

Constitutionalism And Environmental Justice: The Indian Constitutional Framework and The Evolution of Green Jurisprudence

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Abstract- Constitutionalism and environmental justice represent two of the most dynamic and intersecting fields in contemporary Indian jurisprudence. Constitutionalism, in its essence, signifies the limitation of governmental power, adherence to the rule of law, and the supremacy of constitutional values, while environmental justice emphasizes the equitable distribution of environmental benefits and burdens, ensuring that no individual or community suffers disproportionately from ecological degradation. This research paper explores the evolving relationship between the Constitution of India and the emergence of a comprehensive framework for environmental protection. It traces the historical trajectory from a pre-Stockholm phase marked by legislative inaction and minimal environmental consciousness to a transformative period of judicial awakening in the post-emergency era, during which the Supreme Court of India actively reinterpreted Directive Principles of State Policy and elevated them into enforceable Fundamental Rights, thereby reshaping the contours of Indian constitutional law. The paper critically examines the significant role of judicial activism and the development of Public Interest Litigation (PIL) as powerful tools in democratizing access to environmental justice. Through a series of landmark judgments, the judiciary has expanded the scope of Article 21 (Right to Life) to encompass the right to a clean, healthy, and pollution-free environment. In doing so, it has also incorporated key principles of international environmental law into the domestic legal system, including the Precautionary Principle, the Polluter Pays Principle, and the Public Trust Doctrine. These judicial innovations have not only strengthened environmental governance but have also ensured accountability, enhanced transparency, and encouraged public participation in environmental decision-making processes, thereby reinforcing democratic values within environmental governance. The study further engages with the constitutional challenges arising from this proactive judicial approach, particularly the ongoing debate concerning the doctrine of separation of powers and concerns of judicial overreach in policy-oriented domains. It also highlights the socio-economic dimensions of

environmental justice, emphasizing the vulnerability of marginalized communities, including tribal populations, rural inhabitants, and economically weaker sections, who are often the worst affected by environmental harm, displacement, and resource depletion. Additionally, the paper examines the role of sustainable development as a guiding constitutional principle, balancing ecological preservation with economic advancement in a developing country like India. Furthermore, the research underscores the importance of institutional mechanisms and governance frameworks in ensuring effective environmental protection. It evaluates the contribution of bodies such as the National Green Tribunal in providing specialized adjudication and expeditious remedies in environmental disputes. The paper also reflects upon the growing significance of climate governance, environmental accountability, and the need for integrating scientific and technological advancements into policy formulation and implementation. Ultimately, the paper argues that environmental constitutionalism in India represents a unique, judge-driven model that has successfully bridged the gap between constitutional ideals and environmental realities. However, it underscores the necessity of evolving towards a more balanced and collaborative framework of dialogic constitutionalism, wherein the judiciary, legislature, and executive function in harmony to ensure effective and accountable governance. The paper concludes by addressing emerging challenges such as climate change litigation, recognition of the rights of nature, and the strengthening of institutional and regulatory frameworks to ensure effective, inclusive, and sustainable environmental governance for present and future generations, while reinforcing the principle of inter-generational equity and ecological balance.

Keywords: Constitutionalism, Environmental Justice, Article 21, Public Interest Litigation, Sustainable Development, Precautionary Principle, Polluter Pays Principle, Public Trust Doctrine.

I. INTRODUCTION: THE CONCEPTUAL FOUNDATIONS OF CONSTITUTIONALISM AND ENVIRONMENTAL JUSTICE

Constitutionalism is a political philosophy wherein the functions of government are limited by a supreme legal document—the Constitution. It is the antithesis of arbitrary power and the foundation of the Rule of Law. In the Indian context, constitutionalism is anchored in three pillars: the Rule of Law, the power of Judicial Review, and the judicially evolved Basic Structure Doctrine. These principles collectively ensure that no organ of the State transgresses its constitutional boundaries. Concurrently, the concept of environmental justice emerged as a global response to the inequitable distribution of environmental risks and benefits. It posits that a dignified human existence is impossible in a degraded ecosystem, and that the burden of pollution and resource depletion should not fall disproportionately on marginalized communities.

The Constitution of India, 1950, as originally enacted, did not contain any explicit provision declaring the right to a clean environment as a Fundamental Right. Environmental protection was relegated to Article 48A (Protection and improvement of environment and safeguarding of forests and wild life) and Article 51A(g) (Fundamental duty to protect the natural environment), both falling under Directive Principles of State Policy and Fundamental Duties respectively, which are non-justiciable in a court of law. The framers of the Constitution, while visionary in many respects, could not have anticipated the scale of industrial pollution and ecological destruction that would accompany India's post-independence development trajectory.

The transformation of these non-justiciable aspirations into binding, enforceable rights is the story of Indian judicial activism. The judiciary, confronted with massive ecological degradation stemming from rapid industrialization, unplanned urbanization, and governmental apathy, stepped into the legislative vacuum. Through a process of expansive and purposive interpretation, the Supreme Court of India forged an inseparable link between Environmental Quality and the Right to Life guaranteed under Article 21. This judicial creativity has been described by

scholars as the emergence of a "Green Constitution" – a constitutional framework where environmental protection is not merely a policy goal but a fundamental right enforceable through writ jurisdiction.

This paper explores this constitutional evolution in depth. It asks critical questions: How did the Indian judiciary create a robust environmental jurisprudence from a largely silent constitutional text? What are the jurisprudential tools and doctrines employed to enforce Environmental Justice? What are the limits and critiques of this judge-made environmental law, particularly

concerning the separation of powers doctrine? And finally, how is Indian constitutionalism adapting to twenty-first century challenges such as climate change? The central thesis of this paper is that while judicial activism has been indispensable in establishing environmental rights, the long-term sustainability of environmental constitutionalism requires a collaborative institutional framework involving the legislature, executive, and specialized tribunals.

II. THEORETICAL FRAMEWORK: DEFINING ENVIRONMENTAL CONSTITUTIONALISM

2.1. The nexus between constitutionalism and ecology

Constitutionalism traditionally concerns the vertical and horizontal distribution of power among organs of the State and the protection of individual liberties against State action. Environmental constitutionalism expands this traditional framework by arguing that the State's power is not only limited by individual rights but also by the ecological limits of the planet. It represents a paradigm shift in governance, mandating the State to act as a Trustee of natural resources for present and future generations. This theoretical framework rests on two interconnected pillars: Procedural Environmental Rights (access to environmental information, public participation in environmental decision-making, and access to environmental justice) and Substantive Environmental

Rights (the right to a healthy and ecologically balanced environment).

The concept of environmental constitutionalism has gained significant traction globally, with over 150 national constitutions now containing some form of environmental provision. However, the Indian model is distinctive because it relies primarily on judicial interpretation rather than explicit textual guarantees. This interpretative approach has allowed the judiciary to develop a flexible and evolving jurisprudence that adapts to emerging environmental challenges without the need for frequent constitutional amendments.

2.2. Environmental justice: Beyond mere conservation

The concept of Environmental Justice moves beyond the mainstream conservation and preservation movements. While traditional environmentalism focuses on protecting wilderness areas, endangered species, and natural landscapes, Environmental Justice focuses on people—particularly those who have been historically marginalized and excluded from environmental decision-making. It highlights the stark reality that poor communities, tribal populations, and lower castes are often the first and worst victims of industrial pollution, deforestation, mining, and development-induced displacement.

In India, this phenomenon is starkly visible in multiple contexts: Slum Dwellers in urban areas are forced to live adjacent to polluting industries and waste dumps; Adivasi (Tribal) Communities are displaced from their ancestral lands by large dams and mining projects without adequate rehabilitation; and Dalit Communities are often relegated to the most environmentally degraded areas. Therefore, Environmental Justice in the Indian context is intrinsically and inseparably linked to Social Justice and the constitutional promise of Equality (Article 14) and Protection of Life and Personal Liberty (Article 21). The Supreme Court has increasingly recognized this intersectionality in cases involving forest rights, coastal regulation, and industrial pollution.

III. HISTORICAL EVOLUTION OF ENVIRONMENTAL JURISPRUDENCE IN INDIA

3.1. Phase I: Constitutional silence and legislative sparseness (1950-1972)

In the first two decades following the adoption of the Constitution, environmental concerns were virtually absent from constitutional litigation and judicial discourse. The focus of the Supreme Court was overwhelmingly on nation-building, agrarian reform, and the ideological tussle between Fundamental Rights and Directive Principles of State Policy exemplified by cases like *State of Madras v. Champakam Dorairajan* (1951) and the subsequent constitutional amendments. Environmental legislation existed only in fragments and was sectoral in nature—the Indian Forests Act, 1927, the Factories Act, 1948, and the River Boards Act, 1956—but enforcement was notoriously lax, and these statutes were not anchored in any overarching constitutional mandate for environmental protection.

The Constitution (Forty-second Amendment) Act, 1976 was the watershed moment for environmental constitutionalism in India. This amendment, enacted during the Emergency period, inserted Article 48A into the Directive Principles of State Policy and Article 51A(g) into the Fundamental Duties. Article 48A mandates that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." Article 51A(g) imposes a duty on every citizen "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures." This amendment was a direct and conscious response to the United Nations Conference on the Human Environment held in Stockholm in 1972, where then Prime Minister Indira Gandhi articulated a vision of development that harmonized with environmental protection.

3.2. Phase II: Judicial awakening and the Article 21 expansion (1978-1986)

The post-emergency era witnessed a profound transformation in the Supreme Court's approach to fundamental rights, driven by what scholars have

termed "Atonement Activism." Having failed to protect civil liberties during the Emergency—as starkly evidenced in the infamous *ADM Jabalpur v. Shivakant Shukla* (1976) Habeas Corpus decision—the Court sought to redeem its institutional legitimacy by adopting an expansive and liberal interpretation of Article 21. The landmark judgment in *Maneka Gandhi v. Union of India* (1978)¹ laid the conceptual groundwork by holding that the "procedure established by law" for depriving a person of life or liberty must be "right, just, and fair" and not arbitrary or unreasonable. This due process revolution opened the floodgates for reading unenumerated rights into Article 21.

The seminal case that birthed Environmental Constitutionalism in India was *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh* (1985)², popularly known as the Dehradun Quarrying Case. In this public interest litigation, the Supreme Court ordered the closure of numerous limestone quarries operating in the ecologically fragile Mussoorie hills. The Court, in a path-breaking pronouncement, explicitly recognized that the Right to Life guaranteed by Article 21 includes the Right to a Healthy and Wholesome Environment. The Court held that mining operations causing ecological imbalance, deforestation, and landslides violated the community's fundamental right to life. This judgment established the crucial legal principle that environmental degradation constitutes a direct infringement of constitutionally guaranteed fundamental rights, thereby making it justiciable and enforceable through writ petitions under Article 32 and Article 226.

IV. ARTICLE 21: THE CONSTITUTIONAL BEDROCK OF THE RIGHT TO ENVIRONMENT

4.1. Expanding the meaning of "Life"

The textual reading of Article 21 is deceptively simple: "No person shall be deprived of his life or personal liberty except according to procedure established by law." The judiciary, through decades of interpretative creativity, has infused this sparse provision with the rich philosophy of Human Dignity. The Court has consistently and emphatically held that the word "Life" in Article 21 does not connote mere

Animal Existence or physical survival. It encompasses the right to live with human dignity, and this dignity is impossible to achieve or sustain in a polluted, degraded, and unhealthy environment.

The logical chain of constitutional reasoning is clear and compelling:

- The Right to Life under Article 21 includes the Right to Livelihood, as established in *Olga Tellis v. Bombay Municipal Corporation* (1985)³.
- The Right to Livelihood is dependent on and includes the right to access and sustainably use Natural Resources such as clean water, fertile soil, and forest produce.
- Therefore, the degradation, pollution, or destruction of the natural environment constitutes a direct and actionable infringement of the fundamental Right to Life guaranteed under Article 21.

This reasoning has profound implications. It transforms environmental protection from a mere policy preference or statutory obligation into a constitutional imperative enforceable against both State and non-State actors. Any person aggrieved by environmental degradation that threatens life or health can directly approach the Supreme Court under Article 32 or the High Courts under Article 226 for enforcement of this fundamental right.

4.2. Landmark articulation: *Subhash Kumar v. State of Bihar* (1991)⁴

In the landmark case of *Subhash Kumar v. State of Bihar*, the Supreme Court made an unequivocal and oft-quoted declaration that has become the cornerstone of Indian environmental jurisprudence. The petitioner, a public-spirited citizen, had filed a writ petition complaining about the discharge of toxic slurry and sludge from a colliery into the Bokaro River, which was polluting the primary source of drinking water for surrounding villages. The Court, speaking through Justice K.N. Singh, held: "The right to life guaranteed by Article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution for removing

the pollution of water or air which may be detrimental to the quality of life."

This judgment cemented the Substantive Right to a Healthy Environment as a core and non-negotiable component of the Fundamental Rights chapter. It clarified that a petitioner need not prove personal injury or special damage; the mere existence of environmental pollution that threatens the quality of life is sufficient to invoke the constitutional remedy under Article 32.

V. THE DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES: THE SYNERGY OF PARTS III, IV, AND IVA

5.1. Harmonious construction: Bridging the justiciable and non-justiciable

While Article 21 provides the enforceable Right, Article 48A and Article 51A(g) provide the corresponding Obligations on the State and citizens respectively. A strict positivist or textualist reading of the Constitution would treat the provisions of Part IV (Directive Principles of State Policy) as mere non-justiciable guidelines or pious aspirations that cannot be enforced in a court of law. However, the Supreme Court, in a classic display of Judicial Activism and interpretative ingenuity, employed the principle of Harmonious Construction to bridge the gap between the justiciable and non-justiciable parts of the Constitution. The Court held that Part III (Fundamental Rights) and Part IV (Directive Principles) are not antithetical or opposed to each other but are complementary and mutually reinforcing. They are, in the memorable words of the Court, the two wheels of the chariot of social justice, and the Constitution must be interpreted in a manner that gives effect to both.

5.2. Article 48A: The State's constitutional mandate Article 48A states: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." It is important to note that a citizen cannot file a writ petition solely and exclusively for the violation of Article 48A, as it falls within the non-justiciable Directive Principles. However, the Supreme Court has ingeniously used this provision as an interpretative tool to expand the scope and content of the fundamental Right to Life under

Article 21. If the State fails in its constitutional duty under Article 48A to protect and improve the environment, this failure itself strengthens the petitioner's case that the Right to Life under Article 21 is being violated due to State inaction or negligence. The Directive Principle thus infuses content into the Fundamental Right, creating a symbiotic relationship that enhances constitutional protection for the environment.

VI. PUBLIC INTEREST LITIGATION (PIL) AND PROCEDURAL ENVIRONMENTAL JUSTICE

Democratizing access to environmental courts

The Constitution of India guarantees the precious Right to Constitutional Remedies (Article 32) as a fundamental right itself. Dr. B.R. Ambedkar described Article 32 as the "heart and soul" of the Constitution. However, the traditional common law doctrine of Locus Standi required that only a person who had suffered a direct and personal legal injury could approach the court for redressal. This procedural barrier was a death knell for Environmental Litigation, as environmental pollution and degradation typically affect diffuse, unorganized, and often impoverished communities who lack the resources and legal literacy to navigate the complex judicial system. The revolutionary innovation of Public Interest Litigation (PIL) in the late 1970s and early 1980s, pioneered by Justices P.N. Bhagwati and V.R. Krishna Iyer, dismantled this procedural barrier. Under the PIL regime, any public-spirited person, social action group, or Non-Governmental Organization (NGO) acting bona fide can file a writ petition on behalf of the affected ecosystem or community, thereby democratizing access to environmental justice.

VII. FOUNDATIONAL DOCTRINES OF INDIAN ENVIRONMENTAL LAW

The Supreme Court of India has, through the instrument of Article 141 (which declares that the law laid down by the Supreme Court is binding on all courts within the territory of India), developed a unique and sophisticated body of Judge-made Environmental Law. These foundational doctrines, largely imported from evolving norms of International

Environmental Law and adapted to the Indian constitutional context, have been given the status of binding domestic law and constitutional mandate.

The precautionary principle

The Precautionary Principle was authoritatively articulated and incorporated into Indian law in the landmark case of *Vellore Citizens Welfare Forum v. Union of India* (1996)⁶. This principle effects a fundamental shift in the burden of proof in environmental decision-making. It states that where there is a credible threat of Serious or Irreversible Environmental Damage, the Lack of Full Scientific Certainty regarding the precise nature, extent, or causal mechanisms of that damage shall not be used as a reason or excuse for postponing cost-effective measures to prevent environmental degradation. In essence, the principle mandates a "Safety First" or "Better Safe Than Sorry" approach. It requires the proponent of a potentially hazardous activity—whether an industrial project, a new chemical substance, or a large infrastructure development—to demonstrate affirmatively that the activity will Not Cause Significant Harm to the environment or public health. This principle has been invoked by the Supreme Court and the National Green Tribunal to halt or regulate a wide range of activities including mining in ecologically sensitive zones, field trials of genetically modified organisms, and construction in fragile coastal and seismic areas.

VIII. CASE STUDIES IN ENVIRONMENTAL CONSTITUTIONALISM

The Ganga pollution case (*M.C. Mehta v. Union of India*)⁹

The case concerning the pollution of the River Ganga is the longest-running and arguably the most symbolically significant environmental Public Interest Litigation in Indian legal history. Initiated by advocate M.C. Mehta in 1985 as a writ petition under Article 32, the litigation sought to address the massive and chronic pollution of the Ganga, India's holiest and most populous river basin, caused by untreated municipal sewage, industrial effluents from tanneries and other factories, agricultural run-off, and the immersion of religious offerings and partially

cremated human remains. Over nearly four decades, the Supreme Court has issued thousands of orders and directions. It has ordered the closure or relocation of hundreds of highly polluting industries, particularly tanneries in Kanpur and Kolkata. It has mandated the establishment, upgrading, and proper operation of numerous sewage treatment plants (STPs) in cities along the river's course. It has directed municipalities and state governments to implement comprehensive action plans for river cleaning. Despite limited and uneven on-ground success in actually restoring the river to pristine health—a reality that underscores the persistent implementation deficit in Indian environmental governance—the Ganga litigation has established the unassailable Constitutional Status of the Right to Clean Water and has held the State accountable for decades of institutionalized apathy and regulatory failure. The case is the quintessential example of Continuing Mandamus, a procedural innovation where the Court retains jurisdiction over the case indefinitely and monitors the implementation of its orders through periodic compliance reports and further hearings, effectively creating a permanent judicial oversight mechanism for the river's health.

IX. THE CONFLICT BETWEEN ENVIRONMENT AND DEVELOPMENT

The Narmada Bachao Andolan and the limits of judicial intervention

The construction of the massive Sardar Sarovar Dam on the Narmada River in Gujarat represented the most significant, protracted, and ideologically charged constitutional and political showdown between the imperatives of Environmental Protection and the demands of large-scale Development. The Narmada Bachao Andolan (Save the Narmada Movement), led by social activist Medha Patkar, filed a public interest petition in the Supreme Court challenging the dam project on multiple constitutional and legal grounds. The petitioners argued that the project violated the fundamental Right to Life (Article 21) of the tens of thousands of tribal families (largely Adivasis) who would be displaced from their ancestral lands and homes without adequate, humane, and timely rehabilitation. They further argued that the project would cause irreversible and catastrophic environmental damage to the unique riparian

ecosystem of the Narmada Valley, including the submergence of vast tracts of forest land and the loss of biodiversity. In a deeply controversial and widely criticized 2-1 majority judgment delivered in the year 2000 (*Narmada Bachao Andolan v. Union of India*)¹³, the Supreme Court allowed the dam construction to proceed and to be raised to its full planned height. The majority judgment prioritized the projected benefits of the dam—particularly the provision of drinking water to drought-prone regions of Gujarat and Rajasthan—over the environmental and social costs imposed on the displaced tribal communities and the submerged ecosystem. The Court held that the project had been under planning, scrutiny, and litigation for several decades and that halting or even further delaying the project at this advanced stage of construction would cause greater financial, social, and economic loss than the harm alleged by the petitioners. This judgment starkly and uncomfortably highlighted the Limits of Judicial Activism in the face of massive developmental projects that enjoy the full backing of the State apparatus. When confronted with a colossal infrastructure project that had become a symbol of regional pride and political commitment, the Court chose Deference to the executive's policy choices over a robust judicial Injunction to halt the project. The Narmada case exposed the deep tensions and unresolved contradictions between the Court's self-fashioned role as an Environmental Guardian and its constitutional awareness of the Separation of Powers doctrine and its own institutional limitations.

X. THE CRITIQUE: JUDICIAL OVERREACH AND THE SEPARATION OF POWERS IN ENVIRONMENTAL MATTERS

The "Supreme Court as the Supreme Administrator" critique

The extensive, detailed, and long-term use of the procedural innovation of Continuing Mandamus in complex environmental cases has given rise to a powerful and persistent critique that the Supreme Court of India has effectively transformed itself into the "Supreme Environmental Administrator" or the "Super-Regulator" of the country. By establishing and supervising bodies like the Central Empowered Committee (CEC) to monitor forest conservation and compliance with its orders, by dictating the specific

technological choice of fuel (CNG over diesel) for urban public transport, and by issuing detailed, micro-managerial directions regarding the operation of sewage treatment plants and waste management facilities, the Court is seen by many critics to have Usurped the legitimate technical, administrative, and policy-making functions that rightfully belong to the executive branch—specifically the Ministry of Environment, Forest and Climate Change (MoEFCC), the Central Pollution Control Board (CPCB), and the corresponding state-level agencies. Critics, including some retired judges and constitutional scholars, argue that this expansive Judicial Overreach violates the Basic Structure of the Constitution, particularly the fundamental principle of the Separation of Powers which is an essential feature of constitutional governance. It creates a parallel, judicially-controlled governance structure that is not accountable to the electorate, not subject to legislative oversight, and not bound by the procedural norms of administrative law, thereby undermining democratic decision-making and bureaucratic accountability. Furthermore, it is argued that Judicial Orders in technically complex and dynamically evolving policy matters may lack the nuanced understanding, specialized expertise, and long-term planning perspective that are required for effective and adaptive environmental management, potentially leading to implementation chaos, unintended negative consequences, and policy gridlock.

XI. THE 21ST CENTURY CHALLENGES: CLIMATE CHANGE AND CONSTITUTIONALISM

Climate litigation in India: A new frontier

While Indian courts have been remarkably active and interventionist for over four decades in addressing conventional forms of environmental pollution such as Air and Water Pollution, industrial hazards, and deforestation, the field of Climate Change Litigation is a relatively nascent, emerging, and rapidly evolving area of Indian constitutional and environmental law. Climate change presents a unique and unprecedented set of challenges for constitutional adjudication because the Causation of the harm is diffuse, complex, and global in scale (arising from the accumulated

greenhouse gas emissions of all nations over centuries), and the Impacts

are long-term, uncertain, and distributed unevenly across regions and generations. Establishing a direct and legally cognizable causal link between the actions or inactions of a specific State entity and the climate-related harm suffered by a specific individual or community is extraordinarily difficult under traditional tort and constitutional law principles. However, recent judicial pronouncements suggest that the higher judiciary is beginning to engage seriously and creatively with this existential challenge. In the case of *Hanuman Laxman Aroskar v. Union of India* (2019)¹⁴, which concerned the environmental clearance granted for a new international airport at Mopa in Goa, the Supreme Court directed the government and the project proponent to conduct a comprehensive study on the Cumulative Impact of multiple infrastructure projects in the region on climate vulnerability and ecosystem resilience. The Court is increasingly employing the constitutional language and normative framework of Inter-generational Equity, the Public Trust Doctrine, and Sustainable Development to frame a nascent and evolving Right to a Stable and Life-Sustaining Climate System within the broad and flexible ambit of the fundamental Right to Life guaranteed by Article 21.

XII. COMPARATIVE PERSPECTIVES: ENVIRONMENTAL CONSTITUTIONALISM GLOBALLY

The South African model: Explicit environmental right

Unlike the Constitution of India, which required decades of judicial creativity and interpretative expansion to locate an implicit and derivative right to a healthy environment within the interstices of the Right to Life guarantee, the post-apartheid Constitution of the Republic of South Africa, 1996 contains an explicit, self-standing, and directly justiciable environmental right in its progressive Bill of Rights. Section 24 of the South African Constitution provides: "Everyone has the right— (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through

reasonable legislative and other measures that— (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development." This provision is directly enforceable against the State, and the Constitutional Court of South Africa has developed a rich and nuanced jurisprudence under Section 24 to enforce environmental laws and hold the government accountable for environmental protection without needing to derive the right from a more general provision like the right to life or dignity. This represents a Codified Model of Environmental Constitutionalism, which provides greater textual clarity, legal certainty, and normative guidance compared to the Interpretative Model that has evolved in India.

XIII. THE FUTURE OF ENVIRONMENTAL JUSTICE: STRENGTHENING INSTITUTIONAL CAPACITY

The National Green Tribunal (NGT) Act, 2010

The establishment of the National Green Tribunal (NGT) through the National Green Tribunal Act, 2010 was a landmark legislative response to the growing burden of complex environmental cases on the dockets of the Supreme Court and the High Courts and the widely recognized need for a specialized forum with the requisite scientific and technical expertise to adjudicate environmental disputes expeditiously and effectively. The NGT is a specialized quasi-judicial body composed of both judicial members (retired judges of the Supreme Court and High Courts) and expert members (scientists, engineers, and environmental professionals with specialized domain knowledge). The Tribunal is mandated by its establishing statute to ensure the Expedious Disposal of cases relating to environmental protection, conservation of forests and other natural resources, and enforcement of legal rights relating to the environment, including the provision of relief and compensation for damages to persons and property arising from environmental harm. The NGT has emerged as a robust, accessible, and relatively efficient forum for the delivery of Environmental Justice in India. It has consistently and rigorously applied the foundational principles of environmental

law—the Precautionary Principle, the Polluter Pays Principle, and the Public Trust Doctrine—in its adjudicatory functions. The Tribunal's far-reaching orders on critical issues such as Solid Waste Management in urban areas, the regulation of Air Pollution from multiple sources, and the protection of ecologically sensitive Wetlands and Coastal Zones have been significant and impactful. The creation and successful functioning of the NGT represent a maturation and institutionalization of the Indian environmental legal system, marking a gradual but necessary shift from the era of pure, ad-hoc, and case-specific Judicial Activism by the constitutional courts to a more Institutionalized, Specialized, and Expert-informed Adjudication that is better suited to handle the technical complexities of modern environmental governance.

XIV. ENVIRONMENTAL CONSTITUTIONALISM AND FEDERALISM

Centre-State relations in environmental governance

Environmental Protection is enumerated as a subject in the Concurrent List (Entry 17A) of the Seventh Schedule to the Constitution of India. This constitutional placement means that both the Union (Central) Government and the State Governments possess the legislative competence to enact laws on matters pertaining to environmental protection and the conservation of natural resources. However, the constitutional scheme also provides, through Article 254, that in the event of a conflict or inconsistency between a law enacted by Parliament and a law enacted by a State Legislature on a concurrent subject, the central law shall prevail, and the state law shall be void to the extent of the repugnancy. The central government has exercised this legislative power to enact comprehensive and overarching umbrella legislation, most notably the Environment (Protection) Act, 1986, which confers sweeping and plenary powers upon the Central Government to issue binding directions to any person, authority, or state government for the purpose of protecting and improving environmental quality. This centralized structure of environmental regulation has often been a source of significant Federal Frictions and political tensions between the Centre and the States. States that

are richly endowed with mineral resources, extensive forest cover, and hydropower potential—such as Odisha, Chhattisgarh, Jharkhand, and the North-Eastern States—frequently complain that the centralized environmental clearance processes administered by the MoEFCC, combined with the stringent and conservation-oriented judicial orders of the Supreme Court (as in the Godavarman case), unduly constrain and hamper their legitimate economic development aspirations, infringe upon their constitutionally guaranteed rights over land, minerals, and natural resources, and disregard the nuanced local realities and development priorities that state governments are better placed to understand and address.

XV. CORPORATE ACCOUNTABILITY AND CONSTITUTIONAL TORTS

The evolving concept of state action and private corporations

A foundational principle of Indian constitutional law is that the Fundamental Rights enumerated in Part III of the Constitution are primarily enforceable against the "State" as that term is expansively defined in Article 12. The definition of State includes the Government and Parliament of India, the Government and Legislature of each State, and all local and other authorities within the territory of India or under the control of the Government of India. The critical question that arises in the context of environmental harm is: Can a writ petition under Article 32 (in the Supreme Court) or Article 226 (in the High Courts) be filed directly against a Private Corporation or industrial entity that is causing environmental pollution and degradation? The traditional and orthodox answer, rooted in a strict reading of Article 12, was in the negative—fundamental rights were seen as a shield against State action, not private action. However, the Supreme Court has, over time and through a process of interpretative evolution, expanded the horizon of Judicial Review and the enforceability of fundamental rights against non-State actors in certain circumstances. The Court has held that even private entities performing "Public Functions" or dealing with and impacting Public Resources (such as major rivers, public water bodies, or public forest lands) can, in appropriate cases, be

subjected to writ jurisdiction. More importantly and more commonly, the Court uses the mechanism of Article 32 not to issue a writ directly against the private polluter, but to issue a writ of Mandamus directing the State and its regulatory agencies to take effective and time-bound action against the private corporation to abate the pollution and enforce environmental laws. The legal reasoning is that the State's Failure, Negligence, or Inaction in regulating the private polluter and enforcing statutory environmental standards constitutes a violation of the affected citizen's fundamental Right to Life under Article 21, thereby bringing the private action indirectly but effectively within the constitutional fold and the remedial jurisdiction of the writ courts.

XVI. THE RIGHTS OF NATURE: AN EMERGING CONSTITUTIONAL DISCOURSE

From object of protection to subject of rights

A radical, philosophically profound, and potentially transformative shift in global and Indian Environmental Constitutionalism is the emerging movement to recognize and legally operationalize the Rights of Nature. This Ecocentric approach, which has gained significant traction in jurisdictions like Ecuador, Bolivia, New Zealand, and some local communities in the United States, posits that natural entities such as rivers, forests, mountains, and ecosystems possess inherent and intrinsic rights to exist, flourish, regenerate, and evolve, independent of their instrumental utility, economic value, or usefulness to human beings. In a path-breaking and widely discussed judgment in *Mohd. Salim v. State of Uttarakhand* (2017)²⁰, a Division Bench of the High Court of Uttarakhand declared the rivers Ganga and Yamuna, along with all their tributaries, streams, and water bodies, as "Legal Persons" or "Living Entities" possessing the status of a legal person with corresponding rights, duties, and liabilities. The High Court appointed designated senior officials of the State government as the *Loco Parentis* (legal guardians) of the rivers, charged with the fiduciary duty of protecting, conserving, and restoring the rivers and representing their interests in legal proceedings.

XVII. ENVIRONMENTAL JUSTICE AND MARGINALIZED COMMUNITIES

The disproportionate impact on Dalit and Adivasi communities

Any meaningful analysis of Environmental Justice in the Indian context cannot be divorced from the intersecting and deeply entrenched social realities of Caste, Class, and Ethnicity. A growing body of empirical research, investigative journalism, and activist documentation has consistently demonstrated that polluting industries, hazardous waste disposal sites, municipal landfills, thermal power plants, and other environmentally degrading land uses are overwhelmingly and disproportionately located in close proximity to the residential habitations and traditional lands of Dalit (formerly untouchable) and Adivasi (Tribal or Indigenous) communities. This phenomenon, which mirrors the patterns of Environmental Racism documented in the United States and elsewhere, represents a deeply entrenched form of structural environmental injustice in India. Adivasi communities, whose cultural identity, spiritual beliefs, and material livelihoods are inextricably and fundamentally dependent on the health and integrity of forests, rivers, and mountains, are invariably the First and Most Severely Affected Victims of large-scale Development-Induced Displacement caused by dams, mining projects, industrial corridors, and infrastructure development. The constitutional promise of Equality (Article 15), Protection of Life and Liberty (Article 21), and the special protections for the cultural and educational rights of minorities and tribal communities (Articles 29 and 30, and the provisions of the Fifth and Sixth Schedules) are rendered hollow and meaningless if the ecological life-support systems and traditional homelands of these communities are systematically destroyed and degraded without their free, prior, and informed consent.

XVIII. CRITIQUING THE "GREEN
JUDGMENTS": THE GAP BETWEEN
DECREE AND COMPLIANCE

The implementation deficit

The most persistent, trenchant, and empirically verifiable critique of Indian environmental jurisprudence, as developed and articulated by the higher judiciary, is the existence of a yawning and deeply frustrating "Implementation Deficit." There is no denying that the Supreme Court of India has, over the past four decades, handed down some of the most progressive,

path-breaking, and stringently worded environmental judgments and orders to be found anywhere in the world. The judicial pronouncements are often models of legal reasoning, moral clarity, and constitutional vision. Yet, the sobering and undeniable ground reality is that the holy River Ganga remains heavily polluted for much of its course despite thousands of court orders and the expenditure of billions of rupees. The ambient air quality in Delhi and many other major Indian cities remains hazardous and life-threatening for significant portions of the year, particularly during the winter months. The management of Municipal Solid Waste in most Indian cities and towns remains a distant and elusive goal, with unsanitary landfills and open dumping being the norm rather than the exception. The gap between the lofty and inspiring Judicial Decree and the grim and intractable Ground Reality is vast and, by most accounts, not narrowing significantly. This implementation deficit is attributable to a complex interplay of factors, including a persistent Lack of Political Will at both the central and state levels to enforce court orders that may be unpopular with powerful industrial lobbies, real estate interests, or vote-bank constituencies; the chronic and severe Institutional Weakness, Underfunding, and Understaffing of the primary regulatory agencies, particularly the Pollution Control Boards; and the deep-seated structural problems of administrative apathy, corruption, and a culture of non-compliance that pervades many levels of government and industry.

XIX. THE ROLE OF INTERNATIONAL
ENVIRONMENTAL LAW IN
CONSTITUTIONAL INTERPRETATION

Incorporation of customary international law

Article 51(c) of the Constitution of India, which forms part of the Directive Principles of State Policy, explicitly directs the State to foster respect for International Law and international treaty obligations in the conduct of its foreign policy and international relations. The Supreme Court of India has creatively and purposively used this constitutional provision as a normative bridge to Domestic and Incorporate evolving principles of International Environmental Law into the fabric of Indian domestic law and constitutional jurisprudence. As discussed earlier, the foundational doctrines of the Precautionary Principle and the Polluter Pays Principle were explicitly and consciously adopted and integrated into Indian law in the Vellore Citizens Welfare Forum Case⁶. The Court, in that seminal judgment, reasoned that these principles, which had been articulated and endorsed in widely accepted international instruments such as the Rio Declaration on Environment and Development (1992), had crystallized into norms of Customary International Law and therefore, there should be no difficulty or hesitation in accepting them as part of the binding Domestic Law of India, especially when they resonate with, complement, and give concrete content to the fundamental constitutional guarantees of Article 21 (Right to Life) and the directive mandate of Article 48A.

XX. CONCLUSION: TOWARDS A
SUSTAINABLE CONSTITUTIONAL
FUTURE

The journey of Environmentalism and the emergence of a robust framework of Environmental Justice within the Indian Constitutional Framework is a remarkable, inspiring, and in many ways globally unique story of Judicial Creativity, Interpretative Courage, and Institutional Adaptation. Faced with a constitutional text that was originally and deliberately silent on the explicit right to a clean and healthy environment, the Supreme Court of India, drawing upon its plenary powers of constitutional interpretation and its jurisdiction to enforce fundamental rights, excavated

and constructed a rich, sophisticated, and continually evolving Green Jurisprudence from the deep normative reservoirs of Article 21 (Right to Life). By skillfully and purposively synergizing the justiciable provisions of Part III (Fundamental Rights) with the non-justiciable but normatively potent provisions of Part IV (Directive Principles of State Policy) and Part IVA (Fundamental Duties), the Court constructed an interlocking and mutually reinforcing Trinity of Constitutional Obligations that binds the State, the Citizen, and the Corporation in a shared enterprise of environmental stewardship and inter-generational responsibility.

The development and democratization of Public Interest Litigation (PIL) through the relaxation of standing rules, epistolary jurisdiction, and the appointment of expert committees opened the doors of the highest court to the most marginalized, voiceless, and environmentally vulnerable sections of Indian society, thereby transforming the Supreme Court into an accessible forum for the articulation and enforcement of environmental rights. The judicial articulation and application of foundational doctrines such as the Public Trust Doctrine, the Precautionary Principle, the Polluter Pays Principle, and the Absolute Liability Principle provided the conceptual tools, the legal vocabulary, and the remedial mechanisms to hold powerful State and private actors accountable for environmental degradation and to shift the normative baseline of Indian environmental governance. This body of judge-made constitutional and environmental law has undeniably and demonstrably saved precious forests from the axe and the bulldozer, catalyzed efforts to clean some of the nation's most iconic and polluted rivers (at least partially and in specific stretches), forced a serious and ongoing national conversation about the imperative of Sustainable Development and the limits of growth, and compelled governments and industries to acknowledge, at least rhetorically, their environmental responsibilities.

However, the compelling and heroic narrative of Judicial Activism and judicial creativity in the environmental field must be tempered and balanced with a sober and realistic acknowledgment of Institutional Limits, Democratic Legitimacy Concerns, and the persistent challenge of the Implementation Deficit. The constitutional principle

of the Separation of Powers remains a foundational and non-negotiable cornerstone of Constitutionalism and the Basic Structure of the Indian Constitution. The judiciary, however well-intentioned, constitutionally empowered, and publicly lauded, cannot, and in a well-functioning democracy should not, permanently or routinely assume the functions and responsibilities of the Ministry of Environment, the Pollution Control Boards, or the municipal and local planning authorities. The Counter-Majoritarian Difficulty—the legitimate and enduring concern that unelected and electorally unaccountable judges are overriding, reversing, or micro-managing the policy choices and administrative decisions of democratically elected governments and their accountable officials—remains a valid and necessary cautionary principle, especially when judicial orders result in large-scale unemployment, significant economic disruption, and the displacement of vulnerable populations without a clear, democratically deliberated, and legislatively authorized policy mandate.

The sustainable and democratically legitimate future of Environmental Justice in India lies not in the perpetual and ever-expanding judicialization of environmental governance, but in the forging and nurturing of a collaborative, mutually respectful, and constitutionally grounded Tripartite Compact among the three organs of the State. The Judiciary must act as a vigilant, principled, and fearless constitutional sentinel, intervening decisively and with full force in cases of egregious, manifest, and irremediable violations of the fundamental Right to Life and the basic structure of environmental protection, but it must also exercise due Judicial Restraint, humility, and deference in complex, polycentric, and resource-allocation matters of technical, economic, and social policy that are more appropriately and legitimately within the domain of the democratic branches. The Legislature (Parliament and the State Legislatures) must shed its long-standing legislative inertia and abdication of responsibility in the environmental field. It must rise to the occasion and enact comprehensive, modern, forward-looking, and rights-based environmental laws that address the defining challenges of our time, including Climate Change

Constitutionalism and Environmental Justice are not competing or conflicting values to be traded off

against each other in a zero-sum game. They are, in the final analysis, mutually reinforcing, interdependent, and inseparable pillars of a just, equitable, sustainable, and truly democratic society. The Constitution of India, as interpreted, enriched, and brought to life by the higher judiciary over more than seven decades, now firmly and indisputably stands as a Green Constitution—a constitutional charter that embeds environmental protection and inter-generational equity at its normative core. The defining challenge of the twenty-first century for India and for the world is to ensure that this green constitutional text, this inspiring judicial vision, and these solemn normative commitments translate from the pages of law reports and academic journals into a lived and sustainable Green Reality for the World's Largest Democracy. This requires securing not just the environmental rights and well-being of the present generation of citizens, but also upholding and faithfully discharging the Sacred Trust—the solemn fiduciary obligation—owed to the Generations Yet Unborn who will inherit the consequences of our actions and our choices.

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