
GREEN JURISPRUDENCE: ENVIRONMENTAL CONSTITUTIONALISM IN INDIA

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ABSTRACT

The paper focuses on environmental constitutionalism as a reaction to the failure of formal constitutional environmental commitments to be implemented in the face of deteriorating ecological realities. The study, set in the Anthropocene, holds that environmental protection should no longer be an aspirational one that is founded on constitutional text but rather an enforcement regime that can be enforced as a legal and institutional framework, which would guarantee environmental integrity. In order to show how environmental rights tend to be symbolic unless they are supported by administrative capacity, judicial enforcement, and a cohesive governance apparatus, it develops the distinction between constitutional commitments and constitutional practice, which constitute Big C and Small C, respectively.

The Indian framework owes its structure primarily to Articles 21, 48A, and 51A(g) as they form the basis of environmental constitutionalism in the state. India has been shown to have a rights-expansionist strategy, in which Article 21 has been judicially greened to incorporate a pollution-free environment, and more recently, freedom to the ill-effects of climate change. The Indian judiciary has proven time and time again that environmental protection is of utmost importance and cannot be compromised as it is an extension of fundamental rights and duties, however, the frameworks to enforce these rights have been lacklustre and need special attention for a rework.

The article concludes that environmental constitutionalism is most successful when it is combined with strong institutions and political will, substantive rights, procedural rights and emergent rights of nature. That constitutional recognition alone is insufficient for sustained environmental protection; access to the legal system, the ability to enforce environmental promises, and judicial and administrative institutions that can make those commitments a reality are all necessary. At the end of the paper, it is contended that there should be a complete constitutional right to a stable climate as the next stage in developing environmental constitutionalism globally.

Introduction

The world legal order is now in the era of deep ontological change, a change that is being brought about by the understanding that the Earth is in the Anthropocene. The given proposed geological epoch can be characterized by the fact that the anthropogenic economic and industrial activity is now the key factor that is altering the biosphere and disrupting planetary systems. During this period, humanity has become more than a simple resident of the planet, becoming a geological agent, as strong as volcanoes or meteorites. Anthropocene metaphor is a powerful tool that can be used to analyze our regulatory institutions, and it helps to reveal that the law has always been unable to mediate ecological destruction historically and continues to do so today. In fact, the socio-ecological crisis has been actively reproduced by traditional legal frameworks, like property laws that enabled the privatization of the commons or the paradigm of growth-oriented developmental paradigms. The need to respond to a fundamental legal challenge as the Earth system grows more non-stationary, non-predictable and unstable has triggered what scholars call the Ecological Constitutional Moment.

The Ecological Constitutional Moment is a drastic break with conventional constitutionalism which was mainly preoccupied with the horizontal and vertical distribution of political authority and safeguarding human freedom and economic growth. The existing planetary crisis is so serious that it deserves no less than a paradigm shift in the constitutional order, which is the opinion of the major legal theoreticians like Kloepfer, Steinberg, and Bosselmann. This change aims to create an "Ecological Rechtsstaat" or an ecological rule-of-law state, in which the safety of the biosphere is considered a constitutional law. With collapse as a pervasive problem in an environment, the material significance of democratic participation or bodily integrity is highly undermined, since ecological instability undermines the conditions of human agency.

The development of this area has taken place in a series of historical shifts, with a greening up of national charters. Whereas in 1970 only less than a dozen constitutions made reference to the environment, as at today, nearly three-quarters of the national constitutions in the world, that is, about 150 documents, are making reference to environmental rights or duties. This historical course started with the 1972 Stockholm Declaration, in which environmental quality was connected to the right to life and dignity. This was followed by the Rio Earth Summit which was in 1992, which focused on sustainable development and the procedural trinity of

information, participation, and access to justice. The right to a healthy and sustainable environment was most recently enacted by the UNGA 2022 in Resolution 76/300 as a universal human right, giving a global normative guideline that is now starting to solidify into national law.

This study acknowledges that environmental constitutionalism is not just about the inclusion of green clauses to a document; but rather reorganizing the working constitution, the collection of institutions and practices that regulate the way a society relates to its ecosystem. It entails a transformation of anthropocentric models that consider nature as a human exploitation tool, to eco-centric models that recognize the natural rights of ecosystems to live, survive and reproduce. The "Ecological Constitutional Moment" therefore requires an appeal back to the possibilities of constitutionalism in order to have global regulatory interventionist results that are required to sustain a regular and sustainable coexistence.

The Move Toward an Ecological Rechtsstaat

The concept of the Ecological Rechtsstaat or ecological rule-of-law state can be cited as the theoretical impetus behind environmental constitutionalism. Fundamentally, this idea questions the older constitutional imagination where the chief legal role of the state was to guarantee human liberty, economic development, and individual freedom without giving due consideration to the ecological limitations.¹ According to that classical model, constitutional and legal designs were mostly developed on the premise that nature was not scarce, but plentiful, robust and could be exploited continuously. Environmental constitutionalism denies the existence of such an assumption. It is based on the fact that the environment is not a background to constitutional life, but one of its fundamental preconditions. The ecological systems upon which those same interests are based must also be guarded by a constitution that secures liberty, equality, property and democratic participation.

That is why the environmental constitutionalists believe that not only is the livable environment not just another policy issue among others, but it is a precondition of the social order.² The material enjoyment of civil and political rights is materially related to clean air, safe water, climatic stability, biodiversity, and access to natural resources. Under a poor environment, the

¹ Macduff, I., 1994. Steps to an Ecological Jurisprudence: A Review of Im Namen der Natur. Victoria U. Wellington L. Rev., 24, p.333.

² Silkenat, J.R., Hickey, J.E. and Barenboim, P. eds., 2014. The legal doctrines of the rule of law and the legal state (Rechtsstaat) (Vol. 38, pp. 3-90). Heidelberg: Springer.

practical importance of property rights, bodily integrity, freedom of movement and even democratic participation can be grossly devalued. Pollution, desertification, deforestation, the loss of biodiversity, and climate instability do not merely establish the environmental harm, they diminish the circumstances of human agency and constitutional citizenship. According to this opinion, environmental protection cannot be discussed outside of the protection of liberty since in the circumstances of an ecological collapse, the idea of liberty cannot be realized.

This intellectual transformation has helped to green constitutions; whereby environmental values are either written in the constitution or are judicially derived out of pre-existing constitutional guarantees. This greening in certain jurisdictions is done by direct constitutional amendment, whereby the environment is defined as a safeguarded value, or a responsibility of the state, or even a right of the judiciary. In others, the courts interpreted environmental norms into wider requirements about life, dignity, health, public trust or responsibilities of the state. What is important in this process is not only its symbolic recognition, but also its structural impact. It makes environmental protection something that is higher than the usual political trade and has constitutional status.

Indian Model

Indian constitutional path on environmental protection is one of the most intellectual and administrative intricate developments in international environmental law. Having been placed in a relatively silent constitutional stance at the start of the Republic in 1950, the Indian legal system has evolved a distinct form of jurisprudence, the green one. The case of the non-justiciability of social aspirations which are embodied in the Directive Principles of State Policy and are transformed into rights by the creative application of the right to life under Article 21.

Constitutional Architecture: Articles 21, 48A, and 51A(g)

The architectural basis of Indian environmental law cannot be found in a single, united, environmental clause but rather it is scattered throughout the Fundamental Rights, the DPSPs, and the Fundamental Duties. The 1950 Constitution did not introduce this tripartite structure. During the early Republic, the concerns of environmental protection was perceived mainly in the frames of common law nuisance or a concrete statutory law on the subject of water and forests. Only the Stockholm conference in 1972 made the Indian State realize the necessity of

a clear constitutional directive on environmental stewardship.³

This constitutional reconfiguration was the turning point of the 42nd Amendment in 1976. This amendment added Article 48A and Article 51A(g) establishing a kind of double provision which makes both the State and the individual citizen to bear a duty. Article 37 explains that Directive Principles should not be enforced in any court, they are general in the country governance and should be employed by the State in law-making.

This State duty is supplemented by Article 51A(g) in which it is stated that every Indian citizen has a fundamental duty to protect and improve the country's natural resources. The addition of this obligation is an indication of transition to a participatory form of environmental governance.⁴ It recognizes the fact that a moral responsibility of the natural world preservation is a shared duty that must be actively involved in the citizenry.

Article 21, in Part III of the Constitution, is, however, the most powerful element of this architecture. In its originalist understanding was a negative limitation upon the power of the State to intrude on physical liberty. But it has developed over decades to become the "fountainhead" of environmental rights through judicial activism. The Indian judiciary has succeeded in converting aspirational goals into justiciable rights by reading the three articles together.⁵

These provisions synthesis has made the environmental protection not a discretionary policy any more, but a constitutional need. The courts have been of the argument that a clean and stable environment is a requirement to the right to life. Such conceptual connection makes sure that the constitutional requirement does not become inoperative and can be enforced using the writ jurisdiction of the superior courts.

Barriers to Effective Environmental Constitutionalism

Despite the global spread of environmental constitutionalism, several factors continue to

³ Bhullar, L., 2022. Environmental constitutionalism and duties of individuals in India. *Journal of Environmental Law*, 34(3), pp.399-418.

⁴ Nyekwere, E.H., Nnawulezi, U., Adiyatma, S.E., Balarabe, K. and Rouf, M.A., 2023. Constitutional and judicial interpretation of environmental laws in Nigeria, India and Canada. *Lex Scientia Law Review*, 7(2), pp.905-958.

⁵ Singh, S., 2025. *Constitutional Dimensions of Environmental Jurisprudence in India: An Analysis*. Indian Constitution: Changing Paradigms.

undermine its effectiveness.

1. The Primacy of Economic Development

A recurring conflict in environmental constitutionalism is how constitutions define the link between environmental preservation and economic growth. Many constitutional documents and legal theories use the terms "balance" or "harmonisation," implying that growth and environmental preservation may coexist without significant conflict. In practice, however, this equilibrium is frequently unequal. Governments, particularly in resource-dependent countries, tend to prioritize short-term economic advantages from activities such as mining, fossil fuel extraction, infrastructure development, and industrialization. These initiatives are typically justified in terms of job creation, poverty reduction, and national development, rendering them politically tough to oppose.

The issue is systemic, not accidental. Economic advantages are fast, apparent, and politically rewarding, but environmental harm is frequently diffuse, long-lasting, and borne unfairly by marginalized people or future generations. Even if constitutional provisions require sustainable growth or environmental preservation, they are frequently construed in a way that allows for continuous exploitation of natural assets.⁶ As a consequence, environmental constitutionalism may become a framework that legitimizes growth with little protections, rather than one that sets significant constraints on environmentally destructive behaviour.

2. Weak Enforcement and Corruption

The efficacy of environmental constitutionalism is ultimately determined not by the presence of rights or ideas, but by their application. A 2019 United Nations audit revealed a grim reality: while environmental legislation have increased greatly in recent decades, their implementation has lagged significantly.⁷ This "implementation gap" is increasingly regarded as a key contributor to the triple planetary problem, which includes climate change, loss of biodiversity, and pollution.

This gap is caused by a variety of circumstances. One of the most persistent difficulties is

⁶ Shekhar, C., 2024. Sustainable tourism development: Balancing economic growth and environmental conservation. Available at SSRN 4901174.

⁷ Wanyonyi, A., 2020. An Insight into the Emerging Issues, Challenges and Future Prospects in Environmental Audit. Challenges and Future Prospects in Environmental Audit (June 16, 2020).

institutional fragmentation, which results in overlapping mandates and ineffective coordination among environmental agencies, local governments, and sectoral regulators. Limited administrative capacity, a lack of technical experience, and insufficient money exacerbate enforcement weaknesses. Corruption exacerbates these issues, particularly in industries like as mining, logging, and land usage, where huge financial interests are involved. Environmental clearances may be obtained without a sufficient review, compliance criteria ignored, and transgressions penalized.

Simultaneously, civil society actors, who frequently play critical roles in checking compliance and starting lawsuits, are under growing pressure. Environmental advocates, journalists, and activists are occasionally exposed to legal threats, intimidation, or even violence. In such circumstances, even the most advanced constitutional safeguards fail to translate into actual protection.

3. Vagueness and Justiciability

Another critique focuses on the ambiguity regarding environmental constitutional rights. The terms "right to a clean," "healthy," or "ecologically balanced" environment are normatively strong yet legally open-ended. Critics claim that such clauses lack the specificity necessary for uniform judicial interpretation. Unlike conventional rights like as free speech and property, which have relatively clear doctrinal bounds, environmental rights frequently require courts to address complicated scientific, technological, and policy issues.

This raises issues of justiciability and institutional competency. Courts may be required to define acceptable pollution standards, analyse environmental impact studies, or balance opposing scientific claims; tasks that may fall outside of their customary scope. As a result, some judges take a cautious approach, avoiding the formulation of clear quantitative standards (for example, determining what degree of air pollution infringes the right to life), whereas others take a more activist stance, depending on broad concepts including precaution and intergenerational equity.⁸

There's also a democratic criticism. Wider judicial interpretation of environmental rights can transfer decision-making authority from elected governments to the court, generating concerns

⁸ Epstein, Y., Ellison, A.M., Echeverría, H. and Abbott, J.K., 2023. Science and the legal rights of nature. *Science*, 380(6646), p.eadf4155.

about legitimacy and accountability. While judicial involvement has frequently been critical in promoting environmental protection, particularly where executive or legislative action is ineffective, it also risks causing problems between constitutionalism and democratic governance.

Landmark 2024 Development: The Right to be Free from Climate Change

In March 2024, the Indian Supreme Court made what is arguably its most radical environmental decision since the 1980s. In *M.K. Ranjitsinh v. Union of India*, a three-judge court acknowledged the existence of a new right under the constitution, the right not to suffer the dangerous effects of climate change. This movement can be seen as a progression of environmental rights beyond the defence against local pollution to a systemic constitutional defence of global climatic variability.⁹

The Great Indian Bustard and the Policy Conflict

The case was initiated by a conflict between wildlife conservation, and energy transition in India. The petitioners wanted to save the life of the Great Indian Bustard (GIB), which is a highly endangered bird with only less than 200 in the wild. The main danger to the GIB in its habitats in Rajasthan and Gujarat was found to be collisions in the overhead transmission lines (OTL) employed in the solar and wind energy projects. By 2021, the Supreme Court had imposed a blanket order on installing all power lines in such areas underground.

Union Government appealed this order. According to them, the region had the majority of the potential renewable energy in India and that the underground forcing of the lines was technically infeasible. This posed a contradiction: the instruments of combating global climate change (solar farms) were endangering a local threatened species (the GIB).

Articulating the Climate Right

The Court leveraged this conflict to develop a larger right. It noted that India has huge number of environmental laws, but it does not have a specific climate change law. Lacking any legislative intervention, the Court intervened to base climate resilience on the Constitution. The

⁹ Kumar, P. and Naik, A., 2024. India's New Constitutional Climate Right. *Verfassungsblog: On Matters Constitutional*.

Court held that climate change is an existential threat to the right to life under Article 21.

Moreover, the Court based this right upon the Article 14 (the Right to Equality). It observed that climate change is not a universal phenomenon; it is highly skewed towards marginalized groups of people such as tribal groups, forest dwellers and the poor who are least able to adapt. Connecting the impacts of the climate with constitutional equality, the Court brought a strong concept of Climate Justice in India.¹⁰

Although the rhetoric of the new climate right had been wide-ranging, the final order of the Court in *Ranjitsinh* was a pragmatic compromise. It changed its order of 2021, making the mandatory undergrounding of power lines a priority area of about 13,163 square kilometres. In the other potential areas, the Court referred decision to an expert committee.

This balancing act has been criticized to be anthropocentric. By giving renewable energy infrastructure, a top priority (to defend the human right against climate change), according to scholars, the Court had effectively diluted the otherwise eco-centric protection of the GIB.¹¹ This is an indication of a growing but ambivalent phase of Indian environmental jurisprudence where various environmental objectives are now competing directly with each other.

Enforcement Mechanism: The National Green Tribunal (NGT)

The NGT plays an important part in the practical implementation of the ecological requirements of India. It is a specialized court that was set up by the National Green Tribunal Act of 2010 in place of the weak National Environment Appellate Authority. The NGT is a paradigm shift in Indian governance, shifting towards a scientific and inquisitive conception of environmental justice, and away from adversarial litigation.

The most notable innovation made by the NGT is its multi-disciplinary bench. By law, every bench must consist of an equal ratio of Judicial and Expert Members.

According to this law-science linkage, the tribunal can make judgments on complicated technical cases like what industrial effluents are toxic or what a forest can do in terms of carbon

¹⁰ Jolly, S. and Trivedi, A., 2025. *MK Ranjitsinh v Union of India: Climate Litigation as a Game-Changer to Place Human Concerns at the Core of Climate Crisis in India*. *Chinese Journal of Environmental Law*, 9(1), pp.107-126.

¹¹ Ohdedar, B., 2024, October. *India's New 'Climate Right': Boon or Bane for Climate Justice*. In *Socio-Legal Review Forum*.

sequestration without necessarily having to depend on outside committees.¹²

Jurisdictional Mandate

The NGT has the authority to deal with all civil cases where a "substantial question relating to the environment" is at issue. It has limited jurisdiction of implementing seven specific acts:

1. Water (Prevention and Control of Pollution) Act, 1974
2. Water (Prevention and Control of Pollution) Cess Act, 1977
3. Forest (Conservation) Act, 1980
4. Air (Prevention and Control of Pollution) Act, 1981
5. Environment (Protection) Act, 1986
6. Public Liability Insurance Act, 1991
7. Biological Diversity Act, 2002

Notably, the NGT does not have the authority to listen to cases that fall under the Wildlife (Protection) Act, 1972 or Forest Rights Act, 2006. Such fragmentation is frequently subjecting important biodiversity cases (such as the Ranjitsinh case) to the normal court system, instead of the special tribunal.¹³

The suo moto jurisdiction or the ability of the tribunal to initiate cases independently of the parties involved at the time of the news or information is perhaps one of the most powerful instruments of the tribunal. This has enabled the NGT to intervene in a mass environmental disaster, like the Ganga pollution, or the cutting of trees in the Delhi Ridge region even without a petition having been lodged.¹⁴

¹² Salekin, M., 2023. The national green tribunal model to ensure environmental justice through collaboration. In *The Future of Environmental Law* (pp. 196-214). Edward Elgar Publishing.

¹³ Gaur, S., 2023. Role of National Green Tribunal in Protection of the Environment. *Issue 2 Indian JL & Legal Rsch.*, 5, p.1.

¹⁴ Badoni, M., Konoorayar, V. and Chadda, V.M., 2023. Specialised Tribunals and Good Governance: An Analysis of India's Green Tribunal's Suo-motu Interventions. *Journal of Polity and Society*, 15(1).

Critique of the Multi-disciplinary Model

While the NGT is praised as a "global innovator," it faces institutional challenges that threaten its efficacy.

1. **The Expertise Gap:** It has been found out that a significant number of the Expert members are former bureaucrats of the Ministry of Environment, Forest and Climate Change (MoEFCC) or the Indian Forest Service. This brings issues of a conflict of interest since these persons might have been in the government apparatus that issued environmental clearances currently under consideration in the tribunal.
2. **Enforcement Capacity:** NGT does not have its own enforcement wing. It uses the State Pollution Control Boards (SPCBs) which tend to be poorly staffed, poorly funded, and also, politically pressured by the same industries they are meant to control.
3. **Vacancies:** The NGT has long operated with less than the minimum number of members required, and this results in a backlog of thousands of cases, and is a de facto violation of its mandate to deliver expeditious justice.

Final Reflections: The Future of Global Environmental Constitutionalism

In the next 2030s, global environmental constitutionalism is shifting to a pattern of less coordinated individual domestic initiatives to more coherent, values-based patterns. The rise of the so-called Global Pact for the Environment as a draft international treaty indicates an effort to bring international environmental law together into one so-called global constitution. This pact aims to enshrine the "third generation of fundamental rights" into a legally binding instrument that would compel both states and corporations to act. The judiciary is currently obliged to referee between various aspects of environmental protection - local conservation and global energy transition, as was the case in the Great Indian Bustard dispute. These rights have been given language through the "greening of the Constitution, but the biggest obstacle to actual environmental integrity is the implementation gap of institutions such as the NGT.¹⁵

This movement is becoming more and more ecocentric. What we are witnessing is the slow transformation of the environmental movement whereby we ensure that we protect the

¹⁵ Yanti Sulistiawati, L., Bouquelle, F., Lin, J., Lavrysen, L., Ortega, M., Pereira, R. and Tseng, S., 2022. Environmental courts and tribunals: A guide for policymakers. United Nations Environment Programme.

environment because it serves us (anthropocentrism) rather than as an entity that has rights of its own. This is evident in the legalization and judicial consideration of personhood to rivers and the emphasis on the best interest of species in Indian law. Moreover, the UN Pact for the Future (2024) and the Declaration on Future Generations offer a novel normative foundation to intergenerational responsibility, so that states need to entrench long-term strategic foresight into their existing constitutional commitments. To achieve meaningful protection, the judiciary, legislature, and executive should be in harmony so that the right to a stable climate is not a mere judicial pronouncement, but a reality that is fully enforceable by the current and future generations.