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The Constitutionalisation of Environmental Protection in India: Article 21, Judicial Innovation and the Limits of Court-Led Governance

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Abstract

India has developed an extensively judicialised system of environmental protection despite the absence of an express, justiciable environmental right in the Constitution. This article examines how the Supreme Court transformed the guarantee of life and personal liberty in Article 21 into a source of environmental rights, interpreted it alongside the State-directed principle in Article 48A and the citizen's duty under Article 51A(g), liberalised access through public interest litigation, and developed or received principles such as absolute liability, precaution, polluter pays, public trust, sustainable development and intergenerational equity. It argues that this body of law produced three forms of constitutionalisation: normative constitutionalisation, by recognising ecological conditions as constitutive of dignified life; procedural constitutionalisation, by opening constitutional remedies to diffuse and collective injury; and remedial constitutionalisation, by deploying continuing mandamus, expert committees and structural directions. Yet these achievements conceal a conversion deficit: courts can convert environmental harm into constitutional language more readily than constitutional language can be converted into consistent administration, scientific monitoring and ecologically just outcomes. The emerging climate-rights jurisprudence sharpens this difficulty because climate injury is cumulative, distributive and polycentric. The article therefore rejects both uncritical celebration of judicial activism and a categorical demand for judicial withdrawal. It proposes a model of catalytic constitutionalism in which courts enforce legality, reasons, participation, precaution and measurable outcomes while preserving bounded institutional roles, building compliance and exit mechanisms into structural remedies, and requiring elected and expert institutions to assume continuing responsibility.

Keywords: *Article 21; Environmental Constitutionalism; Public Interest Litigation; Judicial Activism; Continuing Mandamus; Climate Rights; Environmental Rule of Law.*

1. INTRODUCTION

Indian environmental law presents a constitutional paradox. The Constitution, as originally enacted, contained no express fundamental right to a healthy environment. Nevertheless, environmental protection has become a conspicuous field of constitutional adjudication. Through Article 21, the Supreme Court has treated clean air, safe water, ecological balance and protection from hazardous activity as conditions of life with dignity. It has read that guarantee alongside Article 48A, which directs the State to protect and improve the environment, and Article 51A(g), which places a corresponding duty upon citizens.[1] Through public interest litigation (PIL), the constitutional courts relaxed traditional rules of standing and procedure; through substantive innovation, they adopted or developed an influential body of environmental principles; and through continuing mandamus, they sometimes supervised administration across years or decades.

This judicial contribution is historically significant. It gave constitutional visibility to injuries that conventional private law, fragmented pollution-control statutes and frequently unresponsive regulators had failed to address in many of the disputes reaching the courts. It also altered the legal grammar of environmental disputes. Pollution ceased to be merely a nuisance or regulatory infraction and became capable of constituting an injury to life, dignity, equality and public trust. Ecological decision-making was correspondingly subjected to constitutional standards of legality, non-arbitrariness, reasoned consideration and fairness.

1.1 Research problem and questions

The central question is no longer whether the judiciary contributed to environmental protection. It plainly did. The harder questions are what kind of constitutional order that contribution produced, whether its doctrines form a coherent framework, and when judicial supervision strengthens rather than displaces environmental governance. Those questions matter because environmental adjudication is unusually polycentric. A direction concerning a mine, dam, industrial cluster, forest, transmission corridor or urban airshed can redistribute risks and benefits among communities, workers, consumers, future generations and non-human life. It may depend upon contested science, require continuing expenditure, engage federal responsibilities and produce consequences beyond the litigating parties. Judicial authority is indispensable where law is ignored or fundamental rights are endangered, but adjudication alone cannot maintain monitoring stations, staff pollution-control boards, conduct cumulative-impact assessment or ensure daily regulatory compliance.

This article develops a two-part claim. First, Indian courts have produced three interrelated forms of environmental constitutionalisation. Normative constitutionalisation located environmental quality within the meaning of dignified life. Procedural constitutionalisation created routes by which collective and diffuse ecological injury could reach constitutional courts. Remedial constitutionalisation extended adjudication beyond a final declaration to monitoring, expert assistance, compensation, restoration and structural directions. Secondly, these achievements are limited by a conversion deficit: judicial doctrine can convert ecological harm into constitutional norms more rapidly than those norms can be converted into stable administrative capacity and verifiable outcomes. This deficit helps to explain why celebrated judgments coexist with recurring pollution, repeated non-compliance and serial litigation.

The article's research problem is therefore framed in the following terms: how should Article 21 environmental jurisprudence be understood after four decades of judicial innovation, and what institutional model can preserve its rights-protective force without converting constitutional courts into indefinite environmental administrators? The analysis asks four subsidiary questions. First, what is the constitutional basis for a right that is not textually enumerated? Secondly, how did PIL and substantive doctrines expand the judiciary's role? Thirdly, what legal and institutional costs arise from court-led governance? Fourthly, how should remedies be designed so that judicial intervention catalyses lawful administration instead of becoming its recurring substitute?

1.2 Method, scope and original argument

The method is doctrinal, analytical and evaluative. It examines the constitutional text, legislation, leading Supreme Court decisions, official international instruments and recent judgments available as at 24 August 2026. Cases are organised by function rather than merely by chronology: rights recognition, access, principle formation, decision-process review and structural remedy. The article does not attempt an

[1] The Constitution of India 1950 arts 21, 48A and 51A(g).

empirical measurement of environmental quality attributable to individual cases; causal claims of that kind would require datasets beyond judicial records. Instead, it evaluates doctrinal coherence, remedial design and institutional allocation. Its original contribution is the distinction between adjudicative constitutionalisation and administrative constitutionalisation, and the consequent proposal for catalytic, benchmarked and exit-oriented judicial review.

2. THE CONSTITUTIONAL FOUNDATIONS OF ENVIRONMENTAL PROTECTION

2.1 Constitutional text, constitutional silence and the Forty-Second Amendment

Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Its language does not identify environmental quality as a discrete entitlement. The textual environmental provisions lie elsewhere. Article 48A, inserted by the Constitution (Forty-second Amendment) Act 1976, directs the State to endeavour to protect and improve the environment and safeguard forests and wildlife. Article 51A(g), inserted at the same time, makes it a fundamental duty of every citizen to protect and improve the natural environment and to have compassion for living creatures. Forests and protection of wild animals and birds were also moved into the Concurrent List, strengthening Parliament's capacity to legislate within a field whose components otherwise intersect with State subjects such as public health, agriculture, water and land.[2]

The placement of Articles 48A and 51A(g) is constitutionally important. Article 48A is a Directive Principle of State Policy and, by virtue of Article 37, is not independently enforceable, although it is fundamental in governance. Article 51A(g) is a duty rather than a directly enforceable right. A purely compartmental reading would therefore leave environmental protection normatively visible but remedially weak. The Court avoided that result by using Parts IV and IVA to inform the content of the enforceable guarantee in Part III. The technique was not to convert every directive principle into a fundamental right. It was to interpret "life" in light of constitutional commitments that identify the environmental conditions under which life can be secure, healthy and dignified.

That interpretive move drew upon the post-*Maneka Gandhi* transformation of Article 21. Once the Court held that a law depriving life or liberty must satisfy standards of fairness rather than merely possess formal statutory pedigree, Article 21 became a source of substantive and procedural protection.[3] In *Francis Coralie Mullin*, life was described as more than physical survival and as including the facilities by which human dignity can be sustained.[4] Environmental protection fitted this trajectory because polluted air, poisoned water, toxic exposure and ecological displacement affect not an amenity peripheral to life but the material conditions through which life is lived.

The legitimacy of this construction rests on three considerations. First, an open-textured term such as "life" must remain responsive to conditions that threaten meaningful existence. Secondly, Articles 48A and 51A(g) provide textual confirmation that the Constitution regards environmental protection as a public value, reducing the charge that judges simply imported a preferred policy. Thirdly, environmental degradation commonly results from State permission, regulatory omission or failure to enforce law. Article 21 therefore operates not as a free-standing environmental code but as a standard against which public power and legally attributable inaction may be reviewed.

2.2 International influence and domestic constitutional reasoning

India's environmental constitutionalism also developed in dialogue with international law. The Stockholm Declaration of 1972 linked human dignity and well-being with an environment of a quality that permits a life of dignity, while simultaneously recognising responsibility to protect the environment for present and future generations.[5] The Rio Declaration of 1992 subsequently articulated participation, access to information, precaution and polluter responsibility in terms that became influential in Indian adjudication.[6] International instruments did not themselves amend Article 21. Their more defensible role has been interpretive: where domestic

[2] Constitution (Forty-second Amendment) Act 1976.
[3] *Maneka Gandhi v Union of India* (1978) 1 SCC 248.
[4] *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608.
[5] Declaration of the United Nations Conference on the Human Environment, UN Doc A/CONF.48/14/Rev.1 (1972) principle 1.
[6] Rio Declaration on Environment and Development, UN Doc A/CONF.151/26 (vol I) (1992).

law is open-textured, and provided that doing so does not conflict with enacted law, international environmental norms may illuminate the content of constitutional and statutory commitments.

Article 253 nevertheless confers upon Parliament the power to make laws for implementing treaties, conventions and decisions of international bodies. Courts should therefore distinguish interpretation from legislative incorporation. The former can legitimately resolve ambiguity or reinforce a constitutional value; the latter risks creating detailed regulatory obligations without the institutional choices and democratic authority that comprehensive legislation supplies. This distinction becomes especially important in climate adjudication, where international commitments concern sectoral transitions, finance, technology and differentiated responsibility. A constitutional court may recognise that climate harm threatens rights, but the allocation of emissions pathways and transition burdens ordinarily requires legislation and administration.

3. ARTICLE 21 AND THE NORMATIVE CONSTITUTIONALISATION OF ENVIRONMENTAL HARM

3.1 From public nuisance to constitutional injury

The pre-history of Article 21 environmentalism lies partly in judicial insistence that statutory authorities perform public duties. In *Municipal Council, Ratlam v Vardhichand*, the Supreme Court refused to accept financial incapacity as an answer to a municipality's statutory obligation to remove conditions injurious to health.[7] Although the case was not constructed as a mature environmental-rights judgment, it established a crucial premise: public bodies cannot neutralise legislated duties through administrative passivity.

The Doon Valley mining litigation brought ecological degradation directly within constitutional proceedings. In *Rural Litigation and Entitlement Kendra v State of Uttar Pradesh*, a letter concerning destructive limestone quarrying was treated as a writ petition, and the Court ordered closure of operations whose ecological costs were considered intolerable.[8] The case joined relaxed procedure, scientific inquiry and preventive relief. It also demonstrated the institutional promise and difficulty that would define later environmental PIL: the Court could act where diffuse harm lacked a conventional claimant, but it had to assess competing claims about livelihoods, mineral production and irreversible ecological loss.

The Oleum Gas Leak litigation supplied a different form of innovation. Rejecting the limitations of inherited strict-liability doctrine for enterprises engaged in hazardous or inherently dangerous activity, the Supreme Court formulated a rule of absolute and non-delegable liability proportionate to the enterprise's capacity.[9] The doctrine responded to mass industrial risk and the practical asymmetry between hazardous enterprises and affected communities. Its constitutional significance lay in treating industrial safety not solely as a matter of private compensation but as a public-law concern connected with Article 21.

A more explicit formulation followed in *Subhash Kumar v State of Bihar*. The Court stated that the right to life includes the right to enjoy pollution-free water and air for the full enjoyment of life.[10] The petition itself failed because the Court found that private interest had been presented as public interest. That conjunction is doctrinally instructive. *Subhash Kumar* simultaneously constitutionalised environmental quality and warned that liberal standing cannot eliminate the judicial responsibility to identify abuse. The environmental right was not a licence for every commercial dispute to be recast as a constitutional cause.

In *Virender Gaur v State of Haryana*, the Court connected environmental sanitation and ecological balance with a hygienic environment and human dignity, reading Article 21 with Articles 47, 48A and 51A(g).[11] This integrative reasoning gives the environmental right greater textual discipline than an unstructured assertion that every desirable condition is part of life. Article 21 supplies enforceability; the directive principles and fundamental duties give contextual content; statutes define institutional responsibilities and technical standards. Properly understood, environmental constitutionalisation is therefore cumulative rather than exclusively judge-made.

[7] *Municipal Council, Ratlam v Vardhichand* (1980) 4 SCC 162.
[8] *Rural Litigation and Entitlement Kendra v State of Uttar Pradesh* (1985) 2 SCC 431.
[9] *M C Mehta v Union of India* (1987) 1 SCC 395.
[10] *Subhash Kumar v State of Bihar* (1991) 1 SCC 598.
[11] *Virender Gaur v State of Haryana* (1995) 2 SCC 577.

3.2 The scope and operation of the environmental right

The resulting right has several dimensions. At its minimum, it protects against State action that foreseeably authorises serious environmental harm in breach of law. It may also ground positive obligations where public bodies fail to enforce statutory safeguards or protect persons from known hazards. It can support access to environmental information, fair consideration of affected communities and reasons demonstrating that ecological consequences were actually evaluated. In cases of established injury, it supports compensation, remediation and restoration. It does not, however, constitutionalise a guarantee of zero environmental risk. Modern society necessarily involves choices among energy, housing, transport, livelihoods, biodiversity and public health. Article 21 constitutionalises both the integrity of decision-making and protection against unjustifiable harm; it cannot itself specify every technically permissible emission, land use or infrastructure configuration.

This distinction matters for the standard of review. When a project proceeds without statutory clearance, when a regulator ignores material evidence, or when an affected community is excluded from a legally mandated hearing, a court reviews legality and constitutional process. When lawful authorities have considered relevant material through a fair and scientifically credible process, the court must identify a constitutional or statutory defect before substituting its preferred technical solution. Rights-based review is strongest when it disciplines public decision-making, not when it assumes that a judge can select an optimal policy from a contested range without an administratively compiled evidentiary record.

Environmental rights also have a distributive dimension. Pollution and climate hazards rarely affect all persons equally. Location, income, occupation, caste, disability, age and dependence upon natural resources shape exposure and adaptive capacity. Article 14 is therefore not merely supplementary to Article 21. Equality review asks whose health and livelihood are discounted, whose knowledge counts in appraisal, and whether environmental burdens have been concentrated upon groups with the least institutional voice. The relationship between Articles 14 and 21 becomes especially important when a facially general policy exposes already vulnerable populations to disproportionate risk.

3.3 From a healthy environment to a climate right

The Supreme Court's 2024 decision in *M K Ranjitsinh v Union of India* marked a new stage by recognising a right to be free from the adverse effects of climate change under Articles 14 and 21. The immediate dispute concerned protection of the critically endangered Great Indian Bustard and the effect of overhead electricity transmission lines in habitats located within areas important to renewable-energy development. The Court modified an earlier blanket approach and constituted an expert committee to recommend a technically workable balance between species protection and energy transition.[12]

The rights holding is significant in at least four respects. First, it shifts constitutional attention from localised pollution events to cumulative and system-wide risk. Secondly, it acknowledges that climate injury affects life, health, food, water, housing and displacement rather than forming an isolated environmental interest. Thirdly, its invocation of Article 14 recognises unequal vulnerability. Fourthly, the litigation itself reveals that environmental values may conflict internally: infrastructure necessary to mitigate greenhouse-gas emissions can harm biodiversity at particular sites.

The final 2025 judgment in the same litigation operationalised an expert-led, geographically differentiated framework rather than a universal prohibition on overhead lines.[13] That development supplies a useful institutional lesson. A constitutional right can establish the legal importance of climate protection and require the State to justify its choices, but the remedy depends upon species data, transmission technology, land characteristics, feasibility, monitoring and periodic revision. The right creates an obligation of protection and reasoned action; expert institutions must translate that obligation into sector-specific standards.

The climate right should therefore be read as a framework right rather than an immediately complete regulatory code. Its core can protect against arbitrary regression, manifestly inadequate consideration of climate risk, exclusion of vulnerable groups and failure to perform enacted duties. Its periphery emissions budgets, sectoral pathways, adaptation priorities and

[12] *M K Ranjitsinh v Union of India* 2024 INSC 280 [24]-[27], [60]-[61].

[13] *M K Ranjitsinh v Union of India* 2025 INSC 1472 [76].

transition finance requires legislative specification. The United Nations General Assembly's recognition of a clean, healthy and sustainable environment as a human right strengthens the normative context but does not remove the need for domestic institutional design.[14]

An overextended reading would expose the climate right to two dangers. One is indeterminacy: almost every major public decision has some climate implication, and a right lacking standards could become either judicially unmanageable or selectively enforced. The other is distributive blindness: an aggregate emissions benefit can coexist with local dispossession, biodiversity loss or energy poverty. The constitutional value of *Ranjitsinh* lies not in authorising courts to manage energy systems but in demanding a reasoned, evidence-based and equitable reconciliation of mitigation, adaptation, biodiversity and human welfare.

4. PIL AND THE PROCEDURAL CONSTITUTIONALISATION OF ENVIRONMENTAL JUSTICE

4.1 Standing, representation and access

Environmental harm is structurally ill-suited to restrictive standing. Injury may be widely dispersed, temporally delayed or suffered by persons who lack resources and information. Forests, rivers, wildlife and future generations cannot appear as ordinary plaintiffs. The liberalisation of standing in *S P Gupta v Union of India* allowed a public-spirited person to seek relief where those directly affected were unable to approach the court.[15] *Bandhua Mukti Morcha v Union of India* further demonstrated that Article 32 procedure could be adapted to investigate collective rights violations rather than confined to an adversarial model designed for bilateral disputes.[16]

Environmental PIL made that procedural transformation ecologically consequential. Letter petitions, commissions, amicus participation and court-appointed experts reduced some barriers created by cost, proof and geographical dispersion. The Ganga pollution litigation is illustrative. Faced with industrial effluent and public-authority inaction, the Supreme Court directed non-compliant tanneries to cease operation unless they installed treatment facilities.[17] The remedy treated regulatory failure as a matter demanding constitutional attention and signalled that employment and investment could not justify operating in persistent breach of pollution-control requirements.

PIL's democratic justification lies in representation failure. Where affected populations are politically marginal, regulatory institutions are inert and ecological injury is diffuse, liberal access can make constitutional accountability possible. Yet representation cannot be presumed merely because a petition bears a public label. Courts must examine the petitioner's bona fides, the participation of affected communities and the adequacy of the factual record. The Supreme Court's later PIL guidelines emphasise verification and guard against petitions driven by private interest, publicity or political rivalry.[18] In environmental cases, those safeguards should not become procedural obstacles for genuine claimants; they should improve the accuracy and legitimacy of representation.

4.2 Continuing mandamus and structural supervision

An ordinary final order is often inadequate where the violation is continuing and the remedy requires coordinated action. Continuing mandamus permits a court to retain jurisdiction, call for reports and issue successive directions. The *T N Godavarman Thirumulpad* litigation illustrates its scale. By interpreting "forest" according to its dictionary meaning for the purpose of conservation law and maintaining oversight through subsequent orders, the Court transformed a dispute into a long-running framework for forest governance.[19]

Continuing jurisdiction has evident strengths. It prevents governments from defeating rights through delay, exposes compliance to public scrutiny, and allows directions to be adjusted as information changes. It can coordinate authorities whose fragmentation has itself caused failure. It may also protect a remedial process from electoral cycles and bureaucratic transfer. In conditions of entrenched non-compliance, a one-time declaration followed by

[14] UNGA Res 76/300, 'The Human Right to a Clean, Healthy and Sustainable Environment' (28 July 2022) UN Doc A/RES/76/300.
[15] *S P Gupta v Union of India* 1981 Supp SCC 87.
[16] *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161.
[17] *M C Mehta v Union of India* (1988) 1 SCC 471.
[18] *State of Uttaranchal v Balwant Singh Chaufal* (2010) 3 SCC 402.
[19] *T N Godavarman Thirumulpad v Union of India* (1997) 2 SCC 267.

closure of the case can amount to a merely symbolic remedy.

The same technique carries institutional costs. A case file may accumulate issues remote from the original pleadings; interim orders may harden into policy without full participation; responsibility can migrate from statutory agencies to court-appointed bodies; and judicial time may be consumed by administrative detail. An indefinitely pending case also complicates legal certainty because operative norms may be distributed across numerous orders. The risk is not simply "activism" in the abstract. It is that an exceptional remedial jurisdiction becomes a parallel administrative system without the staffing, transparency, continuity and political accountability expected of administration.

A striking contemporary acknowledgement appears in the 2026 decision formally disposing of the four-decade-old Taj Trapezium writ petition. The Supreme Court noted that more than 150 heterogeneous applications had accumulated and reorganised the live issues into four focused suo motu proceedings, while preserving the binding force of earlier directions. The decision did not terminate judicial supervision; it attempted to restore procedural coherence.[20] It therefore supports a broader principle: continuing mandamus requires periodic institutional review, issue classification and an explicit decision whether supervision should end, narrow, transfer or be reconstituted.

5. JUDICIALLY DEVELOPED ENVIRONMENTAL PRINCIPLES

5.1 Absolute liability: constitutionalising industrial risk

The rule of absolute liability in *M C Mehta* responded to the inadequacy of exceptions associated with *Rylands v Fletcher*. An enterprise engaged in hazardous or inherently dangerous activity owes an absolute and non-delegable duty to the community and cannot escape liability by showing reasonable care.[21] This doctrine placed risk upon the actor that creates and benefits from the hazardous activity, and connected the scale of compensation with the enterprise's capacity.

Its enduring importance is both preventive and corrective. Correctively, it provides a basis for compensation without forcing victims to prove negligence within complex industrial systems. Preventively, it creates incentives to internalise safety costs. Constitutionally, it reflects the proposition that economic activity licensed by the State cannot externalise catastrophic risk onto life and health. Yet liability after injury cannot replace prevention. In mass-harm settings, irreversible death, disease and ecological loss cannot be made whole by monetary awards. Absolute liability must therefore operate with prior appraisal, safety regulation, emergency planning, disclosure and insurance rather than as a retrospective substitute for them.

5.2 Precaution and scientific uncertainty

In *Vellore Citizens' Welfare Forum v Union of India*, the Supreme Court treated the precautionary principle and polluter pays principle as essential features of sustainable development and part of domestic environmental law.[22] Precaution addresses a recurring problem: conventional adjudication tends to demand proof after causation is established, while environmental protection often requires action before uncertainty is resolved. Where there is a threat of serious or irreversible damage, lack of full scientific certainty cannot become a reason for postponing cost-effective preventive measures.

The doctrinal force of precaution was developed further in *AP Pollution Control Board v MV Nayudu*, where the Court emphasised scientific uncertainty, the difficulty faced by non-specialist judges and the rationale for placing the evidential burden upon an actor seeking to undertake a potentially harmful activity.[23] Properly applied, precaution is neither a prohibition on innovation nor a judicial intuition that any asserted risk is sufficient. It requires a structured inquiry into the plausibility, magnitude and reversibility of harm; the quality of available evidence; feasible alternatives; and the distribution of error costs. A false negative may permit irreversible ecological loss, while a false positive may unnecessarily foreclose beneficial activity. The point of the doctrine is to avoid treating uncertainty as an automatic licence for exposure.

[20] *M C Mehta v Union of India* 2026 INSC 381 [7]-[22].
[21] *M C Mehta v Union of India* (1987) 1 SCC 395.
[22] *Vellore Citizens' Welfare Forum v Union of India* (1996) 5 SCC 647.
[23] *AP Pollution Control Board v MV Nayudu* (1999) 2 SCC 718.

The principle also has procedural content. Decision-makers must obtain relevant information, disclose assumptions, consider alternatives and explain how uncertainty was treated. This process-oriented reading is institutionally preferable to an unreasoned judicial veto. It enables rigorous review while leaving primary technical appraisal with designated authorities. It also permits decisions to be revisited as evidence develops a quality essential for adaptive environmental governance.

5.3 Polluter pays, restoration and remedial proportionality

Polluter pays is sometimes reduced to the idea of a fine. Its stronger meaning is that the costs of preventing, controlling and remedying pollution should be borne by the person responsible rather than transferred to the public. In *Indian Council for Enviro-Legal Action v Union of India*, the Court required industries responsible for toxic contamination to meet the cost of remedial measures.[24] The principle thus supports restitution of the environment as well as compensation for affected persons.

Several cautions are necessary. First, payment cannot become a purchasable permission to pollute. Where harm is legally prohibited or irreversible, financial recovery does not validate the activity. Secondly, compensation must be scientifically assessed and actually recovered; headline figures without enforcement produce expressive rather than restorative justice. Thirdly, remediation should follow a hierarchy: prevent harm, stop continuing violation, restore ecological function, compensate residual injury and impose penalties where authorised. Fourthly, liability should not obscure institutional responsibility where regulators knowingly permitted illegality.

The Court's mining decision in *Common Cause v Union of India* reinforced the proposition that extraction without required environmental and forest clearances attracts consequences and that ex post facto approval cannot be assumed to erase illegality.[25] Such cases expose the link between constitutional principle and administrative incentives. If retrospective regularisation becomes routine, compliance is irrational for firms that expect violations to be condoned after investment is sunk. Effective polluter-pays jurisprudence must therefore preserve the ex ante force of permission systems.

5.4 Public trust, intergenerational equity and ecocentric reasoning

The public trust doctrine constrains the State's treatment of certain natural resources. In *M C Mehta v Kamal Nath*, the Supreme Court held that the State is trustee of resources such as rivers, forests and ecologically fragile lands and cannot transfer or permit their use in a manner inconsistent with the trust.[26] The doctrine is especially valuable where conventional property categories obscure collective ecological dependence.

Public trust does not mean that every resource must remain untouched. It means that the State must act as a fiduciary custodian rather than an unrestricted proprietor. Alienation, diversion or intensive use therefore requires lawful authority, ecological assessment, public justification and protection of public access and function. In *Intellectuals Forum, Tirupathi v State of Andhra Pradesh*, the Court applied public-trust reasoning to protect water bodies against conversion, illustrating the doctrine's relevance to urban planning as well as wilderness.[27]

Intergenerational equity adds a temporal dimension. Present institutions hold ecological capital subject to obligations toward persons not represented in current markets or elections. In *Goa Foundation v Union of India*, the Court invoked intergenerational equity in addressing mineral extraction and the exhaustion of finite resources.[28] The principle should not be used as an ornamental phrase. It demands attention to depletion rates, irreversible thresholds, restoration funds and whether short-term revenue compromises the resource base on which future communities will depend.

Indian jurisprudence has also moved, unevenly, beyond a strictly anthropocentric frame. In *Animal Welfare Board of India v A Nagaraja*, constitutional duties and the intrinsic worth of living beings informed the Court's analysis.[29] Ecocentric reasoning is relevant because biodiversity cannot always be translated into immediate human utility. Yet courts should articulate how intrinsic ecological value interacts with rights, legislation and competing public interests. Without

[24] *Indian Council for Enviro-Legal Action v Union of India* (1996) 3 SCC 212.
[25] *Common Cause v Union of India* (2017) 9 SCC 499.
[26] *M C Mehta v Kamal Nath* (1997) 1 SCC 388.
[27] *Intellectuals Forum, Tirupathi v State of Andhra Pradesh* (2006) 3 SCC 549.
[28] *Goa Foundation v Union of India* (2014) 6 SCC 590.
[29] *Animal Welfare Board of India v A Nagaraja* (2014) 7 SCC 547.

such articulation, ecocentrism risks remaining rhetorically attractive but doctrinally unpredictable.

5.5 Sustainable development: bridge or discretionary balance?

Sustainable development is the organising concept through which courts have attempted to reconcile ecology and development. Its appeal lies in rejecting a false binary: durable development depends upon ecological systems, and environmental protection must account for human welfare. Its weakness is elasticity. If "balance" is invoked without standards, almost any outcome can be described as sustainable.

The tension is visible in *Narmada Bachao Andolan v Union of India*, where the majority permitted the dam project to proceed subject to compliance and treated access to water and development as constitutional considerations alongside environmental protection.[30] The case reflects legitimate judicial caution in reviewing a technically and politically complex project, but it also demonstrates how deference depends upon confidence in appraisal and implementation. Where mitigation measures remain on paper, a balance premised upon future compliance may systematically discount those who bear immediate displacement and ecological loss.

In *Lafarge Umiam Mining (P) Ltd v Union of India*, the Court emphasised the need for informed decision-making, institutional checks and sustainable development while reviewing a forest clearance.[31] The decision is valuable when read as requiring a credible decision process, not as creating a general presumption in favour of projects labelled developmental. Sustainable development should operate through identifiable questions: Were cumulative and site-specific impacts assessed? Were alternatives considered? Were affected groups heard? Are conditions monitorable? Who bears residual risk? What happens upon breach? A judgment that answers those questions is more constitutionally disciplined than one that announces an abstract balance.

5.6 Environmental rule of law and the integrity of decision-making

A particularly important strand in recent doctrine is the emphasis on environmental rule of law. In *Hanuman Laxman Aroskar v Union of India*, while scrutinising environmental clearance for an airport, the Supreme Court insisted that appraisal, public consultation and reasons cannot be reduced to ritual compliance.[32] The decision places constitutional value upon the quality of administrative reasoning. It recognises that a clearance is not environmentally lawful merely because a document bearing that name exists.

In *Alembic Pharmaceuticals Ltd v Rohit Prajapati*, the Court held that ex post facto environmental clearance is alien to the preventive structure of environmental impact assessment because appraisal after operations begin may condone harm already caused.[33] The recent trajectory, however, demonstrates the difficulty of sustaining categorical rules amid regulatory failure and sunk investments. In *Vanashakti v Union of India* in July 2026, the Supreme Court reaffirmed that prior clearance under the 2006 Notification is mandatory, upheld the 2017 Notification as a narrowly tailored and time-bound delegated measure, and held that an executive office memorandum could not establish a perpetual route to regularisation.[34]

This latest position is important less as a licence for retrospective clearance than as an illustration of doctrinal tension. Precaution favours prior assessment; remedial pragmatism resists automatic closure or demolition where public consequences are severe; legality requires any exception to possess statutory form and principled limits. The constitutional task is to prevent exception from consuming the rule. Courts should demand that any exceptional regime deny deliberate or strategic violators an equity founded upon their own breach, identify a supervening public interest, require independent damage assessment, impose restoration and deterrent financial consequences, preserve public participation where meaningful, and publish reasons capable of review.

Environmental rule of law can unify the otherwise disparate doctrines. Precaution governs how uncertainty is treated; polluter pays allocates costs; public trust disciplines State control of common resources; sustainable development structures reconciliation; and Article 21 supplies a rights-based floor. Their common institutional demand is that environmental power be exercised under law, on

[30] *Narmada Bachao Andolan v Union of India* (2000) 10 SCC 664.
[31] *Lafarge Umiam Mining (P) Ltd v Union of India* (2011) 7 SCC 338.
[32] *Hanuman Laxman Aroskar v Union of India* (2019) 15 SCC 401.
[33] *Alembic Pharmaceuticals Ltd v Rohit Prajapati* (2020) 17 SCC 157.
[34] *Vanashakti v Union of India* 2026 INSC 761 [80].

relevant evidence, through fair procedure, for reasons, and with enforceable consequences.

6. THE LIMITS OF COURT-LED ENVIRONMENTAL GOVERNANCE

6.1 Expertise and polycentric choice

Courts decide cases through records assembled by parties, within procedural and remedial constraints. Environmental governance, by contrast, requires routine sampling, modelling, inspection, licensing, budget allocation and adaptation. A court may identify a defective impact assessment, but it is poorly placed to operate a permanent appraisal system. It may order treatment infrastructure, but it cannot manage procurement, staffing, maintenance and electricity supply. The Supreme Court itself recognised the need for specialised environmental adjudicatory expertise in the *Nayudu* litigation.[35]

Expertise is not a reason for judicial abstention. Technical discretion can conceal value choices and cannot legalise arbitrariness. It is instead a reason to distinguish review from administration. Courts should test whether competent experts considered the right questions, used intelligible methods, disclosed uncertainty, addressed credible objections and explained the decision. They should intervene more intensively where expertise is absent, conflicted or merely asserted. They should be slower to choose a technical option themselves where the legally authorised process is credible and the record admits reasonable disagreement.

6.2 Separation of powers and democratic legitimacy

The separation-of-powers concern is not answered by describing environmental injury as urgent. Urgency may justify interim protection, but it does not confer unlimited institutional competence. Indian constitutional doctrine recognises that each branch must respect the domain of the others even though the separation is functional rather than absolute.[36] Environmental orders concerning fuel choice, land-use zoning, industrial relocation or infrastructure design can contain distributive and budgetary judgments normally made by governments accountable to legislatures.

Conversely, separation of powers cannot become a defence for executive non-performance. Judicial review is itself part of the constitutional allocation of power. When authorities violate statutes, ignore mandatory appraisal, act without reasons or permit conditions that threaten fundamental rights, judicial intervention restores rather than disturbs constitutional structure. The relevant distinction is between enforcing the legal duties of administration and indefinitely assuming administrative functions.

The Court's deferential posture in technically complex development litigation illustrates the other side of the boundary. In *Tehri Bandh Virodhi Sangarsh Samiti v State of Uttar Pradesh*, it declined to substitute judicial opinion for expert assessment absent a demonstrated legal infirmity.[37] Deference of this kind is justified only where the institutional process is real. A rubber-stamped expert report, suppressed data or non-compliance with hearing requirements cannot acquire immunity merely because the subject is technical.

6.3 Compliance, capacity and the conversion deficit

The sharpest limit is implementation. A judgment may declare a right, set a deadline and constitute a committee, yet pollution-control boards, municipalities and departments remain responsible for daily performance. The statutory architecture already assigns extensive functions to central and state boards under the Water (Prevention and Control of Pollution) Act 1974.[38] Comparable responsibilities exist under the Air (Prevention and Control of Pollution) Act 1981.[39] The Environment (Protection) Act 1986 gives the Central Government broad powers to coordinate, regulate and issue directions.[40] Persistent recourse to constitutional courts can therefore signify not a legal vacuum but failure to use existing authority competently and consistently.

This is the conversion deficit. Adjudicative constitutionalisation occurs when a court recognises a right, principle or duty. Administrative constitutionalisation occurs when those norms become embedded in budgets, staffing, appraisal protocols, databases, inspection routines, reasoned orders, sanctions and grievance mechanisms. The case law

[35] *AP Pollution Control Board II v MV Nayudu* (2001) 2 SCC 62.
[36] *Asif Hameed v State of Jammu and Kashmir* 1989 Supp (2) SCC 364.
[37] *Tehri Bandh Virodhi Sangarsh Samiti v State of Uttar Pradesh* 1992 Supp (1) SCC 44.
[38] Water (Prevention and Control of Pollution) Act 1974, ss 16, 17, 24 and 25.
[39] Air (Prevention and Control of Pollution) Act 1981, ss 16, 17, 21 and 22.
[40] Environment (Protection) Act 1986, ss 3 and 5.

surveyed here suggests that India has achieved the first more fully than the second. Repeated judicial directions can temporarily bridge the gap, but may also mask it. An agency that responds principally when summoned by a court remains reactive; an agency that internalises constitutional obligations acts before litigation.

The decision in *Paryavaran Suraksha Samiti v Union of India*, which imposed timelines concerning effluent-treatment systems, exemplifies why structural orders may be necessary when statutory duties have long been neglected.[41] It also shows why success cannot be measured by the clarity of a direction alone. A meaningful compliance inquiry must ask whether facilities were commissioned, remain functional, meet standards over time, cover all relevant dischargers and have sustainable operating finance.

6.4 Remedial inconsistency and distributive effects

Environmental remedies range from closure and demolition to compensation, remediation, conditional operation, remand and monitoring. Variation is unavoidable because facts differ. The problem is insufficient articulation of why a particular remedy follows. Closure can protect communities and deter strategic illegality; it can also cause abrupt livelihood loss and induce relocation of pollution. Compensation can fund restoration; it can also become a cost of doing business. Remand respects institutional roles; it can prolong exposure where agencies repeatedly fail.

The Supreme Court's approach in *Sterlite Industries (India) Ltd v Union of India*, which combined recognition of environmental harm with substantial compensation while allowing the plant to operate, illustrates the remedial tension.[42] A principled remedy should separately assess ongoing risk, culpability, reversibility, community injury, employment consequences and regulatory failure. "Balance" should be the conclusion of that analysis, not a substitute for it.

Court-led governance may also reproduce representation inequalities. Nationally prominent PILs can attract senior counsel and expert committees, while local harms may remain invisible. Communities can be spoken for without controlling the litigation. Workers may enter the case only when closure is imminent. Future generations and non-human nature require representation, but so do persons whose housing, subsistence or cultural relations depend upon the affected landscape. Procedural constitutionalisation is incomplete unless remedies are formed with, rather than merely for, those who bear their consequences.

6.5 Fragmentation and the place of the National Green Tribunal

The National Green Tribunal Act 2010 created a specialised forum empowered to determine substantial environmental questions, grant relief and compensation, order restitution, and apply sustainable development, precaution and polluter pays.[43] This statutory institutionalisation should have reduced the need for constitutional courts to undertake first-instance environmental administration. The Supreme Court and High Courts retain judicial-review jurisdiction, but ordinarily should allow the Tribunal to develop evidence and apply specialised expertise within its field.

The Supreme Court has emphasised that environmental disputes falling within the Tribunal's statutory domain should be pursued through that framework and that parallel proceedings can create conflicting orders and institutional confusion.[44] Effective subsidiarity requires more than jurisdictional deference. Tribunal benches must be adequately staffed; expert membership must be meaningful; access cannot be defeated by distance or digital exclusion; and orders must be enforceable. Specialisation without capacity merely relocates the conversion deficit.

7. FROM SUPERVISORY ACTIVISM TO CATALYTIC CONSTITUTIONALISM

7.1 A principled model of judicial intervention

The choice is not between judicial supremacy and judicial silence. A more defensible model is catalytic constitutionalism: courts use constitutional authority to activate, discipline and verify the institutions legally responsible for environmental governance. The model has five elements.

First, review should begin with institutional diagnosis. The court should identify whether the defect is unlawful authorisation, non-enforcement, deficient scientific inquiry, exclusion from participation, lack of

[41] *Paryavaran Suraksha Samiti v Union of India* (2017) 5 SCC 326.
[42] *Sterlite Industries (India) Ltd v Union of India* (2013) 4 SCC 575.
[43] National Green Tribunal Act 2010, ss 14, 15 and 20.
[44] *Bhopal Gas Peedith Mahila Udyog Sangathan v Union of India* (2012) 8 SCC 326.

reasons, regulatory capture or absence of legislative standards. Remedies should respond to that diagnosed failure. A new committee is not a universal answer; it may duplicate an existing body or further diffuse responsibility.

Secondly, courts should enforce an environmental decision-process guarantee. Authorities must act within jurisdiction, collect relevant baseline and cumulative-impact data, disclose material information, hear affected persons, address reasonable alternatives, explain uncertainty and give reasons connecting evidence to conditions. The Environmental Impact Assessment Notification 2006 already structures screening, scoping, public consultation and appraisal for covered projects where those stages apply.[45] Judicial review should ensure that these stages perform their intended functions rather than operate as paperwork.

Thirdly, substantive doctrines should be translated into reviewable questions. Precaution asks how serious uncertainty was treated. Polluter pays asks whether the full costs of prevention and restoration were internalised. Public trust asks whether the State justified impairment of common ecological assets. Intergenerational equity asks whether irreversible depletion was evaluated. Sustainable development asks whether alternatives and distribution were examined. This translation constrains both administrators and judges by replacing slogans with reasons.

Fourthly, intensity of review should track institutional reliability. A court should intervene strongly where mandatory procedure was bypassed, evidence concealed, affected groups excluded, conflicts ignored or conditions chronically unenforced. It should show calibrated deference where an independent and competent authority has transparently evaluated the evidence, responded to objections and adopted monitorable safeguards. Deference must be earned through decision quality, not attached automatically to the executive label.

Fifthly, adjudication should preserve a rights floor. No claimed private economic benefit, standing alone, can justify a remedy that exposes people to conditions destructive of life, condones prohibited conduct or imposes grave and avoidable harm upon a politically marginalised group. Sustainable development is reconciliation within constitutional limits, not a formula by which fundamental protection always yields to sunk investment.

7.2 Designing structural remedies for compliance and exit

Where structural relief is necessary, the initial order should contain a remedial architecture rather than an open-ended instruction to "take steps." That architecture should specify the responsible public authority, the legal duty being enforced, measurable indicators, a reporting format, public access to compliance data, an opportunity for affected groups to respond, consequences for default and a review date.

The remedy should also contain an exit pathway. Judicial supervision may end when objective benchmarks are met and a competent institution demonstrates capacity to maintain them. It may narrow to periodic audit, transfer to the NGT or High Court, or resume upon a defined trigger. The 2026 reorganisation of the Taj Trapezium litigation shows the value of periodically separating accumulated issues into procedurally coherent proceedings rather than allowing a single case to become an indefinite receptacle.[46]

Independent expertise must assist rather than replace accountable decision-makers. Court-appointed experts should disclose methods, data, conflicts of interest and disagreement. Their reports should be available to parties and affected communities before adoption. Courts should avoid converting committee recommendations into law without reasons. Where statutory expert bodies exist, the preferred remedy may be to require them to reconsider under specified safeguards, supplemented by independent audit if their credibility is impaired.

7.3 Legislative and administrative constitutionalisation

Catalytic adjudication ultimately aims at institutional withdrawal made safe by capable governance. Parliament and State legislatures must supply clearer standards where judicial doctrine has outpaced legislation. Climate change is the most obvious case. India's updated nationally determined contribution commits by 2030 to reduce the emissions intensity of its gross domestic product by 45 per cent from the 2005 level and to achieve about 50 per cent

[45] Environmental Impact Assessment Notification 2006, SO 1533(E), Gazette of India, Extraordinary, pt II, sec 3(ii) (14 September 2006).

[46] *M C Mehta v Union of India* 2026 INSC 381 [7]-[22].

cumulative electric power installed capacity from non-fossil fuel-based energy resources, the latter with the assistance of technology transfer and low-cost international finance.[47] An international commitment, however, is not a complete domestic framework for rights, responsibilities, adaptation and accountability. A climate statute or coordinated legislative framework should define planning duties, institutional competence, transparent carbon and adaptation reporting, periodic targets, just-transition safeguards and remedies for non-performance.

Administrative constitutionalisation also requires prosaic reforms: filling technical vacancies; independent laboratories; transparent inspection selection; interoperable emissions and clearance databases; cumulative-impact assessment; public reasons for enforcement choices; protection for whistle-blowers; and predictable sanctions. These matters lack the drama of a landmark judgment but determine whether constitutional rights affect daily exposure.

The Paris Agreement's architecture recognises that climate action must occur in the context of sustainable development and efforts to eradicate poverty.[48] Domestic implementation should correspondingly integrate adaptation, public health, biodiversity, energy access and livelihood transition. Courts can require the State to confront these dimensions, but legislatures and administrators must determine durable policy through participatory processes and revisable evidence.

7.4 Participation, environmental information and access to justice

Environmental decisions can become more accurate and legitimate when persons with local knowledge are able to test official assumptions. Participation is not a ceremonial public hearing after the project design has effectively become irreversible. Relevant documents must be timely, intelligible and accessible; hearings must occur while alternatives remain open; objections must receive reasoned responses; and affected persons must be able to challenge non-compliance. Rio Principle 10 connects participation with access to information and effective judicial and administrative remedies.[49]

Courts should therefore treat serious participation defects as substantive failures of environmental governance. At the remedial stage, they should require representation of affected communities, workers and local institutions where orders alter land use, employment or access to resources. Costs and access to expert evidence can remain significant barriers. Legal services institutions, universities and independent scientific bodies can help develop community-accessible technical assistance without making participation dependent upon elite PIL entrepreneurship.

7.5 A disciplined relationship among courts, the NGT and regulators

A sustainable institutional settlement requires complementary roles. Regulators should collect data, license, inspect and enforce. The NGT should provide accessible, expert and fact-sensitive adjudication, including restoration and compensation. High Courts should supervise legality within their territorial and constitutional jurisdiction. The Supreme Court should settle important questions of law, protect fundamental rights and intervene structurally where failure is systemic and ordinary remedies are demonstrably inadequate.

This allocation is not a rigid hierarchy. Urgent and irreversible harm may justify immediate constitutional relief. But reasons should explain why existing statutory pathways are insufficient. Likewise, when a court retains jurisdiction, it should identify which function cannot presently be entrusted to the designated institution and what change would permit transfer. Institutional discipline makes judicial action more, not less, legitimate because it connects exceptional power to demonstrated necessity.

8. CONCLUSION

The constitutionalisation of environmental protection is a consequential development in Indian public law. Through Article 21, the Supreme Court recognised that life and dignity depend upon ecological conditions. By reading that guarantee with Articles 48A and 51A(g), it anchored environmental protection in the constitutional text. By liberalising standing, it enabled diffuse and under-represented injury to reach constitutional courts. By developing absolute liability, precaution, polluter pays, public

[47] Government of India, *India's Updated First Nationally Determined Contribution Under Paris Agreement* (August 2022) 2, items 3-4.

[48] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) art 2.

[49] Rio Declaration on Environment and Development, UN Doc A/CONF.151/26 (vol I) (1992) principle 10.

trust, sustainable development, intergenerational equity and environmental rule of law, it furnished decision-makers with a vocabulary of responsibility. Through structural remedies, it refused to allow entrenched non-compliance to reduce rights to declarations.

That achievement should neither be romanticised nor dismantled. Court-led environmental governance has exposed the limitations of courts as well as the failures of administration. Polycentric choices, scientific uncertainty, remedial distribution, democratic accountability and long-term implementation cannot be resolved by judicial will alone. Indefinite supervision can lose procedural coherence, diffuse institutional responsibility and leave agencies dependent upon litigation. The recognition of a climate right intensifies these concerns because the injury is systemic and the transition required is economy-wide.

The appropriate response is catalytic constitutionalism. Courts should remain forceful guardians of legality, rights, participation, reasons and precaution, but structure intervention so that constitutionally responsible institutions acquire and retain the capacity to govern. Structural orders should identify duties, responsible actors, benchmarks, public reporting and exit conditions. Environmental principles should be converted from rhetoric into questions that can discipline evidence and reasons. Legislatures should supply climate and governance frameworks; regulators should internalise constitutional standards in routine practice; and the NGT should serve as a genuinely accessible expert forum.

The decisive measure of environmental constitutionalism is therefore not the number of celebrated judgments. It is whether a person can breathe cleaner air, obtain reliable information, participate before harm is authorised, secure timely enforcement, and trust that ecological systems will be protected without first requiring a constitutional court to administer them. India's jurisprudence has successfully constitutionalised the environmental claim. Its next task is to constitutionalise the institutions that must deliver it.