PART 2:

BANGLADESH, INDIA AND NEPAL

CHAPTER 4: BANGLADESH

In this Chapter

- *Introduction to environmental justice in Bangladesh*
- *Constitutional provisions establishing a right to life*
- *Overview of environmental legislation in Bangladesh*
- *Public interest litigation, the expansion of the right to life, and the BELA case*
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Introduction

Environmental protection in Bangladesh was, and continues to be, rooted in traditional legislation, including various Acts intended to provide wide-spread environmental protection and more specific legislation in areas like forest protection. Historically, there was, however, no Act detailing an individual's right to live in a clean environment.

A fundamental part of achieving environmental justice is the recognition and enforcement of every individual's right to live in a clean environment. This will ensure that marginalised communities are not forced to live in unhealthy environments and reinforce the idea that everyone, regardless of age, caste, race, religion, or gender, has an equal right to a clean environment.

In working towards this ideal, the Bangladesh judiciary has judicially created a fundamental right to a clean environment as part of the fundamental right to life. The Bangladesh Constitution does not contain an explicit right to life provision, either as a constitutional provision, or as a directive principle (a provision that gives working guidelines to the government but does not actually create rights). However, the judiciary has interpreted two provisions together, as will be discussed in more detail below, to create a fundamental right to life. Taking the idea of a right to life further, the judiciary in Bangladesh has created a right to a clean environment as part of the right to life.

Constitutional Provisions

Fundamental rights

As in all countries with a written constitution, in Bangladesh, constitutional provisions are the supreme law ruling the land. This means that no law can be passed that contradicts or negates any part of the Constitution. All legislative, executive, and judicial actions must conform to the Constitution, both in the literal words and actions and in the spirit of the words and actions.

Gender and Disaster Network

Woman crosses flood waters, Bangladesh

There are two specific articles in the Constitution of Bangladesh that guarantee fundamental rights:

1. **Article 11:** Article 11 of the Bangladesh Constitution guarantees fundamental rights and freedoms and respect for the dignity and worth of a person. However, Article 11 is limited by Article 8(2). Article 8(2) provides that the principles set out in this part of the Constitution detailing fundamental rights "Shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh". Article 8(2) goes on to specifically mention that these principles are not judicially enforceable, that is, they are principles that should guide the Government in making its policy decisions but they, in and of themselves, do not give legally enforceable rights to citizens. They are not laws that citizens can sue in court to enforce.

2. **Article 102(1):** Article 102(1) of the Constitution gives the High Court division the power to pass necessary orders to enforce fundamental rights.

In Bangladesh, the Supreme Court is divided into two benches: the High Court and an Appeals Court. The High Court can issue necessary orders or writs to enforce fundamental rights and can move petitions on the application of an aggrieved person. The High Court can issue the following types of orders:

- Certiorari
- Mandamus
- Prohibition

No law can be passed that contradicts or negates any part of the Constitution.

Certiorari is used when the act or proceeding in question has already been completed. For example, one would file a writ of certiorari to contest a building permit that has already been issued.

Mandamus is used to compel a public functionary to do what s/he is under a legal duty to do when s/he is refusing to do it. For example, if the head of the Department of Environment was required by law to ensure that all polluting industries did not violate their operating permits, mandamus would be filed if the head was not ensuring such compliance.

Prohibition is used when the act or proceeding is not yet completed. For example, prohibition would be filed when the building permit was still under consideration by the authorities but had not yet been issued.

Fundamental right to life

The Constitution of Bangladesh does not explicitly provide for the right to a healthy environment in either its directive principles or as a fundamental right. However, Articles 31 and 32 together create a fundamental right to life, which can be inferred to include the right to a healthy environment.

1. **Article 31:** Article 31 states that every citizen has the right to protection from "action detrimental to life, liberty, body, reputation, or property", unless they are taken in accordance with law.

2. **Article 32:** Article 32 states that, "No person shall be deprived of life or personal liberty save in accordance with law".

The limitation on the Court is that the Court itself cannot initiate any proceedings to declare any law or action in violation of fundamental rights. For enforcement of fundamental rights, an aggrieved person must apply to the High Court Division

and then the High Court Division is obligated to consider the petition and remedy the breach of fundamental rights. Unlike other petitions, writs for the protection of fundamental rights can be filed before the violation occurs, instead of waiting for the violation to occur. This is particularly relevant in the environmental justice context.

For example: If the government were to initiate a policy that would take land from citizens and use it to build a polluting industry, a writ petition based on the assumed pollution levels could be filed before the industry was even built.

This is important because it is much easier to stop projects before they begin construction than trying to stop projects once construction has begun.

Articles 31 and 32 of the Bangladesh Constitution together create a fundamental right to life.

Environmental Legislation

Ministry of Environment and Forest

The Ministry of Environment and Forest was created in 1989. It is the ultimate body responsible for all matters relating to national environmental policy and regulatory actions. The implementing agency for the Ministry is the Department of Environment. Apart from overseeing the activities of the implementing agency, the Ministry of Environment and Forest has major inputs in the setting of environmental policy and the integration into development of all public investment projects.

The Department of Environment has a broad mandate and regulatory power to enforce the Environment Conservation Act 1995 and the Environment Conservation Rules 1997. The Department is also responsible for:

- Setting environmental guidelines and standards for industry
- Surveillance of environmental quality and sampling
- Stipulating corrective measures for polluters
- Reviewing Environmental Impact Assessments for development projects and providing environmental clearance
- Creating public awareness
- Conducting environmental training
- Undertaking research on environmental resource management

Even though it has a large mandate, the Department is still a small agency with limited capacity to execute its mandate. To date, it has been largely unable to use the power of the environmental laws at its disposal. For instance, although it conducts spot-checks on vehicle emissions, the Department seldom enforces the provision by requiring the police to fine violators or impound vehicles. There has been a significant increase in its authority, however, with the establishment of the environment courts, which will enable the Department to bring cases against violators faster than through regular courts.

Environment Court Act 2000

The Environment Court Act 2000 established two environment courts, one in Dhaka and the other in Chittagong. The Environment Courts have jurisdiction over any matter arising from an environmental law. In other words, any violations of environmental laws, and only environmental laws, can be brought before the Environment Court.

However, private citizens can bring cases before the Environment Courts only after the complaint has been filed with the Department of Environment. Only if the Department does not respond within 60 days will the Environment Courts hear the

complaint. Cases brought by the Department of Environment can be filed directly with the Environment Courts and do not need to abide by any waiting period.

Forest Act 1927

The original Forest Act 1927 was meant to consolidate the law relating to forests, the transit of forest products, and the duty imposed on timber and other forest products. The Forest Act gave power to the Government to classify any land suitable for afforestation as a reserved forest. Once land has been classified as a reserve forest, the Government has a right to appoint an officer (Forest Settlement Officer) to inquire into and determine the existence, nature, and extent of any person's rights with respect to the reserved forest.

The reserve forest is government property and managed by the Forest Department. There are small areas of protected forest, mainly an intermediate category of forests awaiting formal recognition as reserve forest. There is a presumption that forest-produce belongs to the Government. If a question arises as to whether any forest-produce is the property of the Government, the produce is presumed to be the property of the Government until proven otherwise.

The original Forest Act was specifically amended to include a provision on social forestry by the Forest (Amendment) Act 2000 and the Social Forestry Rules 2004. Apart from defining 'social forestry', the 2000 Amendments prohibit land cultivation and attempted cultivation, and penalise activities that may cause damage to social forestry programmes. Social forestry is also sometimes called 'community forestry' and revolves around the inclusion of local communities and communities living within the forests in the management, use, and conservation of forests.

The 2000 Act defines social forestry as:

- Forestry on any land which is the property of the Government or over which the Government has proprietary rights.
- Forestry on any other land assigned to the Government by voluntary agreement of the owner of the forest.

The Government may establish a social forestry programme by assigning rights to forest-produce or rights to use the land for the purposes of social forestry through one or more written agreements.

National Environmental Policy 1992

The National Environmental Policy sets the basic framework for environmental action and provides sectoral guidelines.

Based on the National Conservation Strategy, an initiative by the Government to integrate environment and development into a policy framework, the National Environmental Policy was drawn up by the Ministry of Environment and Forest.

The Policy sets the basic framework for environmental action and provides sectoral guidelines. The Policy has many wide-sweeping, broad objectives. Amongst them, the Policy aims to:

- Maintain the ecological balance and overall development through protection and improvement of the environment.
- Protect the country against natural disasters.
- Identify and regulate activities that pollute and degrade the environment.
- Ensure environmentally sound development in all sectors.
- Ensure sustainable, long term, and environmentally sound use of all national resources.

- Actively remain associated with international environmental initiatives to the maximum extent possible.

In line with the Policy, the Government passed several environmental acts and regulations to combat industry-related pollution problems.

Environment Conservation Act 1995

The Bangladesh Environment Conservation Act 1995 gives the Director General of the Ministry of Environment and Forest the authority to enforce environmental laws. The authority enables him or her to deal with the need for pollution control and other issues. The Act was strengthened by the 1997 Environment Conservation Rules, which provide the regulatory framework for environmental management in Bangladesh.

The Bangladesh Environment Conservation Act 1995 enables the Ministry of Environment and Forest to deal with the need for pollution control and other issues.

The Act is a good example of framework legislation, meaning it provides general guidelines on environmental protection. The Act was created to:

- Provide for the control and mitigation of environmental pollution
- Facilitate environmental conservation
- Improve environmental standards

Under the Act, if the discharge of any environmental pollutant is over the prescribed limit, or even likely to exceed the prescribed limit due to an accident or other unforeseen act or event, the person responsible must mitigate or prevent the environmental pollution caused as a result of the discharge. Any person that is affected, or likely to be affected, by environmental degradation or pollution may apply to the Director General to remedy the damage or perceived damage.

Environment Conservation Rules 1997

The 1995 Bangladesh Environment Conservation Act specified the powers and functions of the Ministry of Environment and Forest and the Department of Environment and the responsibilities of industries to ensure environmental safety and rehabilitation. The Environment Conservation Rules 1997 determine the standards for air quality, water quality, noise quality, motor vehicle exhaust quality, and sewer and waste discharge quality.

The Rules classify industry into three categories:

- Green (safe)
- Orange (hazardous)
- Red (dangerous)

Based on these categories, the Rules apply increasingly stringent requirements on the more potentially dangerous industries.

According to the Rules, the public may ask the Director General of the Department of Environment for redress of grievances, apply for clearance for an investment, and give notice to an industrial unit that it is to be audited and samples collected. The Rules also provide:

- Tables of standards to be met for air and water quality
- Acceptable noise levels
- Motor vehicle exhaust concentration levels
- Effluent and waste discharge allowed from different types of industry

Krishna P. oli

Public Interest Litigation

Public interest litigation (PIL) is a recognised legal mechanism for the enforcement of constitutionally guaranteed rights involving issues of public interest. It is a legal proceeding in which redress is sought in respect of injury to the public in general. In a PIL, the collective rights of the public are affected and there may be no direct specific injury to any one individual member of the public.

The purpose of PIL is to ensure that constitutional or legal rights, benefits, and privileges are given to vulnerable sections of the community.

Some of the arguments in favour of PIL are:

- Because the constitution is the supreme law, challenging a breach of a fundamental right means that the petitioner can move to higher courts and get judgements quicker than through other means, i.e., civil or criminal law routes.
- PIL can address the problem of the non-implementation of substantive laws.

The purpose of PIL is to ensure that constitutional or legal rights, benefits, and privileges are given to vulnerable sections of the community.

Substantive laws focus on actual issues and concerns, whereas procedural laws govern what happens and when. For example, laws detailing action to be taken for environmental protection are substantive laws. Rules detailing who to file complaints with and who can file a complaint are procedural laws. There are many reasons for the non-implementation of substantive laws, including:

- Institutional weakness and inadequacy, leading to non-enforcement and malpractice
- Outdated and inconsistent law
- Ignorance or lack of objectivity of the individual enforcing the law

Public interest environmental litigation

Building on the idea of public interest litigation, public interest environmental litigation (PIEL) aims to promote the enforcement of environmental rules and rights.

PIEL is necessary because:

- Public officials and agencies are not capable of adequately policing the environmental system due to insufficient funds, inadequate staff, and lack of expertise.
- Agencies may be unwilling to bring actions against violators due to political pressure, or the agency itself may be promoting the activity that it should be regulating.
- PIEL also reduces the government's burden to enforce the regulation. It utilises private resources saving the government money and leading to a more efficient administration of legislative policies.

PIEL also:

- Generates awareness of environmental issues on a mainstream level.
- Educates the responsible actors and creates values of environmental protection in society, even if the actual case is lost in court on issues of legal interpretation or on technical grounds.

The attention generated by a PIEL can bring about changes in behaviour that, however limited, may become significant and lead to long term change.

Until 1994, Bangladesh had no reported cases decided by the Supreme Court on environmental issues. The first environmental case was filed in January of 1994 by

the Bangladesh Environmental Lawyers Association (BELA). Since that time, BELA has filed a number of cases that have contributed to the development of public interest litigation. It has filed PIEL in relation to various environmental problems, including:

- Industrial pollution
- Vehicular pollution
- Unlawful construction
- Illegal felling of public forests
- Razing of hills
- Land use and unlawful development schemes

PIEL expands the fundamental right to life

The fundamental right to life has been expanded to include anything that affects life, public health, and safety.

The fundamental right to life has been expanded to include anything that affects life, public health, and safety.

This includes, "the enjoyment of pollution free water and air, improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent with human dignity".

In 1996, BELA brought another petition before the Court, this time dealing with radiation levels in milk powder. Testing of milk powder imported into Bangladesh showed radiation levels above acceptable limits. The petitioner claimed that the action and inaction of government officials purporting to act under the Import Policy Order 1993–95 dealing with testing of imports for radiation was an infringement of the right to life guaranteed under Articles 31 and 32 of the Bangladesh Constitution.

In siding with the petitioners, the Court stated that, "A man has a natural right to the enjoyment of healthy life and a longevity up to normal expectation of life in an ordinary human being ... The natural right of man to live free from all the man made

BELA Writ Expands Right to Life

In 1994, the Bangladesh Environmental Lawyers Association (BELA) filed a writ petition before the Supreme Court that addressed air and noise pollution. The writ petition sought:

- Appropriate direction to be given to the Government of Bangladesh to perform its statutory duties and functions to control environmental pollution created by motor vehicles.
- Effective measures to ensure appropriate mitigation measures to prevent further danger to life and health from vehicular pollution.

In its petition, BELA stated that air pollution from faulty motor vehicles is universally identified as a major threat to human body and life. The pollution in Dhaka City was incompatible with conditions required for the growth of human life and ecology.

The petition also claimed that the failure of public officials to perform their statutory and public duties endangered the lives of city dwellers and the environment, to the point of violating the people's fundamental rights.

The main thrust of the petition was that, although the right to a safe and healthy environment was not directly specified in the Constitution as a fundamental right, such a right was inherent and integrated into the right to life in Article 32 of the Constitution. Therefore, the right to a sound environment was also a fundamental right under Article 32, and is supported by Article 31 which prohibits actions detrimental to life, body, or property. The failure of the government to perform its duties denied the people their basic fundamental rights.

The Supreme Court agreed with this argument that the constitutional right to life does include the right to a safe and healthy environment.

hazards of life has been guaranteed under the aforesaid Articles 31 and 32 subject to the law of the land".

The Court went on to state, "We are therefore, of the view that the right to life under Article 31 and 32 of the Constitution not only means protection of life and limbs necessary for full enjoyment of life but also includes, amongst others, the protection of health and normal longevity of an ordinary human being". In other words, the Court expanded the right to life to include a life free of hazards and anything that affects life, public health, and safety.

Standing to sue

To have standing in a PIEL case, you do not have to be an aggrieved individual, simply an interested member of the public, as PIEL writs deal with environmental issues, which are clearly in the public interest.

The Bangladesh Supreme Court has adopted a similar policy on standing issues (locus standi) as the Indian Supreme Court. 'Standing' dictates who is allowed to bring a suit before the court, i.e., who has 'standing to sue'. In another case brought by BELA challenging the implementation of a Flood Action Plan, the issue of standing was addressed. Initially, BELA's petition was denied for lack of standing. BELA appealed to the District Court and the High Court eventually took up the matter.

The High Court interpreted Article 102 of the Constitution (granting power to hear and adjudicate cases to the High Court) as not limited only to individual rights and individual complaints. The Court stated that it did not give importance to the dictionary meaning of 'any person aggrieved' in Article 102. The Court stated that instead, Article 102 should be seen within the grander scheme of the Constitution and not isolated by itself. The Court interpreted 'any person aggrieved' to include 'people' as a collective and consolidated personality.

The Court stated, "The High Court Division cannot under the circumstances adhere to the traditional concept that to invoke its jurisdiction under Article 102 only a person who has suffered a legal grievance or injury or an adverse decision or a wrongful deprivation or wrongful refusal of his title to something is a person aggrieved". Under this interpretation, PIEL writ petitions will be able to overcome the standing issue, as they deal with environmental issues and environmental issues are clearly in the public interest.

Chittagong Hill Tracts

History and background

The Chittagong Hill Tracts (CHT) is a hilly, forested area in the south-eastern part of Bangladesh covering over 13,000 square kilometres. The CHT is home to thirteen indigenous ethnic groups, called the 'Jumma' people. The Jumma people are racially, culturally, ethnically, and religiously different from the Bengali majority, with their own unique languages.

The CHT has a different governing history from the rest of Bangladesh. The Jumma people were independently governed until 1860 when the British annexed the CHT and created an autonomous administrative district. In 1900, the British enacted Regulation 1 of the 1900 Act, otherwise known as the CHT Regulation of 1900 or the CHT Manual, which provided limited self-government for the peoples of the CHT. The Regulations made it clear that no person other than a hill tribe member indigenous to the CHT, the Lushai Hills, or the Arakan Hill Tracts, of the state of Tripura could enter or reside within the CHT without the permission of the Deputy Commissioner.

The special status of the Chittagong Hill Tracts was further defined by the Government of India Act of 1935. The Act designated the CHT as a 'Totally Excluded Area'. This formally severed the political links between the CHT and the Province of Bengal.

Conflict and the peace accord

The CHT has been an area of unrest since the colonial era. Land-related problems are widely thought to be one of the main contributors to the political unrest and conflict in the CHT. An armed resistance to the Bangladeshi Government began in the 1970s and continued until 2 December 1997 when a peace accord was signed. The Peace Accord set out detailed provisions for strengthening the system of self-governance in the CHT and recognised the indigenous peoples' right to land, culture, language, and religion.

Land administration system

Despite the seemingly strong legislative protection afforded by the Peace Accord, land disputes are still prevalent in the CHT. The CHT has two major systems of land administration: one for reserved forests areas and another for the rest of the region. The reserved forest area covers less than one-quarter of the region. This area is administered by the Bangladesh Forest Department under the Ministry of Environment and Forest. The rest of the CHT is administered by a mix of political and bureaucratic authorities that include traditional institutions, such as the chief, headman, and karbari (village chief or elder), and formalised elective councils at various levels of administration.

Traditional government

The CHT has an important traditional governing structure that is administered through the circle chiefs (rajas). The authority of the chiefs is further distributed through headmen, the karbaris (village-level traditional land administrators), and land revenue officers recognised by the civil government. While they still perform their functions, their role in land allocation has been considerably reduced in the last 20 years. However, the traditional leaders still resolve social problems. They also provide a valuable and trusted non-political form of guidance for local communities.

See Chapter 3 for more information on customary and formal law in the CHT.

CHAPTER 5: INDIA

In this Chapter

- *Introduction to environmental justice in India*
- *Constitutional provisions targeted at environmental protection*
- *Overview of environmental legislation and environmental courts in India*
- *Public interest litigation, the Doon Valley Case, and the Delhi Air Pollution Cases.*

Introduction

Environmental justice in India has come to the fore in recent years. Environmental justice advocates have fought against issues ranging from the mass displacement of tribal people by large dams, to the protection of forest reserves and resources from mining companies. The Indian judiciary was the first in South Asia (and one of the first in the world) to declare that the fundamental right to life must include the right to live in a clean environment. Also, through judicial decisions, the idea of 'public interest litigation' has been firmly established as one of the greatest advocacy tools available for the enforcement of fundamental rights and privileges.

The Indian judiciary was the first in South Asia (and one of the first in the world) to declare that the fundamental right to life must include the right to live in a clean environment.

Constitutional Provisions

The Indian Constitution contains several provisions targeted specifically at environmental protection.

Elisabeth Kerkhoff

Rice terraces in Darjeeling

1. **Article 48A and Article 51A:** In 1976, the Indian Constitution was amended to include two provisions, Article 48A and 51A. These amendments directly affect the environment. Article 48A states, "[T]he State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".

   In addition to the obligation that is imposed on the State, Article 51A imposes an obligation on each citizen of India to, "protect and improve the natural environment including forests, lakes, rivers, and wild life, and to have compassion for living creatures".

   These provisions indicate government awareness of the need to provide a constitutional basis for environmental protection. Furthermore, the present Constitution of India leaves open several ways and means for the legislature to enact specific measures for environmental protection.

Article 21 provides for a fundamental right to life, which has been interpreted to include a right to a clean and healthy environment.

2. **Article 21:** Article 21 provides for a 'fundamental right to life'. The Indian judiciary was the first to interpret the right to life to include a right to a clean and healthy environment.

   Even though there is a strong Constitutional and legislative framework for environmental protection, the judiciary on the whole does not make use of most of the possible provisions; they prefer writ petitions filed under Article 21. Article 21 public interest writ petitions are filed to enforce fundamental rights guaranteed in the Constitution. The development of Article 21 litigation and the effects of the litigation will be further explored in the section in this Chapter on public interest litigation.

Environmental Legislation

Indian Forest Act 1927

The Indian Forest Act was enacted in 1927 and remains in force today. The Act demarcates four categories of forests:

- **Reserved forests:** Forests that the Government has reserved for a specific purpose, whether for its own use or for conservation, etc.
- **Village forests:** Reserved forests assigned to a village community. The state governments are empowered to designate protected forests and may prohibit the felling of trees, quarrying, and the removal of forest produce from these forests.
- **Protected forests:** Forests that are set aside for conservation and cannot be used for commercial use. The preservation of protected forests is enforced through rules, licences, and criminal prosecutions.
- **Private forests:** Forests owned by other entities besides the Government. Use and preservation are at the discretion of the owner.

Under the Act, a state may declare forest lands or waste lands as reserved forests and may sell the produce from these forests. Any unauthorised felling of trees, quarrying, grazing, and hunting in reserved forests is punishable by a fine or imprisonment, or both. The Forest Act is administered by forest officers who are authorised to compel the attendance of witnesses and the production of documents, to issue search warrants, and to take evidence in an inquiry into forest offences.

Forest (Conservation) Act 1980

In response to the rapid rate of deforestation and the resulting environmental degradation, the Central Government passed the Forest (Conservation) Act in 1980. The Forest Conservation Act was amended in 1988. The amended Act requires the approval of the Central Government before:

- A state 'de-reserves' a reserved forest
- Uses forest land for non-forest purposes
- Assigns forest land to a private person or corporation
- Clears forest land for the purpose of reforestation

An Advisory Committee constituted under the Act advises the Central Government on these approvals.

The amended Forest (Conservation) Act 1988 restricts state governments from de-reserving, using, assigning or clearing forest.

The Water and Air Acts

In the 1970s and 1980s India passed two pieces of legislation that were meant to provide over-arching protection for water and air.

The Water (Prevention and Control of Pollution) Act 1974 was meant to, "provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water". The Act established Central and State Pollution Control Boards to oversee the prevention, abatement, and control of water pollution. These Boards have the power to:

- Obtain information from any person or industry regarding non-compliance with the Act.
- Take samples of any effluent to determine non-compliance.
- Enter and inspect any place for non-compliance.

The Act also imposed fines and personal liability on violators.

Similar to the Water Act of 1974, the main goal of the Air Act 1981 was, "to provide for the prevention, control, and abatement of air pollution". The Air Act, like the Water Act, also created Central and State Boards. The main functions of the Central and State Boards are to:

- Improve the quality of air by advising the Central and State Governments on matters dealing with air pollution.
- Plan and execute a nationwide programme for the prevention, control, or abatement of air pollution, including a nationwide mass media campaign.
- Organise and train persons engaged in air pollution prevention, control, and abatement programmes.
- Collect and disseminate information relating to air pollution.

Additionally, the Central Pollution Control Board is to provide technical assistance and guidance to State Pollution Control Boards.

Instead of creating an effective working framework for environmental protection, the Acts were widely criticised for their ineffectiveness in controlling and regulating water and air pollution. Further criticism focused on interest group infestation of the Boards, lack of expertise, and the absence of public participation. In response to this criticism, the legislature passed the Environment Protection Act 1986.

Environment Protection Act 1986

The intent of the Environment Protection Act 1986 (the Environment Act) was to remedy the deficiencies in the earlier laws and serve as a single piece of environmental legislation. Under the Environment Act, the Central Government has the power

to take all measures necessary, "for the purpose of protecting and improving the quality of the environment and preventing, controlling, and abating environmental pollution".

The powers allotted to the Central Government under this Act are extremely broad. In essence, the Central Government is to take any and all measures necessary to prevent, control, and abate pollution including:

- Setting quality standards for air, water, or soil; the maximum allowable limits of concentration of various environmental pollutants
- Setting procedures and safeguards for the handling of hazardous substances
- Setting procedures and safeguards for the prevention of accidents which may cause environmental pollution

In effect, this Act takes the power from Central and State Boards to set limits for air and water quality and gives it to the Central Government.

The Act, like its predecessors, allows the Central Government to take samples from any factory, premise, or other place to determine environmental pollution. The Environment Act also makes employees of polluting companies personally liable for any act of pollution that is a result of consent or negligence.

Right to Information Act 2005

The recently passed Right to Information Act 2005 has tremendous potential to be used for environmental justice advocacy. Under the Act, any citizen has the right to request and receive information from the Government regarding decisions or policies made that affect the public interest.

Access to information is one of the strongest tools available to environmental justice advocates.

Access to information is one of the strongest tools available to environmental justice advocates. With the Right to Information Act, every citizen has access to information and can ensure that their communities or livelihoods are not being threatened through government actions or policies unknown to them.

The Right to Information Act:

- Creates an independent information commission to hear appeals, both at the central and state level, with the power to impose penalties.
- Imposes penalties — including a fine for each day's delay in providing information — and fines and departmental action for various violations. Violations include refusal to accept a request for information, the giving of false information and the destruction of information.
- Applies equally to the Central and State Governments and to local bodies.
- Ensures access to otherwise exempted information when the public interest in disclosure overrides any harm from disclosure.
- Encourages voluntary disclosure by the government of various categories of information.

Under the Act, any citizen can apply in writing or through electronic means, in English or Hindi or in the official language of the area, specifying the particulars of the information sought.

- The application must be addressed to the 'Public Information Officer' (PIO). In his absence, it can also be sent to the District Commissioner to forward to the appropriate authority.
- The reasons for seeking information do not have to be given.
- Information must be provided within 30 days from the date of application. Failure to provide information within the specified period is considered to be a refusal.
- Any material in any form may be requested.

Environmental courts

As well as legislation for environmental protection and regulation, there are several pieces of legislation that complement the environmental protection regime. This legislation creates judicial authorities that focus solely on environmental litigation.

Two pieces of legislation have been passed by the Indian Parliament to create courts specifically for environmental litigation:

- **National Environment Tribunal Act 1995**
- **National Environment Appellate Authority Act 1997**

The National Environment Tribunal Act 1995 was passed as a result of the UN Conference on Environment and Development held at Rio de Janeiro, in which India participated. One of the resolutions of the conference called upon states to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage.

There are two environmental courts in India that deal specifically with environmental litigation: the National Environment Tribunal and the National Environment Appellate Authority.

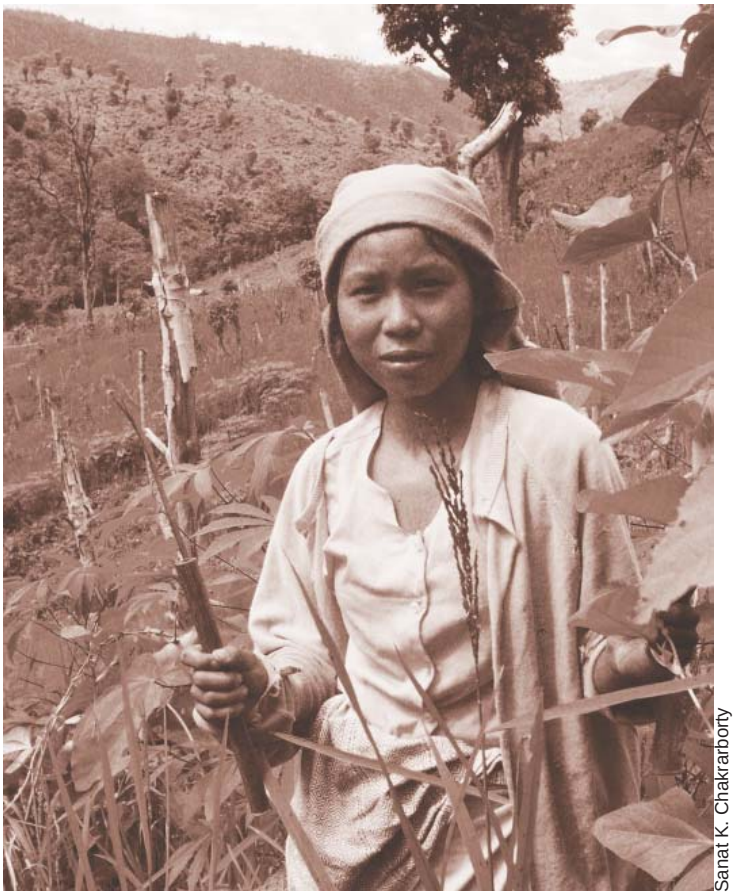
The Act aims to compensate for damage done to persons, property, and the environment while handling hazardous substances. Specifically, the Act imposes strict liability for death or injury to persons who are not workers and for damage to property or the environment resulting from an accident with a hazardous substance. Strict liability means that fault does not have to be proven. The owner of the property is automatically held liable for any injury.

In addition, the Act allows for cases to be brought in front of the Tribunal, not only by those that have been injured or suffered property damage, but also by, "any representative body or organisation, functioning in the field of the environment and recognised in this behalf by the Central Government". In essence, this gives NGOs and other public interest bodies standing (a right to appear) in front of the Tribunal.

The Act grants the Tribunal the same powers as a civil court, but the Tribunal is not bound by the procedures set out in the Code of Civil Procedure. The Tribunal is to be established by the Central Government and include judicial members as well as technical members. Decisions can be appealed directly to the Supreme Court. However, the Tribunal does not have the power to order imprisonment or cease and desist orders. The Tribunal can only grant monetary compensation to claimants.

The National Environment Appellate Authority Act 1997 provides for the establishment of a National Environment Appellate Authority to hear appeals of cases involving environmental litigation. The Authority can hear claims from persons challenging an order granting environmental clearance within 30 days of the granting of the order. The Authority must then address and dispose of the appeal within 90 days from the date of filing.

The Authority is not bound by the rules of Civil Procedure, but is to be guided by the principles of natural justice. Proceedings brought before the Authority are to be deemed as judicial proceedings. For example, if one were to bring a civil suit, like



Sanat K. Chakrarborty

Woman practising shifting cultivation in Meghalaya, India

a case for destruction of personal property, there are very set rules that must be followed that dictate when the case can be filed, what court the case can be filed in, and various other rules that would govern the proceedings. In the Environment Appellate Authority, while it is still regarded as a proper court, the same rules would not apply. Instead, the judge or authority would apply the rules of 'natural justice' or, in other words, rules of fairness.

The National Environment Appellate Authority has not turned out to be as effective as the legislature intended. Even though it had been in place for over seven years, as of March 2005, the Authority had only heard 15 cases and, in fact, had heard no cases at all in 2004. The Authority has been used as often by companies challenging the denial of permits (which is outside the jurisdiction of the Authority) as it has by NGOs or private citizens challenging environmental pollution.

In addition to a low level of awareness regarding the ability and jurisdiction of the Authority, it has not welcomed petitions filed by NGOs and has turned away petitions for things as minor as a one day delay in filing a petition. This is particularly hostile considering that, as stated earlier, the Authority is not bound by strict procedural rules.

Public Interest Litigation

Role of the courts

The Courts in India have taken an activist role in relation to PIL and public minded individuals or groups may bring environmental suits to the highest court in India.

The use of Article 21, public interest writ petitions, has further expanded the reach of environmental protection. In India, PIL is "purely a matter of constitutional law in which the writ jurisdiction of the Supreme Court (meaning the ability of the court to review writ petitions) or any one of the provincial High Courts is invoked".

PIL first emerged in India through the human rights jurisprudence of the Supreme Court of India. It has primarily been judge-led and, to some extent, judge-induced. Faced with a legitimisation crisis, the Supreme Court has worked to achieve distributive justice (or social justice).

As a result of the activist role taken on by the Court the centre of justice has shifted, from traditional ideas of individual locus standi (standing to sue) to the idea of community-oriented public interest litigation. Even though one may not be an aggrieved party, the effect of locus standi means that public minded individuals or groups may bring environmental cases to the highest court in India. Specifically, the courts have taken the view that:

a) The categories of persons considered 'interested' or 'affected' and, therefore, able to bring legal action against the State should be broadened and expanded.
b) The poor enforcement of law and policy by administration can force individuals and groups to turn to the courts with public interest litigation of one kind or another.
c) Those that undertake PIL are considered to be doing a public service and should be encouraged, not repelled, by the court on the basis of narrow and technical rules of standing.

Role of Article 21 and the Doon Valley Case

Through the activist approach taken by the judiciary, Article 21 of the Constitution has been expanded to include a fundamental right to a clean and hygienic environment. Article 21 states, "No person shall be deprived of his life or personal liberty except according to the procedure established by law".

The first indication that the court was willing to expand the right to life to include environmental protection was in the 1985 case of *Rural Litigation and Entitlement Centre v. State of Uttar Pradesh*, otherwise known as the Doon Valley Case. This writ petition related to the mining of limestone quarries in the Dehradun mining area. The Supreme Court ordered the closure of limestone quarries on the basis that their operation upset the ecological balance of the region. While the Court did not explicitly refer to Article 21, the judgement can only be understood on the basis that the Court was referring to the rights granted under Article 21. The Doon Valley case allowed for future writs of enforcement for the newly recognised fundamental right to environmental protection.

The court in *T. Damodar Rao v. S.O. Municipal Corporation (1987)* then took the Doon Valley Case one step further. In this case, the Life Insurance Corporation of India and the Income-Tax Department, Hyderabad sought to use land owned by them in a recreational zone for residential purposes, contrary to the developmental plan. Here, the court ruled that even though the defendants owned the land, because the area had been reserved for a recreational park, the only allowable use of the land was the construction of a recreational park.

The significance of the case lay not in the actual ruling, but in the comments (or dicta) written by the court on the law of ecology and environment. It is here that the court first explicitly stated that the right to a clean environment was a fundamental right. The court stated, "[T]he slow poisoning of the atmosphere by environmental pollution and spoilation should also be regarded as amounting to violation of Article 21 of the Constitution". Apart from claiming the fundamental right to a clean environment, the court also stated, "[I]t is, therefore, the legitimate duty of the Courts as the enforcing organs of constitutional objectives to forbid all action of the State and the citizen from upsetting the environmental balance".

The first indication that the court was willing to expand the right to life to include environmental protection was in the1985 Doon Valley Case.

Delhi Air Pollution Cases

PIL has also been used to stop the use of diesel fuel in Delhi. In a series of judgements, the courts ruled that due to the large number of vehicles in Delhi, from buses to auto rickshaws, the amount of air pollution created was too harmful for the citizens of Delhi.

Facts

In 1985, when the first writ petition concerning air pollution in Delhi was filed, it was estimated that over 10,000 people died every year in Delhi due to complications from air pollution. Worried about the health impact of air pollution on the Delhi population, a writ petition was brought before the Supreme Court asking it to take steps to reduce Delhi's air pollution problems in the interests of public health. In response to the petition, the Court ordered the Delhi administration to detail the steps to be taken to control air pollution from vehicles.

Ruling

As a result of various studies, the Court issued its first order calling for the phasing out of lead from all fuel in Delhi, Bombay, Calcutta, and Madras in 1994. Then, to continue the policy, in 1996, the Court ruled that all government vehicles in Delhi must be converted to compressed natural gas (CNG). In 1998, the Court went a step further and mandated that all buses in Delhi must be converted to CNG from diesel fuel by the end of March, 2001. In this case, the Court acted more quickly and more broadly than the Central Government.

Relaxing procedural rules

The court very clearly addressed the issue of PIL in 1987 in *M.C. Mehta v. Union of India*. Mr Mehta is a practising advocate of the Supreme Court and has brought more than a dozen cases before the court seeking redress for environmental harms. In this 1987 case, the Court stated that, when looking at the enforcement of a fundamental right, it is the substance not the form that is relevant, to the point where a public minded individual would not have to file a writ petition but could file a complaint simply by addressing a letter to the court. The Court further stated that procedure was simply a 'hand-maiden of justice' and should not prevent the poor and disadvantaged from gaining access to justice. The Court emphatically stated, "this Court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or a social action group acting pro bono publico would suffice to ignite the jurisdiction of this Court".

Beyond the allowance of a letter, the Court also stated that the letters do not have to be addressed to the Court or to the Chief Justice. Instead, a letter addressed to an individual justice would suffice as most of the letters would be written by poor or disadvantaged people who may only know one particular judge that comes from their state. While acknowledging that every citizen has a fundamental right to enjoy quality of life and living, the Court warned that this right can only be enforced by people genuinely interested in the protection of society on behalf of society.

CHAPTER 6: NEPAL

In this Chapter

- *Introduction to environmental justice in Nepal*
- *Constitutional provisions creating a right to life*
- *Overview of environmental legislation in Nepal*
- *Public interest litigation, the right to a clean environment, and the Godawari Marble case*

Introduction

The majority of Nepal's poor live in rural areas and high mountain regions that are remote and not easily accessible. Therefore, the idea of marginalisation in Nepal encompasses not just issues of class, ethnic origin, indigenous populations, and religious minorities, but also isolation. Likewise, the idea of disproportionate environmental burdens has a slightly different focus in Nepal than in other South Asian countries. Many rural women in South Asia have to fetch drinking and cooking water from afar. In Nepal, the harshness and isolation of the mountain communities greatly increases this burden.

The idea of marginalisation in Nepal encompasses not just issues of class, ethnic origin, indigenous populations, and religious minorities, but also isolation.

Nepal has been slow to adopt wide-spread environmental legislation. While the legislation may have been slow to develop, the judiciary has been quite active. The judiciary continually reiterates the importance of environmental protection. The judiciary in Nepal has declared that there is a 'fundamental right to a clean environment'.

Source: ENPHO

Diesel truck polluting the environment in Nepal

Constitutional Provisions

On 15 January 2007, Nepal promulgated the 'Interim Constitution of Nepal' (ICN) which repealed the Constitution of the Kingdom of Nepal 1990. The process of transformation of the political system in the country is still underway, and there may well be a new constitution in place in the near future. However, it is likely that any new constitution will include provisions from the Interim Constitution, and equally legal interpretation will be influenced by interpretations of similar provisions in the preceding constitutions. Thus the main relevant articles in the ICN are summarised below. Article 12 (1) of the 1990 Constitution stated that no person shall be deprived of his personal liberty save within accordance with the law, and no law shall be made which provides for capital punishment; the Supreme Court further interpreted this right in the Godawari Marble Case to include a right to clean and healthy environment. This has been further emphasised in the Interim Constitution.

The judiciary in Nepal has interpreted the 1990 Constitution to include a right to life and a right to a clean environment.

The 2007 Interim Constitution of Nepal (ICN) guarantees the following rights to the people of Nepal:

1. **Article 12(1)**: Article 12(1) guarantees the freedom of personal liberty to every individual. In interpreting this provision, the courts will also take into account the judicial precedent developed by the Supreme Court in the Godawari Marble Case.

2. **Article 16 (1)**: Article 16(1) guarantees the right to live in a clean environment to every individual. Recognition of the right to live in a clean environment as a fundamental right is a progressive step taken by the framers of the ICN which gives constitutional recognition to the right to live in a clean environment that was extended by the Supreme Court through interpretation of right to life in the Godawari Marble Case. This provision will have a far reaching impact on addressing the disproportionate distribution of environmental hazards in urban areas.

3. **Article 35(5)**: The State's additional/further commitment to environmental protection is also reflected in the directive policies of the ICN. The goal of environmental protection is further highlighted in Article 35(5) which states that the State:
   - Shall make the necessary arrangements to maintain a clean environment.
   - Shall prevent further damage to environmental cleanliness due to physical development activities.
   - Shall give priority to the special protection of the environment and rare wildlife.
   - Shall make arrangements for the protection of forest, vegetation, and biological diversity, and their sustainable use, and for equitable distribution of the benefit arising from these resources.

   Article 35(5) has special significance for the conservation of biological resources and ensuring the equitable sharing of the benefits arising from the use of such resources.

4. **Article 35(18)**: Article 35(18) stipulates that the State shall pursue the policy of identifying, modernising, and protecting the traditional knowledge, skills, and practices that exist in the country. This is the first time a Constitution of Nepal has mentioned the protection of traditional knowledge of communities.

5. **Article 107**: Article 107 addresses the jurisdiction of the Supreme Court. It contains two very important provisions:

- Any Nepali citizen may file a petition in the Supreme Court to have any law or any part thereof declared void on the ground of inconsistency with this Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by this Constitution.
- The Supreme Court may issue all necessary and appropriate orders and writs to protect:
  - fundamental rights conferred by this Constitution
  - any other legal rights for which no other remedy has been provided or for which the remedy provided is inadequate or ineffective
  - the settlement of any constitutional or legal question involved in any dispute of public interest or concern

Article 107 is essential for public interest litigation. It allows any citizen to file a writ with the court to protect their fundamental rights and grants the Supreme Court the authority to enforce fundamental rights.

Environmental Legislation

The most comprehensive piece of environmental legislation in Nepal is called the Environment Protection Act 1997. This Act was preceded by two environmental policy and action plans: NEPAP and NEPAP-II.

NEPAP

The first Nepal Environmental Policy and Action Plan (NEPAP) was released in 1993 and embraced the objectives of Agenda 21 of the World Summit on Sustainable Development held in 1992. Broadly, NEPAP's objectives focus on:

- Fostering sustainable development by combining resource productivity with the adoption of materials and processes that minimise adverse environmental impacts.
- Reducing poverty and population growth.
- Improving government policy and legal and regulatory frameworks.
- Ensuring that women and other marginalised groups are included in the mainstream of the development process.

NEPAP addressed issues in terms of their environmental impact, such as the impact of poverty on environmental conditions. However, the implementation of NEPAP was difficult. NEPAP dealt with issues that crossed different administrative boundaries making coordination of implementation prohibitively difficult. For instance, dealing with the effect of poverty on the environment requires action from administrative bodies focused on poverty alleviation and administrative bodies focused on environmental protection.

The main piece of environmental legislation in Nepal is the Environment Protection Act 1997.

NEPAP-II

To overcome the problems with NEPAP, an additional action plan (NEPAP-II) was created in 1996. NEPAP-II prepared detailed action plans and identified priority projects for implementation in three areas:

- Forestry
- Water resources
- Industry

NEPAP-II allows public and private bodies with responsibilities and interests in a particular sector to be identified as implementing agencies for projects.

Environment Protection Act 1997

The Environment Protection Act is the first comprehensive piece of environmental legislation passed in Nepal. The Act was passed to deal with environmental problems including:

- Enforcement of air and water pollution standards
- Making environmental impact assessment for prescribed projects mandatory
- The clear delegation of responsibility and authority between stakeholders and government agencies

The Act explicitly recognises the interdependence of economic development and environmental degradation. The preamble to the Act specifically states that "it is expedient to make legal provisions" in order to maintain a clean and healthy environment by minimising adverse environmental impacts and to protect the environment through proper use and management of natural resources. The preamble also states that, "sustainable development [can] be achieved from the inseparable inter-relationship between economic development and environment protection".

The Environment Protection Rules set out the types of projects that must conduct an initial environmental examination or Environmental impact assessment.

The Act provides for:

- Procedures to be followed to prevent and mitigate any adverse environmental effects from development projects.
- The necessary legal mandate and authority to be given to the Ministry of Population and Environment and other agencies to implement environmental protection.

In particular, the Act requires initial environmental examination and/or environmental impact assessment for projects and explicitly forbids the creation of pollution "in such a manner as to cause significant adverse impacts on the environment or likely to be hazardous to public life and people's health".

Environment Protection Rules 1997

The Environment Protection Rules were created alongside the Environment Protection Act. The Rules set out in more detail the types of projects that must conduct an environmental impact assessment or initial environmental examination. The Rules also set out standards for inspectors, creation of an environmental protection zone, and rules for compensation.

However, there are still wide gaps between these policies and their implementation. The greatest problem existing at all levels is the absence of an integrating mechanism through which all major environmental concerns may be adequately addressed while developmental programmes are implemented. Additionally, there is no proper coordination of sectoral and cross-sectoral initiatives and consideration of their implications. The capacity of institutions is also extremely limited and concerned agencies lack sufficient trained personnel and financial resources.

Forest Act 1993

Prior to 1957, most forests were managed under various indigenous common property systems. In 1957, the Private Forests Nationalization Act brought forests under the jurisdiction of the Government. This was then followed by enactment of various Forest Acts, including the 1961 Forest Act and the 1967 Forest Protection (Special Arangements) Act.

To try to reverse the deforestation that resulted from the nationalisation of forests in 1957, the Government set forth the Panchayat Forest Rules and the Panchayat

Protected Forest Rules in the late 1970s. The new rules allowed local Panchayats to create a management plan and take over some of the management of their forests. The Panchayat Rules were amended again in 1980 to include more community forestry concepts, but implementation continued to emphasise replanting as the main way to reverse deforestation.

The Forest Act of 1993, with the accompanying Forest Regulations 1995 replaced the previous Forest Act of 1961. The new Forest Act of 1993 broadly defines forests to include all forest areas:

- Whether marked or unmarked
- Within the forest boundary including wasteland and uncultivated lands or unregistered lands surrounded by the forest
- Situated near the adjoining forest, as well as paths, ponds, rivers, or streams, and riverine lands within the forest land

The Act empowers the Government to declare any part of a national forest that has special environmental, scientific, or cultural importance as a protected forest. The Act also empowers to the Government to:

- Grant any part of a national forest in a manner conducive to the conservation and development of forests to produce raw material required by industries
- Plant trees to increase the production of forest products for sale
- Operate a tourism industry or implement agroforestry

The Forest Act 1993 formally enshrines the concepts of 'user groups' and 'community forestry' in Nepali law.

Community forestry policy

The Forest Act 1993 formally enshrines the concepts of 'user groups' and 'community forestry' in law. As a result of the Forest Act:

- District forest officers are able to hand over any part of the national forest to a user group for conservation, use, and management.
- Communities are able to sell and distribute their forest products.

The new Forest Act represents a more detailed policy on community forestry. Rights over land, and the biomass on it, are separable under the provisions of the present Act and Regulations.

Elisabeth Kerkhoff

Community forest on previously degraded land in Nepal

Under the new Act, forests (outside the national parks and reserves) are legally classified as either private or national forests as follows:

- If both the land and the trees on it belong to a private entity, it is known as a private forest.
- If the land belongs to the State, but the management rights of the biomass (on it) are assigned to an organised body including the State itself, the forest is known as national forest.

There are two types of policies that affect the sustainable management and utilisation of community forests in Nepal: regulatory and fiscal policies.

- **Regulatory policies** refer to the statutory provisions of acts and regulations. These rules describe:
  - what can and should not be done in a community forest
  - who has the rights over the use of forest products
  - what process needs to be followed in handing over a part of national forests to a community forest user group, etc.

  The Forest Act 1993 and Forest Regulations 1995 are examples of regulatory policies directly affecting community forestry in Nepal.
- **Fiscal policies** refer to taxes imposed and subsidies provided in the management of community forests in Nepal.
  - Currently, the Government provides financial subsidies, now on a reduced scale, for the production of tree seedlings (Rs.1/seedling) and reforestation of blank areas (Rs.2,000/ha) in community forests.
  - The Government also imposes a sales tax of 20 percent on timber obtained from national forests. This tax is not levied on products derived from community forests.
  - However, the Government charges a 15 percent value-added tax on logs obtained from every type of forests. Even though those that buy timber have to pay the tax, the burden and effect of the tax falls on the community forestry user groups because they receive a lower price for logs sold outside the Government.
  - There is also an export tax of 0.5 percent on non-timber forest products.

The Forest (Second Amendments) Bill 2001

The Forest Act was amended in 2001, to much criticism by community forestry user groups. The Forest (Second Amendments) Bill 2001 was designed to return the control of land to the Forestry Department. The Amendments require user groups to pay 65 percent of their earnings to the Government. Widely seen as an attack on the Forest Act 1993, the Amendments also call for the giving of forest areas to foreign concessions. The primary reason for the Amendments was to generate government revenue.

Relevant Public Interest Litigation

There are two cases in Nepal with a direct impact on the issue of environmental rights and the creation of a fundamental right to a clean environment, the Godawari Marble Case and *Thapa v. the District Forest of Morang and Others*.

The Godawari Marble Case decided that the right to a clean and healthy environment was a fundamental right under Article 12(1) of the Constitution. It also held that NGOs and individuals not directly affected by the issue at hand had standing to sue and issued orders to parliament to enact legislation to protect the Godawari environment.

The Godawari Marble Case

The case of *Suray Prasad Sharma Dhungel v. Godawari Marble Industries and Others* set the legal precedent that allowed the Courts to rule in favour of environmental protection. In the Godawari Marble case, the Court addressed three issues: (i) the right to a clean environment as part of the fundamental right to life in the Constitution, (ii) the legal standing of NGOs or individuals working to protect the environment to bring a case before the Court, and (iii) the power of the Court to issue an order against Parliament to enact a law.

Fundamental rights

Fundamental rights are rights based on, or derived from, the Constitution and whose validity are guaranteed by the courts. Legislatures cannot enact laws that violate the fundamental rights listed in the Constitution. Placing the right to a clean environment in the fundamental rights category would elevate the importance of environmental protection and ensure that all citizens have a right to live in a clean environment.

Standing to sue

Traditionally, only those who are directly affected by the issue at hand can bring a case before the court. The issue before the Supreme Court in the Godawari Marble case was whether NGOs or individuals not directly affected by the environmental issue at hand could bring a case because of their interest in the environmental issue, even though they themselves may not be directly affected.

Power of the court to issue an order to parliament

The third issue focused on the balance of power between the judiciary and the legislature. If the courts can make laws contrary to the legislature, the judiciary becomes a body that no longer just reviews legislative actions to ensure compliance, but actually legislates. In the environmental context, this means that the courts could pass judgments that had the same effect as laws for environmental protection.

Judgement

In the Godawari Marble case the Court ruled in favour of environmental activists on all three issues.

- The Court held that a clean and healthy environment is indeed a part of the right to life under Article 12(1) of the Constitution of the Kingdom of Nepal 1990.
- The Court ruled that environmental protection was an issue of public interest and that, as the Constitution implies that all citizens have a common right to public issues, any individual interested in protecting the environment has standing before the Court. As such, NGOs and individuals not directly affected by the environmental issue at hand are allowed to bring cases.
- The Supreme Court issued orders to the Parliament to enact the necessary legislation for the protection for air, water, sound, and the environment, and for the protection of the Godawari environment.

Specifically, the Court stated that if the environment around the Godawari area was not maintained and if the environment would worsen due to the lease given to the marble industry, "the contract has to be cancelled in view of the public welfare". While addressing the issue of standing, the Court stated that, "Environmental issues are not the related matter of a specific person, they are a matter for all public interest. Environmental degradation imparts its untoward effect not only to a limited area but encroaches upon the surroundings and the entire nation". Therefore, "Substantially as environmental issues are a matter of public interest and the term public rights used in the Article 88(2) of the Constitution of the Kingdom of Nepal 1990 implies to the common right provided by any law or Constitution in any community or people of the Kingdom of Nepal".

Importance for environmental justice

The Godawari Marble case provides environmental justice activists with two important provisions:

1. Communities can be represented in environmental disputes by organisations (such as NGOs) with the resources and ability to bring cases before the Court.
2. As the right to a clean environment is now a fundamental right, communities suffering environmental harm can bring cases before the Court for the violation of their right to a clean environment, even if the pollution is legitimate. This means that, even when the proper operating permits have been issued, if the community is suffering from the pollution caused by the industry, it can bring suit to stop the polluting industry.

Thapa v. the District Forest of Morang and Others

The case of *Thapa v. the District Forest of Morang and Others* the Court gave priority to environmental protection over development and the rights of the individual.

The issue before the Court was whether Mr. Thapa's fundamental rights were infringed when the Government decided to relocate his industry.

The Nepali Government had decided to move Mr. Thapa's industry away from a forest boundary in order to effectively control the destruction of woods and the theft of timber. The Court ruled that the Government's interest in protecting the forest and keeping the environment free of pollution was greater than Mr. Thapa's interest in being able to place his industry where he pleased.

Judgement
The Court ruled that because the regulation would be applied equally, that is no industry would be able to be located near the forest boundary, not just Mr. Thapa's, it did not infringe upon any fundamental rights.

The Court, citing the Constitution of Nepal and the Forest Act of 1993, stated that there was a new thought and understanding about the environment. The Court went on to state that with the new Constitution of 1990, priority must be given to the cleanliness of the environment and the preservation of wildlife, forest, and flora over physical development.

Importance for environmental justice
This case is important for two reasons:

1. It reaffirms the importance of environmental protection and the creation of an environment free from pollution.
2. In the continuing tension between environmental protection and development, the Court stated that priority must be given to environmental protection and not to development.