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Open Access Law Journal, ISSN (O): 3049-0057

Editor-in-Chief – Prof. (Dr.) Amit Kashyap; Publisher – Reet Parihar

Constitutional Mandates And Environmental Jurisprudence For Marginalised Communities

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Published on: 20th February 2026

Abstract

This conference paper establishes a vital nexus between environmental jurisprudence and constitutional mandates, examining how judicial interpretations and fundamental rights provisions empower marginalised communities in environmental justice struggles. Through an interdisciplinary framework integrating constitutional law, environmental jurisprudence, and human rights doctrine, this analyses how constitutional environmental mandates and judicial precedents can either perpetuate or redress environmental inequalities. Defined as ***JurisprudEquity****, the constitutionalising of environmental justice, and this approach centres on leveraging fundamental rights, public trust doctrine, and sustainable development principles to address environmental injustices through judicial and legislative mechanisms.*

The paper evaluates the effectiveness of constitutional remedies, including Article 21 rights to life and environment, Article 48A Directive Principles, and Article 51A(g) fundamental duties, alongside judicial doctrines like the precautionary principle, polluter pays, and public trust. Drawing from landmark jurisprudence in ***MC Mehta v. Union of India****,* ***Vellore Citizens Welfare Forum v. Union****, and* ***Subhash Kumar v. State of Bihar****, this demonstrates how constitutional courts have transformed environmental rights into enforceable mandates. Platforms such as PILs, judicial commissions, and National Green Tribunal mechanisms serve as critical conduits for marginalised communities to access environmental justice.*

Keywords: *JurisprudEquity, Environmental jurisprudence, Constitutional mandates, Article 21 environment, Public Trust Doctrine, Sustainable development, PIL mechanisms, Eco-constitutionalism*

I. Introduction

Environmental justice in India has transformed from a marginal concern to a foundation of constitutional jurisprudence, intricately integrating the imperatives of ecology with the fundamental rights of marginalised sections. In a country where the pace of industrialisation, urbanisation, and extractive economies has adversely affected the tribal population, fisher communities, slum dwellers, and rural poor with pollution, deforestation, and depletion of resources, the judiciary has become the only safeguard against environmental injustices. JurisprEquity-a neologism coined in this paper to describe the constitutionalization of environmental justice which symbolizes this harmonious convergence of the transformative vision of the Constitution and judicially developed principles to ensure that environmental protection is no longer a matter of policy preference but a legally enforceable right under Articles 14 (equality), 21 (life and dignity), 48A (Directive Principle of State policy for environmental protection), and 51A(g) (fundamental duty to protect the environment).[1]

The development pattern in post-independence India, represented by the Five-Year Plans and Nehru's industrialisation policies, emphasised economic development, even if it meant ecological costs. Such developmental projects as the Bhakra Nangal Dam represented progress but resulted in the displacement of thousands of Adivasis without proper rehabilitation, prefiguring the conflicts in the Narmada Valley.[2] The 1970s saw the Stockholm Conference (1972) as the catalyst for awareness, but the legislative gaps, despite the Environment (Protection) Act of 1986, which required judicial action. [3] The loosening of locus standi through Public Interest Litigation (PIL) in S.P. Gupta v. Union of India (1981) made it more democratic, as "epistolary jurisdiction" became a means for voiceless people.[4]

This judicial activism saw a spate of cases in the 1980s, with disasters such as the Bhopal Gas Tragedy (1984), which claimed thousands of lives in the marginalised areas of cities, establishing the vast reach of Article 21 to encompass "right to wholesome environment" (Charan Lal Sahu v. Union of India, 1990).[5] Cases such as Rural Litigation and Entitlement Kendra v. State of U.P. (1985) established the proactive role of the judiciary, which directed the closure of quarries in Mussoorie hills due to the impact of Himalayan ecology on the

[1] INDIA CONST. arts. 14, 21, 48A, 51A(g).
[2] Narmada Bachao Andolan v. Union of India, (2000) 10 S.C.C. 664.
[3] Environment (Protection) Act, 1986, No. 29, Acts of Parliament,1986(India).
[4] S.P. Gupta v. Union of India, 1981 Supp. S.C.C. 87 (India).
[5] Charan Lal Sahu v. Union of India, (1990) 1 S.C.C. 613 (India).

livelihood of people.[6] In the present scenario, with climate change, the increasing level of the Sundarbans poses a threat to fisher communities, while air pollution in the Delhi NCR adds to the health woes of slum dwellers. Equity jurisprudence takes on an imperative.[7]

This research paper will examine the evolution of Equity jurisprudence, analyse constitutional underpinnings, discuss key judicial tenets, review access mechanisms for marginalised sections, investigate education directives, review the development of eco-constitutional paradigms, point out research gaps, and provide recommendations. In terms of methodology, it will use judicial analysis of Supreme Court/NGT decisions, comparative constitutional analysis with international eco-constitutionalism (for example, Ecuador's rights of nature), and socio-legal scholarship based on civil society documents.[8] By connecting theory and practice, it seeks to make a case for the recognition of environmental rights as a fundamental right itself, in order to provide equity to India's 300 million+ marginalised population.

The stakes are existential: India's per capita carbon footprint lags globally, yet vulnerable communities bear a disproportionate share of climate costs. *Equity jurisprudence* thus mandates not just remediation but prevention, aligning constitutional socialism (Preamble) with sustainable development goals.

II. Constitutional Foundations of Environmental Rights

The constitutional structure of environmental protection in India is based on a rational matrix of the basic rights, the Directive Principles of State Policy (DPSPs), and the fundamental duties, which have helped to develop a strong jurisprudence of environmental rights. The Supreme Court of India has consistently held that these provisions form a composite mandate for environmental protection.

A. Article 21: From Negative Liberty to Substantive Environmental Right

The most important constitutional provision in this regard is Article 21, which states: "No person shall be deprived of his life or personal liberty except according to procedure established by law." This provision was originally designed as a safeguard against arbitrary deprivation of

[6] Rural Litig. & Entitlement Kendra v. State of U.P., 1985 Supp. S.C.C. 79 (India).
[7] Intergovernmental Panel on Climate Change (IPCC), Climate Change 2023: Synthesis Report (2023).
[8] David R. Boyd, The Environmental Rights Revolution (2012).

life or liberty, but it has been gradually expanded to cover the qualitative aspects of life itself, such as health, livelihood, dignity, and a clean environment.[9]

In the case of Subhash Kumar v. State of Bihar (1991), the Supreme Court of India held that the right to life under Article 21 encompasses the right to enjoy pollution-free water and air, and that a person or group of persons can move the Court under Article 32 if their environmental rights are violated.[10] This approach has been reiterated in a series of cases (M.C. Mehta cases, Virender Gaur v. State of Haryana), where the Court has associated environmental degradation with the violation of the right to life and health.[11] Today, the "right to a clean and healthy environment" is considered a part and parcel of Article 21, rather than a penumbral right.[12]

More recently, in the climate context, the Supreme Court has indicated that the right not to be adversely affected by climate change is implicit in Articles 21 and 14, bringing the domestic law in line with international human rights standards.[13] This is in line with India's support for the UN General Assembly resolution in 2022, recognising the right to a clean, healthy, and sustainable environment as a universal human right, while having some reservations regarding the operative clauses.[14]

B. Articles 48A and 51A(g): Constitutionalization of Ecological Duties

Part IV and Part IVA of the Constitution support Article 21 through environment-specific directives and duties. Article 48A, added by the 42nd Amendment in 1976, states that it is the duty of the State to "protect and improve the environment and safeguard the forests and wildlife of the country." Article 51A(g), also added by the same amendment, states that it is the "fundamental duty of every citizen to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures."[15]

Although DPSPs are non-justiciable, the Supreme Court has consistently utilised Articles 48A and 51A(g) as interpretive tools to fill the gaps in Article 21. In various cases, the Court has held that Articles 21, 47 (public health), 48A, and 51A(g) collectively provide "a clear mandate

[9] World Bank, CO_2 Emissions (Metric Tons per Capita) – India Data (2023).
[10] Subhash Kumar v. State of Bihar, (1991) 1 S.C.C. 598 (India).
[11] Virender Gaur v. State of Haryana, (1995) 2 S.C.C. 577 (India).
[12] M.C. Mehta v. Union of India, (1987) 1 S.C.C. 395 (India).
[13] INDIA CONST. arts. 14, 21.
[14] U.N. G.A. Res. 76/300, The Human Right to a Clean, Healthy and Sustainable Environment (July 28, 2022).
[15] INDIA CONST. arts. 14, 48A, 51A(g).

to the State to protect and improve the environment and to safeguard the forests and wildlife of the country."[16] In cases involving vehicular pollution, industrial emissions, and river pollution, in M.C. Mehta, these provisions have been used to support the regulatory measures and the closure of polluting units.[17]

As observed in academic literature, the triangulation of rights, directives, and duties has resulted in the effective constitutionalization of ecological governance, where DPSPs are no longer passive; they now influence judicial interpretation, policy formulation, and even structural remedies like continuous mandamus.[11] The courts have relied on Article 51A(g) not only to remind people of their duties but also to justify state action on the grounds of mandating environmental education, awareness, and even banning environmentally destructive festivals and practices.

C. Directive Principles and Socio-Environmental Justice

Beyond Article 48A, other DPSPs have been mobilised for environmental justice:

- Article 39(b) speaks of distributing material resources of the community to subserve the common good;
- Article 47 obliges the State to improve public health;
- Article 46 mandates promotion of the interests of the Scheduled Castes and the Scheduled Tribes.

Taken cumulatively with Article 21, these provisions can be seen to support an equity-oriented, distributive approach to environmental governance, one that acknowledges the fact that environmental degradation is not, in fact, evenly distributed, but tends to concentrate in areas where historically marginalised populations live and work.

In the cases of Rural Litigation and Entitlement Kendra and subsequent forest and mining cases, the Court has relied on the DPSPs to sustain limitations on exploitative use and to give greater weight to long-term ecological integrity and health than short-term financial benefit. This line of cases implicitly supports environmental justice in its protection of ecologically sensitive areas that are largely home to tribal and hill populations.[18]

[16] INDIA CONST. arts. 14, 21, 48A,47, 51A(g).
[17] M.C. Mehta v. Union of India, (1988) 1 S.C.C. 471 (India) .
[18] Narmada Bachao Andolan v. Union of India, (2000) 10 S.C.C. 664 (India).

D. Fundamental Duties and Civic Environmentalism

Article 51A(g) has also been a constitutional basis for a civic model of environmentalism, where citizens are not only the beneficiaries of environmental rights but also active agents and co-guardians of environmental resources. The judiciary has invoked this obligation to:

- Strike down a provision requiring the use of pollution control devices as unconstitutional;
- Sustain the compulsory provision of environmental education;
- Uphold a provision restricting activities that cause harm to animals and the environment.[19]

Scholars have noted that the Court's articulation of a reciprocal model of environmentalism, through the conjunction of the right guaranteed under Article 21 and the duty imposed under Article 51A(g), reflects the current global trend in environmental constitutionalism, where human rights and environmental obligations are co-constitutive.

E. International Law and the "Right to a Healthy Environment"

Indian courts have frequently drawn on **international environmental and human-rights instruments**—Stockholm Declaration (1972), Rio Declaration (1992), and more broadly the jurisprudence around a "right to a healthy environment"—to interpret constitutional obligations.[17] The Supreme Court has held that in the absence of conflicting domestic law, international norms that further constitutional values can be read into Part III.[18]

The 2022 UNGA resolution recognising the right to a clean, healthy and sustainable environment as a human right, which India supported, provides further normative backing for domestic courts to strengthen Article 21-based environmental rights.[19] Scholars note that this external recognition, combined with India's rich case law, positions the country as a **de facto environmental-rights jurisdiction**, even in the absence of an express textual clause like some Latin American constitutions.[20]

Indian courts have often relied on international documents on the environment and human rights, such as the Stockholm Declaration (1972), Rio Declaration (1992), and more generally, the body of jurisprudence on the "right to a healthy environment," to interpret constitutional

[19] Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (Vol. I) (Aug. 12, 1992).

obligations.[20] The Supreme Court has ruled that in the absence of conflicting domestic law, international norms that promote constitutional values can be incorporated into Part III.[21]

The 2022 UNGA resolution affirming the right to a clean, healthy, and sustainable environment as a human right, which India signed on to, further strengthens normative support for domestic courts to enhance Article 21-based rights to the environment.[22] It has been observed that due to this international validation, combined with the existing rich body of Indian case law, India is effectively a de facto jurisdiction on environmental rights without an explicit textual provision, as in some Latin American constitutions.

III. Judicial Doctrines: Pillars of Equity jurisprudence

Indian courts pioneered several global environmental principles, embedding them into domestic law.

A. Precautionary Principle and Polluter Pays

Vellore Citizens' Welfare Forum v. Union of India (1996)[23] incorporated the precautionary principle and polluter pays principle, based on the Stockholm (1972) and Rio (1992) Declarations, and held tanneries liable for restitution without requiring proof of loss. These principles placed the burden on polluters and directly aided affected agricultural and fishing communities in Tamil Nadu.

B. Public Trust Doctrine

M.C. Mehta v. Kamal Nath (1997)[24] reinstated the public trust doctrine, holding that rivers, forests, and seashores are state trusts that are inalienable for public use. Used in coastal aquaculture disputes, specifically S. Jagannath v. Union of India[25] (1997), it safeguarded fisherfolk from ecologically destructive shrimp farms.

[20] Stockholm Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1 (June 16, 1972)
[21] S. Jagannath v. Union of India, (1997) 2 S.C.C. 87 (India).
[22] supra note 14.
[23] Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 S.C.C. 647 (India).
[24] M.C. Mehta v. Kamal Nath, (1997) 1 S.C.C. 388 (India).
[25] S. Jagannath v. Union of India, (1997) 2 S.C.C. 87 (India).

C. Absolute Liability and Sustainable Development

M.C. Mehta v. Union of India (Oleum Gas Leak, 1987)[26] developed the principle of absolute liability for dangerous industries, thereby overturning the exceptions to Rylands v. Fletcher's strict liability, and making enterprises liable irrespective of their care. Narmada Bachao Andolan v. Union of India (2000)[27] struck a balance between sustainable development, displacement, and environmental issues by making large dams liable for environmental clearance and monitoring.[19]

IV. Access Mechanisms for Marginalised Communities

PILs transformed locus standi, allowing representation for those who cannot personally approach courts. Bandhua Mukti Morcha v. Union of India (1984) codified this liberal locus standi, subsequently applied to environmental issues.[28] The creation of the National Green Tribunal (NGT) in 2010 introduced a dedicated institution with technical knowledge; in Pahwa Plastics v. Dastak NGO (2017), the NGT imposed substantial fines on plastic violators, increasing deterrence.[29]

Continuous mandamus ensures environmental directions are followed. This is seen in the protracted case of M.C. Mehta v. Union of India (Ganga pollution), where the Supreme Court has periodically issued directions to the central and state governments and has continued to monitor their implementation.[30]

V. Education and Awareness: Constitutional Mandates

Article 21 has been read to include the right to environmental education. In M.C. Mehta v. Union of India (1987, "Environmental Education" case), the Supreme Court ordered the inclusion of environmental studies in school syllabi at all levels, acknowledging awareness as a precursor to environmental protection.[31] Article 51A(g) has been invoked to support campaigns and awareness programs, especially in rural and tribal areas, which are both guardians of traditional ecological knowledge and sufferers of environmental damage.

[26] Supra note 12.
[27] supra note 14 & 22.
[28] Bandhua Mukti Morcha v. Union of India, (1984) 3 S.C.C. 161 (India).
[29] Pahwa Plastics Pvt. Ltd. v. Dastak NGO, Appeal No. 479 of 2017, Nat'l Green Tribunal (India).
[30] Supra note 17.
[31] Supra note 12.

VI. Emerging Trends: Eco-Constitutionalism

Recent judicial decisions reveal the growing trend of eco-constitutionalism, which emphasises intergenerational equity, climate justice, and rights of nature in some countries. In India, the Supreme Court's ruling in M.K. Ranjitsinh v. Union of India (Great Indian Bustard case, 2024) highlights intergenerational equity, which seeks to achieve a balance between the development of renewable energy and the survival of an endangered species and the desert ecosystem. [32] Orders have been passed by the NGT and some High Courts to strengthen the regimes of river protection, which are gradually adopting a discourse of rights of nature.

VII. Research Gaps and Challenges

There are several gaps that continue to exist despite the richness of the doctrine, including the lack of coordination between the federal and state governments, the lack of enforcement by the executive authority, and the urban bias that sometimes neglects the claims of rural and tribal communities. The policy analysis reveals the concerns that exist, including the absence of NGT members, the lack of infrastructure, and the delays that render the NGT ineffective as a specialised forum. The socio-legal study also reveals that there is a lack of awareness about PIL and NGT remedies in distant and marginalised communities, which creates a gap between rights and access.

VIII. Recommendations

1. Constitutional Amendment to give Article 48A a specific, justiciable status as an environmental right, consistent with Article 21.

2. Mandatory EIAs with community participation and a veto or consent requirement for projects of high impact on indigenous and forest-dwelling communities.

3. Accessible PIL and NGT websites in regional languages with para-legal assistance to help marginalised communities track cases and initiate PILs.

4. Judicial and administrative training on eco-constitutionalism, climate change, and environmental justice to ensure uniform application of the principles across courts and tribunals.

[32] M.K. Ranjitsinh v. Union of India (2024) SCC OnLine SC 570.

Here are some additional recommendations that you may append to Section VIII as a follow-through on your environmental justice theme:

Constitutional and Legislative Reform

- Implement a robust Environmental Rights Act that gives effect to the right to a clean, healthy, and sustainable environment as a fundamental right by implementing Articles 21 and 48A through the establishment of standards and time-bound obligations.

- Provide constitutional recognition for climate justice and intergenerational equity, requiring assessments of future generations for large infrastructure and mining projects.

- Modify major sectoral laws (Mines and Minerals, Forests, Water, Air) to include provisions for environmental justice, requiring special treatment for Scheduled Areas, Coastal Areas, and Climate-affected areas.

Strengthening NGT and Judicial Infrastructure

- Ensure legislative assurances regarding staff, budget, and regional benches for the NGT to prevent erosion of its exclusive jurisdiction.

- Establish mobile or circuit benches and e-hearing facilities for the NGT to regularly sit in distant tribal and coastal areas, thus making justice more accessible to marginalised sections.

- Establish Environmental Legal Aid Cells linked to state legal services authorities and law schools, which shall give priority to cases of vulnerable sections (tribals, forest dwellers, informal sector workers).

Procedural Justice and Community Participation

FPIC should be made mandatory by law for projects that impact Scheduled Tribes and traditional forest dwellers, and Gram Sabha approvals should be judicially reviewable.

The EIA process should be amended to ensure:

i. Public hearings are conducted in local languages, at convenient times and places;

ii. Independent social and environmental impact assessments;

iii. Disclosure of cumulative impacts, not just project-specific impacts.

a. Establish Community Environmental Monitoring Committees with representation from women, youth, and traditional knowledge holders to monitor project compliance with environmental approvals.

b. Develop a National Environmental Information and Justice Portal that aggregates real-time data on air, water, forest cover, pollution violations, and compliance orders, with district-wise filters and open data APIs.

c. Make geo-tagged disclosure of clearances, compliance, and penalties mandatory on a single public dashboard, making it easier for communities and researchers to track non-compliance.

d. Utilise remote sensing, IoT sensors, and citizen science platforms (mobile apps for reporting pollution, illegal felling, sand mining) with legal mandates on the regulator to respond within set timelines.

Targeted Protection for Marginalised Communities

a. Notify "Environmental Justice Zones"—regions where vulnerable populations are subjected to cumulative environmental burdens—to trigger more stringent standards, project ceilings, and high-priority funding for remediation.

b. Develop compensation and rehabilitation schemes that extend beyond financial compensation to livelihood replacement, land for land, and community infrastructure, with rights-based entitlements rather than ex gratia schemes.

c. Establish special fast-track benches for cases involving the intersection of environmental degradation with caste, gender, and indigenous status, in recognition of the cumulative vulnerability.

Capacity Building and Environmental Governance

a. Make mandatory environmental justice training a part of the institutions for judges, prosecutors, pollution control board members, forest officers, and representatives of local self-government.

b. Stimulate problem-based environmental clinics in universities and National Law Universities, connecting students with affected communities and NGT litigation.

c. Prepare model environmental bye-laws for Panchayats and Urban Local Bodies, incorporating waste, water, green areas, and local air quality management with defined roles for community organisations.

Fiscal and Market-Based Instruments with Equity Safeguards

a. Establish a National Environmental Justice Fund using a fixed percentage of pollution fines, mining royalties, and climate finance inflows, dedicated to restoration and adaptation initiatives in disadvantaged communities.

b. Develop green taxes and permit systems (for pollution, groundwater use, etc.) with a clear recycling of revenues to support the development of clean energy, access to clean water, and climate-resilient infrastructure in disadvantaged communities.

c. Make it mandatory for firms exceeding set thresholds of pollution to develop Just Transition Plans, with commitments on jobs, upskilling, and investments in disadvantaged regions.

Climate and Disaster Governance

a. Climate risk and loss and damage analysis must be integrated into all major project approvals, mandating quantification of the impact on particular vulnerable groups and formulating binding mitigation policies.

b. Enhance disaster response strategies to encompass warning, evacuation, and relief actions targeted at informal settlements, coastal communities, and remote tribal hamlets, involving them in the planning process.

c. Harmonise national climate policies (NDCs and sectoral decarbonization strategies) with rights-based approaches, citing Articles 21 and 14, and requiring periodic reporting on distributional effects.

Regional and International Cooperation

a. Utilise the SAARC/BIMSTEC and other regional mechanisms to establish common standards for transboundary environmental damage (rivers, airsheds, migratory species) with a people-focused approach to protect border communities.

b. Engage actively in international debates on the human right to a clean, healthy, and sustainable environment, using Indian jurisprudence as proof of long-standing practice and commitment to uphold these standards.

Conclusion

Equity jurisprudence shows that environmental protection in India is no longer a marginal concern in constitutional discourse but a central one to the project of achieving substantive equality and human dignity for the marginalised. By juxtaposing Articles 14 and 21 with Articles 48A and 51A(g), the judiciary has established a rights, duties, and principles trinity that enables the environment to be conceptualised not only as a resource but also as a condition precedent to the effective enjoyment of all other rights. This has enabled tribal communities opposing displacement, fisher communities opposing coastal pollution, and slum dwellers opposing toxic air and water to use the Constitution as a living document rather than a dead letter.

However, the transition from the promise of doctrine to the delivery of justice on the ground is still a work in progress. The deficits of implementation, regulatory capture, and lack of access to legal expertise can often dilute the radical edge of progressive decisions. Environmental jurisprudence has, at times, been criticised for being "top-down" and technocratic, and for not being sufficiently attuned to the knowledge systems and experiences of marginalisation. The next level of Equity jurisprudence has to, therefore, progress from the triumph of the courtroom to the institutionalisation of participatory governance, decentralised monitoring, and community-centric remedies so that the affected communities are not merely litigants but co-authors of environmental decision-making.

In a world that is increasingly climate-unstable, the Indian constitutional system, strengthened by many years of innovative environmental judicial decision-making, provides a rich normative resource for the integration of climate justice, intergenerational equity, and rights of nature into the mainstream of public law. To deepen this process will require legislative boldness (to enshrine environmental rights), administrative commitment (to give effect to them), and judicial nuance (to give voice to the poorest and most vulnerable). If these threads can be successfully intertwined, Equity jurisprudence may well develop into a strong paradigm of green constitutionalism in the Global South, situating India not only as a laboratory of

environmental rights but as a pioneer in the construction of a more just and climate-secure constitutional future.