IS THE JURIDICAL FIELD OF ENVIRONMENTAL LAW IN INDIA GENDERED? A STUDY OF ENVIRONMENTAL JUSTICE IN GOA THROUGH AN ECOFEMINIST LENS

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ABSTRACT

IS THE JURIDICAL FIELD OF ENVIRONMENTAL LAW IN INDIA GENDERED? A STUDY OF ENVIRONMENTAL JUSTICE IN GOA THROUGH AN ECOFEMINIST LENS

Shweta Dilip Singh Sinha

The aim of this study is to examine whether the "juridical field," as defined by Bourdieu, of environmental law in India (Goa), is gendered. As per Bourdieu, the legal field is neither as neutral nor as autonomous as the legal profession asserts it is. It relies heavily on the juridical practices of universalization, appropriation, and naming or categorization in order to constantly reimagine and negotiate its own boundaries.

This study examines these juridical practices including acts of symbolic violence committed in the process of 'naming' or 'defining' within legal terms extra-legal concepts, mainly environmental toponyms, such as, '"forest," "CRZ" (Coastal Regulation Zone), "wildlife sanctuary," "national park," and "ESZ" (Eco-sensitive Zone). The dataset for analysis comprises legal judgements passed by the Goa Bench of the Bombay High Court, or the Supreme Court of India, or the National Green Tribunal (NGT) on civil environmental disputes in Goa, where one of the aggrieved parties (appellant or defendant) is the Goa Foundation.

A total of 17 cases met the parameters for the study. The points in each case were divided into one of 4 categories or quadrants – in court-gendered, in court-not gendered, out of court-gendered, and out of court-not gendered. The analysis of the quadrants per se did not reveal any overt evidence of

gendering. One of the reasons is that the arguments and judgments in the cases do not take an ecofeminist view at all. If they did, not only would the outcome of this study be different, but so would the outcomes of some the legal cases used in this study. If the juridical field were to adopt an ecofeminist view, it would overall be more sensitive towards acknowledging the nexus between women's issues and the environmental crises.

This study endeavors to instigate further academic dialogue on the inherently gendered intersection of legal, economic, and environmental fields, and thereby influence public policy in ways that will help narrow the gender disparity evident in environmental law in India.

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INTRODUCTION

The aim of this study is to examine whether the "juridical field," as defined by Bourdieu, of environmental law in India (Goa), is gendered. Bourdieu's conceptualizations of the juridical field, habitus, symbolic capital, and symbolic violence are products of a rigorous dialectic between traditions found in different historical contexts and empirical observations of certain social realities. By conferring epistemological status to his theorizations, Bourdieu has created universally valid frameworks of analysis, that find application in the scrutiny of diverse sociological truths. His theories are open-ended and agile, and are therefore capable of being flexible in their application depending on the requirement of the researcher. This makes the exercise of exploring the scope of applications of Bourdieusian sociology, both fascinating and challenging.

As per Bourdieu, the legal field is neither as neutral nor as autonomous as the legal profession asserts it is. It relies heavily on the juridical practices of universalization, appropriation, and naming or categorization in order to constantly reimagine and negotiate its own boundaries. This study examines these juridical practices including acts of symbolic violence committed in the process of 'naming' or 'defining' within legal terms extra-legal concepts, mainly environmental toponyms, such as, '"forest," "CRZ" (Coastal Regulation Zone), "wildlife sanctuary," "national park," and "ESZ" (Eco-sensitive Zone). The dataset for analysis comprises legal judgements passed by the judges of Bombay High Court (including Goa Bench), or the Supreme

Court of India, or the National Green Tribunal (NGT) on civil environmental disputes in Goa, where one of the aggrieved parties (appellant or defendant) is the Goa Foundation. A total of 17 cases meet the parameters of the study. This study hopes to instigate further academic dialogue on the inherently gendered intersection of legal, economic, and environmental fields, and thereby influence public policy in ways that will help narrow the gender disparity evident in environmental law in India.

LITERATURE REVIEW

An Overview of Ecofeminism

The issues of environmental degradation and climate change have often been viewed purely as scientific problems requiring technological solutions. The discourses have been bereft of ideologies of socio-economic exploitation, domination, and colonialism. However, a feminist ethical approach to climate justice brings into focus the relations of gender, sexuality, species, nations, and ecology, thereby, introducing ecofeminism as a theory that views capitalistic patriarchy as the source of environmental degradation and the exploitation of women and animals globally (Gaard, 1993; Mies & Shiva, 1993).

The term Ecofeminism was coined by the French radical feminist theorist Françoise D'Eaubonne. In her 1974 book, *Le Féminisme ou la Mort* (Feminism or Death), D'Eaubonne argued that improving the status of women globally was imperative for the survival of the planet and human species.

According to D'Eaubonne, the exploitation of women and all other marginalized groups (people or colour, children, the economically weaker sections of society) can be attributed to patriarchal oppression, which is also responsible for the destruction of the environment. Therefore the aim of ecofeminism must be to not just overthrow male-domination, but systems of power altogether (D'Eaubonne, 1974/2022).

Susan Griffin (1978), in her book *Woman and Nature* discusses the oppression of all that is associated with femininity and feminized statuses at the hands of an often violent, militarized male-dominant social order. Women and feminized others, such as, children, people of colour, slaves, farmers, and animals are often considered weaker, inferior, and therefore fit for subjugation. Radical feminist Mary Daly (1978), in her work *Gyn/Ecology* highlighted the historical and cross-cultural persecution of women by male-dominated institutions such as, religion, culture, and medical science that have legitimized barbaric misogynistic practices, such as, the ancient Indian practice of self-immolation at the husband's funeral pyre (*Sati),* Chinese foot-binding practices, African practice of female genital mutilation, European witch burnings, as well as Nazi medical experiments.

Going beyond the works of Griffin and Daly, Carolyn Marchant (1980) in *The Death of Nature* brought together the ideals of socialist feminism and ecology. She traced the nexus between economics and rationalism to document the shared origins of the subjugations of women and environment in science and capitalism. She thereby brought materialist feminist foundations to women's activism in the ecofeminist sphere.

Ecofeminism and India

A voice that is strongly associated with the ecofeminist movement in India is that of Vandana Shiva, an Indian theoretical physicist who has devoted her life to decolonizing and decapitalizing the environmental agenda

in India from a feminist lens. In her 1993 book – *Ecofeminism*, that she has written with the German social scientist Maria Mies, the two women impress upon the urgent need for switching to a subsistence and survival perspective in consumption if one truly wishes to protect women and the environment from the oppressive nature of patriarchal capitalism.

According to them, the solutions need to be local and cannot be dictated by the Global North (Mies et al., 2014). They are to be found in grassroots movements that oppose agricultural monoculture practices and emphasize on decolonizing narratives and practices of food, seeds, and biodiversity. Vandana Shiva heavily criticizes the colonial aspects of Western science and technologies that have been utilized to create food insufficiency by promoting monocultures, causing deforestation, and resulting in the displacement of women from forestry and food production, resulting in poverty and scarcity among local communities (Shiva et al., 1999; Shiva, 2004; Mies et al., 2014,).

Some of the early ecofeminist movements in India that were primarily led by peasants and women include the 'Chipko Movement' of 1974, which began in the Garhwal region in the Himalayas. When the Indian government began to lease parts of this land to contractors for gathering construction material, it led to large scale deforestation and consequent floods. This adversely affected the local communities who incurred huge financial losses as they relied on the local ecology and biodiversity for their sustenance via subsistence farming in these areas. After the indigenous protests were ignored

by the forest department, the local women, led by Gaura Devi, launched a massive protest where they hugged trees and prevented them from being cut down. They did not leave the trees, until the loggers departed (Parameswaran, 2022).

Another significant environmental protest led by women in the 1980's was the *Narmada Bachao Andolan* ('Save the Narmada' movement). The river Narmada that flows through the states of Madhya Pradesh, Maharashtra, and Gujarat was selected by the government for the construction of a series of dams. However, there were government reports that discussed the deleterious environmental impact that such dam projects would have, as well as the impact on local communities.

A movement against the dam projects was started by the environmental activist Medha Patkar, who organized a group of protesters who found that the funds for the project had been sanctioned by the World Bank without any input from the local communities or even an ecological impact assessment. While the *Narmada Bachao Andolan* witnessed mixed success in stopping the dam projects, it received international recognition for its grassroots mobilization and eventually resulted in the World Bank withdrawing support to the project (Parameswaran, 2022).

According to the Indian environmentalist Bina Agarwal, "*to transform gender relations, and relations between people and nature, will need enhancing the bargaining power of women vis-a-vis men and of those seeking*

to conserve the environment vis-a-vis those causing its degradation" (Agarwal, 1998, p. 55).

Bringing a South Asian perspective to the ecofeminist movement, Bina Agarwal also demonstrates how institutions for natural resource management (such as, community forestry groups), are neither as participative, equitable or efficient, as they portray themselves to be. In her work she finds little to suggest that women are inherently more conservationist than men; however, according to Agarwal, women's social networks have historically shown successful cooperation, and women generally tend to depend heavily on their networks and on the commons in general. She also argues that women possess potentially greater group homogeneity relative to men and could use that to provide an important and often overlooked basis for organizing sustainable environmental collective action (Agarwal, 2000).

In the 1970's, Kerala, an Indian State, went from being called a 'problem State', to being recognized as the 'model' for Third-World development, despite having a large population and suffering from poor economic growth. This was mainly on account of social and infrastructure development undertaken by the State. However, the languages of reform and development were found to be severely gendered. While the men were assigned the task of 'conquering' nature for production, women were relegated to active domesticity, which primarily involved being caregivers to the children at home, systematically turning women into agents of 'childcrafting' (Jayakumari, 2010). However, the rising development and consumption led to

enormous problems of pollution and waste disposal, posing serious environmental threats.

As per Jayakumari (2010, p. 753), "*It is not difficult to demonstrate that the people of Kerala are going through not simply an ecological crisis or merely in a tense phase in gender arrangements. The situation is clearly more complex. We are facing no less than a crisis of 'staying alive' (to draw upon Vandana Shiva's fruitful coinage) in which the social and the ecological, the material and the non-material dimensions are intensely intertwined."* In her work, Jayakumari explores the possibilities of ecofeminism as an ethico-political alternative, lending itself as a bridge between what she calls "an over-rationalistic style of feminist activism and radical theology." She discusses the currently dominant institution of care — child rearing in the modern family – and against this, she examines instances of 'caring beyond families and humans' based on fieldwork conducted by 'visionary' women in environmental activism in Kerala. She finds that the mode of care and nurture found in the latter is often at odds with the dominant mode. Through her work she raises pertinent questions about reconciling caregiving and citizenship.

Similar work was earlier done by Shubhra Gururani (2002), who studied the gendered practices of labor and livelihood in the forests of the Kumaon Himalayas, India through narrated memories and oral accounts of embodied pain and pleasure. The author discusses the conceptual limitations of such discourses and insists upon the need for a culturally and geographically embedded understanding of nature–society relationships. The

author examines the ways in which, "*the identities of women in Kumaon are constituted through, always entwined with, everyday practices in the forest, and culturally specific notions of proper behavior, 'good mothers,' and 'dutiful wives' are mapped in the overlapping domains of village and forests. Such a view of the nature–society dynamic, it is argued, is critical for a grounded and locally meaningful understanding of how gendered relations are operationalized in nature and for insights into thinking about policy issues"* (Gururani, 2002, p. 229).

Ecofeminism in Legal Discourses

Ecofeminist jurisprudence has its central tenet in the denunciation of regressive patriarchy. Pandey and Pandey (2022) analyze law and highlight its bias towards masculine standpoint of observations, thereby enforcing mastery and control over nature and women. Their work scrutinizes the ways in which law as an institution has instrumentalized women and nature, and attempts to find ways in which ecofeminism and legal theories could rely on each other and facilitate sustainable development and global justice (Pandey & Pandey, 2022).

As per Lee (2018), distributional inequity, especially in terms of gender must be taken into account while designing effective environmental policies, since the more resourceful party is likelier to degrade the environment, and the less resourceful party is likelier to disproportionately experience the harms. Environmental crises tend to affect women disproportionately and differently as compared to men, as seen in the case of

mercury emissions. Taking an ecofeminist view, Lee's case study examines the EPA regulations of mercury emissions and demonstrates that had the policies taken into account the harm that the emissions cause to women, they could have been more effective, fair, and durable.

In late 2007, the canola farmers were kept from suing Monsanto and Bayer Cropscience for the harm caused by drifting GM (genetically modified) seeds, by the Supreme Court of Canada. Using the case study of GM foods in Canada, McLeod-Kilmurray (2009) has also examined the importance of an ecofeminist legal analysis of the law's treatment of environmental issues, in order to improve the effectiveness of environmental law. Using an ecofeminist lens, the study examines various threads of legal reasoning including, the definitions of harm, regulation of technology, and the notions of rights and duties, to highlight the need for an ecofeminist legal analysis to guide significant reform in Canadian environmental law (McLeod-Kilmurray, 2009).

A similar ecofeminist analysis of Canadian environmental law was conducted by Hughes (1995), over a decade prior. The author ended the article with her own portrayal of what such a "re-visioned" law might look like.

Critiques of Ecofeminism

While this study employs an ecofeminist lens to analyze the legal field of environmental law in India, it acknowledges certain drawbacks of the ecofeminist framework and disregards those aspects in its analysis. Some of the shortcomings of ecofeminism have been addressed by both Greta Gaard

and Manisha Rao. Gaard (2011) analyses the anti-feminist backlash that ecofeminism faced due to its rootedness in essentialism. She discusses the urge for academicians to disavow the term 'ecofeminism' and instead look for another term that would bring together feminist environmentalism. While examining how racism, heterosexism, classism, ageism, and sexism are all related to naturism, Gaard has also argued for the importance of developing a queer ecofeminism (Gaard, 1997).

Manisha Rao, in her works has discussed the critique around Vandana Shiva's conceptualization of ecofeminism. Shiva has been accused of generalizing the problems of rural women in Northwest India to cover all Third World women. Her work has also been considered neglectful of caste factors and political options. Her work has been criticized for its inherent essentialism wherein, like the Western ecofeminists, she essentializes Third World women as being closer to nature. Additionally, the notions of *Shakti* (strength) and *Prakriti* (nature) are Hindu terms popular in the North of India, and her ecofeminism alienates people of other religions (Christians, Muslims, Sikh) and social hierarchies, such as Dalits (Rao, 2012).

Vandana Shiva's ecofeminism has also been charged with portraying the "West" as inherently vicious and the place of origin of evil, masculine, modern science, and the "Third World" as fundamentally virtuous (Nanda, 1991, as cited in Rao, 2012). Even her subsistence model is based on ownership of land which is mainly the privilege of the upper classes.

Jayakumari (2010) has also decried the Western ecofeminist notion of essentializing ‘women’, which results in creating a singular narrative, leading to the erasure of differences and the effective entrapment of women within a disempowered identity.

Gendering in the Courtroom

In his paper about women and law, Ritter (1998) launches an inquiry into the language of Western law, where the law is written law, and is predominately written by men. Ritter questions the ways in which such gendering has framed the character of the law and how men’s sexual authority over women is systematically reinforced by the law. Written by men, legal language ostensibly serves characteristically masculine interests of ‘universally abstract autonomous individuality,’ while categorically disserving characteristically feminine interests such as care, connectedness, context, and community (Ritter, 1998).

In another article, the gendered construction and negotiation of creditable identities and the subsequent differential sentencing outcomes has been discussed. Observations of discourses in two courts in North Carolina led to the argument that defense attorneys attempted to construct the defendant’s identities in a way that made them worthy of leniency. This was predominantly done through gendered narratives of men being good workers, good providers, and victims of other’s actions, and women as good mothers/caretakers and dependent. While such a construction does help to negotiate the identity of criminal defendants and mitigate the consequences

though lesser sentences, it also ends up reproducing the hegemonic gender order (Gathings & Parrotta, 2013).

Flipping the narrative, is the article about female judges at the Islamic court. As per Nurlaelawati and Salim, Indonesia has been more welcoming towards women occupying judges' positions at the Islamic court, as compared to other Muslim countries. The authors discuss the process of recruitment of female judges at the Indonesian Islamic courts and explore Indonesian women's imperative to engage in judicial practice, while protecting the rights of disadvantaged women litigants. This paper however, argues that although female judges are as qualified and skilled at interpreting law as their male counterparts, and perhaps are even more gender sensitive, they unfortunately have not maximized the use of their legal skills for the benefits of women litigants (Nurlaelawati & Salim, 2013).

Another paper that analyzes courtroom interaction in Israeli district courts examines the ways in which gender affects the construction of the professional identity of lawyers and judges (Bogoch, 1999). When the legal discourses were quantitatively analyzed, it was found that women judges and women lawyers were not only accorded less deference than men, but even their professional competence was challenged and undermined. The qualitative analysis of the off-the-record comments by judges, lawyers, and witnesses revealed similar results (Bogoch, 1999).

Finley (1989), Charlesworth (2002), and Rose (2010) have also written about the gendered nature of legal reasoning and international law, and the place of women in the legal discourse.

Pierre Bourdieu's Juridical Field as a Mediated Field of Power

The contested intersections of power and knowledge in society have been extensively explored by several political and economic philosophers, theorists, and sociologists. Critical theories on the ways in which power is mediated in society can be found in the Marxist concepts of base-superstructure relations (1859), as well as the works of Weber in *Economy and Society* (1968), Gramsci's conceptualization of hegemony in his *Prison Writings* (1929-1935), Foucault's *Discipline and Punish* (1975), and more recently in Kimberly Crenshaw's theorization of 'intersectionality' (1989).

However, the works of the French sociologist Pierre Bourdieu stand out in their critical analysis of various fields of power, especially that of law and judiciary. The Force of Law, is amongst Bourdieu's (1987) seminal works in which he conceptualizes the legal profession as a juridical field, from a sociological point of view. Bourdieu's (1989) critique of the legal field is underscored by his notion of symbolic capital and the use of symbolic power to commit symbolic violence.

Bourdieusian sociology continues to be widely deployed for scrutinizing the legal field in a multitude of contexts, such as, Chinese criminal court practices (He, 2016), international criminal justice system (Mégret, 2016; Garbett, 2017), the course of action taken by young

professionals within and outside the juridical field (Evans & Shackelford, 2015), nationalization projects undertaken by the Romanian government (Magno, 2021), the safety of child trespassers as developed in English Law (Bennett, 2011), an analysis of the internet regulation in Europe using the notion of symbolic capital (Sideri, 2004), the field of American legal education (Jewel, 2008), and post-authoritarian state formation in Argentina (Carmody, 2017).

This study focuses on analyzing Bourdieu's concept of the juridical field and using it as a framework for examining the juridical field of environmental law as it exists in the Indian coastal State of Goa.

The Competition for Monopoly to Determine Law

Bourdieu (1987) begins the sociological analysis of the legal field in his essay, 'The Force of Law,' with the dominant jurisprudential debate between 'formalism' and 'instrumentalism.' While formalism argues the absolute autonomy of juridical form, instrumentalism views law as a reflection or tool to serve the dominant groups, and therefore, as an instrument of domination. Bourdieu, however, alleges that these two extreme perspectives (the former from within and the latter from outside the law) altogether ignore the existence of an entire social universe, which he terms as the 'juridical field.'

As per Bourdieu, society is composed of a number of overlapping fields, each with its own set of practices and hierarchies of value. Fields are the marketplace where the various kinds of capital accrued are spent and

exchanged in an attempt to compete for power. The various kinds of capital are economic, cultural, social, and symbolic. While economic capital pertains to one's ability to exchange wealth for benefits, cultural capital refers to the education, knowledge, and skills that one gains in the course of one's life. Social capital includes the social networks and social groups that people belong to and can rely on, whereas, symbolic capital is a function of one's authority, reputation, and prestige that one can use to accrue other forms of capital. The internal mechanism common to a social group through which such capital can be accrued is called as 'habitus' (Mant, 2020). People belonging to a habitus have a shared history. They think, perceive, evaluate, and act in similar ways that are informed by their similar social and material conditions.

The accumulation of capital happens over a period of time and therefore is in some ways a function of history. As per Bourdieu, every historical action reflects two states of history: objectified history – with passage of time, it is accumulated in things (machines, buildings, monuments, books, theories, customs, law, etc.); and embodied or internalized history, in the form of habitus. Objectified history is reflected in Bourdieu's notion of fields, and the relation between habitus and field is conceptualized as two modes of the existence of history (Jain, 2007).

There are specific forms of capital associated with the different positions within the juridical field that contribute to the forms of competence possessed by the various actors and institutions. The different juridical bodies such as, judges, lawyers, solicitors, are often divided into different groups

based on *"their position within the internal hierarchy of the body, which always corresponds rather closely to the position of their clients in the social hierarchy"* (Bourdieu, 1987, p. 822). These 'truths' question and challenge the notion of total independence of the juridical field.

Bourdieu (1987) alleges that, *"The juridical field is the site of a competition for monopoly of the right to determine the law"* (p. 817). It thrives by maintaining a social division between lay people and professionals, thereby, fostering a continual process of rationalization. This separation confers upon the juridical field an illusion of total independence from the power relations that are sustained and legitimized by it. In fact, a clear division of labor exists within the juridical field between its actors and institutions through the structurally organized competition between them, based on the different forms of competence that they possess. Different parts of the legal system constantly engage in competition, such as different courts at different hierarchical levels, as well as the courts and common law versus the legislature and the statues that it can impose. This competition is considered a source of the juridical field's supposed autonomy and also its ongoing internal transformation (Krieken, 2004).

Bourdieu makes a compelling argument that helps in uncovering the ways in which the juridical field is unconcerned with morality or rationality, so long as the legal solution can be justified using legal language and logic. The Indian jurisprudence in this regard is comparable to the Anglo-American tradition of case law as described by Bourdieu, wherein, legal procedures and

rule of precedent are given importance in court decisions. In Bourdieu's words: *"Here, a legal rule does not claim to be based upon moral theory or rational science but aims merely to provide a solution to a lawsuit, placing itself deliberately at the level of the debate concerning a specific application. The status of such a rule becomes comprehensible when one realizes that in any particular case, the significant jurist is the judge who has emerged from within the ranks of practitioners"* (Bourdieu, 1987, p. 823).

The hierarchical structure of the juridical field also inculcates a certain level of arbitrariness in legal decisions as judges are granted extensive freedom in the interpretation and application of rules. These interpretations are then integrated as changes into the system by legal scholars, who thereby, through the process of 'rationalization' and 'formalization,' legitimize the assimilation of these new rules and principles into the legal framework. The juridical language is also characterized by its ability to create the 'neutralization effect' and 'universalization effect.' The former is created by the use of passive and impersonal constructions in legal utterances that aid in establishing the speaker as an impartial and objective universal subject. The universalization effect on the other hand is created by set of convergent procedures, including the use of constative verbs which emphasize the expression of the factual; the use of indefinites to assert the omni-temporality of law (the "juridical future"); and the presupposition of ethical consensus. The juridical language therefore comprises a rhetoric of 'autonomy,'

'neutrality,' and 'universality,' that further helps in the 'rationalization' and 'historicization' of juridical norms (Bourdieu, 1987).

Bourdieu (1987) brings to light the elasticity inherent in the interpretation and application of law by judges and jurists by their use of rhetorical devices such as, *restrictio* (avoiding the application of a law which is technically applicable); *extensio* (extending the application of law which technically should not be extended); and the use of analogies. Furthermore, since judges are situated within the specific power relations of other legal professionals (jurors, lawyers, solicitors, etc.), the ultimate outcome of a case is also influenced by the symbolic struggle between these professionals caused by their unequal possession of technical skills and social influence.

The Universalization Effect

Legal language often becomes the source of both elasticity and autonomy of law, further contributing to the division of labor within the juridical field. Legal language comprises the use of ordinary language but often ascribes a completely different usage to a word than its ordinary usage. Therefore, only those 'competent' in the legal parlance truly have the power and authority to influence the outcome of a case. The client who is often a layperson is then automatically disenfranchised from the legal rhetoric, and becomes powerless before those (judge, lawyer, jurist, etc.,) who can claim to possess expertise in the usage of legal language, and end up representing the client's interest. The jurists represent a neutralizing space, which makes the solutions proposed by them seem impartial and rooted in formal, logical, and

coherent rules of law. *"The juridical field is a social space organized around the conversion of a direct conflict between directly concerned parties into juridically regulated debate between professionals acting by proxy"* (Bourdieu, 1987, p. 831).

The process of universalization and normalization of the word of law is inherent in the presupposed acceptance that conflicts can only be resolved according to the rules and conventions of the juridical field. This also applies to the use of a body of precedents by the jurists, in which aspects of law extracted from the verdict on a previous case are applied to justify a legal rhetoric in an entirely different current case. Since a precedent can be understood and applied in a number of different ways, it can yield different results based on the way in which it is applied, further adding to the arbitrariness of legal reasoning and displaying the power vested within a jurists' ability to use compelling legal rhetoric. The legal professionals thereby end up creating, *"the need for their own services by redefining problems expressed in ordinary language as legal problems, translating them into the language of the law and proposing a prospective evaluation of the chances of success of different strategies"* (Bourdieu, 1987, p. 834).

The judgements proclaimed by judges are ultimately universally recognized and have the power to distribute differing amounts of different types of capital to the various actors and institutions within a society. These judgements through law possess the symbolic power of naming (common names, proper names, titles) and creating social groups (married, divorced,

etc.). The authority to name and categorize, legitimized by the symbolic power of law, reproduces, elevates, and reinforces the historical power of judiciary. Those that have the symbolic power and authority to apply law are inextricably also linked to holders of worldly power in the form of political or economic power. The totality of the objective relations between the juridical field and the field of power therefore end up casting an influencing shadow over the whole social field. The actors within the juridical field who can wield legal authority often share a habitus due to their comparable socio-economic and educational backgrounds. This confers upon them kindred world views, as well as, cultural capital and symbolic power that often places them in the dominant social classes. It is therefore unlikely that the choices made by these individuals would generally disadvantage the dominant forces (Bourdieu, 1987).

The Symbolic Power of Law

An important aspect to note is that symbolic power requires the dominated groups to be complicit in their own domination by being unaware of the arbitrariness that lies at the heart of legal processes. The ceaseless reproduction of the symbolic power of the juridical field requires tacit faith in the juridical order, which is ensured by the universalization of judicial principles and ideology through the process of neutralization, formalization, rationalization, and a presupposed faith in the autonomy of the judiciary.

The universalization effect (or normalization effect) produced by the juridical field is one of the most powerful mechanisms for generating

symbolic domination. The dominant group of juridical actors, in the form of social agents with legal authority, impose an official representation of the social world; they commit symbolic violence by sustaining their own world view and favoring their own interests, especially in the face of socially stressful or revolutionary situations. In this manner, with its inherently powerful discourse combined with its authority to impose compliance, the law itself is the quintessential instrument of universalization (Bourdieu, 1987).

The symbolic power of law is truly reflected in the homology between those who require legal services and those of supply them. An example is that of the social welfare law, which is generally considered to occupy an inferior position in the juridical hierarchy. The clientele corresponding to the social welfare field similarly tends to occupy a weaker social position. Given their dominated position, their likelihood of overturning power relations within the juridical field isn't optimistic, as opposed to the chance that they will contribute to the perpetuation of the existing structure. The power relations within the juridical field are therefore often reflective of the extra-legal positions occupied by the juridical agents within the social, political, and economic fields.

Bourdieu's Notion of Symbolic Capital

Bourdieu points out that those in possession of large amount of symbolic capital (the well-known and well-recognized *nobiles)* usually hold a de-facto monopoly over most of the social institutions, such as the school system, and therefore have both powers – to determine and guarantee rank.

Further, through official nomination, it is possible to sanction, guarantee, and even juridically institute symbolic capital. Symbolic capital is the power accrued by those who are sufficiently recognized to be able to impose their views and opinions. The granting of a title through official nomination, such as, conferring a socially-recognized credential in the form of say a school diploma, is one of the ways in which the state or its representatives express monopoly over symbolic violence. The state therefore possesses monopoly over legitimate symbolic violence through its power to preserve or transform social interactions into legal constructs (marriage/divorce), and its power to create, transform, legitimize various classifications amongst people and institutions in the form of gender, age, social status, nationality, religion, etc. Symbolic power, therefore uses symbolic capital, to make groups and establish social authority and thereby construct reality and social order (Bourdieu, 1989).

Bourdieusian Sociology and the Indian Legal System

In the United States, Bourdieusian sociology was met with poor reception in the law and society scholarship primarily due to the profound structural differences in the very conceptions of law, state, and society between US and French historical sociology. Bourdieu's model is empirically grounded in a continental European model of law, and does not travel well when applied to US law and society. Therefore, to successfully adapt Bourdieu's approach, it is imperative to reexamine the genesis of the state,

law, and legal professions in different legal and cultural contexts (Dezalay & Madsen, 2012).

India follows a parliamentary system of government that is based on the Westminster model, which gets its name from the area in central London where the Parliament of the United Kingdom is located. India fell under British colonial rule in the mid-19th century and regained its independence in 1947 through a widespread non-violent resistance movement. The constituent assembly convened in 1948 to draft the Indian constitution, which was officially adopted in 1950 and continues to be the supreme law of India. The constitution replaced a series of statutes enacted by the British Parliament, primarily the Government of India Acts of 1919 and 1935. The Indian constitution was therefore extensively modelled on European legal and constitutional practices; its key features being:

- The establishment of a federal system with residual powers in a central government
- The development of a list of fundamental rights
- A Westminster style parliamentary system of government (Idea, 2016).

The Indian legal system primarily comprises three forms of law - common law, religious law, and civil ('Romanist') law. While structuring the legal framework of the country, departures from English law had been made based on the unique conditions of India and considerations of equity. Subsequently, Indian laws also incorporated the United Nations guidelines on human rights law and the environmental law. Although India follows a Federal Constitution,

it does not have a dual court system (Minattur, 1978). The highest apex court of the country is the Supreme Court, below which are the High Courts and their satellite branches (called 'benches') present in every State. There are local District courts and village lay courts (*nyaya panchayats*) as well.

The symbolic capital possessed by the judiciary, especially the higher courts, equips them with the power to shape the socio-economic, religious, political, and environmental landscape of a country. Berti & Tarabout (2018), in their essay 'Through the Lens of the Law: Court Cases and Social Issues in India' expound on the facet of law as a social institution that is indeed completely entrenched in social life, contrary to the common perception of its autonomy. The essay highlights the judicialization of modern society, that involves the increasing role of courts of law usually at the expense of other institutions while managing all aspects of human life, be it intimate relationships or global issues.

Berti & Tarabout (2018), take a historical view of India's "judicialization" process, and find its roots in the period of British rule, where the courts were involved primarily in the religious realm, resolving endowment-linked conflicts and temple issues. However, the scope of judicial intervention of the courts in Indian society widely expanded since the 1980's with the advent of the Public Interest Litigation (PIL). Although the PIL was aimed at equipping the most socially and economically disadvantaged citizens with access to judicial process, and in the initial period it did serve that purpose, it simultaneously provided the courts with the liberty to assert their

jurisdiction over other branches of government and administration. While adjudicating disputes filed via PILs, the higher judiciary in India, in addition to legislating, has also taken on an executive role and monitored the implementation of the guidelines or recommendations issued by them, thereby wielding legislative, executive, and judicial authority.

Since India follows a Common Law-based legal system, judges have the authority to not only pass legal judgements but to also make the law. Their legal judgements become law to be adopted by the legislature and the regulations to be adopted by the executive. Furthermore, as evidenced by the example of the judicial discourse on the victims of Bhopal gas tragedy, the legal language of the courts transformed the events and persons into verbal objects. An industrial tragedy of epic proportions that impacted over 600,000 people was reduced in the courts to an argument over settlement charges, which also were ultimately a trifling amount (Mathur, 2006).

The ‘universalizing attitude’ of the language of law, as propounded by Bourdieu, resides at the heart of the transformation of events and persons into verbal objects, and the application of general, “rational” reasoning to legal categories. By combining an abstract set of legal rules with the specific interests and motivations of all actors involved in a court case, the courts extend their influence on a wide range of social constructs, including family relationships, criminality, environmental protection, natural resource management, religious practices, and human rights (Berti & Tarabout, 2018).

Another example that examines the Indian judicial process in a PIL (public interest litigation) through Bourdieusian logic is that of the 2006 ‘Sealings case’ from Delhi. The essay argues that the courts, instead of treating everyone equally, offer a site for negotiating exceptional treatment for specific groups based on mutual interests and shared projects (Rubin, 2013). It uses Bourdieu’s conceptualization of the juridical field, and Gramsci’s notion of hegemony to highlight the autonomy of law and its ability to insert itself into social life, but also differs on both theories by insisting that the law does not necessarily side with the dominant social groups, but rather preferentially sides with those groups that share its vision for the social order it wishes to create.

In 2006, a coalition of Delhi’s middle-class Resident Welfare Association (RWA) filed a PIL over illegal land use and construction in residential areas by traders and business owners. Instead of directing the Municipal Corporation of Delhi to look into the matter, the Supreme Court of India (SCI) insisted on the closing down or “sealing” of over 40,000 commercial activities. The drive, that ran until early 2007, led to massive protests from the trading bodies in the city and resulted in the deaths of four people (Rubin, 2013).

Rubin (2013) agrees with the Bourdieusian logic that judicial decisions often reflect the political and social affiliations of the courts and judges and that the judicial realm actively produces political visions that the judges and juries subscribe to, and thereby entrench their own roles in the existing

structures. However, in doing so, the court can sometimes set itself up in opposition to the incumbent government, as in the case of the Delhi Sealing Drive, where the Supreme Court of India (SCI) repeatedly blamed and reprimanded the local government for not managing the drive effectively.

As per Rubin (2013), the SCI's willingness to side with the RWA's PIL can be explained by the alignment between the SCI's and the RWAs' middle-class vision of Delhi as a world class city. Rubin highlights a number of litigations in Delhi that have demonstrated the SCI's progressively sympathetic support of the middle-class who bring several PILs before the court that support the turning of Delhi into a world-class city. The courts realized that India's national capital, i.e., Delhi, matters because it is the site of residence of some of the country's top political elites and is also a representation of India's image on the global platform. *"By supporting the middle class RWAs and the world-class vision of Delhi, the SCI is able to capture a small but increasingly powerful urban constituency that has to a large extent been left out of Indian bi-partisan party politics"* (Mehra, 2012 as cited in Rubin, 2013, p. 9/13*).*

Bourdieusian Sociology in Feminist Analysis of Legal Practices

The implications of combining different theoretical tools for research in the socio-legal discipline have been studied by Jess Mant (2020). In her article, she combines Feminist legal theory, Bourdieusian theory, and Actor Network Theory, to research the experiences of those representing themselves in family court hearings in England and Wales. Mant argues that the act of

combining different theories within socio-legal research is a political activity as the process requires the researchers to introspect their own worldviews that inform their selection of theories.

While the research for this study has been conducted through a feminist lens, much in line with Mant's thinking, Bourdieu's theoretical framework has been used to analyze whether the juridical field of environmental law in Goa is gendered. Several scholars have combined feminist thinking and Bourdieu's concepts of juridical field and symbolic capital to research various socio-legal facets within their own countries. One such research that stands out is the Sheena Jain's (2007) analysis of the Shah Bano Case in India, using Bourdieu's theory of the symbolic.

Shah Bano was a Muslim woman who married Mohammed Ahmed Khan in 1932 and was driven out of her home in 1975. In April 1978, she filed an application that demanded maintenance from her husband, but was divorced (by *talaq* under Islamic law) later in November 1978. Since she was no longer his wife, Mohammed Ahmed Khan protested the application for maintenance. The High Court however, under section 125 of the Code of Criminal Procedure (CrPC), ruled that the ex-husband would have to pay a small sum to Shah Bano. This decision of the High Court was appealed against by Mohammed Ahmed Khan at the Supreme Court under the claim that it violated the tenets of the right to personal law (Muslim law), which did not have such a provision (Jain, 2007).

When the Supreme Court also ruled in favor of Shah Bano, it provoked widespread dissent within the Muslim community. While the men, especially the Muslim clerics and members of and the All India Muslim Personal Law Board (AIMPLB), vehemently opposed the ruling, groups of Muslim women rose up to support it. The case went on for a number of years, and finally succumbing to the pressures of the incumbent government in 1986, the Muslim Women (Protection of Rights on Divorce) Bill, 1985, called *ibid*, was introduced in the Parliament, which denied Muslim women the option to avail Section 125 of the CrPC. In order to appease the minority Muslim vote bank, the bill was passed to legitimize the arguments of the AIMPLB and the Muslim League that a divorced woman's responsibility rested upon her natal family and not her ex-husband. Women's organizations protested this turn of events highlighting the injustice inherent in women's identities getting subsumed in community identities. However, the government refused to overturn the Bill. The Muslim community was already agitated because of the Babri masjid issue, and the government wanted to pacify the sentiments of the minority male population (Jain, 2007).

Jain begins her analysis of the above situation by first considering Shah Bano's habitus – an illiterate and aging woman, abandoned by her husband, and living with her sons. Given her subordinate position as a women in her family and social community, her application for maintenance was less likely an act of feminist rebellion and more likely explained by Bourdieu's concept of doxa (a culmination of undiscussed common opinions, established

beliefs, and received ideas). She likely succumbed to the doxic mode of what her sons dictated to her. Journalists found that her sons were also pressuring her to demand for property rights. But the fact that eventually Shah Bano was successfully pressured into withdrawing her appeal from the courts shows that her protests perhaps lacked agency in the first place. As a function of her habitus, Shah Bano was easily repressed, as compared to the other educated and financially stable Muslim women who organized the protests for her cause. Similarly, her husband was a financially well-to-do lawyer, and based on his habitus, he was able to protest the Supreme Court ruling using his knowledge of the right to follow personal law (Jain, 2007).

Although the judgment passed by the Supreme Court was in favor of Shah Bano, it was based on what according to Bourdieu are heterodox beliefs and options (existence of competing possibilities in the field of opinion). The judgement opened with the proclamation of unjust treatment of women in Muslim religion, thereby alluding to the religious-bias of the judge(s). The fact that the State eventually chose to concede under the pressure applied by fundamentalist groups to further its own agenda speaks to the notion of the State as an agent with a monopoly over legitimate symbolic violence (Jain, 2007).

Bourdieu's theoretical framework also finds application in Alessandra Dino's (2022) work, which analyzes the representations of femicide in the judicial field, in Italy, and highlights issues of gender disparity. Her study examines multiple facets of violence against migrant and foreign women in

Italy, by scrutinizing the narrations of femicide in juridical discourse and observing the meaning used to represent extreme violence against women in the juridical field. The use of the term femicide has been investigated through the lens of the normative process. The framework of Bourdieu's juridical field has been used to examine the social meanings, as well as the political and economic underpinnings of the term femicide (Dino 2022).

Another article that uncovers the gendered nature of judicial proceedings is by Helena Machado (2008). In her research, Machado uncovers the ways in which Portuguese legal systems uphold and perpetuate patriarchal structures in cases where paternity determination has to be conducted for a child born to an unmarried women. In Portugal, since the Civil Code of 1966, the initiation of proceedings for paternity determination when no father is listed on the birth registration is automatically the state's obligation and is conducted by the Registry Office.

Based on her observations of courtroom hearings in paternity investigation cases, Machado emphasis the importance of the way language is used in courtrooms as a means of production and exercise of power, especially in the type of questions directed to mothers. The mother has no right to privacy regarding her sexual and reproductive activity as it becomes a matter of interest to the state. The mother is asked detailed and intrusive questions about the number of sexual partners, number of occasions of sexual intercourse, as well as, type of sexual acts committed before and around the time of the child's conception; the time frame being determined by Portuguese

law. According to Machado, the selective use of DNA testing in paternity cases is often based on the judge's evaluation of a mother's sexual behaviour. Machado therefore brings up Bourdieu's rhetoric of the façade of neutrality and objectivity of law in its stance as an autopoietic entity that is self-legitimating and self-constructive. In line with Bourdieu's conceptualization, Machado asserts that the legal field is just as influenced by the dominant ideology of what constitutes a normative model of a family, as well as reinforces the gender inequality prevalent in men-women relationships (Machado, 2008).

Bourdieu's field theory has also been used in the extensive study of the juridical field of Jewish divorce law in central Israel. The study examines the hierarchical positions within the legal field and their ability to influence legally-binding outcomes in matters of custody and visitation disputes; the ultimate power of judges as final arbiters; and the protection afforded to therapists by the law and judges for their professional opinion. It uncovers the power relations within the juridical field of Israeli divorce law that guarantees dominance to those agents who have acquired legal habitus (Hacker, 2008).

Bourdieu's notion of 'symbolic power' has also been combined with Habermas's notions of 'public sphere' and 'power' to analyze a Turkish talk show format 'Woman's Voice' (WV) and its audience. Sanli (2011) proposes that viewing WV should be considered a political activity, as WV provides a sphere where, for the first time in Turkish broadcasting history, the needs and problems of Turkish women are discussed. The study discusses the domestic

and symbolic violence experienced by Turkish women based on their first-hand narrations that reveals the prevailing patriarchal authority of the 'honour code' and of the Turkish ruling elite (Sanli, 2011).

Another study that scrutinizes lethal violence against women analyzes the phenomenon of female homicide victimization through the lens of Pierre Bourdieu's theory of symbolic violence (Grzyb, 2016). It primarily focuses on females who are victims of honour killings (a culturally specific form of gender-related homicide) in migrant communities in Europe. Within the framework of patriarchal theories, honor-related violence can be partially understood using the concept of symbolic violence. Given the country's evolving social structures, the patriarchal backlash is directed against the changing gender relations, which threaten to undermine the dominant symbolic patriarchal power (Grzyb, 2016).

Bourdieusian Sociology and Environmental Disputes

Several socio-environmental conflicts globally have been analyzed using Bourdieu's theories. One that is pertinent to this discussion is regarding the large power-generation project (Parnaiba Thermoelectric Complex), in Maranhdo, Northeast of Brazil as a source of socio-environmental conflicts (Didier Bruzaca & de Alencar Mayer Feitosa, 2018). The case study examines the situatedness of the rights of vulnerable and traditional social groups, especially those of the babassu coconut breakers, within the crosshairs of a development discourse and the legal field.

The judicialization of the case highlights notions and practices of juridical field including, legal corpus, habitus, the role of external pressures, and the role of specialized agents at the cost of delegitimating non-specialized agents. The authors categorize those who can participate in the competition for monopoly over law, such as lawyers, judges, academics as specialized agents, while the traditional populations who are excluded from participating in legal discourse on account of being 'non-professionals' are the non-specialized agents. The study concludes that it is difficult to find a fair legal solution to socio-environmental disputes, especially those involving large economic enterprises and rights of traditional people, because the discourses disqualify the visions of nonspecialized agents (Didier Bruzaca & de Alencar Mayer Feitosa, 2018).

A similar meta-narrative or hegemonic framing of environmental narratives has also been developed in the Indian context, using essays that examine the discourses in and of the courtroom, logic of state bureaucracy, neoliberal urban policy and their legitimizing frames, regional development narratives, and indigenous social movements against land acquisition. In each case, the environmental narrative is appropriated in multiple ways that unfold in diverse expressions of conflicts and controversies making the environment the meta-narrative of our times (Vasan, 2021).

One of the five essays examines the institutional arrangements in India that facilitate and sustain the meta-narrative of environment. One such institute that is focused upon is the National Green Tribunal (NGT). India is

one of the first countries to establish a national-level legal institution to specifically address environmental cases. Within the NGT, environmentalism is a significant or perhaps the only narrative of interest. As per Vasan (2021), the NGT serves as a structured juridical field wherein environmentalism serves as a currency of legitimacy that compels all players in this juridical field to understand and present themselves as environmentalists. Vasan follows a case filed in the NGT by an indigenous community against a hydel power project in Himachal Pradesh, India. She examines the ways in which diverse interests are presented from an environmentalist perspective within the juridical field of environmentalism at NGT.

An interesting subversion of the juridical narrative can be seen in the Netherlands, as exemplified in Mostert's 2020 article regarding the implementation of the Water Framework Directive (WFD) in the Netherlands. It unpacks the intersection of law and politics in the context of river basin management. Mostert discusses the shift in approach with respect to the implementation of the WFD in the Netherlands from being a purely technical and administrative issue handled by water quality and ecology experts to finding interference from the agricultural sector from fear of stricter regulation, and subsequently, lowering the bar for the environmental objectives of the WFD.

However, the European Court of Justice impressed upon the binding nature of environmental objectives and insisted that Member States would have to refuse authorization of projects that jeopardized the achievement of

these objectives. Using the framework of juridical field to analyze this situation, the author shows the important role that law as a social phenomenon or "field" can play in river basin management, so long as the courts function independently while enjoying sufficient social and political support, as they do in the Netherlands (Mostert 2020).

A similar theorization of legal change within an effective juridical field at the hands of social change had been conducted by Houtzager in 2005 in his working paper on the Movement of the Landless (MST) in Brazil, a country which has one of the most unequal land distributions in the world. Although the MST did not have legal standing to bring cases to expropriate land, which is the preserve of federal government, according to the author, the MST was successful in facilitating legal change through the juridical field due to two key reasons. First, for defending its claims, it was successfully able to concentrate the talents of diverse juridical actors – lawyers, judges, law school professors, mobilizing multiple agents across multiple fields, even outside of the juridical field. Second, the 1990's social movements and changes in juridical field that resulted in the democratic transition of the country also contributed to the movement's capacity for strategic legal action.

Through its reactive juridical mobilization in civil and criminal cases brought against it, the MST was able to contribute to the passing of watershed high court rulings that contributed to the process of constitutionalizing law, and redefined property rights to make land distribution more equitable in parts of Brazil (Houtzager, 2005).

Environmental Toponyms as Instruments of Power

Bourdieu's juridical field discusses the ways in which it derives power from its practices of 'naming,' 'creating categories,' and 'meaning making' using legal processes of universalization and appropriation. Another practice that wields power through the creation of names and categories is that of Toponomy. Toponyms are the socio-cultural extracts of natural, geographical objects. Toponymic analysis show how places are named and the impact of the usage of the name.

A classic case that demonstrates the power of toponymy is that of the Lomonosov Ridge dispute. Situated in the Arctic Ocean, Lomonosov Ridge is an underwater ridge that divides the Arctic Basin into the Eurasian Basin and the Amerasian Basin. All three countries, Canada, Russia, and Denmark have made claims of ownership of some part of the ridge, thereby, turning it into a disputed territory. The name Lomonosov however, is Russian, since the ridge was discovered by Soviet high-latitude expeditions in 1948 and was named after the famous Russian polymath, scientist, and writer Mikhail Lomonosov. In August 2007, a Russian submarine planted its flag on the Arctic seabed and proclaimed control over the potentially resource-rich region along its northern coast. Currently, no country owns the North Pole or the Arctic region around it. Therefore Russia's action was met with resistance from Canada and Denmark, both of whom then staked their claim over the region (Gunitskiy, 2008). Both acts, of naming the ridge as well as, planting the flag, were symbolic expressions of Russian power over ownership of the ridge.

Another example of toponymic politics is the place naming of the “Salish sea,” and the role that has played in the rescaling of the Pacific waters along the Canada/United States border (Tucker & Rose-Redwood, 2015). There is also extant research regarding the history of toponymic inscription in the island of Taiwan, where different political regimes have established their hegemony by inscribing their political subjectivities into the island through toponymic naming and renaming, and the way in which the marginalized groups have resorted to toponymic struggle to reclaim the ‘lost’ sovereignty (Hui, 2017).

The relationship between landscape and ideology has also been examined by studying the traditional, Tsarist, Soviet, and post-Soviet Pamir mountain toponyms. The study compares mountain toponyms with the naming processes of urban Soviet and post-Soviet places. It also compares the way political landscape is used under Soviet regime with other political ideologies, especially Nazism. According to the study, over time, commonalities can be found in the rationale and the types of names selected for urban places and mountains. However, it also points towards significant differences that suggest that the concept of 'the mountain' differed in its political significance across urban landscapes in Russian, Soviet, and post-Soviet ideological and nation-building constructions (Horsman, 2006).

A Bourdieusian Approach to Toponymic Disputes

The interplay of power structures inherent in the process of toponymy have been widely explored in international academic literature through the

lens of Bourdieu's theories. Ji's 2018 study on China's toponymic practices of renaming cities for marketing and tourism purposes is one such example. Ji has explored the positive and negative impact of city-renaming practices on tourism, as well as, on the socio-cultural dynamics of neighborhood relationships. Based on Bourdieu's field theory and notion of habitus, Ji has offered a synthetic conception of tourism placename field (TPF) and defined it as, *"a social network of power relations, where stakeholders contend or negotiate with various sorts of capital in tourism placenames, depending on their habitus and capital conditions, by maintaining or changing the quantity, proportion, naming agents, using agents, implications, and regional level of toponyms"* (Ji, 2018, p. 383).

Although appropriate renaming was found to improve a city's popularity, inappropriate renaming was likely to negatively impact not only the tourism, but also interpersonal relationships amongst locals. The individual response to the renaming was found to be a function of the stakeholder's habitus and capital conditions, and TPF in China was found to be dominated by governmental hegemony and economic priorities. However, the stakeholders were capable of boycotting the toponymic change if it caused economic losses (Ji, 2018).

Another study that focusses on the toponymy of South African gated communities employs Bourdieu's notion of symbolic capital to illustrate the ways in which symbolic capital can be utilized to gain economic capital. Spocter (2018) examines the ways in which environmental names or names

that indicate a sense of community, heritage, or European associations tend to confer exclusionary qualities by creating an illusionary residential territory, which are then used and promoted by private developers for creating economic capital.

A study that examines the manipulation of a placename for the pursuit of political legitimacy and nationalism is Saparov's (2017) article on post-Soviet Azerbaijan. The article compares two renaming campaigns in Azerbaijan. The first occurred in the context of violent ethnic conflict in Nagornyi (Mountainous) Karabakh at the end of the Soviet era where Azerbaijani authorities responded to the Armenian secessionist challenge by replacing Armenian place-names and restoring Azerbaijani ones from the pre-Soviet period. The second renaming campaign occurred in the aftermath of the death of the former Azerbaijani President Heydar Aliyev in 2003 where a large number of street names and other elements of cityscapes across Azerbaijan were renamed.

Unlike the first campaign that targeted 'enemy' placenames, the second was hyper-focused on cityscapes. The former attempted to establish political legitimacy by showcasing the control of Azerbaijan over a disputed region, while the latter, by imposing the political personality of Heydar Aliyev on the toponymic landscape attempted to undermine the primordialist claim of Azerbaijan to the disputed territory. The author draws on Bourdieu by highlighting the relationship between language and power and the way in which their interaction can result in establishing legitimate competence in a

society, while simultaneously determining and defining what can be considered as ‘illegitimate’ linguistic forms. Therefore, official language is not only tied into a state’s genesis and social uses, but can also be applied to study place-names and their relationship with power structures. In the second case, Heydar Aliyev was being elevated to the role of the founder of the Azerbaijani state while other presidents of Azerbaijan were hardly ever mentioned. As per the author, this fits Bourdieu’s description according to which, “*the dominant classes establish an all-encompassing legitimate discourse which all other groups in the society must accept as a reference point* (p. 544).” By legitimizing his own legacy through the use of his father’s name, Heydar Aliyev’s son Ilham Aliyev curtailed the opportunity for other contenders to claim power in Azerbaijan (Saparov, 2017).

Another study on contested names in the toponymic landscapes of post-soviet space was conducted in 2020 by Kudriavtseva and Homanyuk. Back in 2014, Bigon and Dahamshe also conducted a similar analysis in the context of Israeli road signs, where the multiethnic/multilingual linguistic landscape is constituted in a contested context. The authors use Bourdieu’s concept of ‘symbolic power’ to reveal the bipartite rhetorical policy of the Israeli governmental agencies; who, on the one hand, spatially exclude Palestinian memory through various visual and linguistic manipulations at the expense of its own rich toponymic corpus, and on the other, establish the majority Hebrew identity, which supports the Zionist project, regional consciousness, and spatial appropriation (Bigon & Dahamshe, 2014).

An interesting paper that draws upon Bourdieu's notion of symbolic capital to compare two street-naming moments in New-York history is Rose-Redwood's 2008 study. The study compares the renaming of the avenues on Manhattan's Upper West Side in the latter nineteenth century and the street renaming in Harlem a century later. The author demonstrates the role of symbolic capital in letting an elite project result in the symbolic erasure and forced eviction of a marginalized group while simultaneously causing its cultural recognition. In both cases, formerly numbered streets and avenues were renamed at the behest of exclusionary politics of race, class, and gender (Rose-Redwood, 2008).

Rose-Redwood has also co-authored another piece on the toponymic commodification in Dubai and Winnipeg (Rose-Redwood et al., 2018). The authors have explored the political economy of the selling of naming rights and how symbolic/economic capital transformations are facilitated when brands become destinations and public places are reconceived as marketing opportunities.

Looking at how toponyms can be used as instruments of power, and considering that the focus of this study is on reviewing legal disputes over environmental toponyms such as, 'forest,' 'eco-sensitive zone (ESZ),' 'coastal regulation zone (CRZ),' "national park,' and 'wildlife sanctuary,' the next section will be about the history and evolution of environmental laws in India, and the reasons for which Goa has been selected as the representative state. The purpose of this study is to scrutinize the environmental issues in Goa from

Bourdieu's lens and parse the competition that exists regarding the monopoly over the right to determine the true meaning/definition of environmental toponyms in legal disputes in Goa.

Environmental Law in India

Protecting the environment and keeping ecological balance is a social obligation and fundamental duty of every citizen as enshrined in Article 51 A (g) of the Constitution of India. However, the ethos of environmental awareness and protection has been an intrinsic part of Indian culture since time immemorial. All religious texts in some form or another preach against the exploitation of nature. While the Mahabharata cautions that the entire society suffers at the hands of a few polluters, the Holy Quran warns against "making mischief in the earth." The Christian ceremony of baptism involves water as a sign of purity, and the basic tenets of Buddhism are ahimsa or nonviolence towards all creatures. Even Jainism emphasizes the virtue of minimum destruction of living and non-living resources for the benefit of man. And the Guru Granth Sahab proclaims that all human beings are composed of five basic elements of nature, i.e., earth, air, water, fire and sky (Ahmad, 2001).

Environmentalism during Ancient and Medieval India

Forests, wildlife, especially trees were held sacred in Hindu theology, including the *Vedas, Puranas, Upanishads*, and other scriptures of the Hindu religion. The *Rigveda* emphasized the importance of intimate kinship with nature and underscored the interconnectedness between climate and human activities. Trees were also considered as the abode of various gods and

goddesses. The *Yajurveda* highlighted the importance of maintaining a relationship of equality with nature and animals instead of one of dominion and subjugation. In the *Yajnavalkya Smriti,* cutting of trees and forests was considered an offence punishable with a fine. *Yajnavalkya Smriti* and *Charak Samhita* are also instructional about water usage and the importance of maintaining its purity. As per the *Srimad Bhagavatam*, in order to attain supreme peace and god's grace, one must offer respect to the sky, water, earth, heavenly bodies, living beings, trees, rivers, and seas and all created being, and consider them to be a part of the Lord's being. The Yajurveda, Yalhavalkya Smriti, and the Vishnu Samhita also vehemently condemn the killing of animals (Lawtool.net, 2021).

In *Kautalya Arthashastra* (321 BC – 309 BC) from the Mauryan period, there are detailed legal provisions regarding the necessity of a forest administration, including the appointment of superintendent of forest and the classification of forests on their functional basis. The *Arthashastra* also prescribed various forms of punishments for the cutting of trees, damaging forests, and killing of animals. Such measures of environmental conservation continued largely unaltered in subsequent reigns until the end of Gupta empire in 673 A.D (Lawtool.net, 2021).

During the medieval period, under the Moghul rule however, no noteworthy developments took place in the area of environmental jurisprudence, except during the rule of the Mughal Emperor Akbar, who prohibited the commons (anyone who was not a Ruler) from hunting. Even

cutting of trees was unrestricted, aside from a few special ones considered as "royal trees," which could be cut after imposing a fee. As a result, forests during this period shrank steadily in size (Akash, 2019).

Environmentalism during British Raj

The legal control of environmental pollution, during the British period, began with the enactment of the Indian Penal Code of 1860. Section 277 of the code made it punishable to pollute water or the environment in any way that made it noxious and dangerous to human health. British India also issued a number of enactments dealing primarily with the regulation of factories, preservation of forests, and protection of animals and wildlife (Akash, 2019). The following table includes some of the key acts passed by the British

Table 1. Key Environmental Acts passed during British Rule in India

1853	Shore Nuisance (Bombay and Kolaba) Act	Imposed restrictions on the fouling of seawater
1858	The Merchant Shipping Act	Dealt with the prevention of sea pollution by oil
1897	The Fisheries Act	Penalized the killing of fish by poisoning water and by using explosives
1905	Bengal Smoke Nuisance Act	Aimed at reducing the nuisances arising from the smoke of furnaces or fire-places in some of the towns and suburbs Bengal
1912	Bombay Smoke Nuisance Act	Aimed at reducing the nuisances arising from the smoke of furnaces in Greater

		Bombay and later in other areas of the State of Maharashtra
1912	Wild Birds and Animals Protection Act	Made better provisions for the protection and preservation of certain wild birds and animals
1927	The Indian Forest Act	Consolidated the laws relating to forests, the transit of forest-produce, and the duty leviable on timber and other forest-produce

The Indian Forest Act gave the government uncontested rights over natural resources. State Governments were then authorized to grant licenses to lumber contractors and oversee protection of the forests (Environmental Legislation in India, 2022). In 1935, the subject of 'forest' was included in the provincial legislative list, as the British Parliament, through the Government of India Act 1935 created provincial legislatures. Thereafter, several provinces made their own laws to regulate forests largely within the framework of the 1927 Act. (Lawtool.net, 2021).

The Indian Forest Act has also been used to define the procedure for declaring an area to be a 'reserved forest' and a 'protected forest', or a 'village forest.' Reserved forests and protected forest are accorded a certain degree of protection. Unlike National Parks or wildlife sanctuaries which are offered their status by the Central government, it is the State governments that declare certain areas as reserved forests and protected forests within their State. Presently, reserved forests and protected forests differ in one important way – activities including hunting, grazing, etc., are banned in reserved

forests unless specific orders are issued otherwise. In protected forests, certain communities who live on the fringes of the forests are allowed such activities for the sustenance of their livelihood. A village or *panchayat* forest is a forest that is regulated by the local communities and panchayats (elected rural body) at the village level (Reserved forests and protected forests of India, 2022).

Post-Independence Environmental Laws

India won its independence from the British rule in 1947, and the Constitution of free India was framed and adopted in 1950. In the early years of Independence, there were no specific policies or laws for environmental protection. It was only in 1972 with the Stockholm Declaration that the Indian Government turned its attention to the broader perspective of environmental protection.

In February 1972, a National Committee on Environmental Planning and Coordination (NCEPC) was set up which functioned as an apex advisory body in all matters relating to environmental protection and improvement. However, due to bureaucratic problems, it was replaced by what was called a National Committee on Environmental Planning (NCEP) with almost the same functions in 1981. The Forest Conservation Act was passed by the Parliament of India in 1980 and the Air (Prevention and Control of Pollution) Act was passed in 1981. In 1985, the Rajiv Gandhi Government created the Ministry of Environment and Forests (MoEF) which was a formal, institutionalized body that also had a Union Minister and Minister of State reporting directly to the then Prime Minister Rajiv Gandhi (Environmental Legislation in India, 2022).

A watershed event that brought further focus upon environmental laws was the 1984 Bhopal gas tragedy. As a fallout, in 1986, the Parliament of India passed the Environment Protection Act. This was an umbrella legislation that provided the Central Government with a framework for coordinating the activities of various Central and State authorities established under previous laws, such as the Water Act and Air Act. The Environment Protection Act (1986) was also considered an enabling law that articulated the essential legislative policy and framed necessary rules and regulations for bureaucrats (Environmental Legislation in India, 2022).

Some of the key environmental laws and regulations that have been passed in India are listed below (Environmental Legislation in India, 2022; Akash, 2019; Lawtool.net, 2021; Ahmad, 2001).

- Wildlife Protection Act (WPA), 1972
- Water (Prevention and Control of Pollution) Act, 1974
- Forest Conservation Act, 1980
- Air (Prevention and Control of Pollution) Act, 1981
- The Environment (Protection) Act, 1986
- Noise Pollution (Regulation and Control) Rules, 2000
- Coastal Regulation Zone (CRZ) Notification 201
    - CRZ-I: ecologically sensitive areas, where no construction is allowed except activities for atomic power plants, defense.

  - CRZ-II: designated urban areas where construction activities are allowed only on the landward side.
  - CRZ-III: relatively undisturbed, mainly rural areas. No new construction is allowed except for repairs of existing ones. However, construction of dwelling units is allowed in the plot area lying between 200 – 500m of the high tide line.
  - CRZ-IV: water area covered between the Low Tide Line and 12 nautical miles seaward. Except for fishing and related activities, all other actions are regulated.
- The Ozone-Depleting Substances (regulation and control) rules, 2000
- The Energy Conservation Act, 2001
- Biological Diversity Act 2002
- Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA)
- National Green Tribunal Act (NGT), 2010 – established after the Rio Summit 1992, the NGT Act provides judicial and administrative remedies to the victims of environmental pollution. The NGT is empowered to hear all civil cases relating to environmental issues linked to the implementation of laws listed in Schedule I of the NGT Act. These include the following:
  - The Water (Prevention and Control of Pollution) Act, 1974;
  - The Water (Prevention and Control of Pollution) Cess Act, 1977;

- The Forest (Conservation) Act, 1980;
- The Air (Prevention and Control of Pollution) Act, 1981;
- The Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biological Diversity Act, 2002.

The Tribunal is present across five zones in India - North, Central, East, South and West, with the Principal Bench situated in the North Zone, headquartered in Delhi. The Central zone bench is situated in Bhopal, South zone in Chennai, East zone in Kolkata, and West zone in Pune. The Tribunal is headed by the Chairperson and comprises at least ten but no more than twenty judicial members and at least ten but no more than twenty expert members (National Green Tribunal, 2019).

- Compensatory Afforestation Fund (CAF) Act, 2016

Environmental Crises in Goa and the Role of Goa Foundation

There are a few reasons behind Goa being the central focus of this study. Firstly, my parents have retired and settled down Goa, giving me some personal stake in the welfare of the State. Secondly, Goa has witnessed rapid development and economic growth in the past few decades and has been the focus of environmental disputes in the country because of it.

Thirdly, Goa as a State has an interesting history that is different from the other States of India, making it an fascinating case study. While the rest of

the country won its independence from the British Rule in 1947, Goa was liberated from the Portuguese rule as late as 1961, when along with Daman and Diu, it was considered as a union territory. It was only in 1987 that Goa was integrated into India as the 25th State, while Daman and Diu continued to remain union territories. While the constitution of India applies uniformly to all States, the vestiges of Portuguese rule can still be seen in the presence of the option of personal law in the state. In domestic matters of matrimony, inheritance, and divorce, the Christian community in Goa is given the option to follow either the national law or the Portuguese law.

Lastly, Goa is the smallest State in India and stretches over an area of 3,702 sq. km; 1,736 sq. km is considered North Goa and 1,966 is South Goa. Although the city witnesses a great traditional/cosmopolitan divide in its ethos, the environmental problems that the State faces due to mining, tourism, and infrastructure development are fairly uniform throughout the state and are also a keen reflection of similar issues witnessed by other States in the country, making Goa a good representative sample for the rest of the county in terms of the environmental disputes it witnesses.

Tourism and mining were considered the key economic activities of the state until 2007 when the Supreme Court of India banned iron-ore mining and export in Goa due to its environmental impact. The ban was conditionally revoked in 2014, but was reinstated soon after. However, as of December 14, 2022, the Goa Chief minister Pramod Sawant restarted mining auctions in Goa

and the firm that bid the highest among competing firms, promised to share 88.40% of the mining revenue with the Goa government (Chaurasia, 2022; DeSouza, 2022). Both tourism and mining have been heavily criticized by the local communities due to their impact on the socio-cultural fabric of Goa, as well as their environmental impact and effect on the local communities.

Impact of Mining Operations

While Goa is the smallest State of India in terms of area covered, it is richly endowed with Iron Ore and Bauxite. Mining operations have covered approximately 700 sq.km, i.e., almost 19% of the total area of the state, and have primarily been carried out in the Bicholim *taluka* (subdivision) of North Goa district and Salcete, Sanguem *taluka*, and Quepem *taluka* of South Goa district. Mining operations have adversely affected the natural landscape leaving behind pits, waste rejects, and enormous dust pollution. It has caused irreversible loss to the agriculture sector as many workers have left the fields to work in mines, and the cultivable land has been greatly reduced due to encroachment by mines and due to the pollution of the soil by the waste generated by mining, which includes mineral particles and acids. It has also resulted in polluting ground water and surface water and has caused large-scale deforestation affecting the local marine life, wildlife, and biodiversity. The lack of safety measures during mining have resulted in hearing loss and deafness among workers due to noise levels ranging between 100-140dB, and

neighborhoods have been exposed to heavy dust pollution resulting from mining (Nayak, 1998; Talule & Naik, 2014; Jakati, 2021).

A very early study conducted by Parulekar et al. (1986), revealed the adverse effects of mining activities on the clam fisheries and bottom fauna of Goa estuaries. Another newer study by Ranjan (2018) exposed the corrupt linkages between the government regulators and mining industry in Goa due to the significant financial rewards associated with mining. As per the results of the study, "*the relative risks of political survival and conviction, the degree of impatience displayed by the regulator as well as the contribution of the mining sector to the economy, play a role in influencing the extent of illegal mining activity*. *When the regulator faces a low risk of political ouster, an increase in conviction risk may not provide enough deterrence to illegal mining, resulting in high levels of deforestation"* (Ranjan, 2018, p. 122).

Mining activities have most adversely affected the tribal people who mostly live in the areas that have been encroached upon for mining operations and depend on the forests for their livelihood. A large number of illegal mining activities that have been operational in the tribal areas are responsible for the destruction of the natural forest and habitation. The tribal communities, namely Gawada, Kunabi, & Velip are amongst the poorest and most backward communities in the state of Goa suffering from extreme poverty. Deforestation activities have resulted in their displacement and taken away their livelihood (Gawas, 2019). There is also a detailed article regarding five fishing villages in

Goa (Odxel, Cacra, Nauxi, Bambolim and Siridao) that highlights the ways in which development in the region has resulted in increased marginalization of the local communities (mainly the *Gauda* community) by depriving them of their sources of livelihood (Correa, 2016).

The traditionally managed agro-aqua ecosystems found in Goa are called *Khazans,* which have been reclaimed over centuries from marshy mangrove swamps. The *Khazan* coastal wetlands serve as an example of resource sharing between *Shetkars* (farmer community) and *Kharvi* (fishermen community). The *khazan* technology is based on the principle of salinity regulation and tidal clock which is managed by an intricate system of dykes (*bunds),* sluice gates, and canals, for the purposes of agriculture, aquaculture, and salt panning. The landward side of the sluice gate is marked by a depression called *poiem* which protects the agricultural fields from high tide, and its size and depth determines the fish yield. Mining operations have also adversely affected the *Khazan* system by causing deterioration of external bunds. Barges that are used for carrying ore from the mining areas to the harbor create bow-shock waves resulting in the silting of *poiem* and impacting both agriculture and fishing (Sonak et al., 2005).

Impact of Tourism and Infrastructure Development

Development of tourism has always been a double-edged sword. On the one hand it brings the promise of economic growth and employment opportunities, especially international and luxury tourism, but on the other

hand, the development activities associated with tourism can also adversely impact local communities and the environment. Goa is considered as one of India's premier beach resorts and witnesses a huge influx of international tourists every year. However, as Routledge (2000) points out, tourism development necessitates the marginalization of the needs of the local communities who lose control over their land and sea, and gain barely any personal profits from the industry. Additionally, tourism results in an increase in the levels of crime, prostitution, and drug use, and impacts the socio-cultural fabric of local communities (Routledge, 2000).

The impact of tourism development on the coastal zone environment of Goa, which includes the marine part and the land part, is well documented in the case studies conducted by the World Bank Institute. The marine part of the coastal regions have suffered from loss of mangroves, as well as, a decline in the quantity of fish catch and in the number of species found due to unscientific fishing practices catering to increasing demands and loss of spawning grounds due to land reclamation and silting. The land parts of the coastal zone which have sandy beach areas and sand dunes protect the coast from tides, replenish sand on the beach, and are habitat for several marine lifeforms. Hotel constructions have caused a loss of sand dunes resulting in tidal ingress, and have also caused loss of biodiversity, especially in the form of endangering several turtle species (Sawkar et al., 1998).

Additionally, centrally-funded big infrastructure projects like eight lane highways, the construction of a new airport, setting up of coal rail lines, and a real estate and construction boom riding on these projects, has resulted in large scale tree felling in Goa (D'Mello, 2018). Several ill-planned projects, such as the Margao bypass, are also splintering waterways, affecting villages, and worsening floods (D'Mello, 2019). Goa primarily has four types of forests: estuarine, coastal strand vegetation, open scrub jungle, and semi-evergreen forests, each with its unique composition of flora and fauna and challenges of sustainability. Urban development encroaching upon forest land has taken a severe toll on the fragile ecology with incidences of pythons and crocodiles in habited areas greatly increasing (Fernandes, 2019).

Goa Foundation and Environmental Action

The most well-known environmental action group in Goa is the Goa Foundation. All the cases that are included in the data set for this dissertation involve the Goa Foundation. Since I am examining the juridical field of environmental law in India using Goa as a sample state, I have selected my data set based on the institutions that are involved in the formation of the juridical field of environmental disputes in Goa. One of the key defendants of all environmental matters of public importance in Goa is the Goa Foundation, and hence it has been one of the key criteria for the selection of cases for the data set.

The Goa Foundation was founded in 1986 by a group of Goan environmentalists who got together to fight their own individual environmental battles. The organization has persisted with its environmental agenda for over three-and-a-half decades and now commands the respect of the judiciary, government, and the general public. Its work spans across different areas and facets of conservation of Goa's natural environment. The first time that the foundation got involved in a public matter was in 1987 with its first public interest litigation (PIL) for the protection of the sand dunes of Salcette from mining operations. The organization has eventually filed more than 200 PILs in the Bombay High Court (Goa bench) and the Supreme Court of India over matters involving Goa's beaches, forests, rivers, turtle nesting sites, mining degradation, Konkan Railway project, etc.

METHODOLOGY

Research Design

Using the web repository for legal rulings in India, https://indiankanoon.org/, the search term "Goa Foundation" was entered which yielded (n=568) rulings. The results obtained range from the year 1973 to the present. The Goa Foundation search term was chosen due to them being the primary institute representing environmental interests in legal matters in Goa. The Goa Foundation was founded in 1986 by a group of Goan environmentalists and has persisted with its environment agenda for more than three and a half decades.

The terms "forest," "CRZ (Coastal Regulation Zone)," "Wildlife Sanctuary," "national park" and "ESZ (Eco-sensitive Zone)" are the commonly found environmental toponyms that are often the subject of disputes in environmental matters in Goa. They were therefore used in the search criteria along with "Goa Foundation" to further delineate the search results.

The search parameters that were input were "Goa Foundation" + forest. This yielded (n=310) results. Since the data set was to be filtered based on disputes around the definition of what constitutes a forest, the search results were further narrowed based on the cases that use the criteria utilized by the Sawant committee as the official definition of the term forest, in order to identify areas that can be classified as forests. The search parameters that were

then input were “Goa Foundation” + “Sawant committee”. This yielded 7 results. However, upon manually examining the results, (n=4) cases fit the criteria. Out of the remaining three cases, two were duplicate results, and one did not involve Goa Foundation.

This was followed by the search parameters “Goa Foundation” + “CRZ” that yielded 67 legal rulings. Upon manually examining the results, (n=9) cases fit the criteria. The others were excluded due to the following reasons:

1) There were overlaps in search results with ““Goa Foundation” + “Sawant committee;””
2) Some results were duplicate copies of judgements that has already been included;
3) The results were not relevant to search criteria (either Goa Foundation wasn’t involved in the case, or the judgements weren’t conclusive to the case, but instead involved some form of deferment of the legal matter)
4) The content of the cases was not numbered (the numbering system of the cases is used in the methodology for coding the data)

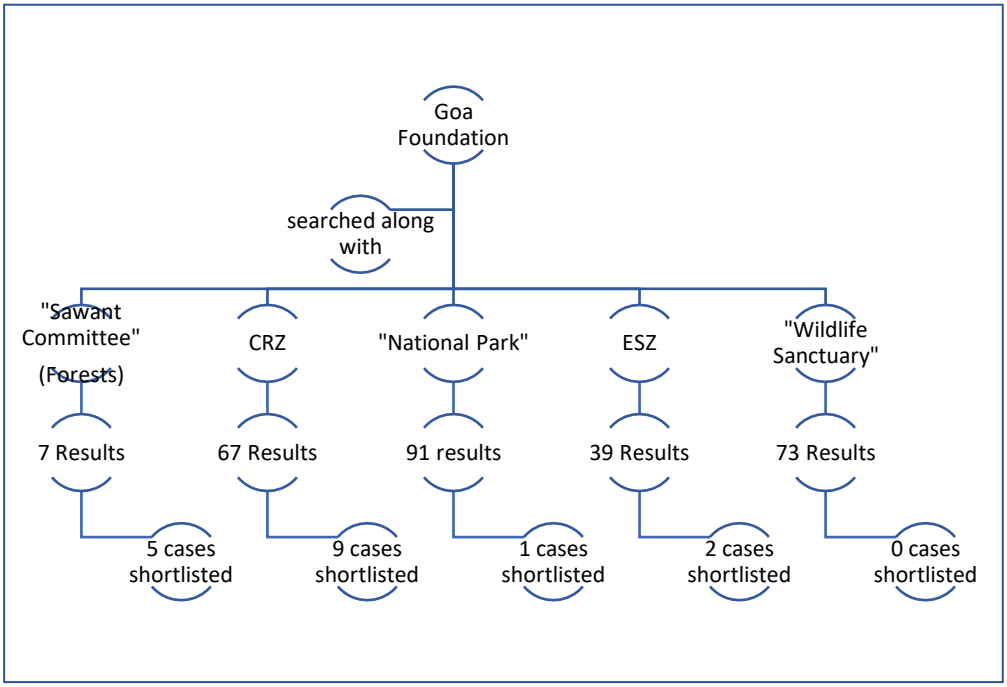
The next set of search parameters were "goa foundation" + "national park" and that yielded 91 results. All results were manually examined and sorted for conclusive procedural rulings on environmental justice matters. Those rulings that were not conclusive for the case, but instead involved some form of

deferment of the legal matter, were excluded from further analysis. The final shortlist then comprised three cases. One of the cases, however, was regarding a disputed “forest” area, and was therefore included with the cases under “forests,” taking the total of the cases regarding ‘forests’ to 5. The remaining two cases were identical, and therefore one of them was dropped. Ultimately, only n=1 case was shortlisted.

This was followed by the search parameters "goa foundation" + ESZ. This yielded 39 results. But the final number of cases that fit the criteria were (n=2) for reasons similar to the ones stated above. After that, "goa foundation" + "wildlife sanctuary" were input as search criteria, and yielded 73 results. However none of the results could be included. Either, the cases had already been covered in one of the previous categories, or Goa Foundation wasn’t one of the parties, or the cases were not about Goa but other states.

Finally, total of (n=17) cases were shortlisted for analysis for the study. The following schematic demonstrates the search process and the 17 results thus obtained:

Figure 1. Schematic of Research Design



Methods

The 17 cases that were shortlisted into 4 categories of toponymic disputes ("forests," "CRZ," "national park," and "ESZ") were used as media texts and were subjected to critical discourse analysis using Pierre Bourdieu's concept of juridical field. It is important to note that the study does not wish to, nor is qualified to, conduct a legal analysis. Using the judgements as media text, the study scrutinized the discursive language involved and critically analyzed the power structures and competing fields within the juridical field of environmental law as it played out in the context of the Indian State of Goa. In this regard, this is a qualitative study that has utilized an approach that deploys both grounded theory, as well as, emergent coding. Grounded theory was developed by two sociologists Barney Glaser and Anselm Strauss. It is a

systematic methodology in qualitative research that involves the construction of a hypothesis based on the collection and analysis of data (Khan, 2014). In emergent coding, the codes that are used to categorize the data emerge from the data itself and do not rely on prior assumptions or expectations. In this study, grounded theory was used because an interest in studying legal cases led to the analyses of the power dynamics inherent within the legal discourse from ground up, resulting in the formulation of the hypothesis of this study. However, along the way, certain emergent themes of toponyms revealed themselves, turning the course of the study towards the analysis of the usage of environmental toponyms in legal environmental disputes in Goa, through a Bourdieusean lens.

Toponymic disputes about "Forests"

Five cases were shortlisted where the dispute was centered around the definition of the term "forest." Two of the cases were argued before the National Green Tribunal, the third before the Bombay High Court, and the remaining two were argued before the Supreme court of India. In each case, a certain land area had been disputed for its categorization as a forest based on the criteria set up by the Sawant Committee.

Currently, India's forests are governed by the National Forest Policy of 1988. The first National Forest Policy (NFP) in independent India was brought into effect in 1952 and a new version of NFP was introduced in 1988. The key policies that presently govern India's forests and regulate activities

include Forest Conservation Act 1980, National Forest Policy 1988, Indian Forest Act 1927, Panchayats Extension to Scheduled Areas Act 1996, Forest Rights Act 2006, Compensatory Afforestation Fund Act 2016, and the Wildlife (Protection) Act 1972. However; there is no clear nationally-accepted definition of 'forest.' States are responsible for determining their definition of forests (Tandon & Warrier, 2020).

The prerogative for the states to determine a definition for forests stems from a 1996 Supreme Court order called the T.N. Godavarman Thirumulkpad versus the Union of India judgment, where the debate over defining a forest came to the fore. In 1995, a writ petition was filed by T.N. Godavarman Thirumulkpad with the Supreme Court of India to protect the Nilgiris forest land from deforestation by illegal timber operations in a Tamil Nadu forest. This petition later went on to influence the national forest policy. As per the judgement, the Supreme Court interpreted the word "forest" for its "dictionary meaning" covering all statutorily recognized forests, whether designated as reserved, protected or otherwise. State governments were ordered to constitute an expert committee that would identify, notify and demarcate areas as forests. This committee was to also provide further guidelines for the use of forest areas, including diverting forestland for non-forest use, under the Forest Conservation Act, 1980 (Tandon & Warrier, 2020).

The Sawant committee was appointed by the State of Goa in 1997 for the purpose of identification of forests in the State, as per the directives of the Supreme Court in the T.N. Godavarman case. The Committee was presented with the following three tasks (Sawant, 1997):

i. To identify areas which are "forests", irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest;
ii. To identify areas which were earlier forests but stand degraded, denuded or cleared; and
iii. To identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

In 1997, the Committee submitted a 'Second Interim Report' wherein it has been enumerated that the Committee took into consideration all relevant factors, including the guidelines issued by the Government of Goa, and laid down the following three criteria for the purpose of identifying a forest (Sawant, 1997):

1. 75% of the composition of the trees in the forest should be forestry species.
2. The area should be continuous to government forest and if in isolation the minimum area should be 5 hectares.
3. The canopy density should not be less than 0.4, i.e. 40%.

Toponymic disputes about "Coastal Regulation Zone" (CRZ)

From a total of 67 results, 9 cases were short-listed that pertain to disputes regarding CRZs in Goa. In all of the cases, Goa Foundation represents the interests of Goa's coastal environment and ecology against various tourism, development, and construction agencies who seek permission to carry on activities in areas demarcated as CRZ.

As per section 3 of Environment Protection Act, 1986 of India, the coastal land up to 500m from the High Tide Line (HTL) and a stage of 100m along banks of creeks, lagoons, estuaries, backwater and rivers subject to tidal fluctuations, is called the Coastal Regulation Zone (CRZ) where restrictions are imposed on setting up and expansion of industries or processing plants etc. Coastal areas are classified under 4 zones: CRZ-1, CRZ-2, CRZ-3, CRZ-4 (Coastal Regulation Zone, 2022):

- CRZ-1: These are ecologically sensitive areas that are essential in maintaining the ecosystem of the coast, lying between low and high tide lines. Exploration of natural gas and extraction of salt is permitted.
- CRZ-2: These areas are urban areas located in the coastal areas.
- CRZ-3: There include rural and urban areas which fall outside of 1 and 2. Only certain activities related to agriculture and some public facilities are permitted.

- CRZ-4: This lies in the aquatic area up to territorial limits where fishing and allied activities are permitted; however, no solid waste is permitted to be let off in this zone.

As per the Coastal regulation zone notification 2019, CRZ-III areas(rural areas) were further divided into two categories namely CRZ-IIIA and CRZ-IIIB of which the former denotes an area with population density of more than 2161 persons per square km while the later denotes rural areas with population density less than 2161 persons per square km. As per the 2019 notification, the CRZ-IIIA areas have a no-development zone (NDZ) of 50 meters from the high tide line (HTL) as compared to the 200 meters as stipulated in the notification of 2011. The CRZ-IIIB areas will have a no development zone of 200 meters from the HTL. The 2019 notification also promotes the development of tourism infrastructure in the coastal areas. It also proposes a no development zone of 20 meters for all islands (Coastal Regulation Zone, 2022).

Toponymic dispute about "National Park" and "Eco-sensitive Zone" (ESZ)

The one case that met the criteria for "national park" was argued before the Supreme Court of India and was between Goa Foundation and Union of India (2013). The case pertains to Goa Foundation's objections to certain mining activities in Goa and their impact on Goa's ecology. Goa foundation requested for a ban on mining activity within 10 km of any

National Parks/Wildlife Sanctuaries in order to protect the flora, fauna and wildlife habitat of National Parks and Wildlife Sanctuaries.

The two cases that met the criteria for “ESZ” were argued between Goa Foundation and Union of India before the National Green Tribunal in the years 2013 and 2020 respectively. Goa foundation is also a member of MoEF National Committee on Identifying Parameters for Designating Ecologically Sensitive Areas in India. Both cases pertain to the protection of the ecology of the Western Ghats. The Goa foundation has requested the NGT to not issue any consent/environmental clearance or NOC or permission under the Environment Protection Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Forest Conservation Act, 1980 or the Biological Diversity Act, 2002, (for short the "Environment Act", "the Water Act" , " the Air Act" , " the Forest Act," and " the Bio-Diversity Act," respectively) within the Western Ghat areas, particularly in relation to those which have been demarcated as Ecological Sensitive Zone I (ESZ 1) and Ecologically Sensitive Zone II (ESZ 2).

Eco-Sensitive Zones (ESZs) or Ecologically Fragile Areas (EFAs) are areas in India notified by the Ministry of Environment, Forests and Climate Change (MoEFCC), Government of India around protected Areas, National Parks and Wildlife Sanctuaries to regulate and manage activities around such

areas. They also serve as zones of transition from areas of high protection to areas of lower protection (Eco-Sensitive Zone, 2022).

Hypothesis

The hypothesis for the study is that through the analysis of the use of environmental toponyms (such as, “forest,” “CRZ” (Coastal Regulation Zone), “wildlife sanctuary,” “national park,” and “ESZ” (Eco-sensitive Zone)) in legal arguments, as evidenced in judgements passed by the High Court, Supreme Court, and the National Green Tribunal, it is possible to prove that the juridical field of environmental law in Goa (India) is gendered.

The first step in the analysis involves coding of data. The format in which the cases are written is such that each case is divided into its key points and arguments. Each of the points in every case are then coded into one of the following 4 categories for analyses – instances of gendering in court; instances of non-gendering in court; instances of gendering out of court; instances of non-gendering out of court. Arguments in-court and out-of-court are distinguished from each other based on whether they directly pertain to the key arguments made in the case (in-court) or if they are referring to background information regarding the case (out-of-court). This entire coded database for understanding the coding done on the basis of “in court,” “out of court,” “gendered” and “non-gendered” can be found in the Appendix.

Based on existing literature, for the purpose of this study, ecofeminism is defined as the study of the intersection of patriarchy and modern-day

capitalism resulting in the exploitation of both the women and the environment (D'Eaubonne, 1974/2022; Gaard, 1993; Mies & Shiva, 1993). In this study, from an ecofeminist perspective, in order for a legal occurrence to be categorized as gendered, it must result in an outcome that has historically been detrimental towards women, or selectively beneficial for men. In this way, the study will look at the outcome of legal language and discourse used in order to study its gendered nature, as opposed to looking at the source of the legal language or discourse.

Critical Discourse Analysis

The methodological framework that the study used to scrutinize the legal texts through Bourdieu's juridical field is that of Critical Discourse Analysis (CDA). CDA is often used for analyzing the ways in which discourses function as instruments of power and control. CDA examines the social inequalities, power dynamics, and processes at play in the production of a discourse. It facilitates the uncovering of otherwise opaque links between texts, their discursive properties, and broader social and cultural power relations (Blommaert & Bulcaen, 2000). According to Fairclough and Wodak (1997; as mentioned in Van Dijk et al., 2015), the key tenets of CDA are as follows:

1. CDA addresses social problems
2. Power relations are discursive
3. Discourse constitutes society and culture

4. Discourse does ideological work
5. Discourse is historical

One of the key "symbolic" resources that supplies power to a group or institution is its access to or control over public discourse and communication. The study draws on the contributions of Van Dijk for examining the legal texts (judgements) on environmental cases as discourse with an aim to uncover the social and cultural practices involved in the creation and production of Bourdieusean concepts, such as, division of labor, symbolic domination, and law's universalization and neutralization effect within the juridical field of environmental toponymic disputes in Goa, India.

Since this is a media analysis and not a legal analysis, the study takes into account the various discursive techniques as framed by Bourdieu's juridical field that are deployed by the various actors (lawyers, judges, activists, experts, etc.) during a case, in order to gain monopoly over the right to determine the law. Based on type of discursive practices that are relevant, inferences have been drawn for each case. The study examines the text in terms of its potential meanings and its ability to produce a power dynamic. It further engages in the analysis of the language used and how language is deployed strategically to produce certain semantic themes of the text. It also looks at how expert discourses are treated and the ones whose narratives are taken into account. The study identifies the various dimensions of discourse, including semantic, linguistic, and strategic dimensions of the legal texts

studied. It relates the micro-elements of texts to macro discourses in order to shed light on existing social relations and power dynamics at play within the juridical field of environmental toponymic disputes in Goa.

Based on critical discourse analysis, the next step involves formulating a central research question and follow up questions that serve as deductive codes and searching for the answers within the legal texts.

Central Research Question

R: What are the various dimensions of power evident in the juridical field of environmental law in Goa and are these dimensions involved in creation of gendered violence? If yes, how?

The follow up research questions are:

R_1: What are the hierarchies within the juridical field of environmental law in Goa?

R_2: How do instances of symbolic capital and symbolic domination manifest within the toponymic disputes in Goa?

R_3: What does the gendered dimension in the power dynamics at play within the juridical field of environmental disputes look like?

R_4: How are each of the four quadrants in the coded data different from each other?

Further steps involve using deductive coding for identifying the instances in the legal text when the following aspects of Bourdieu's juridical field are applicable:

1. Division of labor – creation of internal hierarchies and competition over monopoly on the right to determine law
2. Rationalization and formalization – the ability to pass a ruling and then formalize it into law
3. Neutralization – the use of passive or impersonal constructs to exhibit autonomy and impartiality of law
4. Universalization – the use of constative verbs, allusion towards the omni-temporality of law, presupposition of ethical consensus, use of analogies, and the power to arbitrarily apply *restrictio and extensio,* as and when deemed necessary
5. Use of legal language to frame extra-legal constructs into legal terms to mean something different from their regular usage.
6. Use of a body of precedents
7. Symbolic power of naming and appropriation of terms
8. Symbolic domination
9. Symbolic power of law in the form of habitus
10. Relation between symbolic capital and economic capital

After all the cases have individually been analyzed, a round of analysis will be conducted in order to identify any common themes and patterns that emerge across all the legal texts used as data in this study across the 4 categories - instances of gendering in court; instances of non-gendering in court; instances of gendering out of court; instances of non-gendering out of court.

ANALYSIS

As per the above methodological framework, all 17 cases are analyzed below. The analysis of the individual cases include answers to the research questions R_1, R_2, and R_3.

Case 1, **Bombay High Court, 16th October, 1998 (Coding data available in Appendix A)**

Bombay High Court The Goa Foundation & Another vs The Conservator Of Forests & ... on 16 October, 1998

Equivalent citations: 1999 (2) BomCR 695

Author: R Batta , Bench: A Desai, R Batta, ORDER: R.K. Batta, J.

Case Analysis

The case (*The Goa Foundation & Another vs The Conservator Of Forests &...*, 16th October, 1998) is about a disputed piece of land. While one party (the respondent – Tata Housing Development Co. Ltd.) claims that it is not a forest and has sought various permissions to construct a residential complex on that piece of land, the other party (the petitioner – Goa Foundation) claims that it is a forest, and as per the Forest Conservation Act of 1980, permission should have been sought from the Central Government for using it for construction of a residential complex. The petitioners have also questioned the validity of all the *sanads* (Indian government charter) and permissions sought by the respondents from the local as well as state authorities for conversion of the land from an agricultural land (A-1 and A-2)

to a settlement zone (S-2) and for the subsequent construction of a residential complex. The juridical field in this case is rather vast and comprises several players or agents, including those from the judiciary, property builders, the state government, local political bodies, as well as environmental activists.

Throughout the case, different sets of criteria and precedents were used by both rival parties in order to define the toponym 'forest' and determine whether a specific area of land qualifies as a forest or not. While the petitioner's relied on the guidelines of the Forest Conservation Act of 1980; The TN Godavarman case; Sawant committee's final report; the Shivanang Salgaonkar v. Tree Officer case; the Samatha v. State of AP case; the JC Wagmare v. The State of Maharashtra case; and the Janu Chandra v. State of Maharashtra case, the respondents used the reports prepared by M/s. AIC Watson Consultants Limited and M/s. GeoProfiles and Engineering Services; the Sawant Committee interim report, as well as the reports furnished by Dr. Ashok Joshi and Dr. V Raghavswamy. All of these guidelines, reports and precedents are independently valid. However, it was ultimately up to the judges to use their symbolic power and the autonomy of law to decide which of the precedents or guidelines they chose to consider while making their final decision regarding the case, through the processes of formalization, rationalization, and universalization.

There are clear hierarchies of power that exist within this juridical field. The State Government and the Deputy collector used their social capital to grant the necessary permissions. In fact, the Conservator of forests used his

symbolic power and granted permission to fell trees, even though earlier, the permission was denied by the Deputy Conservator of Forests. What is further suspect is that the Conservator and deputy conservator of forests when later made a part of the Sawant committee, categorized survey no. 69/4 as a forest.

The respondent Tata Housing relied on its cultural as well as economic capital to flout the permissions it was granted and not only felled more than the permissible number of trees, but also created temporary structures in the 'no construction' zone. They also built an access road by cutting the land by 7 to 8 meters in height from the road level, thus disturbing the gradient and creating a risk of landslides.

In the context of this case, within the juridical field, the judges ultimately ruled in favor of Goa Foundation thereby challenging the existing power structures involving the State and economic-capital-rich Tata Housing. However, throughout the case, there is no mention of the human impact of all the activities conducted by the respondent. Some of the questions that should have been considered during the arguments are – Who will be affected most if the agricultural land A-1, A-2 is converted into a settlement zone S-2? Will it be farmer women who collect and sell the forest/agricultural produce? What will happen to their livelihood? Further, if there were to occur landslides due to the development activity, whom would it impact? Who are the people living around that area who would bear the brunt? How are women impacted due to construction activities?

Case 2, Supreme Court of India, 18th August, 2008 (Coding data available in Appendix B)

Supreme Court of India

A. Chowgule & Co. Ltd vs Goa Foundation & Ors on 18 August, 2008

Author: H S Bedi

Bench: Tarun Chatterjee, Harjit Singh Bedi

Case Analysis

This case (*A. Chowgule & Co. Ltd vs Goa Foundation & Ors,* 18th August, 2008) is about a disputed piece of land where the appellant describes it as an agricultural/dry crops land, and wants to use it for setting up a mining plant; whereas, the respondents call it a 'forest' land and state that the appellants should have sought permission from the Central government for using it for non-forest purposes, as per the Forest Conservation Act (FCA), 1980. The respondents use the precedent of the TN Godavarman case to describe the disputed piece of land as a 'forest.' Both parties used their symbolic and cultural capital to assert their points of view; however, ultimately, using law's autonomy and impartiality, the judges applied their symbolic power to decide in favor of the respondents.

Throughout the arguments posed by either party, neither of them considered the impact that the change of status of the land from forest/agricultural use to non-forest/non-agricultural use would have on the people who potentially work on the land and depend on it for their livelihood. Women in India constitute over 42 percent of agricultural labor and undertake

around 80 percent of farm work, but own less than two percent of farmland. It is likely that some of the women were displaced by the decision of de-reservation and lost their livelihoods ("India's Women Farmers," 2022).

Also, despite the disputed land having 3000 trees, the appellant used their cultural and economic capital, as well as, their habitus to subvert due process and managed to get the required licenses from the State authorities. It is also interesting that the state authorities decided to approach the Centre for approval post facto having granted all the necessary licenses for conversion of the land for non-agricultural use, as well as allotment of 4.44 hectares of land to the appellant.

Three different aspects are interesting to note while examining the juridical field of environmental law in this case, in which, the two key agents competing for the right to determine law are the State Government and the Judiciary. First, while the State machinery used its symbolic power to lease out a plot of land to a private individual without the requisite permissions from the Centre, the judiciary used legal precedents and its arbitrary power to interpret law in order to safeguard environmental interests. Secondly, the field inherently allows for manipulation of rules using economic capital – an amount of Rs. 6 lakhs was paid by Chowgule and co., as conversion fees, for the use of land for non-agricultural purposes. Provisions like these help in reinforcing the power structures present in society, where those with sufficient economic capital can exchange it for gaining more social capital and hence, can use money to find their way around rules and legislations. Thirdly, the

legal proceedings for this case span over a decade during which time, some of leases expired, some part of the mining plant was shifted from the original location for which permissions had been sought, and the mining company had already gone ahead and secured international buyers for their product. They had sufficient economic and social capital to keep their operations running over this protracted legal battle, and to also keep paying the legal fees. The juridical field in this sense is ultimately biased towards those with economic capital, who can monetarily afford to keep a legal battle going. Even though ultimately, the judges ruled against the mining company, the field and systems of power within society are such that they keep reinforcing and furthering existing inequities in society.

Case 3, National Green Tribunal, 30th July, 2014 (Coding data available in Appendix C)

National Green Tribunal The Goa Foundation vs State Of Goa Anr on 30 July, 2014

CORAM:

Hon'ble Shri Justice V.R. Kingaonkar (Judicial Member)

Hon'ble Dr. Ajay A. Deshpande (Expert Member)

Case Analysis

This case (*The Goa Foundation vs State Of Goa Anr,* 30th July, 2014) deals with the dispensation of two applications (Application numbers.14 & 16 (THC) of 2013 NGT (WZ)), both of which deal with identical issues regarding the setting of criteria for the identification of forests in the State of Goa and its

implementation thereof. Application No.14 (THC) of 2013 challenges the criteria (specifically no. 2 and 3) applied in Goa for identification of a private forest, and Application No.16 (THC) of 2013 requests for the identification of degraded forest lands and early completion of identification of private forests. Both applications have been registered by Goa Foundation versus the State of Goa.

The criteria adopted by the two committees that were appointed by the State Government for identification of forests were:

(a) 75% of tree composition should be the forestry species,

(b) The area should be contiguous to the Govt. forest and if in isolation, the minimum area should be 5 Ha,

(c) Canopy density should not be less than 0.4.

The applicants argue against criteria (b) and (c), because a lot of forests that were dense earlier, now stand denuded due to human activity and therefore may not have a canopy density of 0.4 or may not be 5 Ha in total area. Despite the Forest Conservation Act (FCA) being a central legislation, the applicants argue that none of the criteria have been approved by the central government or by Goa government. Instead, the applicants submit that as per the Forest Survey of India, forest vegetation in the country falls specifically in three mutually inclusive canopy density classes:

(1) Very dense forest (with crown density) 0.7 to 1,

(2) Moderate dense forest (with crown density) 0.4 to 0.7,

(3) Open forest (with crown density) 0.1 to 0.4

Therefore both the applicants and the respondents use vastly different criteria for defining the environmental toponym ‘forest.’ The Sawant and Karpurkar committees appointed by the State government to identify forests, in their interim report indicated the presence of approximately 256 sq.km of private forest in Goa. However, in a later report, they only mentioned identifying a total of 67 sq.km of private forest. According to the committees, the process of identifying forests is long and therefore still incomplete. However, the applicants argue that the delay in the process of completing the identification and demarcation of private forest areas is leading to degradation of the forests due to illegal cutting of trees and diversion of land-use.

The hierarchy within the juridical field is evident in this case, as the respondent argues against the suitability of the National Green Tribunal to preside over this matter. As per the respondent, since this is a case regarding a Supreme Court matter (TN Godavarman case) that directed the State government to appoint committees for identifying forest areas, the applicant should appeal to the Supreme court and not the NGT. The NGT agreed to this argument and left it upon the applicant to take the matter of challenging the criteria for forest identification to the Supreme Court. As for completion of the process of identification of forests by the two committees, the NGT directed the Chief Secretary of Goa, to call for a meeting to work out a time-bound action plan for early completion of forest identification and demarcation in the State of Goa within next six weeks, and to submit a time-bound program to the Tribunal within eight weeks.

Once again, this case makes one question the effectiveness of the juridical field in bringing about any form of tangible change within a reasonable time period. It was in the year 1996 within the juridical field that orders were given by the Supreme Court to all the State governments to commence the task of identification of private forests. This task wasn't completed until 2020, and even now, some follow-up work is in process (https://forest.goa.gov.in/node/1174). As an outcome of arguments within the juridical field by various agents, first the Sawant Committee was formed for the purpose of identifying private forests in 1997, followed by the Karapurkar committee in 2000. When both of these committees were unable to complete the task within a few years, two more new committees were instated for North and South Goa respectively (2012 – 2018). When this also failed, then the Sharma committee was appointed (2018), which finally identified an area of 46.11 sq km as private forests (2019), and this was ultimately accepted by the National Green Tribunal (NGT) in 2020. From 1997 to 2020, numerous legal battles over forest conservation have taken place, wherein the reports of the Sawant committee and the Karapurkar committee have been relied upon. The total private land identified by them as forest land was close to 67 sq km. However, over the years, with various committees taking over, the total area of private forest land shrank to 46.11 sq km. Further the Sawant and Karapurkar committee's reports can no longer be considered valid. While this does not retroactively affect the cases that were won on the basis of the report

of these two committees, it certainly makes one question the mutable, arbitrary nature of decisions made within the juridical field.

Case 4, National Green Tribunal, 4th September, 2014 (Coding data available in Appendix D)

National Green Tribunal The Goa Foundation Anr vs Marmugao Planning Devpt. ... on 4 September, 2014

Before the National Green Tribunal (Western zone) bench, Pune

Application no. 37(thc)/2013

CORAM:

Hon'ble Mr. Justice V.R. Kingaonkar (Judicial Member) Hon'ble Dr. Ajay A. Deshpande (Expert Member)

Case Analysis

This case (*The Goa Foundation Anr vs Marmugao Planning Devpt…,* 4th September, 2014) is about a disputed piece of land. The applicant is Goa Foundation, and they have asked for the permissions of development granted by the State authorities on the piece of land to be quashed. According to Goa Foundation, the land in question is a forest area and no development should be permitted on it without prior permission of Central government. The land developers used their symbolic power to fell trees in the said disputed land after seeking permission from the local Marmugao Planning and Development Authority to develop the land. The Deputy Conservator of forests also asked for the this permission to be quashed. The Town Planning Department was also asked to rectify the decision to change the status of the area into a

settlement zone. Despite these official communications, symbolic domination was used and the Conversion Sanad was issued by the Collector of South Goa for the use of land for building a residential area.

The respondents argue that the permissions were granted because the area was not identified as a forest by either the Sawant or Karapurkar committee. However, it is important to note that the committees only identified 67 sq.km of private forest and mentioned that the rest of the identification work remained uncompleted due to certain difficulties. Ultimately, the judges used the autonomy of law at their discretion to discern that the applicant did not provide sufficient rationale for proving that the area in question is indeed a forest, and so the petition was partly dismissed. However the developers were held accountable for compensatory afforestation of the areas in which they felled excess trees illegally.

Case 5, Supreme Court of India, 17th September, 2003 (Coding data available in Appendix E)

Supreme Court of India

The Tata Housing Development Co. ... vs The Goa Foundation And Ors. on 17 September, 2003

Equivalent citations: AIR 2003 SC 4238, 2003 (7) SCALE 589, (2003) 11 SCC 714

Author: B Agrawal

Bench: Y Sabharwal, B Agarwal

JUDGMENT B.N. Agrawal, J.

Case Analysis

In this case (*The Tata Housing Development Co. ... vs The Goa Foundation And Ors*, 17th September, 2003), a plot of land was converted from agricultural zone to a settlement zone by the developers/owners of the plot, after acquiring all the required *sanads* (permissions and licenses) from the various local bodies (Chief Town Planner, Deputy Collector, Town and Country Planning Department, Gram Panchayat, etc.) for conducting development activities. The only condition was that the natural landscape formed by trees as seen from river Mandovi was not to be disturbed. While the Tree Officer rejected the permission for felling of 51 trees in the plot, the Conservator of Forest, Goa, who was the appellate authority, granted permission to fell 32 trees out of 51 standing on the appellants' plot, subject to the condition that the appellants were to plant 89 trees in their place.

All of the above took place before the TN Godavarman case of 1996 wherein, the State governments were directed to appoint committees for the identification of private forests. After this, the Sawant committee was appointed for the identification of private forests in Goa. The above plot of land did not feature in their report. However, when the Sawant committee was pointedly directed to survey the plot and categorize it, they said that the plot was indeed a forest in their third interim report. The criteria adopted by the committee for this categorization were (i) Satellite Imagery and Toposheets of 1960; (ii) Slope Analysis Maps prepared in 1988; and (iii) Enumeration of the

plants in a 50 metre wide belt adjoining the boundaries of the said plot only on three sides, i.e., the North, East and West, but excluding the South where there was a huge public structure admeasuring 1000 sq. metres.

The appellant however categorically rejected satellite imagery and toposheets as a correct indicator for identifying forest stating that satellite imagery of the nature green cover would also include most of the plantations/seasonal crops, such as cashew, coconut, arecanut, etc., which are not forest species, and therefore could not be considered for the purpose of classifying a forest. As per the appellant, their plot did not meet any of the three criteria originally utilized by the Sawant committee in their second interim report for the identification of private forests ((i) 75% of its composition should be forestry species, (ii) The area should be in contiguous to Govt. Forest and if in isolation the minimum area should be 5 hectare, (iii) The canopy density should not be less than 0.4), and therefore arguably, the plot could not be considered as a forest land. The appellant relied on various reports from agencies and expert opinions to prove that the said plot of land was not indeed a forest.

However, the High Court accepted Sawant committee's third interim report which is why the appellant took the matter to the Supreme court. At the Supreme Court, the judges ruled in favor of the appellant by stating that it was wrong on the part of the High Court to accept the third interim report when all the conditions of the second interim report were not met by the plot of land.

Case 6, Supreme Court of India, 11th November, 2013 (Coding data available in Appendix F)

Supreme Court of India

Goa Foundation vs Union Of India & Ors on 11 November, 2013

Author: A K Patnaik

Bench: A.K. Patnaik, Surinder Singh Nijjar, Fakkir Mohamed Kalifulla

Case Analysis

This case (*Goa Foundation vs Union Of India & Ors*, 11th November, 2013) is a common judgement passed on a number of cases filed at the Supreme Court regarding the regulation of mining activities in the State of Goa. The Justice Shah Commission was appointed in 2012 to look into all the illegal mining leases and mining-related operations taking place in Goa. On the basis of findings in the report of the Justice Shah Commission on illegal mining in the State of Goa, the Goa Foundation filed a writ petition, as a Public Interest Litigation, asking the Union of India and the State of Goa to take action for the termination of the mining leases of lessees involved in mining that were in violation of the Forest (Conservation) Act, 1980, the Mines and Minerals (Regulation and Development) Act, 1957, the Mineral Concessions Rules, 1960, the Environment (Protection) Act, 1986, the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as the Wild Life (Protection) Act, 1972. Goa Foundation also asked for the prosecution of all those who committed offences under the different laws and were involved in the

pilferage of State revenue through illegal mining activities in the State of Goa including the public servants who aided and abetted the offences. The Goa Foundation also sought for the appointment of an independent authority to control, supervise, and regulate mining operations in Goa and to ensure the implementation of laws.

The respondents have all filed cases (all of which are being dispensed off in this judgement), calling the Justice Shah Commission report as illegal, asking for it to be quashed, along with the order by the government of Goa that suspended all the mining operations based on the report. The judges decided that the Justice Shah Commission report will not be quashed, but at the same time, *"we cannot also direct prosecution of the mining lessees on the basis of the findings in the report of the Justice Shah Commission, if they have not been given the opportunity of being heard and to produce evidence in their defence and not allowed the right to cross-examine and the right to be represented by a legal practitioner before the Commission as provided in Sections 8B and 8C respectively of the Commissions of Inquiry Act, 1952. We will, however, examine the legal and environmental issues raised in the report of the Justice Shah Commission and on the basis of our findings on these issues consider granting the reliefs prayed for in the writ petition filed by Goa Foundation and the reliefs prayed for in the writ petitions filed by the mining lessees, which have been transferred to this Court."*

The court ultimately upheld the decision of the State to suspend all mining operations. It also ruled that the dumping of minerals outside the

leased area of the mining lessees is not permissible under the MMDR Act and the Rules made thereunder. Further, it prohibited mining activities within one kilometer from the boundaries of National Parks and Sanctuaries in Goa. Lastly, it decided that it was for the State Government to determine as a matter of policy the manner in which mining leases were to be granted in future, but the constitutionality or legality of the decision of the State Government could be examined by the Court in exercise of its power of judicial review.

Case 7, National Green Tribunal, 18th July, 2013 (Coding data available in Appendix G)

National Green Tribunal

The Goa Foundation Anr vs Union Of India Ors on 18 July, 2013

Case Analysis

The Goa Foundation along with another applicant (the principal convener of the "Save the Western Ghats March") in this case (*The Goa Foundation Anr vs Union Of India Ors*, 18th July, 2013 have requested the National Green Tribunal (NGT) for the preservation and protection of the Western Ghats by making sure that no permissions for any sort of development activity are granted in the ecologically sensitive zones (ESZ 1, ESZ 2, and ESZ 3) of the Western Ghats. The background of this case which includes the chronology of events is difficult to follow due to the number of times cases have been listed and pending before the various State and juridical authorities. The autonomy of the juridical field allows for it to accommodate for such extended delays in judicial proceedings.

In many ways, this case is regarding the juridical power of the NGT itself. The case constantly keeps questioning the power and authority of the NGT over the various legislative bodies under certain circumstances. It therefore reinforces the hierarchies present within the juridical field of environmental law in India, wherein the Supreme Court and High Courts are considered higher authorities and occupy a superior position to a body like the NGT.

An interesting aspect of the case involves the delays at the hands of various legislative bodies. The case questions the NGT's authority in bringing to task the various legislative bodies for delays caused by them, since a delay does not technically qualify as a 'dispute,' and the NGT has been appointed to solve environmental 'disputes.' Therefore, through the process of appropriation of a non-legal term 'dispute' into a legal definition, the juridical field explores and exhibits its own symbolic power. Ultimately, the judges decide that as per the precautionary principle (prevention of harm to the environment), the applicant has a legal right to approach the Tribunal and pray for relief within the scheme of the NGT Act.

Case 8, National Green Tribunal, 28th September, 2020 (Coding data available in Appendix H)

National Green Tribunal

Goa Foundation vs Union Of India on 28 September, 2020

Bench: Adarsh Kumar Goel, Sonam Phintso Wangdi, Nagin Nanda

Case Analysis

This case (*Goa Foundation vs Union Of India*, 28th September, 2020), although occurring in 2020, is a continuation of the previous case (2013) regarding preserving the ecology of the Western Ghats. In this case, some of the recommendations made by the various committees to the Ministry of Environment, Forest and Climate Change (MoEF&CC) have been accepted, however, certain States and legislative bodies have requested the MoEF&CC for a larger number of areas to be excluded from eco sensitive zone (ESZ), so that development activities can be permitted in those areas. The NGT did not see merit in a similar request made in 2017 and had declined permission for exclusion of certain areas from ESZ in the Western Ghats region. However, the matter has continued to get delayed, due to the delay by the MoEF&CC to get all the States on the same page regarding the total area that needs to be covered by ESZ. The court has therefore directed the MoEF&CC to conclude on the matter before 31.12.2020, as any default thereafter will result in the stopping of the salary of the Advisor, ESZ Division, MoEF&CC. The juridical field therefore used its symbolic power and authority over the legislative body to arrive at a decision in a speedy manner.

Case 9, Bombay High Court, 29th April, 1992 (Coding data available in Appendix I)

Bombay High Court

The Goa Foundation And Another vs The Konkan Railway Corporation ... on 29 April, 1992

Equivalent citations: AIR 1992 Bom 471, 1994 (1) MhLj 21

Bench: M Pendse, G Kamat

Case Analysis

As per the case (*The Goa Foundation And Another vs The Konkan Railway Corporation...*, 29th April, 1992), The Konkan Railway Corporation Ltd., was a public limited company that was set up by the Central Government to provide a broad gauge railway line from Mumbai to Mangalore and thereafter to extend into the State of Kerala. The total length of the line was 760 km, of which 106 km were to run through the State of Goa, necessitating the construction of tunnels, bridges, etc., over rivers. Goa Foundation approached the Bombay High Court to request for a stay on the project unless the Corporation sought environmental clearance for its project from the Ministry of Environment and Forests, Government of India, as per Article 226 of the Indian Constitution. As per Goa Foundation, under the provisions of Section 3(2)(v), the Ministry of Environment restricts setting up of any industries or operations in CRZs. Also the project would disturb the delicate manmade ecosystem of Khazan lands, depleting the river basin, and impacting the agriculture and fisheries in the Khazan ecosystem.

The Corporation argued against the claim that Khazan lands would be destroyed and said that they employed their own personal experts to ratify that the project would not destroy the environment in any way. The judges, using autonomy of law, through a proves of rationalization and formalization, also agreed with the Corporation and said that out of 227 hectares of Khazan land, only 30 hectares would likely be affected. As per the judges, given the scale

and benefit of the project, it should be allowed to continue, as environmental concerns of a few should not hamper progress, or get in the way of the benefit to many others.

The internal hierarchy as described by Bourdieu under division of labor is explicitly at play here. The Railway Corporation, having been formed by the Central government enjoys a symbolic capital that enables it to get experts from within its own habitus to testify for it. The Goa Foundation does not enjoy a similar symbolic power and can only rely on the provisions of the constitution.

The symbolic capital and the resulting symbolic domination enjoyed by the corporation is also evidenced in their power of not being governed (use of *restrictio*) by the Environmental Act and the notifications issued thereunder…

"The Corporation points out that the provisions of the Environment Act and Notifications issued thereunder are not binding upon the Railway Administration and Corporation, apart from the fact that alt requisite steps for ensuring that the environment will not be adversely affected are already undertaken."

The interrelatedness of symbolic and economic capital is also on display when the courts decided that the financial cost incurred by the Corporation due to any delays that would be caused by any additional environmental assessments are not justified. It is a case of symbolic domination where the courts unilaterally decided that the interests of the

railway project are more important to consider than the environmental concerns of the petitioners, and once again gave importance to the opinion of specialized agents.

Completely overlooking the argument over the toponym, the Court determined that the term ‘industry’ will not be applicable to the Railway Corporation, and therefore there cannot be a restriction on their operations within the CRZ. By using the legal-language device of *restrictio*, the judges limited the application of an ordinary word ‘industries’ to exclude the railway corporation. Similarly, it determined that environmental clearance was required for construction of permanent buildings, workshop, harbours, or thermal plants and not for construction of a railway line. Therefore, once again, by means of *restrictio*, the Court decided that the provisions of Environmental Act have no application on railways, which follow the Railways Act that determines that no clearance is required. The juridical field therefore enables the Courts to use their symbolic domination for their autonomy to rationalize, formalize, and universalize legal constructions.

Case 10, Bombay High Court, 20th February, 1995 (Coding data available in Appendix J)

Bombay High Court

The Goa Foundation And Others vs The North Goa Planning And ... on 20 February, 1995

Equivalent citations: AIR 1995 Bom 342, 1996 (5) BomCR 174, (1995) 97 BOMLR 338 Author: . Silva, Bench: E D Silva, T C Das, ORDER: Dr. Silva, J.

Case Analysis

This case (*The Goa Foundation And Others vs The North Goa Planning And...*, 20th February, 1995) is regarding an application for stay filed by the Goa Foundation with regard to the construction of Palm Hotel, on the grounds that subsequent developments justify the intervention of the Court in order to halt the progress of the same construction which is in clear violation of the Environment Protection Act, 1986 and its Rules, as it is in total violation of the Coastal Regulation Zone (CRZ) Notification dated 20th February, 1991. According to the petitioner, the construction work was causing irreversible damage to the fragile ecology of the area. It was also disputed whether or not the area where the hotel was being constructed qualified as a river front or not. A report on the project noted that on visual inspection of the beach, the site of the construction was clearly located on a bay and since the river Mandovi flows into the bay this was an estuarine area which is ecologically sensitive and vital for marine life. A casuarina plantation grown by the Goa Government as a wind breaker for shore protection was seen to be standing on either side of the construction site and it was apparent that the casuarina plantation was cut down to accommodate the construction. The report further said that the temporary access road to the site was to be

widened and made permanent which would clearly involve large scale tree cutting resulting in an ecological imbalance.

Further, as per the Supreme Court order dated 13th December, 1994, it laid down a ban on constructions of all sorts in the area, at least up to 500 mts. from the sea water, as a maximum High Tide and therefore the said area from the High Tide Level up to 500 mts. is to be kept free from constructions of any type. The respondents denied all the allegations against their construction and submitted that the construction was carried out in accordance with the approved plans and the same was located on the river bank on the landward side of the existing buildings, and not on the beach. They also argued that the High Tide Line was about 1.5 kms. away from the hotel site. The judges ultimately accepted the arguments of the respondents and dismissed the case.

Case 11, Bombay High Court, 11th February, 1999 (Coding data available in Appendix K)

Bombay High Court

The Goa Foundation vs Diksha Holdings Pvt. Ltd. & Others on 11 February, 1999

Equivalent citations: 1999 (2) BomCR 550

Author: R Khandeparkar

Bench: R Batta, R Khandeparkar

ORDER R.M.S. Khandeparkar, J.

Case Analysis

In this case (*The Goa Foundation vs Diksha Holdings Pvt. Ltd. & Others*, 11th February, 1999), the petitioner Goa Foundation challenges the permission granted to respondent Diksha Holdings for construction of a beach resort in an area on Nagorcem beach. As per Goa Foundation, the environment clearance and the construction licenses for the construction of the beach resort have been granted in CRZ-I area which have natural sand dunes, which is in violation of the CRZ Notification dated 19-1-1991. According to the respondents, the area was classified as CRZ-III, however, as per the petitioners, due to the presence of sand dunes, the area is technically CRZ-I, and the respondent no. 1 has already bulldozed and flattened some of the sand dunes, in order to accommodate for their construction.

However, as per the respondent, their proposed construction will not cause any damage to the sand dunes which are located mostly within 200 meters of H.T.L. besides northern side of the area, nor affect the stability of the beach, as the construction plan had been drawn bearing in mind the environmental point of view. However, there is photographic proof of bulldozers razing down sand dunes in the construction area. In this case, the economic capital spent by the respondent on his construction project, did not influence or inform the symbolic capital possessed by the judges, who ultimately ruled in favor of the petitioner by stating, *"In such case, merely because the respondent No. 1 has made investment of Rs. 4 crores that by itself can be no justification to permit the development of such area. Sand dunes which are Nature's line of defence cannot be permitted to be bulldozed*

with money power. These geomorphic edifices have to be preserved at all costs."

Case 12, Bombay High Court, 29th June, 2000 (Coding data available in Appendix L)

Bombay High Court

The Goa Foundation, Represented ... vs State Of Goa, Through Its Chief ... on 29 June, 2000

Equivalent citations: 2000 (4) BomCR 709

Author: M F Rebello

Bench: F Rebello, V Daga

ORDER Mrs. F.I. Rebello, J.

Case Analysis

In this case (*The Goa Foundation, Represented... vs State Of Goa, Through Its Chief...*, 29th June, 2000), Goa Foundation has argued that on the Cadolim-Baga Beach, a large number of constructions have been coming up within 200 metres of the High Tide Line, and that the responsible authorities have failed to exercise their duties or have been turning a blind eye to such development. The petitioner also questions the licenses given by various Panchayats for construction and new developments. Before the Environment (Protection) Act, came along in 1986, there were guidelines for constructions up to 500 metres of the High Tide Line. As per these guidelines, no constructions were approved within the 200 metres of the High Tide Line. Thereafter, the Government of India issued the Coastal Zone Regulations. The

first is dated 19th February, 1991 which has been amended from time to time on 16th August, 1994, 18th April, 1996, 31st January, 1997 and 9th July, 1997. The petitioner therefore highlights that there is supposed to be a blanket ban on any construction within 200 meters of the High Tide Line.

The courts not only instructed the requisite authorities and legislative bodies to take the necessary action, but also as directed the respondents, by way of compensatory cost, to pay the petitioners a sum of Rs. 15,000/-. According to the judges, the petitioners acted in public interest and therefore must be compensated for bringing to the notice of the Court the ecological degradation of the coastal area and mushrooming of illegal constructions.

Case 13, Bombay High Court, 3rd July, 2000 (Coding data available in Appendix M)

Bombay High Court

The Goa Foundation, Represented ... vs State Of Goa & Others on 3 July, 2000

Equivalent citations: 2000 (4) BomCR 646

Author: F Rebello

Bench: F Rebello, V Daga

ORDER F.I. Rebello, J.

Case Analysis

In this case (*The Goa Foundation, Represented... vs State Of Goa & Others*, 3rd July, 2000), Goa foundation challenges the State government for approving and accepting the High Tide Line (HTL) as demarcated by the

Surveyor General of India. As per Goa Foundation, this approval of the demarcation of the HTL is not in consonance with the CRZ Notification dated 19-2-1991 as amended on 16-8-94 issued under the Environment Protection Act, 1986. The Surveyor General of India had attempted to demarcate an HTL for approximately 27 kms of Goa State, from Velsao to Cavelossim beach stretch in South Goa, after which the Government of Goa dispensed with the services of the Surveyor General of India on the grounds of cost. The stretch from Velsao to Cavelossim observes the largest number of violations of 200 metres zone taking place at the hands of the developers, of which several petitions are pending in court.

The CRZ notification defines the HTL as "the line on the land up to which the highest water line reaches during the spring tide and has to be demarcated uniformly in all parts of the country". However, the Surveyor General demarcated an average between high and low tides. This resulted in two HTL lines for different areas of Goa, only one of which met the provisions of the CRZ notification. Despite this anomaly, the government of Goa accepted the HTL demarcation by the Surveyor General, which was on average 40-60 metres closer to the sea and resulted in a lot of development projects closer to the sea and sand dunes.

Ultimately, the judges rejected all the contentions raised by the respondents and passed the judgement in favor of Goa Foundation by rejecting the order that demarcated the HTL as per the Surveyor General.

Case 14, Bombay High Court, 20th December, 2000 (Coding data available in Appendix N)

Bombay High Court

Goa Foundation vs Goa State Coastal Zone Management ... on 20 December, 2000

Equivalent citations: 2001 (4) BomCR 226

Author: P Upasani

Bench: P Upasani, R Deshpande

JUDGMENT Pratibha Upasani, J.

Case Analysis

This case (*Goa Foundation vs Goa State Coastal Zone Management...*, 20th December, 2000) involves Goa Foundation filing a public interest litigation (PIL) against the Goa Coastal Zone Management Authority (GCZMA) and other legislative and State bodies. The responsibilities of GCZMA include clearing projects within the Coastal Regulation Zone (CRZ) areas of Goa under the Environmental Protection Act (EPA), 1986. Goa Foundation is against the permissions granted for construction of a beach resort in the CRZ area of Baga, Calangute in Goa. According to the petitioner (Goa Foundation), the resort area should be categorized as CRZ-I due to the presence of sand dunes in the area. And even if it is categorized as CRZ-III, development activities are severely restricted within 200-500 meters area from the high tide line (HTL). The construction of the resort is therefore in violation of the CRZ Notification dated 19th February, 1991, issued under EPA. As per

the petitioner, symbolic and cultural capital was used, and symbolic violence was committed by the respondents as, *"…no site inspection was carried out and the permissions were granted without there being any query from any quarter and that permission from the respondent No. 1 has been obtained through the intervention of an influential person in the Cabinet. It is also submitted that part of the dune has already been damaged."*

The lawyer for the respondents, using a precedent from another case, invoked the matter of hierarchy in determining law and stated that, *"it is not for the Court to determine whether a particular policy or particular decision taken in fulfilment of that policy is fair and that the Court is only concerned with the manner in which those decisions have been taken."* In other words, the lawyer argued that the court had no right to veto the permissions granted by expert bodies and competent government authorities, unless there was a specific allegation (which was not made), that all these authorities had conspired together with a definitely pre decided intention to give advantage to the respondents, to the detriment of the interest of the citizens at large.

The judges ultimately dismissed the case in the name of balancing interests between ecological preservation and tourism development. According to the judges, the respondent's lawyer made a pertinent point when he differentiated between "sand dune" and "sand dune area" – while a sand dune is clearly marked as CRZ-I, the entire area on which the sand dune exists cannot be treated as CRZ-I. The judges also accepted that since the petitioners

only challenged the merit of the decisions given by the government authorities and not the decision making process, the courts cannot intervene.

Case 15, National Green Tribunal, 22nd January, 2020 (Coding data available in Appendix O)

National Green Tribunal

The Goa Foundation Through Its ... vs Goa State Environment Impact ... on 22 January, 2020

Bench: Adarsh Kumar Goel, Sonam Phintso Wangdi, Siddhanta Das

Case Analysis

In this case (*The Goa Foundation Through Its ... vs Goa State Environment Impact...*, 22nd January, 2020), Goa Foundation challenged the construction of Tiracol Bridge that was partly being erected on Querim beach in Goa on the ground that the construction was in violation of the CRZ Notification , and requires prior approval of the MoEF&CC/SEIAA. According to the applicant, the construction was occurring in the No Development Zones (NDZ) and no mitigation measures were taken against possible adverse consequences on fishing. The judgement is a short one where the Tribunal offers some suggestions in the construction process to protect the ecology and allow for the continuation of the construction of the bridge.

Case 16, National Green Tribunal, 17th January, 2022 (Coding data available in Appendix P)

National Green Tribunal

The Goa Foundation Through Its ... vs Goa State Environment Impact ... on 17 January, 2022

Bench: Adarsh Kumar Goel, Sudhir Agarwal, Brijesh Sethi, Arun Kumar Verma

Case Analysis

This dispute (*The Goa Foundation Through Its ... vs Goa State Environment Impact...*, 17th January, 2022) is a continuation of the above dispute regarding the construction of the Tiracol Bridge in a CRZ area. In fact this case has been going on in various courts since 2014. In this case, the Goa Foundation states that as the project's stage I forest clearance has already expired, the bridge cannot be constructed, besides the fact that the construction of the bridge would be a waste of public funds and a cause of unwarranted environmental distress.

Once again, the tribunal found no merit in the plea of the applicant.

Case 17, National Green Tribunal, 16th August, 2022 (Coding data available in Appendix Q)

National Green Tribunal

The Goa Foundation Through Its ... vs Goa Tourism Development ... on 16 August, 2022

Bench: Adarsh Kumar Goel, Sudhir Agarwal, Dinesh Kumar Singh, Vijay Kulkarni, A Senthil Vel

Case Analysis

This case (*The Goa Foundation Through Its ... vs Goa Tourism Development...*, 16th August, 2022) involves a common judgement for two separate cases, both of which are regarding illegal constructions on Baina beach in Goa, in violation of CRZ notification 2011, under the EP Act, 1986. According to Goa foundation, GCZMA illegally granted permission for construction activity undertaken in the name of beautification of the beach at Taluka Mormugao, Vasco Da Gama, Goa, which comes under CRZ-I and has dunes that are being flattened for construction purposes. Further, a cement-concrete construction is being conducted within 100 meters from the High Tide Line on a sandy beach area. Both these activities are in violation of the CRZ notification.

The respondents argue that the area is on CRZ-II not CRZ-I, and that all necessary permissions were given. However, after taking into consideration all the arguments, the tribunal decided in favor of Goa Foundation, and asked the respondents to remove their illegal constructions and restore the area to its original form.

Analysis of the 4 quadrants

This section answers research question R_4. The four quadrants that were used for the analysis of the cases are: out of court- gendered, out of court-not gendered, in court-gendered, and in court-not gendered. Each case in its original form has been presented in such a way that the key aspects of the case have been written in chronological order in a series of points. Each point in the case has been categorized into one of the 4, previously-mentioned,

categories for analysis. The difference between ‘in court’ and ‘out of court’ arguments is based on whether the argument posed is directly in relation to the case being argued within the court (‘in court’) or whether the argument contains either background information or aspects of the case that happened outside of the court (‘out of court.’) For example, in case 1, *“The petitioners are a registered society and are working in the field of environment with the object to maintain ecological balance. The petitioners are public spirited body and for the purpose of preservation of environment have approached this Court by way of this petition…,”* this sentence is stated in court about the petitioner and the reason behind their approaching the court. It has therefore been categorized as ‘in court.’ On the other hand, *“The petitioners' case is that Survey No. 69/4 is 'forest' and non-forest activity therein is not permissible unless prior permission is taken from the Central Government under the F.C.A. 1980…,”* contains background information that is presented about occurrences outside of court, and is therefore categorized as ‘out of court.’

Except for a few instances mentioned in the case analyses, there is no explicit evidence of overarching gendering in the juridical field of environmental law in Goa, based on the categorization alone. This is evident in the fact that most of the points in all the cases belong either in the ‘in court-not gendered’ category or the ‘out of court-not gendered’ category. The two categories that involve gendering are ‘in court-gendered’ and ‘out of court’ gendered. The reason why a few points have been placed in these two categories are as follows.

In case 1 and 2, a lot of weightage is given to the decisions taken by the Conservator and Deputy Conservator of forests. These are positions that are typically, historically, held by men. These positions within the juridical field of environmental law are therefore inherently gendered (Sharma, 2015a; Sharma, 2015b). This does not mean that the two cases or their outcomes are gendered, but just that inherently gendered positions exist within the juridical field of environmental law. In cases 3, 4, and 5, the points that have been placed in one of the two 'gendered' quadrants refer to an argument regarding one of the various committees appointed for identification of forest areas. These are the Sawant committee, the Kapur committee, and the Karapurkar committee. All of these committees are mainly headed by men and the committees are even named after the men. Once again, the very naming process is gendered, but that does not mean that their actions are gendered, which is why it does not reflect on the case being gendered in its totality.

In case 6, there is use of gendered pronouns by the judges. Even when talking about the general public, the judges constantly use the male pronouns ("he will have no legal right…," "his dump…," "his agent…," etc.). This is reflective of an inherent maleness or a male-bias that is evident in the language of the juridical field. In fact, even seasoned lawyers refer to female judges as "sir" or "my lord." It can be argued that this maleness ends up perpetuating stereotypical ideas of femaleness and womanhood within the juridical field. In fact, in cases of rape, women victims are often attempted to

be portrayed as monogamous and sexually conservative in order to establish their victimhood and their status as “good women” (Kalia, 2022).

The juridical field of environmental law in India does have power dynamics at play, even if the gendered aspect is not overtly evident. At the end of the day, as mentioned by Rubin (2013) in the Delhi ‘Sealings case,’ the courts, instead of treating everyone equally, offer a site for negotiating exceptional treatment for specific groups based on mutual interests and shared projects. The judges’ decisions are the last word in a case and are reliant on the shared morals and values of the judges and the lawyers. The arbitrary nature of law and the legal field, as opined by Bourdieu is evidenced thus.

Beyond case 6, there were no real instances of gendering observable in the points of each case.

CONCLUSION

The hypothesis for this study was that through the analysis of the use of environmental toponyms (such as, “forest,” “CRZ” (Coastal Regulation Zone), “wildlife sanctuary,” “national park,” and “ESZ” (Eco-sensitive Zone)) in legal arguments, as evidenced in judgements passed by the High Court, Supreme Court, and the National Green Tribunal, it is possible to prove that the juridical field of environmental law in Goa (India) is gendered. After using Critical Discourse Analysis and applying Bourdieu’s framework of the juridical field, the study was unable to prove that the juridical field of environmental law in India is gendered.

However, absence of evidence does not necessarily imply the evidence of absence. For gender disparity or gendering to prominently feature within the juridical field of environmental law, it would require the field to acknowledge in some form the differential impact of environmental crises on women, as compared to their male counterparts. There is no such acknowledgement amongst any of the agents within the juridical field in the arguments presented by them, including those of the female lawyers who were representing the environmental interests. The conspicuous absence of the ecofeminist lens within the arguments presented within the juridical field makes it challenging to highlight instances of overt gendering.

While Indian environmental laws may not be inherently designed to be gendered, there are instances where their implementation or consequences could have gender-differentiated effects. Certain environmental conservation

policies, such as restrictions on land use or displacement of communities for conservation projects, can disproportionately impact women who may rely on natural resources for their livelihoods, like collecting fuelwood or water. These restrictions can exacerbate existing gender inequalities and increase the burden on women in accessing essential resources. Environmental policies and projects may not adequately consider the differential impacts on men and women. A lack of gender-sensitive approaches can overlook women's specific roles and knowledge in resource management and decision-making, further marginalizing them in the process. Women from marginalized communities may face challenges in accessing legal remedies or participating in environmental decision-making processes due to systemic discrimination, lack of resources, or cultural barriers. This can limit their ability to protect their environmental rights effectively. Further, certain environmental hazards, like exposure to hazardous substances or indoor air pollution, may disproportionately affect women due to their traditional roles and responsibilities in household chores and caregiving. Lastly, conservation policies may prioritize certain species or ecosystems, often overlooking the importance of more gender-inclusive conservation practices that consider the needs and knowledge of local communities, including women. To address these concerns, there is a growing recognition of the importance of integrating gender perspectives into environmental policymaking and implementation. Initiatives like gender mainstreaming in environmental projects, promoting women's participation in decision-making processes, and recognizing women's

role as key stakeholders in sustainable development are steps taken to address potential anti-feminist implications of environmental law (Jolly & Menon, 2019).

It is essential to conduct further in-depth research and analysis to fully understand the gender implications of specific environmental laws and policies in India. The interplay between environmental conservation, gender dynamics, and socio-economic factors is complex, and any evaluation should consider the broader context and the experiences of diverse groups of women in different regions and communities. In this regard, there is scope for future research to further use an intersectional approach (Crenshaw, 1989) and parse in details the differential impacts of environmental policies in India on women belonging to different socio-economic, religious, educational, cultural, backgrounds, in addition to the differential gender impacts.

Using Bourdieu's juridical field, the study was however able to highlight the power dynamics that exist within the field amongst its various actors depending on the type of capital available to them. While the Forest Conservation Act aims to regulate the diversion of forest land for non-forest purposes, such as industrial projects and infrastructure development, corporations and industries seeking access to forest land possess economic capital and often engage powerful legal teams to navigate the legal processes for obtaining clearances. The Act itself carries symbolic capital as a legal instrument that establishes the state's authority to regulate forest land use and manage natural resources. Government agencies involved in the

implementation and enforcement of the Act also hold symbolic capital in terms of representing the state's control over forest resources. Similar is the case for laws and acts that have been instated by Goa's Coastal Zone Management Authorities for preserving Goa's coastal and marine ecosystems. Goa Foundation, that is at the forefront of advocating for environmental conservation, brings cultural capital by raising awareness about ecological concerns, traditional knowledge, and the importance of preserving forest and marine ecosystems. Both parties (corporations seeking infrastructure development, and Goa Foundation seeking environmental preservation) use legal strategies to justify their arguments.

The Goa State and government agencies have the symbolic power and legitimacy to regulate the use of the State's forest land and coastal zones. The State plays a key role in the implementation and enforcement of the environmental conservation policies. It holds significant power in determining forest land diversion, issuing clearances, and overseeing the conservation and management of land and marine resources. The overall power relations between the state, corporations, environmental activists, and indigenous communities influence the decision-making process and the outcomes of legal conservation cases.

Limitations

Although this dissertation is a media study and not a legal analysis, a legal background would have been helpful while working on the cases as it would have given the analysis a more nuanced perspective.

Only 17 cases in total passed the qualifying criteria for this study, mainly because of the strict inclusion criteria of “Goa Foundation”, since they are the key petitioners in Goa when it comes to the environment. However, another study should be conducted which should explore other cases filed by civilians and local residents as petitioners as well. This will give a much broader canvas to study and might even yield different results.

This study was conducted remotely, completely online in the United States of America. All the impacts that have been written about on women have been referenced from secondary sources. It would have been much more effective and definitive had this study been conducted in Goa by someone who knows the local language, where in addition to the local women, perhaps even the judges could have been interviewed, or a court proceeding been witnessed in person.

DISCUSSION

One of the reasons that it was not possible to prove a gendered aspect to the environmental cases used in this study is because the courts do not take an ecofeminist view when looking at these environmental cases, when perhaps they ought to. When considering cases regarding use of forest area for non-forestry purposes, or use of a Coastal Regulation Zone (CRZ) for activities such as infrastructure development or mining (which are the crux of most of the cases), the judges have not even once taken into account the impact that their decision would have on women. There is no consideration for the effect that converting a forest land for non-forestry purpose would have on the tribal women who rely on the forests for their livelihood.

Similarly, none of the conditions in section 2 of the FCA pertaining to dereservation of forests take into consideration the impact on human beings, especially women, who might be impacted by mining operations, in a sense making the FCA gendered. If upon following the FCA, mining were to be approved, it would benefit the men by giving them employment. But the women would be adversely impacted. Mining pollution has been found to affect health of family members and women are likelier to stay home and care for them instead of go out and work. The mines sometimes hire male workers from other areas who are experienced at the job, causing higher unemployment among local males, leading to higher rates of domestic violence against women, underage sex work and teenage pregnancies. Women living close to mines are likelier to experience higher rates of violence, have

limited voice in decision making, suffer health risks from mining pollution, are exposed to heightened socio-economic vulnerability, and are likelier to get involved in prostitution with greater exposure to sexually transmitted diseases, such as HIV/AIDS. Due to greater employment opportunities and better compensation, men are more likely to reap any benefits from mining projects, whereas, women are generally offered menial and low-paid positions if any, further exacerbating existing gender inequality. Especially with regards to Goa, mining has reduced the water table in many areas, because of which tankers are brought in to supply water. It is mainly the women's job to walk long distances to fetch water from the tanker and carry the heavy loads of water back home. Silt and run offs from iron ore mines also choke up agricultural and fishing areas impacting the livelihood of the farmer women and fisherwomen (D'Souza et al., 2013; Vohra, 2021; Muponde, 2021).

More importantly, mining itself is a heavily gendered industry. Integration and participation of women in mining has been very slow as compared to other industries. Although women have never been forbidden from working above ground, women employed under and above ground has traditionally been a low number. Over the years there have been changes in government policy, and discriminatory laws forbidding women to work underground have been repealed. Although this makes women free to work underground, but very few women are indeed working underground. Only 27% of total women mining laborers are in the age-group of 15-19 years. A

sure sign of exploitation is the fact that about 40% of women laborers belong to the age group of 5-14 years. And further, the income drawn by women as mine workers is both physically and economically unsustainable. This drags them into deeper indebtedness and bonded labor. (Nayak & Mishra, 2005).

None of these aspects are even looked at when judges are ruling on cases involving mining, nor are these facts reflected in the arguments made by any of the lawyers. Similarly, when ruling on cases involving infrastructure development, all the actors in the juridical field are completely oblivious to the impact of the ruling on women. The process involving construction and infrastructure development in India is inherently gendered. Construction is the second largest industry in India after agriculture and employs over 40 million workers. As per data from the Ministry of Labour and Employment, 49 per cent of the workers are females. Women are often compelled to work in the construction industry in order to supplement the family income or to pay off debts that were incurred due to failed farming ventures or more recently, due to the pandemic (Dutta, 2022).

They are usually illiterate, married off at a young age, and usually accompany their husbands to the cities where they get recruited by construction contractors. Not considered skilled enough to work as masons or carpenters, they are allotted physically taxing work of concrete mixers, diggers, stone breakers and brick haulers; and yet, they are paid less than their male counterparts. While a male laborer makes up to 500 rupees ($6.25) a day,

a woman is paid 300 rupees ($3.75) a day and is often allowed to work only 15 days a month. Even basic amenities such as clean toilets and basic safety equipment are not afforded to women, making the them prone to health hazards, construction hazards, including exposure to construction pollution. The women also bear a double burden of having to look after and feed the children and the family in addition to their job which involves hard labor (Dutta, 2022).

When judges rule in favor of construction, they fail to take these aspects into consideration. And when they rule in favor of the environment and against construction, they likely take away women's opportunity to work and support their family. It is therefore not clear whether safeguarding the interests of the environment potentially helps or hurts women at large, although these aspects should be taken into consideration in these cases.

Similarly, women are greatly impacted by tourism development. In many societies, including Indian society, women are considered the custodians of culture and culture is reproduced in their homes. Women are often also the wearers of cultural identity markers in India, be it in the way that they dress, or their rituals and their cooking. By association, women play a major role in, and are affected greatly by, tourism because tourism activities are usually based on existing unequal, exploitative relationships, as a result, the poorer and more vulnerable groups suffer disproportionately from the negative impacts of tourism. Due to the overriding economic interests of the industry, water resources are often diverted and populations are displaced to suit the

industrial need rather than the need of the local inhabitants. Once again, the burden of fetching water and rehabilitation of the family set up are often considered women's jobs. Further, through the exploitation of ethnic lifestyles, tourism directly targets traditional communities, with women experiencing their cultural commodification in the form of exploitative sex trade, especially when economic circumstances provide no alternative employment opportunities (Hemingway, 2004).

The juridical field of environmental law in India completely overlooks all of these aspects when deciding upon cases related to the tourism and development industry. In fact, if one is to look at one of the key classification criterion for forests as set up by the Forest Department and the Sawant committee, a canopy cover of 40% (0.4) is required for an area to be considered a forest. Firstly, this criteria seems unreasonable considering that a lot of forests stand denuded due to human activity, and have lost substantial canopy cover because of it. Secondly, it is interesting to compare this criteria with those established by the United Nations (UN) or those used by other countries. According to the UN, "Land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds in situ. It does not include land that is predominantly under agricultural or urban land use." A mere 10% of canopy cover is sufficient for an area to be termed as a forest (2018). Besides, there is an interesting inverse correlation between a country's forest cover and its gender equity ranking. Finland is Europe's most heavily forested country, and

forests, as defined by UN's FAO (Food and Agriculture Organization), occupy 23 million hectares or 74.2% of land area (Corona, 2022). Globally Finland ranks number 3 in gender equity ("Gender Inequality Index," 2022). Afghanistan on the other hand has only 2.1% or about 13,50,000 hectares forested ("Afghanistan Forest Information and Data," 2010) and ranks number 157 in gender equity globally (Gender Inequality Index, 2022). India, with over 24.62% (80.9 million hectares) of its area forested ("Forest cover by state in India," 2023) ranks number 123 on the global index of gender equity ("Gender Inequality Index," 2022). While causation cannot be established between area covered by forests and gender equity, it might be interesting to conduct a study that examines whether a correlation between the two exists.

One of the reasons why an ecofeminist perspective is missing within the juridical field is perhaps due to the gender-imbalance present in the field itself, which is also reflected in the cases. Across the cases, there are very few women present to represent women's voices or interests. All parties involved, including the lawyers, the judges, the petitioners, the experts, are mostly men. If one is to observe this through an ecofeminist lens, then the exploitation of the environment in the name of development is yet another manifestation of patriarchy that exercises power and oppression over women, animals, and the environment alike (Gaard, 1993; Mies & Shiva, 1993). The one woman who is prominently in the forefront in many of the cases is the female lawyer Norma Alvares. She is the lawyer defending Goa Foundation in many of the cases. It is no surprise that she is also an environmental activist, like many other

prominent female faces of environmentalism, such as, Greta Thunberg, Jane Goodall, Vandana Shiva, Rachel Carson, etc.

From an ecofeminist perspective, this is fitting, as women are usually at the forefront of environmental activism all over the world. This is perhaps because they are affected worse than men due to environmental disruptions and climate change (Rodriguez, 2022). As witnessed during the COVID pandemic, it was women's careers and pay took the greatest hit due to the increased load of unpaid domestic and caring work due to home-schooling, closure of childcare, and the need to care for elderly parents. As per an IPCC report, one of the key factors that compounds vulnerability to climate change impacts is gender. Extreme weather events, like floods, that disrupt livelihoods, also affect hygiene and sanitation. This has a flow-on effects on women's health, economic circumstances and education. As per the Malala fund, in 2021 alone, climate-related events likely prevented at least four million girls in low and low-middle-income countries from completing their education. Climate change fears also impact young women in their decision to procreate given the state of an increasingly warming planet, as seen in the emergence of groups like Birth Strike and Conceivable Future (Workman et al., 2022).

The juridical field, also known for the absence of the use of personal titles such as., Mr. or Ms., before the names of judges in judgements, while giving an illusion of a gender-blind legal fraternity, completely overlooks the fact that there is so little female representation in the entire juridical field.

According to the data released the law ministry, the government informed the parliament that only 15.3 percent of lawyers in India are women (Mathur, 2022). After the retirement of Justice R. Banumathi on 19 July 2020, India's Supreme Court was left with just two women judges out of 31, a female representation of less than 6.5%. In the 70+ years of its existence and in a country where 48% of the population is female, the Supreme Court has only had eight women judges. Of the 245 judges who have made it to the country's highest court, less than 3.3% have been women, and notably, no woman has served as the Chief Justice of India. Even in the 25 high courts, no more than 78 of 685 judges were women. That is less than 12% have been women as of 1 August 2020, according to the department of justice website (Ray, 2020). Even the current chief justice of India, Justice DY Chandrachud believes that it is important to incorporate feminist thinking in the way one deals with law (Suryam, 2022).

In the absence of sufficient female representation in the juridical field, it is difficult to expect that the courts will take an ecofeminist view – not that men cannot take an ecofeminist view. But space must be made for women to lead the change they seek to see. Incorporating an ecofeminist view when looking at environmental matters will result in judgements that are more holistic and take into account the gender inequity that is inherent within the system as well as society at large.

APPENDIX

Cases Regarding Forests

Appendix A: Case 1, Bombay High Court, 16th October, 1998

Bombay High Court
The Goa Foundation & Another vs The Conservator Of Forests & ... on 16 October, 1998
Equivalent citations: 1999 (2) BomCR 695
Author: R Batta , Bench: A Desai, R Batta, ORDER: R.K. Batta, J.

Case 1

Out of Court – Gendered	**Out of Court – Not Gendered**
4) ? The Deputy Conservator of Forests, North Goa Division (Tree Officer) refused to grant permission to cut the trees vide Orders dated 14-11 -96 and 25-11 -96 under section 8 of the Goa, Daman and Diu Preservation of Trees Act, 1984. However, the Conservator of Forests who is the Appellate Authority in the matter granted permission to fell 32 trees out of 51 trees originally applied for felling vide Order dated 9-1-97. It is interesting to note that besides sending copies of these directions to Conservator of Forests, Panaji, Goa, Town Planner, North Goa District Office, Mapusa, Levin da Costa, a copy for information was sent to the Special Secretary to the Hon'ble the Chief Minister, Secretariat, Panaji, Goa.	2), The petitioners' case is that Survey No. 69/4 is 'forest' and non-forest activity therein is not permissible unless prior permission is taken from the Central Government under the F.C.A. 1980. 3), 7)
In Court – Gendered	**In Court – Not Gendered**
	1), The petitioners are a registered society and are working in the field of environment with the object to maintain ecological balance. The petitioners are public spirited body

	and for the purpose of preservation of environment have approached this Court by way of this petition. 5), 6), 8), 9) 10), 11), 12), 13), 14), 15), 16), 17), 18), 19), 20), 21), 22), 23), 24), 25), 26), 27), 28), 29), 30), 31), 32), 33), 34), 35), 36), 37), 38), 39), 40)

Appendix B: Case 2, Supreme Court of India, 18th August, 2008

Supreme Court of India
A. Chowgule & Co. Ltd vs Goa Foundation & Ors on 18 August, 2008
Author: H S Bedi
Bench: Tarun Chatterjee, Harjit Singh Bedi

Case 2

Out of Court – Gendered	**Out of Court – Not Gendered**
In Court – Gendered **2) ?** Respondent No.5 herein, the **Conservator of Forests, Goa** filed an affidavit before the High Court pointing out that the 12 hectares of land which had been leased to the appellant had already been classified as Revenue Land meant for " Dry Crops" and was not a forest area, as had been contended by the writ petitioners/respondents 1,2 and 3.	**In Court – Not Gendered** 1), The facts leading to the filing of this appeal are as under: 3), 4), 5), 6), 7), 8), 9), 10)

Appendix C: Case 3, National Green Tribunal, 30th July, 2014

National Green Tribunal
The Goa Foundation vs State Of Goa Anr on 30 July, 2014
CORAM:
Hon'bleShri Justice V.R. Kingaonkar (Judicial Member)
Hon'bleDr. AjayA.Deshpande (Expert Member)

Case 3

Out of Court – Gendered	**Out of Court – Not Gendered**
8)? Pursuant to these orders, Goa state Page 9 (J) Appln. Nos.14 & 16 (THC) of 2013 NGT (WZ) government appointed a Committee headed by Shri. S.M.Sawant, in January, 1997 to carry out the survey of forest lands in Goa and submit the report. The Committee adopted above referred criteria for identification of forests and in its interim report indicated that there were approximately 256 sq km of private forests in Goa. However, in final report submitted in 1999, only 47 sq km of private forest was identified. Thereafter, in September, 2000, Goa Govt. appointed another Committee, headed by Dr. H. Karpurkar, to carry out the work. 36)? Earlier, the State of Rajastan has appointed the Kapur Committee for the same and the report of the Kapur Committee is also available.	4), The Applicants submit that there is no basis for criteria No.3, i.e. related to canopy density, as there are Page 6 (J) Appln. Nos.14 & 16 (THC) of 2013 NGT (WZ) several forest areas, which are presently degraded and having canopy density of less than 0.4, but which were originally dense or medium dense forests and which must accordingly be identified as forests. 5), 6), 14), 18)
In Court – Gendered	**In Court – Not Gendered**
15)? The forest department further submits that pursuant to the orders of the Hon'ble Supreme Court, dated	1), By this common Judgment, we shall dispose of both these Applications, which have raised

12.12.1996, the State Govt. had appointed Sawant Committee for the purpose of identification of forest lands in the State of Goa on 24th January 1997, which submitted its report on 8th December 1999. 16) ? Respondents further submit that the Sawant Committee has already obtained data on clearings and diversion made on Government forest lands for various purposes from 1980 and identified that total 13.0798 Ha of forest land has been diverted for various purposes. 23) ? The Respondents submit the process of demarcating in the private forest on the site, as identified by Sawant and Karapurkar Committees. 26) ? The Sawant Committee also decided that the year 1980 to be a benchmark for the Govt. forest lands for assessing degradation, denudation or clearing of the forests. It is also observed that State of Goa, has worked on this criteria and the reports of two (2) Committees, i.e. Sawant and Karapurkar were finalized and submitted before the Apex Court. 28) ? Learned Advocate General Shri A.N.S. Nadkarni, representing State of Goa while opposing the Applications submitted that the State Government had formed two Expert Committees, namely Sawant and karapurkar Page 25 (J) Appln. Nos.14 & 16 (THC) of 2013 NGT (WZ) committee's, to identify private forest areas in compliance of the orders of the Apex court in case	related and identical dispute regarding the issue of setting the criteria for identification of forests in the State of Goa and implementation thereof. 2), 3), 7), 9), 10), 11), 12), 13), 17), 19), 20), 21), 22), 24), 25), 27), 29), 30), 31), 32), 33), 34), 35), 37), 38), 40), 41)

of TN Godavarman Vs. Union of India. 39)? When asked about time limit for completion of identification process, the officer present indicates that entire identification and demarcation process is a complex process and includes survey, investigation, public consultation and then notification with mapping. They, therefore, submit that Page 36 (J) Appln. Nos.14 & 16 (THC) of 2013 NGT (WZ) no such time frame can be fixed. We are surprised to note this submission.	

Appendix D: Case 4, National Green Tribunal, 4th September, 2014

National Green Tribunal
The Goa Foundation Anr vs Marmugao Planning Devpt. ... on 4 September, 2014
BEFORE THE NATIONAL GREEN TRIBUNAL (WESTERN ZONE) BENCH, PUNE
APPLICATION No. 37(THC)/2013
CORAM:
Hon'ble Mr. Justice V.R. Kingaonkar (Judicial Member) Hon'ble Dr. Ajay A. Deshpande (Expert Member)

Case 4

Out of Court – Gendered	**Out of Court – Not Gendered**
3) Consequently, Goa State Government had appointed Sawant Committee for compliance of orders of the Apex Court, which adopted certain criteria for identification of "forest" as follows… This Committee could not, however, complete the entire work and therefore, the State Government appointed another Committee headed by Dr. Karapurkar to carry the work. 5) It is the grievance of Applicants that in spite of these official communications, the Conversion Sanad was issued by Respondent No.2 (Collector) on 5-1-2006 for use of the land for residential area. 8) Respondent No.2 i.e. Collector, South Goa by his affidavit clarified the procedure for grant of Sanad in view of various orders of State Government. 15) It is an admitted fact that Govt. of Goa appointed two (2) Committees, namely; Sawant	6), The Respondent No.1 filed an Affidavit on 11 th December 2006, and submits that an Application dated 19- 11-2005 was received on 14-12-2005 from Sancoale village Panchyat for issuing of final NOC for sub division of land bearing S.No. 113/2 of village Sancoale village. 7), 10), 19)

Committee and thereafter Dr. Karapurkar Committee, to identify 'private forests' in Goa in pursuance to the directions of the Hon'ble Supreme Court in "T.N.Godavarman Thirumulkpad vs Union of India". 17) The second interim report of Sawant Committee, categorically rejected Satellite Imaginary and Topo-sheets, as one of the criteria for identifying the 'forest', for the reason that it would at the best show natural green cover, which would include plantations, seasonal crops etc. 22) The copies of the report of the Sawant Committee and the Karapurkar Committee would be placed with the Collector/Deputy Collector so that the various forest areas mentioned therein are known to the authorities based on which appropriate decision will be taken in any matter relating to conversation of such land.	
In Court – Gendered 11) Respondent No.6, filed counter Affidavit to the affidavit filed by Respondent-5 and specifically contended that the subject property i.e. S.No.113/2 do not satisfy the definition of "forest" as per parameters laid down by Hon'ble Supreme Court nor the criteria adopted by Sawant and Dr. Karapurkar Committee's.	**In Court – Not Gendered** 1) The present Application was originally filed in the High Court of Bombay, Bench at Goa as Writ Petition No.434/2006, which was transferred to the National Green Tribunal vide order of Division Bench, of the Hon'ble High Court, at Goa dated 11th November, 2013.

12) Respondent No.6 submits that the subject property situates in village Sancoale, which had been visited by both, Sawant and Dr. Karapurkar Committees, in the past which were specifically formed to identify the private forest in the State of Goa as per the orders of Hon'ble Supreme Court. He asserted that as per his Application, the Collector, South Goa gave conversion Sanad in his favour for use of land for non-agriculture purposes in terms of Section 32 of Goa Land Revenue Code, 1968, after getting necessary report/feedback from all the concerned departments including the " forest" . 18) Learned Counsel Mrs. Norma Alvares appearing on behalf of Applicants invited our attention to the fact that Sawant and Dr. Karapurkar Committees have identified four (4) survey numbers in Soncoale village as private forests and the subject property at S.No.113/2 has not so far been surveyed and identified as private forest. 26) However, we noted the submissions made by Learned Sr. Counsel for Respondent No.6 that the Sawant and Dr. Karapurkar Committees have visited the Soncoale village as a part of identification process, and have identified four (4) S. Nos. as private forests. 27) The forest identification criteria laid down by Sawant and Dr.	2), 4), 9), 13), 14), 16), 20), 21), 23), 24), 25), 28) 29), 30)

Karapurkar Committees are the pre-requisites of the identification of private forest. In the present case, admittedly neither Sawant nor Karapurkar Committee nor the South Goa Committee has identified the subject property as a private forest, in part or full.	

Appendix E: Case 5, Supreme Court of India, 17th September, 2003

Supreme Court of India
The Tata Housing Development Co. ... vs The Goa Foundation And Ors. on 17 September, 2003
Equivalent citations: AIR 2003 SC 4238, 2003 (7) SCALE 589, (2003) 11 SCC 714
Author: B Agrawal
Bench: Y Sabharwal, B Agarwal
JUDGMENT B.N. Agrawal, J.

Case 5

Out of Court – Gendered	**Out of Court – Not Gendered**
15) In its Second Interim Report Sawant Committee categorically rejected satellite imagery and toposheets as one of the criterions for identifying a forest as the same would at best show natural green cover which, according to the Committee, would include plantations, seasonal crops, etc. and the same cannot be a relevant consideration for classifying a forest, as such the Committee in its report relating to the appellants' plot was not justified in taking the same into consideration. 16) Further, Sawant Committee in the Report in question came to the conclusion that the soil of the appellants' plot was rich in humus content only by looking at the same.	2) Survey No. 69/4 measuring 13593 sq. mtrs., by virtue of deed of partition amongst the co-owners of the property, came to the share of Manohar Lal Bhandiye (respondent No. 10) and his wife Shantabai Bhandiye in the month of December, 1965 wherein this property situate in Village Penha De Franca was specifically described as 'Palmar De Sam Tamas De Malim' which means 'Coconut Plantation'. 3)
In Court – Gendered	**In Court – Not Gendered**
4) Pursuant to the said order the Government of Goa constituted a Committee on 24.1.1997 headed by Shri	1) These appeals by special leave, are directed against the judgment rendered by Goa Bench of Bombay High Court in a writ application,

Sadanand Sawant, members of which were Conservator of Forest and a Scientist besides three Deputy Conservators of Forests. At first the Committee, which was known as Sawant Committee, submitted its interim Report in relation to government forest which was called 'First Interim Report'. Thereafter, Sawant Committee, after laying down the criteria, proceeded to identify private forests by making physical inspection of the areas and visited 28 cases (villages) out of 109 placed before it. In the said Report the, Committee categorically rejected satellite imagery and toposheets as a correct indicia for identifying forest stating therein that satellite imagery would indicate nature green cover which would include most of the plantations/seasonal crops, such as cashew, coconut, arecanut, etc., which, according to the Committee, could not be considered for the purpose of classifying a forest. It also rejected the Nature Green Cover Maps as they would include all types of vegetation and of all density and class, including cashew crop which could not be fitted into the criteria taken for identification of forests. 5) By the same order the Court, however, directed Sawant Committee to identify and submit report on the question whether appellants' plot was a forest or not as in its	which was filed by respondent Nos. 1 and 2 (hereinafter referred to as 'the contesting respondents') by way of public interest litigation, whereby the same has been allowed, permissions granted to the appellants for change of land use, construction and felling of trees in relation to Survey No. 69/4 measuring 11275 sq. mtrs. situate in Village Penha De Franca concerning the project undertaken by appellant No. 1 over the said land quashed, and the appellants were directed to remove all development works done thereon. 7), 9), 19)

opinion it was not clear whether Sawant Committee, before submitting the Second Interim Report, visited the same. 6) Pursuant to the aforesaid direction of the High Court, Sawant Committee made physical inspection of the appellants' plot and submitted its report dated 22.4.1996, which may be called Third Interim Report', in which it reported that the appellants' plot was a forest. 8) At the time of arguments before the High Court, it was contended on behalf of the appellants that no reliance should be placed upon the Third interim Report of Sawant Committee as the same jettisoned the criteria laid down by it in the Second Interim Report for identifying a forest and adopted criteria which had either been rejected by it earlier or wholly arbitrary and erroneous. 10) Shri Ashok H. Desai, learned Senior Advocate appearing in support of the appeal filed by the developer and the owner, submitted that the High Court was not justified in placing reliance upon the Third Interim Report of Sawant Committee according to which the appellants' plot was a forest as the said Report jettisoned the criteria adopted by it while submitting its Second Interim Report for identifying a forest and instead adopted the criteria which had either been rejected by it earlier or were wholly arbitrary and erroneous.	

11) Thus question which falls for consideration of this Court is whether the High Court was justified in accepting the Third Interim Report of Sawant Committee and allowing the writ application on the basis thereof. 12) From a bars perusal of the aforesaid passages from the Second Interim Report of Sawant Committee it would appear that the Committee had categorically laid down three criteria for identifying a land to be forest and it had rejected Satellite Imagery and Toposheets of 1960 and Nature Green Cover maps as the relevant criterions for classifying any land to be a forest. 13) From a bare perusal of the Third Interim Report, it would appear that the three criteria laid down in the Second Interim Report of the Sawant Committee have been given a complete go bye and in relation to the appellants' plot altogether different criteria have been adopted. 14) The appellants' plot does not satisfy any of the three criteria laid down by the Committee in its Second Interim Report. 17) At this juncture, it may be relevant to point out that Sawant Committee submitted its final Report dated 8.12.1999 wherein on the basis of the findings in its Third Interim Report alone the appellants' plot has been shown as a forest. In the final Report, Sawant Committee has reiterated all the three criteria	

referred to above for treating any land to be a forest land. 18) This being the position, we are of the view that the Third Interim Report of Sawant Committee, having been based upon the criteria which were rejected by it in its previous report, cannot be accepted as there was no ground for making a departure therefrom while submitting the Report in relation to the appellants' plot.	

Case Regarding National Park

Appendix F: Case 6, Supreme Court of India, 11th November, 2013

Supreme Court of India
Goa Foundation vs Union Of India & Ors on 11 November, 2013
Author: A K Patnaik
Bench: A.K. Patnaik, Surinder Singh Nijjar, Fakkir Mohamed Kalifulla

Case 6

Out of Court – Gendered	**Out of Court – Not Gendered**
29) Such area outside the leased area of the mining lease may belong to the State or may belong to any private person, but if the mining lease does not confer any right whatsoever on the holder of a mining lease to dump any mining waste outside the leased area, **he** will have no legal right whatsoever to remove **his** dump, overburden, tailings or rejects and keep the same in such area outside the leased area. (Gendered language) 30) Moreover, Section 9(2) of the MMDR Act makes the holder of a mining lease granted on or after the commencement of the Act liable to pay royalty in respect of any mineral removed or consumed by **him** or by **his** agent, manager, employee, contractor or sub-lessee from the leased area. (Gendered language)	2) Prior to 19.12.1961 when Goa was a Portuguese territory, its Portuguese Government had granted mining concessions in perpetuity to concessionaires. 3), 4), 5), 12), 13), 15), 16), 17), 22), 23), 25), 28), 32), 34), 35), 44), 45), 47), 50), 51), 59),
In Court – Gendered	**In Court – Not Gendered**
49) The intent of the Rule-making authority in making these provisions in Rule 37 is that the liabilities and conditions in a mining lease are also enforceable against the transferee and that the transferee pays **his** dues	1) This batch of Writ Petitions and Transferred Cases relate to mining in the State of Goa and as issues raised are common to the Writ Petitions and the Transferred Cases, the cases have been analogously heard and are

towards income tax regularly. (Gendered language)	being disposed of by this common judgment. 6), 7), 8), 9), 10), 11), 14), 18), 19), 20), 21), 24), 26), 27), 31), 33), 36), 37), 38), 39), 40), 41), 42), 43), 44), 46), 48), 52), 53), 54), 55), 56), 57), 58), 60), 61), 62), 63), 64), 65), 66), 67), 68), 69), 70), 71)

Cases Regarding Eco-Sensitive Zone (ESZ)

Appendix G: Case 7, National Green Tribunal, 18th July, 2013

National Green Tribunal
The Goa Foundation Anr vs Union Of India Ors on 18 July, 2013

Case 7

Out of Court – Gendered	**Out of Court – Not Gendered**
	7), Now we may notice certain undisputed facts in regard to the Western Ghats. 8), 9), 10), 11), 18), 20), 23), 24), 25),
In Court – Gendered	**In Court – Not Gendered**
	1), Applicant No.1 is a registered society and claims to be at the forefront in environment campaigns in Goa working not just towards conserving and protecting the ecology of Western Ghats but also towards demanding additional protection, including declaration of wild life sanctuary as a tiger reserve. 2), 3), 4), 5), 6), 12), 13), 14), 15), 16), 17), 19), 21), 22), 26), 27), 28), 29), 30), 31), 32), 33), 34), 35), 36), 37), 38), 39), 40), 41), 42), 43), 44), 45

Appendix H: Case 8, National Green Tribunal, 28th September, 2020

National Green Tribunal
Goa Foundation vs Union Of India on 28 September, 2020
Bench: Adarsh Kumar Goel, Sonam Phintso Wangdi, Nagin Nanda

Case 8

Out of Court – Gendered	**Out of Court – Not Gendered**
In Court – Gendered	**In Court – Not Gendered** 1), The issue for consideration is the remedial steps for protection of ecology of Western Ghats, which is an eco-sensitive area within the meaning of the relevant notification under the Environment (Protection) Act, 1986. 2), 3), 4), 5), 6)

Cases Regarding Coastal Regulatory Zone (CRZ)

Appendix I: Case 9, Bombay High Court, 29th April, 1992

Bombay High Court
The Goa Foundation And Another vs The Konkan Railway Corporation ... on 29 April, 1992
Equivalent citations: AIR 1992 Bom 471, 1994 (1) MhLj 21
Bench: M Pendse, G Kamat

Case 9

Out of Court – Gendered	**Out of Court – Not Gendered** 1), Very few people are fortunate to see their dreams fulfilled and people residing on the west coast saw fulfillment of their dream when the Central Government decided to provide a broad gauge railway line from Bombay to Mangalore and thereafter to extend to the State of Kerala.
In Court – Gendered	**In Court – Not Gendered** 2), The petitioner No. 1 is a Society registered under the Societies Registration Act and claims to protect and improve the natural environment including forests, lakes, river and wild life and to have compassion for living creatures. 3), 4), 5), 6), 7), 8), 9), 10), 11)

Appendix J: Case 10, Bombay High Court, 20th February, 1995

Bombay High Court
The Goa Foundation And Others vs The North Goa Planning And ... on 20 February, 1995
Equivalent citations: AIR 1995 Bom 342, 1996 (5) BomCR 174, (1995) 97 BOMLR 338 Author: . Silva, Bench: E D Silva, T C Das, ORDER: Dr. Silva, J.

Case 10

Out of Court – Gendered	**Out of Court – Not Gendered**
In Court – Gendered	**In Court – Not Gendered** 1), This is an application for stay filed by the petitioners in Writ Petition No. 333/93 with regard to the construction of Palm Hotel of the respondent No. 7, situated at Miramar, on the ground that subsequent developments justify the intervention of the Court in order to halt the progress of the same construction which is going on in clear violation of the Environment Protection Act, 1986 and its Rules (hereinafter called "the Act"). 2), 3), 4), 5), 6), 7), 8), 9), 10), 11), 12), 13), 14), 15), 16), 17), 18)

Appendix K: Case 11, Bombay High Court, 11th February, 1999

Bombay High Court
The Goa Foundation vs Diksha Holdings Pvt. Ltd. & Others on 11 February, 1999
Equivalent citations: 1999 (2) BomCR 550
Author: R Khandeparkar
Bench: R Batta, R Khandeparkar
ORDER R.M.S. Khandeparkar, J.

Case 11

Out of Court – Gendered	**Out of Court – Not Gendered**
	2), The facts, in brief, are that the respondent No. 1 applied to Town and Country Planning Department of Government of Goa for permission of construction of the Beach Resort on 8-1-1996 along with a contour and site plan of the area. 3), 4), 5), 6)
In Court – Gendered	**In Court – Not Gendered**
	1), The petitioner challenges the permission granted to the respondent No. 1 for construction of a Beach Resort in the property bearing Survey No. 28/1, 29, 33/1 and 33/2 of Nagorcem beach by the respondents. 7), 8), 9), 10), 11), 12), 13), 14), 15), 16), 17), 18), 19), 20), 21)

Appendix L: Case 12, Bombay High Court, 29th June, 2000

Bombay High Court
The Goa Foundation, Represented ... vs State Of Goa, Through Its Chief ... on 29 June, 2000
Equivalent citations: 2000 (4) BomCR 709
Author: M F Rebello
Bench: F Rebello, V Daga
ORDER Mrs. F.I. Rebello, J.

Case 12

Out of Court – Gendered	**Out of Court – Not Gendered**
	5), Similarly, the Village Panchayat of Candolim has also carried out a survey of new structures in addition to the existing structures which are within the 200 metres High Tide Line. 11)
In Court – Gendered	**In Court – Not Gendered**
	1), By the present petition, the petitioners complained that on the Cadolim-Baga Beach, a large number of constructions have been coming up within 200 metres of the High Tide Line. 2), 3), 4), 6), 7), 8), 9), 10), 12), 13), 14)

Appendix M: Case 13, Bombay High Court, 3rd July, 2000

Bombay High Court
The Goa Foundation, Represented ... vs State Of Goa & Others on 3 July, 2000
Equivalent citations: 2000 (4) BomCR 646
Author: F Rebello
Bench: F Rebello, V Daga
ORDER F.I. Rebello, J.

Case 13

Out of Court – Gendered	**Out of Court – Not Gendered**
In Court – Gendered	**In Court – Not Gendered** 1), The petitioner No. 1 is a society registered under the Societies Registration Act with the objects amongst others to take appropriate action to halt the ecological degradation of the environment and to formulate and implement programmes for the rehabilitation and development of the Goan environment and to restore ecological balance. 2), 3), 4), 5), 6), 7), 8), 9), 10), 11), 12), 13), 14)

Appendix N: Case 14, Bombay High Court, 20th December, 2000

Bombay High Court
Goa Foundation vs Goa State Coastal Zone Management ... on 20 December, 2000
Equivalent citations: 2001 (4) BomCR 226
Author: P Upasani
Bench: P Upasani, R Deshpande
JUDGMENT Pratibha Upasani, J.

Case 14

Out of Court – Gendered	**Out of Court – Not Gendered**
	5), In other words, permission can only be granted to those who are part of village gaothans or village community and so long as it is within the ambit of traditional rights and customary uses such as existing fishing villages and goathans. 9), 11), 19), 21)
In Court – Gendered	**In Court – Not Gendered**
	1), This writ petition under Articles 226 and 227 read with Articles 21, 48-A and 51A(g) of the Constitution of India, is a public interest litigation filed by the petitioner, the Goa Foundation, which is non-Governmental organization. 2), 3), 4), 6), 7), 8), 10), 12), 13), 14), 15), 16), 17), 18), 20), 22), 23), 24), 25), 26), 27), 28), 29), 30), 31), 32), 33), 34), 35), 36), 37), 38), 39), 40), 41)

Appendix O: Case 15, National Green Tribunal, 22nd January, 2020

National Green Tribunal
The Goa Foundation Through Its ... vs Goa State Environment Impact ... on 22 January, 2020
Bench: Adarsh Kumar Goel, Sonam Phintso Wangdi, Siddhanta Das

Case 15

Out of Court – Gendered	**Out of Court – Not Gendered**
In Court – Gendered	**In Court – Not Gendered** 1), This application challenges construction of Tiracol Bridge partly being erected on Querim beach in Goa on the ground that there is violation of CRZ Notification which requires prior approval of the MoEF&CC/SEIAA. 2), 3), 4), 5), 6)

Appendix P: Case 16, National Green Tribunal, 17th January, 2022

National Green Tribunal
The Goa Foundation Through Its ... vs Goa State Environment Impact ... on 17 January, 2022
Bench: Adarsh Kumar Goel, Sudhir Agarwal, Brijesh Sethi, Arun Kumar Verma

Case 16

Out of Court – Gendered	**Out of Court – Not Gendered**
In Court – Gendered	**In Court – Not Gendered** 1), This application has been filed to recall order of this Tribunal dated 22.01.2020 in O.A. No. 33/2015, Goa Foundation vs. Goa State Environment Impact Assessment Authority & Ors. 2), 3), 4), 5), 6), 7), 8), 9), 10), 11)

Appendix Q: Case 17, National Green Tribunal, 16th August, 2022

National Green Tribunal
The Goa Foundation Through Its ... vs Goa Tourism Development ... on 16 August, 2022
Bench: Adarsh Kumar Goel, Sudhir Agarwal, Dinesh Kumar Singh, Vijay Kulkarni, A Senthil Vel

Case 17

Out of Court – Gendered	**Out of Court – Not Gendered** 8), Relevant part of the Notification is reproduced bellows… 9), 10)
In Court – Gendered	**In Court – Not Gendered** 1), This order will deal with Original Application No. 97/2016 (WZ) and Original Application No. 156/2016 (WZ) as both the matters pertain to the same issue. 2), 3), 4), 5), 6), 7), 11), 12)

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