
THE COURTYARD AND THE COMMON: WHEN COURTS BECOME ENVIRONMENTAL STAKEHOLDERS

Shivsai S Nakul, National Law University Odisha

India's colonial-era High Courts were not merely designed as houses of adjudication; they were carefully integrated into the grand architecture of empire, deliberately sited next to sprawling, landscaped maidans, parks, and public gardens. This British civic planning was meant to project an aura of serene, detached authority. Decades later, however, this geographical intimacy has birthed a fascinating judicial paradox. While the Indian judiciary has generated a vast repository of progressive environmental jurisprudence balancing national development against ecological preservation, a distinct friction emerges when the litigation lands on its own doorstep. When ruling on the very green spaces that envelop their courtrooms, courts are forced to shift from neutral, detached arbiters into direct, institutional stakeholders. They begin to feel the immediate physical weight of their own decrees as structural transformations unfold right before their eyes.

The Cubbon Park Case

To walk through the gates of the Karnataka High Court is to experience a rare spatial harmony. When lawyers in traditional black robes and white bands pass through Gate 3 or Gate 5, they do not just enter a court premise; they step directly into the living, breathing expanse of Cubbon Park. Covering nearly 300 acres in the heart of Bengaluru's Central Business District, characterized by its natural rock outcrops, bamboo groves, and symmetrical colonial-era layout, the park serves as both a botanical asset and the civic heart of the city. On any given day, the view from the High Court overlooks unpaved paths of mud and sand where citizens find a brief, happy respite from the city's chaos, a daily reminder to the legal community of the vibrant public commons sitting right outside their windows.

Yet, this daily physical proximity has turned the park's boundaries into a recurring site of contest since the 1990s. In those early years, activists filed Public Interest Litigations (PILs) against the dumping of construction debris in the park, which contributed to protective measures such as the installation of perimeter gates. The Cubbon Park Walkers' Association

has since remained the park's most consistent institutional watchdog a role that would resurface pointedly when the High Court itself became a party seeking to build within the park's own boundaries.

The legislative shield for this green space is Section 4 of the Karnataka Government Parks (Preservation) Act, 1975,¹ which strictly prohibits the construction of buildings within state-controlled parks. Despite this clear statutory bar, the judiciary's approach has been highly ambivalent — not least because the legislature has itself periodically carved out exceptions to its own prohibition: a 2010 amendment to the Act, for instance, permitted the state to alienate parcels of both Cubbon Park and Lalbagh for road-widening and metro-station construction.² In the seminal case of *G.K. Govinda Rao v. State of Karnataka* (2001),³ which consolidated a *Suo- motu* writ petition and several PILs, citizens challenged a 1998 government notification that denotified roughly 46 acres of the park to clear the way for an extension of the Legislators' Home and a water reservoir. Rather than striking down these ecological incursions, the High Court upheld the notification's validity and declined to halt the proposed constructions, rendering the merit of the case an unambiguous loss for conservationists.

However, the court engineered a unique compromise: it established a continuing supervisory mechanism, decreeing that any future construction within Cubbon Park's boundaries would require the High Court's prior explicit approval.

The latent danger of a court appointing itself as the sole gatekeeper of its own environment became starkly evident a decade later. In 2014, the High Court's own Registrar filed a petition seeking permission to demolish the old Election Commissioner's Office within the park and construct a seven-storey High Court annexe in its place.⁴ A single-judge bench cleared a revised plan by order dated 17 October 2019 that spared the seventeen mature trees originally slated for felling, though it permitted demolition of the heritage structure itself. The optics of the episode drew sharp public ire: the Cubbon Park Walkers' Association filed its own writ petition against the very project, prompting the Chief Justice to direct that the High Court itself be impleaded as a respondent in litigation concerning its own expansion.⁵ Heritage and

¹Karnataka Government Parks (Preservation) Act 1975, s 4 (India).

²New Construction In Cubbon Park: High Court Permits 7-Storey Building, Citizens To Protest' Citizen Matters (Bengaluru, 31 October 2019).

³*G.K. Govinda Rao v State of Karnataka* (2001) ILR (Kar) 5332 (Karnataka HC).

⁴*Rajendra Badamkar v State of Karnataka* WP No 42354 of 2014 (Karnataka HC, 17 October 2019).

⁵HC Makes Itself A Respondent In Cubbon Park Annexe Case' Deccan Herald (Bengaluru, 19 November 2019).

environmental activists rightly characterized it as a classic case of the “fence eating the crops.” The very institution that had constructed the regulatory checkpoint had transformed into the applicant clearing the barrier for its own institutional expansion. This tension highlights a profound systemic challenge: Can an institution maintain strict judicial self-restraint when its own administrative comfort is at stake?

The Oval Maidan Case

A compelling, more protective counter-narrative can be found at the Bombay High Court, which overlooks the historic Oval Maidan in South Mumbai. According to contemporaneous local reporting, when the state government failed for over a decade to maintain the ground, the Oval-Cooperage Residents Association (OCRA) formed by area residents in 1997 eventually secured a favourable outcome before the Bombay High Court, prompting the state to cede the maidan's upkeep to the newly formed OVAL Trust.⁶ The Oval-Cooperage Residents Association's standing as a genuine litigating party in defence of the precinct's green spaces is independently corroborated by its appearance, nearly two decades later, as a named petitioner in a separate 2013 PIL concerning the adjoining Jawaharlal Nehru Garden, in which the Bombay High Court directed the removal of encroaching structures from land reserved as a recreational ground under Mumbai's sanctioned Development Plan.⁷ This protective stance has extended to the neighbouring Cross Maidan, where the OVAL Trust filed a petition in 2017 challenging a state government resolution as illegal; the Bombay High Court restrained the transfer of the land to third parties for the duration of the case, a restraint order that continues to govern the ground's use including the terms on which the Kala Ghoda Arts Festival has each year sought, and been granted, the Court's permission to hold its events there without permanent commercial stalls.⁸ Even when handling the adjacent Azad Maidan where litigation has often veered into questions of public order rather than pure ecology the court has consistently sought to balance the civic upkeep of the precinct with public regulation.

Yet, even the assertive Bombay High Court faces an efficacy trap right outside its gates. A long-running Suo-motu proceeding concerning unauthorised street hawking across Mumbai has repeatedly found that footpaths and public thoroughfares in the city's most prominent

⁶Nayana Kathpalia, 'Oval Maidan: The Makeover Story' DNA (Mumbai, 30 January 2015).

⁷Nariman Point Churchgate Citizens Welfare Trust v State of Maharashtra PIL No 101 of 2013 (Bombay HC, 2 March 2016).

⁸'Bombay High Court Allows Cross Maidan To Be Used For Kala Ghoda Arts Festival From January 20-28, With Conditions' LiveLaw (9 January 2024).

commercial districts remain persistently encroached despite explicit judicial directions,⁹ a reminder that judicial pronouncement and civic enforcement do not always keep pace with one another, even in a city whose High Court has otherwise proved willing to act.

The Capitals and the Commons

To fully understand the spectrum of judicial behaviour, one must look to the Calcutta High Court at the edge of the Kolkata Maidan. Described by the court as the “lungs of the city,” the preservation of this vast green space has seen highly nuanced handling, shaped partly by the area's history as India's former imperial capital. In the case of *People United for Better Living in Calcutta v. State of West Bengal* (2024),¹⁰ the court faced a direct clash between infrastructure and ecology when a PIL challenged the construction of the Kolkata Metro beneath the Maidan. Rather than issuing a flat, reactionary denial or rubber-stamping the state's developmental agenda, the court engaged deeply with the technical merits of the project. It permitted the construction to proceed precisely because the project utilized underground tunnelling rather than elevated tracks, thereby preserving the historic skyline of the Maidan, while simultaneously mandating a strict 5:1 compensatory afforestation model for any felled trees. A subsequent special leave petition against this outcome was dismissed by the Supreme Court at the admission stage.¹¹

This pragmatic balancing act stands in stark contrast to the handling of other court-adjudicated civic spaces, such as the highly politicized Central Vista litigation in Delhi. When the redevelopment of the lawns stretching from India Gate to Rashtrapati Bhawan was challenged on heritage and environmental grounds, the Supreme Court of India hearing the matter as a case transferred from the Delhi High Court upheld the project's land-use clearances and environmental approvals by a 2:1 majority, adopting a markedly deferential posture toward executive policy on questions of national importance. The Court did, however, quash one specific land-use notification on procedural grounds and directed a fresh round of public notice and consultation before re-notification.¹²

⁹High Court on its own Motion v State of Maharashtra, Suo Motu Writ Petition (Original) No 1 of 2023 (Bombay HC).

¹⁰People United for Better Living in Calcutta (PUBLIC) v State of West Bengal WPA(P) No 569 of 2023 (Calcutta HC, 20 June 2024).

¹¹SLP (C) No 20499 of 2024 (Supreme Court of India, 13 September 2024).

¹²Rajeev Suri v Union of India (2021) 15 SCR 283 (SC); also reported at 2021 SCC OnLine SC 7 (Khanwilkar J for the majority; Khanna J dissenting).

The Doctrinal Undercurrent: Public Trust and the Preservation of Urban Green Space

Underlying all three case studies is a single doctrinal thread that Indian courts have spent three decades weaving: the public trust doctrine. The doctrine holds that certain resources rivers, forests, the seashore, and, by extension, public parks and open spaces are held by the State not as owner but as trustee for the public, incapable of alienation to private or narrowly commercial ends. The Supreme Court gave the doctrine its clearest Indian articulation in *M.C. Mehta v Kamal Nath*,¹³ holding that the State cannot abdicate its role as guardian of natural resources meant for public enjoyment, and reinforced it in *Virender Gaur v State of Haryana*,¹⁴ which set aside the leasing of land reserved for public use to a private party.

The doctrine bites hardest, however, precisely where this article has looked: municipal parks under institutional pressure. In *Bangalore Medical Trust v B.S. Muddappa*,¹⁵ the Supreme Court struck down the diversion of a Bangalore park reserved under a scheme strikingly similar to the one governing Cubbon Park to a private hospital trust, holding that land dedicated to public parks and playgrounds could not be diverted even to another ostensibly beneficial use without amounting to an abuse of statutory power. Eight years later, in *M.I. Builders Pvt Ltd v Radhey Shyam Sahu*,¹⁶ the Court went further still, ordering the demolition of an already-completed underground shopping complex beneath a historic Lucknow park and the restoration of the park to its original condition a remedy considerably more drastic than anything sought against the Karnataka High Court's own annexe.

Running alongside the public trust doctrine is a second, complementary strand of environmental principle. *Vellore Citizens Welfare Forum v Union of India*¹⁷ established the precautionary principle and the polluter-pays principle as part of Indian environmental law, while *A.P. Pollution Control Board v Prof M.V. Nayudu*¹⁸ held that precautionary duties are triggered by reasonable apprehension of harm, not merely by proven danger placing the burden on the party seeking to change existing land use to prove its safety. In the specific context of urban planning, *Karnataka Industrial Areas Development Board v C Kenchappa*¹⁹ required developers to treat sustainable development as a central consideration and to assume, rather than merely rebut, the possibility of environmental harm.

¹³*M.C. Mehta v Kamal Nath* (1997) 1 SCC 388 (SC).

¹⁴*Virender Gaur v State of Haryana* (1995) 2 SCC 577 (SC).

¹⁵*Bangalore Medical Trust v B.S. Muddappa* (1991) 4 SCC 54 (SC).

¹⁶*M.I. Builders Pvt Ltd v Radhey Shyam Sahu* (1999) 6 SCC 464 (SC).

¹⁷*Vellore Citizens Welfare Forum v Union of India* (1996) 5 SCC 647 (SC).

¹⁸*A.P. Pollution Control Board v Prof M.V. Nayudu* (1999) 2 SCC 718 (SC).

¹⁹*Karnataka Industrial Areas Development Board v C Kenchappa* (2006) 6 SCC 371 (SC).

More recent decisions confirm that this jurisprudence has not merely persisted but hardened. In *Fomento Resorts & Hotels Ltd v Minguel Martins*,²⁰ the Court reaffirmed that public authorities must protect public resources against private exploitation; in *MCGM v Kohinoor CTNL Infrastructure Co Pvt Ltd*,²¹ it took judicial notice of Mumbai's acute shortage of open space – fewer than one square metre per person – to insist that such space be augmented rather than eroded; in *Lal Bahadur v State of UP*,²² it held that land designated as green belt cannot be reclassified for residential use; and in *MCGM v Hiranman Sitaram Deorukhar*,²³ it confirmed that a park reservation survives even the lapse of the underlying land acquisition. Read together, these cases suggest that Indian courts possess an unambiguous doctrinal toolkit for resisting encroachment on public green space which makes the ambivalence documented in Cubbon Park's own case law, and the caution shown even in Mumbai and Kolkata, less a doctrinal gap than an institutional one. The law is clear; its application to the institutions that administer it, including courts themselves, is where the real difficulty lies.

Conclusion

The legal history of India's court-adjacent green spaces reveals that the “green endeavours of the courts” do not form a monolithic category. While the Bombay High Court has positioned itself as a protective, citizen-favouring shield, and the Calcutta High Court has demonstrated an ability to scientifically balance infrastructure against ecology, the Karnataka High Court's record remains deeply ambivalent by its self-referential expansion into Cubbon Park – an ambivalence made more striking, not less, by how settled the underlying public trust doctrine has become.

These localized disputes serve as a microcosm for a larger constitutional reality. They expose the delicate, often uncomfortable tension that arises when courts transition from neutral, objective environmental adjudicators into institutional stakeholders of the very soil upon which they sit. If the judiciary is to retain its moral authority as the ultimate guardian of India's environment, it must remember that the principles of ecological integrity – the same principles it has spent three decades articulating for others – apply just as strictly inside the palace of justice as they do outside its gates.

²⁰*Fomento Resorts & Hotels Ltd v Minguel Martins* (2009) 3 SCC 571 (SC).

²¹*MCGM v Kohinoor CTNL Infrastructure Co Pvt Ltd* (2014) 4 SCC 538 (SC).

²²*Lal Bahadur v State of UP* (2018) 15 SCC 407 (SC).

²³*MCGM v Hiranman Sitaram Deorukhar* (2019) 14 SCC 411 (SC).