

BOOK REVIEW

ENVIRONMENTAL JURISPRUDENCE AND THE SUPREME COURT (2014). By Geetanjoy Sahu. Orient BlackSwan, 3-6-752 Himayatnagar, Hyderabad, Andhra Pradesh. Pp. xviii + 323. Price Rs. 695/-.

THE BOOK¹ under review is the result of an empirical study conducted by the author to assess the “greenness of the Supreme Court”. The author has, for this purpose, analyzed the judgments of the Supreme Court from 1980 to 2010. A total of 191 judgments of the apex court have been studied for the purpose of assessing the court’s greenness and commitment towards the cause of environment. The author has specifically excluded orders and judgments related to forest governance, especially the orders issued in *T.N. Godavarman v. Union of India*.² Different stakeholders including lawyers and petitioners to understand the factors contributing to judicial decision-making process were interviewed. The author also interviewed 78 of the 104 judges who sat in the Supreme Court from 1980 to 2010 and were involved in environmental matters. This was done to examine the apparent inconsistency of the judicial approach to environmental matters.

The sheer number of judgments examined and the stakeholders interviewed suggest a great commitment and diligence on part of the author to seek answers to the several questions associated with environmental jurisprudence in India. These questions include, as the author himself states in the introduction, “how judges make decisions, what factors influence their decisions on environmental issues, what makes them entertain and reject public interest environmental litigations, why judges are not consistent, why judges are selective in implementing their own decisions and what political and economic conditions determine their judgments with reference to infrastructure and development projects.”³ The fact that a non-legal scholar attempts to engage with these issues is commendable. In doing so, the author tries to fill a huge vacuum in an otherwise robust area of jurisprudence evolved by the Indian judiciary. Lack of empirical research, particularly research that focuses on judicial decision-making in the field of environmental law is particularly troublesome given the importance of the area as we deal with the challenge of ensuring sustainable development. The book emerges as an honest attempt to correct this anomaly.

The book comprises of three chapters apart from the introduction and conclusion. In the first chapter titled, “How Green is the Supreme Court of India?”, the author

1 Geetanjoy Sahu, *Environmental Jurisprudence and the Supreme Court* (2014).

2 AIR 1997 SC 1228.

has argued that there are different shades of green in India. Most of the agitations for better environment had different motivations and there been no ideologically homogenous strand for environment protection in India.⁴ Some of the environmental movements started when our development activities began harming the people who depend on natural resources for their livelihood and existence. In this manner, the author has argued that one of the reasons for environmental agitations is the dependence of several groups on environment and safeguarding of their 'material interest' or rights. Another reason is protection of the environment for its own sake and for the 'intrinsic value' of nature, unmotivated by material interests in natural resources.⁵ Yet another strand relates to protection of environment to perpetuate right wing principles and political agenda of Hindutva.⁶ Which argument succeeds in the end depends on the clout and strategy of the group that forwards the argument along with the prevalent political economy. It is in this chapter that the author has examined the Supreme Court judgments over the period of three decades in the light of the above shades of green.

The second chapter is titled "Understanding the Judicial Decision Making Process on Environmental Litigation". Here, the author has examined the innovative methods adopted by the judiciary to deal with the environmental cases such as the role of public interest litigations and expert committees. The author has also examined ideological values and individual preferences of Supreme Court judges. This becomes crucial because judges are also a product of their times. Ideological considerations do creep into adjudication. After all, tilting in favour of the environment or adopting a pro-poor stance is nothing but an ideological choice. The role of lawyers, public interest litigators and the prevalent political economy is also examined. In an adversarial system, much depends on the manner in which lawyers construct and put forward their arguments. The prevalent political economy determines which argument will be given more weight and the kind of court-craft and manoeuvring the litigators and their lawyers will have to employ.

There is another problem associated with litigation and that pertains to the implementation of the court orders. Often judgments and orders of the court in environmental matters are ignored or violated. What can the court do in such cases? An attempt to deal with these issues is made in chapter 3 which is titled, "The Impact of Environmental Judgments at the Implementation Level". The author has examined how non-implementation strikes at the root of judicial activism and how it undermines

3 *Supra* note 1 at 15.

4 *Id.* at 21-22.

5 *Id.* at 24-25.

6 *Id.* at 26.

the sanctity of the court, apart from causing damage to the environment and the public at large. The author has examined several factors which might contribute to the implementation of the judgments or orders of the apex court. These include prevailing political and economic conditions, the petitioner's resource capacity and court's activism in the implementation process⁷.

The author concludes in affirming that the Supreme Court has adopted a pro-active stance with regard to environmental matters and implementation of its judgments and orders. This activism is more visible when it comes to matters of air and water pollution. However, the court has deviated from its own practices and judgments in matters involving large scale infrastructure projects, especially those backed by the state⁸.

Elsewhere in the book, the author has also pointed out that, from the year 2000, a pro-development stance has been observed in the judgments of the Supreme Court. There is a section that elaborates upon the events that led to the constitution of the Green Tribunal, a dedicated green court for India. He proceeds to examine, in brief, the working of this young dedicated green court that has since its inception displayed exemplary activist attitude towards environmental matters.

Interestingly, about half the book comprises of a single appendix where the author has provided a tabulated list of all the Supreme Court judgments from 1980 to 2010. The table comprises of name of the case, name of the judges involved in the matter, key arguments of the petitioner(s), key arguments of the respondent(s) and the order/judgment of the court in brief. This table is a very useful ready reference for lawyers, academicians, researchers, students and judges.

The author also provides several suggestions for the continued vitality of our environmental jurisprudence. It is argued that there is a need to train and sensitize the bar and the bench about environmental matters so that the quality of arguments and the quality of judgments is consistently of a high quality. The author advocates equipping the National Green Tribunal with adequate powers and facilities to ensure its smooth functioning. There is also a focus on the role of the *amicus curiae* who, though, not responsible to anyone has an immense responsibility in environmental matters. Often the amicus faces a conflict of interest having represented the government or the industry in earlier matters or at earlier times. The author has emphasised on certainty, continuity and consistency in environmental matters. This has, sadly, been missing in recent judgments of the apex court. It is further argued that it does not bode well to have the Supreme Court look into implementation each

7 *Id.* at 136-146.

8 *Id.* at 154.

and every time and a level of commitment is required from other organs as well. At the same time, the court must be careful not to give sweeping judgments that are impossible either to execute or effectively monitor, given our socio-economic scenario.

The level of research, effort and the quality of critical evaluation of the court and its work is laudable. This book is exceptionally well-written and provides quality insights into the dynamics of environmental jurisprudence in the country, though at times the author rushed through some of the discussions. It is simple to read and highly accessible. Importantly, in its conclusion, the inquisitive researcher will find several areas where further research could possibly be carried out. It is indeed gratifying as well as sobering that a work of this quality should come from a non-legal scholar, as the author calls himself. Perhaps legal scholarship will do well to try to match up to the standards the book sets. The book could be particularly useful for academicians, research scholars and senior law students who are looking for something more than an introductory book on Indian environmental law.

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