THE CONSTITUTIONAL RIGHT TO BE FREE FROM CLIMATE HARM: JUDICIAL ACTIVISM, ARTICLE 21, AND THE ENFORCEMENT THRESHOLD AGAINST PRIVATE POLLUTERS

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ABSTRACT

The rights to life, "to health, to livelihood and to living a dignified life have become the main focus of concern for climate change as a matter of constitutional and human rights. In India, the concept of right to environmental health and cleanliness has been interpreted as an extension of the right to life as enshrined under Article 21 of the Indian Constitution. Other rules have been reinforced by judicial acts: the polluter pays principle, the precautionary principle and the principle of sustainable development. The private sector's increasing role in causing damage to the climate does, however, present some interesting questions about constitutional responsibility for private polluters and the constitution's standards for holding the private sector to its climate responsibilities. The article investigates how climate rights has been evolving in the Indian Judicial system, especially how Article 21 has been taking form in the Indian Judges. This article looks at the evolution of climate rights jurisprudence in India, specifically the aspect of judicial activism and the constitutional aspects of Article 21. It examines the scope of private entity obligations subject to constitutional protection whose activities lead to green-house gas-gas emissions, pollution and environmental risks. The article also considers the evidentiary, cause in action and process issues related to getting a private polluter to pay for climate damages, especially when climate damages are forms of evidence-based harm and are caused by a history of emissions as well as long-term environmental" issues.

Keywords: Climate Change, Article 21, Constitutional Environmental Rights, Judicial Activism, Private Polluters, Climate Justice, Corporate Accountability.

INTRODUCTION: CLIMATE HARM AS A CONSTITUTIONAL AND HUMAN RIGHTS CONCERN

Climate change has become "one of the greatest threats to human rights, environmental issues, and constitutional governance. Rising temperatures, extreme weather events, floods, droughts and rising sea levels are increasingly threatening to human life, public health, livelihood, food security and access to safe drinking water in India where millions of people depend on agriculture, natural resources and weather sensitive livelihoods for survival and are suspicious of the operational efficiency of existing environmental laws in the absence of tangible mitigation measures.[1]

The judicial interpretation of the right to life has enabled its meaning to evolve to encompass the conditions required for a dignified and healthy life beyond just the element of physical existence as guaranteed by Article 21 of the Indian Constitution.[2] The reasoning in Subhash Kumar v. State of Bihar, where the Supreme Court noted that the right to live encompassed the right to enjoy pollution free water and air for the full enjoyment of life, though the case was not particular to climate change, nevertheless it offers a constitutional reasoning to support the issue of environmental degradation and the impact thereof on human wellbeing.[3]

Article 48A of the Constitution mandates the State to protect and improve environment and to preserve forests and wildlife, and Article 51A(g) imposes fundamental duty on citizens to protect and improve natural environment, which clearly show that there is a Constitutional imperative towards environmental protection and to interpret fundamental rights in the context of environment protection.[4] When decision, whether by the government or otherwise, impacts environmental interests, the Supreme Court in Sachidanand Pandey vs State of West Bengal placed importance on consider environmental protection. In this regard, climate change requires a constitutional approach of intergenerational equity, obligation to protect life, public welfare and connection of environmental protection and human dignity.[5]

By finding climate change as a constitutional issue and not just an issue of governmental policy,

[1] Intergovernmental Panel on Climate Change, Climate Change 2023: Synthesis Report 4–9 (IPCC, Geneva, 2023).
[2] INDIA CONST. art. 21.
[3] Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.
[4] INDIA CONST. arts. 48A, 51A(g).
[5] Sachidanand Pandey v. State of West Bengal, (1987) 2 SCC 295.

M.K. Ranjitsinh v Union of India is also an important step in Indian constitutional environmentalism.[6] This decision also bolsters arguments for using equality, life and environmental protection as constitutional benchmarks when considering climate related decisionmaking.

But can the same be said for private companies and industrial businesses that generate climate damage, While addressing the parties responsible for climate change pollution is the main tenet of climate change disputes, the discussion of private polluters introduces a whole new level of complexity at the intersection of constitutional obligations, environmental statutory responsibilities and the principles of liability for private" parties.

CONSTITUTIONAL FOUNDATIONS OF THE RIGHT TO BE FREE FROM CLIMATE HARM UNDER ARTICLE 21

The protection "against harm of the climate in India, as enshrined in its Constitution, is basically based on the broadened definition of the right to life and personal liberty in terms of Article 21 of the Constitution of India. The Supreme Court held that the words 'life' in Article 21 has been given a greater connotation than mere physical existence. It refers to the rights of living with dignity, health and appropriate living environment and the good conditions for enjoying life. Because the threats of environmental risks, public health, disturbance of ecological balance, and a shortage of natural resources are all direct effects of climate change on these constitutional interests, they are considered to be closely interconnected. All the threats to these constitutional interests are direct consequences of climate change, such as environmentally unfriendly risks, endangering public health, harm to ecological balance, and lack of access to essential natural resources, and they are all closely interconnected. As a result, the constitutional definition of the right to life must cover at least the protection from serious environmental and climate challenges.[7]

In Maneka Gandhi vs. Union of India, the Supreme Court gave a broad and substantive interpretation of Article 21 noting that the procedure denying a person life or personal liberty must be fair and just and reasonable.[8] This interpretation was later to form the bedrock for the progressive development of fundamental rights through judicial review. In the case of climate

[6] M.K. Ranjitsingh v. Union of India, 2024 INSC 280.
[7] M.K. Ranjitsinh v. Union of India, 2024 INSC 280, ss 25–27.
[8] INDIA CONST. arts. 14, 21.

change, this was important because adverse effects on the environment and climate related disasters could impact on the fundamental precondition for human rights protection of the constitutional freedoms.

The decisions further set an important precedent in establishing the constitutional footprint of the right to live in a human way and the right to basic necessities, which includes the right to a healthy environment and conditions conducive to human life in Francis Coralie Mullin v. Administrator, Union Territory of Delhi,[9] and Bandhua Mukti Morcha v. Union of India. The cases are illustrative of the concept of climate harm as a violation of the right to live with human dignity, especially when environmental changes impact access to food and water; shelter; health; and livelihood.[10]

The relationship between Article 21 and environmental protection was linked in Subhash Kumar v. State of Bihar. The Supreme Court's ruling claimed that access to water and air free from environmental pollution is part of the fundamental right to life and made access to good quality environment tightly connected with the enforcement of the fundamental rights.[11] The decisions are important as they affirm that the right to a hygienic environment is part of the right to a healthy life guaranteed by Article 21 of the Indian Constitution, and that the environment happens to be a single of the many factors where climate change is expected to have a negative impact if not fatal effects.

That Article 21 is not the only constitutional provision that enables environmental protection. There are also important links between Article 14 and 19 and climate justice. This article ensures "equal protection of the laws" and "equal treatment under the law." Not all communities or individuals are equally impacted by climate change.[12] The argument that environmental policies have to take into account the abnormal sharing of climate risks is bolstered by the Supreme Court's recognition that the right to be free from the adverse impacts of climate change can also be understood to flow from Article 14 and Article 21 combined.

The principle of freedom of profession and the freedom to engage in any occupation, trade or business is relevant to climate harm under Article 19(1)(g) of the International Covenant on

[9] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
[10] Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161.
[11] Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.
[12] INDIA CONST. art. 14.

Civil and Economic Rights.[13] Article 19(6) also allows measures which are reasonable in the interest of the general public; the protection of the environment, in this context, cannot therefore be viewed as an absolute prohibition on conducting business activities that can lead to harmful impacts on the environment. This is because the constitutional framework calls for a balance of "economic freedom" with the protection of the environment and the protection of public health.[14]

The other constitutional principle is the public trust doctrine; that the state holds the nature in trust for the public's use and benefit. The doctrine is especially applicable to climate harm, both in that it gives governments more duties to protect ecological stability, and in that it gives resources such as forests, wetlands, rivers, and ecologically important areas that are used by the public more protection.

The adage 'prevention is better than cure' or 'better safe than sorry' known as the precautionary principle is also recognised in Vellore Citizens' Welfare Forum as an important principle of environmental law[20] and is also incorporated into environmental jurisprudence in India. The polluter pays principle is also accepted as a principle of environmental law in the Supreme Court in Vellore Citizens' Welfare Forum.[15] The Paris agreement, 2015, highlights the rights of vulnerable communities and the importance of human rights alongside climate action. The United Nations General Assembly (UNGA) through their resolution on human right to a clean, healthy and sustainable environment, 2015, also stresses the importance of human rights, especially for the vulnerable" communities.[16]

JUDICIAL ACTIVISM AND THE EVOLUTION OF CLIMATE RIGHTS JURISPRUDENCE IN INDIA

Judicial activism "has been a significant feature of Indian environmental jurisprudence in India, in broadening the ambit of Article 21 of the Indian Constitution, a right to a healthy environment. With a lack of an integrated and autonomous climate change legislation, the Indian judiciary has been increasingly using the interpretation of the Constitution of India, public interest litigation and basic environmental law principles to tackle problems concerning

[13] INDIA CONST. art. 19(1)(g).
[14] INDIA CONST. art. 19(6).
[15] Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647.
[16] Paris Agreement, Dec. 12, 2015, pmbl., opened for signature Apr. 22, 2016, T.I.A.S. No. 16-1104.

environmental degradation and ecological protection.[17] Climate rights jurisprudence has taken another step forward in this regard: Courts have now started to recognise that the impacts of climate change directly impact the enjoyment of fundamental rights.

Pivotal to its genesis of environmental judicial activism was the case of Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, which concerned the adverse effects of quarrying of limestone—a practice which subjects the environment to heavy pollution and pollution from other activities—on ecological stability and the need for balancing the interest of environment and economics.[18] In the very same manner, in the M.C. Mehta case relating to industrial pollution, the Supreme Court took a proactive step towards eco-environmental protection and laid down some significant principles on environmental liability of industries.[19] These judgments paved way for judicial activism in the field of environmental protection and ushered in a paradigm shift towards assessing environmental impact of economic activities.

In M C Mehta v Union of India (Oleum Gas Leak Case), the Supreme Court gave a new meaning to absolute liability on the part of an enterprise engaged in a hazardous or inherently dangerous activity.[20] It was observed that they had absolute liability that cannot be delegated to others as long as their activity continues to cause harm to others or to the community. The legal principle of 'absolutely liable' emerged in relation to industrial accidents but, in greater detail, it meant a recognition of the responsibility, accountability and liability of a person, organisation or entity on behalf of enterprise concerned with any hazardous activity they are responsible for.[5]

The elusiveness of order and the ‘policing of the environment' were also partly propelled by judicial activism. Judicial activism played a role in the underdevelopment of the preventive environmental principles. The precautionary principle has received feed-back in Vellore Citizens' Welfare Forum v. Union of India where the Supreme Court has declared that the polluter pays principle is too of the environmental law in India, particularly where the effects of GHGs are cumulative and long-term, such that preventive judicial and regulatory action could be necessary before the environment has been harmed.[21]

[17] INDIA CONST. arts. 14, 21.
[18] Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, (1985) 2 SCC 431.
[19] M.C. Mehta v. Union of India, (1987) 1 SCC 395.
[20] M.C. Mehta v. Union of India, (1987) 1 SCC 395.
[21] Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647.

In this case, M.K. Ranjitsinh v. Union of India, 21 March 2024, the case mainly focussed on the conservation of the Great Indian Bustard, and the immediate detriment it has faced from overhead transmission lines, showing a major development in the evolution of Climate Rights jurisprudence. But the proceedings also pinpointed serious issues linked to India's move towards renewable energy and its obligations to other nations in matters of climate change.[22]

However, judicial methods of adjudicating issues pertaining to environment should be confined within the constitutional and statutory boundaries and should not unwarrantably supplant the policy making powers of the legislature and the executive. Judicial intervention in environment should be guided by the bestowing of constitutional and statutory powers upon the Supreme Court and the High Courts to review and grant remedy for violation of basic rights, and should also be limited to their specific, constitutional and statutory mandates such as public interest litigation, special leave and review petitions.14,15,16 By adopting 'sustainable development principles', 'precautionary principles' and 'polluter pays principles', the National Green Tribunal has also contributed in providing relief to affected communities through its environmental adjudication.[23]"

CONSTITUTIONAL ACCOUNTABILITY OF PRIVATE POLLUTERS: DUTIES, LIABILITY, AND THE HORIZONTAL APPLICATION OF FUNDAMENTAL RIGHTS

However, the "right to be free from environmental harm cannot only be imposed on State's responsibility; private companies, industries and businesses are major contributors to environmental harm. Pollution and emissions can be a problem in industries that produce the energy, make manufactured goods, mining, transportation and other emission-generating activities. Whereas rights to life guaranteed by Article 21 must be found in the conduct of private individuals and associations, if there is a connection between their activity and public life and enjoyment of the right to life.[24]The fundamental rights are enforceable only against the State, but where there is a link between the activity and public life and enjoyment of the right to life then it can be reached by the Constitution in order to be controlled.[25]

In this case the idea of "horizontal" application of fundamental rights is important. Historically,

[22] M.K. Ranjitsinh v. Union of India, 2024 INSC 280 (India).
[23] National Green Tribunal Act, 2010 (Act 19 of 2010), ss. 14, 15 and 20.
[24] Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.
[25] Constitution of India, art. 21

fundamental rights are applied vertically, to shield individual from arbitrary State action. The obligations are extended, however, to private individuals and bodies by some aspects of the constitution. Article 15(2), Article 17, Article 23 and Article 24 show that constitutional obligations are not restricted to individuals and the State; it is possible to find a similar direct constitutional constraint on other private polluters as a result of constitutional obligations, statutory duties, regulatory instructions and legal actions by other parties, in particular the judiciary.[26]

In Oleum Gas Leak Case, Supreme Court introduced absolute liability principle as an important foundation of private environmental liability, by ruling that an enterprise that undertakes hazardous or inherently dangerous activity has an absolute and non-delegable duty to ensure that the operations of the enterprise do not cause damage to the community.[27] This is important because it means that there are no counterparts to the Rylands v. Fletcher doctrine of strict liability for the exceptions to liability applied in that case. The use of absolute liability however has to be separated from ordinary industrial accidents within the climate framework and the nature of the activity as well as the legal basis must be taken into account.[28]

Another important reason that private companies are held to environmental damages is the principle of "the polluter pays." This principle, that the burden of environmental pollution should fall on the shoulders of the inflicted industries, is relevant to the context of climate change damage, as the economic and social impacts of the climate change causing industries/companies must be borne by them rather than by the public. Similarly, polluter pays and precautionary principle were recognised as integral parts of Indian environmental law in the case of Vellore Citizens' Welfare Forum v. Union of India.[29]

The regulatory regime on environmental protection also needs to be analyzed to assess the obligation of private polluters under the Constitution. The Environment (Protection) Act, 1986 gives to the Central Government powers for the protection and improvement of environmental quality and makes it powerfully responsible to make directions to regulate or prohibit industrial operations;[30] while the Air (Prevention and Control of Pollution) Act, 1981 places regulatory obligations on private industries regarding air pollution. Moreover, National Green Tribunal

[26] Constitution of India, arts. 15(2), 17, 23 and 24
[27] M.C. Mehta v. Union of India, AIR 1987 SC 1086.
[28] Rylands v. Fletcher, (1868) LR 3 HL 330.
[29] Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647.
[30] The Environment (Protection) Act, 1986 (Act 29 of 1986), ss. 3, 5 and 7.

Act, 2010 offers several provisions for compensation, restitution of damaged environment and restoration of environment; this is a clear reflection on the fact that there cannot be absolute commercial freedom at the expense of environment protection.[31]

In Kaushal Kishor v. State of Uttar Pradesh, an important provision of the Constitution regarding horizontal application of fundamental rights was given.[32] The reasoning in the judgment is important for the subject of climate accountability, as it adds weight to the claim that there should be effective protections against private (non-State) actions threatening life for which the State is responsible under the Constitution. This does not imply that all private corporations are necessarily directly subject to Article 21 as is the" State.

DETERMINING THE ENFORCEMENT THRESHOLD AGAINST PRIVATE POLLUTERS: CAUSATION, SCIENTIFIC EVIDENCE, AND JUDICIAL REMEDIES

In order for "constitutional climate rights to be enforced against an individual – whether a company or an industrial plant – there must be a clear law defining private claims for climate damage. While Article 21 does provide a right to be free from the harmful effects of climate change, proving a person or entity is responsible in legal terms has several difficulties. Whereas there were a few cases of actual pollution, more akin to conventional pollution issues, where some form of contamination could be directly traced to a specific source, climate change is a cumulative impact due to the emissions of greenhouse gases accumulating over a long time from many activities.[33] There has to be a linkage between the pollution, the environmental risk, and the harm or threatened harm suffered by the claimant.

Causation is a crucial element in climate litigation. The traditional principles of causation usually necessitate the claimant showing some connection between the defendant's conduct and the alleged injury. The United States Supreme Court decision in Massachusetts v. Environmental Protection Agency, however, does offer some instructive examples of how courts might interpret the connection between emissions, environmental damage, and government liability as it relates to GHGs.[34]

The scientific proof needs to therefore be a critical factor in the decision of the enforcement

[31] The Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981), ss. 21, 22 and 31A.
[32] Kaushal Kishor v. State of Uttar Pradesh, (2023) 4 SCC 1.
[33] Constitution of India, art. 21
[34] Massachusetts v. Environmental Protection Agency, 549 U.S. 497, 521–23 (2007).

threshold. Because INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE reports include scientific evaluations regarding the contributions of greenhouse gases, global warming and the impact of human activities on climate systems, the reports could help a court in its decision making process on these matters. Such evidence can include emissions records, environmental impact assessments, regulatory compliance reports, scientific studies, and expert testimony, among other things in individual cases, and the evidentiary framework in these cases should ensure that judicial decisions are based on reliable scientific evidence, rather than on assumptions about climate damage caused by corporate emission.[35]

Causation has also been strongly emphasised in the length of Indian environmental jurisprudence. The polluter pays principle as propounded by Supreme Court in Indian Council for Enviro-Legal Action v. Union of India is considered to shift the burden on compensation of remediation measures, but it does require identification of who caused the pollution and a causal link between the pollution and the damage.[36] In Vyakti Vikas Kendra India v. Manoj Misra (2026), the Supreme Court also said that for any pollution case, therefore pollution caused by a corporation has to be proven, and for climate case the principle of the pollution caused by the polluter had to be linked to the pollution actually caused by the corporation.[37]

Judicial remedies need to also be able to serve to correct past environmental harm and to prevent future harm. Courts and tribunals, under the various provisions of NGT Act, 2010, are thus empowered to award compensation, demand compliance and directions for the environment's restoration in context of the type of court/tribunal and available evidence.[38]

So, the rate of enforcement actions and penalties imposed on private polluters should be based on credible evidence of environmental harm or the likelihood of environmental harm; on a scientifically sound relationship between the defendant's activities and the harm; and on a clear legal obligation or basis for liability. An objective and well-balanced approach would allow that courts can restrict the capacity to inflict serious damage through climate emissions, whilst also imposing private actors on any legally sustainable basis and not merely for lack of evidence.

[35] Intergovernmental Panel on Climate Change, Climate Change 2021: The Physical Science Basis (Cambridge University Press, 2021).
[36] Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.
[37] Vyakti Vikas Kendra India v. Manoj Misra (Dead), 2026 INSC 910
[38] The National Green Tribunal Act, 2010 (Act 19 of 2010), ss. 15, 17 and 20.

CONCLUSION AND SUGGESTIONS: STRENGTHENING CONSTITUTIONAL PROTECTION AGAINST CLIMATE HARM

Considering the right to be freed from the consequences of climate change, is a step forward in Indian constitutional and environmental law history. Article 21 of the Constitution has been expanded to make it clear that the right to life is not limited to simply being alive, but also the environmental conditions that enable human dignity, well-being, health and livelihood. A constitutional interpretation, based on articles 14 and 21, founded on articles 48A and 51A(g), can be built on to tackle climate related issues and challenges through the lens of fundamental rights. The Supreme Court's ruling in M.K. Ranjitsinh v. Union of India has further reaffirmed this understanding, by specifically affirming the constitutional aspects of climate change protection.

The development of environmental rights has been significantly influenced by judicial activism, which has incorporated three new concepts: the principle of absolute liability, the principle of sustainable development, the principle of precautionary principle and the polluter pays principle. Based on those values, the legal liability of industries and other organizations involved in polluting activities have increased. Yet, while constitutional recognition serves as a crucial foundation for effective protection on climate harms, it is not sufficient on its own. Lack of clear rules about how companies can be held accountable, the scientifically understood cause and expressive remedies remains a challenge for the enforcement of rights in climate issues. The constitutional agenda thus needs to be shifted from recognition to action and to the accountability.

To further constitutional safeguards for climate related harm in India consider the following suggestions:

1.Establishment of a Comprehensive Climate Change Legal Framework: India should allow for a comprehensive legal framework for climate change outlining responsibilities for emissions reduction, adaptation, and monitoring compliance. This law would offer the regulatory agencies, industries, communities and courts more legal certainty.

2. Have clarity in private polluter liability law: It is needed to establish clear regulation about the liability of private corporations and industrial facilities for the causes of climate harm. The nature of the activity, the level of emissions, scientific evidence, foreseeability and, the causal

connection between the conduct and the environmental harm are among the factors that should be brought into play to assess liability.

3.Strengthening and augmenting scientific and technical evidence: Greater use of independent scientific experts, climate assessments, emissions and environmental impact reports by courts and environmental tribunals. Judicial systems can be supported with specialised scientific expertise to address complicated climate disputes and adjudicate legitimate environmental claims as opposed to non-founded allegations.

4. Building up the capacities of the National Green Tribunal: The National Green Tribunal is to be given sufficient institutional resources and scientific capabilities and effective monitoring mechanism to deal with the environmental conflicts regarding damage/repair in relation to climate change. It needs to make good use of remedial powers in statutory terms.

5. Protection of Vulnerable Communities: Climate policies and judicial remedies should be sensitive to those communities disproportionately affected by climate change, such as groups engaged in agriculture, coastal communities, forest-dependent communities and economically disadvantaged communities. Everyone should have access to justice, without being hindered by financial means or technical knowledge.

6. Good Corporate Environmental Responsibility: Private companies should be encouraged and, where necessary under the law, obligated to report on emissions in a transparent way, perform environmental audits, implement sustainable production systems and preventive measures. CSR is not something corporations voluntarily do, but a compulsory part of industrial" governance.