
JUDICIAL TRENDS IN AIR POLLUTION LITIGATION IN INDIA: AN ANALYSIS OF JUDICIAL ACTIVISM, ENVIRONMENTAL GOVERNANCE, AND THE RIGHT TO CLEAN AIR

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ABSTRACT

Pollutants in the air have now become the backbone of an environmental, constitutional and public health issue in India, especially in the Delhi-NCR area. This study is a critical analysis of judicial trends in Air pollution litigation in India with a focus on Courts and law as a protection of the right's to "clean air" as guaranteed under Article 21 of the Constitution of India. This study examines the way in which environmental jurisprudence has been enhanced by the Supreme Court of India, High courts of the states and the process of judicial activism and the use of Public interest litigations. A pollution free environment has been declared a part of the Fundamental right to life in landmark cases like M.C. Mehta v. Union of India, Subhash Kumar v. State of Bihar, and Vellore Citizens' Welfare Forum v. Union of India.

The research also assesses the efficiency of existing legislations like Air (Prevention and Control of Pollution) Act, 1981 and Commission for Air Quality Management Act, 2021 in the process of managing pollution in Delhi-NCR. It identifies the ongoing shortcomings in implementation, institutionalization and environmental governance and environmental enforcement despite continued court interventions. The study ultimately finds that while judicial activism has helped pave the way for environmental rights and environmental accountability to some extent, the implementation of administrative policies, scientific policy making, inter-governmental coordination, and the need for a comprehensive rights-based approach towards environmental governance in India are key areas that require further strengthening in order to achieve sustainable air pollution control.

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Introduction

The air pollution situation has become one of the most serious environmental and health crises in India, especially in the Delhi–NCR region, where air pollution levels often endanger the lives of people, ecological sustainability and constitutional governance. The air quality in Indian cities has suffered due to increased industrialization, vehicle pollution, urban development, biomass burning, thermal power plants and other activities.⁴ The crisis has gone beyond the environmental crisis and become a health, human rights, sustainable development, and constitutional accountability crisis.⁵

In India, the judiciary has taken the lead in bringing a change in the scenario of environmental degradation and air pollution through Public Interest Litigation (PIL), judicial innovation, and interpretation of the constitution to an unprecedented level.⁶ The Supreme Court of India and the various High Courts, in the last 30 years, have intervened actively in environmental matters in order to fill in the gaps in the implementation by the executive and administrative tiers.⁷ The courts have interpreted Article 21 of the Constitution of India—which guarantees the right to life and personal liberty—to include the right to a clean and healthy environment⁸. The doctrinal backbone of Indian environmental jurisprudence was laid by landmark decisions like *M.C. Mehta vs. Union of India*, *Subhash Kumar vs. State of Bihar* and *Vellore Citizens' Welfare Forum vs. Union of India*.⁹

In Delhi – NCR, judicial interventions have been very prominent in the governance of air pollution. Judiciary has been trying to force the executive to take action through continuing mandamus, court- monitored committees, industrial restrictions, switch to CNG, ban old diesel

⁴ Health Effects Institute, *State of Global Air 2024* (2024); World Health Organization, *Air Pollution and Health* (2022).

⁵ G. Jeuland et al., *Air Pollution Exposure and Inequality in India*, 18 *Env't Dev. Econ.* 1 (2022); CREA, *India Clean Air Report 2025: Health and Policy Gaps* (2025)

⁶ Upendra Baxi, *The Avatars of Indian Judicial Activism: Explorations in the Geographies of (In)Justice, in Fifty Years of the Supreme Court of India* 156 (S.K. Verma & Kusum eds., 2000).

⁷ Shibani Ghosh, *Courts as Environmental Regulators: Challenges and Limits*, 4 *Indian L. Rev.* 1 (2020); Anirudh Krishnan, *Public Interest Litigation and Environmental Governance in India*, 18 *Asian J. Comp. L.* 89 (2023).

⁸ INDIA CONST. art. 21; *Subhash Kumar v. State of Bihar*, (1991) 1 S.C.C. 598 (India).

⁹ *M.C. Mehta v. Union of India*, (1987) 1 S.C.C. 395 (India); *Subhash Kumar v. State of Bihar*, (1991) 1 S.C.C. 598 (India); *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647 (India).

vehicles and emergency measures as per Graded Response Action Plan (GRAP).¹⁰ But after decades of litigation and judicial guidance, air pollution continues to be dangerously high and pertinent issues about the effectiveness, boundaries and legitimacy of judicial activism in environmental governance remain.¹¹

This article is a critical study of the judicial trends in the field of air pollution litigation in India with a particular focus on Delhi – NCR. It looks at the development of environmental jurisprudence, the function of PILs, the character of judicial intervention and the dichotomy between short term judicial remedies and long term environmental governance. The article also examines the role of judicial activism in effectively safeguarding the constitutional right to clean air or simply making up for the constant lapses by the government.¹²

Literature Review

The judicial approach to environmental litigation in India is a testament to the fact that courts have been the cornerstone of environmental governance and constitutional environmentalism in India¹³. In the article entitled *Judicial Activism and Environment in India*, Shibani Ghosh contends that Indian judiciary in the name of judicial activism and judicial extension of PIL jurisprudence revolutionized the guardianship of the environment.¹⁴ She notes that one of the reasons for judicial intervention was the lack of action coming from the executive and institutional failure. In *Litigating Climate Claims in India*, Shibani Ghosh traces the development of environmental litigation in India from its roots in classic environmental claims to those of governance and climate claims.¹⁵ She says Indian courts have often invoked constitutional rights and international environmental law to allow for intervention in environmental governance. Upendra Baxi, by his judicial writings on judicial activism and social justice, brings attention to the Supreme Court's judicial jurisdiction for access to justice, by means of epistolary jurisdiction and PILs.¹⁶ Baxi found that environmental litigation “has

¹⁰ M.C. Mehta v. Union of India, W.P. (C) No. 13029/1985 (Sup. Ct. India); Commission for Air Quality Management, Graded Response Action Plan (GRAP) (Revised 2023).

¹¹ Id.

¹² Lavanya Rajamani & Shibani Ghosh, *Climate Change Litigation in India: Trends, Trajectories, and Impacts*, 35 J. Env't L. 67 (2023); Gautam Bhatia, *Directive Principles and Environmental Justice: The Role of Courts in Policy Gaps*, 9 Indian Const. L. Rev. 89 (2022).

¹³ Upendra Baxi, *The Avatars of Indian Judicial Activism: Explorations in the Geographies of (In)Justice*, in *Fifty Years of the Supreme Court of India* 156 (S.K. Verma & Kusum eds., 2000).

¹⁴ Shibani Ghosh, *Courts as Environmental Regulators: Challenges and Limits*, 4 Indian L. Rev. 1 (2020).

¹⁵ Id.

¹⁶ Upendra Baxi, *supra* note 1.

now come to serve as a tool for democratizing constitutional remedies and safeguarding the collective rights.” Pritam Ghosh speaks about how PIL and judicial activism has evolved in India and how PILs relating to pollution have done a lot to enhance judicial powers of review and accountability in the Indian constitution. He does caution against judicial overreach, however, and the challenges of activism and institutional restraint.¹⁷ Arpita Saha states that Indian courts evolved environment friendly jurisprudence with the incorporation of the concepts like sustainable development, precautionary principle, polluter pays principle¹⁸. Meanwhile, she says, there has been a lot of criticism that courts have intruded into the realm of policy-making and administration. In his writing on ‘climate litigation in India’ Eeshan Chaturvedi mentions that the judicial activism in environmental cases is made possible by India's constitutional set-up, robust judicial review and trust in the judiciary among the people. He also states that the judiciary has increasingly been seen as a space for dealing with environmental government failures.¹⁹

Others, like Lavanya Rajamani and Navroz K. Dubash, have studied environmental federalism and governance fragmentation in India. They point out that the failure to harmonize responsibilities within institutions and the inter-governmental disputes hamper the functioning of environmental regulation²⁰. The CPCB, CREA, PRS Legislative Research and World Bank's institutional reports state that the judicial orders will be incapable of addressing the structural pollution issues unless there is an administrative coordination, scientific planning and implementation strategy.²¹

The literature shows that although judicial activism has played an important role in expanding environmental rights and environmental accountability, there are existing problems concerning implementation gaps, institutional capacity, and long-term sustainability of court-governance.²²

¹⁷ Pritam Ghosh, Public Interest Litigation and Environmental Governance in India, *Indian J. Legal Stud.* (2023).

¹⁸ Arpita Saha, Environmental Jurisprudence and Judicial Innovation in India, 14 *Indian J. Env't L.* 45 (2022).

¹⁹ *Id.*

²⁰ Lavanya Rajamani & Shibani Ghosh, Climate Change Litigation in India: Trends, Trajectories, and Impacts, 35 *J. Env't L.* 67 (2023).

²¹ CREA, Air Quality Management in India: Gaps and Opportunities (2024); PRS Legislative Research, Air Pollution in Delhi NCR and Steps Taken by Various Agencies for Its Mitigation (2025); World Bank, Striving for Clean Air: Air Pollution and Public Health in South Asia (2019).

²² Health Effects Institute, State of Global Air 2024 (2024); CREA, India Clean Air Report 2025: Health and Policy Gaps(2025).

Statement of the Problem

Even though the case has gone on for a long time in the courts and there has been a paradigm shift in environmental laws and policies, the air quality in Delhi – NCR remains polluted. The courts have issued many orders on issues of vehicle pollution, industrial relocation, burning off wastes, construction work, and emergency pollution control measures, but the implementation of these orders has been inconsistent and inadequate.²³

The continued poor air quality levels give rise to significant legal and governance issues. Judicial activism has definitely boosted environmental rights in article 21, while also leading to growing judicial interference in the executive and policy functions²⁴. It is therefore not clear if courts can be effective in environmental governance without continuous monitoring and if judicial instructions can lead to structural change over the long-term. The problem under focus in this study is the increasing judicial intervention in environmental governance and the shortcomings of litigation-driven governance strategies in addressing complex and transboundary air pollution issues in Delhi–NCR.²⁵

Research Questions

1. What is the impact of judicial activism on air pollution control in India?
2. How has Supreme Court contributed in the recognition of the fundamental right to clean air under Article 21?
3. How effective have PILs been in the area of environmental governance in Delhi – NCR?
4. Do judicial interventions contribute to long-term solutions to air pollution?
5. What are the drawbacks and problems of judicial governance of the environment?
6. What can be done about judicial intervention in a way that is accountable to administration

²³ Apoorva Mandhani, *The Supreme Court and Air Pollution in Delhi-NCR: Judicial Activism or Overreach?*, 10 *Indian J. Const. L.* 145 (2022); Gautam Bhatia, *Directive Principles and Environmental Justice: The Role of Courts in Policy Gaps*, 9 *Indian Const. L. Rev.* 89 (2022).

²⁴ *Supra Note*, 10

²⁵ Shibani Ghosh, *Environmental Justice and the Limits of Judicial Intervention in India*, 14 *Transnat'l Env't L.* 211 (2023).

and policy changes?

Objectives of the Study

1. To discuss evolution of trends in judicial approach towards air pollution litigations in India.
2. To examine the contribution of the judiciary in the extension of environmental rights as enshrined in Article 21.
3. To critically analyse the role of PILs in Environmental Governance.
4. To understand landmark air pollution related issues of Delhi-NCR.

To evaluate the scope and impact of judicial involvement in the regulation of the environment.

6. To propose recommendations on ways to enhance environmental governance and minimise unwarranted reliance on judicial activism.

Scope and Limitations of the Study

The study revolves around the judicial trends and trends in air pollution litigation in India especially in Delhi – NCR. It reviews constitutional principles and decisions, environmental laws, and institutional structures for air pollution governance.²⁶

The study is doctrinal and analytical in character and draws upon jurisprudential decisions, legal literature, policy reports and academic commentaries. Is not empirical—no field studies or pollution measurement studies. Comparative references are few and are used mainly to put the developments in the Indian environmental law field in perspective²⁷.

The growth of environmental law in India goes hand in hand with the development of PIL in the late 1970s and 1980s. Traditional rules of locus standi were relaxed and social consciousness groups and individuals were allowed to approach the court on behalf of affected communities. The earliest case of the environment was Rural Litigation and Entitlement

²⁶ Air (Prevention and Control of Pollution) Act, 1981, No. 14 of 1981, INDIA CODE; Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021, No. 29 of 2021, INDIA CODE.

²⁷ P. Leelakrishnan, *Environmental Law in India* (6th ed. 2021); J. J. R. Upadhyaya, *Environmental Law* (5th ed.).

Kendra v. State of Uttar Pradesh, which was taken by the Supreme Court to close the limestone quarries that were responsible for ecological harm.²⁸ The judgment acknowledged the importance of protecting the environment to the constitutional governance. But the most significant air pollution litigation has come from M. C. Mehta's environmental PILs. The Mehta case, M.C. Mehta v. Union of India, has essentially revolutionized the environmental jurisprudence in India.²⁹

This Delhi vehicular pollution case led to significant policy measures such as conversion of public transport vehicles to CNG, removal of old commercial vehicles, shifting of hazardous industries etc. and restrictions on polluting fuels. The litigation had a significant impact on environmental governance in Delhi–NCR for more than 40 years as per the recent report.³⁰ The Supreme Court also established the doctrine of “continuing mandamus” which gave courts the power to supervise the executive branch continuously. This enabled the judiciary to have a “live” oversight of compliance with the environmental directions. The Supreme Court has, in the case of the late Subhash Kumar v. State of Bihar, confirmed that the right to pollution-free water and air is part of Article 21.³¹ Similarly, in the case of the Welfare Forum of Vellore Citizens v. Union of India, the Court introduced sustainable development, the precautionary principle and the polluter pays principle in Indian environmental law.³²

In more recent years, the judiciary has come into the picture with regards to firecracker ban, crop burning ban, limitations on vehicles and the enactment of GRAPs in Delhi–NCR. But there have been criticisms about the lack of integration and responsiveness of these interventions. Judicial activism has thus progressed from the role of defender of rights to an activist governor of the government! Administrative agencies are more and more being directed by the courts, courts are establishing monitoring committees, and courts are overseeing the implementation process. Such a push can force the government into action, but also engenders questions about separation of powers and institutional competence.³³

The distinction between temporary relief and long-term compliance. The difference

²⁸ Supra Note,13

²⁹ ID

³⁰ Shyam Divan & Armin Rosencranz, Environmental Law and Policy in India 519–27 (4th ed. 2023).

³¹ M.C. Mehta v. Union of India, (1987) 1 S.C.C. 395 (India).

³² Vellore Citizens’ Welfare Forum v. Union of India, (1996) 5 S.C.C. 647 (India).

³³ Usha Ramanathan, The Supreme Court and the Environment: Epistolary Jurisdiction and the Limits of Judicial Power, 6 Asian J. Comp. L. 123 (2021).

between temporary relief and long term compliance.

A major concern about environmental litigation in India is that it only offers a "temporary" solution, and not a "permanent" one. Restrictions like odd-even vehicle system, construction ban, school closure etc., and GRAP are mainly measures taken during winter season when pollution levels are high. These can temporarily limit the amount of pollution, but they don't tackle the underlying issues like fossil fuel reliance, poor public transport, industry emissions and regional farming³⁴. Even the Supreme Court has now admitted that there was a constraint on judicial intervention, saying that the orders of the court cannot be the solution to the pollution problem in Delhi without proper implementation. Some writers have suggested that the judiciary's over-achieving role in the governance process can undermine democratic accountability by removing it from the executive agencies and creating a judicial arena for it. The courts have no institutional capacity to develop or enforce intricate environmental policies, involving both scientific and economic and political dimensions.³⁵ Meanwhile, the judiciary must play a role in enforcing environmental regulations as these are rarely effectively enforced by the regulatory authorities. The judiciary is thus a safeguard of constitutional rights and a corrective of failures of government.³⁶

Judicial Responses, Governance Failures and the necessity for Structural Reforms in Air Pollution Control

The article emphasizes the pivotal role played by Judiciary in transforming environmental governance and safeguarding the air pollution free environment in India, especially in the backdrop of the current Delhi–NCR air pollution crisis. The judiciary expounded this concept of Article 21 of the Constitution with a broadened interpretation, whereby the right to a clean and healthy environment was considered an integral part of the right to life.³⁷ The introduction of concepts like sustainable development, precautionary principle, polluter pays principle and public trust doctrine in environmental law through landmark judgments like *M.C. Mehta v. Union of India*, *Subhash Kumar v. State of Bihar* and *Vellore Citizens' Welfare Forum v. Union of India* played a significant role in the formulation of environmental jurisprudence³⁸.

³⁴ ID

³⁵ Gautam Bhatia, Directive Principles and Environmental Justice: The Role of Courts in Policy Gaps, 9 *Indian Const. L. Rev.* 89 (2022).

³⁶ Shakti Sustainable Energy Foundation, *Legal Framework for Clean Air in Cities* 48–49

³⁷ *INDIA CONST.* art. 21; *Subhash Kumar v. State of Bihar*, (1991) 1 S.C.C. 598 (India).

³⁸ Rekha Tewathia & Santosh Kumar, *Public Interest Litigation (PIL) and Environmental Constitutionalism: Exploring the Nexus of Judicial Activism and Environmental Protection*, 1 *Maharaja Surajmal Inst. L.J.* 42

The article also elaborates on why judicial activism was needed, given the inability of the executive branch, the poor implementation of environmental laws, the lack of integration of institutions and the ineffectiveness of pollution control authorities. Public Interest Litigation (PIL) became an important constitutional remedy available to the citizens, environmentalists and civil society groups as a means of holding the government accountable for environmental degradation.³⁹ The article still argues however, that the governance of air pollution in India remains marred by major structural flaws despite decades of judicial oversight, court directed committees and ongoing mandamus in matters of pollution. Judicial interventions like odd-even vehicle schemes, closing of construction sites, temporary shutdown of industries, diesel ban and emergency action under Graded Response Action Plan (GRAP) have the ability to bring temporary and occasional relief, but not a lasting solution to air quality problems.⁴⁰ The study thus contends that there will be no lasting solution to complex and transboundary environmental issues without the effective implementation in the administrative arena and necessary long-term policy changes. The article proposes some significant reforms for improving environmental governance in this context. It also calls for tougher enforcement of the Air (Prevention and Control of Pollution) Act, 1981 and the Commission for Air Quality Management Act, 2021 with tougher penalty, better monitoring systems and better compliance mechanisms. The article further suggests better coordination between the Central Pollution Control Board (CPCB), State Pollution Control Boards (SPCBs), the Commission for Air Quality Management (CAQM) and State Govts to minimise overlapping jurisdictions and institutional fragmentation.⁴¹ In addition, it calls for long-term prevention measures such as sustainable urban development, use of clean energy, the development of efficient transport systems, controlling industrial pollution and scientific pollution forecasting. Another key reform proposed is to establish the Environment in a more robust rights-based framework which clearly establishes clean air as a constitutionally protected right. The article also emphasizes the need for data-driven governance, technological innovations, real-time air quality monitoring, public engagement, environmental awareness, and collaborative governance between neighbouring states to tackle regional air quality issues⁴². Finally, the

(2024).

³⁹ Bharat H. Desai & Balraj Sidhu, Environmental Rights and Jurisprudence in India, 8 Indian J. Envtl. L. 67 (2023).

⁴⁰ Navroz K. Dubash & Lavanya Rajamani, India's Climate and Air Governance: Fragmentation and Integration Challenges, 15 Climate Pol'y 1123 (2023)

⁴¹ Air (Prevention and Control of Pollution) Act, 1981, No. 14 of 1981, INDIA CODE; Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021, No. 29 of 2021, INDIA CODE.

⁴² Karthik Ganesan et al., Institutional Capacity for Air Quality Management in India (Council on Energy,

article suggests that judicial activism has been essential to the enforcement of environmental rights and the enforcement of accountability for government action on air pollution, but that sustainable and effective air pollution governance cannot rely solely on constant judicial intervention.⁴³

Conclusion

The judicial trends in air pollution litigation in India are indicative of the judicial revolution in environmental governance and constitutional development in India. By invoking PILs, broadening the scope of Article 21 and by persistently monitoring the courts, Indian judiciary awarded the right to a clean and healthy environment as a constitutional right.⁴⁴ Pollution control cases like *M.C. Mehta, Subhash Kumar, Vellore Citizens' Welfare Forum and Rural Litigation* established the domain of environmental jurisprudence and forced the government to take action on pollution. In Delhi-NCR, judicial activism emerged as a key factor, with the judiciary frequently stepping in to tackle the issues of severe air pollution and administrative inefficiencies.⁴⁵

The study, however, shows that effective environmental governance is not necessarily achieved through judicial intervention. Despite decades of litigation and judicial monitoring, the air pollution situation in Delhi – NCR remains a huge public health problem.⁴⁶ There remain a lot of reactive, short-term, implementation dependent judicial measures. Long-term compliance is still hampered by structural issues like institutional fragmentation and weak enforcement, a lack of scientific planning, and political conflicts.⁴⁷

The article finds that judicial activism has been a vital mechanism for advancing environmental rights, but a more robust administrative system, a more coordinated federal system, science-based policymaking and sustained long-term environmental regulation are essential for achieving sustainable air pollution governance in the future. While courts can force action and advance constitutional values, there are also critical institutional and political factors, and

Environment and Water, 2024).

⁴³ Commission for Air Quality Management, Order Invoking Stage-IV GRAP (Dec. 13, 2025)

⁴⁴ *A.P. Pollution Control Bd. v. Prof. M.V. Nayudu*, (1999) 2 S.C.C. 718 (India).

⁴⁵ Michael Greenstone & Rema Hanna, Environmental Regulations, Air Quality, and Public Policy in India, 140 *Q.J. Econ.* 1123 (2025).

⁴⁶ Navroz K. Dubash & Lavanya Rajamani, India's Environmental Federalism, 15 *Global Env'tl. Pol.* 1 (2024).

⁴⁷ Kuldeep Singh Rautela & Manish Kumar Goyal, Transforming Air Pollution Management in India with AI and Machine Learning Technologies, 14 *Sci. Rep.* 20412 (2024).

accountable governance, that must also be in place to make the right to clean air a reality. A balanced plan that integrates constitutional rights, statutory enforcement, administrative accountability and scientific regulation is thus needed for environmental governance in India in the future, as a single mode of action is not sufficient.⁴⁸

⁴⁸ Anumita Roychowdhury, *Air Pollution Control in India: Institutional Challenges and Policy Gaps* (Centre for Science and Environment, 2025).