initiatives, positions the BRICS grouping to play a leading role in shaping global environmental governance.

Effective CSR strategies ensure that investments not only simply follow the law but also support the growth and development of underprivileged groups and the environment. India's judicial experience, particularly its use of public interest litigation and constitutional environmental rights, offers valuable lessons for BRICS nations seeking to strengthen environmental governance through courts. CSR should also be long-lasting, involving initiatives that a company can consistently pursue without putting its business goals at risk. Companies in India have been strategically astute in initiating CSR projects and integrating them into their business operations. This approach has gradually become a part of the Indian business landscape as companies have realized the importance of building responsible and cooperative relationships with the larger community in addition to building their businesses.

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