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Judiciary - The Unexpected Ally in Environmental Conservation: A Comparative Analysis of Judiciary's Role in Environmental Conservation in India and Brazil

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ABSTRACT

The most pressing concern, endangering the existence of humanity itself, is that of environmental destruction and climate change. While there is a need to give generational equity the top priority, it has been observed all over the world that various corporations and Governments (legislative and executive alike) have been pushing forward unsustainable modes of development and sources of energy, whether in terms of burning down the Amazon forest to create grazing pastures for the meat industry, carving out hills and mountains for roads and soil, or fracking. In all this chaos, the citizens globally have found their refuge and an unexpected ally in the Judiciary, who, time and again, has upheld the principle of equal opportunities and democracy by advocating generational equity. This paper seeks to draw a close perusal of the role of the Judiciary in environmental conservation in India and Brazil- both resource-rich developing nations that were colonized by the European monarchies.

Keywords: *Absolute Liability, Brazil, Environment, India, Intergenerational Equity, Legislation, Public Interest Litigation, Sustainable Development.*

I. INTRODUCTION

It is an ancient custom of India to pay constant attention to environmental conservation. There are several writings to demonstrate that every person had to practice the dharma in ancient India to protect and worship nature. In India, from ancient times, the devices and laws for environmental conservation can be discerned. Environmentalism is not a fixed term, but it's meaning still affects evolution. This also relates to Indian environmentalism, which over the years has grown and modified. It is to the credit of Indian courts, especially the higher Judiciary, that there has been a genuinely strident march in India to protect the environment.

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In fact, of point, it would not be an overstatement to remark that the growth of environmental law in India is inextricably related to the development and development of the Judiciary in India.

'Environment' is defined under the Environmental Protection Act, 1986, 'Environment' includes water, air, land, and the inter-relationship between and between water, air, land, human beings, other living creatures, and plants, microorganisms, and property.[3] Environmental policy priorities can be developed in many ways: to protect human health, to ensure the viability of wildlife, to conserve historical monuments, to avoid further environmental destruction, etc. In India, not only has the concern for the protection of the environment been elevated to the status of fundamental land law, but it is also married to the approach to human rights, and it is now well-founded that it is the fundamental human right of every person to flourish with absolute human dignity in a pollution-free world.

Whenever we discuss environmental changes, it is hard not to include the lungs of the Earth. Brazil has emerged as an environmental pioneer over the past two decades, taking a leading role in international forums such as the United Nations Sustainable Development Conferences. The nation has received recognition for developing its protected area network and reductions in deforestation in the Amazon. However, growth pressures and changes in legislation are jeopardizing these achievements.

(A) Statement of Problem and the Purpose of Research

1. Through judicial activism, how has the Judiciary in India and Brazil opened up many avenues to help the country regulate environmental policies?

In India, the courts are highly conscious and mindful of the bare existence of environmental rights as a fundamental Right to Life under Article 21 of the Constitution. At the same time, we intend to draw a comparative analysis with Brazil and the current inconsistencies between the nation's legal order and the actual environmental condition.

(B) Research Hypothesis

The Judiciary in the developing countries- India and Brazil- have taken more concrete steps in environmental conservation and intergenerational equity than the Legislature and Executive, sometimes even reigning in the reckless projects of the Legislature.

(C) Research Objectives

Via this paper, we aim to highlight that significant changes in the law have been in the case of

[3] Section 2(a) of the Environmental Protection Act, 1986

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the Judiciary. Public-spirited individuals are a distinctive feature of the growth of environmental law in India. By extending the concept of locus standi, the courts resolved the constraints imposed by the conventional adversarial method. The paper will not only focus on the current scenario of Environment laws in India but will also present a comparative study of Brazil and the Indian environmental crisis. We aim to highlight concerns about constructing major infrastructure and natural resource extraction projects in the protected areas and indigenous lands for the newly elected Government in Brazil.

(D) Research Methodology

The methodology used here is "Doctrinal Research" (also called "black letter methodology"), where the focus is on "the letter of the law" rather than "law in action." Simply put, this methodology studies what is the written text of the law and not the actual implementation and practicalities. Since we study the written law, the sources used are-

- The Constitution of India, various legislations relating to environmental conservation
- Case Laws
- Government Reports
- Books
- Research Articles

(E) Scope & Limitation

The scope of this paper is the analysis of the evolution of environmental jurisprudence as a direct result of public and judicial interference. It is a general observation that the elements of the society who foresee the consequences of the lack of intergenerational environmental equity and who have nothing to gain financially from the rampant environmental destruction are usually the stakeholders in such PILs. The policymakers reflect the sentiment of people electing them, and hence environment conservation policies follow. It is often spearheaded by the Judiciary, which lays down the guidelines.

The most significant hindrance of this study is the lack of authoritative resources to build a reliable foundation. Given the fact that environmental conservation is a phenomenon that gained mainstream momentum only towards the end of the 20th century, catapulted into prominence by the human-made disasters like the Chernobyl disaster, Bhopal Gas Leak, Minamata Disease, which first emerged in the mid-twentieth century in Japan, London's Great Smog of 1952, and more recently, the Uttarakhand, Brazilian, Californian, and Australian forest fires, the Great Pacific Garbage Patch, and the rapidly melting permafrost, glaciers, and

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ice caps, it is a topic that lacks research. By way of this paper, we aim to remedy that particular limitation. Future readers and researchers should come to have a gateway into the world of environmental law and jurisprudence.

(F) Review of Related Literature

Hon'ble Justice Brian J. Preston's (Chief Judge of Land and Environment Court of New South Wales, Australia) *The Role of Judiciary in Promoting Sustainable Development: The Experience in Asia and Pacific* is a gateway to understanding the environmental jurisprudence in the Asia-Pacific region, with a focus on the Indian subcontinent. It also enumerates and explains the twelve principles of sustainable development with a detailed discussion of the case laws. It also has an information-sharing objective. It outlines, in brief, the Judiciary's position. It discusses the past of sustainable development and the definition. Four main elements or principles of sustainable development are then addressed; The theory of vigilance, inter-and intragenerational equity, protection of biological diversity and ecological dignity, and environmental internalization expenses.[4].

Further, *Global Democracy and Sustainable Jurisprudence: Deliberative Environmental Law by Walter F. Baber and Robert V. Bartlett* suggests that the political deliberations and theories provide valuable insights into the "democratic deficit" in international law. It indicates that there are approaches to the global environmental protection issue that need little more than a new intellectual orientation and a renewed sense of cosmopolitan possibilities.[5]

In *Judicial Contribution in Enhancing Environmental Jurisprudence by Dr. VG Shinde,* while discussing the role of the Judiciary in environmental protection, the paper attempted to analyze the definition of environmental justice in depth. It also seeks to define the constitutional mandate relating to protecting the environment and the Judiciary's role in the implementation of India's environmental governance.[6]

The Evolution of India's Environmental Jurisprudence and the Role of The Judiciary by Arjun Pal is a paper highlighting different historic decisions to illustrate how the Supreme Court is continuously attempting to fill the holes that the law has been left behind. Via our judicial advocacy, the Supreme Court has put forward many new environmental conservation proposals. These new technologies open up various approaches to help the country in judicial

[4] Preston, Brian, *The Role of the Judiciary in Promoting Sustainable Development: The Experience of Asia and the Pacific.*, Asia Pacific Journal of Environmental Law, Vol. 9, No. 2&3, pp. 109-211, 2005, Sydney Law School Research Paper No. 08/46, Available at SSRN: https://ssrn.com/abstract=1124804

[5] Walter F. Baber & Robert V. Bartlett, *Global Democracy and Sustainable Jurisprudence: Deliberative Environmental Law* (2009).

[6] Dr. VG Shinde, *Judicial Contribution in Enhancing Environmental Jurisprudence*, Vol. 4, ILJ, 20-22 (2018).

activism.[7]

Via *Judicial Remedies in Environmental Cases by Prof (Dr) Ranbir Singh*, the objective is to understand avenues for grievance redressal in case of environmental matters and discuss the avenues for redress of complaints on environmental issues.[8]

In *The Role of the Judiciary in Environmental Protection by Patricia M. Wald*, the paper highlights that in the United States, environmental law is a product of interaction between the Federal Government's three branches and between the federal administration and the individual states.[9]

The series of essays titled *Conferring Legal Personality on the World's Rivers: A Brief Intellectual Assessment by Gabriel Eckstein et al.* are based on legal and judicial steps taken to accept any under national legislation. A test of independent legal personality for rivers was precisely undertaken to further the evaluation and debate of this distinct new approach to managing the essential freshwater resources of the planet.[10]

The book *Making Law Matter – Environmental Protection and Legal Institutions in Brazil by Lesley K McAllister* provides a detailed narrative of how environmental policy has been made more successful by participating legal actors in environmental protection in Brazil. It finds that legal institutions, especially prosecutors and courts, helped establish a robust, efficient environmental regulatory system in Brazil.[11]

Environmental Protection in Brazil: A Matter of Principles by Marco Aurelio Peri Guedes states how Brazil's environmental legal framework is very robust and well detailed, yet it is complicated by the State's lack of environmental culture's deep commitment to implementing the law's commands.[12]

Can Legality Verification Enhance Local Rights to Forest Resources? by Ben Cashore and Ingrid Visseren-Hamakers et al. is a report from Peru that provides stakeholders with a procedure to help resolve this difference between goal and outcome in one or more domestic

[7] Arjun Pal, *The Evolution of India's Environmental Jurisprudence and the Role of The Judiciary*, SSRN, (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3492633.
[8] Prof. Ranbir Singh, *Judicial Remedies in Environmental Cases*, EPGF, http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/06._environmental_law/22._judicial_remedies_in_environmental_cases/et/5738_et_22_et.pdf.
[9] Patricia M. Wald, *The Role of the Judiciary in Environmental Protection*, 19 B.C. Envtl. Aff. L. Rev. 519 (1992), https://lawdigitalcommons.bc.edu/ealr/vol19/iss3/8.
[10] Gabriel Eckstein, Ariella D'Andrea, Virginia Marshall, Erin O'Donnell, Julia Talbot-Jones, Deborah Curran & Katie O'Bryan, Conferring *legal personality on the world's rivers: A brief intellectual assessment*, Water International, (2019), 44:6-7, 804-829, DOI: 10.1080/02508060.2019.1631558.
[11] Lesley K McAllister, *Making Law Matter – Environmental Protection and Legal Institutions in Brazil*, (2008).
[12] Marco Aurelio Peri Guedes, *Environmental Protection in Brazil: A Matter of Principles*, SSRN E J, (2014), DOI: 10.2139/ssrn.2431490.

countries, stakeholders working at multiple levels of governance concentrate on better understanding the causal mechanisms by which global governance initiatives will contribute to effective and sustainable 'on-the-ground outcomes.[13]

The *Judgements on Environmental Law in Brazil by IUCN Academy of Environmental Law* are decisions are a counterpoint to the legislative defeats as they help to create a jurisprudence dealing, among many other subjects, with environmental responsibility, environmental crimes, invasive species, protected areas, the precautionary principle, and hazardous substances.[14]

The standard gap in all literature reviewed is that it has failed to do justice in showing the Judiciary as the champion of environment law and protector of mother nature. The focus has been more on the policies applied and not the desired effect.

II. EVOLUTION OF ENVIRONMENTAL JURISPRUDENCE IN INDIA

Due to India's peculiar geographic location and topography, from the coasts to the mountains of Sahyadris and Himalayas, from mangroves delta of Bay of Bengal to the deserts of Kachch and Thar, the numerous rivers, plains, and plateaus, the Indian subcontinent is rich in biodiversity. The Sahyadris are a UNESCO-certified hotspot for biodiversity. All this biodiversity has a vital role in the environment- the more diversity rich the region, the better carbon sink. A carbon sink is a region that absorbs the carbon in the environment through respiration, energy expenditure, molecules synthesized via the process of growth, etc. These factors directly affect the delicate balance of the cycles of seasons, the check on the overcrowding by a particular species, and most vital -the global temperatures.

In line with the environmental importance in survival, the Indian culture has a rich history of environmental conservation manifesting itself in the worship of animal gods, tree gods, river goddesses, holy lakes, hills, mountains, etc. When the British colonized India, they acquired land for dams, railroads, highways, industries, and the allied infrastructure, a.k.a. Exploitation of the resources and riches of a foreign land. While they did enact specific laws to protect the environment (e.g., The Indian Ports Act in 1908 to prevent pollution of seashore due to oil discharge/spillage, Indian Penal Code in 1860 to criminalize voluntary fouling/poisoning of water bodies), the laws enacted mostly authorized the British Government of acquiring lands, forests, impose duties and taxes on the resources generated from the land (e.g., The Forests Act

[13] Ben Cashore, Ingrid Visseren-Hamaker, Paloma Caro, Wil de Jong, Audrey Denver, David Humphreys & Kathleen Mcginley, *Can Legality Verification Enhance Local Rights to Forest Resources?*, ResearchGate, (2016), https://www.researchgate.net/publication/303839310_Can_Legality_Verification_enhance_local_rights_to_forest_resources_Piloting_the_policy_learning_protocol_in_the_Peruvian_forest_context.

[14] Marcia Leuzinger, Carina Costa de Oliviera & Priscila Pereira de Andrade, *Judgements on Environmental Law in Brazil*, IUCNAEL, (2016).

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in 1927 had provisions for imposition of duty on timber). What old colonial masters considered environmentalism is today called the exploitation of resources. Thus, we can state that "environmentalism" is a dynamic, ever-evolving term, modified and adapted according to the present understanding of the human role in the complex environmental hierarchy.

The Constitution framers had a tremendous amount of foresight when they included the Directive Principles of State Policy in the Constitution. While not mandatory, these principles serve to provide the end goal of any and every legislation enacted in the country. Two such principles of DPSP were included in the Constitution by the Constitution (Forty Second Amendment) Act, 1976 by the then legislators in Parliament. They are Article 48-A and Article 51-A(g).

Article 48-A reads, "The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country." A fundamental duty, Article 51-A (g)[xv], was also inserted in Part VI-A which states, "Every Indian citizen has a responsibility to conserve and develop the natural world, including trees, lakes, and animals, as well as to have respect for all living things." The importance of these provisions was upheld in *Sachidanand Pandey v. State of West Bengal*[15] The Supreme Court dictated that these 2 Articles are to be observed while deciding the matters about the environment.

India embraced the modified definitions of environmentalism from time to time and sought to enact legislation with a progressive environmental policy. 'Environment' defined in S. 2(a) under the Environmental Protection Act, 1986, 'Environment' includes air, water and land and the correlation which exists among and between, air, water, land, and human beings, other living creatures, plants, microorganisms and property. Environmental policy priorities can be developed in many ways: to protect human health, to ensure the viability of wildlife, to conserve historical monuments, to avoid further environmental destruction, etc.

In India, not only has the concern for the protection of the environment been elevated to the status of fundamental land law, but it is also married to the approach to human rights. It is now well-founded that every person under Article 21 of the Indian Constitution can live in a pollution-free atmosphere is a cardinal human right with full dignity.[16]. The National Green Tribunal Act of 2010, where the appellate jurisdiction bypasses the High Courts and lies entirely with the Supreme Court of India, is a testimony to the vast powers that have been statutorily vested in the NGTs by the Parliament to ensure that the matters of environmental

[15] Sachidanand Pandey v. State of West Bengal 1987 AIR 1109.
[16] Subhash Kumar v. State of Bihar 1991 SCR (1) 5.

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concern are disposed of speedily. The provision for the expert member on the NGT Bench depicts the commitment to ensure that the matters are not viewed only through the lenses of law but of science and greater environmental good.

While the Legislative sought to vest more power in the Judiciary via the NGT Act, the Judiciary had assumed the role of de facto champion of the environment from the 1980s. This is apparent on the face of the record that the Judiciary, with its progressive outlook, led the environmental activism by admitting Public Interest Litigations even when the locus standi was not clear. The Apex Court has, over time, established certain vital doctrines and principles in environmental jurisprudence.

The first such case where the "Doctrine of Absolute Liability" was established was *Union Carbide Corporation v. Union of India.*[17]. It was held that when an entity occupies land and undertakes an activity that is inherently hazardous and disaster-prone, the leakage of poisonous gas in this case, then the entity will bear the absolute liability of compensating every affected individual. They will not be granted any kind of exemption in this regard. This case has served as a landmark precedent in all the matters after dealing with the damage caused to the people and environment due to industrial mishaps.

The *Vellore Citizens Welfare Forum v. Union of India*[18] led to the evolution of the "Polluter Pays Principle." The Supreme Court of India held that this is an essential feature of sustainable development. It is more of a remedial or "making good the damage" principle than a penalizing one.

Further, the SC prescribed 3 rules for the "Precautionary Principle," namely:

"1. Environmental policies must foresee, deter, and combat environmental degradation's causes.

2. The lack of statistical certainty should not be seen as an excuse to put off taking action.

3. The actor bears the burden of evidence in demonstrating that his conduct is benign."

M.C. Mehta is considered to be the pioneer of environmental activism and the PIL movement in India. He has filed several cases in the SC concerning environmental matters. One such case, *M.C. Mehta v. Kamal Nath and Ors*.[19] has reiterated the "Doctrine of Public Trust." It states that certain natural resources- air, water, land, forests, mountains, etc.- belong to the people at large. Private ownership of such resources is completely unjustified and arbitrary. These are

[17] Union Carbide Corporation v. Union of India 1992 AIR 248.
[18] Vellore Citizens Welfare Forum v. Union of India (1996) 5 SCC 647.
[19] M.C. Mehta v. Kamal Nath and Ors. (1997) 1 SCC 388.

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the resources of people, and the Government is a mere trustee. The World Commission on Environment and Development, the SC observed in *Rural Litigation and Entitlement Kendra v. the State of UP*.[20] The "Doctrine of Sustainable Development" is a viable way to ensure poverty eradication, intergenerational equity of resources, and environmental conservation.

In recent times, acknowledging the life-giving nature of the rivers and water bodies to the environment, the Uttarakhand High Court conferred the status of "legal personality" on the Ganga and Yamuna river *Lalit Miglani v. State of Uttarakhand and Ors.*[21] Similarly, in 2009, a suo motu petition was initiated in the High Court of Punjab and Haryana in cognizance of the depleting water levels of the Sukhna Lake. In March 2020, the said HC declared Sukhna Lake as a legal person.[22]. The rivers and the lakes, as legal persons, would have a right against the injuries and a right to the maintenance of its health. This order sought to curb the injuries to the rivers in the form of untreated sewage and industrial effluents release, the encroachment of the natural catchment area of the rivers and lakes by humans for housing, industrial units, sand mining in the beds of rivers, etc.

Thus, the Judiciary often plays the role of guardian in India and often bridges the gaps in the legislation on environmental conservation. However, more recently, SC was in the headlines for clearing (in 2019) and later intervening again in the 900 km long Chardham Highway project. The highway aims to provide all-year-round connectivity to the four holy shrines in Hinduism, all located in the Himalayas. The project includes a 160 km long zone near the Bhagirathi river, a susceptible area ecologically, cutting through 174 mountains, out of which 102 are prone to landslides. The Government has planned for a 10-meter-wide road that will require a 24-meter-wide area to be deforested instead of the 7-meter width deforestation, of which 5.5 meters would be the tarred road. In response to a petition signed by locals of the region in the Supreme Court in 2019, the SC appointed an 18-member review committee of experts with Ravi Chopra, a noted environmentalist, as the Chairperson. The SC set for another hearing in January 2021.[23] In matters like this, the position and the role of the Judiciary are often challenged and criticized for lacking clarity and ground.

2020 saw the power of internet activism in the Environmental Impact Assessment, 2020 (EIA 2020) Draft Notification. It is a widely criticized draft of the Ministry of Environment, Forest

[20] Rural Litigation and Entitlement Kendra v. the State of UP
[21] Lalit Miglani v. State of Uttarakhand and Ors. WPPIL 140/2015.
[22] HT Correspondent, *Sukhna Lake is a living entity with rights: HC*, HINDUSTAN TIMES, 2020 (Mar 3), https://www.hindustantimes.com/chandigarh/sukhna-lake-is-a-living-entity-with-rights-hc/story.
[23] Hridayesh Joshi, *The Char Dham project poses grave danger to the Himalayas: a multimedia report*, THE THIRD POLE, 2018 (Oct 28), https://www.thethirdpole.net/2018/10/25/char-dam-project.

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and Climate Change of the Central Government released in March 2020. As stated by

Environment (Protection) Act, 1986, the Government can issue draft notifications from time to time to amend the rules related to various developmental activities. The Draft Notification of 2020 has various controversial aspects such as post-facto clearance (clearance to the projects that have already commenced without prior permission), non-admissibility of the violations and non-compliances by the industries reported by the general public, classification of 40 activities including sand and clay mining, foundations of the buildings, construction of highways, waterways, hydroelectric power plants as exempt from EIA/public consultation. However, the most alarming aspect remains is the abandonment of the doctrine of public trust.[24]

The SC has observed that "The definition of an ex post facto EC (environmental clearance) violates basic environmental jurisprudence values and is incompatible with the EIA notice of January 27, 1994. It is harmful to the environment and could lead to irreversible depletion, according to the decision in Common Cause." The Delhi and Karnataka High Courts accepted the pleas for extending the deadline to submit comments on the Draft from June 25, 2020, to August 11, 2020. Karnataka HC cited that enough publicity was not given to the draft amidst the raging COVID-19 pandemic. Further, both courts ordered that the draft be published in regional languages since Hindi and English literacy cannot be a prerequisite for reading and understanding law. These orders by the HCs resulted in more than 17 lacs individuals sending comments to the Environment Ministry.[25]

Legislating from the Bench is an aspect that is frowned upon in democratic nations. However, who is to safeguard democracy if the legislative and administrative frame policies are inherently dangerous to humanity's very existence? Using the Constitution optimally and interpreting it from a progressive perspective, the Indian Judiciary is constantly walking on a tightrope- safeguarding the public interest and existence while trying hard not to violate the democratic institutions and the doctrine of separation of powers.

III. EVOLUTION OF ENVIRONMENTAL JURISPRUDENCE IN BRAZIL

Brazil is the fifth largest nation worldwide. In the 2000s, vibrant growth and successful social policies lifted millions of people out of poverty, while socio-economic progress throughout the world varies widely. Natural resources are essential to the development of Brazil: it is among

[24] BTG Legal, *Draft Environmental Impact Assessment Notification, 2020: Key Highlights*, MONDAQ, 2020 (Nov 20), https://www.mondaq.com/india/climate-change/1007950/draft-environmental-impact-assessment-notification-2020-key-highlights.

[25] Asmita Bakshi, *EIA Draft 2020: Violation of Environmental Law is seen as Development*, MINT, 2020 (August 17), https://www.livemint.com/mint-lounge/features/eia-draft-2020-violation-of-environmental-law-is-seen-as-development-11597593043757.html.

the world's largest producers of agriculture, minerals, and oil, and most of its electricity is provided by hydropower. Protected areas cover a large part of the nation, and deforestation in the Amazon has decreased dramatically, which has helped to minimize greenhouse gas emissions. Economic development, however, and the expansion of urban, agricultural, and infrastructure have also led to increased use of energy and resources and consequent environmental pressures.

At the national level and in the majority of states, Brazil has developed a stringent and advanced framework for environmental legislation. The three tiers of the Government's environmental obligations have been better defined by recent legislation. The Constitution of Brazil acknowledges the right of the people to an ecologically sustainable climate. With a complex federal governance system, Brazil is an economically and socially heterogeneous nation. This makes it challenging to enforce environmental policies and programs on the ground. The strictness of environmental standards and the degree of enforcement differ dramatically across jurisdictions, reflecting local preferences and restrictions on capacity. The strictness of environmental standards, however, differs across jurisdictions, raising environmental dumping threats. In several states and municipalities, the statute is weakly applied, partially because of an inadequate number of inspectors. Fines are scarcely obtained, and there is intermittent enforcement of environmental liability.

In recent decades, in the sense of global threats and complex anthropogenic environmental issues, a growing number of environmental lawsuits have entered the Brazilian judicial system, which faces the arduous task of offering timely and appropriate answers to complex environmental controversies. By operationalizing the constitutional structure of the country, acknowledging the fundamental right to an ecologically sustainable environment, and applying the principles and techniques of environmental hermeneutics in its decision-making process, the Brazilian High Court (known as the Superior Court of Justice in Portuguese) has contributed significantly to the advancement of environmental law in the country. Therefore, questions surrounding the application of environmental laws have been explained.

Therefore, an ecological approach to the rule of law "calls for the greening of the entire law and governance system." The idea of an eco-constitutional state, in which the rule of law and environmental conservation are regarded as mutually reinforcing elements of the State, can explain this change. The most significant institutional trend impacting contemporary Brazilian society is the persistent lack of regulatory oversight over public lands, and private land uses are environmental regulations. In a scheme called *endites Romana*, this is expressed above all in the colonial (1500-1822) and post-colonial (after 1822) pattern of large land grants granted

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to small numbers of citizens. The Rio Summit took place in Brazil in 1992. It was clear that the host country was supposed to implement laws and policies expeditiously in line with this grand environmental summit. Among the documents signed or proposed at the 1992 summit, the Convention on Biological Diversity, accompanied by the Protocols on Climate Change and Biosecurity, was the most important one for Brazil. Brazil ratified this convention in 1994.

The overture of the *World Declaration on the Environmental Rule of Law*, which is the conclusion text of the first World Commission on Environmental Law convened by the International Union for Conservation of Nature (IUCN). The Environmental Law Congress acknowledges that "environmental law concepts have made a significant contribution to the progressive advancement of regulatory and policy regimes for the protection and fair use of resources at all levels of government," "recognizing the critical role that judges and courts play in promoting the environmental rule of law by ensuring the efficient enforcement of laws at the national, subnational, regional, and international levels, as well as by ensuring equal and impartial decision-making."

The rule of law for nature evolves "[…] from the original state-citizen component of a system of government in which both public and private individuals, agencies, and organizations, including the state itself, are held responsible to laws aimed at protecting the environment's health, dignity, and security." Therefore, judges and courts have an essential role in the "greening process" because, in a rational, impartial and scientifically based decision-making process, they are responsible for correctly applying legal norms and standards to individual cases. For example, in Brazil, judges have played a requisite role in strengthening and improving environmental law, putting constitutional environmental law principles into practice, and developing their interpretation, despite the country being a civil law jurisdiction. It is noteworthy that the courts have developed an improved interpretation system for environmental cases in special STJ, focused on the foundations of environmental hermeneutics, providing a more significant climate.

Also granted was the unprecedented special protection of the environment under the Brazilian Constitution of 1988, which was proclaimed to be a fundamental right: Article 225 stipulates that “Everyone has the right to an environmentally balanced environment that is a virtue of quotidian use and requisite to a healthy quality of life, and it is the duty of both the government and the community to protect and preserve it for present and future generations.” In its broad meaning, 'Environment' is understood here as the set of physics, chemistry, and biology conditions, laws, influences, and interactions that allow, shelter, and stimulate life in all its forms and is perceived as an autonomous protected legal interest. Brazil, establishing that all

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individuals are entitled to an environmentally balanced environment.

In short, the Brazilian Constitutional Structure-

- grants an implementable fundamental right to an ecologically healthy environment,
- recognizes environmental protection as a binding right and responsibility of the State,
- provides a conceptual basis for public policies, and
- assumes strict and distinct environmental protection by the Judiciary, which is the center of Brazilian environmental law. It also provides the basis for the strengthening of the nature's rule of law.

For activities considered to be significantly polluting, an environmental impact assessment is required, as provided in Article 225 of the Federal Constitution. Non - the violator could be liable to three distinct types of environmental responsibility under environmental rules:

- Administrative liability arising from the violation of an environmental protection regulation consisting of the imposition by supervisory and control bodies of notices, fines, and prohibitions, as well as other administrative penalties provided for in the relevant legislation,
- Criminal responsibility, consisting of the imposition of sanctions, including the loss of independence and the limitation of privileges,
- Civil responsibility, consisting of a duty to restore or mitigate or compensate for harm to the environment, or to compensate, if such reparation or remediation is not possible.

The distribution of criminal responsibility will enter associates, directors, officers, managers, professional advisors if there is evidence of an intentional connection to the harm or if little has been done to prevent it even if it might or could have been done. Because of their role in the company or for illegal acts committed by workers or other managers, the manager of a company should not be deemed criminally responsible, which they were not aware of and could not have prevented. As for civil environmental liability, due to its strict existence, a particular regime exists. Still, proof of causation is necessary between the harm and the polluter's act or omission. Environmental civil liability is strict according to Article 14 of the National Environmental Legislation, which ensures that it does not include proof of misconduct.

In Brazil, new environmental laws are implemented repeatedly. In 2019, the Brazilian Supreme

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Court ruled that the principal articles of Law No. 12,651/2012 ('New Forest Code') regulating the use of land and forestry protection were constitutional. The Supreme Court of Justice granted a relevant decision in 2019, calculating the subjective nature of environmental liability in the administrative sphere. According to the decision, administrative penalties can only be imposed against the transgressor, such as fines, provided that elements of guilt can be asserted. It is also worth considering that the Brazilian Congress is analyzing a bill to speed up environmental licensing procedures in Brazil for activities that could influence the environment or the use of natural resources. It is a crucial legal instrument for the conservation of forests on private property. It seeks to address the enforcement flaws of the previous one, which has resulted in widespread violations and vast areas of illegal deforestation.

The language of environmental laws is often ambiguous and vague, notwithstanding the many positive aspects of the country's environmental law. Thus, vast disputes concerning their interpretation are common. Discussions about whether environmental regulations can take precedence over private interests are also an equally debated issue. Under this scenario, the Brazilian Courts have been continuously faced with supplying the normative commands with the correct interpretation, which must undoubtedly be carried out in accordance with their constitutional obligation to protect the environment. Because of the wide variety of environmental disciplines, this procedure has enabled judges to have a certain level of experience in fields other than law and a degree of ecological awareness.

For example, in the case of the *State Public Prosecutor's Office of Minas Gerais v Pedro Paulo Pereira*, which supports the principle of applying environmental hermeneutics to environmental cases in Brazil, the STJ understood that laws relating to the protection of vulnerable groups and diffuse interests, such as the environment, should be interpreted in the way most beneficial to those groups and distinguished between them.

Thus, on that occasion, the Court declared that environmental hermeneutics is regulated by the principle of in *dubio pro-nature*, which means that there are doubts about the interpretation of a given legal order, the interpretation which is most beneficial to the environment shall prevail.[26]

Similarly, in the *Brasilia v State Public Prosecutor's Office in Rio de Janeiro*,[27] The Court declared that environmental laws serve their intended social objectives and are therefore interpreted per the *dubio pro natura* hermeneutics principle.

[26] (Federal) *State Public Prosecutor 's Office of Minas Gerais v Pedro Paulo Pereira* (2012) (STJ).
[27] (Federal) *Brazil v State Public Prosecutor's Office of Rio de Janeiro* (2013) (STJ).

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The Court has contributed to the State's ability to fulfill its responsibility to protect the environment, while at the same time contributing to law enforcement, supplying lower courts and local judges with solid case law, which demonstrates that the judges of the Court are increasingly recognizing and coping adequately with the complexities of transdisciplinary environmental issues. They reflect the adoption by the Court of avant-garde positions, which have frequently issued decisions consistent with the principle of ensuring complete security of the environment, safeguarding public interests to the detriment of private ones. These decisions are somewhat challenging to achieve a greener system at the judicial level because they make our constitutional framework operational and standardize the interpretation of core environmental principles and legal commands repeatedly overlooked or misinterpreted by other judicial instances.

The precautionary principle is widely recognized in Brazilian jurisprudence, although the courts and judges do not always agree on its scope. According to the Rio Declaration, in cases where "threats of serious or irreversible damage are present, the paucity of full scientific certainty shall not be used as a reason for delaying cost-effective environmental degradation prevention measures." For instance, in the case *Maxtel S.A v. Federal Public Prosecutor's Office*[28], the precautionary principle was invoked by the STJ to prevent the installation of a radio station. According to the Court, "The protection of the environment prevails in accordance with the precautionary principle, taking into account the lack of scientific certainty concerning the effects that the installation of a radio station could have on human health." On the other hand, the principle of sustainable development has only begun to be invoked recently by the STJ. It is generally concerned with maintaining a healthy environment for present and future generations while developing the many naturals, social, cultural, and economic aspects. In addition, it also implies respecting the biophysical limits of the Earth, in line with the idea of robust sustainability.

Thus, the Court has relied on the principle of concluding that the mere possibility of causing damage constitutes an offense under the law, even though it is not explicitly stated in the article. In this light, the Court ruled in the case *Federal Public Prosecutor's Office v. Edgar Antônio Castegnaro*[29] that: "The ideals of sustainable growth and prevention enshrined in Art. 225 of the Federal Constitution should direct the interpretation of environmental legislation, whether regulatory or criminal, given that the environment is a gift to this generation and future generations, as well as a constitutional right, requiring prudent behavior to avoid harming the

[28] (Federal) *Maxiell S.A* v. *Federal Public Prosecutor's Office* (2016) (STJ).
[29] (Federal) *Federal Public Prosecutor 's Office v. Edegar Antônio Castegnaro* (2014) (STJ)

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environment."

The Court also manifested kindred understanding in the case *Jose Elias Silva Torres v. State Public Prosecutor's Office of Amazona*s[30]. The judicial recognition of a principle of sustainable development shows that the Judiciary is increasingly sensitive to specific implications of the rule of law of nature, emphasizing and integrating the meaning of sustainability into its decision-making, assuming a compromise with intra- and inter-generational equity. Environmental agencies mainly adopt a command-and-control approach. Infringement of the rules on environmental protection leads to the imposition of warnings, fines, prohibitions, and other administrative penalties provided for in the law in force. It may also lead to criminal liability, consisting of the imposition of penalties involving the loss of liberty and the restriction of rights.

The Supreme Court of Brazil held the country's first public hearing on climate change in September 2020. A climate litigation case has reached the highest Court in Brazil for the first time, marking a historical landmark for the country's legal system. Participants included a wide range of members from civil society, Government, and the business sector, ensuring a diverse range of perspectives on Brazil's currently legal, environmental, social, scientific, and economic climate policy situation. The key issue discussed was the challenge of addressing climate change through Brazilian environmental policy and the Brazilian Government's related actions and omissions, particularly concerning the financial resources of the Climate Fund.

Case ADPF 708 involves the Brazilian Climate Fund, established as a financial instrument of the National Climate Policy Plan by the Brazilian Government in 2009. The lawsuit was brought against the Federal Union by four political parties.in June 2020, alleging that the Government's failure to act concerning the Climate Fund is a violation of constitutional and international obligations, in particular, because President Bolsonaro has failed to allocate funds to climate alleviation and remodeling projects. The plaintiffs seek a declaration of "unconstitutional omission" against the Climate Fund's operations and governance paralysis, as well as an order ordering the Government to reactivate the fund. In retaliation, the federal government has argued that because the Constitution does not expressly require the formation of a climate fund, there is no constitutional problem. The Government also argued that the Court's involvement would constitute a breach of the concept of separation of powers, following the precedent of most global climate litigation proceedings.

The case of the Climate Fund is the first climate case to reach the Supreme Court of Brazil, the

[30] (Federal) *Jose Elias Silva Torres v. State Public Prosecutor's Office of Amazona*s (2016) (STJ)

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first to be brought before political parties, the first to discuss preliminary government steps to finance climate change mitigation and adaptation initiatives, and the first to convene a public hearing (broader than a hearing with interveners) to collect additional factual evidence. Many science specialists clarify the most significant omission from the current Government about the rising deforestation and forest fires rate—these impact the international climate, the economy, and the public image of Brazil. International financial aid and trade negotiations have also been impacted by the Government's inability to take appropriate action. It also directly discussed the importance of environmental crimes globally, which threaten agribusiness and energy supply, rendering the nation less attractive to foreign investment. Experts noted the role of transparent deforestation monitoring, a coherent public policy of innovation and promotion of technology and entrepreneurship, and the potential of the Amazon as the basis of a renewed Brazilian economy, focused on the development of high-value-added supply chains for forest products, agroforestry systems, and the valorization of socio-biodiversity

IV. CONCLUSION

The chronology of environmental jurisprudence in India is a series of landmark decisions that have shaped the Indian outlook on the environment. However, the most prominent development is that of the Public Interest Litigation or, as it is popularly called- the "Jurisprudence of the masses," originating in the late 1970s. PILs are a type of writ petitions provided in Article 32 (Supreme Court's power to adjudicate writ petitions) and Article 226 (High Court's power to adjudicate writ petitions) of the Indian Constitution. With the 42nd Amendment in 1974, Article 39-A was included in the Constitution, which provides for free legal aid. This gave a Constitutional Sanction to the PIL petitions. The several PILs by M.C. Mehta and other environmental activists later formed an integral part of the chronology of environmental jurisprudence.

While the Indian Government often sees this as a hindrance to the "development," the Judiciary has time and again tried to honor Article 21 Right to Life and tried to interpret it beyond the mere survival of the humans. It has included the aspects of intergenerational equity of resources, sustainable development, right to clean drinking water and fresh air, the cognizance of the fact that specific resources are too precious to be owned privately and that they belong to humankind, with a mere trusteeship obligation vested in the Government and so on.

Although the Government is playing its role in the conservation with incentives for solar power fields, afforestation programs, the statutory institution of NGTs, it is not nearly as much of an impressive accomplishment as that of the Judiciary. More often than not, the Government

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comes under fire for not bearing in mind the concept of environmental conservation under Article 48-A.

On the other hand, a vibrant and sophisticated environmental law has been generated by Brazil. However, in terms of regulation and compliance, much remains to be done, particularly in the case of economic actors. Brazil has dreamed of being an industrialized country at any expense for decades, and it could still take another century before Brazilians understand that economic development and environmental quality are not mutually exclusive but complementary. Various challenges are:

- The economy is slowing, and wages and access to environmental resources are widely disparate.
- A decentralized governance structure, demanding close coordination between federal, state, and municipal governments.
- Institutional capability is highly heterogeneous, resulting in gaps between announced initiatives and their execution.
- Significant tracts of tropical forests and savannah continue to be cleared and degraded.

In this context, the STJ has consistently applied refined legal experience to environmental cases, acknowledging that they must follow a different rationale from that applied to ordinary criminal, administrative and civil cases. Therefore, in the state courts and the local Judiciary, the Court has helped to end environmental issues that have given rise to divergent decisions. These recent developments in the case-law of the Court of Justice bring a new contribution to the debate on legal frameworks for more excellent protection of the environment concerning a rule of law that has environmental protection as one of its pillar principles but also from a global and inclusive viewpoint, foresees the relationship between the environment and society.

The case of the Climate Fund is one of the first relevant cases to endorse strategic climate litigation in Brazil, to challenge the deregulation of environmental law and climate law. Simply hosting the public hearing was important as an opportunity to widen the debate on Brazil's climate policy and an ambitious proposal from the Court. Public policy on the environment needs multiple groups to work together to tackle deforestation and climate change. The Court recognized that the subject matter goes well beyond the parties to the case, and it was necessary to listen to experts from a wide variety of sectors and offer opinions from all sides. After the hearing, it became apparent that environmental policy is not already a constitutional issue and should be debated at Brazil's highest Court. In addition to its relevance in determining the

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constitutional responsibilities of the State to climate policy, the case also calls for an evaluation of the use of international law to deal with climate change at the national level. It brings explicitly international agreements as binding sources, continuing a pattern started by other climate cases worldwide, which could be implemented at the national level. The case, therefore, calls on the Court to provide a legal review as to whether the Climate Fund and other national structures and policies are sufficient to enforce, by their nationally defined contributions, the commitments made by Brazil at the international level.

In conclusion, the Judiciary of Brazil is going through a remarkable journey of enhancing its understanding of environmental issues and legislation. As part of this, the STJ plays a vital role in clarifying major disputes, helping to resolve one of the critical problems of the environmental legislation of Brazil, that is, its proper interpretation. There is no dismissing that much more has to be accomplished to resolve the tremendous environmental concerns of Brazil. However, these recent changes in case law indicate that we are moving towards a more successful implementation by the Judiciary of environmental legislation.

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