

## EVOLUTION OF ENVIRONMENTAL JURISPRUDENCE IN INDIA

The great Indian economic growth story is intricately linked to, and dependent on, the story of India's natural environment. The development of Indian environmental jurisprudence, since India's independence, has been an effort to make sense of this dependence. This effort, by no means, has been easy. It has been fraught with challenges of a different order. Significant competing interests of uplifting millions out of extreme poverty, while heavily relying on an already plundered environmental inheritance, has made the legal and regulatory landscape tremendously challenging.

Accordingly, the evolution of Indian environmental jurisprudence, essentially, is an evolution of the legal response of the Indian judiciary while navigating these complex and competing rights and interests, within the larger context of the India Story. The Indian judiciary, led by the Supreme Court of India, has time and again espoused novel environmental principles and has modified the application of legal precedents in response to various competing considerations. This has included the creation of dedicated environmental law courts in the country.

The aim of this work is to explore the impact of legal trends and inconsistencies, and highlight different dominant considerations at play within the evolution of Indian environmental jurisprudence. In doing so, it seeks to contextualize and situate the recent adjudicatory trends, particularly of the National Green Tribunal, within the larger adjudicatory framework carved out over the decades by the Supreme Court of India.

The reader will find this work useful in understanding not only where we presently are in the larger scheme of Indian environmental law, but also where we are headed.

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## THE NATIONAL GREEN TRIBUNAL

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*To the silent champions of environmental justice who, knowingly or unknowingly, have helped shape  
India's environmental jurisprudence and whose tireless efforts, both inside and outside the courtroom,  
give hope for a brighter and greener future for generations to come*

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## FOREWORD

In the annals of India's legal history, the journey of environmental jurisprudence stands as a testament to the country's evolving consciousness and commitment towards preserving its natural heritage. Tracing its evolution through the decades, thus, becomes vitally important in not just understanding the pulse of India's evolving environmental paradigm but also in assessing the direction in which it is heading.

My own journey in environmental law, marked by relentless legal battles, has been driven by a deep-seated belief in the power of jurisprudence to safeguard our natural world. The establishment of environmental tribunals in India, a direct consequence of these legal battles, symbolizes a shift in the Indian judicial paradigm – a shift aimed at moving from reactive measures to proactive environmental governance. The National Green Tribunal (NGT), in particular, was established to be an embodiment of this transformation, serving as a specialized body to address the complex and urgent environmental challenges facing our nation. However, even after more than a decade of the Tribunal's establishment, the general dearth of comprehensive literature on the NGT has often hindered a deeper understanding of its functions, challenges, and impacts.

The authors, Raghuveer Nath and Armin Rosencranz, have done commendable work in filling this significant void in the literature on environmental jurisprudence in India. Their book, *Evolution of Environmental Jurisprudence in India: The National Green Tribunal*, provides nuanced insights into the NGT's formation, functioning, and the challenges it is yet to overcome. In a country where environmental issues are as diverse as its ecology, the need for such comprehensive academic work cannot be overstated. It offers a reservoir of knowledge for practitioners, academicians, policymakers, and students alike.

Perhaps, one of the most important aspects of this work is that it allows the reader to situate the present environmental legal trends within the larger context of India's environmental jurisprudence. For instance, the three most important environmental law principles – polluter



pays, precautionary principle, and sustainable development – have undergone significant changes over the last few decades. The book highlights how these principles have been historically evolved and deployed with varying standards depending on the circumstances of different cases. In doing so, it allows the reader to navigate through internal legal contradictions and helps them to contrast the NGT's adjudication with that of the Indian Supreme Court and international environmental law. Such an analysis is very useful for any environmental legal practitioner or student.

Another striking aspect of this book is its candid exploration of the challenges facing the NGT. As highlighted, these challenges are not hypothetical but real and pressing. They range from infrastructural constraints and bureaucratic hurdles to deeper issues of legal interpretation and enforcement. The effective functioning of the NGT is imperative for the safeguarding of India's environmental future. Hence, addressing these challenges is not just an institutional necessity but a national imperative.

The journey of environmental jurisprudence in India, as illustrated in this book, is a narrative of struggle, resilience, and hope. It mirrors the country's aspirations of sustainable development, balancing economic growth with ecological preservation. The NGT's role in this journey is pivotal. As an institution, it embodies the spirit of our constitutional promise – to protect and improve the environment for present and future generations.

In conclusion, *Evolution of Environmental Jurisprudence in India* is a significant contribution to the field of environmental law. It offers a comprehensive understanding of the NGT's role in India's environmental landscape. I commend the authors for their thorough research and insightful writing. This book is a valuable resource for anyone interested in the intersection of law, policy, and environmental protection in India.

**M.C. Mehta**

Padma Shri (2016)

Ramon Magsaysay Award (1997)

Goldman Environmental Prize (1996)

## PREFACE

The ‘India Story’ – in all the multitude of senses and contradictions that it is perceived – is largely a story of collective amnesia coupled with the thirst to regain a lost glory. To put this into perspective, India’s share of global gross domestic product (GDP) went from around 24.2 per cent in the early 1700s to about 2.3 per cent around the time of its independence – a reduction of over 90 per cent after more than two centuries of colonialism.<sup>1</sup> At the same time, India’s population more than doubled. Thus, in addition to the extreme economic depredation, poverty, and burden there was a deep-seated sense of injustice and the need to regain the lost economic and political glory India enjoyed a few centuries ago.

This India Story has fashioned, and continues to fashion, most political and socio-economic narratives, discourses, and policies in India.

However, this India Story is intricately linked to, and dependent on, the story of India’s natural environment. The development of Indian environmental jurisprudence, since India’s independence, has been an effort to make sense of this dependence. This effort by no means has been easy. It has been fraught with challenges of a different order. Significant competing interests of uplifting millions out of extreme poverty, while heavily relying on an already plundered environmental inheritance, has made the legal and regulatory landscape tremendously challenging.

Accordingly, the evolution of Indian environmental jurisprudence, essentially, is an evolution of the legal response of the Indian judiciary while navigating these complex and competing rights and interests, within the larger context of the India Story. The Indian judiciary, led by the Supreme Court of India, has time and again espoused novel environmental principles and has modified the application of legal precedents in response to various competing considerations. This has included the creation of dedicated environmental law courts in the country.

The aim of this work is to explore the impact of legal trends and inconsistencies, and highlight different dominant considerations at play within the evolution of Indian environmental

jurisprudence. In doing so, it seeks to contextualize and situate the recent adjudicatory trends, particularly of the National Green Tribunal (NGT), within the larger adjudicatory framework carved out over the decades by the Supreme Court of India.

We hope that the reader finds this work useful in not only understanding where we are presently in the larger scheme of Indian environmental law, but also where we are headed. It is written keeping in mind the different needs of academics, law students, and practitioners.

Academics might find the comparative analysis of adjudicatory trends of international law, the Indian Supreme Court, and the NGT useful in furthering their research. We have employed the case-book method to highlight the relevant portions of several landmark environmental judgments followed by notes and questions. This direct interface with case law and legal reasoning is likely to assist the reader, especially law students, in formulating their own legal opinion and critically analysing the case. Furthermore, the book explores the socio-enviro impact of environmental policy and adjudication that might assist a legal practitioner in making a more cogent case.

## NOTE

1. Aditya Mukherjee, 'Empire: How Colonial India Made Modern Britain', *Economic and Political Weekly* 45, no. 50 (December 2010): 73–82,75.

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We extend our heartfelt appreciation to Prof. (Dr.) C. Raj Kumar, Vice Chancellor and Dean, O.P. Jindal Global University, without whose remarkable vision and leadership the authors would not have met. His foresight has not only ensured the creation of one of Asia's leading law schools, but has also yielded academics and scholars that have contributed significantly in shaping India's evolving jurisprudence.

We express our deep gratitude to Prof. (Dr.) S.G. Sreejith, Executive Dean, Jindal Global Law School, for his encouragement and support. His work on transcendental jurisprudence provides a unique and important paradigm to understand Indian environmental jurisprudence. It has been very valuable to the authors and any student of law would greatly benefit from it.

Our sincere gratitude also extends to Prof. (Dr.) Lavanya Rajamani, Professor of International Law, University of Oxford, whose extensive knowledge of international environmental law has been invaluable in providing a global perspective to this work. Her work has been deeply inspirational and has provided several inputs that have allowed us to compare the interpretation and application of international environmental principles within Indian environmental jurisprudence.

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We are very thankful to Sudhanshu Kalla, Sehal Cheema, and Prathik Karthikeyan for their invaluable assistance in researching and compiling the legal precedents and case studies featured

in this book. Their meticulous attention to detail and comprehensive analysis have enhanced the depth and relevance of the material.

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We acknowledge with heartfelt gratitude the contributions of each individual mentioned above, as well as the countless others who have supported and inspired us along this journey. This book stands as a testament to the collective effort and dedication of all those who strive to protect and preserve our environment through the rule of law.

Any omissions or errors remain our own.

ABBREVIATIONS

|       |                                           |
|-------|-------------------------------------------|
| AAQ   | ambient air quality                       |
| BIRSA | Bindrai Institute for Research and Action |
| CBR   | California bearing ratio                  |
| CNG   | compressed natural gas                    |
| CPCB  | Central Pollution Control Board           |
| CSE   | Centre for Science and Environment        |
| CSR   | corporate social responsibility           |
| DDA   | Delhi Development Authority               |
| DDMA  | Delhi Disaster Management Authority       |
| DDT   | dichloro-diphenyl-trichloroethane         |
| DPCC  | Delhi Pollution Control Committee         |
| EC    | environmental clearance                   |
| EIA   | environmental impact assessment           |
| ELD   | environmental liability directive         |
| ERF   | Environmental Relief Fund                 |
| EU    | European Union                            |
| GDP   | gross domestic product                    |
| GIS   | gas-insulated sub-station                 |
| GPI   | grossly polluting industries              |

|             |                                                                                          |
|-------------|------------------------------------------------------------------------------------------|
| ICJ         | International Court of Justice                                                           |
| ICMR        | Indian Council of Medical Research                                                       |
| IFCD        | Irrigation and Flood Control Department of Delhi                                         |
| IIT         | Indian Institute of Technology                                                           |
| INR         | Indian Rupees                                                                            |
| LCI         | Law Commission of India                                                                  |
| ML          | mining leases                                                                            |
| MoEF/MoEFCC | Ministry of Environment and Forests/Ministry of Environment, Forests, and Climate Change |
| MPPCB       | Madhya Pradesh Pollution Control Board                                                   |
| NEAA        | National Environment Appellate Authority                                                 |
| NEAA Act    | National Environment Appellate Authority Act, 1997                                       |
| NEERI       | National Environment Engineering Research Institute                                      |
| NET Act     | National Environmental Tribunal Act, 1995                                                |
| NGT         | National Green Tribunal                                                                  |
| NGT Act     | National Green Tribunal Act, 2010                                                        |
| OCEMS       | online continuous emission/effluent monitoring systems                                   |
| OECD        | Organization for Economic Co-operation and Development                                   |
| OHSC        | occupation health and safety centre                                                      |
| PIL         | public interest litigation                                                               |
| PMC         | Pune Municipal Corporation                                                               |
| REA         | resource equivalency analysis                                                            |
| REIA        | regional environmental impact assessment                                                 |
| SDM         | subdivisional magistrate                                                                 |
| SOR         | statement of objects and reasons                                                         |
| SPCB        | State(s) Pollution Control Board                                                         |
| UN          | United Nations                                                                           |
| UPIC        | Uttar Pradesh Irrigation Committee                                                       |
| UPPCB       | Uttar Pradesh Pollution Control Board                                                    |
| US          | United States                                                                            |
| USD         | United States Dollars                                                                    |
| WCF         | World Cultural Festival                                                                  |
| WTO         | World Trade Organization                                                                 |