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Guardians of the Green: The Judiciary's Role in Environmental Protection and the Evolution of Environmental Jurisprudence in India

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ABSTRACT

This paper critically examines the part played by the Indian judiciary in the protection and preservation of the environment and in the development of environmental case law. It traces the history of environmental protection in India, with special reference to the constitutional provisions, judicial activism and the expansion of Public Interest Litigation (PIL). It studies how the courts have tried to balance the conflicting interests of industrial development and environmental sustainability, while recognising the right to a clean and healthy environment as an essential part of the right to life under Article 21 of the Constitution. Focusing on the judicial development of environmental principles, the study examines how the Public Trust Doctrine, Sustainable Development, the Polluter Pays Principle and the Precautionary Principle have been applied in important judicial decisions. It also considers the importance of PIL in combating environmental degradation and examines key cases relating to mining, industrial pollution, hazardous activities and water contamination. The analysis takes into account the constitutional framework set out in Articles 21, 47, 48A and 51A(g) and the role of the judiciary in enforcing environmental obligations and holding the government accountable. The paper concludes that judicial intervention has made a significant contribution to the development of environmental law in India by expanding constitutional environmental rights, evolving protective principles and enabling access to environmental justice, while pointing to the need for effective institutional mechanisms and specialised environmental adjudication to strengthen long-term environmental protection.

Keywords: *Environmental jurisprudence, judicial activism, Public Interest Litigation, Article 21, Public Trust Doctrine, Polluter Pays Principle, Precautionary Principle*

I. INTRODUCTION

Earth is the only planet known to support human life, and every form of life on it is sustained by its environment. While the environment has been a life-sustaining force for all people,

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unchecked human activity has been the primary cause of environmental degradation.¹ Massive population growth, rapid urbanisation, unrestrained exploitation of resources and continuing industrial expansion across the world have upset the ecological balance. The increase of carbon dioxide, nitrogen and other gases in the atmosphere has resulted in “global warming”, a warning to everyone on the planet.²

The entire international community has become aware of environmental degradation and has resolved to protect and improve the quality of the environment. As a social institution, the judiciary has a pivotal role to play in addressing environmental degradation and pollution.³

In India, the judiciary has been crucial to environmental preservation and has developed a new body of environmental jurisprudence that has been described as a “jurisprudence of masses”.⁴

In the years after independence, environmental protection did not receive the attention it deserved in India, because of the need for industrial expansion and political instability. The main priorities after independence were establishing markets and businesses and creating new employment for the people. After the Bhopal gas disaster, however, protecting the environment became a top priority. In the wake of the disaster, environmental legislation grew in breadth and judicial activity increased across the country.⁵

II. ENVIRONMENTAL PROTECTION

Environmental law is a relatively new area of international legal thought. India, however, had begun to consider the link between environmental protection and development before the 1972 Stockholm Conference. The Fourth Five-Year Plan, which ran from 1969 to 1974, clearly recognised that humans and nature are connected,⁶ and stressed that environmental issues must form part of development planning. The Plan noted that balanced development required a study of its effects on the environment, and that early environmental advice could help shape projects

¹ Baljit Kaur, *Role of Public Interest Litigations in Environment Protection in India*, 6 J. EMERGING TECH. & INNOVATIVE RSCH. 254, 254 (2019), <https://www.jetir.org/papers/JETIR1901H99.pdf>; Gitanjali Nain Gill, *Human Rights and the Environment in India: Access through Public Interest Litigation*, 14 ENV'T L. REV. 200 (2012), <https://doi.org/10.1350/enlr.2012.14.3.158>.

² Kaur, *supra* note 1, at 254.

³ See Kaur, *supra* note 1, at 254; Priyal Bohra, *Role of Judiciary in Environmental Protection*, LEX TERRA (Nat'l L. Univ. & Jud. Acad., Assam), no. 32, Oct. 2018, at 8, 10, <https://nluassam.ac.in/docs/lex%20terra/Lex%20Terra%20Issue%2032.pdf>; see generally Shalini Iyengar, Nives Dolšak & Aseem Prakash, *Selectively Assertive: Interventions of India's Supreme Court to Enforce Environmental Laws*, 11 SUSTAINABILITY 7234 (2019), <https://doi.org/10.3390/su11247234> (examining when the Supreme Court intervenes to correct the executive's failure to enforce environmental laws).

⁴ Kaur, *supra* note 1, at 254.

⁵ Bohra, *supra* note 3, at 8; see, e.g., Environment (Protection) Act, No. 29 of 1986, INDIA CODE (1986); Public Liability Insurance Act, No. 6 of 1991, INDIA CODE (1991).

⁶ PLANNING COMMISSION, GOVERNMENT OF INDIA, FOURTH FIVE-YEAR PLAN, 1969–74 ch. 2, ¶ 2.46 (1969); see Bohra, *supra* note 3, at 9.

and reduce damage to, and the loss of, natural resources. The Plan was an early occasion on which India officially acknowledged that environmental concerns should be built into development efforts.⁷

India's concern for the environment did not, however, begin with the Supreme Court's reading of the Constitution. Even before environmental protection became part of the right to life, Indian law already had ways of dealing with environmental harm: statutory rules, the law of nuisance and principles of tort law. Over time the courts turned these legal tools into a wider constitutional system. As Article 21 expanded, the right to life grew to include the conditions needed for a healthy life, including protection from pollution. From the 1970s, and especially through the 1980s, the Supreme Court and the High Courts came to see environmental quality, public health and the rights to life and personal liberty as bound together. This change was strengthened when Articles 48A and 51A(g) were inserted into the Constitution by the Forty-second Amendment in 1976. Together these developments built the constitutional approach to environmental protection in India.⁸

III. CONSTITUTIONAL FOUNDATIONS OF ENVIRONMENTAL PROTECTION

A. Article 21 and the right to a healthy environment

The constitutional framework for environmental protection has changed considerably over time, mainly through the courts' interpretation of Article 21. A key case marking this shift was *Subhash Kumar v. State of Bihar*,⁹ in which the Supreme Court gave the right to life a broad meaning, holding that it includes the right to enjoy pollution-free water and air for the full enjoyment of life. Over time the right to life has come to mean not merely the right to exist but the right to live with dignity, which includes living in conditions that make a decent life possible. Environmental pollution and damage to nature have thus come to be seen as threats to life and health. Where the government fails to act, or acts in a way that harms the environment, the courts can step in, because such action or inaction can violate the right to a healthy environment under Article 21.

This approach shows how the Constitution works as an integrated whole rather than through a single article. Fundamental Rights such as Article 21 interact with the Directive Principles of State Policy and the Fundamental Duties, and Articles 48A and 51A(g) are part of that scheme.

⁷ Bohra, *supra* note 3, at 9.

⁸ PARAS DIWAN & PEEYUSHI DIWAN, ENVIRONMENT ADMINISTRATION, LAW AND JUDICIAL ATTITUDE (2002); *see* Bohra, *supra* note 3, at 9.

⁹ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598, 604 (India) (holding that the right to life under Article 21 includes the right of enjoyment of pollution-free water and air, although the petition itself was dismissed as not filed bona fide in the public interest).

Although they are not directly enforceable as rights, they shape how courts understand the State's role in protecting the environment. In *Sachidanand Pandey v. State of West Bengal*,¹⁰ the Supreme Court held that whenever a problem of ecology is brought before it, the Court is bound to bear Articles 48A and 51A(g) in mind. The Constitution thus works not through one part alone but through all its parts together in support of environmental protection.

B. Articles 48A and 51A(g): the Forty-second Amendment

In 1976 the Forty-second Amendment inserted two provisions into the Constitution.¹¹ Article 48A, added to the Directive Principles of State Policy, requires the State to endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51A(g), added to the Fundamental Duties, makes it the duty of every citizen to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures. These provisions gave the Constitution an express environmental vocabulary, and they became tools for the courts in interpreting environmental laws.

The real value of these articles lies not only in what they say but in how they connect with Article 21. Courts have often treated environmental quality, public health and the health of ecosystems as parts of the right to life. In this way, even though Articles 48A and 51A(g) are not directly enforceable, courts can still use them in support of environmental protection. This method of interpretation allows the Constitution to give meaning to environmental values even where no specific environmental right is written into its text.

IV. JUDICIALLY DEVELOPED PRINCIPLES OF ENVIRONMENTAL LAW

Indian environmental law has been greatly influenced by principles developed through court decisions. The courts have adopted and applied a number of environmental principles that have become key points in the growth and refinement of environmental law in India.

A. Public trust doctrine

Indian law, which rests largely on the common law, has incorporated the public trust doctrine into its jurisprudence. Under the doctrine, certain natural resources cannot be turned into private property; they are held and maintained by the State for the public, and the State is under a legal duty to safeguard them. In the landmark case of *M.C. Mehta v. Kamal Nath*,¹² the Supreme

¹⁰ *Sachidanand Pandey v. State of West Bengal*, (1987) 2 SCC 295, 334–35 (India) (Chinnappa Reddy, J.); *see also* Bohra, *supra* note 3, at 13.

¹¹ INDIA CONST. arts. 48A, 51A(g) (inserted by the Constitution (Forty-second Amendment) Act, 1976).

¹² *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388 (India).

Court applied the doctrine to resolve an environmental dispute for the first time in the country's history. According to the Court, the doctrine rests on the principle that certain resources, such as air, sea, waters and forests, are of such great importance to the people as a whole that it would be wholly unjustified to make them the subject of private ownership.¹³

The consequence is that the State's control over natural resources is treated not as absolute ownership but as a trust, to be exercised for the benefit of the public and of future generations. *Kamal Nath* thus made the State more accountable by treating such resources as held for the public, not merely for the government's use.

B. Doctrine of sustainable development

Pollution and environmental damage have become serious problems in today's world. As part of society, the courts can help to deal with these problems and ensure that people are held responsible for harming the environment. Industrial growth and economic progress are important for a country's development, but they can also cause great harm to the environment. The legal system therefore faces a dilemma: balancing the goals of economic growth against the need to keep the environment safe and healthy.

The courts have in several cases recognised the wider consequences that could follow if factories were suddenly shut down. A complete halt in production could hurt jobs, livelihoods and the economy in a country where many people depend on industry for a living. At the same time, factories cannot keep running if they destroy nature or make people sick. The courts have therefore tried to find a middle ground between allowing businesses to operate and protecting the environment, and the level of pollution that may be allowed depends on the environmental situation and the need to keep people and nature safe.

In *Vellore Citizens' Welfare Forum v. Union of India*,¹⁴ the Supreme Court held that the traditional concept that development and ecology are opposed to each other is no longer acceptable, and that sustainable development is the answer. The essence of sustainable development is meeting the needs of the present without compromising the ability of future generations to meet their own needs.

The consequence is that environmental protection is no longer seen as an obstacle to progress but as a requirement that every development effort must meet.

¹³ *Kamal Nath*, *supra* note 12; see *Bohra*, *supra* note 3, at 10.

¹⁴ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, AIR 1996 SC 2715 (India); see *Bohra*, *supra* note 3, at 10–11.

C. Polluter pays principle

For industrialising countries, ensuring effective compensation for those affected by pollution and environmental hazards has become a major legal and policy challenge. In response to the growing consequences of industrial activity, the principle that those responsible for causing environmental harm should bear the financial burden of remedying it has become an important foundation of environmental law.

In *M.C. Mehta v. Union of India*,¹⁵ the Supreme Court considered a petition under Article 32 that sought, among other things, the closure of an industrial unit manufacturing hazardous substances. The case arose after oleum gas leaked from the plant and injured people. It is especially important for the growth of the doctrine of absolute liability in Indian environmental law: the Supreme Court held that an enterprise engaged in a hazardous or inherently dangerous activity owes an absolute and non-delegable duty to the community. Building on that rule, the Supreme Court later held the polluter pays principle to be a sound principle in *Indian Council for Enviro-Legal Action v. Union of India*,¹⁶ and in *Vellore Citizens' Welfare Forum* explained that it makes the polluter liable not only to compensate the victims of pollution but also to pay the cost of restoring the damaged environment.¹⁷

The consequence is that the cost of pollution is shifted from the public to the polluter, who must pay for the damage caused.

D. Precautionary principle

Under the precautionary principle, environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious and irreversible damage, lack of scientific certainty is not a reason for postponing measures to prevent harm, and the burden of proof lies on the person undertaking the activity or project to show that it is environmentally benign.¹⁸ Society is therefore entitled to take measures to protect the public from a risk of harm before that harm is conclusively proved, and the restrictions may be relaxed only if the actor shows that the activity will not cause harm.¹⁹

¹⁵ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395, 421–24 (India); see Bohra, *supra* note 3, at 11.

¹⁶ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212 (India).

¹⁷ *Vellore Citizens' Welfare Forum*, *supra* note 14.

¹⁸ *Id.*

¹⁹ Bohra, *supra* note 3, at 11.

In *Vijayanagar Educational Trust v. Karnataka State Pollution Control Board*,²⁰ the Karnataka High Court recognised that the precautionary principle is now part of domestic law and finds expression in Articles 47, 48A and 51A(g) of the Constitution. Citing the Supreme Court's decision in the *Nayudu* case, the Court held that where a project poses uncertain but non-negligible risks, the burden lies on the developer to show that it will not expose the environment to serious or irreversible damage. On the facts, however, the Court found that no non-negligible risk had been shown, and it quashed the refusal of consent for the petitioner's hospital while leaving the Pollution Control Board free to impose precautionary conditions.

The consequence is that decision-makers may need to take preventive action even before science has established the danger: safety comes first.

V. PUBLIC INTEREST LITIGATION AS A VEHICLE FOR ENVIRONMENTAL JUSTICE

The concept of public interest litigation originated in the United States, where it is known as “public interest law”; in India the term is understood as “public interest litigation” (PIL). The concept was first introduced into the Indian legal system by Krishna Iyer J. in 1976. Although Justice Krishna Iyer did not use the expression “public interest litigation”, he evolved the concept that later came to be known as PIL.²¹ In 1981, Justice P.N. Bhagwati set out what PIL means in *S.P. Gupta v. Union of India*.²²

Black's Law Dictionary defines “public interest” as “[s]omething in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected”.²³

Public interest litigation has proved an effective tool in the fight against environmental degradation and pollution, and in some cases it has paved the way for improvements to the existing natural environment. Litigation in the public interest has made it possible to prevent environmental harm, and the strategic arm of PIL has made a substantial difference in cases of environmental damage.²⁴ In *Municipal Council, Ratlam v. Vardhichand*,²⁵ Krishna Iyer J.

²⁰ *Vijayanagar Educational Trust v. Karnataka State Pollution Control Board*, AIR 2002 Kant 123, ¶¶ 22, 29–32, 36 (India) (citing *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718 (India)); see Bohra, *supra* note 3, at 11.

²¹ Kaur, *supra* note 1, at 254 (citing *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*, AIR 1976 SC 1455 (India)).

²² *S.P. Gupta v. Union of India*, 1981 Supp SCC 87 (India); see Kaur, *supra* note 1, at 254.

²³ BLACK'S LAW DICTIONARY 1229 (6th ed. 1990), quoted in *Janata Dal v. H.S. Chowdhary*, (1992) 4 SCC 305, ¶ 52 (India); see also Kaur, *supra* note 1, at 255.

²⁴ Kaur, *supra* note 1, at 255–56; see also Rekha Tewathia & Santosh Kumar, *Public Interest Litigation (PIL) and Environmental Constitutionalism: Exploring the Nexus of Judicial Activism and Environmental Protection in India*, 1 MAHARAJA SURAJMAL INST. L.J. 42, 43 (2024), <https://journals.acspublisher.com/index.php/msilj/article/view/21509>.

²⁵ *Municipal Council, Ratlam v. Vardhichand*, (1980) 4 SCC 162 (India); see Kaur, *supra* note 1, at 256.

observed that “[s]ocial justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under s. 133 Cr.P.C.”

As a result of this expansion, numerous environmental problems have been brought before the courts through public interest litigation, filed by private individuals and voluntary organisations or by letters and petitions addressed to the courts. The advocate M.C. Mehta has received international recognition for his work in environmental protection. A Supreme Court Bench headed by Chief Justice Ranganath Misra directed that education on the environment be made compulsory in schools and that universities prescribe a course on it, one of the most significant outcomes of PIL. Judges such as Justices Krishna Iyer, Bhagwati, Kuldeep Singh and Ranganath Misra consistently supported the preservation of the environment, and “Green Benches” have been constituted in certain High Courts to hear environmental matters.²⁶

VI. FROM STATUTORY ENFORCEMENT TO ENVIRONMENTAL CONSTITUTIONALISM

A. Dehradun quarries case

In *Rural Litigation & Entitlement Kendra v. State of Uttar Pradesh*,²⁷ the Supreme Court, to protect the environment and public health, closed limestone quarries in the Doon Valley following the report of the Bhargav Committee. The decision was important as one of the first occasions on which the Supreme Court spoke directly about the clash between mining and ecological preservation. In later proceedings concerning the same area, the Court held that mining in the Doon Valley should generally be stopped, and that it could be permitted only to the extent necessary in the interest of the defence of the country and of safeguarding its foreign exchange position, and then only in compliance with strict ecological and environmental protection standards.²⁸

Rural Litigation & Entitlement Kendra shows that judicial intervention can halt environmentally harmful activity before nature is irreversibly damaged.

²⁶ Kaur, *supra* note 1, at 256; Gill, *supra* note 1; see *M.C. Mehta v. Union of India*, (1992) 1 SCC 358 (India) (directing that education on the environment be made compulsory in schools in a graded way and that universities prescribe a course on it).

²⁷ *Rural Litigation & Entitlement Kendra v. State of Uttar Pradesh*, AIR 1985 SC 652 (India).

²⁸ *Rural Litigation & Entitlement Kendra v. State of Uttar Pradesh*, AIR 1988 SC 2187 (India) (recalling the Court’s order of 19 Oct. 1987, AIR 1987 SC 2426, ¶¶ 8–9); see Kaur, *supra* note 1, at 256.

B. Oleum gas leak case

The advocate and environmentalist M.C. Mehta approached the Supreme Court in *M.C. Mehta v. Union of India*²⁹ by way of a writ petition under Article 32 of the Constitution. The case gave the Court an opportunity to examine significant questions concerning the scope of Article 32, the liability of enterprises engaged in hazardous activities, and the availability of compensation as a constitutional remedy. The Supreme Court held that, in appropriate cases, the power to award compensation may form part of the Court's remedial jurisdiction under Article 32 where a fundamental right has been violated.

More significantly, the Court departed from the traditional rule of strict liability and evolved the doctrine of absolute liability for enterprises engaged in hazardous or inherently dangerous activities.

The consequence is that enterprises working with hazardous materials must bear full responsibility for any harm they cause, which strengthens the rules designed to prevent harm before it occurs.

C. The Ganga pollution (Kanpur tanneries) case

In *M.C. Mehta v. Union of India*,³⁰ M.C. Mehta brought a public interest litigation in the Supreme Court to stop tanneries at Jajmau, Kanpur, from discharging their effluents into the River Ganga. The tanneries had for several years been asked to install treatment plants and to treat their effluents before discharging them into the river. Many of them had not set up even primary treatment plants, and many had not even responded to the notices issued to them. The Supreme Court therefore directed that the tanneries which had failed to take the minimum steps required for the primary treatment of their effluents be closed.

In making this decision, the Court acknowledged that closing the tanneries might bring unemployment and loss of revenue, but held that life, health and ecology were of greater importance to the people.

The decision shows the Court's readiness to protect life, public health and the environment, especially where industrial activity causes damage to nature.

D. Tamil Nadu tanneries case

In *Vellore Citizens' Welfare Forum v. Union of India*,³¹ a public interest litigation was brought in the Supreme Court against the discharge of untreated effluents by tanneries and other

²⁹ *M.C. Mehta v. Union of India*, *supra* note 15; see Kaur, *supra* note 1, at 256.

³⁰ *M.C. Mehta v. Union of India*, (1987) 4 SCC 463, AIR 1988 SC 1037 (India); see Kaur, *supra* note 1, at 257.

³¹ *Vellore Citizens' Welfare Forum v. Union of India*, *supra* note 14; see Kaur, *supra* note 1, at 257.

industries in Tamil Nadu. The effluents had polluted both the surface water and the groundwater of the River Palar, making the water unsafe to drink and harming agricultural land. According to a preliminary survey by the Tamil Nadu Agricultural University Research Centre, Vellore, cited in the petition, nearly 35,000 hectares of agricultural land in the tanneries belt had become partially or totally unfit for cultivation.

The decision is a landmark in Indian environmental law. The Supreme Court held that the precautionary principle and the polluter pays principle have been accepted as part of the law of the land. It directed the authorities to ensure that pollution standards are complied with and held the polluting industries liable for the damage they had caused.

VII. THE JUDICIARY AND THE DEVELOPMENT OF ENVIRONMENTAL JURISPRUDENCE

Professor Upendra Baxi, a leading scholar of judicial activism in India, has observed that the “Supreme Court of India” was becoming the “Supreme Court for Indians”.³² The shift reflects the larger role the judiciary has taken on in defending constitutional rights, an approach that has played a large part in shaping environmental law in the country.

The Constitution (Forty-second Amendment) Act, 1976 followed the growth of global concern for the environment after the 1972 Stockholm Conference. The amendment inserted Article 48A and Article 51A(g) into the Constitution. Article 48A directs the State to protect and improve the environment and to safeguard forests and wildlife, while Article 51A(g) places on citizens the duty to help protect the environment.³³

Although Articles 48A and 51A(g) cannot be directly enforced in court, Indian courts have drawn on them in reading Article 21 and recognising a right to a healthy environment. In *Consumer Education & Research Centre v. Union of India*,³⁴ the Supreme Court examined the health problems faced by workers exposed to asbestos. Drawing on international human rights and labour instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the ILO Asbestos Convention, 1986, the Court held that the right to health of workers is a fundamental right under Article 21, and it issued directions to protect workers from occupational hazards.³⁵

³² Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 THIRD WORLD LEGAL STUD. 107 (1985), <https://scholar.valpo.edu/twls/vol4/iss1/6>; see Bohra, *supra* note 3, at 12.

³³ See Bohra, *supra* note 3, at 12.

³⁴ *Consumer Education & Research Centre v. Union of India*, (1995) 3 SCC 42 (India).

³⁵ *Consumer Education & Research Centre*, *supra* note 34, ¶¶ 3, 22–27; see Bohra, *supra* note 3, at 12.

A. The right to a wholesome environment

In *Charan Lal Sahu v. Union of India*,³⁶ K.N. Singh J., in a concurring opinion, observed that the right to life, liberty, pollution-free air and water is guaranteed by the Constitution under Articles 21, 48A and 51A(g), and that the State is under a duty to take effective steps to protect these rights.

In *T. Damodhar Rao v. Special Officer, Municipal Corporation of Hyderabad*,³⁷ the Andhra Pradesh High Court, relying on the constitutional mandates in Articles 48A and 51A(g), held that the slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation amounts to a violation of the right to life and personal liberty guaranteed by Article 21 of the Constitution.

VIII. JUDICIAL REMEDIES AND ACCESS TO ENVIRONMENTAL JUSTICE

Environmental protection in India can be pursued through statutory and constitutional remedies as well as through tortious liability. The tort remedies include trespass, nuisance, strict liability and negligence. Statutory remedies include Section 19 of the Environment (Protection) Act, 1986,³⁸ Section 133 of the Code of Criminal Procedure, 1973, now Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023,³⁹ and Section 268 of the Indian Penal Code, 1860, which defines public nuisance, now Section 270 of the Bharatiya Nyaya Sanhita, 2023.⁴⁰ Both Sanhitas came into force on 1 July 2024. In addition, individuals may approach the High Courts under Article 226 of the Constitution, or the Supreme Court under Article 32, by way of writ proceedings.⁴¹

IX. CONCLUSION

The development of environmental law in India shows that the courts have done a great deal to fill gaps in environmental protection and to give meaning to the environmental provisions of the Constitution.⁴² By reading Article 21 together with Articles 48A and 51A(g), the courts have gradually linked the protection of the environment with the protection of life, health and human dignity. The acceptance of principles such as the public trust doctrine, the polluter pays

³⁶ *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613 (India) (Singh, J., concurring).

³⁷ *T. Damodhar Rao v. Special Officer, Municipal Corporation of Hyderabad*, AIR 1987 AP 171, ¶¶ 23–24 (India).

³⁸ Environment (Protection) Act, No. 29 of 1986, § 19, INDIA CODE (1986).

³⁹ Code of Criminal Procedure, No. 2 of 1974, § 133, INDIA CODE (1974); Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 152, INDIA CODE (2023).

⁴⁰ Indian Penal Code, No. 45 of 1860, § 268, INDIA CODE (1860); Bharatiya Nyaya Sanhita, No. 45 of 2023, § 270, INDIA CODE (2023).

⁴¹ See Bohra, *supra* note 3, at 12–13.

⁴² See Bohra, *supra* note 3, at 13.

principle, the precautionary principle and sustainable development has strengthened this framework.

At the same time, judicial action alone cannot remedy all environmental damage. Courts can ensure that laws are obeyed, but long-term environmental protection also needs sound legislation, specialised institutions, scientific knowledge and effective action by the government. Extensive judicial involvement in technical or policy questions may also raise concerns about who is in charge and about how the different branches of government work together.

The proper task of the courts, therefore, is not to take over the functions of other institutions or to make environmental rules in every case. It is better understood as ensuring that the government and private actors comply with the Constitution's environmental mandates, that those responsible are held accountable, and that the courts step in when other institutions fail to protect rights and the environment. The growth of environmental law in India is thus not a story of the courts gaining power but of an effort to build a system in which development, health and the environment work together.⁴³

Environmental conflicts often involve scientific, technical and policy issues that cannot be resolved by constitutional adjudication alone, and they are not easy to handle. The idea of environmental courts was put forward by the Law Commission of India in its 186th Report, *Proposal to Constitute Environment Courts* (2003).⁴⁴ The Commission recommended courts that would combine judges with the help of scientific and technical experts, so that they could handle the complex issues that arise in environmental disputes. Such specialised courts could help produce decisions that are both effective and well informed. The National Green Tribunal, established under the National Green Tribunal Act, 2010, now sits with both judicial and expert members.⁴⁵

The Indian experience shows that the judiciary can serve as a constitutional safeguard for environmental protection, but it is not the only institution that should handle environmental governance. The best model is one in which courts guard rights and enforce legal rules while dedicated environmental agencies supply the scientific, technical and administrative expertise needed to carry out those rules effectively. In this way the judiciary keeps its role in securing

⁴³ See generally Iyengar, Dolšák & Prakash, *supra* note 3.

⁴⁴ LAW COMM'N OF INDIA, 186TH REPORT ON PROPOSAL TO CONSTITUTE ENVIRONMENT COURTS (2003); see Bohra, *supra* note 3, at 14.

⁴⁵ National Green Tribunal Act, No. 19 of 2010, §§ 3–4, INDIA CODE (2010).

justice, while the limits of each institution that sustainable environmental governance requires are respected.
